The City of New York

POLICE DEPARTMENT

February 6, 2020

In the Matter of the Charges and Specifications :

- against - :

Lieutenant Mobeen Yasin Tax Registry No. 948285 Internal Affairs Bureau	: :	Case No. 2018-18414
Police Officer Hassan Gheith Tax Registry No. 938557 Intelligence Bureau	: : :	Case No. 2018-18415

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondent Yasin: Marissa Gillespie, Esq.
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New York, NY 10279

For Respondent Gheith: Craig Hayes, Esq.
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To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

LIEUTENANT MOBEEN YASIN
POLICE OFFICER HASSAN GHEITH

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-18414

1. Sergeant Mobeen Yasin, on or about March 23, 2017, at approximately 2130 hours, while assigned to the 68th Precinct and on duty, in the vicinity of [redacted] and the 68th Precinct station house, Kings County, abused his authority as a member of the New York City Police Department, in that he authorized a strip-search of A in the 68th Precinct stationhouse in Brooklyn without sufficient legal authority.
   P.G. 208-05, Page 2, paragraph C(2) ARRESTS
   GENERAL SEARCH GUIDELINES

2. Sergeant Mobeen Yasin, on or about March 23, 2017, at approximately 2130 hours, while assigned to the 68th Precinct and on duty, in the vicinity of [redacted] and the 68th Precinct station house, Kings County, abused his authority as a member of the New York City Police Department, in that he authorized a strip-search of B in the 68th Precinct stationhouse in Brooklyn without sufficient legal authority.
   P.G. 208-05, Page 2, paragraph C(2) ARRESTS –
   GENERAL SEARCH GUIDELINES

Disciplinary Case No. 2018-18415

1. Police Officer Hassan Gheith, on or about March 23, 2017, at approximately 2130 hours, while assigned to the 68th Precinct and on duty, in the vicinity of [redacted] and the 68th Precinct station house, Kings County, abused his authority as a member of the New York City Police Department, in that he strip-searched A in the 68th Precinct stationhouse in Brooklyn without sufficient legal authority.
   P.G. 208-05, Page 2, paragraph C(1) ARRESTS
   GENERAL SEARCH GUIDELINES

2. Police Officer Hassan Gheith, on or about March 23, 2017, at approximately 2130 hours, while assigned to the 68th Precinct and on duty, in the vicinity of [redacted] and the 68th Precinct station house, Kings County, abused his authority as a member of the New York City Police Department, in that he strip-searched B in the 68th Precinct stationhouse in Brooklyn without sufficient legal authority.
   P.G. 208-05, Page 2, paragraph C(1) ARRESTS –
   GENERAL SEARCH GUIDELINES

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on December 4, 2019. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The Civilian Complaint Review Board offered the statement of B in evidence.

Respondents called Police Officer Manuel Martinez as a witness and testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondents Not Guilty of the charged misconduct.

ANALYSIS

The following is a summary of the facts which are not in dispute. On March 23, 2017, Respondent Gheith was assigned to the Anti-Crime Unit at the 68th Precinct (T. 34). Respondent Yasin was assigned as the precinct Anti-Crime sergeant; on that date, he also supervised the precinct Conditions Unit (T. 119). At about 2100 hours, Respondent Yasin received notification of a 311 caller who had complained about loud noise and smoking at [redacted] (T. 119). Both Respondents knew that location as the primary source of 311, 911 and community complaints in the 68th Precinct (T. 119-120). Respondent Yasin contacted Respondent Gheith, advised him of the nature of the 311 call and directed him to investigate the conditions at that location (T. 35-36, 120).

Respondent Gheith drove down [redacted] between [redacted] and passed the location, at which he observed three individuals, two males and one female, passing a lit cigar; he also smelled the scent of burning marihuana (T. 36-37). Respondent Gheith drove past the location to the end of the block, where he parked his police car; he then walked back up the block to the aforementioned location (T. 37-38).

When Respondent Gheith reached the address, he placed all three suspects under arrest and recovered a marihuana cigar (T. 38). He recognized A and B as suspected drug dealers. Respondent Gheith contacted Respondent Yasin and informed him that he had made three arrests at the location for smoking marihuana; the prisoners were then placed

in police cars for transportation to the 68th Precinct (T. 40 41). Respondent Gheith transported the female suspect to the precinct; Police Officer Manuel Martinez transported A and B (T. 41-42, 97).

Once the suspects arrived at the precinct, Respondent Gheith and Respondent Yasin decided to conduct strip searches of A and B; the circumstances of the searches and the bases for the decision to conduct strip searches are in issue.

The searches of A and B were conducted in a bathroom off the precinct's holding cell area (T. 46-50, 131-134). The search of A resulted in the seizure of 98 pills of different controlled substances (T. 133). The subsequent search of B resulted in the seizure of 84 pills of different controlled substances (T. 133-134).

The following is a summary of the relevant evidence adduced at trial.

Respondent Gheith testified that when he placed A and B under arrest, they appeared to be "very upset that they were getting arrested" and asked repeatedly if they could be issued desk appearance tickets ("DATs") (T. 39-40). Respondent Gheith testified further that as they were placed in the rear of Police Officer Martinez's police car, they were "fidgeting [with] their hands" while rear-cuffed and moving about a great deal (T. 40-41). Respondent Gheith arrived at the 68th Precinct before Police Officer Martinez and observed A and B as they walked inside. According to Respondent Gheith, both men appeared to be walking with stiff gaits and appeared to be waddling (T. 42-43). Respondent Gheith opined that they were walking as if they "were hiding something" and did not want it to fall out (T. 43). Police Officer Martinez told Respondent Gheith, "Be careful. They were moving around a lot in the car" (*Id.*, 98, 1001-101).

Martinez then went back to his police car after dropping A and B at

the precinct to search the back seat to ensure that neither man had left any contraband behind (T. 101).

Respondent Gheith testified that he had [redacted] both A and B were known to carry narcotics (T. 44). He then informed Respondent Yasin of: (1) the observations he made at the arrest scene of A and B fidgeting as they were being placed into a police car; (2) Police Officer Martinez's observation that both men were moving around as they were transported to the precinct; and (3) the [redacted] both men carrying drugs (T. 44). Respondent Gheith then requested authorization to conduct strip searches of both men; Respondent Yasin granted his request (T. 44-45).

Respondent Gheith testified that he then took A into a bathroom to conduct the strip search; A pulled down his pants, grabbed his crotch area, and pulled out glassine envelopes containing pills (T. 47 48). A then violently swung his free hand, while trying to first throw the drugs into a toilet (T. 48-49). A then threw the drugs onto the floor and attempted to crush them under his foot (T. 48). Respondent Gheith eventually recovered heroin and Xanax pills (T. 49-50). A was later transported to a hospital to receive medical attention for injuries incurred during a physical struggle with Respondent Gheith and other police officers (T. 50).

Respondent Gheith then prepared to strip search B in the same bathroom; according to Gheith, B voluntarily squatted and removed Xanax pills from his buttocks area (*Id.*).

Respondent Yasin testified that he was standing behind the desk inside the 68th Precinct when A and B arrived. He observed that they were walking with "an altered gait. They were constantly digging – moving their hands around, almost, like, shuffling their buttocks

and their groin area" (T. 122). He further testified that "their legs appeared very stiff. Their movement was – it appeared that they were waddling towards the desk, and when they were in front of the desk they were moving, making a lot of movement . . ." (T. 123). Both men were also yelling in front of the desk, demanding that they receive desk appearance tickets (*Id.*). Respondent Yasin was also aware of the [redacted] which suggested that A and B both sold and carried drugs (T. 127, 130-131). He was also aware that on one previous occasion, A had been strip searched at the 68th Precinct and was found to be secreting drugs on his person (T. 126-127, 165).

Respondent Yasin testified further that Respondent Gheith approached him and informed him that he had observed A and B constantly fidgeting and moving around (T. 124). He also informed Respondent Yasin that Police Officer Martinez had witnessed both suspects moving around in the back seat of his police car as they were being transported to the precinct (T. 124-125). Police Officer Martinez also reported to Respondent Yasin the negative results of the search of his police car back seat (T. 125).

Based upon his observations of A and B in front of the desk, Respondent Ghieth's reporting, [redacted] and the arrest histories of each man, Respondent Yasin authorized strip searches (T. 123-131). Both prisoners were removed from the holding area and taken to a bathroom for the searches (T. 131). A was un-cuffed and told to remove his garments; he then reached into his groin area and removed "a large bag containing narcotics" and attempted to flush them in the toilet (*Id.*). Respondent Yasin testified that police officers had to use force to prevent A from destroying the drugs (*Id.*). 98 pills of various controlled substances were recovered from A (T. 133).

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According to Respondent Yasin, after B was un-cuffed in preparation to be searched, he removed a package of narcotics from his underwear and threw it to the ground; the package contained 84 pills of controlled substances of various types (T. 133-134).

The Tribunal received the statement of B provided to CCRB on August 22, 2017, in evidence (CCRB Ex. 1-A, 1-B). In his statement, B admitted that he was smoking marihuana when he was stopped by Respondent Gheith and even admitted to Respondent Gheith that he was smoking marihuana; he asserted that he should not have been arrested or strip searched, because "Marijuana is not – it's not a crime. It's a violation" (CCRB Ex. 1-B at 6, 12). He conceded that he protested his arrest at the scene and further protested the strip search at the 68th Precinct (*Id.* at 17, 23, 26). B denied moving around inside the police car or attempting to either remove something from or place something into, his pockets
(*Id.* at 22 23).

B further admitted taking his underwear off in the bathroom and that pills in a bag fell out, although he accused Respondent Gheith and other police officers of punching him in his ribs until he complied with a request to disrobe (*Id.* at 5-6, 8, 48-53, 56-57). B claimed that he suffered from bipolar disorder and was experiencing distress at the time of his arrest because Respondent Gheith refused to provide him with his medication, despite several requests to do so (*Id.* at 5-7, 57-60). B also accused Respondent Gheith of calling him a "dirty, lying Arab" (*Id.* at 67).

B asserted that during A's strip search, he saw A grab pills from his
pants and attempt to eat them, which led to the police officers striking and kicking his head repeatedly (*Id.* at 27, 33-34). He also claimed that Respondent Gheith "slammed [A] to the floor" (*Id.* at 35). B asserted that the police officers struck and kicked A for 10-

15 minutes without A ever hitting back (*Id.* at 41). He observed as A was attended by EMTs, then transported to a hospital (*Id.* at 44).

The parties stipulated that B had a criminal record which included: (1) a 2017 felony conviction for Robbery in the Third Degree; (2) a 2017 misdemeanor conviction for Petit Larceny; and (3) a 2017 Public Health Law conviction for attempting to sell an imitation controlled substance (T. 26-30).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events based on opposing accounts. In a hearsay case of this nature, particular attention must be paid to the evidence. Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Police Dep't v. Ayala*, OATH Index No. 401/88 (Aug. 11, 1989), aff'd sub nom., *Ayala v. Ward*, 170 A.D.2d 235 (1st Dep't 1991)).

I find the respective testimonies of Respondents Gheith and Yasin logical, forthright and credible, notwithstanding their interests in the outcome of this proceeding. I find their willingness to concede unflattering facts, such as the use of force against A, to be a factor weighing in favor of their veracity. I further find the testimony of Police Officer Martinez to be credible and reliable. He is a disinterested witness in this proceeding and the substance of his testimony is consistent with the faithful execution of his duties.

In contrast, B's statement is rife with exaggeration and generally unreliable, although he does corroborate certain material aspects of both Respondents' respective testimonies concerning the manner in which the strip searches were conducted. I find his unavailability for cross examination a factor weighing against the reliability of his statement.

especially considering the allegations of uncharged misconduct contained in it. The thrust of his statement appears to be a concession to the irrefutable facts, but ascribing misconduct to Respondents which could arguably taint the evidence they recovered through the strip searches.

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Specification 1, 2: Strip search Without Sufficient Authority

I find that CCRB has failed to meet its burden of proof by a preponderance of the evidence that Respondent Gheith conducted strip searches of A and B without sufficient legal authority.

A strip search is defined in the Patrol Guide as "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" (P.G. 208-05[1][C][1]). Under the Patrol Guide, strip searches may only be conducted with the knowledge and approval of the arresting officer's immediate supervisor or the borough court section supervisor (*Id.*). Strip searches 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 other search methods outlined in the Patrol Guide (*Id.*; see P.G. 208-05[1][A], [1][B]).

In this case, there is no dispute that Respondent Yasin, who was at the time of the searches Respondent Gheith's immediate supervisor, authorized the strip searches of both A and B. There is further no dispute that both suspects were searched at the scene of their arrests and again before the Desk Officer at the 68th Precinct. The dispositive issue is whether Respondent had a sufficient basis to request strip searches of both men; I find that he did.

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Respondent Gheith was informed by Police Officer Martinez that both A and B were squirming in the back seat of his police car and moving about as they were being transported to the 68th Precinct for arrest processing. I find this to be a credible assertion upon which Respondent Gheith could rely, as it was relayed to him by a fellow police officer. More importantly, Respondent Gheith observed both men walk into the 68th Precinct exhibiting an odd gait which he described as waddling. I find that Respondent Gheith's first-hand observation, corroborated by Respondent Yasin's concomitant observation of the same behavior, was sufficiently noteworthy that combined with: (1) the fact that both men had been arrested minutes before in possession of a marihuana cigar they were smoking in public; and (2) Police Officer Martinez's report that both men were moving about while handcuffed in the back of his police car, it provided a sufficient legal basis for him to suspect that both men were hiding contraband of some sort on their persons, most likely in their pants.

While both Respondents testified regarding [redacted] suggesting that both A and B were drug dealers, I do not find that fact, standing alone, persuasive but simply one of many factors they were entitled to consider in determining whether to request and later approve a request for strip searches.

Accordingly, I find Respondent Gheith Not Guilty of Specifications 1 and 2.

Disciplinary Case No. 2018-18414

Specifications 1, 2: Authorizing a Strip search Without Sufficient Legal Authority

I find that CCRB has failed to meet its burden of proof by a preponderance of the evidence that Respondent Yasin authorized strip searches of A and B without sufficient legal authority.

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As set forth above, Respondent Gheith had a sufficient legal basis for a request to conduct strip searches of A and B based upon: (1) Respondent Gheith's first-hand observation of both men waddling as they walked into the 68th Precinct after an arrest minutes before for smoking a marihuana cigar in public; and (2) Police Officer Martinez's report that both men were moving about while handcuffed in the back of his police car. In addition to Respondent Yasin independently observing both men using the same waddling gait inside the precinct, he was also aware that A had previously been subjected to a strip search at the 68th Precinct and was found in that instance to be secreting drugs.

Based upon the totality of the information available to Respondent Yasin at the time of Respondent Gheith's request, I find that he had a sufficient legal basis to authorize strip searches of both A and B. Accordingly, I find him Not Guilty of Specifications 1 and 2.

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

MAY 22 2020

DERMOT SHEA
POLICE COMMISSIONER