



POLICE DEPARTMENT CITY OF NEW YORK

July 19, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant John Ryan
Tax Registry No. 940685
120th Precinct
Disciplinary Case No. 2015-14109

Detective Matthew Reich
Tax Registry No. 933211
Narcotics Borough Staten Island
Disciplinary Case No. 2015-14107

Detective Philip Vaccarino
Tax Registry No. 943905
Narcotics Borough Staten Island
Disciplinary Case No. 2015-14108

Charges and Specifications:

Disciplinary Case No. 2015-14109

1. Said Lieutenant John Ryan, on or about September 23, 2014, at approximately 1940 hours, while assigned to Narcotics Borough Staten Island and on duty, in the vicinity of Willowbrook Road and Forest Avenue, Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he stopped the vehicle driven by Michael Skolnick without sufficient legal authority.

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

Disciplinary Case No. 2015-14107

1. Said Detective Mathew Reich, on or about September 23, 2014, at approximately 1940 hours, while assigned to Narcotics Borough Staten Island and on duty, in the vicinity of Willowbrook Road and Forest Avenue, Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he stopped the vehicle driven by Michael Skolnick without sufficient legal authority.

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

LIEUTENANT JOHN RYAN
DETECTIVE MATHEW REICH
DETECTIVE PHILIP VACCARINO

Disciplinary Case No. 2015-14108

1. Said Detective Philip Vaccarino, on or about September 23, 2014, at approximately 1940 hours, while assigned to Narcotics Borough Staten Island and on duty, in the vicinity of Willowbrook Road and Forest Avenue, Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he stopped the vehicle driven by Michael Skolnick without sufficient legal authority.

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

Appearances:

For CCRB-APU: Cindy Horowitz, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondents: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, New York 10279

Hearing Date:

May 5, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on May 5, 2016.

Respondent, through their counsel, entered a plea of Not Guilty to the subject charges. CCRB called Michael Skolnick as a witness. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

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DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the undisputed facts of this case. At approximately 1940 hours on September 23, 2014, Michael Skolnick drove up to [REDACTED], Staten Island, New York (hereinafter referred to as "the premises")(T. 13). At the time, Skolnick lived in New Jersey and drove a 2012 Mitsubishi Lancer with tinted windows (T. 14). Skolnick, accompanied by his nine-year old daughter, who was seated in the front passenger seat, left the engine running and went inside the premises (T. 14-15, 59-60).

At the time Skolnick drove up to the premises, Respondents Lieutenant John Ryan, Detective Matthew Reich and Detective Philip Vaccarino were conducting a surveillance of a targeted location on the same block (T. 84, 114, 146). Respondents observed Skolnick drive up to the premises and exit his car, leaving the engine running and his minor child in the front passenger seat (T. 86, 114, 146-147).

After remaining inside the premises for a short period of time, Skolnick left the building, returned to his car holding something in his hand, then drove away on Willowbrook Road (T. 17, 88, 92, 117, 147-148). Respondents followed Skolnick in their unmarked vehicle and eventually stopped his car about one block away (T. 18, 93, 118-119, 148-149). Respondent Reich approached Skolnick's car from the driver's side and Respondent Ryan from the passenger side. Respondent Reich spoke to Skolnick through the driver's side window and asked him for his driver's license and registration (T. 119). Skolnick stepped out of the car and told Respondent Reich that he [REDACTED]

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[REDACTED]. The investigation concerned the illegal sale of prescription drugs (T. 35, 36). Respondent Reich [REDACTED]. [REDACTED]. Shortly thereafter, Skolnick was released without being issued a summons and left the area.

At some point subsequent to the September 23, 2014 car stop, Skolnick [REDACTED]. [REDACTED] On October 14, 2014, Skolnick filed a complaint with the Civilian Complaint Review Board (T. 31). On [REDACTED] 2014, Skolnick was [REDACTED] [REDACTED] (T. 44, 46, 51). [REDACTED] As of the date of his testimony before the tribunal, Skolnick has a pending civil action against the City of New York and Respondents arising from the September 23rd car stop (T. 13, 27).

What is at issue in this case is whether Respondents had sufficient cause to detain Skolnick. After reviewing the relevant, credible evidence in the record, I find that Respondents did have sufficient cause to conduct a car stop in the manner described above.

The following is a summary of the disputed facts in this case. Respondent Ryan testified that on the date of the incident which is the subject of this case, he was a Sergeant supervising a team of investigators assigned to Staten Island Narcotics. At about 1940 hours, he and his co-respondents were conducting surveillance in response to civilian complaints of narcotics activity in the area (T. 84-85, 108-109). At about that time, Respondent Ryan observed Skolnick drive up in front of the premises, double-park, then exit his car with the key in the ignition, all while leaving a small child in the front seat (T. 86-87). Skolnick went inside the premises, remained therein for a minute or two, then returned to his car holding a brown paper bag (T. 88). Respondent Ryan suspected that Skolnick may have been involved in narcotics activity inside

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the premises (T. 89). In addition to the suspected narcotics activity, Respondent Ryan observed that Skolnick had committed several traffic infractions, namely: double-parking his vehicle, leaving the keys in the ignition of his car unattended, and over-tinted windows (T. 89).

Once Skolnick drove away from the premises, Respondent Ryan and the other Detectives followed with the intention of conducting a car stop (T. 92). Respondent Ryan testified that his basis for stopping Skolnick was the traffic infractions he had observed but a secondary purpose was to learn what, if anything, had transpired within the premises (T. 92-93). According to Respondent Ryan, as soon as Skolnick was pulled over, he stepped out of his car [REDACTED]

Respondent Reich testified that he observed Skolnick drive up to [REDACTED] and step out of his vehicle, leaving it running with a small child in the front seat (T. 114). Respondent Reich observed Skolnick enter and remain inside the premises for a couple of minutes, then return to his car (Id.). Prior to conducting surveillance that evening, Respondent Reich was aware of complaints of narcotics sales being conducted inside the premises (T. 115-116). After observing Skolnick drive away, Respondent Reich activated his lights and siren approximately a block away from the premises to avoid alerting potential targets of the investigation that they had been under surveillance (T. 118, 133).

Respondent Vaccarino testified that the other members of his team that day alerted him to a car which had pulled up in front of the premises (T. 147). Respondent Vaccarino saw Skolnick get out of the car and run inside the premises, leaving it unattended, with the engine running and a child in the front seat (Id.). While Respondent Vaccarino testified that Skolnick's car was pulled over because of the excessive window tints, he previously testified that he was pulled over because he was suspected of engaging in a narcotics transaction (T. 161-162).

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None of Respondents confessed to receiving any tip or possessing any intelligence regarding Skolnick prior to conducting surveillance that day (T. 98, 152). Respondent Reich testified that when he saw Skolnick enter the premises, [REDACTED]

I credit the respective testimonies of Respondents as forthright, logical and generally consistent with the independent facts, as well as with each other. Respondents, in the view of the tribunal, performed their duties in a professional manner which was consistent with their primary responsibility that day to investigate possible narcotics crimes. Furthermore, Skolnick's arrival at the premises and his actions, as observed by Respondents, all experienced narcotics investigators, led almost ineluctably to his being stopped for further investigation.

Skolnick testified that earlier on the evening of September 23, 2014, he had engaged in a telephonic conversation with a friend of his who resided at the premises and discussed what cleaning supplies Skolnick would need to clean his home, as he had no prior experience in doing so. According to Skolnick, his friend, who was a retired sanitation engineer, agreed to provide him a list of necessary items (T. 13). Skolnick testified that he drove from his home in New Jersey to his friend's home to obtain the list (T. 61-62, 72). Skolnick testified that he was accompanied by his then-9 year old daughter, who was seated in the front seat (T. 14, 57). Skolnick testified further that when he went inside the premises, he spoke with his friend, who provided him with a written list of cleaning supplies in a sealed business size envelope (T. 60-62). Skolnick denied any knowledge of unlawful activity by his friend or by anyone living at that location.

Skolnick testified that on the date of the incident, he [REDACTED]

[REDACTED] While Skolnick admitted [REDACTED]

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[REDACTED]

[REDACTED] According to Skolnick,
he [REDACTED]

[REDACTED] Skolnick testified that he contacted [REDACTED] and informed him that
[REDACTED] (T. 40). Later in his cross-examination,

Skolnick testified that he was told [REDACTED]

[REDACTED], alluding to [REDACTED] for [REDACTED]
[REDACTED] (T. 43-46). When questioned

regarding the factual allegations of the [REDACTED] case, Skolnick denied them (T. 48-51).

I decline to credit the testimony of Skolnick, as it was implausible on its face, inconsistent with his prior testimony on material issues and vague. In addition, I find that Skolnick had a strong incentive to tailor his testimony to bolster his position in his pending civil suit. At the outset, I find Skolnick's assertion that he drove from New Jersey to Staten Island simply to pick up a written list of cleaning supplies to be incredible. Skolnick's apoloia that he had never cleaned his own home and had no idea how to go about doing so; and that the list was too long to take over the telephone ring hollow.

Furthermore, I find that Skolnick's trial testimony contained several material inconsistencies. On direct examination, Skolnick denied having over-tinted windows but then conceded on cross-examination that he applied for a waiver from the Department of Motor Vehicles to permit him to have over-tinted windows due to a purported photosensitivity condition (T. 67). Skolnick testified on direct examination that he was told by Respondents that he had been pulled over for speeding, which he denied (T. 26). On cross-examination, Skolnick

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conceded that he had previously stated in a deposition on March 2, 2016, that he drove away from the premises at 40–45 miles per hour (T. 71).

Finally, I find Skolnick's testimony regarding the circumstances under which [REDACTED]

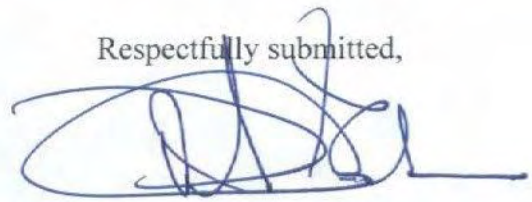
[REDACTED] Based upon all the foregoing reasons, I find Skolnick to be an incredible witness.

It is well-settled that where a police officer has probable cause to detain a person temporarily for a traffic infraction, that seizure does not violate the Fourth Amendment even though the underlying reason for the stop might have been to investigate some other matter (*People v. Edwards*, 14 N.Y.3d 741, 742 [2010])[initial stop of defendant's vehicle was permissible and police officers' subjective motivation to investigate possible narcotics activity does not negate the objective reasonableness of the officers' actions]; *People v. Robinson*, 97 N.Y.2d 341, 348 [2001]). Respondents had probable cause to believe Skolnick had committed several traffic infractions, among them driving with excessive tints on the windows, double-parking and leaving an unattended car with keys in the ignition (*People v. Daniels*, 117 A.D.3d 1573 [4th Dept. 2014][excessively tinted windows in violation of VTL § 375[12-a][b][1]]; *People v. Guzman*, 78 A.D.3d 568, 569 [1st Dept. 2010][double-parked vehicle in violation of VTL § 1202(a)(1)(a)]; VTL § 1210[keys in ignition in violation of VTL § 120(a)]).

In this case, Respondents testified candidly, in my view, that they suspected Skolnick of narcotics activity at the outset but capitalized upon the traffic infractions they observed him commit as a means to stop Skolnick and question him with respect to their ongoing narcotics investigation. The investigative technique they employed was consistent with state and federal law. Accordingly, I find Respondents Not Guilty of the charged misconduct.

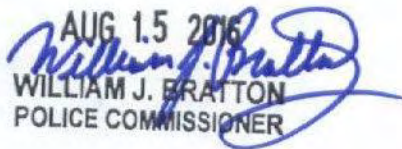
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Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

AUG 15 2016

WILLIAM J. FRATTON
POLICE COMMISSIONER