



POLICE DEPARTMENT

September 11, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Eric Robinson
Tax Registry No. 934118
107 Precinct
Disciplinary Case No. 2014-11685

Police Officer Kevin Tresham
Tax Registry No. 935868
107 Precinct
Disciplinary Case No. 2014-11686

The above-named members of the Department appeared before the Court on July 9, 2015, charged with the following:

Disciplinary Case No. 2014-11685

1. Said Lieutenant Eric Robinson, on or about July 9, 2013, at approximately 1915 hours while assigned to the 107th Precinct and on duty, in the vicinity of [REDACTED], Queens County, abused his authority as a member of the New York City Police Department in that he participated in the stop of Randy Winslow without sufficient legal authority.

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

2. Said Lieutenant Eric Robinson, on or about July 9, 2013, at approximately 1915 hours while assigned to the 107th Precinct and on duty, in the vicinity of [REDACTED], Queens County, abused his authority as a member of the New York City Police Department in that he participated in the stop of Person B without sufficient legal authority.

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

Disciplinary Case No. 2014-11686

1. Said Police Officer Kevin Tresham, on or about July 9, 2013, at approximately 1915 hours while assigned to the 107th Precinct and on duty, in the vicinity of [REDACTED] [REDACTED], Queens County, abused his authority as a member of the New York City Police Department in that he frisked Randy Winslow without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

2. Said Police Officer Kevin Tresham, on or about July 9, 2013, at approximately 1915 hours while assigned to the 107th Precinct and on duty, in the vicinity of [REDACTED] [REDACTED], Queens County, abused his authority as a member of the New York City Police Department in that he searched Randy Winslow without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK¹

The Civilian Complaint Review Board (CCRB) was represented by Raasheja N. Page, Esq. Respondent Robinson was represented by Michael Lacondi, Esq., Karasyk & Moschella LLP. Respondent Tresham was represented by John P. Tynan, Esq., Worth, Longworth & London LLP.

Respondents pleaded 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

Respondent Robinson is found Guilty. Respondent Tresham is found Not Guilty.

¹ Sergeant Person A originally was a co-respondent in this case under Case No. 2014-11688. Unfortunately, he suffered a heart attack earlier this year and remained unable to appear at trial, on long-term sick leave and likely to retire. Person A, however, made statements in his CCRB interview that were favorable to Respondent Tresham, who otherwise would have used him as a witness at trial. Anthony DiFiore, Esq., of The Quinn Law Firm PLLC, representing Person A, stated at the outset of trial that Person A likely would be pleading guilty before his retirement. The parties agreed that Person A's CCRB interview could be admitted into evidence here in lieu of his testimony (Tr. 2-5).

FACTS

It is not in dispute that on July 9, 2013, at approximately 1930 hours, Randy Winslow and [REDACTED], Person B, were walking northbound on [REDACTED] in Queens [REDACTED] [REDACTED], when they were stopped by a 107 Precinct conditions team consisting of Sergeant William Wanamaker, Police Officer (now Sergeant) Person A, and Respondent Tresham. Winslow and Person B were asked to produce identification and questioned about their destination. During the encounter, both were frisked and searched. The disputed facts in this case concern the actions of the officers that engaged in the stop and the chronology of events prior to the frisks and searches.

Winslow, a retired Traffic Enforcement Agent, [REDACTED] [REDACTED]. On July 9, 2013, he was out for a walk, which he took five days a week, as part of an exercise regimen in his recovery [REDACTED]. He was accompanied by [REDACTED] Person B. Person B [REDACTED] [REDACTED] had binoculars so he could watch airplanes on takeoff and landing approach for John F. Kennedy and LaGuardia Airports. Winslow indicated that they were walking on the west side [REDACTED], heading toward [REDACTED] [REDACTED]. He testified that there were no vehicles on the west side of the street where he was walking. At one point they stopped to look at a raccoon (Tr. 17-19, 29, 34-36, 38, 112).

Winslow testified that about 100 feet south of [REDACTED] School [REDACTED] [REDACTED] he observed three police officers exit a black Chevy Impala sedan with tinted windows. One was a sergeant. The officers asked Winslow where he and his son were coming from. He replied that he was coming from home. Winslow testified that the officers asked him whether he was involved in a fight at [REDACTED]

██████████, adding they had received a call that two men were involved in an altercation there.

Winslow was asked for identification and produced his NYPD ID as well as his New York State driver license. Winslow explained to the officers that he was out for a walk (Tr. 19-20, 27).

Winslow testified that the officers asked if they could search him and Person B.

Winslow indicated that they could. The officers returned Winslow's NYPD ID but kept his license, as well as ██████████ identification to run checks on their names. Winslow did not see ██████████

██████████ binoculars get removed from his pocket (Tr. 21-22, 25).

Winslow volunteered to the officer that he had pepper spray and a pocket knife in his right cargo pants pocket. He was told to remove them and gave them to the officer. The officer conducted a pat-down of Winslow's front, rear and cargo pockets, and then placed his hands inside each of the pockets. At trial, Winslow stated he believed, but was not sure, that Respondent Tresham was the officer that frisked and searched him. Winslow watched as ██████████ was frisked and searched by another officer. Winslow was advised that their identification checks were clear, and then the officer apologized. Winslow and ██████████ went on to finish their walk (T. 22-24, 28).

Respondent Robinson was the 107 Precinct Special Operations Lieutenant. He testified that he was traveling with his commanding officer ██████████ at about 1915 hours on July 9, 2013. At the time, there were sporting events underway at several ball fields on the east side ██████████. These were part of ██████████, but there was a wooded area on the west side as well. There also were cars parked on the west side of the street (Tr. 65, 67-68, 84-85).

Respondent Robinson's attention was drawn to the complainants because, in his view, they "weren't walking with a general purpose." They were walking on the west side ██████████

[REDACTED], for approximately 15 minutes. There had been problems in that area with car break-ins, as parked vehicles in that area were relatively isolated because there were no businesses or houses right there. According to Respondent, the complainants would "take a few steps, look over their shoulders, take a few steps more, stop, talk to one another, glance over their shoulders, look at the cars, et cetera." Respondent also described their activity as "meandering." In Respondent's view, the distance that the complainants covered in that period of observation should have taken them no more than five minutes, even at a slow pace. At no time did he observe them peering into, circling or entering cars, or attempting to open car doors, trunks or hoods. Respondent Robinson further conceded that he never saw Winslow or Person B in possession of any burglar's tools. There was a sidewalk that the complainants were walking on the entire time (T. 66, 68-69, 71-72, 75, 79-80, 82).

Nevertheless, based upon the aforementioned observations, Respondent Robinson concluded that he had reasonable suspicion to stop the complainants. Respondent Robinson contacted the conditions sergeant, Sergeant William Wanamaker, informed him that Winslow and Person B had been casing vehicles, and instructed him to stop them. Respondent Robinson stayed on the scene until he observed the conditions team step out of their vehicle and encounter the two men, but did not observe their subsequent interaction (T. 71-74).

Person A stated in his CCRB interview (Respondent's Exhibit A) on September 11, 2013, that Wanamaker instructed him to stop Winslow and Person B, based upon a request from Respondent Robinson. When Person A first saw them, they were not doing anything except walking. Winslow and Person B were asked what they were doing, to which they responded that they were taking a walk and lived about a mile south of where they were stopped. Identification

was requested and received, and their names were checked for open warrants. Person A conceded that he frisked Winslow, saying that he did so because he saw a "suspicious bulge" in his pocket. Person A was unable to describe the bulge but stated that he "need[ed] to find out what that is for my own safety." Person A admitted that, recognizing the object only to be a hard object, he placed his hand in the pocket, seizing a cell phone (RX A, pp. 11-18).

Person A stated that he also frisked Person B because he too had a "suspicious bulge" in his back pocket. Person A reached into the pocket and seized the binoculars. Person A denied telling the men that he had received a report of a fight at their location or asking for consent to search them (RX A, pp. 18-21).

Respondent Tresham concurred that at no time did he observe the complainants doing anything but walking. He admitted that at no time during the encounter did he fear for his personal safety. Respondent Tresham nevertheless asserted that he did not have any physical contact with these individuals and denied frisking or searching either of them. Person A prepared the Stop, Question and Frisk Report Worksheets (UF-250) (T. 97-101).

It is charged that Respondent Robinson "participated" in the stops "without sufficient legal authority." By this the CCRB means that he directed subordinates to conduct a stop that was not legally authorized. Respondent Tresham is charged with frisking and searching Winslow without sufficient authority.

FINDINGS AND ANALYSIS

Case No. 2014-11685: Respondent Robinson

The tribunal credits Respondent Robinson's testimony as credible, forthright and consistent. Nevertheless, it was conceded by Respondent Robinson that the stop he ordered was

a forcible stop requiring reasonable suspicion (Tr. 9-10, 71, 84, 113-15). Also known as a Level III stop under the street encounters analysis set forth in People v. De Bour, 40 N.Y.2d 210 (1976), a forcible stop requires a police officer to have reasonable suspicion that the person has committed, is committing or is about to commit a crime. See People v. Hollman, 79 N.Y.2d 181, 185 (1992).

The complainants here were taking a leisurely walk, as they were entitled to do. They were entitled to do so on a part of the [REDACTED] where there was [REDACTED] and no other homes or businesses. Winslow testified that he was recovering [REDACTED] and that his [REDACTED] [REDACTED] liked to watch planes or look at other interesting things. Respondent Robinson conceded that the only thing the complainants were doing wrong was walking slowly in an area with no apparent place to go, and occasionally looking around. They were not looking into vehicles or trying car doors, and there was no other indicator of a crime.

In sum, the activity Respondent Robinson testified to observing was unremarkable and innocuous, particularly on a summer evening. Based upon his own testimony, Respondent Robinson had an insufficient basis to conduct a forcible stop and thus no authority to direct his subordinate officers to conduct one. At best, he could have conducted a Level I inquiry, a simple request for information, in which he only would have required an objective, credible reason for the encounter, not necessarily indicative of any criminality. See Hollman, 79 N.Y.2d at 184.

Accordingly, Respondent Robinson is found Guilty of Specification Nos. 1 and 2, directing the stops of Winslow and Person B.

Case No. 2014-11686: Respondent Tresham

It was undisputed that both Winslow and Person B were frisked and searched. Winslow believed Respondent Tresham was the officer that frisked and searched him, but was not sure. Respondent Tresham denied doing either action upon either complainant. He contended that Person A frisked and searched both men. Person A indeed admitted in his CCRB interview that he frisked and searched both Winslow and Person B.

Due to his unfortunate personal circumstances, Person A was not subjected to cross examination at trial. The lack of confrontation undermines the probative value of hearsay statements in general. Here, however, Person A's statement was a declaration against his interest because it subjected him to disciplinary action, even if he believed he was in the right. See People v. Shabazz, 22 N.Y.3d 896, 898 (2013) (such statements are recognized as generally reliable because normally people do not make statements damaging to themselves unless they are true).

It is a reasonable conclusion that Person A conducted the frisks and searches himself while Respondent Tresham backed him up. Only Person A filled out the UF-250s. Respondent Tresham credibly testified that it depended on the situation whether one or two officers would deal with two individuals. Here, as the encounter was not volatile and the officers were not in fear for their safety over it, Respondent Tresham felt that he could back up Person A while Person A did the frisking and searching. The Court credits this testimony as consistent with Department practice for street encounters.

Both Person A and Respondent Tresham were white. Winslow testified that they were roughly the same height (Tr. 43-44, 48, 51). Nothing else about Person A's appearance was

admitted at trial. This makes it difficult for the tribunal to assess the possibility that Winslow identified Respondent Tresham correctly.

In sum, Person A admitted doing the frisks and searches of both Winslow and Person B by himself. His hearsay statement was credible as a declaration against interest, and Respondent Tresham's agreement on this point was credible in light of Department practice during street encounters. Winslow's identification of Respondent Tresham was equivocal to begin with and clouded by the lack of a comparison with Person A's appearance. As such, the CCRB failed to prove by a preponderance of the credible evidence that Respondent Tresham frisked and searched Winslow. He thus is found Not Guilty of Specification No. 1 (frisking Winslow) and Specification No. 2 (searching Winslow).

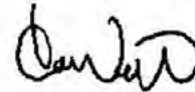
PENALTY

In order to determine an appropriate penalty, Respondent Robinson's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222 (1974). Respondent Robinson was appointed to the Department on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB's recommendation of the forfeiture of 5 vacation days as a penalty is too harsh in light of the most recent cases imposing fewer days of forfeiture. Respondent Robinson has over 11 years of service of outstanding service to the Department and no prior disciplinary record. His goal here was to interdict crime, although the way in which he did so was mistaken. He engaged in an analytical process that attached great significance to certain facts and downplayed other relevant facts. The Court accordingly recommends a penalty of the forfeiture

of 3 vacation days. See, e.g., Case No. 2014-12398, pp. 5, 7 (June 22, 2015) (3 days for frisk with no legal justification offered).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED

OCT 14 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

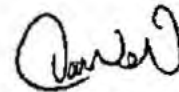
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT ERIC ROBINSON
TAX REGISTRY NO. 934118
DISCIPLINARY CASE NO. 2014-11685

In 2015, Respondent Robinson received an overall rating of 5.0 "Extremely Competent" on his annual evaluation. He received a 4.5 "Highly/Extremely Competent" in 2014, and a 4.0 "Highly Competent" in 2013. [REDACTED]
[REDACTED]

Respondent Robinson has received one commendation for Excellent Police Duty.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials