



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 30, 2014

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Steven Bennett**
Tax Registry No. 929705
108 Precinct
Disciplinary Case No. 2012-6915

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on February 14, 2014, charged with the following:

DISCIPLINARY CASE NO. 2012-6915

1. Sergeant Steven Bennett, while on-duty and assigned to the 104th Precinct, on or about December 22, 2010, failed to follow the proper procedure for Emotionally Disturbed Persons. (*As amended*)

P.G. 216-05, Page 1

**EMOTIONALLY DISTURBED
PERSON**

2. Sergeant Steven Bennett, while on-duty on or about December 22, 2010, failed to carry a conducted energy device, as required.

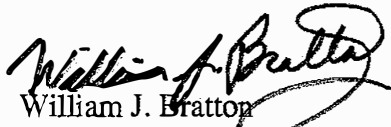
Interim Order 20 S. 2008, Page 2

**USE OF CONDUCTED ENERGY
DEVICES**

In a Memorandum dated June 20, 2014, Assistant Deputy Commissioner Robert W. Vinal found the Respondent Not Guilty of Specification No. 1 and Guilty of Specification No. 2 in Disciplinary Case No. 2012-6915. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances in this matter and deem that a lesser penalty is warranted. Therefore, the Respondent is to receive No Disciplinary Action, as a penalty in this matter. Further, it is directed that the Respondent

receive Instructions from his Commanding Officer regarding Interim Order 20 S. 2008 –
Use of Conducted Energy Devices.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

June 20, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Steven Bennett
Tax Registry No. 929705
108 Precinct
Disciplinary Case No. 2012-6915

The above-named member of the Department appeared before me on February 14, 2014, charged with the following:

1. Said Sergeant Steven Bennett, while on-duty and assigned to the 104th Precinct [sic], on or about December 22, 2010, failed to follow the proper procedure for Emotionally Disturbed Persons. (*As amended*)

P.G. 216-05, Page 1 EMOTIONALLY DISTURBED PERSON

2. Said Sergeant Steven Bennett, while on-duty on or about December 22, 2010, failed to carry a conducted energy device, as required.

Interim Order 20 S. 2008, Page 2 USE OF CONDUCTED ENERGY DEVICES

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office. Respondent was represented by John D' Alessandro, Esq.

Respondent, through his counsel, entered a plea 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

Respondent is found Not Guilty of Specification No. 1. Respondent is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not disputed that on December 22, 2010, at about 2140 hours, Respondent was on duty, in uniform, inside the 104 Precinct, assigned as the 104 patrol supervisor. While he was performing administrative duties, he heard a radio transmission that a family dispute involving a knife was taking place inside a house [REDACTED] (the house).

Because the house is a short distance from the 104 Precinct, Respondent decided to respond on foot rather than drive to the house. Police Officer Charles Sadler, Respondent's driver, also ran to the house from the 104 Precinct. Police Officers Raymond Nappi and Westley Dunbar also responded to the house. Sergeant Edward Reiman used a marked Radio Motor Patrol car (RMP).

When Respondent arrived outside of the house, he spoke on the street with Person A who told him that her son Person B was inside the house holding a knife. Respondent, accompanied by Officers Nappi and Dunbar, entered the house. When Person B attacked Respondent with a knife, Respondent, Nappi and Dunbar discharged their firearms at Person B resulting in his death.

The Department's Case

The Department called Sergeants Floros Efstratiou and Edward Reiman and Police Officer Charles Sadler as witnesses.

Sergeant Floros Efstratiou

Efstratiou, a 25-year member of the Department who is currently assigned to Queens North Investigations Unit, was assigned to investigate the December 22, 2010 firearm discharges by Respondent, Nappi and Dunbar that resulted in Person B's death.

Efstratiou testified that his investigation confirmed the following facts: That the radio transmission put out by the dispatcher described a family dispute with a knife; that the house is a two-family house; that Person A told Respondent and the other responding officers that Person B had psychological problems, that he had been drinking, and that he possessed two knives. Efstratiou also confirmed that Respondent and the officers heard a woman screaming on the second floor of the house; that Respondent requested that the Emergency Services Unit (ESU) be called to the scene; that Sergeant Reiman went behind the house to secure the rear entrance; that Respondent entered the front door with Officers Nappi and Dunbar; that behind the front door is a small vestibule area where there were two more doors, one leading to a ground-floor apartment and the other leading upstairs to a second-floor apartment; and that Respondent opened the door to the ground-floor apartment with keys that Person A had given him.

[Department's Exhibit (DX) 1 is the SPRINT Report of the radio transmissions regarding this incident. The report shows that Person A called 911 at 9:36 p.m. and reported that her son had pulled a knife on her. The dispatcher transmitted a family

dispute with a knife call one minute later and the first units arrived outside the house at 9:40 p.m. ESU was requested at 9:44 p.m. and it was reported one minute later that shots had been fired at the scene.]

Efstratiou opined that under applicable Patrol Guide procedures, Respondent should have waited outside the house for ESU to arrive because officers assigned to ESU have the ability to subdue an emotionally disturbed person (EDP) by using the minimal amount of force necessary. Efstratiou confirmed that although Respondent was taser-trained, he left his taser in his RMP when he responded to the incident on foot by running the block-and-a-half distance to the house. Efstratiou explained that under the Patrol Guide, the patrol supervisor is supposed to be in possession of his taser at all times while on patrol.

On cross-examination, Efstratiou agreed that to a person who was standing in front of the house, it appeared to be a single-family house and that a person standing in front of the house would not be able to ascertain that there were, in fact, two separate apartments inside the house. Efstratiou confirmed that the dispatcher's initial radio transmission specifically described the house as a "private house." Efstratiou also confirmed that neither the dispatcher nor Person A specifically informed Respondent or any of the other officers who arrived at the house that Person B was an "EDP."

Efstratiou also confirmed that the responding officers told him that they were able to see a woman who was inside the house leaning out of a second floor window and that the woman was screaming out the window and appeared to be in distress. The officers stated that they believed that this woman was in danger. Efstratiou testified that he concluded that this belief was reasonable under the circumstances. Efstratiou further

confirmed that the responding officers told him that Person A was hysterical when she met the officers outside the house and that she told the officers that her son was inside with a knife and had done this before. Efstratiou agreed that all of the uniformed members of the service (UMOS) who were present at the scene provided Efstratiou with consistent versions of this incident. Finally, Efstratiou confirmed that it was only after the fact that it was discovered that Person B was physically contained inside the ground-floor apartment and was not a physical threat to the woman who had been leaning out of the second floor window screaming.

Sergeant Edward Reiman

Reiman, a 14-year member of the Department who is assigned to the 104 Precinct, recalled that when he arrived in front of the house, he heard Person A say that her son was inside with a knife. Reiman also saw a woman looking out an upstairs window. While they were on the front steps of the house, Respondent walked past Reiman with keys. Respondent opened the front door and then started to use the keys to open a second door that was located inside the entryway. At that point, Person A told them that Person B sometimes used the back door so Reiman went around to the back of the house to secure the rear entrance. Reiman never entered the house.

On cross-examination, Reiman confirmed that the Department tasers that were in use in 2010 were bigger and more cumbersome to carry than those currently being used and that they would get in the way when supervisors were entering and exiting Department vehicles.

Reiman agreed that viewing the house from outside the house, he could not tell that it was a two-family house and that he was under the impression that it was a single family residence. He recalled that Person A was hysterical and that, as a result, it was difficult for the officers to get information from her. He described Person A's demeanor as follows: "When you went to go ask her a question or just try to get more information, as soon as another officer came on the scene, she would immediately turn and go to that officer, 'Please help me, help me, he's in there with a knife,' or something to the effect." Reiman was concerned for the safety of the woman he observed at the second-floor window. Although he did not remember the woman screaming, he was concerned for her safety because she was inside the house and Person A had stated that Person B was in the house with a knife.

On redirect examination, Reiman testified that he was standing about five feet from Respondent when Respondent started to open the door inside the vestibule. Reiman did not see any other doors in the vestibule area.

On recross-examination, Reiman testified that he did not recall Person A stating which floor of the house Person B had been on when Person A came outside.

Police Officer Charles Sadler

Sadler, an eight-year member of the Department who is assigned to the 104 Precinct, recalled that he was assigned as Respondent's driver on the day of the incident and that he and Respondent were inside the station house when he heard the family dispute with a knife "job" come over the radio. He and Respondent ran down the block to the nearby house. When he arrived in front of the house, Respondent instructed him to

call ESU to respond to the house. Sadler called for ESU over the radio. He then heard the sound of shots being fired. He did not personally enter the house.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 12-year member of the Department who is currently assigned to the 108 Precinct, testified that he has held the rank of sergeant for four years. He recalled that he was inside the 104 Precinct when he heard a radio transmission of a family dispute with a knife at a single-family house that he knew was nearby. He did not have his taser with him because he had left it in his RMP that was parked in front of the command. He explained that the taser was so bulky and cumbersome that it made it difficult for him to buckle his seatbelt so he unhooked it from his belt when he was seated in the vehicle. When exiting the car while on patrol, he always brought the taser with him, but there was no reason for him to bring the taser into the station house that day. Since the house was only one block from the station house, he and Sadler ran there because it was faster than driving there.

When he arrived at the house, Reiman was already speaking to Person A. Because Person A was acting in an erratic manner and not speaking clearly, it was difficult to get information from her other than that her son Person B was in the house, that he had a knife, and that he sometimes exited through the back door. Respondent saw a woman leaning out the window on the second floor of the house. The woman was yelling to

them on the street, but Respondent could not make out what she was saying. She appeared distressed. Respondent was concerned for the woman's safety because, based on what Person A had told him, he believed that the woman was locked inside the house with Person B who had a knife. Person A gave Respondent the apartment keys, and Respondent entered the front door of the house with Nappi and Dunbar. All of the lights were turned off and it was pitch black inside. Respondent had his firearm out and repeatedly called out "Police." As Respondent crossed the living room, he heard a rustling noise and saw movement from behind a wall. Zachary swung a large knife at him while stating, "Get the fuck out of my house." Respondent blocked the knife with his hand and sustained a laceration from his knuckle to his wrist. Respondent started to back away from Person B. Respondent tripped and fell to the floor. As he was on his back, Person B tried to stab him in the chest. Respondent and the other officers in the room discharged their firearms at Person B who fell to the floor.

Before entering the house, Respondent directed Sadler to call ESU because "Any time there's a relatively confirmed threat of a guy with a knife, any type of weapon, you want to have ESU coming. They're properly equipped. They're good at what they do, so you want them to come." Though it would have been safer to wait for ESU to arrive, he entered the house to help the woman on the second floor. He explained, "I didn't know this was a two-family apartment. From the outside it looks like a very small house. I wasn't about to risk somebody's life waiting for ESU, so I went in. You have fractions of a second to make a choice, and I made it."

On cross-examination, Respondent confirmed that the front door of the house led to a vestibule. Respondent had no recollection of seeing more than one interior door.

Respondent agreed that when he was outside the house he never called to the woman in the window to ask her if she was in danger. He walked ten or 12 feet into the apartment before he encountered Person B. He did not notice any staircase leading upstairs.

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that Respondent “failed to follow the proper procedure for Emotionally Disturbed Persons.” The Advocate stated that the proper procedure that Respondent failed to follow was that Respondent should have waited for ESU to arrive at the scene before entering the house.

The facts regarding this incident are largely not in dispute because the facts that were ascertained by Efstratiou during his investigation and his interviews of all three of the officers involved corroborated Respondent’s testimony as to what he knew and what he did not know at the point when he entered the house. Efstratiou testified that the SPRINT Report states that Person B had pulled a knife on his mother Person A and that when Respondent arrived at the house, Person A told him that Person B was inside, that he had been drinking and that he had knives. Efstratiou also corroborated Respondent’s testimony that he directed that a radio call be made requesting that ESU respond to the scene.

Most significantly, Efstratiou confirmed two highly important facts: First, that a woman who was inside the house and who appeared to be in distress was leaning out of a second floor window screaming and that the officers believed that she was in danger; and second, that the house does not look like a two-family residence. This is significant

because since the house looks like a single-family residence and since the initial dispatch called it a private house, Respondent had good reason to conclude that the reason that the woman who was leaning out the window was screaming was because she was afraid that Person B would enter the room she was in and stab her.

The Advocate argued that rather than immediately enter the house as he did, Respondent should have called out to the woman to ask her whether she was alone in the room, whether she was in danger, and whether the door to the room she was in was locked. The Advocate also argued that Respondent could have ascertained from Person A the fact that the woman was inside her own apartment (although that would still beg the question of whether the woman was in danger since Person A would not have been able to assure Respondent that the door to the second floor apartment was locked at that point in time). Finally, the Advocate argued that Respondent could have quickly ascertained on his own that the woman on the second floor was not in danger just by opening the front door because “all you have to do is know when you open a front door and you see two doors” that “maybe this is [a] two-family house.”

Each of the investigative actions that the Advocate argued Respondent should have attempted would have taken time and I credit Respondent’s testimony, which was corroborated by Reiman, that because Person A was hysterical it was difficult to get information from her. Under the circumstances he was presented with here, Respondent could not be certain that he had sufficient time to perform these investigative actions or, to put it another way, how much time he had left before Person B entered the room and stabbed the woman with his knife. Respondent had the right to rely on the woman’s screams as an indication of how little time he might have.

The Advocate argued that Respondent's action of entering the house before ESU arrived at the scene constitutes misconduct. However, the record establishes that Respondent entered the house to come to the aid of a woman who he had good reason to believe was in immediate danger because she was inside what Respondent reasonably believed was an upstairs room in a single-family house; because the knife-wielding Person B, who had already pulled a knife on his mother, was inside the house with her; and because she was screaming out of a window. Since Respondent was faced with an exigent circumstance which justified taking immediate police action, Respondent's action of entering the house in the absence of ESU did not constitute misconduct.

Therefore, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

It is charged that Respondent failed to carry a conducted energy device (CED or taser) as he was required to do. It is not disputed that when Respondent entered the 104 Precinct to perform administrative duties, he left his taser inside his RMP and that when he heard the radio transmission that a family dispute was in progress inside a nearby house he ran directly to the location without stopping at his RMP to retrieve his taser. Since Respondent was on duty assigned as the 104 patrol supervisor he was "required to carry a CED in a Department issued holster as authorized." Interim Order 20, Page 2 "PURPOSE" (issued: June 4, 2008).¹

Also, since Respondent knew that the radio call he was responding to had included the information that the family dispute involved a knife, he was on notice before

¹ This Interim Order has now been incorporated into the Patrol Guide as Patrol Guide Procedure No. 212-117 (effective August 1, 2013).

he left the 104 Precinct that he might be required to use force. Thus, even though he was anxious to get to the scene as quickly as possible, he was required to first stop at his RMP, which was parked in front of the station house, to retrieve his taser.

Respondent's attorney noted that the Firearms Discharge Review Board which reviewed this shooting had made a finding that even if Respondent had possessed his taser at the point when he encountered Person B, the taser "would have been of no use" to Respondent in the particular situation that he found himself in. However, this post-action determination does not excuse or justify Respondent's failure to go to his nearby RMP to retrieve his taser. At the point in time when Respondent left the 104 Precinct to run to the scene, he did not know that he would wind up in a situation where deadly physical force would be the only means he had of defending himself. On the contrary, based on the information in the radio transmission that he was responding to a family dispute involving a knife, Respondent had good reason to conclude that he needed to have his taser so that he might be able, if it was necessary and if it was possible, to subdue the knife holder by using this less lethal device.

Therefore, Respondent is found Guilty of Specification No. 2.

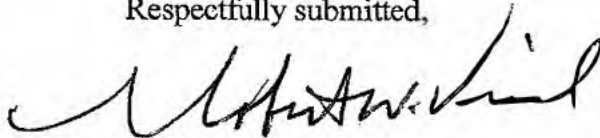
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974). Respondent was appointed on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary record.

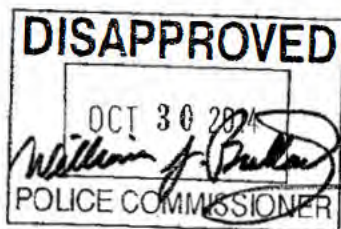
Respondent has been found Guilty of failing to carry a conducted energy device as he knew he was required to do while on duty as patrol supervisor. Respondent's and Reiman's testimony that the tasers that were issued to supervisors by the Department during 2010 were bigger and more cumbersome to carry than the tasers that are currently issued does not serve to mitigate Respondent's failure to retrieve his taser from his RMP before he responded on foot to the scene.

The Advocate recommended that Respondent's penalty consist of the forfeiture of ten vacation days. Since Respondent has been found Guilty only of failing to carry his taser and since Respondent's failure to retrieve his taser from his RMP was the result of the fact that he ran directly from the precinct to the nearby scene, it is recommended that Respondent's penalty consist of the forfeiture of two vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

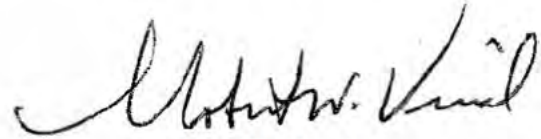


POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT STEVEN BENNETT
TAX REGISTRY NO. 929705
DISCIPLINARY CASE NO. 2012-6915

The Respondent received an overall rating of 3.5 on his 2013 performance evaluation, 3.5 on his 2012 evaluation, and 3.5 on his 2011 evaluation. He has been awarded one Meritorious Police Duty medal. [REDACTED]

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials