



POLICE DEPARTMENT

July 13, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Christopher Smith
Tax Registry No. 948428
Police Service Area 7
Disciplinary Case No. 2013-10710

Police Officer Matthew Mozdziak
Tax Registry No. 943590
Police Service Area 7
Disciplinary Case Nos. 2013-10711 & 2014-12345

The above-named members of the Department appeared before me on February 10¹ and May 1, 2015, charged with the following:

Disciplinary Case No. 2013-10710

1. Said PO Christopher Smith, on or about September 13, 2012, at approximately 1300 hours, while assigned to Police Service Area 7 and on duty, inside of 281 East 153rd Street, Bronx County, abused his authority as a member of the New York City Police department, in that he stopped Kevin Edwards without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 - STOP AND FRISK

2. Said PO Christopher Smith, on or about September 13, 2012, at approximately 1300 hours, while assigned to Police Service Area 7 and on duty, inside of 281 East 153rd Street, Bronx County, did wrongfully use force against Kevin Edwards, in that Officer Smith used a chokehold against Kevin Edwards. (*Dismissed*)

P.G. 203-11- USE OF FORCE

¹ Respondents appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster for the first day of trial. Counsel for both parties consented to having the case continue and be reassigned to another Assistant Deputy Commissioner. (Tr. pp. 101-102).

Disciplinary Case No. 2013-10711

1. Said PO Matthew Mozdziak, on or about September 13, 2012, at approximately 1300 hours, while assigned to Police Service Area 7 and on duty, inside of 281 East 153rd Street, Bronx County, abused his authority as a member of the New York City Police department, in that he stopped Kevin Edwards without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 - STOP AND FRISK

Disciplinary Case No. 2014-12345

1. Said Police Officer Matthew Mozdziak, on or about June 1, 2013, at approximately 14:10 hours while assigned to the PSA 7 and on duty in the vicinity of 169 Cypress Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued a Disorderly Conduct summons to ELIZABETH STODDARD without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED
CONDUCT

2. Said Police Officer Matthew Mozdziak, on or about June 1, 2013, at approximately 14:10 hours while assigned to the PSA 7 and on duty in the vicinity of 169 Cypress Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued a Disorderly Conduct summons to Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED
CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Heather Cook, Esq., Respondents Smith and Mozdziak were represented by John Tynan, Esq.

Respondents through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-10710

Respondent Smith is found Not Guilty. Specification 2 is dismissed.

Disciplinary Case Nos. 2013-10711 & 2014-12345

Respondent Mozdziak is found Guilty of Specifications 1 and 2 in Case No. 2014-12345 and Not Guilty in Case No. 2013-10711.

SUMMARY OF EVIDENCE PRESENTED

The CCRB's Case

CCRB called Elizabeth Stoddard in Case No. 2014-12345 and Kevin Edwards, Sheika Grump and John Phelan as witnesses in Case Nos. 2013-10710 and 10711.

The Respondents' Case

Respondents testified on their own behalf.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2014-12345

On June 1, 2013, at approximately 2:10 PM, Respondent Mozdziak was working as an anti-crime officer patrolling in plain clothes in an unmarked police car. Person B and two passengers, Elizabeth Stoddard, the owner of the vehicle, and Person A

, were driving in a vehicle with a broken taillight. Respondent and his partner pulled the vehicle over in the vicinity of 169 Cypress Avenue in the Bronx. Stoddard's vehicle stopped next to a parked car. The police vehicle pulled up directly behind Stoddard's vehicle. Respondent and his partner, Officer Vasquez, asked Person B for his license and registration.

There is conflicting testimony as to what happened next. Respondent testified that after asking for the license and registration, either his partner or he observed a weapon, an asp, inside the car and they then asked the occupants to get out of the car. (Tr. pp. 172-173). Stoddard testified that the occupants were told to get out of the car and go to the back of the vehicle. She stated that the officers then put them in handcuffs and searched her car where they discovered the asp, which belonged to Person B. (Tr. pp. 14-15). There are no charges pertaining to the legality of either the stop or the search.

It is undisputed that the occupants, once outside their vehicle, were all brought to the rear of the vehicle. (Tr. pp. 14, 180). It is also undisputed that Stoddard and Person A were taken back to the precinct and were issued summonses by Respondent for disorderly conduct; specifically for violation of Penal Law Section 240.20.5 (obstructs vehicular or pedestrian traffic). The issue is whether Respondent had sufficient legal authority to issue these summonses. I find that he did not.

Respondent testified that he issued the summonses to Stoddard and Person A because, "they were acting in a loud, boisterous manner that was causing public annoyance and alarm to other passersby and pedestrians on the sidewalk." (Tr. p. 174). He said this went on for a couple of minutes. (Tr. p. 175). Respondent further testified that when he went for his interview at CCRB he realized he made a clerical error and put

the wrong subsection of P.L. 240.20 on the ticket. He stated that he meant to issue the summons for being loud and boisterous and making unreasonable noise and causing public alarm rather than for obstructing vehicular traffic. (Tr. pp. 187-88).

Respondent's explanation of making a mere clerical error as to the subsection numbers on the summonses does not withstand scrutiny of the actual summonses or his activity log entries. In the factual allegations section of each summons, Respondent wrote out, "Deft with the intent to cause public (appears to read "inconvenience") and alarm by obstructing vehicular traffic by standing in the street stopping the flow of traffic." (CCRB X 2A and 2B). By looking at Respondent's own written description of the offense, which he memorialized on the same date as the incident, it is clear that Respondent was giving Stoddard and Person A summonses for stopping the flow of vehicular traffic by standing in the street. Respondent also noted in his activity log that the two summonses were issued and he wrote out not just the Penal Law section number but actually wrote obstructing "veh" next to it. (Tr. 194, CCRB X 1).

The evidence does not support the issuance of the summonses for obstructing vehicular or pedestrian traffic. Respondent testified that he brought all three of the vehicle occupants to the rear of their vehicle and at no point were they left unattended. (Tr. p. 186). He further testified that the occupants were in the road because he told them to walk there and stand there. (Tr. p. 187). Even if any vehicular traffic had been impeded, although there is no convincing evidence of this, it would have been because Stoddard and Person A were complying with Respondent's instructions to stand in the street and it would not constitute a violation of P.L. 240.20.5.

Respondent is found Guilty.

Disciplinary Case Nos. 2013-10710 and 2013-10711

On September 13, 2012, Respondents Smith and Mozdziak were assigned to patrol the Melrose Jackson Houses, a New York City Housing Authority building, located at 281 East 153rd Street in the Bronx. They were in uniform. At about 1 PM they were in the lobby of the building. Also present in the lobby was Kevin Edwards. He did not live in the building. Edwards had a newspaper under his arm. Respondents and Edwards had a conversation. Edwards was arrested for trespassing.

The details of what took place in the lobby are in dispute. Edwards testified that he was in the building to visit an apartment where he watches his three children during the day. Sheika Crump testified that Edwards had permission to visit her. (Tr. pp. 81-82). Edwards said he was in the lobby, with a newspaper folded under his arm, and was waiting for an elevator for approximately two minutes after having been told by a repairman that he couldn't get on one of the elevators. (Tr. p. 46, 49). Edwards saw two officers approach him and one of them asked him why he had his newspaper folded under his arm and did he mind if he looked at it? Edwards said the officers both started asking him questions and that he showed them his identification which indicated he did not live in the building. (Tr. pp. 48, 50) Edwards testified that he told the officers which apartment he was going to visit but they did nothing to verify the information. (Tr. p. 50). Edwards further testified that he tried to leave but the officers shifted in front of him and told him he couldn't go anywhere. (Tr. pp. 51-52). On cross-examination, Edwards testified that he shook the newspaper out twice for the officers and when a piece of the

paper fell to the floor and he tried to pick it up the officers tried to choke him and beat him for 30 minutes. (Tr. p. 73).

Respondent Smith's account of what took place in the lobby is that the Respondents were in the lobby as part of a vertical patrol of the NYCHA building when they saw Edwards waiting for an elevator for about four minutes. They observed Edwards let elevators open without getting into them and they saw him looking around. (Tr. pp. 112, 114). Respondent Smith stated he went up to Edwards and asked him if he lived in the building and if he had ID to prove it? According to Respondent Smith, Edwards said he was not giving him any ID and started to blade his body. Respondent Smith was suspicious of a newspaper that was folded under Edwards' arm and was about three inches thicker than a regular newspaper. (Tr. p. 115). Respondent Smith testified that when Edwards failed to provide his ID or an apartment number he was going to he asked him to place his hands behind his back and put him under arrest for criminal trespassing. (Tr. p. 115). Edwards raised his fists in a "threatening motion" and pushed Respondent Smith away. A struggle ensued on the floor. (Tr. pp. 116-17).

Respondent Mozdziak testified that he saw Edwards off to his right for a couple of minutes and that there were no signs or markings that the elevators were inoperable at the time. (Tr. p. 144). Respondent Mozdziak described Edwards as looking around and "scanning" the area and looking nervous. (Tr. p. 145). He further testified that Edwards "wasn't cooperating very well" and was "giving resistance" to Respondent Smith's questions. He saw Edwards had a newspaper with "some type of a bulge" in it, (Tr. pp. 146-47) and described Edwards as tucking it up under his arm as if he wanted to protect something of value in it. (Tr. p. 158). Respondent Mozdziak remembers that either he or

Respondent Smith asked Edwards about the newspaper. (Tr. p. 160). When Respondent Smith went to place Edwards under arrest, a struggle ensued and approximately 30 bags of crack were recovered from the scene after the scuffle. (Tr. p. 149).

A third person, testified about being in the building for a portion of the time Edwards and Respondents were in the lobby. Elevator repairman, John Phelan, testified that he was working on the elevators that day. He testified he was holding the door open "a crack" when he saw a man come into the building, walking like a normal person with a newspaper under his arm. (Tr. pp. 89-90). He also saw two officers maybe a minute later come in behind him the man. He stated that "they wanted to see his newspaper or something like that [and] shortly after that we started up the shaft, and all I can hear was the young man saying I'm not resisting." (Tr. p. 89, 92). Phelan later stated that he started up the shaft about the time the officers came in and only observed the officers for 30 to 60 seconds at most. (Tr. pp. 91, 94). Phelan didn't recall if the elevator was out of service before the repair crew got there. When he came back down to the lobby in about a half hour or an hour, he didn't see anyone there. (Tr. p. 91, 95).

Under P.G. 212-60 (12), uniformed members of the service are instructed to be alert for persons who may be violating Housing Authority rules and regulations, including "potentially unauthorized persons within NYCHA property". They are further instructed that upon encountering such persons they are to approach the person and ask if they live in the building, are visiting the building or they have business in the building. When someone's authority to be present in the building is in question, the officers are to take reasonable measures to verify the authority.

The Respondents in this case are charged with stopping Edwards without sufficient legal authority. I credit the Respondents' testimony and find that they did stop Edwards, but that they were in compliance with Patrol Guide procedures governing interior vertical patrols of Housing Authority Buildings and Patrol Guide 212-11. The Respondents testified that they questioned Edwards' authority to be in the building because they saw him acting in a somewhat suspicious manner by waiting for elevators and looking around the lobby as if to scan it. They reasonably approached and asked for some identification. Respondent Smith credibly testified that Edwards refused to produce any identification. It is notable that even according to Edwards, the officers were asking him questions in response to which, under his account, he showed his ID to them. (Tr. pp. 48, 50). This supports the Respondents' testimony that they questioned Edwards about his authority to be in the building.

Edward's testimony can be seen as both biased and exaggerated in certain aspects. Edwards has filed a lawsuit based on the incident in question and although he denied knowing how much the suit was for, he does have a financial stake in the outcome of a lawsuit against the city which is a source of bias to be considered in evaluating his testimony. An example of exaggerated or incredible and unsupported testimony is his statement that the officers were beating him for a full thirty minutes in the open lobby of the building. There was no supporting evidence that such a beating took place.

I have also considered the testimony of the elevator repairman. At best, he observed what was going on through a crack in the elevator door he opened for approximately 30-60 seconds. His testimony supports both Edwards' and the Respondents' accounts that the Respondents were talking to Edwards and that their

questions included questions about the newspaper. It is not inconceivable that the Respondents, as they testified, did not see a repairman in those brief seconds he was holding the doors open just a crack while they were focused on Edwards. They also would not have any reason to know the elevator was out of service by the repairman briefly opening the doors a crack and therefore they could have had cause to be suspicious that Edwards was not getting in the elevators as Respondent Smith testified. In addition, since the repairman's view was limited to a mere crack in the elevator doors, it is not inconceivable that he didn't see where the Respondents were located or what they were doing immediately before they came up behind Edwards. In total, I find that the repairman's testimony is neutral and does not either convincingly conflict with or support either Edwards' or Respondents' accounts of what took place in the lobby.

Therefore, I find that the Respondents had sufficient legal authority to approach Edwards and to inquire about his authority to be in the NYCHA building. Once the Respondents saw the bulge in the newspaper and Respondent Smith saw Edwards blade his body in a way to conceal the newspaper, combined with their previous observations of Edwards waiting for an elevator and scanning the lobby, they had reasonable suspicion that he may be committing a crime and had sufficient authority to stop him to question him about the newspaper.

Respondents therefore are found Not Guilty of Case Nos. 2013-10710 and 2013-10711.

PENALTY

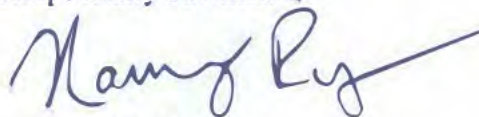
Disciplinary Case No. 2014-12345

In order to determine an appropriate penalty, Respondent Mozdziak's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Mozdziak was appointed to the Department on January 10, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent Mozdziak has been found guilty of issuing Disorderly Conduct summonses to Elizabeth Stoddard and Person A without sufficient legal authority. In *Disciplinary Case Nos. 2013-10146 & 2013-10147* (Apr. 7, 2015), two eleven-year police officers with no prior disciplinary record forfeited three vacation days each for issuing complainant a summons without sufficient legal authority. In that case, the officers were also found guilty of wrongfully searching complainant's car.

Because Respondent Mozdziak has been found Not Guilty of all additional charges, it is recommended that he forfeit a penalty of two vacation days.

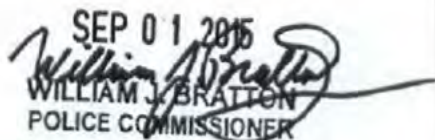
Respectfully submitted,



Nancy R. Ryan

Assistant Deputy Commissioner – Trials

APPROVED

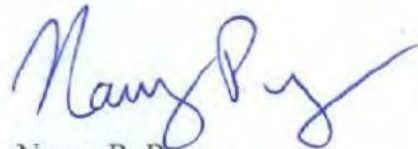
SEP 01 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MATTHEW MOZDZIAK
TAX REGISTRY NO. 943590
DISCIPLINARY CASE NO. 2014-12345

On his last three performance evaluations, Respondent Mozdziak received an overall rating of 4.5 "Extremely Competent/Highly Competent" twice and 4.0 "Highly Competent" once. He has been awarded three medals for Excellent Police Duty, seven for Meritorious Police Duty, and a Commendation. [REDACTED] He has no prior formal disciplinary record.

For your consideration.



Nancy R. Ryan
Assistant Deputy Commissioner – Trials