The City of New York

POLICE DEPARTMENT

April 18, 2013

MEMORANDUM FOR: Police Commissioner

Re: Detective Juan Leonbravo
Tax Registry No. 938847
Narcotics Borough Brooklyn North
Disciplinary Case No. 2010-3262

Detective Matthew Zito
Tax Registry No. 937792
Narcotics Borough Brooklyn North
Disciplinary Case Nos. 2010-3263 & 2011-6079

The above-named members of the Department appeared before the Court on September 20, November 13, and December 13, 2012, charged with the following:

Disciplinary Case No. 2010-3262

1. Said Detective Juan Leonbravo, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, abused his authority as a New York City police detective by improperly stopping a vehicle occupied by Mr. Elias Maysonet.

P.G. 212-11 STOP AND FRISK
P.G. 203-10 – PROHIBITED CONDUCT

2. Said Detective Juan Leonbravo, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, failed to do his duty as a New York City police detective in that after having an encounter with Mr. Elias Maysonet, said detective failed to make a sufficient activity log entry about said encounter.

P.G. 212-08 ACTIVITY LOGS

3. Said Detective Juan Leonbravo, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, failed to do his duty as a New York City police detective in that after having an encounter with Mr. Elias Maysonet, said detective failed to prepare a UF-250 Stop and Frisk Report.

P.G. 212-11 STOP AND FRISK

Disciplinary Case No. 2010-3263

1. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, abused his authority as a New York City police detective by improperly stopping a vehicle occupied by Mr. Elias Maysonet.

P.G. 212-11 – STOP AND FRISK
P.G. 203-10 PROHIBITED CONDUCT

2. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, failed to do his duty as a New York City police detective in that after having an encounter with Mr. Elias Maysonet, said detective failed to make a sufficient activity log entry about said encounter.

P.G. 212-08 – ACTIVITY LOGS

3. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, failed to do his duty as a New York City police detective in that after having an encounter with Mr. Elias Maysonet, said detective failed to prepare a UF-250 Stop and Frisk Report.

P.G. 212-11 – STOP AND FRISK

4. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, abused his authority as a New York City police detective by improperly searching a vehicle occupied by Mr. Elias Maysonet.

LEGAL BUREAU, Volume 33, Number 3 – CAR SEARCH
P.G. 203-10 – PROHIBITED CONDUCT

5. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about February 3, 2010, at approximately 8:38 pm, in the vicinity of Cooper Avenue and Cypress Avenue in Queens, abused his authority as a New York City police detective by improperly frisking Minor A.

P.G. 212-11 – STOP AND FRISK
P.G. 203-10 – PROHIBITED CONDUCT

Disciplinary Case No. 2011-6079

1. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about September 22, 2010, at approximately 7:45 pm, in the vicinity of Troutman Street and Central Avenue in Brooklyn, abused his authority as a New York City police detective by improperly stopping a vehicle occupied by Mr. Advendizo Torres.

P.G. 212-11 – STOP, QUESTION AND FRISK

2. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about September 22, 2010, at approximately 7:45 pm, in the vicinity of Troutman Street and Central Avenue in Brooklyn, abused his authority as a New York City police detective by improperly frisking Mr. Advendizo Torres.

P.G. 212-11 STOP, QUESTION AND FRISK

3. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about September 22, 2010, at approximately 7:45 pm, in the vicinity of Troutman Street and Central Avenue in Brooklyn, abused his authority as a New York City police detective by improperly searching a vehicle occupied by Mr. Advendizo Torres.

LEGAL BUREAU, Volume 33, Number 3 – CAR SEARCH
P.G. 203-10 PROHIBITED CONDUCT

4. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about September 22, 2010, at approximately 7:45 pm, in the vicinity of Troutman Street and Central Avenue in Brooklyn, failed to do his duty as a New York City police detective in that after having an encounter with Mr. Advendizo Torres, said detective failed to prepare a UF 250 Stop and Frisk Report.

P.G. 212-11 - UF 250 STOP AND FRISK REPORT

5. Said Detective Matthew Zito, while on-duty and assigned to Narcotics Borough Brooklyn North, on or about September 22, 2010, at approximately 7:45 pm, in the vicinity of Troutman Street and Central Avenue in Brooklyn, abused his authority as a New York City police detective by improperly searching Mr. Advendizo Torres.

P.G. 212-11 STOP, QUESTION AND FRISK

The case was prosecuted by Adam Sheldon, Esq., Department Advocate's Office, and Lauren E. Allerti, Esq., Civilian Complaint Review Board (CCRB). Respondents were represented by Philip Karasyk, Esq., Karasyk & Moschella LLP.

In Case No. 2010-3262, Respondent Leonbravo entered a plea of Not Guilty to Specification No. 1. He pleaded Guilty to Specification Nos. 2 and 3 and testified in mitigation of the penalty.

In Case No. 2010-3263, Respondent Zito pleaded Not Guilty to Specification Nos. 1, 4 and 5. He pleaded Guilty to Specification Nos. 2 and 3 and testified in mitigation of the penalty. In Case No. 2011-6079, Respondent Zito pleaded Not Guilty.

A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 2010-3262, having pleaded Guilty to Specification Nos. 2 and 3, Respondent Leonbravo is found Guilty. He is found Not Guilty of Specification No. 1.

In Case No. 2010-3263, having pleaded Guilty to Specification Nos. 2 and 3, Respondent Zito is found Guilty. He is found Guilty of Specification Nos. 4 and 5, and Not Guilty of Specification No. 1. In Case No. 2011-6079, Respondent Zito is found Guilty of Specification Nos. 2, 3 and 5, and Not Guilty of Specification Nos. 1 and 4.

SUMMARY OF EVIDENCE

The Department's Case

The Department called Elias Marty Maysonet (the elder Maysonet), Minor A, and Avendizo Torres as witnesses. The Advocate stated that in the Specifications, "Mr. Elias Maysonet" referred to the elder Maysonet, except for Specification No. 5 of Case No. 2010-3263, in which it referred to the younger Maysonet. The Maysonets also were referred to as "Sr." and "Jr." at trial and in documents notwithstanding their different middle names and the elder's testimony that they did not use those suffixes.

Elias Marty Maysonet

Elias Marty Maysonet was 44 years old. He had been employed by the Metropolitan Transportation Authority (MTA) for 24 years as a cleaner and truck driver. He had lived in [redacted] for the past 20 years in a "private house" that actually consisted of two apartments. He lived in one, and his mother and one of his daughters lived in the other. He was single and asserted that he had lived in [redacted] his entire life.

Maysonet said that his "general relationship" with the Department was "[g]reat." His mother retired as a Department police attendant; she worked at One Police Plaza. His cousin was a uniformed officer, as was his nephew, although "he currently works for Homeland Security." Maysonet interacted often with police officers at his job, as he worked at terminal locations. He stated that officers were allowed to use various transit facilities there, like bathrooms and meal rooms. Additionally, Maysonet had received training on counterterrorism vigilance.

Maysonet had four children. The eldest was a "stay at home mom," and the youngest was his only son, Minor **A**.

Maysonet admitted that in 1984, as a high school student, he was convicted of disorderly conduct.

On February 3, 2010, at approximately 2030 hours, Maysonet and his son were leaving a barbershop located at Wilson Avenue and Jefferson Street in Bushwick, Brooklyn. The child was 14 years old at the time and they were there for a haircut. Maysonet drove a four-door Mercury Grand Marquis to get there.

Maysonet was at the barbershop for three to four hours. It took so long because they wanted to see one particular barber. Also, "I came after work and my son came after school so there was maybe like three people ahead of him." Maysonet also got his beard trimmed.

Maysonet and his son left the shop and were going home. They did not speak to anyone after leaving but before getting into Maysonet's vehicle. No one else approached the vehicle.

Maysonet was driving the car. He went down Wilson Avenue, a two-way street, and turned left onto Cooper Street-Cooper Avenue. He headed toward Cypress Avenue. He was driving normally and did not run any traffic signals or stop signs. Speeding was impossible because of the amount of traffic and intersections. Maysonet testified that there were three to four traffic lights and two to three stop signs between the barbershop and the Cooper-Cypress intersection.

About three or four cars from the intersection with Cypress Avenue, a white commercial van pulled up to the right of Maysonet's vehicle. The driver, Respondent Leonbravo, exited with a gun and screamed at Maysonet to turn off the ignition.

Respondent Leonbravo was dressed in regular clothing. Maysonet asserted that he had "no idea" that "they" were law enforcement. He thought that they believed he was someone else. Maysonet nevertheless "immediately" told his son to put his hands up and not make any sudden movements. Maysonet put up his own hands and told Respondent Leonbravo to calm down, noting that he was going to move his hand in order to turn the car off.

After Maysonet turned off the ignition, Respondent Leonbravo grabbed the keys through the window and told him to get out of the car. Maysonet told Respondent Leonbravo that he was going to use his left hand to open the door. As Maysonet opened the door, Respondent Leonbravo grabbed it and opened it faster, grabbing Maysonet as well "to help me" get out of the vehicle. Maysonet had his back to the driver side door. He kept his hands up and continued to tell Respondent Leonbravo to calm down. Maysonet also told him that the other occupant of the car was his son, who was 14 years old. Because Maysonet thought they were confusing them with someone else, he wanted them to know that his son was not a grown man.

Maysonet was standing in front of the car. Respondent Leonbravo asked for his driver's license. He said that it was in his left pocket and Respondent Leonbravo told him to take it out. He did so, and Respondent Leonbravo grabbed it from his hand. Maysonet put his hands back in the air, but when Respondent Leonbravo returned his wallet and Maysonet put it back in his pocket, he said, "[W]hat are you doing with your hand, what are you doing with your hand." Maysonet put his hands back up and again told them to calm down.

Maysonet claimed that he did not know at this point that the individuals were with law enforcement. Respondent Leonbravo told Maysonet to stand at the rear of the car and had him face away from the vehicle. Maysonet was frightened. It was only when he observed handcuffs

on Respondent Leonbravo's pants that he "started trying figuring out that they might be the police."

Maysonet stated that he was at the back of his car for five to seven minutes when his son joined him. Maysonet had not turned around and did not know what was going on with his son during that period.

Maysonet told his son to keep his hands up; even when the officers said he could put them down, Maysonet "screamed at him to put them back up." Maysonet testified that he tried telling the officers that he worked for the MTA, his son had just left school, they had just come from the barbershop and the people there could vouch for them. Respondent Leonbravo told him to shut up "like very nasty, aggressive," adding, "you want to go to jail, you want to get locked up"? Maysonet was silent, but relieved that he could see his son and be assured that nothing was happening to him.

Maysonet never lost sight of Respondent Leonbravo. He did not see him do anything with his license, like writing down the information. The officer did not ask for his registration or insurance card. He did not see anyone take anything from the car and bring it to their van. He did not see anyone use a police radio or cell phone. He was not issued a summons.

Maysonet testified that Respondent Leonbravo flung his license onto the trunk of his car and walked away. Maysonet looked inside his vehicle and found it "completely ransacked, demolished, papers, everything all over the place." The papers included mail, things for his job, his insurance and registration holder, and his son's birth certificate and immunization card because he had just moved back from [redacted] Even things from his ashtray were thrown on the floor.

It was while walking to the front of his car that Maysonet first saw Respondent Zito. Respondent Zito was on the right side of Maysonet's car, toward the front.

Respondent Leonbravo returned Maysonet's keys to him. The officer told him to "consider myself lucky" or "consider it a warning."

Maysonet called 911 because he still was unsure that the individuals with whom he had interacted were police officers. He was angry that they had not identified themselves previously.

On cross examination, Maysonet admitted that while he said he had always lived in [redacted] he once lived in [redacted] He lived in [redacted] for about eight months, but conceded that the [redacted] address was on his license. It had been there for a couple of years.

Maysonet denied having excess points on his license. When asked whether he took a point-reduction course, Maysonet answered, "I took defensive driving."

When asked whether his license was suspended on May 30, 2012, for failure to pay a summons, Maysonet answered, "I believe I had a ticket that I didn't pay." He "had to pay like a bond so I was waiting for my court date," which was in December 2012 (in the future as of his testimony). He did not recall what the summons was for. He did not "recall" if his license was suspended but it was possible that he had been driving with a suspended license. It was possible that he cleared the summons on June 22, 2012. He was sure, however, that he did not drive at his job between May 30 and June 22, 2012. Maysonet did not recall receiving a summons on May 22, 2009, for not wearing a seat belt (see Respondent's Exhibit A, Department of Motor Vehicles abstract).

Maysonet did not see a shield around the officers' necks when they got out of the van. His son told him, however, that he saw a shield. They were not in uniform and the van was unmarked.

Maysonet alleged that Respondent Leonbravo pointed the gun at him with two hands. He later averred that the gun was pointed downward.

Minor A

Minor A was 17 years old and lived with his mother. Elias Maysonet was his father. He attended [redacted] High School and anticipated graduating in June 2013 with an Advanced Regents diploma. He also had taken business-related enrichment courses outside school. His top choice for college was the University of Miami, as he had family there and the school had good psychology and law departments. He had held jobs but was not employed currently. In his spare time, he played basketball and exercised. He also played several instruments.

Minor A then admitted that he had been convicted of disorderly conduct and was sentenced to two days of community service.

On February 3, 2010, Minor A was 14 years old. Before 2030 hours, approximately, Minor A and his father were at a barbershop. They always went to that shop, for a particular barber. While they were waiting, for about 20 to 30 minutes, they sat and watched television. Their total time spent there was about an hour and a half. They then left for home. His father was driving. They did not stop anywhere or speak to anyone besides each other before heading to the vehicle. No one else approached their car.

Minor A and his father drove three or four blocks before arriving at the corner of Cooper and Cypress. Minor A recalled driving slowly because there was some congestion and they had stopped at a red light. Minor A' s father was not speeding and did not run any stop signs or red lights. In fact, Minor A did not recall any stop signs on the route. As they waited at the Cooper-Cypress light, an unmarked white van cut them off. The van's driver, Respondent Leonbravo, told Minor A's father to roll down the window and turn off the car. His father turned off the car but kept asking what was going on and told Minor A to keep his hands up. His father also kept his hands up.

Minor A asserted that he did not immediately recognize Respondent Leonbravo as a police officer. He was terrified and thought he and his father were being robbed. He admitted, however, that Respondent Leonbravo's hand was "near his gun." Minor A was unsure if the gun was holstered. He understood that Respondent Leonbravo wanted to approach with caution, but the gun made his father scared.

Minor A described Respondent Leonbravo as "somewhat hostile." His father was "trying to understand what was going on," asking what they did wrong. Respondent Leonbravo, however, did not give them an answer. Both Maysonets were "a little frantic." They realized that the van's occupants were the police once Respondent Leonbravo told the elder Maysonet that if he did not keep quiet he was going to jail.

Minor A testified that the van's passenger approached the passenger side of the Maysonets' vehicle and looked through the window with a flashlight, "just searching around the car I guess seeing what he could see through the window."

Minor A stated that his father told him to cooperate. Respondent Leonbravo "asked" Minor A's father to exit the car. He did so. The van's passenger told Minor A to

get out of the car, and he complied. The passenger frisked him. Both Maysonets were ordered to stand at the rear of the car. Respondent Leonbravo was with them.

After the passenger brought Minor A to the rear of the Maysonets' car, the passenger returned to the vehicle. [redacted] testified that he heard someone in the car. He heard rustling of paperwork. The officers told him and his father to keep their backs to the vehicle. He then heard someone in the back of their van. Once the officers realized this movement, Respondent Leonbravo threw the elder Maysonet's driver's license at him and the officers left. Respondent Leonbravo said to "consider this a warning."

Upon return to their vehicle, Minor A observed that the interior was not how he and his father had left it. Papers had been thrown about from the glove compartment, the visors and the seat backs. "[E]verything was just completely trashed."

On cross examination, Minor A testified that he pleaded guilty to disorderly conduct in July 2012. He alleged that he was "taking goods from a store," but conceded that he was shoplifting. This was the first time he had done so. The merchandise that he stole was Enfamil, the baby formula. He said that he stole it for "[m]yself." While he agreed that he did not drink formula, he "wanted to find someone that needed it." He "[p]ossibly" was going to sell it. When asked by the Court, "Were you going to sell it or give it to someone?," he answered that he was going to give it. He agreed that he "went into a store stole Enfamil and" was "just going to give it to somebody out of the goodness of your heart." He performed his community service sentence.

Minor A admitted that he had been arrested other than in connection to the Enfamil incident. This was when he was 14 years old, for marijuana possession. The disposition was that he "had to do work for the judge like written work."

Minor A conceded that he was carrying a cell phone in his right pocket when the van's passenger frisked him.

Upon his recollection being refreshed with the transcript of his CCRB interview on February 25, 2010, Minor A agreed that he told the investigator that the officer asked his father, "[C]an you step out of the car please?"

Minor A testified that the incident with the police officers lasted about 10 to 15 minutes.

Minor A denied speaking to his father about the father's trial testimony, which occurred several weeks prior to the son's.

On re-direct examination, Minor A stated that when he and his father were at the rear of the vehicle, the van's passenger walked to the Maysonet vehicle's passenger side. Before the Maysonets returned to their vehicle, they were at the rear of the car for approximately five to seven minutes.

Avendizo Torres

Torres originally was from [redacted] and lived there for 38 years. In 2001, he purchased a home in [redacted] and moved there. He lived with two stepchildren, a daughter and a "common law wife." He graduated from John Jay College of Criminal Justice and was an auxiliary police officer (APO) in the early 1980s.

Torres had worked in several private security positions. He also worked for the New York City Criminal Justice Agency and the state court system. He also had held a position with the AmeriCorps national service program.

Torres owned two businesses. He was a licensed insurance broker as well as a notary public and certified defensive driving trainer. He also owned a lighting store in Red Hook.

Torres admitted that in 1982, he was convicted of misdemeanor criminal possession of a weapon.

On September 22, 2010, Torres was working at the lighting store, fixing it up so it could open. His parents lived in the building, renting out two other apartments. He hired a friend of his "common law wife"'s brother to help with the job. The brother recommended the man, whom Torres knew as "Joe." Torres had met Joe a couple of times at parties held at the brother's parents' home. Joe worked for Torres five or six times over a two-week period.

On the day in question, Torres and Joe were dressed in dusty work clothes because of all the compounding and sanding they were doing. At approximately 7:30 p.m., he gave Joe, who did not have a car, a ride home. He was driving a four-door Ford Explorer sport utility vehicle (SUV). Any tint on the window was factory-issued.

Torres did not speak to anyone other than Joe before getting in the vehicle. Nothing unusual happened as they drove. There were no traffic incidents and they made no stops. They arrived at Joe's residence on Central Avenue. His block was mixed residential and industrial. Torres pulled over, he and Joe shook hands and then said goodbye. Neither of them handed each other anything. After Joe left, Torres pulled away, heading toward Bushwick Avenue to get to the Jackie Robinson (Interborough) Parkway (possibly out of the way).

Torres was obeying traffic rules; as a defensive-driving instructor he always tried to do so. While he was waiting at a traffic signal on Central Avenue, two police officers with guns out and wearing "gold badges" on their chests began banging on his car's windows. Torres knew that this signified their rank as Detective. One was on the left side of the car and the other was on the right. The one on the left, a "not skinny" white male about 6'1" or 6'2", was yelling. Torres did not know what the officers wanted because he knew he did not do anything wrong.

The detective told Torres to shut off the ignition. Torres rolled down the window and asked what was wrong. When the detective yelled "at the top of his lung" to shut it off, Torres complied. He wanted Torres to get out of the car. Torres "tried to like say something" but the detective kept yelling, so he got out. Torres opened the door himself, but the detective grabbed him and put him against the car to search him.

Torres admitted that he put his hands in his "pocket" when he got out of the car. He did not know why he did this, but because he knew he had done nothing wrong, there was nothing nefarious about it.

There were "rapid fire questions," like what Torres was doing there, did he know the individual he dropped off, and did he know he was a drug dealer. The detective would not let Torres finish answering. Torres told the detective that he did not know Joe was a drug dealer, but in any event he had nothing to do with that as Joe merely was working with him. Torres asked, if Joe was a dealer, "well, then what's his name." The detectives refused to answer. Torres did not know Joe to be a drug dealer, and knew from his experience of growing up in Red Hook that he was not a user. Joe worked for Torres for eight hours one day and the only thing he asked for was soda.

The detective disregarded Torres's answers and insisted that a drug transaction had taken place, saying that he saw an exchange. The detective did not appreciate Torres's questions about why he was stopped, even though, Torres asserted, he was compliant and asking nicely. Torres was not asking aggressively even though he had done nothing wrong. The other detective, who was black, put his hands in Torres's back pocket as well.

Torres testified that the white detective patted him down from his arms to his feet as Torres's hands were upon the vehicle. The white detective also reached into Torres's two front pockets.

Torres conceded that he had a $20 bill in his hand. The officers made a comment about it, implying that it was for a drug transaction. Torres testified that the money actually was for buying food and drinks for him and Joe while they were working. The officers did not take the bill or examine it.

Torres testified that the white detective went to the driver side door and "poked his head inside and he started looking." He was touching something. He went to the passenger side and looked through the glove compartment. He also looked in the pocket compartment of the door. Torres told him, "[Y]ou have no legal right to actually touch anything in my vehicle without permission," adding that the detective did not have a search warrant. The white detective got very mad and yelled that he was going to place Torres under arrest. He came around to do so but the black detective said he would do it. After Torres was handcuffed, the white detective continued to search his car.

The black detective told Torres to move behind the vehicle and face away so that he could not observe the search. Torres kept looking, however, worried that the detectives would plant something in the car. There were onlookers present that told Torres what the white detective was doing. He did not get their names, however, fearing that he would be accused of colluding with them.

Torres denied being aggressive or threatening the detectives during the encounter. When Torres told the black detective that he was a John Jay alumnus and knew what the police were doing was illegal, the detective became upset. When Torres kept looking back to see the search

of his vehicle, the black detective said he was making him nervous. Torres decided that it was "time just to be quiet and let things take its course."

The detectives indicated to each other that they did not find anything. Torres said, "I told you you're not going to find anything." They were going to uncuff him, when the white detective asked for his identification (ID). Torres said that he did not have his wallet in his work clothes. The detective said that Torres was going to get arrested "for no ID," but "he didn't give me a chance to literally just state the obvious it's in my other pants." Torres yelled this, directing the detectives to where in the car they could find them.

Torres was uncuffed and allowed to return to his vehicle. He found that "everything was thrown everywhere . . . like someone literally ransacked looking for something." He could not find his car keys, so he got out and walked to the police vehicle to ask for them. The black detective told him to go back to his car. Torres told him that he wanted the other detective's shield number. The black detective repeated that Torres was to return to his car. He complied, but when he still could not find the keys, he got out again. The black detective returned his keys. Torres again asked for the shield number but he refused. Torres took a cell-phone photograph of the police vehicle's license plate instead. The driver almost hit him as they left. Torres eventually found his keys under one of his car's seats.

On cross examination, Torres admitted that he was an APO at the time of his weapons possession conviction. The weapon was not "on me." It was a small .22-caliber gun. He was sentenced to three years' probation.

Torres agreed that he applied to join the Department as a police officer several years later but failed the psychological examination. He denied that he was angry about this, noting that he had worked "hand to hand" with police officers for many years.

Torres stated that Joe generally worked for him after his regular job hours. On a given day, Joe would work for Torres for three or four hours. Only once, on a Saturday, did Joe work for a full eight hours.

Torres admitted that the detectives had to tell him several times to turn off the ignition. He did not know, "as someone familiar with police work and police tactics," that this "would be an issue of their safety." He felt the same way about putting his hands in his pockets.

Torres testified that he did not have anything in his hand when he and Joe shook hands. Yet, when he took his hand out of his pocket later, there was a $20 bill in it. He drove one and a half to two blocks before the detectives pulled him over.

Torres was unsure whether the detectives frisked him before asking what was in his hand. He conceded that he told the CCRB investigator that the frisk happened first. Torres did not know why the officer did this.

Torres agreed that he taught his defensive-driving students to obey the police. He claimed that he did this during the encounter. He admitted, however, not obeying the police when one of the officers told him to face the vehicle and not turn around. Nor was he obeying when the officer told him to return to his car but he repeatedly got back out.

Torres asserted that he did not know whether an officer placing a subject against a vehicle and telling him to face forward was for the officers' safety.

Torres denied that he came off the vehicle while turning his head to look at what the police were doing. He was doing this while talking and while onlookers from the street were talking. He admitted that he kept turning after the black detective told him he was making the detective nervous.

Torres admitted, after being impeached with his CCRB statement, that one of the officers gave his shield number.

On re-direct examination, Torres testified that he did not turn off his ignition immediately because he was nervous, and puzzled because he did not do anything wrong.

Respondents' Case

Respondents called Detective Steve Lafortune, and both testified on their own behalf.

Respondent Leonbravo

Respondent Leonbravo was assigned to Narcotics Borough Brooklyn North (NBBN). On February 3, 2010, he was assigned with Respondent Zito to the prisoner van. Respondent Leonbravo was the operator. They were doing an observation of a kite location. Respondent Leonbravo observed a driver and a passenger enter a car. They were the Maysonets.

The car took off from the kite location at a high rate of speed. The roads were not congested. The vehicle went through a red traffic signal and failed to make a complete stop at a stop sign. The vehicle's speed was 40 to 50 miles per hour. Respondent Leonbravo believed that the driver, the elder Maysonet, might have been under the influence of alcohol or drugs.

Respondent Leonbravo testified that the officers drove in front of the vehicle and cut it off. He admitted that Maysonet had stopped at a red light. He approached the driver side of the car saying, "[P]olice shutoff your vehicle." Maysonet did not comply, but did so after several repeated requests.

Respondent Leonbravo went with Maysonet to the back of the car. Respondent Zito was "in the other side of the vehicle."

Respondent Leonbravo described the elder Maysonet as "[v]ery argumentative." He was cursing and "had no respect for the law at all." At one point, Minor A asked his father "to just comply with me." The elder Maysonet did not calm down.

Respondent Leonbravo denied having his gun out at any time during the stop.

Although the elder Maysonet was "completely rude," Respondent Leonbravo felt bad for his son, whom Respondent Zito brought to the back of the vehicle. For this reason he did not issue a summons. Additionally, "It would have took me longer I didn't have a summons." Respondent Leonbravo did not have the necessary computer to run the elder Maysonet for warrants.

Respondent Leonbravo would have taken Maysonet's keys if he turned off the vehicle. He admitted that he did not remember what happened to them.

On cross examination, Respondent Leonbravo agreed that the prisoner van was an unmarked white van. He agreed that in his CCRB interview, he did not remember whether he was the operator or recorder. There might have been other prisoners in the van when Respondents began following the Maysonets.

Respondent Leonbravo clarified that his assignment to the prisoner van and the kite observation were not necessarily related. He was working as part of a team, and the team might have been doing something else, giving Respondents time to make the observation. The kite was not assigned to Respondent Leonbravo; it was assigned to someone from NBBN but he did not know whom. The assigned member was responsible for writing a report on the observation.

Respondent Leonbravo was not sure whether the elder Maysonet walked to the car with his son. He was also unsure if other cars or pedestrians had to move out of the way due to Maysonet's driving. Respondent Leonbravo likely would have driven through stop signs and a

red light as well, to catch up. He agreed that the "main reason" the Maysonets were stopped was because of the traffic infractions.

The stop took place on a corner near a cemetery. Respondent Leonbravo indicated that, in his CCRB interview, he said he did not recall if the police vehicle was in front of or behind the Maysonet vehicle when the stop was made. He also indicated that he said he was unsure which side of the vehicle he approached.

While the Maysonets were at the rear of the vehicle, they were facing away from it. Respondent Leonbravo was facing them. Respondent Zito "went inside the vehicle." Respondent Leonbravo did not, however, see him "go up inside of that car with some portion of his body."

Respondent Leonbravo agreed that although the elder Maysonet was combative and hostile, he did not seek assistance over the radio from the rest of the team.

Upon questioning by the Court, Respondent Leonbravo said that the command discipline he had received in the past, mentioned on direct examination by his attorney, was for failure to submit court forms and to sign out of the command.

Detective Steve Lafortune

Lafortune, who was African American, had been a member of the Department since July 2001. He became a detective in November 2006. He had made over 200 arrests.

On September 22, 2010, Lafortune was assigned to street narcotics enforcement in NBBN with Respondent Zito. Respondent Zito was the operator of their vehicle and Lafortune was the recorder. Around 1920 hours, they were in a vehicle and observed two individuals seated inside a second vehicle. There was a "hand-to-hand transaction," meaning that the

passenger placed United States currency in the hand of the driver, Torres. The passenger exited the vehicle, and Lafortune recognized him as someone "we" had arrested previously for "narcotic related transaction."

The passenger entered a building so Lafortune and Respondent Zito were unable to follow him. When asked if he knew the passenger's name, Lafortune answered, "No, at the time but I remembered who he was I don't remember his name now."

Lafortune and Respondent Zito conducted a car stop on Torres. Lafortune stated that he approached the passenger side and Respondent Zito approached the driver side. Neither of them had their weapons out. Respondent Zito had Torres "come out." Lafortune asked Torres to come to "one of the sides of the vehicle, I don't recall whether it was the front or the rear." Torres was upset and agitated. Lafortune frisked him. He was speaking in a raised voice and wanted to know who the officers were. Lafortune had his shield out and answered Torres's questions, but he did not calm down.

Lafortune explained that Torres started calling to bystanders on the street. Lafortune was concerned that he was going to "start a riot." Torres refused to stand still and kept motioning his hands to the other people. Lafortune instructed him to stop, and he "[e]ventually" complied.

Lafortune testified that Respondent Zito might have handcuffed Torres.

Lafortune denied that either detective told Torres he was going to get arrested. He agreed that Torres was asked for identification, but did not recall if he produced it.

Lafortune stated that while Respondent Zito "look[ed] in the vehicle," he did not "enter any compartment" of it. Lafortune did not see him open the glove compartment.

Lafortune stated that the encounter lasted about five to ten minutes.

On cross examination, Lafortune agreed that as a result of his involvement in this incident, the Police Commissioner ordered him to attend a week of training at the Police Academy. There, he was reinstructed on Patrol Guide § 212 11, the stop, question and frisk procedure. There was a large class of members present for the retraining.

On the day of trial, Lafortune spoke to Respondent Zito's attorney in the presence of Respondent Zito. Counsel showed Lafortune Lafortune's CCRB statement. Lafortune did not know whether Respondent Zito spoke to counsel. When asked, "Despite the fact that the three of you were just sitting at this table you didn't pay any attention or weren't able to hear any conversation between" them, Lafortune answered, "I was speaking to the attorney and I was reviewing the CCRB statement." Lafortune and Respondent Zito had not discussed the facts of the case.

Lafortune stated that Torres pulled the car to the side of the road. Lafortune did not recall whether Respondent Zito pulled behind or to the side of Torres. He then agreed that the officers did not pull up right next to him and stop the car. Rather, Lafortune made the hand-to-hand observation, Torres pulled away, the officers drove behind him, and then made the car stop. Lafortune then said that he did not remember whether they drove past Torres, or whether they were behind him, saw the transaction, and then followed him.

Lafortune indicated that the officers were driving an unmarked car and Torres was driving an SUV. Lafortune did not recall whether the side windows of the police vehicle were tinted. The SUV's windows were not.

Lafortune asserted that the transaction between Torres and the passenger involved "multiple motions." Lafortune indicated that while he did not mention multiple hand movements to the CCRB investigator, that was what he meant by hand-to-hand transaction. He admitted at

trial that he did not see a "hallmark object resembling narcotics" being passed in exchange for money. He could not, in fact, specifically identify the object.

Lafortune did not recall if his vehicle was moving when he observed the transaction. Lafortune disagreed that he would not have been able to see the transaction from behind Torres's vehicle.

Lafortune conceded that he did not know the passenger's name at the time of his CCRB interview. At trial, he did not recall for what the passenger was arrested. The individual did not run from the car. The building that the individual entered had a lock, so "there was no way we were going to be able to run after him." He conceded that he did not test the lock. He also admitted that the passenger did not use a key to get inside. It was "one of those community buildings . . . Like a buzzer to get in or there was a security guard at the front gate. . . . All I know once you try to get into that building it's a locked door."

Lafortune agreed with the Advocate's assertion that "you knew there was no passenger in the car because you had just seen the passenger exit."

Lafortune now recalled that he and Torres went to the front of the vehicle. He was nervous at Torres's excited state and thought he might have a weapon.

Lafortune did not see Respondent Zito "searching" the vehicle. He agreed that Torres would not have been allowed to enter his car and get his license, registration or insurance card.

Lafortune did not observe Respondent Zito go into Torres's pockets. The CCRB investigator asked Lafortune, "At any time did you observe your partner put his hands into any pockets," and Lafortune answered, "No, I don't recall that."

Lafortune agreed that he did not tell the CCRB investigator about Torres's hand movements as a reason for frisking him.

Lafortune stated that he observed Respondent Zito prepare a Stop, Question and Frisk Report Worksheet (UF-250) for the stop and frisk of Torres. Lafortune asked him to do so.

Respondent Zito

Respondent Zito, who was white, was appointed to the Department on January 10, 2005. He first was assigned to Police Service Area (PSA) 2, which covered the 73 and 75 Precincts. For his Impact assignment he was assigned to PSA 7 in the Bronx, then moved to PSA 3 in Brooklyn in a regular patrol assignment. Next, in November 2008, he was assigned to NBBN. In his career, he had made over 350 arrests and played a supporting role in over 700.

On February 3, 2010, Respondent Zito was doing narcotics enforcement within the confines of the 83 Precinct with his partner, Respondent Leonbravo. They were observing 562 Wilson Avenue, a barbershop, in an unmarked car. Respondent Leonbravo was the driver and Respondent Zito was the recorder.

This was a prior kite location. A kite dated November 16, 2006, from an anonymous caller alleged that barbers were selling marijuana (see RX B). Respondent Zito stated that it was "pretty routine" for narcotics to be sold in barbershops.

Respondent Zito testified that although the kite was generated in 2006, he liked to familiarize himself with previous kites that were in a narcotics zone. A narcotics zone was an area so designated by the large amount of narcotics complaints.

On the day in question, Respondent Zito observed the elder Maysonet walking back and forth in front of the barbershop talking to various individuals. The elder Maysonet left, entered a vehicle and drove away at a high rate of speed. Respondents followed the vehicle, which committed numerous traffic infractions before it was stopped on Cooper Avenue and Cypress

Avenue. The vehicle ran at least one stop sign and one red light. It took a while to catch up to the vehicle because it was proceeding at such a high rate of speed. Although the vehicle initially was observed in Brooklyn, it eventually was stopped in Queens.

Upon pulling the vehicle over, Respondent Zito approached the passenger side and Respondent Leonbravo approached the driver side. Respondent Zito identified himself as a police officer by having his shield out and saying "police" while approaching the vehicle.

Respondent Leonbravo asked the driver of the car, the elder Maysonet, to exit the vehicle. The elder Maysonet started screaming and yelling, "[W]hy are you stopping me? You have no right to stop me." He nevertheless eventually got out of the vehicle and Respondent Leonbravo took him to the rear of the vehicle.

Respondent Zito testified that the passenger in the vehicle, Minor A, exited the vehicle upon his direction. He was wearing sweatpants and Respondent Zito observed a bulge. Respondent Zito frisked the bulge and felt either a cell phone or keys. He did not enter the younger individual's pockets once he realized it was not a weapon.

Respondent Zito described Minor A as cooperative. He had his hands up when exiting the car and said, "I have nothing on me, you can search me." Respondent Zito did not search him but did bring him to the back of the vehicle.

At no time did Respondent Zito instruct either Maysonet to raise his hands. While both Maysonets stood at the back of the car with Respondents, the elder Maysonet kept yelling, "[Y]ou have no right to stop me, this is harassment." Minor A tried to calm down his father. Respondent Zito tried to explain to the elder Maysonet the reason for the stop but he did not want to hear it.

The elder Maysonet was asked for the paperwork on the car. Respondent Zito was informed that it was in the glove compartment. Respondent Zito retrieved the paperwork. He did not search any other compartments. He "just looked around in the area by the glove compartment for the paperwork and by the seat, and on top of the seat, and on the driver's seat, and maybe behind the seat, but I didn't open anything up or search anything."

Respondent Zito did not notice "any kind of problem or any contraband or weapons in the grabbable area of the car," and the paperwork was in order. He also determined that the elder Maysonet was not intoxicated. He gave the elder Maysonet a warning rather than a summons because their focus was narcotics enforcement. Additionally, Respondents "usually" did not carry summonses, so they would have to call a sector to respond and issue any summonses. There were more pressing things to do. Once the stop was concluded, the Maysonets were sent on their way.

On September 22, 2010, Respondent Zito again was assigned to narcotics enforcement within the confines of the 83 Precinct. This time, he was working with Lafortune. Respondent Zito testified that while he was traveling on Central Avenue, he observed Torres driving a vehicle in front of him. Torres quickly pulled over to the side of the road.

While passing the car and looking into the vehicle, Respondent Zito observed United States currency being exchanged from the passenger to Torres. Respondent Zito stopped in front of Torres's vehicle. Respondent Zito observed a motion from Torres to the passenger, but Lafortune observed that Torres handed the passenger an object. The passenger "within a split second" exited the vehicle and quickly walked down the block.

Respondent Zito contended that he recognized the passenger "from the precinct that I've either seen arrested, arrested myself, or had the field team arrested." Respondent Zito did not recall the individual's name, but indicated that he had been arrested for buying or selling drugs.

Torres "immediately" began driving again, and Respondent Zito and Lafortune followed him for about two blocks before pulling the car over. While conducting the car stop, Respondent Zito stated, he had his shield out and said the word "police."

Respondent Zito told Torres to exit the vehicle immediately. Torres became irate and said, "[W]hy are you stopping me, you have no right to stop me, how dare you stop me." He did not exit the vehicle until the second request by Respondent Zito. Torres was still angry, had his hands in his pockets and yelled out to bystanders to look at what the police were doing to him.

Respondent Zito instructed Torres to take his hands out of his pockets. Torres had his hands clenched when he removed them from his pocket. Respondent Zito frisked Torres because he saw a bulge in his pocket. He felt what appeared to be a cell phone and some keys. Respondent Zito asked Torres to open his hands. Torres had a $20 bill in his hand.

Torres was still acting erratically, "not complying, coming off the car after we frisked him," and talking to bystanders. Respondent Zito handcuffed Torres for safety because he was not complying "with any of our directions."

Torres told Respondent Zito that he did not know the passenger, and that he was just a guy from the neighborhood that owed him money. This response raised Respondent Zito's suspicion because, he claimed, it was inconsistent with what he observed. Respondent Zito claimed that Torres's answers were consistent with people who just had been involved in drug transactions. This raised his level of suspicion even more.

During the encounter, Respondent Zito and Lafortune radioed to the field team to stop the person that got out of the car. The field team canvassed but was unable to locate him. Respondent Zito "look[ed] in the car, I look around the grabbable areas under the seat, under the passenger seat, I look on top of the seat, I look in the back seat for any kind of contraband or weapons." Because the field team could not find the passenger, there was no probable cause and Torres was released.

Respondent Zito stated that he made Activity Log entries (RX C) and prepared a UF-250. Respondent Zito wrote, inter alia, "250 Torres, Advendiz[o] . . . drug sale." After preparing the UF-250, he dropped it off in the desk basket at the 83 Precinct station house later that night.

On cross examination, Respondent Zito agreed that he was assigned to the unmarked prisoner van on the date of the incident with the Maysonets.

Respondent Zito agreed that the 2006 kite report was the last narcotics complaint generated at the location before the encounter. Respondent Zito did not recall telling the CCRB that he observed the elder Maysonet in front of a few stores and not mentioning a specific barbershop.

At his CCRB interview, Respondent Zito acknowledged, he did not mention that the elder Maysonet committed specific traffic infractions. He just stated that he was driving erratically.

Respondent Zito admitted telling the CCRB investigator that he did not remember if he was the passenger or driver, or which side of the Maysonets' vehicle he or Respondent Leonbravo approached.

Once the Maysonets' vehicle was stopped, Respondent Zito testified, he and Respondent Leonbravo might have pulled in front of it. He did not recall if he or Respondent Leonbravo drew their weapons when approaching the car.

Respondent Zito agreed that he told the CCRB that he did not remember specifically what the elder Maysonet said other than that he was irate, uncooperative and disrespectful to law enforcement.

Respondent Zito admitted that he frisked both pockets of Minor A, as he saw bulges in each. He also frisked his waistband. The bulges turned out to be keys, a phone and a wallet.

Respondent Zito testified that he did not open the door and go into the rear of the vehicle. He looked there without doing so. He did not recall stating at his CCRB interview that it was possible he opened the door to look back there. He testified that neither he nor Respondent Leonbravo caused the car to be in "utter disarray."

Respondent Zito admitted that he did not check to see if the elder Maysonet's driver's license, registration or insurance were valid or suspended.

On September 22, 2010, Respondent Zito first saw Torres's SUV while driving behind him, a couple of car lengths away. Respondent Zito was in an unmarked minivan. The windows on the minivan were not tinted. He first observed the SUV through the windshield of the minivan. Respondent Zito asserted that the SUV sat at about the same height as the minivan.

When he observed the transactions, Respondent Zito had driven past the SUV slightly, not a full car length. He observed the transactions through the front passenger side window of the minivan, looking past Lafortune, the passenger window of the minivan, the driver window of the SUV, and Torres. Respondent Zito agreed that the transaction took place at 1945 hours, but

asserted that there was ample lighting. He admitted that the doors to the SUV were closed and the interior light was not on.

Respondent Zito admitted that he did not know where the passenger went after he left Torres's car. The passenger was Hispanic and slim, but Respondent Zito did not remember what he was wearing. When asked how old he was, Respondent Zito replied, "I don't know exactly how old he is." Torres pulled away quickly after the passenger exited.

Respondent Zito acknowledged that he did not tell the CCRB of the fact that Torres and the passenger exchanged money.

Respondent Zito did not remember if he had his gun drawn during the car stop. He acknowledged that during his CCRB interview, he said that Torres immediately got out of his car and that he did not recall if Torres had his hands in his pockets. He also told the investigator that he did not recall putting his hands into Torres's pockets.

Respondent Zito denied taking things out of the car and throwing them around. Respondent Zito admitted that he did not run Torres's driver's license for warrants or to see if it was valid.

The people across the street whom Torres addressed did not get involved with the stop and none of them was arrested or summonsed. Backup was not called to the scene because the bystanders were not threatening.

Upon examination by the Court, Respondent Zito contended that 83 Precinct officers spoke about the barbershop as being a drug spot.

FINDINGS AND ANALYSIS

Case Nos. 2010-3262 & 2010-3263 (The Maysonets)

Specification No. 1

The first specification against each Respondent in the above-captioned cases charge them with stopping improperly the vehicle driven by Elias Marty Maysonet, with his son, Minor A, as a passenger. Respondents were on enforcement duty with Brooklyn North Narcotics and assigned to the prisoner van. They were parked or standing near a barbershop that had, four years earlier, been the subject of a kite investigation. Kites are complaints of drug sales generated through 911, 311, and the like. These kites are assigned to detectives for investigation.

Although the kite was closed with negative results, Respondents indicated that it was a practice in narcotics enforcement to continue observation of such locations. It is undisputed that the Maysonets walked out of the barbershop. Respondents testified that they followed the Maysonets' vehicle and observed the driver violating several traffic laws, like excessive speeds or going through stop signs. The Maysonets denied this. The prosecution argued that Respondents suspected the Maysonets of involvement in drugs because of their presence in the shop. The supposed traffic infractions, it said, were a pretext to pull them over without legally sufficient suspicion.

Where a police officer has probable cause to make a car stop on the basis of a traffic infraction, the subjective motivations of the officers are not relevant to the constitutional reasonable of the stop. See Whren v. United States, 517 U.S. 806, 813 (1996); People v. Robinson, 97 N.Y.2d 341, 349 (2001). Thus, if Respondents observed the Maysonet vehicle committing a traffic violation, there was legal justification for the stop. See People v. Williams, 65 A.D.3d 484, 491 (1st Dept. 2009).

The elder Maysonet was angry at being stopped and did not have a good driving record. He grudgingly indicated that his license had been suspended and claimed not to recall receiving a citation for failing to wear a seatbelt. He also grudgingly indicated that he took a defensive-driving course to reduce points on his license. Moreover, while he claimed that he lived in [redacted] his entire life, he agreed that his license had a [redacted] address. As defense counsel later argued, this did not indicate so much that Maysonet lived on [redacted] at some point as it suggested that he falsely registered his car there to obtain lower insurance rates.

Minor A admitted that he had one conviction on his record, for stealing a box of baby formula from a store. He denied a colorably admirable motive: that, like Jean Valjean, he was going to give it away to his mother, sister, girlfriend, etc., because she could not afford it. Nor did he admit a less admirable but believable purpose: that he was going to sell it on the street, in his building or online. Instead, he gave a ridiculous untruth: that he was going to give it away to someone he yet had not selected or even been aware of. This kind of breeziness in telling falsehoods severely damaged his credibility.

The elder Maysonet made unusual and sometimes bizarre statements during his testimony. He insisted that, even as a lifelong resident of the city, he did not know Respondents were the police until he was out of the vehicle and observed handcuffs. He told Respondents to "calm down," then was surprised when they reacted negatively. He "screamed" at his son to keep his hands up even when Respondents said he could put them down.

The prosecution argued that Respondents were unworthy of belief because neither could recall the precise traffic infractions that led to the stop. It is not surprising, however, that they could not do so, as this was one of thousands of stops and did not lead to an arrest. (Of course, that only highlights the need to document activity, see Specification Nos. 2 & 3, infra).

Moreover, if Respondents wished to pull over the Maysonets on suspicion of drug involvement, and the Maysonets were driving within normal limits, they could have done so immediately. Instead, they followed them for several blocks. This suggests that they were waiting or hoping for, or observing, traffic violations. See People v. Roger, 2012 N.Y. Misc. Lexis 185, *11 (Dist. Ct., Nassau County, Jan. 20, 2012).

Accordingly, the Court credits Respondents' assertion that they observed the elder Maysonet commit a traffic violation. See People v. Guzman, 78 A.D.3d 568, 569 (1st Dept. 2010), lv. denied, 16 N.Y.3d 831 (2011); People v. Tuck, 55 A.D.3d 369 (1st Dept. 2008). The "real" reason they pulled the Maysonets' vehicle over is irrelevant. As such, Respondents are found Not Guilty of Specification No. 1.

Specification Nos. 2 & 3

Having pleaded Guilty to these specifications, Respondents are found Guilty.

Case No. 2010-3263

Specification No. 4

Respondent Zito is charged with improperly searching the Maysonets' vehicle. Respondent Zito admitted looking into the car but said that, in essence, he never crossed the threshold of the vehicle. The Maysonets did not see Respondent Zito in the car, but, as they were placed facing away from the vehicle, they heard noise, did not see Respondent Zito, and when they returned to the vehicle, observed that its contents had been tossed about.

An "improper" search, within the meaning of the specification, would be one that exceeded the bounds of the law or the rules of the Department. It was not necessarily disputed

that a full-scale warrantless search of the vehicle would not have been authorized, as there was no reasonable basis for the officers to conclude that a weapon within the vehicle posed an actual and specific danger to their safety. See generally People v. Mundo, 99 N.Y.2d 55, 59 (2002).

Respondent Zito testified that he "just looked around in the area by the glove compartment for the paperwork and by the seat, and on top of the seat, and on the driver's seat, and maybe behind the seat, but I didn't open anything up or search anything." Respondent Leonbravo said that Respondent Zito "went inside the vehicle."

This testimony established that Respondent Zito did more than simply look into the car from outside the car. He "crossed the threshold," as it were, and conducted a search. Cf. People v. Young, 207 A.D.2d 465, 466 (2d Dept. 1994) ("[A]n officer's simply peering inside an automobile will not constitute a search," but "where an action is undertaken so as to expose an area in the car which is not readily observable from the outside, then the action does constitute a search"). Thus, Respondent Zito is found Guilty.

Specification No. 5

Respondent Zito is charged in the fifth specification with frisking Minor A improperly. He admitted that he frisked the individual, but asserted that this was justified.

Reasonable suspicion is required for a frisk, even when the stop is justified. That suspicion can be unparticularized if the stop is for a violent crime, like robbery. Here, however, where there was a justified stop for non-violent traffic infractions, and the Maysonets did nothing more than come from the location of a known drug spot, Respondent Zito needed an independent, reasonable belief of immediate danger to himself in order to frisk tMinor A. See Legal Bureau Bulletin, Vol. 1, No. 3, p. 3 (Mar. 31, 1971); People v. Mack, 26

N.Y.2d 311, 317 (1970). A simple pocket bulge is insufficient. In any event, Respondent Zito admitted frisking **Minor A**'s waistband, and provided no reason for this. As such, he is found Guilty of Specification No. 5.

Case No. 2011-6079 (Avendizo Torres)

Specification No.1

In the first specification in this case, Respondent Zito is charged with an improper vehicle stop of Torres. Respondent Zito and Lafortune testified that they observed the passenger hand United States currency to Torres while both were sitting in Torres's vehicle. Torres then handed an unknown object back to the passenger.

Torres denied handing anything to the passenger, an individual he knew as Joe. Joe was doing construction work for Torres at a store he was getting ready to open. He was dropping off Joe after work and they shook hands, but did not exchange anything. Torres admitted that when he took his hands out of his pockets during the stop, he had a $20 bill in his hand, but Joe did not give it to him. It was Torres's money, used for buying food while they worked.

It was not disputed that the stop of Torres's car was a forcible stop requiring reasonable suspicion. Cf. People v. May, 81 N.Y.2d 725, 727 (1992). Under the circumstances described by Respondent Zito and Lafortune, a belief on their part that reasonable suspicion was established would have been objectively reasonable. See People v. Bonilla, 81 A.D.3d 555, 556 (1st Dept.) (while defendant was parked, he made furtive hand motions with a man who approached the vehicle), lv. denied, 17 N.Y.3d 792 (2011); People v. Thomas, 48 A.D.3d 314, 314-15 (1st Dept. 2008) (narcotics officer observed suspicious pattern of behavior and other participants in the transaction; when viewed in its entirety and through lens of officer's

experience, this was inconsistent with transfer of innocent item and suggested drug buy); cf. *Case No. 83153/07*, p. 25 (Aug. 19, 2008) (because officer's actions were objectively reasonable under New York law governing forcible stops, his actions were not wrongful and without just cause). Thus, the Court must determine whether the version of events put forth by Respondent Zito and Lafortune was credible.

Torres was angry about being pulled over. He portrayed the detectives as thuggish and rude. While he claimed to be knowledgeable about law enforcement, he did not know that putting one's hands in one's pockets created a safety risk to officers, and told the detectives that they had no right to enter his car without a warrant. He also made odd remarks, like testifying that Respondent Zito yelled "at the top of his lung[s]" to turn off the ignition, and it was "obvious" that his ID was in his other pair of pants. His position of auxiliary police officer was terminated for possession of an illegal gun and his application to become a police officer was rejected when he failed the psych exam.

The belief of Respondent Zito and Lafortune that there was an exchange of currency for an object was supported by Torres's admission that he had a $20 bill in his pocket and that he shook hands with Joe before Joe left. Thus, the evidence supports their claim that there appeared to be a "hand-to-hand." Cf. *Case No. 84356/08*, pp. 11-13 (Dec. 14, 2010) (no evidence supported detective's claim that unapprehended individual came from unknown building and made hand-to-hand with one of the complainants in their vehicle).

Because the evidence supports the objectively reasonable belief that reasonable suspicion existed to make a forcible stop of Torres's vehicle, Respondent Zito is found Not Guilty of Specification No. 1.

Specification No. 2

In the second specification, Respondent Zito is charged with frisking Torres improperly. The analysis and operative facts are similar to the frisk of Minor A, supra. Respondent Zito's decision to frisk Torres on the basis of a bulge was not particularized and was unsupported by reasonable suspicion. As such, he is found Guilty.

Specification No. 3

In the third specification, Respondent Zito is charged with improperly searching Torres's vehicle. The facts again are similar to those in the Maysonets' case. Torres saw Respondent Zito looking inside the vehicle before being instructed to face away. When he returned to his car, he observed that its contents had been tossed about.

Respondent Zito testified that he "look[ed] in the car, I look around the grabbable areas under the seat, under the passenger seat, I look on top of the seat, I look in the back seat for any kind of contraband or weapons."

It is inferable from Respondent Zito's own testimony that he did more than simply look into the car from outside the car. He must have entered the car to examine it to the extent he conceded. Thus, Respondent Zito is found Guilty of conducting an improper search.

Specification No. 5

Respondent Zito also is charged with searching Torres himself. Torres claimed that Respondent Zito placed his hands inside Torres's two front pockets. Respondent Zito denied doing so. He stated at his CCRB interview that he did not recall doing so. Lafortune's CCRB interview and trial testimony were much the same.

On summation, the Advocate argued that Respondent Zito's differing accounts constituted a concession on his part that "I can't remember if I searched Mr. Torres' pockets." That, in fact, is not what he said in the interview. According to the Advocate's reading of the transcript at trial, the CCRB investigator asked, "And at any point in time did you put your hands into his pockets." Respondent Zito answered, "I don't recall putting my hands into his pockets."

Nevertheless, both Respondent Zito and Lafortune were unsure on the date or dates of their CCRB interviews whether such a search had taken place. Yet they testified at trial, after the interviews, that it did not take place. Their inability to remember, closer in time to the incident, is more consistent with Torres's account that such a search occurred.

As such, the prosecution proved, by a preponderance of the evidence, that it was more likely than not that Respondent Zito searched Torres's pockets. As such, he is found Guilty of Specification No. 5.

Specification No. 4

In the final specification, Respondent Zito is charged with failing to file a UF-250 concerning the Torres incident. Respondent Zito testified that he filled out the UF-250 and Lafortune concurred. Respondent Zito said that he dropped it off in the basket at the 83 Precinct station house. The Advocate stated that the Department and the CCRB requested that searches be performed for the UF-250. The Department checked with both the 83 Precinct and the Criminal Records Section. No UF-250 was found.

The Court finds Respondent Zito's version more likely. UF-250s are small, non-standard pieces of paper. It is not a carbon-copy form and generally no photocopies are made and no

receipts are given. It is certainly imaginable that a UF-250, placed in the basket, could be lost. Cf. *Case No. 84486/08*, pp. 19-20 (Mar. 26, 2012) (loss of one '28').

The Court is not simply giving Respondent Zito the benefit of the doubt here. The fact that he indicated in his Activity Log that he prepared the UF 250 is strong evidence in support of his assertion that that it fell through the cracks. See *84486/08* (fact that four other contemporaneous '28's made it into the system, but one did not, was powerful evidence that the lost one was filed); cf. *Case Nos. 83041/07 & 85211/09*, pp. 26-27 (June 30, 2010) (rejecting claim that lost UF-250 was filed; officer had no Activity Log entry, he insisted almost four years later that he remembered filling it out, and supervisor was sure one was done because he either would have instructed officer to do so or officer would have done so on his own volition). Furthermore, there would be no reason for Respondent Zito to memorialize the preparation of the document, but not actually to prepare it. If he prepared it, there was no reason not to file it.

Accordingly, the Court finds Respondent Zito Not Guilty of the fourth specification, failing to prepare a UF-250 for the Torres incident.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent Leonbravo was appointed to the Department on July 11, 2005. Respondent Zito was appointed on January 10, 2005. Information from their personnel files that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Respondents have been found Guilty of various infractions regarding two separate vehicle stops. Respondent Leonbravo has been found Guilty of failing to prepare a UF-250 and

a sufficient Activity Log entry for the incident involving the Maysonets. Respondent Zito has been found Guilty of this (he admitted making no Activity Log entry), as well as the improper frisking of Minor A and Torres, the improper search of both the Maysonets' and Torres's vehicles, and the improper search of Torres's person.

There is, nevertheless, no evidence that Respondents' goal in stopping these vehicles and engaging in the other conduct related to the stops was anything other than to interdict narcotics activity. Accordingly, the Court recommends that Respondent Leonbravo be penalized with the forfeiture of 5 vacation days in the Maysonets case, and that Respondent Zito be penalized with the loss of 10 vacation days for his misconduct in the Maysonets and Torres cases. See *84356/08* (5 days for officer who engaged in unauthorized stop then lost relevant Activity Log); *Case Nos. 80029/04 & 80030/04* (Mar. 21, 2005) (5 days for sergeant for failing to prepare UF-250 and command log entry of strip search, and abusing his authority by supervising unlawful search of two other individuals).

APPROVED
MAY 16 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JUAN LEONBRAVO
TAX REGISTRY NO. 938847
DISCIPLINARY CASE NO. 2010-3262

In his 2012 annual evaluation, Respondent received an overall rating of 4.0 "Highly Competent. He was rated 4.0 "Highly Competent" in 2011 and 3.0 "Competent" in 2009. He has one medal for Meritorious Police Duty. [redacted] He has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE MATTHEW ZITO
TAX REGISTRY NO. 937792
DISCIPLINARY CASE NOS. 2010-3263 & 2011-6079

In his 2012 annual evaluation, Respondent received an overall rating of 3.5 "Competent/Highly Competent." He was rated 3.5 "Competent/Highly Competent" in 2011 and 2010. [redacted]

Respondent was placed on Level 1 Force Monitoring from 2008 to 2009 due to three or more CCRB complaints in a one-year period. He has been on Level 1 Force Monitoring, for the same reason, since November 2010. He has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials