



POLICE DEPARTMENT

June 24, 2019

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In the Matter of the Charges and Specifications :

Case Nos.

- against - :

Police Officer Joseph Reyes :  
Tax Registry No. 955373 :  
75 Precinct :

2018-18861

Police Officer Sean Keegan :  
Tax Registry No. 954994 :  
75 Precinct :

2018-18860

Police Officer Nicholas Smith :  
Tax Registry No. 953421 :  
75 Precinct :

2018-18862  
-----X

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Claudia Avin, Esq.  
Simone Manigo, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

For Respondent:

John Tynan, Esq.  
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111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

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## CHARGES AND SPECIFICATIONS

### Disciplinary Case No. 2018-18861

1. Police Officer Joseph Reyes, on or about September 27, 2017, at approximately 0050, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he stopped Anton Battle without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16 INVESTIGATIVE ENCOUNTERS

### Disciplinary Case No. 2018-18860

1. Police Officer Sean Keegan, on or about September 27, 2017, at approximately 0050, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he stopped Anton Battle without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16 INVESTIGATIVE ENCOUNTERS

2. Police Officer Sean Keegan, on or about September 27, 2017, at approximately 0050, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that he used physical force by punching Anton Battle about the face without police necessity.

P.G. 221-02, Page 2, Prohibition 11 USE OF FORCE

P.G. 221-01

FORCE GUIDELINES

P.G. 221-02

USE OF FORCE

### Disciplinary Case No. 2018-18862

1. Police Officer Nicholas Smith, on or about September 27, 2017, at approximately 0050, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he stopped Anton Battle without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16 INVESTIGATIVE ENCOUNTERS

## REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on April 10 and 23,

2019. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges.

The CCRB called Anton Battle as a witness. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having carefully reviewed all testimony and evidence in this matter, I find Respondents Guilty and recommend a penalty of three days for Respondents Reyes and Smith and 18 days for Respondent Keegan.

### ANALYSIS

It is undisputed that at approximately 0050 hours on September 27, 2017, Anton Battle was walking home along [REDACTED], Brooklyn, from his job as a security guard. Respondents, in plain clothes and an unmarked car, made a U-turn to park next to Mr. Battle and engage him in conversation. By the time they approached him, they had observed a square-shaped lump in his pocket. Respondents grabbed Mr. Battle. He ran and was eventually apprehended approximately a minute later. He was ultimately released without being charged or issued a summons and he left the scene. Mr. Battle made a civilian complaint alleging that he had been stopped unlawfully and that an officer had punched him.

Mr. Battle testified that at the time of the incident, he was walking home, wearing tight-fitting sweatpants with two front pockets. He denied having had any weapons or drugs, including marijuana, on his person. He noticed a sedan, which he inferred was a police vehicle because its windows were open and at least one of its occupants was making eye contact with him. (Tr. 10-14, 36-37, 55-56, 88) The car made a U-turn slowly, one of the men inside the vehicle asked Mr. Battle for I.D., and two men exited the vehicle. Mr. Battle stopped walking when the car pulled next to him; his hands were to his sides. The men were not wearing police uniforms, but did have police badges around their necks, leading him to conclude that they were police. (Tr. 14-15, 68-75) According to Mr. Battle, they did not identify themselves as police

officers. Mr. Battle testified that he did not verbally agree to show his I.D., but rather reached for it silently. While Mr. Battle was reaching for his I.D., one of the officers, who had spiky hair, yelled that Mr. Battle had a gun or weapon and "rushed" him. The same individual grabbed Mr. Battle's neck. Mr. Battle "mushed<sup>1</sup> his hands away and started to back up." Mr. Battle then ran, because "I feared for my life." Mr. Battle acknowledged that his breathing was never obstructed and clarified that the choking consisted of a "firm grip." (Tr. 15-18, 76, 85-87) Mr. Battle testified that he was running for "about 60 seconds....just an estimate." He saw two people standing inside their gate, but did not ask for help: "What were they going to do, call the cops?" (Tr. 92-94)

As Mr. Battle was running, he saw the driver of the car coming in the opposite direction. At that point, he surrendered by dropping to the ground and putting his hands in the air, and he was facing the officers who were chasing him. Mr. Battle could not recall exactly how he came to be facing the officers who had been behind him, but estimated that he had been on his knees for 30 seconds before they reached him. (Tr. 18-19, 98-103) One of the officers who had been chasing him on foot arrived and "as soon as he got to me he punched me." Mr. Battle testified that the officer, wearing a tan hat, punched him three times with a closed fist, causing his vision to become blurry: "He punched me one time, I landed on my right side and his body was on top of mine and that's when he hit me two more times. I think that's when the other officer that was on foot came and I was placed in handcuffs." The officer that punched Mr. Battle was standing over him, crouched at the knees. Mr. Battle twice denied that he ever "collided" with the officer that punched him. (Tr. 19-20, 105-109, 112-113, 143).

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<sup>1</sup> Mr. Battle used the word "mushed" to describe his actions several times throughout his testimony. During cross-examination, he clarified that he meant he "pushed" the officer. (Tr. 87)

After Mr. Battle was handcuffed, the officers stood him up. They took his I.D. and phone from his pocket and ran his name. He was taken to the police vehicle. Respondents then "came to me about some man to man agreement." Mr. Battle specified that the officer with the spiky hair was the one to propose the man to man agreement. Regarding the nature of the agreement, Mr. Battle testified, "I couldn't say the 75<sup>th</sup> Precinct or the police did this to me." Mr. Battle agreed and was released. (Tr. 21-24, 116-119) He went straight home and told his girlfriend and sister what had happened. His eye was swollen and bruised. He felt pain the next morning when he woke up. He was taken to the hospital and prescribed pain medication, although he "never went to pick it up." (Tr. 25-27, 33-34, 127)

Respondent Reyes testified that he was working with his partners as part of an anti-crime team on September 27, 2017. He was the driver of the Ford Taurus. He was driving slowly with the windows down and saw Mr. Battle walking on the sidewalk in the opposite direction. He observed "bulges inside one of his pants pockets" and made a U-turn "to go to talk to Mr. Battle." He did not use the emergency lights or loudspeaker that the vehicle had. Respondent Reyes acknowledged that the bulge, which looked like a square object, could have been a cell phone or wallet, but maintained that it also could have been a small firearm. (Tr. 156-160, 168-170) One of his partners said something to Mr. Battle, who "proceeded to put his hands in his pockets." Respondent Reyes saw his partners exit the vehicle and approach Mr. Battle to remove his hands from his pockets "for our safety." Mr. Battle stopped walking when the officers exited the vehicle. Respondent Reyes initially remained in the vehicle but started to exit "to help if anything happens." One of his partners asked Mr. Battle to take his hands out of his pockets and "at that point...we grabbed his arms out of that pocket and he pushed off one of the officers and I." Mr. Battle's refusal to remove his hands from his pockets "seemed a little suspicious" to

Respondent Reyes. Once Mr. Battle pushed off the officers, he ran and Respondent Reyes got back in his vehicle and drove after him. (Tr. 160-163, 170-171)

When Respondent Reyes reached the intersection, he lost sight of Mr. Battle. He traveled around the block and saw Mr. Battle in handcuffs, with both of Respondent Reyes' partners. At that point, Respondent Reyes ran Mr. Battle's name on his Department cell phone. Respondents "decided to let him go" because they "didn't want to put anything on his record." Respondent Reyes saw no injuries on Mr. Battle, although he acknowledged that Mr. Battle's shirt was ripped. He also acknowledged that he lost sight of his partners' pursuit of Mr. Battle and thus did not see whether he had been punched. The team took a photograph of Mr. Battle's I.D. for a stop-and-frisk report, although no such report was ever completed. Because they declined to issue a summons to Mr. Battle for possessing marijuana, Respondent Reyes and his partners returned the marijuana to him and released him. They never vouchered the marijuana. (Tr. 163-165, 174-179, 218)

Respondent Smith testified that he and his partners saw Mr. Battle, made eye contact with him, and made a U-turn. After driving closer, they "observed a bulge in his pocket but weren't necessarily concerned with the bulge, just were checking him out....we decided to just inquire, just speak to him." He acknowledged that the object could have been a cell phone or wallet. Although he was concerned about the object in Mr. Battle's pocket, he did not plan to ask about it. Rather, "we just inquire what's going on in the neighborhood." Respondent Smith characterized his tone of voice as non-threatening. Respondent Smith testified that asking directly about what someone has in their pocket can be "dangerous." However, he admitted that he told CCRB that he would have asked about the object, and before this tribunal he acknowledged, "If that came up, we would have spoken to him about it, sure." When Mr. Battle

stopped. Respondent Smith showed him his shield and said, "Hey, police, mind if I talked to you real quick?" Mr. Battle stopped voluntarily and faced the officers. Respondents Smith and Keegan then exited the vehicle. Respondent Smith again asked Mr. Battle, "What's going on, what are you doing, where are you going?" He thought Mr. Battle was "annoyed to have to interact with us" but "didn't say anything...overly disrespectful." Respondent Smith acknowledged at trial that Mr. Battle was not obligated to stop and that the officers were not entitled to search his pockets at that time. (Tr. 182-184, 197-200, 204-205, 219)

However, Mr. Battle placed his hands in his pockets and stood in a way that concerned Respondent Smith. Namely, Mr. Battle "bladed" his body, a stance that was "indicative of somebody who...could potentially be acting violent toward us." Respondent Smith explained that this was a stance similar to a boxer's. He asked Mr. Battle at least three times to remove his hands from his pockets. Because he was concerned about Mr. Battle's hand, he grabbed "from his wrist to his elbow" to remove the hand from the pocket. Mr. Battle shoved Respondent Smith's "shoulder or chest area" and Respondent Smith attempted to grab his arm. He concluded that he likely was the one to rip Mr. Battle's shirt in the process. (Tr. 184-187)

Mr. Battle then "zigzagged" and ran. Respondent Smith attempted to run after him but fell. Respondent Keegan caught him and Respondent Smith observed him "on the floor" with Mr. Battle. Respondent Smith acknowledged that he had "just briefly" lost sight of Respondent Keegan and Mr. Battle "from the moments of pushing myself off the ground." Respondent Smith testified, "I believe Mr. Battle was on his chest and Officer Keegan was either kneeling beside him or in some position as such to hold his arms behind his back." Respondent Smith put handcuffs on Mr. Battle with the assistance of Respondent Keegan. One of Respondent Smith's partners searched Mr. Battle incident to lawful arrest. The partners waited until Respondent

Reyes arrived in the car, at which time they had Mr. Battle sit in the vehicle. They found no weapons on his person or in the vicinity, but did find "two small bags" of marijuana in his pocket. Because Mr. Battle had no criminal history, the partners decided neither to issue a summons for marijuana nor to arrest him for obstructing governmental administration, for pushing Respondent Keegan. They did not notify a supervisor because "there would have been no discretion." Respondent Keegan admitted that he considered it "unnecessary...to tax ourselves with vouchering marijuana that wasn't causing an issue." Respondents returned the marijuana to Mr. Battle. They then had a "cordial conversation" with Mr. Battle, including about a basketball video game, before leaving to respond to another location. Respondent Keegan denied offering Mr. Battle a "deal" to release him and testified that Mr. Battle's only complaint was that the handcuffs were too tight. They did not voucher the marijuana and did not complete a stop-and-frisk report. (Tr. 187-195, 212-214, 218).

Respondent Keegan testified that he first saw Mr. Battle after the patrol vehicle made the U-turn. The team identified themselves as police officers and exited the vehicle. Respondent Keegan kept his eyes on Mr. Battle because he appeared to have a cautious and nervous demeanor; namely, he appeared to be "looking back at our vehicle." After seeing a square object in his pocket, Respondent Keegan told Mr. Battle to remove his hand from his pocket. Respondent Keegan thought that the object could have potentially been a weapon, but conceded it could also have been a cell phone. When Mr. Battle failed to remove his hand, Respondents "used our protective measures to try to remove his hand from his pocket." Respondents Keegan and Smith both reached for Mr. Battle's hand but he ripped his hand away and pushed both officers away. Mr. Battle "mostly" pushed Respondent Smith but "we were in such close



proximity that...it was kind of both of us.” Mr. Battle ran away and “zigzagged” with “evasive maneuvers,” leading Respondent Smith to fall. (Tr. 227-231, 239, 250, 253)

Respondent Keegan continued pursuing Mr. Battle and commanding him to stop. He saw that Mr. Battle “tried to cut back again.” The two were “in such close proximity that we collided” when Mr. Battle changed directions. Respondent Keegan testified that his chest hit Mr. Battle’s shoulder or side. They both fell to the ground, and Respondent Keegan “had minor scrapes.” While they were on the ground, Respondent Keegan told Mr. Battle repeatedly to calm down and relax. Respondent Smith arrived “less than five seconds” later and was able to place Mr. Battle in handcuffs, as Respondent Keegan “was completely gassed.” Respondent Keegan denied ever punching Mr. Battle. (Tr. 231-234) After Mr. Battle was placed in handcuffs, Respondent Keegan asked why he ran and he screamed, “It’s just weed.” While at the patrol vehicle, he calmed down and apologized, again telling Respondents that he ran simply because he had “weed” on his person and did not want to be arrested. Respondent Keegan explained to Mr. Battle that he had discretion not to charge him for “violation-level marijuana” and that “it’s not a good idea to run like that...people could get hurt.” Respondents “decided that he seemed like a nice enough gentleman now that he was calmed down” and decided to release him, in part due to the Kings County District Attorney’s Office’s policy not to prosecute low-level marijuana possession. Mr. Battle stayed and chatted before Respondents left to answer a call. Respondent Keegan denied asking Mr. Battle what he would say about the incident. (Tr. 234-237, 259-261)

CCRB submitted photographs of Mr. Battle’s face, the scene of the incident, and medical records from his stay in the hospital. The hospital records from Jamaica Hospital Medical Center (CCRB Ex. 3) include a statement that Mr. Battle “was walking home from work around 1am and was confronted by police officers who asked for his ID, when he went to reach into his

pocket they thought he had a weapon and they punched him in the left eye and pushed him to the ground.” The document also diagnoses “hematoma to left eye.” One photograph (CCRB Ex. 1B) clearly shows a black eye on Mr. Battle’s left side. Two other photographs, taken at the hospital (CCRB Exs. 1C and 1D), also show a black eye and marks on Mr. Battle’s neck, respectively.

Specification 1 for each Respondent charges Respondents with stopping Mr. Battle without sufficient legal authority. It is undisputed that the patrol vehicle made a U-turn to drive closer to Mr. Battle and that Respondents Smith and Keegan exited the car to approach him. Respondents were varied in their explanations for why they approached him. Respondent Reyes indicated that they wanted to ask about the bulge in Mr. Battle’s pocket; Respondent Smith testified that they wanted to ask generalized questions about the neighborhood; and Respondent Keegan testified that he did not notice Mr. Battle until after the U-turn had already happened. Pursuant to the Patrol Guide (P.G. 212-11, page 1) and *People v. De Bour*, 40 N.Y.2d 210, 216 (1976), if Respondents indeed were just asking for general information about the neighborhood, their actions would have been a Level 1 Encounter. The Patrol Guide specifies that in such a scenario, officers “may not create a situation (either by words *or actions*) where a reasonable person would not feel free to leave” (P.G. 212-11, pages 1-2 [emphasis added]). Because Respondents drove up to Mr. Battle and two of them exited the vehicle almost immediately to speak to him, their actions led Mr. Battle reasonably to feel that he was not free to leave. If Respondents sought to ask general questions, for example, about events in the neighborhood that evening, they could have remained in the vehicle instead, so as to avoid giving Mr. Battle the impression that he was being surrounded or detained.

On the other hand, if Respondents instead were stopping Mr. Battle to investigate the lump in his pocket, their actions would amount to at least a Level 2 Encounter and would need to be predicated on a founded suspicion of criminal activity, which requires "some present indication of criminality based on observable conduct or reliable hearsay information" (*Id.* at page 2). Seeing a square-shaped bulge in Mr. Battle's pocket, which each Respondent acknowledged could have been something innocuous such as a cell phone or wallet, does not give rise to a founded suspicion of criminal activity. Therefore, whether Respondents intended to engage in a Level 1 or Level 2 Encounter with Mr. Battle, the manner in which they did so constituted an unlawful stop. Accordingly, I find Respondents Guilty of Specification 1.

Respondent Keegan is also charged with unlawful use of force, namely punching Mr. Battle in the face. Respondent Keegan denies punching Mr. Battle and claims that the two instead collided during the foot chase. Mr. Battle, however, claims that he was punched three times, including on his left eye. Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Moloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]). The preponderance of the evidence suggests that Mr. Battle was indeed punched in the face as he claims. Both Respondents Reyes and Smith admitted that they were not present for the moment when Respondent Keegan chased down Mr. Battle. Therefore, neither of them can testify with certitude that Respondent Keegan did not punch Mr. Battle. On the other hand, Mr. Battle's story has remained consistent since he told doctors that he had been assaulted by a police officer and punched in the left eye. Documents such as hospital records, made in the regular course of

business, are admissible as evidence of the events described therein (NY CPLR § 4518).

Moreover, the photographic evidence is consistent with Mr. Battle's allegations. Respondent Keegan did not present an adequate explanation for how Mr. Battle's eye came to be injured, testifying instead that he collided with Mr. Battle's "side." I find this testimony to be self-serving and incredible in light of the photographs taken shortly after the incident and the consistent story told by Mr. Battle from the time he was in the hospital. Accordingly, I find Respondent Keegan Guilty of Specification 2.

## PENALTY

In order to determine an appropriate penalty, Respondents' service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 9, 2007. Information from their personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has recommended a penalty of the loss of three vacation days for Respondent Reyes, seven days for Respondent Smith, and 15 days for Respondent Keegan. Respondents in previous cases have forfeited from three to five vacation days for stopping an individual without sufficient legal authority (*Disciplinary Case No. 2015-14036* [May 23, 2017][Eighteen-year sergeant with no prior disciplinary record forfeited five vacation days for (i) stopping an individual without sufficient legal authority, (ii) stopping a second individual without sufficient legal authority, and (iii) entering a house without sufficient legal authority]; *Disciplinary Case Nos. 2015-14923 & 2015-14924* [March 28, 2017][Five-year police officer, with no prior disciplinary history, forfeited three vacation days for stopping an individual without sufficient

legal authority. Nine-year detective, with no prior disciplinary history, forfeited six vacation days for (i) stopping an individual without sufficient legal authority; (ii) entering an apartment without sufficient legal authority and (iii) damaging a civilian's property without sufficient legal authority. The entry was deemed unlawful, as the officers lacked probable cause that the woman possessed a firearm and thus were unjustified in pursuing her into the private home, even though they may have been reasonable in considering her behavior suspicious. Though they reported noticing a slight bulge, they did not see a firearm or even an object in the shape of a gun and they were not responding to a firearm call]).

Respondents in previous cases have forfeited between five and 15 vacation days for wrongfully striking a suspect in the face. (*Disciplinary Case No. 2016-15603* [October 6, 2017][Four-year police officer, with no disciplinary history, forfeited 15 vacation days for wrongfully punching an arrestee about the face without police necessity. According to hospital records, Respondent had "pain in right hand" and a "likely contusion" as a result of "punching." Complainant's medical records also corroborated the claim of a punch, as the records denoted a "contusion to head," "superficial abrasions" and a "chipped tooth"]; *Disciplinary Case No. 2015-14379* [May 23, 2017][Seventeen-year detective, with one prior adjudication, forfeited 15 vacation days for striking an individual in the face without police necessity. After pushing the individual down to the ground, and placing one handcuff on his left wrist, Respondent repeatedly ordered the individual to give him his right arm. When the individual did not comply, Respondent punched him once in the face to try to gain compliance. The individual was not engaging in any active aggression or active resistance at the time he was punched and Respondent had obtained control over him. Thus, Respondent's punch to the face was in violation of the Patrol Guide which demands that MOS use the minimum force necessary];

*Disciplinary Case No. 2015-14319* [March 28, 2017][Eleven-year police officer, with no prior disciplinary history, forfeited 15 vacation days for repeatedly striking a prisoner in the head with a closed fist. Respondent arrived at the scene of an arrest as back-up and assisted other officers in taking the resisting arrestee to the ground and to the RMP]; *Disciplinary Case No. 2015-14073* [December 19, 2016][Five-year police officer with no prior disciplinary record forfeited 15 vacation days for wrongfully using force without police necessity in that he struck an individual in the face. Respondent responded to a call from a group home for adolescents with mental health issues regarding an aggressive sixteen-year-old resident. After agreeing to bring the resident to a hospital for a psychological evaluation, Respondent punched the resident in the face several times while he was being restrained by two other police officers. There was no evidence in the record to support a finding that the resident's resistance was so protracted and violent that a resort to physical force to compel his acquiescence was warranted]; *Disciplinary Case No. 2015-14484* [August 3, 2017][Four-year police officer with no prior disciplinary history forfeited seven vacation days for wrongfully striking an individual in the face with a closed fist. The record lacked sufficient evidence, including video footage, in support of Respondent's assertion that the individual was behaving in a threatening manner that warranted a punch to his face. ADCT determined that seven vacation days was sufficient to address the misconduct because the one brief punch, which was in furtherance of a lawful detention and arrest, did not result in any injuries.]; *Disciplinary Case No. 2015-14828* [October 6, 2017][Nine-year police officer, with no prior disciplinary history, forfeited five vacation days for wrongfully striking an unidentified youth in the face with an open hand. Respondent observed the youth entering the train platform area through the emergency door without having paid the fare. Thus, Respondent had the right to take the youth into custody and to physically remove him from the platform. As to the facial

strike, although Respondent denied that he had slapped the youth, the witness testified that he saw Respondent slap the youth once in the face with an open hand and that he could clearly hear the sharp sound of Respondent's hand making contact with the youth's face)).

CCRB cited several cases that it mischaracterized. CCRB cited *Disciplinary Case No. 2015-14828* as a fifteen-day penalty for punching an arrestee in the face, but the respondent forfeited just five days. CCRB cited *Disciplinary Case No. 2016-15355* as a fifteen-day penalty for throwing an individual to the ground, but in actuality the respondent was found not guilty. *Disciplinary Case No. 2016-16185* was cited as a negotiated penalty of ten days for initiating a Level 2 Encounter unlawfully, but there were several additional specifications to which the respondent pleaded guilty, such as using profanity toward the civilian and conducting an unlawful frisk, which are absent from the instant case. *Disciplinary Case No. 2015-14171* was cited as a three-day penalty for stopping an individual without sufficient legal authority. However, the respondent in that case was found not guilty of an unlawful stop, although he did forfeit 25 vacation days for profanity and use of force, among other specifications. Therefore, I have not weighed CCRB's analysis in making my recommendation.

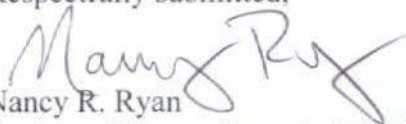
In sum, recent precedent shows that, for an unlawful stop alone, respondents typically forfeit three vacation days. I do not believe that there is a meaningful distinction between Respondents Reyes and Smith merely because one acted as driver and one handcuffed Mr. Battle. Accordingly, I recommend that both Respondents Reyes and Smith forfeit three vacation days. Recent precedent also shows that striking (i.e. slapping or punching) a complainant typically carries a penalty of five to 15 days. I believe a penalty on the higher end is appropriate here, as Respondent Keegan punched Mr. Battle multiple times, causing a black eye.

POLICE OFFICER JOSEPH REYES  
POLICE OFFICER NICHOLAS SMITH  
POLICE OFFICER SEAN KEEGAN

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Accordingly, I recommend that Respondent Keegan forfeit 18 vacation days, including the three days for the stop and 15 days for the punch.

Respectfully submitted,

  
Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

NOV 21 2019

  
JAMES P. O'NEILL  
POLICE COMMISSIONER





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JOSEPH REYES  
TAX REGISTRY NO. 955373  
DISCIPLINARY CASE NO. 2018-18861

Respondent was appointed to the Department on July 9, 2013. On his three most recent performance evaluations, he has received 4.0 overall ratings of "Highly Competent" in 2016 and 2015 (twice).

He has received 16 medals for Excellent Police Duty and one medal for Meritorious Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER SEAN KEEGAN  
TAX REGISTRY NO. 954994  
DISCIPLINARY CASE NO. 2018-18860

Respondent was appointed to the Department on July 9, 2013. On his three most recent performance evaluations, he received a 4.5 overall rating of "Extremely Competent/Highly Competent" in 2015, a 4.0 overall rating of "Highly Competent" also in 2015, and a 3.0 overall rating of "Competent" in 2014. [REDACTED]

[REDACTED] He has received eight medals for Excellent Police Duty and three medals for Meritorious Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER NICHOLAS SMITH  
TAX REGISTRY NO. 953421  
DISCIPLINARY CASE NO. 2018-18862

Respondent was appointed to the Department on July 9, 2013. On his three most recent performance evaluations, he received a 4.0 overall rating of "Highly Competent" for 2015 and 2016 and a 4.5 overall rating of "Extremely Competent/Highly Competent" for 2014. [REDACTED]

[REDACTED] He has received seven medals for Excellent Police Duty and two medals for Meritorious Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials