June 3, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Thomas Napolitano**
Tax Registry No. 940682
Brooklyn Robbery Squad
Disciplinary Case No. 2020-21743

The above named members of the service appeared before Assistant Deputy Commissioner Josh Kleiman remotely on February 8, 2022, charged with the following:

DISCIPLINARY CASE NO. 2020-21743

1. Detective Thomas Napolitano, on or about August 28, 2018, at approximately 0722, while assigned to WARRSEC and on duty, inside [redacted] New York County, abused his authority as a member of the New York City Police Department, in that he damaged Elizabeth Saunders' property without sufficient legal authority.

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

2. Detective Thomas Napolitano, on or about August 28, 2018, at approximately 0722, while assigned to WARRSEC and on duty, inside [redacted] New York County, abused his authority as a member of the New York City Police Department, in that he entered [redacted] in Manhattan without sufficient legal authority.

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

3. Detective Thomas Napolitano, on or about August 28, 2018, at approximately 0722, while assigned to WARRSEC and on duty, inside [redacted] New York County, abused his authority as a member of the New York City Police Department, in that he searched [redacted] in Manhattan without sufficient legal authority.

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

4. Detective Thomas Napolitano, on or about August 28, 2018, at approximately 0722, while assigned to WARRSEC and on duty, inside [redacted] New York County, abused his authority as a member of the New York City Police Department, in that he threatened to arrest Elizabeth Saunders without sufficient legal authority.

P.G. 208-01, Page 1, Paragraph 3 **LAW OF ARREST**

In a Memorandum dated March 16, 2022, Assistant Deputy Commissioner Josh Kleiman found Detective Thomas Napolitano guilty of specification nos. 2 and 3 and not guilty of specification nos. 1 and 4 in Disciplinary Case No. 2020-21743.

I have reviewed and considered the entire record in this matter, and disapprove of Assistant Deputy Commissioner Kleiman's guilty findings. I have determined that based on the totality of the circumstances, including the testimony provided at trial, a finding of not guilty is warranted with respect to all four (4) specifications.

The allegations that Detective Napolitano abused his authority by entering and searching a residence were not supported by the evidence in the trial. In fact, Assistant Deputy Commissioner Kleiman found that Detective Napolitano's investigation sufficiently supported the first of the two prongs identified in the applicable two-prong test; the reasonable belief that the individual he was seeking to arrest with a valid parole warrant actually resided at the subject address. The only remaining prong which was required in order to justify Detective Napolitano's entry into the residence was a reasonable belief that the individual was there at the time that the entry and search was being undertaken. The reasonable belief required by this second factor was shown to be present by an abundance of evidence testified to by Detective Napolitano at trial.

Among the factors that the Department's "Guidelines for Warrants" training lists as being reliable to support a reasonable belief that the individual being sought on a warrant is present at the time of the entry and search are the following: the time of day of the entry, voices inside the location, as well as any other actions that would lead a reasonable person to believe someone is present in the location.

Detective Napolitano testified to having a reasonable belief that the individual was present at the time he made the entry, including details in support of each of the above cited factors. He articulated several reasons leading him to reasonably believe that the individual named on the warrant was actually present, including the early time of the day, the voice of the person who answered the telephone call, the identification of the apartment by neighbors upon seeing the individual's photograph, and movement in one of the bedrooms observed through the window. While these factors do not establish that the individual was in-fact present, they do establish that any similarly situated police officer would reasonably believe that the individual was present. Ultimately, the individual being

sought was actually present at the location, and was arrested on the active parole warrant, further supporting the reasonableness of Detective Napolitano's belief that he was present at that time.

Because Detective Napolitano relied on and appropriately followed his training with regard to establishing both prongs of the applicable two-prong test in order to make the entry and search in this matter, his actions in entering and searching the location do not constitute misconduct. Therefore, it is directed that Detective Napolitano be found not guilty of all specifications in this matter.

Keechant L. Sewell
Police Commissioner

POLICE DEPARTMENT

March 16, 2022

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2020-21743
Detective Thomas Napolitano	:	
Tax Registry No. 940682	:	
Brooklyn Robbery Squad	:	

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Jeannie Elie-Fulgencio, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Daniel Gallagher, Esq.
Karasyk & Moschella, LLP
233 Broadway – Suite 2340
New York, NY 10279

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Detective Thomas Napolitano, on or about August 28, 2018, at approximately 0722, while assigned to WARRSEC and on duty, inside [redacted] New York County, abused his authority as a member of the New York City Police Department, in that he damaged Elizabeth Saunders' property without sufficient legal authority.

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4. Detective Thomas Napolitano, on or about August 28, 2018, at approximately 0722, while assigned to WARRSEC and on duty, inside [redacted] New York County, abused his authority as a member of the New York City Police Department, in that he threatened to arrest Elizabeth Saunders without sufficient legal authority.

   P.G. 208-01, Page 1, Paragraph 3 — LAW OF ARREST

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 8, 2022. CCRB called Ms. Elizabeth Saunders and Ms. Kisha Sayles as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available

for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent Not Guilty of Specifications 1 and 4 and Guilty of Specifications 2 and 3. The Tribunal recommends that Respondent forfeit ten (10) vacation days.

ANALYSIS

It is undisputed that on August 28, 2018, at approximately 7 a.m., Respondent arrived at Complainant's Manhattan apartment. Respondent possessed an active parole warrant for the arrest of Complainant's [redacted]-year-old son (TJ). The warrant listed a men's shelter in Manhattan as TJ's current address (CCRB Exs. 2-3). An I-card, dated May 15, 2007 (CCRB Ex. 1), listed a Brooklyn address for TJ. According to Respondent, based on interviews of TJ's girlfriend and grandmother, and a review of prior addresses associated with TJ, he believed TJ was living with his mother, Complainant. (Tr. 16, 19, 26, 223)

Respondent had visited Complainant's home five months earlier and had not found TJ to be present. The parties disputed whether during this visit Complainant told Respondent that TJ did not live there. (Tr. 44, 251, 261-62)

Upon arrival to Complainant's apartment building on August 28, 2018, Respondent claims he spoke to more than one resident of the building who told him that TJ lived in Complainant's apartment. The only one of these neighbors to testify at trial, however, testified that she told Respondent that she had not seen TJ for "months." (Tr. 136, 187-88)

The officers knocked on Complainant's door for a lengthy period of time with no response. Respondent heard activity inside the apartment. At some point, the officers removed Complainant's peephole from her door (CCRB Ex. 4). Respondent called a landline inside the apartment and a "younger [male] voice" answered the phone, but hung up after Respondent

mentioned the "Police Department." After several more minutes of knocking, Complainant heard Respondent say that they were going to have to remove the door by its hinges. Complainant then answered the door. (Tr. 51-52, 190-93)

Respondent informed Complainant of the purpose of his visit. He then received a radio transmission from officers at the back of the building that they observed activity through the rear window of the apartment. Respondent entered the apartment. According to Respondent, after Complainant continued to block him from proceeding to the back of the apartment, he informed her that she could be arrested for Obstruction of Governmental Administration. Respondent continued to the Complainant's bedroom and found TJ hiding under Complainant's bed. Respondent arrested TJ and left the apartment. (Tr. 54, 61, 63, 198-202, 246)

At issue is whether: (1) Respondent abused his authority and damaged property when the peephole was removed from the door, (2) Respondent had sufficient authority to enter the premises to effect the arrest of Complainant's son, (3) Respondent had sufficient authority to search the premises for Complainant's son, and (4) Respondent abused his authority when he informed Complainant that she could be arrested. Based on the ensuing analysis, the Tribunal finds Respondent Not Guilty in connection with Specifications 1 and 4, but Guilty of Specifications 2 and 3.

Testimony of Complainant

Complainant testified that she has lived in her current home, a NYCHA property, for 13 years. In 2015, her son, TJ, lived with her. NYCHA informed her, however, that it was a violation of her lease for TJ to be living with her. Complainant then told TJ's parole officer that he could no longer live there. TJ moved to Bellevue Men's Shelter. Nevertheless, Complainant

testified that TJ continued to visit her. She estimated that in 2018, TJ visited her five to ten times that year. These visits included overnight stays. (Tr. 38-42, 87)

On March 15, 2018,[1] Respondent, along with other officers, visited Complainant's apartment. Respondent explained to her that he was looking for TJ in connection with an arrest warrant. She told him that TJ did not live there. Respondent told her that he had a warrant for TJ's arrest. Complainant let them inside, so they could search the apartment. As the officers were leaving, she told them that she would let her son know that they were looking for him. The officers left. Complainant testified that her interaction with Respondent that day was "polite." (Tr. 43-46)

On August 28, 2018, Complainant was in her bed sleeping when she heard "very loud banging" at her door. At the time, a friend of hers, who was recovering from surgery, was sleeping on a sofa in the living room and her son, TJ, was sleeping in the bedroom opposite hers. She explained that TJ had arrived at 3am or 4am that morning. She stated that TJ does not have a set of keys and has to ring the doorbell if he wants to come in. That night, her friend, who knew TJ to be her son, let him in. Complainant discovered TJ in the second bedroom when she got up to go to the bathroom. (Tr. 46-47, 85, 106, 122-23)

Upon hearing the banging at the door that made her "jump out of my sleep," Complainant stated that she just "laid there." Soon, thereafter, her neighbor, JB, sent her a text message informing her that the police were in the building. Upon receiving the text message, Complainant stated that she "just laid there." She explained that she was not feeling well and had barely slept and "I just didn't want to get up and answer the door." Sometime later, however, she got up and

[1] At trial, Respondent initially testified that he had visited Complainant's property a few weeks prior to the incident date and Complainant testified their prior meeting was earlier that summer in "June or July." Upon reviewing database entries concerning his investigation of the warrant, however, Respondent clarified that the only visit prior to the incident date was on March 15, 2018. (Tr. 43, 192, 261-62)

went to the bathroom, continuing to hear the banging at the door. While she was in the bathroom she heard the telephone ring and her son, TJ, answer the phone. After leaving the bathroom, she saw a "bright light" shining through a hole in her front door, discovering that her peephole had been removed.[2] (Tr. 49-51)

After hearing Respondent say that they were going to remove the door by the hinges, Complainant approached the door, asking that the light be removed from the peephole. She then unlocked the door, opened it, and put her foot against the door to prevent it from being opened any further. She found Respondent, and four other officers, on the other side of the door. Respondent appeared "annoyed." He placed his foot in the doorway and told her, "[A]ll of this could have been avoided if [you] . . . opened the door." (Tr. 51-54)

Respondent informed Complainant that he had a warrant for her son's arrest. She asked Respondent for the officers' badges and the warrant. Respondent told her that he would show her them once inside. They then "came through the door" and into the living room. Complainant explained that she "didn't welcome them in." Once inside, she again asked Respondent for the warrant. Respondent replied to her that "[he] didn't have to show the warrant, it's for the person that he was arresting." Respondent directed that everyone stay in the living room. Her friend remained on the sofa in the living room. Complainant followed Respondent down the hall. (Tr. 54-57)

Respondent entered her bedroom and looked under the bed, finding TJ. She did not observe Respondent search anywhere else in her apartment. Once TJ was discovered, the officers asked her to return to the living room, which she did. (Tr. 57-59)

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[2] CCRB Ex. 4A-4D are photographs of the peephole and her door after the peephole was removed.

While in the living room, she overheard that her son was refusing to surrender himself. She then heard Respondent yell, "put the mother in cuffs." After approximately fifteen minutes in the bedroom, the officers emerged with her son. Respondent then permitted Complainant to get her son a pair of shoes. (Tr. 59-61, 63)

As the officers were preparing to leave, Complainant confronted Respondent and asked him to put the peephole back in the door. Respondent replied, "Get your boyfriend to do it." She did not respond. As Respondent went out of the door, he said to her that "he should arrest me for obstructing – for harboring a fugitive." Complainant responded, "Do what you need to." Respondent left. Complainant estimated that Respondent was present in her apartment for "[m]ore than 20 minutes." (Tr. 62-64)

Later the same day, Complainant reset the peephole herself by turning it into place. After making a request to NYCHA that the peephole be fixed, the peephole was replaced. Complainant did not testify to any damage to the peephole or any costs that she paid due to any damage; she confirmed that if there was damage she "would" be charged for it. (Tr. 74-75, 104)

Complainant reported the incident to CCRB the day of its occurrence. She stated that she felt that Respondent's behavior was unprofessional and unwarranted: "This is where I live...You tore my door up, you stood in the hallway, you yelled and screamed and got the attention of my neighbors, knocked on neighbors' doors and other things like that." Complainant stated that she has not filed a lawsuit against the City of New York in connection with this matter. (Tr. 75-76)

On cross-examination, Complainant stated that she was unaware, prior to her discovery on the way to the bathroom, that her son would be visiting that night. She never instructed her friend to let her son into the apartment. Complainant explained that the reason her friend, who was recovering from surgery, was not sleeping in the second bedroom was that he preferred to

sleep on the couch in the living room where there was a TV. While Complainant remembered, after being confronted, that there was a TV in the second bedroom, she explained that it did not work. (Tr. 79-83, 103)

Complainant denied that she talked to her son after the police started knocking on her door and before opening the door. She admitted that she did not object when the officers went into the second bedroom to look for her son, but did object, for religious reasons, when they entered her bedroom since, as a "Minister of God," she does not allow men in her bedroom. When asked if she paid for damages associated with the police entry, Complainant stated "I probably did or was charged for it." When asked whether she "had to pay for it," she answered, "Yes." No evidence of any such charges were submitted to the Tribunal. (Tr. 45, 96-99, 112)

As to where her son was living, Complainant stated that she had no idea where he was staying at the time of the incident. When asked whether she had discussed where he was staying during the five to ten times he had visited her that year prior to the incident date, she stated that she had never asked him where he was living. (Tr. 112-113)

Testimony of Neighbor

Complainant's neighbor, JB, who lives across the hall from Complainant, on the first floor of their six story apartment building, testified that on August 28, 2018, she awoke to banging on her window facing the street. She got up and opened the front door to the building so that four to five police officers could enter. They proceeded to Complainant's apartment. While in the hallway outside her apartment, Respondent displayed a photograph to her and asked her if she knew the person in the photograph. She identified that person as Complainant's son, TJ. She told them that she had not seen him in "months," but she would occasionally see him "in passing," "sometimes inside, sometimes outside." One of the officers told her that someone had

answered a phone inside Complainant's residence. JB proceeded back to her apartment. (Tr. 127-135)

Approximately ten to fifteen minutes later, Respondent knocked on the front door to her apartment. She opened the door. Respondent asked her if she was sure she had not seen Complainant's son. She repeated that she had not seen him in months. When he told her that a man had answered the phone in Complainant's apartment, she told him that Complainant had a friend staying with her who was recovering from prostate surgery. Respondent told her that the person who answered the phone sounded like a "younger gentleman" and that he believed Complainant's son was in the apartment. Looking across the hall at Complainant's apartment, she noticed one officer with his ear to the door and another kneeling and touching the "knob area" of the door. (Tr. 136-39)

After her conversation with Respondent, JB sent Complainant a text message to tell her that police were at her door. At the time, JB thought that Complainant was away at her mother's home because Complainant had left her a note asking her to collect packages for her. After closing the door, she heard what sounded to her like a "hand drill." While looking through her peephole, she heard the officers say they were going to get into Complainant's apartment "one way or the other." She then heard something fall to the floor. Later that day, she noticed that the peephole "apparatus" was missing from Complainant's door. (Tr. 140-43)

On cross-examination, JB admitted that she is Complainant's friend and that in 2018, she was a pastor at a church at which Complainant was a member. She further stated that, occasionally, they referred to each other as "cousins," in an affectionate manner. JB stated that, "[i]n the past," she would see Complainant's son "quite a bit . . . maybe once or twice a week." JB stated that she has known TJ as long as she has known Complainant. When asked if she

would lie for Complainant, JB explained that she "work[ed] for a higher court. . . . I have to stand before God one day in judgment." (Tr. 144-146, 148, 161)

Testimony of Respondent

Respondent testified that as of August 28, 2018, he was assigned to the Brooklyn North Warrant Squad and was tasked with investigating parole absconders and enforcing parole warrants. In March 2018, Respondent was assigned the parole warrant for TJ. The warrant was dated March 6, 2018. (Tr. 166-167, 259)

Respondent testified that preliminarily, on March 12, 2018, he did some database searches. On March 14, 2018, Respondent traveled to a Riverdale address associated with TJ's girlfriend. Upon arrival, she was "cordial" and permitted them to search her apartment. She explained that they had a fight a "couple days" prior and that TJ was likely "staying at the mother's house." The next day, on March 15, 2018, Respondent visited Complainant's apartment. He described Complainant as cordial and readily granting them access to her apartment to search for TJ. Respondent did not recall Complainant telling him that TJ did not live there. (Tr. 171, 182-184, 227, 260-61)

On April 2, 2018, during a "TLO" search, which Respondent stated may provide mailing addresses the subject used in the past, Respondent stated that he discovered that the most frequently used address associated with TJ was Complainant's address. Respondent also noted that an "E-Justice" database search revealed that the most frequently used address was Complainant's.[3] Thereafter, Respondent went on vacation and was assigned to another case in North Carolina. (Tr. 174-75, 262-63)

[3] No documentation of search results was entered into evidence.

On July 9, 2018, Respondent returned to the case and revisited the girlfriend's residence in Riverdale, but she was not home. Later that day, Respondent visited TJ's grandmother's address in Brooklyn. The grandmother told Respondent that she had not seen TJ "in a while, but if he was going to be anywhere, he would be home with his mom." On August 9, 23, and 27, 2018, Respondent conducted canvases with negative results in the vicinity of TJ's grandmother's home because he had received information that TJ frequented the park near her home. (Tr. 185, 231, 264-67)

While the address on the parole warrant for TJ was a men's shelter, Respondent explained that from his experience he knew this to be an unlikely address at which to find TJ since he was likely an "absconder because [he wasn't] showing up to that address." Respondent admitted that he ruled out this address from the "get go" and did not visit the men's shelter to look for TJ. He also confirmed that when TJ was initially released from incarceration he was "paroled to" Complainant's home. (Tr. 175, 215, 254, 271)

Respondent testified that on August 28, 2018, Complainant's neighbor, JB, met him and the other officers at the front door to Complainant's apartment complex. Respondent explained that when asking people about the subject of a warrant in the vicinity of a target residence, he carries an 8x10 photograph of the subject, holds it against his chest, and points to it, so that no verbal cue or verbal responses are necessary. When he pointed to the photograph in front of JB, she looked at it, nodded her head yes, and looked at Complainant's apartment. Respondent and the officers then proceeded to Complainant's door. (Tr. 187)

After knocking on the door, Respondent stopped to listen. He heard "knees cracking, the floor creaking" and made the determination that there was movement in the apartment. Respondent then observed a male with a child walking down a staircase near the front door to the

building. Respondent showed the photograph of TJ to the male and the male pointed at Complainant's apartment and said, "[Y]eah, he lives in that apartment." Respondent resumed knocking. (Tr. 188)

At some point, Respondent called a landline associated with the apartment. He heard a phone ringing inside and a male with "a younger voice" answered the phone. Respondent stated, "[H]ey, it's the police department, come to the door." The call immediately disconnected. Respondent went to JB's apartment and asked her if there was "any way" she could let Complainant know they were outside. JB responded that "she doesn't really know her like that." Upon returning to the door, the peephole had been removed by the other officers. Respondent denied that a drill was used. Respondent explained that the peephole is removed for safety "to make sure the parolee or the person we are looking for is not standing behind the door with a MAC-10 or a Glock or any type of firearm." (Tr. 190-192, 194-96, 237)

After speaking to his supervisor, "Sergeant Samuels," Respondent learned that he was authorized to remove Complainant's front door. Respondent did not want to remove the door, however, since it would require more paperwork, the involvement of the Housing Unit, and guarding the door afterward. In a last ditch effort, Respondent pleaded at the door, "Please, if you are in there, please come to the door. Please come to the door." Respondent then observed Complainant through the peephole coming down the hallway towards the door. (Tr. 192)

Complainant screamed, "You are not coming in here; you don't have a warrant." Respondent stated, "[M]a'am, I was just here a few weeks ago and I showed you the warrant when I was here the last time and I explained to you. You have my card. I can see my business card on the refrigerator." Complainant opened the door. Respondent put his foot in the doorway to keep her from closing the door and explained to her that they were looking for TJ.

Complainant responded that TJ was not there. Respondent informed her, "[L]ook, I need you to step aside. I need to find [TJ] in the back. I know he is back here." At that point, Respondent received a radio transmission that officer standing outside saw someone come to the rear window of the apartment. Respondent entered the apartment. (Tr. 192, 197-98, 239)

Complainant initially moved out of the way. When, however, Respondent moved towards the rear bedroom, she jumped in front of Respondent screaming, "[W]hat is your shield number, let me see the warrant." She placed her hand on Respondent's chest and was "extremely irate." Respondent told her that he would explain everything to her once "the situation is under control." Respondent explained to her that she was "obstructing governmental administration and that you can be arrested for this." Respondent then proceeded to Complainant's bedroom and discovered TJ "curled up in a ball" under the bed by the headboard. After initially refusing to remove himself from under the bed, TJ eventually crawled out. He was wearing "either boxers and a t-shirt or Long John pants." Respondent told Complainant, "[L]ook, do me a favor, go get him some sneakers and clothes." (Tr. 198-99, 202-03)

Complainant was calm following TJ's arrest. Respondent explained to her, "[N]one of this had to happen if you would have just walked him to me when I asked you to. You could have just walked him to the door." Respondent then showed her the warrant on his phone. She said, "okay." As Respondent was leaving, she asked about the peephole. Respondent instructed an officer to reinstall it. It was reinstalled by the time Respondent left. (Tr. 203-04)

On cross-examination, Respondent admitted that there were 11 prior addresses listed on the parole warrant for TJ (CCRB Ex. 3), none of which were Complainant's apartment and all of which were in Brooklyn. Respondent stated that he based his entry of Complainant's apartment on the statements of TJ's girlfriend and mother, and the database searches he performed.

Respondent stated that the results of his database searches and his interactions with the witnesses would have been documented in his "ECMS case."[4] Respondent admitted to telling CCRB that while he showed the warrant to Complainant, he had no obligation to show her the warrant because it was for her son, not her. (Tr. 217, 232-33, 244, 267)

Upon being questioned by the Tribunal, Respondent stated that he would not obtain a search warrant to apprehend a person, only where he sought to recover evidence. (Tr. 269-70)

Findings

CCRB has charged Respondent with: (1) damaging property without sufficient legal authority, (2) entering Complainant's home without sufficient legal authority, (3) searching Complainant's home without sufficient legal authority, and (4) threatening to arrest Complainant without sufficient legal authority.

Property Damage (Specification 1)

At trial, CCRB asserted that Respondent wrongfully damaged complainant's property when he removed the peephole from her front door. While CCRB submitted a photograph of the constituent parts of the peephole on the floor of complainant's residence, no evidence was submitted that they were damaged. To the contrary, according to Complainant, the peephole was reinstalled later the same day. While Complainant's neighbor testified to hearing the sound of a drill, Complainant and Respondent explained that the peephole was removed and reinstalled simply by turning it. There is no credible evidence that Complainant suffered any costs associated with the removal and reinstallation of the peephole. Accordingly, Respondent is found Not Guilty of the conduct charged in Specification 1.

[4] These records were not introduced into evidence.

Improper Entry (Specification 2)

"[I]n order to authorize entry into a person's home to execute a warrant for his arrest, the officers' belief that the residence to be entered is the home of the person named in the warrant need not be supported by 'probable cause.' Rather, 'the proper inquiry is whether there is a reasonable belief that the suspect resides at the place to be entered to execute [the] warrant, and whether the officers have reason to believe that the suspect is present.'" (*US v Lovelock,* 170 F3d 339, 343 [2d Cir 1999] [*quoting US v Lauter,* 57 F.3d 212, 215 [2d Cir. 1995]]). An arrest warrant does not authorize the invasion of a third-person's home where there is reason to believe the subject is merely a visitor *(Id.* at 344). Rather, absent exigent circumstances, a third party's home may only be breached by a police officer to search for the target of an arrest warrant where a search warrant has been obtained for such a purpose (*Steagald v US,* 451 US 204, 205-206 [1981]).

Here, the balance of the evidence preponderates in favor of CCRB. While Respondent may have believed that complainant's son lived with his mother, based on Respondent's unrefuted testimony that this is what he was told by the subject's girlfriend, grandmother, and others, Respondent lacked a reasonable basis upon which to form an opinion as to whether complainant's son was present in the home at the time of entry. While Respondent claimed that he formed such a reasonable belief when he pointed to a picture of Complainant's son on his chest and JB looked at the Complainant's door, this testimony was not corroborated by JB, who denied seeing complainant's son in the unit in the past "few months." That a "younger gentlemen" answered a phone inside the apartment is also insufficient since Respondent admitted that he was unfamiliar with the subject's voice at the time of the call (Tr. 274).

Finally, Respondent knew the home to be Complainant's, which under the circumstances presented herein should have raised a strong presumption that a search warrant should be obtained. Respondent's testimony at trial that he would never obtain a search warrant to search for the subject of an arrest warrant (Tr. 268-70) contravenes the law applicable to the enforcement of arrest warrants and Department policy (*see* P.G. 208-42, Page 1, Para. 4, Note; Legal Bureau Bulletin Vol. 11, No. 5, *"Warrantless Search of Third Party Home"* [July 17, 1981]; Legal Bureau Bulletin Vol. 20, No. 8, *"The Payton Rule - Arrest In The Home Without A Warrant"* [Dec. 1990]).

Accordingly, Respondent is found Guilty of Specification 2.

Improper Search (Specification 3)

For the same reasons that the entry was improper, the search was also improper. Accordingly, Respondent is found Guilty of Specification 3.

Threat to Arrest (Specification 4)

Complainant testified that when she was in her living room she overheard Respondent say "put the mother in cuffs" and that Respondent told her as he was leaving that he "should arrest me for obstructing – for harboring a fugitive." CCRB did not ask Respondent on cross-examination whether he spoke the words "put the mother in cuffs" or "harboring a fugitive," but Respondent admitted that before leaving he "explain[ed] to [Complainant] the entire situation from entering into the apartment" and told her that she should have been arrested for obstructing governmental administration (Tr. 247). Complainant did not testify that she feared imminent arrest or that Respondent acted in a threatening manner when he expressed these words.

During his testimony, Respondent explained that as he was moving down Complainant's hallway towards her bedroom, she positioned herself in front of him, put her hand on his chest, and yelled, "[B]adge numbers, shield numbers, warrants. I want to see it. I want to see it. You are not coming in here." Respondent warned her that if she continued to block him she could be arrested for obstructing governmental administration. Complainant did not mention this hallway confrontation during her testimony. (Tr. 63, 199, 247)

While Respondent would have lacked the authority to arrest Complainant because his presence in her apartment was unlawful, the Tribunal finds that Respondent's conduct in explaining to Complainant that she could have or should have been arrested does not rise to the level of actionable misconduct. As to the initial statement testified to by Complainant that she heard Respondent from her bedroom state "put the mother in cuffs," CCRB neither asked Respondent about this statement nor asserted that the Tribunal should rely on this statement as proof of the charge. Accordingly, the Tribunal finds that there is insufficient evidence that the statement was made and no evidence, even if it were made, that Respondent intended to cause Complainant fear of an imminent and unwarranted arrest in making this statement or that the statement caused Complainant such fear.

As for Respondent's statement before leaving that he should have arrested Complainant, there is no testimony or evidence that this statement caused or was intended to cause Complainant fear of imminent arrest. Such inchoate language, without more, is unlikely to be intended or perceived as a bona fide threat (*see Disciplinary Case No. 2014-12407* [May 27, 2016] [finding the subject officer Not Guilty of threatening to arrest complainant for the "flippant remark" "I should arrest you or give you a ticket for blowing smoke in my face" for the "non-existent offense of blowing smoke in the face of a police officer."]).

As to the confrontation in the hallway testified to by Respondent, wherein he warned Complainant that she could be arrested for obstruction of governmental administration, Respondent's actions do not constitute misconduct. Words alone, expressing only a possibility of enforcement, must be closely examined before they are adjudged to be misconduct, so as not to disincentivize officers from engaging in open and forthright communication with members of the public, especially in the context of pre-enforcement dialogue. Rather, the inquiry, for disciplinary purposes, must focus upon the officer's intent and whether the officer was acting in good faith.

Accepting Respondent's unrefuted version of events, the arrest warning was issued by Respondent only after Complainant attempted to physically stop him, including placing her hand on his chest. Accordingly, this is not a case wherein the threat of arrest is initiated by the officer as a mere pretext for an illegal entry or where the entry is so egregious and lacking in any possible claim to legal authority as to be proof of a wrongful intent on the part of the officer. Here, Respondent's words and actions, which did not include a physical response, were more likely directed toward de-escalation than intimidation.

Accordingly, under the totality of the circumstances, the Tribunal finds Respondent Not Guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 31, 2006, has been found Guilty of improperly entering and searching complainant's home. At trial, CCRB recommended, without explanation or the delineation of any aggravating factors, that Respondent should receive the aggravated penalty of the forfeiture of twenty (20) penalty days in connection with the charges of unlawfully entering and searching complainant's home (Tr. 20). The Tribunal cannot find support for this recommendation.

Despite being guilty of misunderstanding and misapplying the law, Respondent acted professionally in each of the enforcement encounters memorialized in this disciplinary matter. Complainant described her first encounter with Respondent as "polite." Complainant's neighbor never testified that Respondent acted inappropriately during their encounter. Respondent sought several avenues of contact with Complainant to avoid a forced entry that was authorized by a supervisor. There is no evidence that Respondent used discourteous language or unnecessary force. And there is no evidence that Respondent searched any areas that could not contain a person or sought to extend the search needlessly. Finally, Respondent's employment record reveals that Respondent has no prior formal discipline, high evaluations, and numerous Department recognitions, including a Commendation and Combat Cross. All of these factors countenance a mitigated penalty, not an aggravated penalty.

Nevertheless, the Tribunal recommends that the presumptive penalty of the forfeiture of ten (10) vacation days be imposed. As a four-year member of a Warrant Squad at the time of the incident, Respondent should have been more familiar with the law of searches and seizures. Even after having been formally accused of abusing his authority in connection with an unlawful entry and search, Respondent continued to display an ignorance of the applicable law at trial (Tr. 267-70). Such behavior does not warrant the application of a mitigated penalty.

Accordingly, in accordance with the Disciplinary Guidelines, the Tribunal recommends that Respondent forfeit ten (10) vacation days.

Respectfully submitted,

Josh Kleiman
Assistant Deputy Commissioner Trials

DISAPPROVED
JUN 03 2022
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE THOMAS NAPOLITANO
TAX REGISTRY NO. 940682
DISCIPLINARY CASE NO. 2020-21743

Respondent was appointed to the Department on January 31, 2006. On his three most recent performance evaluations, he received 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2016, 2017 and 2018. He has been awarded nine medals for Excellent Police Duty, six medals for Meritorious Police Duty, one Honorable Mention, one Commendation, and one Combat Cross.

Respondent has no adverse disciplinary history.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials