



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

March 21, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Robert King**  
Tax Registry No. 924028  
52 Precinct  
Disciplinary Case No. 2015-14369

The above named member of the service appeared before Assistant Deputy Commissioner Paul M. Gamble on September 13, 2016, and was charged with the following:

**DISCIPLINARY CASE NO. 2015-14369**

1. Said Sergeant Robert King, on or about February 9, 2015, at approximately 2020 hours, while assigned to the 52<sup>nd</sup> Precinct and on duty in the vicinity of the 52<sup>nd</sup> Precinct station house, Bronx County, abused his authority as a member of the New York City Police Department, in that he authorized a strip search of [REDACTED] without York sufficient legal authority.

**P.G. 208-05, Page 2, Paragraph C**

**ARRESTS – GENERAL SEARCH  
GUIDELINES**

In a Memorandum dated December 2, 2016, Assistant Deputy Commissioner Paul M. Gamble found Sergeant Robert King Guilty of the sole Specification in Disciplinary Case No. 2015-14369. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Sergeant King.

I have considered the totality of the issues and circumstances in this matter, and deem that a lesser penalty is warranted. Therefore, Sergeant King is to forfeit ten (10) vacation days, as a disciplinary penalty.

  
James P. O'Neill  
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

December 2, 2016

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Robert King  
Tax Registry No. 924028  
52 Precinct  
Disciplinary Case No. 2015-14369  
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**Charges and Specifications:**

1. Said Sergeant Robert King, on or about February 9, 2015, at approximately 2020 hours while assigned to the 52<sup>nd</sup> Precinct and on duty in the vicinity of the 52<sup>nd</sup> Precinct station house, Bronx County, abused his authority as a member of the New York City Police Department, in that he authorized a strip search of Person A without sufficient legal authority.

P.G. 208-05, Page 2, Paragraph C - ARRESTS - GENERAL SEARCH  
GUIDELINES

**Appearances:**

For CCRB-APU: Heather Cook, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> floor  
New York, NY 10007

For Respondent: John D'Alessandro, Esq.  
The Quinn Law Firm  
Crosswest Office Center  
399 Knollwood Road – Suite 220  
White Plains, NY 10603

**Hearing Date:**

September 13, 2016

**Decision:**

Guilty

**Trial Commissioner:**

ADCT Paul M. Gamble



## REPORT AND RECOMMENDATION

The above named member of the Department appeared before me on September 13, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

## FINDINGS AND ANALYSIS

At issue in this case is whether Respondent abused his authority by authorizing a strip search of Person A without sufficient legal cause.

The testimony at trial established that the following facts were not in dispute. On February 9, 2015, at approximately 2020 hours, Detective Goldrick entered the 52<sup>nd</sup> Precinct with Person A in custody (T. 10). At that time, Respondent was the acting Desk Officer at the 52<sup>nd</sup> Precinct, temporarily filling in for Sergeant Calvente (T. 10, 13). Respondent has been a member of this Department for 17 years and a Sergeant for eight years (T. 9, 12). Goldrick told Respondent that Person A had been arrested for possessing a Taser; that he had arrested her several times in the past; that he knew she sometimes secreted narcotics in her underwear; that while he was transporting her to the precinct, she was fidgeting in the rear of the vehicle; and that she was making furtive movements by her waistband (*Id.*). Based upon these representations, Goldrick informed Respondent that he thought he had reasonable suspicion to believe Person A might be secreting a weapon or narcotics (*Id.*). Goldrick then asked Respondent whether he had permission to strip search Person A, asserting that his Sergeant was in the field and unavailable (T.

11-12). Respondent authorized the search and Person A was strip searched by Police Officer Moncion with negative results (*Id.*).

CCRB offered a transcript of the recorded statement of Person A in evidence without objection (CCRB Exhibit 1-B). Person A stated that on February 9, 2015, at approximately 1930 hours, she was dropping off a friend at an address on [REDACTED] (CCRB Ex. 1-B, p. 3). Person A discharged her passenger, then drove away, making two right turns and a left, when she observed an unmarked black car behind her activate its police lights (CCRB Ex. 1-B, p. 4). Person A pulled her car over and two police officers, one of whom was Goldrick, approached the vehicle (*Id.*). Goldrick asked Person A for her license and registration, which she provided (*Id.*). Person A asked Goldrick why she had been stopped and he responded that she had gone through several stop signs. He then asked her if there was anything in her car that she should not have, which Person A denied (*Id.*). Person A was directed to step out of her car and was escorted to the trunk area while another police officer conducted a search of her vehicle (CCRB Ex. 1-B, p. 5). Person A heard Goldrick request that a female police officer respond to the scene of the stop so Person A could be searched (*Id.*). No such police officer ever responded to the scene of the arrest.

The police officer accompanying Goldrick walked to the trunk area of the car and displayed an item he described as a Taser, which he asserted came from Person A's glove compartment (CCRB Ex. 1-B, p. 6). Person A was placed under arrest and transported to the 52<sup>nd</sup> Precinct (CCRB Ex. 1-B, p. 8; T. 8). At the precinct, Person A met Moncion, who took her into a rest room (CCRB Ex. 1-B, p. 8; T. 12).

Moncion placed rubber gloves on, slid her hands underneath Person A's bra and felt her breasts (CCRB Ex. 1-B, p. 9). Moncion then pulled the waistband of Person A's pants forward and performed a visual inspection of Person A's vaginal area (*Id.*). Moncion directed Person A to turn



around and, standing behind her, pulled the waistband of her pants toward her before performing a visual examination of Person A's buttocks area (*Id.*). Person A became upset and requested an opportunity to contact her lawyer; Moncion informed her that the search was over because "there was nothing on you" (*Id.*). Person A was placed in a holding cell, fingerprinted and eventually released (CCRB Ex. 1-B, p. 12). Person A described the clothing she wore that evening as tight jeans, a tight undershirt, a sweater and a coat (CCRB Ex. 1-B, p. 33).

The following is a summary of the facts which are in issue. Respondent testified on cross-examination that he was familiar with the Patrol Guide provisions regarding the requirements for authorizing a strip search and further acknowledged that the supervisor who authorizes such a search is ultimately responsible for ensuring that it is properly conducted (T. 13 ). Respondent was aware that the Patrol Guide required him to make a Command Log entry after authorizing a strip search and conceded that he did not do so (T. 15-17). Respondent admitted that Goldrick never asserted that Person A had been searched in the field; in fact, he told Respondent that Person A had to be brought back to the precinct to be searched (T. 18-19).

On direct examination, Respondent testified that he directed Goldrick to "Go over to that female [identified as Moncion]. Have that female [Person A] taken in the bathroom and strip searched" (T. 12). On cross-examination, Respondent asserted that he never spoke to Moncion personally (T. 20, 27-28). Respondent testified on cross-examination that when he granted Goldrick's request, he did so to look for contraband, because "the arresting officer articulated to me there was suspicion -suspicion she may be storing contraband, whether it be a weapon or narcotics or pills or anything . . ." (T. 21-22).

Respondent conceded on cross-examination that when Goldrick asserted that Person A had a number of previous drug-related arrests, he neither questioned the assertion, nor exercised due

diligence to determine whether, in fact, Person A had prior arrests (T. 22-23, 25). Respondent asserted that based upon his history with Goldrick, he trusted him (T. 23).

Respondent testified on re-direct examination that he did not believe that he was required to conduct an independent investigation into whether the arresting officer had a reasonable suspicion that a suspect is hiding contraband, narcotics or other evidence prior to authorizing a strip search (T. 30). Respondent later acknowledged under questioning from the Tribunal that he was required to consider, as the acting Desk Officer, whether the basis for the proposed search the arresting officer had articulated to him was, in his judgment, reasonable (T. 33). Respondent further admitted that he did not remember whether he asked if there had been a pat-down conducted in the field and eventually conceded that he did not ask (T. 34).

Patrol Guide 202-14(3) declares unambiguously that the Desk Officer "shall be responsible for all police operations within [the] command during [his] tour." In addition to setting forth various discrete responsibilities, Patrol Guide 202-14 (50) directs the Desk Officer to "supervise subordinate members of [the] command."

Patrol Guide 208-05 sets forth the criteria for the performance of a strip search<sup>1</sup>

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#### <sup>1</sup> C. STRIP SEARCH

(1) A strip search is any search in which an individual's undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas. A strip search of a prisoner **may not be conducted routinely** in connection with an arrest. Strip searches may only be conducted with the **knowledge and approval** of the arresting officer's immediate supervisor or the borough Court Section supervisor. A strip search may only be conducted when the arresting officer **reasonably suspects** that weapons, contraband, or evidence may be concealed upon the person or in the clothing **in such a manner that they may not be discovered by the previous search methods.**

**NOTE** *If a strip search is conducted, such information will be entered in the Command Log, arresting officer's **ACTIVITY LOG (PD112-145)**, and also documented on the **ON-LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)** or the **ARREST***



(P.G. 208 05). A close reading of this provision clearly conveys the concept that the approval of a supervisor is a condition precedent to the proper conduct of a strip search. The purpose behind this rule is to ensure that a senior police officer with managerial responsibilities takes a "second look" at the evidence supporting the requesting officer's belief that a strip search is warranted under the circumstances. Before granting a request for a strip search, the approving officer must determine that the arresting officer's belief is reasonable (P.G. 208-05[C][1], [2]). An explicit element of the reasonableness standard is that the evidence, weapons or contraband sought was not discovered during previous searches.

In this case, the credible evidence establishes that Goldrick told Respondent that Person A had not been searched in the field. Respondent admitted in his sworn testimony that he never asked Goldrick whether he had patted down Person A prior to requesting a strip search and had simply assumed that a pat-down had been conducted.

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**REPORT - SUPPLEMENT (PD244-157).** *A subsequent strip search will not be conducted unless there is reasonable belief that the subject has acquired a weapon or contraband.*

(2) The arresting officer requesting authorization to conduct a strip search must describe the factual basis for the request to the officer's immediate supervisor/borough Court Section supervisor. A supervisor will authorize a strip search only when an arresting officer has articulated a reasonable suspicion that the individual is concealing evidence, contraband, or a weapon. Note, this is a different standard than the probable cause required for the arrest. **The immediate supervisor of the arresting officer/borough Court Section supervisor, based on the facts presented, will determine if a strip search should be conducted. The supervisor authorizing the strip search is responsible for ensuring the search is conducted properly.**

(3) Other factors that should be considered in determining whether an appropriate basis exists for a strip search include the nature of the crime (i.e., serious violent felony), arrest circumstances, subject's reputation (i.e., extremely violent person), acts of violence, unaccounted "hits" on magnetometers or walk-through metal detectors, and any discoveries or information from previous searches of the same individual or others arrested with him/her (emphasis in original).

It is inherent in the power to approve an action that the person in a position of authority may withhold such approval. In a Patrol Guide context, the power to approve includes the obligation to disapprove an action if the action contravenes the Patrol Guide, the standards of this Department or the Federal and State Constitutions, which every uniformed member of this Department swears to uphold. Patrol Guide 208-05 permits strip searches only if: (1) the arresting officer has a reasonable belief that evidence, weapons or contraband which could not be discovered during previous searches will be discovered in a more intrusive search of a suspect's clothing or person; and (2) the arresting officer's immediate supervisor authorizes such search.

In this case, Respondent was, by operation of the Patrol Guide, Goldrick's immediate supervisor (P.G. 202-14). When Goldrick made the request for the search, it was Respondent's obligation to ensure that all of the conditions precedent to a proper strip search had been met.

It was Respondent's obligation to determine whether Goldrick's professed belief that Person A was secreting contraband or evidence was reasonable. After being told that Person A had not been searched in the field, Respondent, according to his testimony, made the assumption that she had been subjected to a pat-down without any evidence to support that belief. Essentially, he based his judgment that the strip search was appropriate upon the performance of an interim investigative step which had never taken place. Respondent's reliance upon this fallacy tainted any subsequent authorization for a strip search.

Respondent's position at trial was that once he determined that Goldrick had articulated a facially sufficient basis for requesting a strip search, he had fully discharged his duties under the Patrol Guide. Based upon the credible relevant evidence in the record, I find that the Patrol Guide required more of him. Based upon the foregoing, I find him Guilty of the charged misconduct.



## PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 7, 1999. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

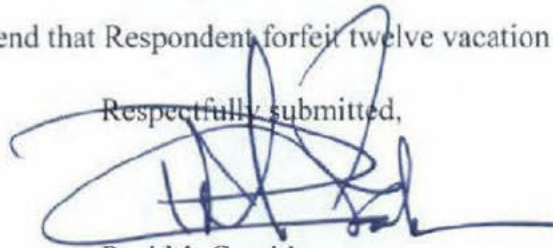
In previous cases, Respondents have forfeited eight to 15 vacation days for improperly authorizing a strip search (*Case Nos. 2013-10901 & 2015-13190* [Sep. 22, 2015])[Sixteen-year captain with no prior disciplinary record forfeits eight vacation days for entering an apartment without sufficient legal authority. In an unrelated case, Respondent is also found guilty of wrongfully authorizing a strip search. The Court found that Respondent relied on the minimal information provided by one of his officers without taking any further steps. The information he possessed did not create a reasonable suspicion that the suspect was concealing weapons, contraband, or evidence that would not have been uncovered during a previous search]; *Case No. 2013-11027* [Nov. 20, 2015]; Twenty-two year sergeant, with one prior adjudication negotiated a penalty of ten (10) vacation days for participating in a strip search of an individual without sufficient legal authority. Respondent, via Viper camera, observed two individuals approach a known narcotics dealer and engage in a hand to hand transaction. Respondent, along with three other officers, responded to the scene, frisked the individuals, handcuffed them and transported them back to the stationhouse. Respondent authorized a strip search of one of the alleged buyers but could not recall why he did so]; *Case No. 2010-86288* [Jul. 10, 2012][Fifteen-year sergeant with one prior adjudication forfeits 15 vacation days for authorizing a subordinate to issue a summons without sufficient legal basis, transporting the complainant to the station house without police necessity, authorizing a strip search without notifying the desk officer, and neglecting to make sufficient Activity Log entries]).

In this case, Respondent failed to perform the supervisory function required by the Patrol Guide in the authorization of strip searches. Respondent's rank and position provided an opportunity to bring to bear 17 years of patrol experience, eight of them in a supervisory capacity; instead, he chose to defer to the judgment of a subordinate police officer. This action was inconsistent with the leadership role this Department expects Respondent to perform.

The tribunal notes that Respondent has previously been disciplined for failing to exercise proper supervisory authority over the submission of an Arrest Report and a Complaint Report. Respondent negotiated a 15-day penalty as a result of failing an integrity test in December 2015.

Based upon the foregoing, I recommend that Respondent forfeit twelve vacation days.

Respectfully submitted,



Paul M. Gamble  
Assistant Deputy Commissioner Trials







POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT ROBERT KING  
TAX REGISTRY NO. 924028  
DISCIPLINARY CASE NO. 2015-14369

On his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent." He has been awarded no medals. [REDACTED]

Respondent has been the subject of one prior adjudication. On September 13, 2016, the Police Commissioner approved a negotiated settlement in which Respondent agreed to forfeit 15 vacation days for approving an Arrest Report and a Complaint Report that contained false and/or inaccurate narratives.

Additionally, from April 12, 2012, to June 13, 2014, Respondent was placed on Level 2 Force Monitoring for having three or more CCRB complaints in a one year period. On October 16, 2015, Respondent was again placed on Level 2 Force Monitoring for the same reason. That monitoring remains ongoing.

Paul M. Gamble  
Assistant Deputy Commissioner Trials