



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

September 10, 2015

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Sekou Bourne**
Tax Registry No. 924971
Narcotics Borough Brooklyn North
Disciplinary Case No. 2014-11568

Sergeant Afzal Ali
Tax Registry No. 936116
Narcotics Borough Brooklyn North
Disciplinary Case No. 2014-11569

The above named members of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on February 9, 2015, and were charged with the following:

DISCIPLINARY CASE NO. 2014-11568

1. Said Detective Sekou Bourne, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority. *(As amended)*

P.G. 203-10, Pages 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

2. Said Detective Sekou Bourne, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Jarnale Willomon Henry without sufficient legal authority. *(As amended)*

P.G. 212-11, Pages 1, Paragraph 2

STOP AND FRISK

**DETECTIVE SEKOU BOURNE
SERGEANT AFZAL ALI**

**DISCIPLINARY CASE NO. 2014-11568 &
DISCIPLINARY CASE NO. 2014-11569**

3. Said Detective Sekou Bourne, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department in that he searched Jarnale Willomon Henry without sufficient legal authority. (*As amended*)

P.G. 212-11, Pages 1, Paragraph 3

STOP AND FRISK

DISCIPLINARY CASE NO. 2014-11569

1. Said Sergeant Afzal Ali, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority. (*As amended*)

P.G. 203-10, Pages 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

In a Memorandum dated June 22, 2015, Assistant Deputy Commissioner Robert W. Vinal found Detective Bourne Guilty of Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2014-11568 and found Sergeant Ali Guilty of Specification No. 1 in Disciplinary Case No. 2014-11569. Having read the Memorandum and analyzed the facts of this matter, I approve the findings and the penalty for Detective Bourne, and I approve the findings, but disapprove the penalty for Sergeant Ali.

I have considered the totality of issues and circumstances in this matter and deem that a greater penalty is warranted for Sergeant Ali. Therefore, Sergeant Ali is to forfeit three (3) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

June 22, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Sekou Bourne
Tax Registry No. 924971
Narcotics Borough Brooklyn North
Disciplinary Case No. 2014-11568

Sergeant Afzal Ali
Tax Registry No. 936116
Narcotics Borough Brooklyn North
Disciplinary Case No. 2013-11569

The above-named members of the Department appeared before me on February 9, 2015, charged with the following:

Disciplinary Case No. 2014-11568

1. Said Detective Sekou Bourne, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED], Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority. *(As amended)*

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

2. Said Detective Sekou Bourne, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Jarnale Willomon Henry without sufficient legal authority. *(As amended)*

P.G. 212-11, Page 1, Paragraph 2 – STOP & FRISK

3. Said Detective Sekou Bourne, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he searched Jarnale Willomon Henry without sufficient legal authority. *(As amended)*

P.G. 212-11, Page 1, Paragraph 3 – STOP & FRISK

Disciplinary Case No. 2014-11569

1. Said Sergeant Afzal Ali, on or about April 13, 2013, at approximately 2100 hours while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority. *(As amended)*

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

The Civilian Complaint Review Board was represented by Raasheja Page, Esq.
Respondent Ali was represented by Matthew Schieffer, Esq., and Respondent Bourne was represented by Michael Lacondi, Esq.

Respondents, through their counsels, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2014-11568

Respondent Bourne is found Guilty.

Disciplinary Case No. 2014-11569

Respondent Ali is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on April 13, 2013, Respondents were on duty, wearing plainclothes, assigned to Narcotics Borough Brooklyn North, performing KITE (civilian complaint) investigations of suspected drug sales locations. One of Respondent Bourne's assigned KITE investigations had been initiated based on an anonymous complaint that drugs were being sold out of [REDACTED] Brooklyn.

Respondent Bourne ascertained that the tenant of that apartment was Malik Saunders and that Saunders had previously been convicted of Criminal Possession of a Controlled Substance with intent to sell. At about 2100 hours that day, Respondents learned that a noise complaint regarding [REDACTED] had just been received. They immediately responded to [REDACTED]. They arrived at about 2040 hours, entered the building and proceeded to the second floor hallway.

CCRB called Jarnale Henry and Malik Saunders as witnesses.

Henry testified that on April 13, 2013, she, her sister [REDACTED] and [REDACTED] were visiting Saunders, a long-time family friend who Henry refers to as "my brother," inside his residence, [REDACTED]. Shortly after 2100 hours, Henry and [REDACTED] decided to go out and buy food for dinner. When Henry opened the apartment door and took one step out into the hallway, she saw two men

standing in the hallway. At the time, Henry was holding a blue and white lollipop in her hand. She described the men as "goons" because they were "large intimidating guys" and they were "dressed in all black." She asked the men twice if she could help them with anything. Neither man responded. Henry looked back into the apartment to see if Saunders recognized the men but Saunders shrugged his shoulders indicating that he did not know who she was talking to. Henry then stepped back into the apartment to avoid having to pass the men in the hallway because she was afraid of them. Henry and Saunders attempted to close the door from inside the apartment but felt resistance on the other side of the door. The door then "flew open" and Henry fell to the floor. The two men entered the apartment. No one had given them permission to enter the apartment. One of the men got on top of Henry, straddling her body as she struggled to get out from underneath him. While Henry was on the floor, [REDACTED] called 911 to report that two armed men were trying to get into the apartment. Henry testified that the man on top of her was feeling her "all over" and when she stood up he searched the pockets of her coat. The two men did not identify themselves as police officers until after she was frisked and searched.

On cross-examination, Henry testified that she had removed the plastic wrapper from the lollipop she was holding when she stepped out the apartment door. On re-direct examination, Henry stated that the lollipop was blue colored with streaks of white on it.

Saunders testified that he noticed as Henry was going out the door of the apartment, she stopped walking and began looking around in the hallway. He walked over behind her to see what was happening and saw two men he did not recognize

standing in the hallway. He heard Henry ask the men, "May I help you?" Saunders heard no response. He and Henry backed up into the apartment and attempted to close the door. As they tried to close the door shut, they felt the door "trying to be forced open." Saunders told [REDACTED] to call 911. Saunders saw an arm reaching through the gap between the door and the door jamb just before the door "burst open" which caused Henry to fall to the floor. One of the men got on top of Henry and it appeared to Saunders that he was trying to hold her down on the floor. When Saunders went towards Henry to try to help her, the second man came into the apartment with his gun drawn. The two men then identified themselves as police officers. Saunders helped Henry get to her feet. The officer who had been on top of her patted her down and put his hands in her coat pockets but he did not remove anything from her pockets.

Testimony of Respondents

Respondent Bourne testified that as he and Respondent Ali were standing in the second floor hallway, Henry exited [REDACTED], walked three or four steps into the hallway, and asked them, "What do you need?" Respondent Bourne observed that Henry was holding something white in her hand which he believed was "an eight ball" of crack cocaine. Based on Henry's question and what he saw in her hand, and based on the information he had about [REDACTED] and the fact that Saunders had previously been convicted of Criminal Possession of a Controlled Substance with intent to sell, and his experience as a narcotics detective, Respondent Bourne believed that Henry was offering to sell him drugs.

Respondent Bourne asserted that after Henry asked them a second time, "What do you need?" he identified himself as a police officer and Henry immediately "took off running back into the apartment." As Henry ran through the doorway, she tripped and fell into the apartment. Respondent Bourne pursued Henry through the doorway into the apartment. While Henry was on the floor, Respondent Bourne got on top of her and frisked her waist area and outer garments for weapons. Respondent Bourne looked around and saw that the object that Henry had been holding that he had thought was "an eight ball" of crack cocaine had fallen out of her hand onto the floor and was actually "just a piece of candy." Respondent Bourne denied that he had searched Henry.

On cross-examination, Respondent Bourne was confronted with a statement he made at his CCRB interview that as he was frisking Henry while she was on floor, he was looking for the object that Henry had been holding in her hand. On re-direct examination, he explained that he had meant that he was looking for the object on the floor while he was frisking Henry, but he was not looking for it on her person.

Respondent Ali testified that as he and Respondent Bourne were standing in the hallway on the second floor, Henry exited [REDACTED] and asked, "Can I help you?" Respondent Ali asserted that Respondent Bourne identified himself as a police officer, that Henry "made a movement to her mouth," turned around and ran. As she re-entered the apartment, she fell down. Respondent Bourne followed her inside the apartment. Respondent Ali then followed him into the apartment. Respondent Bourne went over to Henry and began "checking her pockets and everything she had." Two people who were inside the apartment approached and Respondent Ali identified himself as a police

officer. Respondent Ali testified that he followed Respondent Bourne into the apartment because "police officers go where their partner goes. Just for his safety, I'm right behind him no matter what."

On cross-examination, Respondent Ali testified that his purpose in entering the apartment was to recover evidence of a controlled substance because he believed that when Henry made a movement to her mouth, she was trying to destroy evidence by swallowing it. Respondent Ali acknowledged that he could not tell whether Henry actually had something in her hand because his view was obstructed. Respondent Ali confirmed that Respondent Bourne had frisked Henry for weapons but he did not see Respondent Bourne search Henry.

FINDINGS AND ANALYSIS

Both Respondents are charged with having entered [REDACTED] without sufficient legal authority. Respondents do not dispute that they entered [REDACTED]. Respondent Bourne asserted that the information he possessed regarding the apartment and his interaction with Henry in the hallway justified his warrantless entry into the apartment, and Respondent Ali asserted that he had entered the apartment because he believed that Henry had committed a crime and that "she was trying to destroy something" and to insure Respondent Bourne's safety.

At the point when Respondents were standing in the second floor hallway before Henry opened the door and stepped outside [REDACTED], the only information they possessed was that the tenant, Saunders, had previously been convicted of Criminal Possession of a Controlled Substance with intent to sell, and that they had received a

complaint that drugs were being sold out of [REDACTED]. However, since that complaint had come from an anonymous source, Respondents knew that they could not rely on the accuracy of this information. Moreover, they had responded to the second floor hallway outside [REDACTED] that day only because they had learned that a noise complaint had been received. Since this complaint did not allege drug activity, it added nothing to the negligible information they possessed regarding whether drugs were actually being sold out of [REDACTED].

Since it is clear that before Henry opened the door and stepped outside [REDACTED] Respondents were not even close to possessing sufficiently reliable information to obtain a warrant to search [REDACTED], the question of whether Respondents had sufficient legal authority to conduct a warrantless entry of [REDACTED] hangs on their interaction with Henry in the hallway. I find that based on Respondents' testimony regarding this interaction, they had an insufficient legal basis to enter the apartment.

Respondent Bourne asserted that Henry had asked them, "What do you need?" Thus, Respondent Bourne characterized her inquiry as the type of question that a drug seller would ask a potential buyer. However, Respondent Ali corroborated Henry's much more innocent version of what she had asked them. Henry testified that she had asked them if she could help them with anything and Respondent Ali recalled that Henry had asked them, "Can I help you?" Since Respondent Bourne's version of what Henry asked them was not supported by Respondent Ali, and since Henry's version of what she asked them was supported by Respondent Ali, I credit Henry's claim that she asked them if she could help them with anything. This innocent inquiry added nothing to the negligible

information they possessed regarding whether drugs were actually being sold out of [REDACTED]

Also, it is clear that Henry was holding candy (which she testified was a lollipop) when she stepped out the apartment door because Respondent Bourne conceded that the object he had seen in her hand and which fell onto the floor inside the apartment was "a piece of candy." Nonetheless, Respondent Bourne claimed that he had a reasonable objective belief, as opposed to a mere assumption, that the object he saw in Henry's hand in the hallway was "an eight ball" of crack cocaine. This claim has no support in the record. Respondent Ali testified that he did not see what was in Henry's hand. He only saw her hand move to her mouth, a physical reaction that is as consistent with surprise as it is with trying to swallow crack cocaine.

Respondent Bourne's claim that he reasonably believed that what Henry was holding in her hand was crack cocaine must also be examined in light of the fact that he did not ask Henry what she was holding in her hand nor did he ask her to open her hand and show him what she was holding. In fact, he asked her no questions at all. Moreover, Respondent Bourne's professed belief that Henry had just obtained crack cocaine inside [REDACTED] had no objective evidentiary support whatsoever since no one had told Respondents that they had observed a hand-to-hand exchange at [REDACTED] nor did they possess information from an undercover officer or a reliable informant that he or she had purchased drugs at [REDACTED] or that he or she had seen drugs inside [REDACTED]

■ Based on the above, I find that Respondent Bourne did not have probable cause to arrest Henry for possession of crack cocaine.¹

Respondent Bourne and Respondent Ali both asserted that Respondent Bourne identified himself as a police officer to Henry in the hallway outside ■ Henry testified that neither of the Respondents identified himself as a police officer until they were inside ■. However, even if I credited Respondents' claims that Respondent Bourne identified himself as a police officer to Henry in the hallway, because he did not have probable cause to arrest Henry, when she rapidly re-entered ■ he had no legal right to pursue her into the apartment. Warrantless entries into residences are presumptively unreasonable and are unlawful unless the entering police officer can articulate specific facts which establish one of the carefully delineated exceptions to the warrant requirement.² Respondent Bourne's attorney asserted that Respondent Bourne's entry into ■ was proper because Henry "was potentially selling" crack cocaine. This argument to justify Respondent Bourne's entry into ■ is not supported by the record.

Based on the above, I find Respondent Bourne guilty of entering the apartment without sufficient legal authority.

As to Respondent Ali, when he was asked, "Why did you enter that apartment?" he answered that he had entered because he believed that Henry had committed a crime, even though he did not see anything in Henry's hand, and because he "had assumed she

¹ See Legal Bureau Bulletins Vol. 11, No. 2 and Vol. 27, No.1. In reaching this finding I have not relied on Saunder's testimony since he has an extensive criminal record including a conviction for Criminal Possession of a Controlled Substance with intent to sell (RX A).

² See Legal Bureau Bulletin Vol. 44, No. 2.

was trying to destroy something at the time so I just followed the detective's lead." This explanation does not justify his warrantless entry into the apartment.

Respondent Ali also testified that he had entered the apartment right behind Respondent Bourne "just for his safety," and that he would have entered "right behind him no matter what" because "police officers go where their partner goes." This safety justification has been recognized by this tribunal in situations where a police officer has followed a fellow police officer into a residence, even where the following officer had reason to believe that his partner's entry was improper, because if the following officer had remained in the hallway and one of the occupants had closed the door and locked it he would have been unable to come to his partner's assistance if his partner was attacked inside the residence. However, the instant case presents a different scenario because Respondent Ali was Respondent Bourne's supervisor.

Respondent Ali's own testimony shows that they had responded to the noise complaint in the hope that they would be able to gain entry into [REDACTED] and thereby determine whether the anonymous complaint that drugs were being sold out of the apartment was "founded or unfounded." It is clear that they had no other investigative plan. Although the complaint regarding [REDACTED] was one of Respondent Bourne's assigned KITE cases, and although Respondent Bourne (having been appointed to the Department in 2000) was senior to Respondent Ali (who was appointed in 2005) in length of service and had more experience, this did not relieve Respondent Ali of his responsibility as Respondent Bourne's immediate supervisor to insure that the police actions Respondent Bourne engaged in were proper. Respondent Ali's testimony that he merely followed Respondent Bourne's "lead" in entering the

apartment shows that he abdicated his responsibility as the supervisor at the scene to take control of the encounter with Henry in the hallway.

Based on the above, I find that Respondent Ali is also guilty of entering the apartment without sufficient legal authority.

Respondent Bourne is also charged with having frisked and searched Henry inside [REDACTED] without sufficient legal authority. Respondent Bourne does not dispute that he frisked Henry while he was standing over her inside the apartment. Patrol Guide Procedure 212-11 "Stop and Frisk," states that "a uniformed member of the service" may lawfully "frisk" a person only "if you reasonably suspect you or others are in danger of physical injury"³ Respondent Bourne's position, as his attorney stated in his summation, is that he had frisked Henry "because people who run from the police especially at a known drug location might be carrying weapons," and to insure the safety not only of himself and Respondent Ali, but also Henry's own safety "and the safety of all the civilians inside of the apartment." Since the record establishes that Respondent Bourne possessed insufficient information to conclude that [REDACTED] was actually a drug location; since neither Respondent had observed anything that indicated that Henry had a weapon on her person; and since Henry had left the company of the civilians inside the apartment only moments before Respondent Bourne frisked her, this argument does not justify his frisk of Henry. Thus, I find Respondent Bourne guilty because he had an insufficient legal basis to frisk Henry.

³ Patrol Guide Procedure No. 212-11(2).

Finally, although Respondent Bourne denied that he had searched Henry, Henry's testimony that he searched her pockets was corroborated by Respondent Ali. Although Respondent Ali asserted that in his opinion Respondent Bourne had not searched Henry, Respondent Ali conceded that he had seen Respondent Bourne "checking her pockets and everything she had." Patrol Guide Procedure 212-11 defines "search" as "(t)o place hands inside pocket or other interior parts of clothing to determine if object felt is a weapon."⁴ Thus, Respondent Bourne's action of checking Henry's pockets to ascertain what was in them constituted a search which, like his frisk of Henry, was conducted without sufficient legal basis. As a result, Respondent Bourne is also found Guilty of having searched Henry without sufficient legal authority.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent Bourne was appointed to the Department on March 1, 2000. Respondent Ali was appointed to the Department on January 10, 2005. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda. In fashioning appropriate penalty recommendations I have also taken into consideration the fact that neither Respondent has a prior formal disciplinary record.

⁴ Patrol Guide Procedure No. 212-11 – DEFINITIONS.

Respondent Bourne has been found guilty of entering the apartment and frisking and searching Henry without sufficient legal authority. The CCRB prosecutor recommended that Respondent Bourne forfeit ten vacation days as a penalty.

With regard to Respondent Bourne's misconduct of unlawfully entering the apartment, in *Case No. 2013-9538* (Dec. 12, 2014), a six-year police officer who had no prior disciplinary record forfeited five vacation days for unlawfully entering an apartment. In that case, as here, the officer admitted that he had entered the apartment but the facts he cited did not justify his unlawful entry.

With regard to Respondent Bourne's misconduct of having frisked and searched Henry without sufficient legal authority, in *Case No. 2013-9623* (Mar. 4, 2015), a nine-year police officer who had no prior disciplinary record received a reprimand for frisking and searching a civilian without the requisite legal authority.

The CCRB prosecutor recommended that Respondent Ali forfeit five vacation days as a penalty. In *Case No. 2013-10137* (Nov. 10, 2014), a lieutenant who had no prior disciplinary record received a reprimand for entering an apartment without sufficient legal authority.

Therefore, it is recommended that Respondent Bourne forfeit five vacation days as a penalty and it is recommended that Respondent Ali receive a reprimand as a penalty.



Respectfully submitted,

A handwritten signature in black ink, which appears to read "Robert W. Vinal", is written above the printed name.

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 SEKOU BOURNE
TAX REGISTRY NO. 924971
DISCIPLINARY CASE NO. 2014-11568

Respondent received an overall rating of 4.5 on his 2013-2014 performance evaluation, 3.5 on his 2012-2013 evaluation, and 3.0 on his 2011-2012 evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED]
[REDACTED] He has no prior formal disciplinary record.

He has been placed on Level 1 Force Monitoring on two occasions. On September 2, 2013, he was placed on Level 2 Force Monitoring which is continuing.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT AFZAL ALI
TAX REGISTRY NO. 936116
DISCIPLINARY CASE NO. 2014-11569

The Respondent received an overall rating of 4.5 on his 2014 performance evaluation, 4.0 on his 2013 evaluation, and 4.0 on his 2011 evaluation. He has been awarded two Meritorious Police Duty medals and two Excellent Police Duty medals. [REDACTED]
[REDACTED]. He has no prior formal disciplinary record and no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner – Trials