The City of New York

POLICE DEPARTMENT

October 21, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Matthew Buonaspina
Tax Registry No. 940975
13 Precinct
Disciplinary Case No. 2013-10401

The above-named member of the Department appeared before me on May 1 and July 10, 2015, charged with the following:

1. Said Police Officer Matthew Buonaspina, on or about March 27, 2012, at approximately 1730 hours, while assigned to the 13th Precinct and on duty, at the corner of West 27th Street and 6th Avenue, New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he searched Glenn Martin's vehicle without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Andre Applewhite, Esq. Respondent was represented by Stuart London, Esq.

Respondent pleaded Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF THE EVIDENCE PRESENTED

It is not disputed that on March 27, 2012 at about 5:30 p.m., Glenn Martin was driving his mother's four-door Mercedes sedan (the Mercedes) in Manhattan. A government parking plaque that belonged to Martin's mother was on the visor of the Mercedes. Martin pulled over at the corner of West 27th Street and 6th Avenue, parked the Mercedes in a no parking zone, and entered a coffee shop where he met his friend Person A. When Martin saw a traffic enforcement agent (TEA) and a Department tow truck approach the Mercedes, he exited the coffee shop and spoke with the tow truck operator. The TEA moved his car next to the Mercedes blocking it in. The TEA then flagged down Respondent, who was on duty, assigned to the 13th Precinct, performing patrol duties in a Department van with his partner, Police Officer Traci McLaughlin. Respondent exited the van and approached the Mercedes. Martin complied with Respondent's request that he turn off the ignition and exit the car.

Martin testified that when he attempted to explain to Respondent that the plaque was his mother's and was not a fake plaque, Respondent ignored him and started looking through the car and underneath seats. Martin told Respondent that he did not have permission to search the car. Respondent told him several times to back up. Respondent "rummaged through" a "gym bag that was in the back seat." Respondent handcuffed him and placed him inside the police van but later released him. Martin filed a civil suit against the City the New York regarding this incident which was settled for $12,000.

Martin's friend, Person A, whose CCRB interview was offered as hearsay evidence when he failed to appear to testify [CCRB Exhibit 1], stated that he exited the coffee shop after Martin; that he heard Respondent tell Martin to get out of the car; that

he heard Respondent ask Martin several times who the car belonged to and what he did for a living; and that he saw Respondent search inside the car. Martin asked Respondent the reason for the search and when Martin stepped forward and asked Respondent what he was looking for, Respondent repeatedly ordered him to back up. Respondent told Martin that he was under arrest, placed him in handcuffs, and put him inside a police van. Martin was detained inside the van for about ten minutes before being released.

Respondent testified that he and McLaughlin saw a TEA running in traffic waving his arms over his head, and yelling, "Help, help, he's trying to get away!" Respondent exited the van, leaving the van in the middle of traffic, and ran over to the TEA who told him that the Mercedes had a "fake plaque" in the visor. Respondent approached the driver's side of the Mercedes and asked Martin to step out. Martin complied and Respondent told him to wait at the rear of the Mercedes with McLaughlin. When Respondent leaned into the open driver's door to retrieve the plaque from the visor, Martin walked up abruptly on Respondent's right-hand side. Since Respondent carried his gun on his right side and he did not know what Martin's intentions were, he felt unsafe. Respondent again directed Martin to wait at the rear of the car. Martin again complied, but he walked back toward Respondent three more times as Respondent was reaching into the car to get the plaque. Each time Martin did this he did not say anything which Respondent found strange and made him nervous. Respondent decided to handcuff Martin and place him inside the police van.

After Martin was seated in the van, Respondent removed the plaque from the visor and examined it. Although the plaque was expired, it "looked real to me." As he was standing by the driver's side door examining the plaque, he noticed that there was a

closed folding knife in the driver's door panel. Respondent inspected the knife and determined that it was not a gravity knife or other illegal knife. He then proceeded to search "the reachable, lungeable area" of the front seating area of the Mercedes. He explained that he did this because of Martin's demeanor and because he had discovered the knife in the door panel. He searched the center console and underneath the driver's seat "front and back."

He also searched the "back seat, back floor." He saw "either a coat or a gym bag on the passenger's side rear seat." He "lifted it up, looked underneath it, pushed it to the side" and "moved it around." He did not unzip the gym bag, or open the glove compartment or open the trunk. Martin told him that the knife belonged to his father who was a retired detective and that the plaque belonged to his mother. Respondent confirmed this information in a telephone conversation with Martin's mother. Respondent then released Martin. Respondent allowed Martin to open the glove compartment.

Respondent testified about training he received at the Police Academy regarding car stops that, "as far as regarding weapons, we were taught absolutely search the reachable, lungeable area, if it's probable that they have a weapon. They've taught us in the Police Academy to remove all occupants from the vehicle when doing so for safety." With regard to his search of the rear seating area of the Mercedes, Respondent explained, "After seeing the knife, I started to think about the whole situation. . . . When I approached, he [Martin] was looking out the rear of the vehicle both sides, like he was turning. And initially to me that looks like he was looking out the back of the vehicle as we're approaching. After his actions, trying to get in between me and the vehicle and get

towards the vehicle, and seeing the knife, I thought maybe he was also reaching around in the vehicle maybe hiding something, maybe going for something. So at that time I said, I think I have enough suspicion here to search the reachable, lungeable area. Maybe he was hiding something."

FINDINGS AND ANALYSIS

It is charged that Respondent searched the Mercedes without sufficient legal authority. I find Respondent guilty based on his own testimony regarding why he searched the rear seating area of the Mercedes.

Respondent acknowledged that, since the parking plaque on the visor of the Mercedes appeared to be genuine and since the knife that he found in the driver's door panel was not an illegal gravity knife, he did not possess probable cause that Martin had committed any crime, only a parking violation. Respondent further acknowledged that because Martin had exited the Mercedes, the car was unoccupied when Respondent entered the rear passenger seating area; searched the "back seat" and "back floor;" saw "either a coat or a gym bag on the passenger's side rear seat" and "lifted it up, looked underneath it, pushed it to the side" and "moved it around." When Respondent was asked if he had looked underneath loose clothing that was on the rear passenger seat, he answered that he had "moved them around."

"A police officer's entry into an automobile and inspection of the personal effects therein are significant encroachments upon a motorist's privacy interests."[1] As a result, "to enter and search an unoccupied vehicle the Court of Appeals has clearly stated that

[1] Legal Bureau Bulletin, Vol. 22, No. 5, p. 2 (Nov. 1992) discussing the New York Court of Appeals decision in *People v. Jackson*, 79 NY2d 907 (1992).

the officer must have probable cause that the vehicle contains a weapon, evidence of a crime or a means of escape. Reasonable suspicion alone is not sufficient."[2]

Respondent testified that he searched the rear passenger seating area because he had discovered a non-illegal knife in "the driver's side door pocket;" because while Martin was still in the driver's seat he saw Martin "turning" and "I thought maybe he was also reaching around in the vehicle maybe hiding something, maybe going for something;" and because he perceived that Martin had engaged in "actions" of "trying to get in between me and the vehicle and get towards the vehicle."

Based on this testimony, I find that Respondent's conclusion that he had a sufficient legal basis to search the rear passenger seating area because Martin may have possibly thrown "something" into the rear seating area constitutes pure speculation. Respondent's testimony falls so far short of articulable facts that would establish probable cause that the Mercedes contained a weapon or evidence of a crime or a means of escape that it does not support his attorney's argument that even if there was an insufficient basis for his search, the search constituted only a technical constitutional violation and that he was acting in good faith when he searched the rear seating area.

Finally, although Department training materials stress that safety is the most important factor for an officer to consider when engaging in a car stop encounter, Respondent's claim that his purpose in searching the rear passenger seating area was solely to ensure his personal safety is inconsistent with his admission that he allowed Martin to open the glove compartment of the Mercedes even though Respondent did not know what was inside the glove compartment. Respondent is found Guilty.

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[2] Ibid. p. 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 31, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB Administrative Prosecutor recommended that Respondent forfeit five vacation days as a penalty. In determining a penalty recommendation I have taken into consideration the fact that Respondent did not conduct a full-blown search of every area of the Mercedes. It is not disputed that Respondent exercised some restraint in conducting his search in that he did not search the glove compartment or the trunk.

I have also taken into consideration the fact that Respondent is a nearly ten-year member of the Department who has no formal disciplinary record; who has received consistently good performance evaluations; and who has an impressive Department Recognition Summary.

Therefore, it is recommended that Respondent receive a reprimand as a penalty.

APPROVED

JAN 27 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,

Robert W. Vinal
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MATTHEW BUONASPINA
TAX REGISTRY NO. 940975
DISCIPLINARY CASE NO. 2013-10401

Respondent received an overall rating of 4.5 on his 2014 annual performance evaluation, 4.5 on his 2013 annual evaluation, and 4.0 on his 2012 annual evaluation. He has been awarded 15 Excellent Police Duty medals. [redacted] He has no prior formal disciplinary record and no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner – Trials