



POLICE DEPARTMENT

April 14, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Yuseff Hamm
Tax Registry No. 928455
Applicant Processing Division
Disciplinary Case No. 2013-9756

Police Officer Dayne Beissel
Tax Registry No. 938050
106 Precinct
Disciplinary Case No. 2013-9757

The above-named members of the Department appeared before me on December 9, 2014¹ charged with the following:

Disciplinary Case No. 2013-9756

1. Said Police Officer, Yuseff Hamm, while assigned to the 106th Precinct, on or about May 17, 2012, at approximately 845 [sic] hours, at [REDACTED], Queens County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he entered said location without sufficient legal authority.

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

Disciplinary Case No. 2013-9757

1. Said Police Officer, Dayne Beissel, while assigned to the 106th Precinct, on or about May 17, 2012, at approximately 845 [sic] hours, at [REDACTED], Queens County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that she entered said location without sufficient legal authority.

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

¹ The trial record was held open until December 17, 2014 for the receipt of a recording of a 911 call.

The Civilian Complaint Review Board was represented by Gretchen Robinson, Esq. Respondents were represented by Michael Martinez, Esq.

Respondents, through their counsel, 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. 2013-9756

Respondent Hamm is found Not Guilty.

Disciplinary Case No. 2013-9757

Respondent Beissel is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on May 17, 2012, just prior to 0830 hours, a call was made to 911 by an employee of ADT Security Company (ADT) because a security alarm that had been installed by ADT at [REDACTED], Queens, had tripped in "Zone One" of the residence at that address. [Civilian Complaint Review Board Exhibit (CCRBX) 1]

It is also undisputed that on May 17, 2012, at 0830 hours, Respondent Hamm and Respondent Beissel were on duty, in uniform, assigned to the 106 Precinct, performing patrol duties in a marked Radio Motor Patrol car (RMP) when they received a "10-11" (alarm) radio transmission from the dispatcher. They then drove to [REDACTED].

Queens (not to [REDACTED], Queens). When they arrived at [REDACTED], Queens, Respondents checked the front door and ascertained that it was locked. They then went around to the back door and saw that it was open.

The Civilian Complaint Review Board's Case

The Civilian Complaint Review Board (CCRB) called Dayanand Ramcharran as its only witness.

Dayanand Ramcharran

Ramcharran, who is a retired 62-year-old, testified that he is a long-time resident of a one-family house at [REDACTED] Queens [Photos of the front of the house, a walkway leading to the back of the house, and the back door of the house were admitted into evidence as CCRBX 2 A-E].

On May 17, 2012, at about 0845 hours, Ramcharran's dog started barking. He initially thought it was because a carpenter he was waiting for had arrived at the house. He had left the back door "wide open" for the carpenter. He looked outside and saw Respondents in his backyard. He walked outside through the back door. He was wearing a T-shirt, short pants and slippers. Respondents told him that the back door was open and that the alarm system "came on." He told Respondents that he did not have an alarm system and that they had the wrong address.

Respondent Hamm told him that he needed to see his ID. He responded, "You guys stay here," while he went inside the house to "get my ID." Ramcharran then turned around. As he started to walk into the house through the back door, Respondent Hamm

briefly grabbed his arm. He walked into his kitchen and he walked through the kitchen into his adjoining living room. He then entered his bedroom, which is off the living room, and retrieved his ID. Respondents followed him through the back door into his kitchen and into his living room, but they did not follow him into his bedroom. [Photos of the kitchen, the living room, and the door to the bedroom were admitted into evidence as CCRBX 3 A-E]. After Ramcharran showed Respondents his driver's license, they left.

On cross-examination, Ramcharran agreed that he was wearing sandals that morning.

Respondents' Case

Respondent Hamm testified in his own behalf and Respondent Beissel testified in her own behalf.

Respondent Hamm

Respondent Hamm testified that [REDACTED] is located within the South Richmond Hill section of Queens, an area which has a high incidence of home burglaries. When he checked the front door, it was locked. He heard no alarm going off but he did hear a "humming" noise emanating from the vicinity of the house. They walked around to the rear of the house and observed that the back door to the residence was wide open. This raised their suspicion that a burglary might be in progress inside the house because kick-in-the-back-door burglaries were a common method of entry. He called and requested that a sergeant and back-up officers respond to [REDACTED]

Respondent Hamm confirmed that when Ramcharran came out the back door he claimed that he lived in the house. However, because Ramcharran did not have any ID on him, Respondent Hamm was not willing to rely solely on Ramcharran's claim because he knew from experience that burglars who are discovered by police inside a house often claim that they live in the residence that they are actually burglarizing.

Respondent Hamm testified that Ramcharran never came out but instead tried to close the door on Respondents. Respondent Hamm confirmed that he and Respondent Beissel followed Ramcharran through a kitchen and into a living room where Ramcharran called to his wife so that she should bring his ID downstairs. Respondent Hamm denied that he and Respondent Beissel had permitted Ramcharran to enter a room alone to retrieve his ID and he asserted that he would never have allowed Ramcharran to enter his bedroom because it was unnecessary.

On cross-examination, Respondent Hamm agreed that when he and Respondent Beissel arrived at [REDACTED], they did not see any burglar alarm or any sign on the premises warning that an alarm had been installed in the residence. Neither did they see any evidence of a breach, damage to the front door, or evidence that the front door lock had been tampered with. Respondent Hamm confirmed that at his CCRB interview he had stated that when Ramcharran came out the back door he told them that everything was "okay" and that he was calm and cooperative. Respondent Hamm denied that he had touched Ramcharran.

Respondent Beissel

Respondent Beissel testified in a manner consistent with her partner's testimony.

She supported Respondent Hamm's testimony that, since Ramcharran did not have any ID on him to prove that he was a resident and not an intruder, if they had allowed him to enter the house and close the back door on them, she and her partner would have become vulnerable because they would not have been able to see what Ramcharran was doing inside the house.

FINDINGS AND ANALYSIS

Almost all of the facts regarding this incident are not in dispute. Although Respondents received a "10-11" radio transmission from the dispatcher that an alarm had gone off in "Zone One" inside a residence at [REDACTED], Queens, Respondents mistakenly drove to [REDACTED], Queens. The CCRB attorney seemingly did not dispute Respondents' claim that when they arrived at [REDACTED], they believed that they were at the location the dispatcher had directed them to. Although Respondents heard no alarm going off and ascertained that the front door was locked, they saw that the back door was wide open. That Respondents genuinely believed that a burglary might well be in progress inside the residence is supported by the fact that they immediately requested that a sergeant and back-up officers respond to the location.

Although the CCRB attorney argued that Respondents acted in "bad faith" by following Ramcharran into the house, the CCRB attorney did not refute Respondents' testimony that residential burglaries are common in the area where the house is located; that the back door was wide open and kicking-in-the-back-door is a common method of forced entry; and that when Ramcharran came out the back door he possessed no ID to corroborate his claim that he lived in the house.

The CCRB attorney argued that since no alarm was going off at the house and since Ramcharran had asserted that he was a resident, Respondents should have realized that they might well be at the wrong address and they should have contacted the dispatcher to check whether they had responded to the correct location. However, this argument constitutes hindsight second-guessing as to what Respondents could have done differently. That Respondents could have engaged in a particular discretionary action does not establish that what they did do under the circumstances they were presented with constituted misconduct.

I find that the particular circumstances they were presented with here are that after they asked Ramcharran to show them ID, he told them that his ID was inside the house and he immediately re-entered the house and tried to close the back door. Based on these particular circumstances, I find that Respondents' action of following Ramcharran through the back door, through a small kitchen and into the living room constituted a minimally invasive intrusion which Respondents engaged in solely to insure their personal safety. Their action of keeping Ramcharran within their sight until they were able to confirm that he actually was who he claimed to be is consistent with the proper safety tactics officers are supposed to follow when they have encountered an unidentified person at what they believe may be an on-going crime scene.

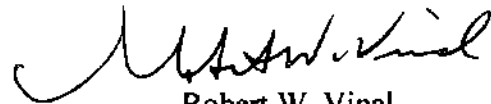
Respondents' position that their action of keeping Ramcharran within their view until he had produced ID constituted a sound safety tactic is supported by the Department's Field Training Program Guide which stresses that "the primary concern of every police officer should always be safety"² and that a "key" safety tactic is "when

² NYPD 2015 Field Training Program Guide (Jan. 6, 2015), Lesson 1, p. 10.

responding to a job or situation maintain your suspicions until they are proven otherwise by documentation or hard evidence."³

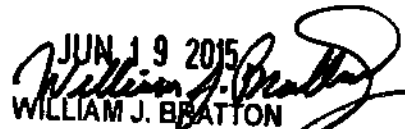
Since I find that Respondents' action of following Ramcharran into the house did not constitute misconduct, Respondents are found Not Guilty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

JUN 19 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

³ NYPD 2015 Field Training Program Guide (Jan. 6, 2015), Lesson 5 (7), p. 33.