



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 24, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Felix Arana**
Tax Registry No. 944249
Warrant Section
Disciplinary Case No. 2014-12284

Detective Tyrone Horne
Tax Registry No. 947774
Warrant Section
Disciplinary Case No. 2014-12282

Detective Victor Sadarangani
Tax Registry No. 934143
Warrant Section
Disciplinary Case No. 2014-12283

The above named members of the service appeared before Assistant Deputy Commissioner Paul M. Gamble on March 9, 2016 and were charged with the following:

DISCIPLINARY CASE NO. 2014-12284

DETECTIVE FELIX ARANA

1. Said Detective Felix Arana, on or about February 7, 2014, at approximately 0530 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED], Bronx 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

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

**PUBLIC CONTACT- PROHIBITED
CONDUCT**

2. Said Detective Felix Arana, on or about February 7, 2014, at approximately 0530 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED], Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.

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

**PUBLIC CONTACT- PROHIBITED
CONDUCT**

DISCIPLINARY CASE NO. 2014-12282

DETECTIVE TYRONE HORNE

1. Said Detective Tyrone Horne, on or about February 7, 2014, at approximately 0530 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] Bronx 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.

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

**PUBLIC CONTACT - PROHIBITED
CONDUCT**

2. Said Detective Tyrone Horne, on or about February 7, 2014, at approximately 0530 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.

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

**PUBLIC CONTACT- PROHIBITED
CONDUCT**

DISCIPLINARY CASE NO. 2014-12283 DETECTIVE VICTOR SADARANGANI

1. Said Detective Victor Sadarangani, on or about February 7, 2014, at approximately 0530 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] Bronx 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.

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

**PUBLIC CONTACT - PROHIBITED
CONDUCT**

2. Said Detective Victor Sadarangani, on or about February 7, 2014, at approximately 0530 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.

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

**PUBLIC CONTACT - PROHIBITED
CONDUCT**

DETECTIVE FELIX ARANA
DETECTIVE TYRONE HORNE
DETECTIVE VICTOR SADARANGANI

DISCIPLINARY CASE No.2014-12284
DISCIPLINARY CASE No.2014-12282
DISCIPLINARY CASE No.2014-12283

In a Memorandum dated July 28, 2016, Assistant Deputy Commissioner Paul M. Gamble found Detective Felix Arana, Not Guilty of Specification No. 1 and Guilty of Specification No. 2 in Disciplinary Case No. 2014-12284, Detective Tyrone Horne, Not Guilty of Specification No. 1 and Guilty of Specification No. 2 in Disciplinary Case No. 2014-12282, and Detective Victor Sadarangani, Not Guilty of Specification No. 1 and Guilty of Specification No. 2 in Disciplinary Case No. 2014-12283. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In consideration of the totality of the issues and circumstances in this matter I deem that a greater penalty is warranted. Therefore, Detective Arana, Detective Horne and Detective Sadarangani shall each forfeit seven (7) vacation days, as a disciplinary penalty.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

July 28, 2016

MEMORANDUM FOR: Police Commissioner

Re: Detective Felix Arana
Tax Registry No. 944249
Warrant Section
Disciplinary Case No. 2014-12284

Detective Tyrone Horne
Tax Registry No. 947774
Warrant Section
Disciplinary Case No. 2014-12282

Detective Victor Sadarangani
Tax Registry No. 934143
Warrant Section
Disciplinary Case No. 2014-12283

Charges and Specifications:

Disciplinary Case No. 2014-12284

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

Disciplinary Case No. 2014-12282

1. Said Detective Tyrone Horne, on or about February 7, 2014, at approximately 0530 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] Bronx 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.

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

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CONDUCT

Disciplinary Case No. 2014-12283

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

Appearances:

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

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

Hearing Date:

March 9, 2016

Decision:

Respondents are each found Not Guilty of Specification 1; and Guilty of Specification 2.

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above named members of the Department appeared before me on March 9, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. CCRB called Laverne Jones and Elizabeth Cruz as witnesses. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the relevant evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents Not Guilty of Specification 1 and Guilty of Specification 2.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute. On February 7, 2014, Respondents Arana, Horne, and Sadarangani were working together as part of the Bronx Warrant Squad. At about 0530 hours, they were inside [REDACTED], on the second floor. Respondents were looking for Person A who was wanted for failure to appear on a 2013 case charging her with Criminal Possession of a Forged Instrument in the Second Degree (Penal Law §170.25). Respondents carried with them a bench warrant, dated January 29, 2014, which bore a photograph and a description of Person A, as well as an address: Location 1.. Sometime between January 29th and February 7th, Respondents had gone to Location 1

■■■■ address in search of Person A but were informed by her mother that she no longer resided there.

At about 0530 hours, Respondent Horne knocked on the door of the apartment next door to Apartment ■■■■ which eventually was answered by Elizabeth Cruz. Respondent Horne informed Cruz that he was looking for Person A and Person B and showed her pictures of Person B and Person A. Cruz replied that Person B lived across the hall but was presently incarcerated. Cruz also stated that she recognized Person A as Laverne Jones' "former ■■■■ but that she (Person A) never lived in Apartment ■■■■. Cruz told Respondents to wait, closed her door and reappeared shortly thereafter. Cruz left her apartment and knocked on Apartment ■■■■, calling out "Chunky, it's the police; they need to speak to you." When Jones opened the door. Cruz told her that Respondents were "looking for Persons A and B ," then walked inside Jones' apartment, followed by Respondents.

Once Respondents entered Jones' apartment, Respondent Horne began a conversation with her relevant to the investigation. Jones led Respondent Horne through the apartment, stopping before each room and opening each door.

At issue in this case is: (1) whether Respondents entered Jones' apartment lawfully; and (2) whether Respondents searched Jones' apartment lawfully. Based upon the credible relevant evidence in the record, I find that Respondents did enter Jones' apartment lawfully; however, Respondents did not search Jones' apartment lawfully.

1. Entry into the Apartment

Based upon the credible evidence in the record, I find that there is insufficient evidence to support a finding that Respondents entered Jones' apartment without legal authority.

Respondents' argument that a bench warrant allows them to enter a third-party residence without a search warrant if they have reasonable suspicion that the subject of the arrest warrant is inside the premises mis-states the law and the provisions of the Patrol Guide. While detectives armed with a bench warrant may forcibly enter the subject's residence, they may not do so at the home of a third-party (*Steagald v. United States*, 451 US 204 [1981]; *Patrol Guide* § 208-42). In order to enter a third-party residence, the police officers also need a search warrant in the absence of exigent circumstances or consent (*Steagald* at 205-206).

The bench warrant upon which Respondents rely was issued January 29, 2014 (Respondent's Exhibit B). The address provided on the bench warrant was Location 1 (Id.). Respondent Horne testified that he investigated that location several weeks earlier and spoke with Person A's relatives who informed him that Person A did not reside there (T. 171).

Respondents asserted at trial that they believed Person A resided at [REDACTED] Apartment [REDACTED], on the basis of two five-year old Domestic Incident Reports. In the first report dated January 13, 2009, Person A reported an assault which allegedly took place on the same day at 1400 hours inside Location 1 (Respondent's Exhibits C, D). The assailant is identified as Person B, whose address is listed as [REDACTED] [REDACTED], Bronx, NY (Id.). In the Domestic Incident Report, Person A asserted that she and Jones cohabitated in the past but does not specify where they cohabitated (Respondent's Exhibit D).

In a second Domestic Incident Report dated February 2, 2009, Person A alleged that Jones assaulted her that same day at 2000 hours outside a beauty salon near East 224th Street and Laconia Avenue (Respondent's Exhibit E). Person A's address is listed again as Location 1

(Id.). Jones' address, consistent with the previous reports, is listed as [REDACTED], Bronx, New York (Id.).

Based upon this record, Respondents could not reasonably infer that Person A resided at [REDACTED], Apartment [REDACTED]. Instead, the record supports a finding that the apartment was a third-party premise. Respondent Horne conceded in his testimony that Person A had never provided that address in any court or police documents (T. 188, 207). Cruz testified that she told Respondents that Person A did not live in Apartment [REDACTED] (T. 71). Respondent Horne testified that Cruz recognized Person A's photograph and responded by saying, "I know who this is; give me a second to change my clothes and I'll take you over there" (T. 186). I credit Respondent Horne's recollection of Cruz' statement, as it seems more logical, considering that she then took Respondents to Jones' apartment door.

Based upon the addresses provided in the Domestic Incident Reports, the address on the face of the bench warrant and Cruz' response to Respondent Horne's inquiry about Person A, checking [REDACTED], Apartment [REDACTED] certainly was a logical investigative step to ascertain where Person A might be found. That quantum of evidence is insufficient, however, to support a finding that the apartment was Person A's residence.

In this case, it is undisputed that Respondents did not have a search warrant. It is similarly undisputed that there were no exigent circumstances surrounding Respondents entry into Jones' apartment; thus, the only means of lawfully entering her apartment that morning would have been with her consent.

Jones testified that she did not explicitly or implicitly consent to Respondents entering her apartment (T. 21). Jones did, however, admit that she "opened the door real wide" (Id.). Jones also made a prior inconsistent statement during her CCRB interview in which she

conceded that she had granted Respondent's permission to enter when she opened her door (T. 47). The record shows that Cruz entered the apartment first and then Respondents followed behind her (T. 74). In her testimony, Jones stated that she stepped back as the officers walked in (T. 21). There is no evidence that she attempted to confront them verbally or told them to stop. The gratuitous presence of Jones' neighbor in this scenario begs the question of whether she merely granted Cruz access to her apartment and Respondents attempted to bootstrap this familiarity into consent to enter. Whatever Jones' actual state of mind was after being awakened at 0530 hours, the circumstances of Respondents' entry are ambiguous enough to afford them the benefit of the doubt.

Based upon the foregoing, Jones' actions, combined with the absence of any independent evidence of a contrary state of mind, may reasonably have been construed by Respondents as consent to enter. This standard of implied consent is consistent with New York law and Department precedent (*People v Rivas*, 182 A.D.2d 722 [2d Dept. 1992] [officers obtained consent to enter even where the consenting party could not verbally communicate with the officers but communicated by hand gestures]; *Case No. 77580/01* [February 16, 2003] [Finding that in light of a resident opening the door and her non-confrontational manner at the threshold, it was not unreasonable for the Respondent to assume she had consented to their entry]; *Case No. 75765/00* [April 3, 2001] [Respondents were charged with an unlawful entry based upon the resident's hearsay statement during a CCRB interview that she did not consent to their entry into the apartment and that one of the officers pushed her back into the door. The Respondents testified that although she never verbally told them they could enter, Complainant's mother gestured in a manner that indicated that she consented to their entry into the apartment. The court credited Respondents' testimony that Respondent gestured for them to enter, finding that if

Respondents had invented a false story to create a bogus consensual entry scenario, it is likely that they would have claimed that the resident verbally communicated that they could enter)).

Based upon the record before the tribunal, CCRB has failed to meet their burden of establishing by a preponderance of the evidence that Respondents lacked authority to enter Jones' apartment. Respondents, therefore, are found Not Guilty of Specification 1.

2. Search of the Apartment

Based upon the credible evidence in the record, I find that Respondents searched Jones' apartment without sufficient legal authority. It is undisputed that Respondents did not have a search warrant for [REDACTED] Apartment [REDACTED]. Thus, the only lawful means of searching Jones' apartment would be either the presence of some exigency or consent. While Respondents have not advanced a theory of exigent circumstances, there is, however, credible evidence that Jones requested to see a search warrant and was told by Respondents that they had one. There is no credible evidence that Jones gave consent, either express or implied, to search her apartment for the presence of Person A.

Jones testified that Respondents, once they entered her apartment, identified themselves as police, asking her if she knew Person B and eventually Person A (T. 22). Jones acknowledged her son's relationship with Person A but asserted that Person A did not reside with her (T. 23). Respondent Horne pressed the issue of searching for Person A in case Jones was hiding her (Id.). Jones denied hiding Person A and reasserted that Person A did not live there (T. 24). Jones testified that when Respondent Horne said he was going to search anyway, Jones asked him if he had a search warrant (Id.). According to Jones, Respondent Horne stated that he did but never showed the warrant to her (T. 25).

Cruz testified that once Respondents' were inside Jones' apartment, she asked what they were doing there. Once Jones was informed that Respondents were looking for Person B, she told them he was incarcerated (T. 73, 74). Respondents then stated that they were looking for Person A and Jones informed them that Person A did not live there (T. 73). Cruz testified further that Respondents told Jones that they had visited Person A's mother's home and she had advised them that Person A lived at Jones' apartment (Id.). Cruz testified further that Jones asked if Respondents had a search warrant; Respondents replied that they did but they did not have to show it to her (Id.). Respondents then proceeded to walk through Jones' apartment, looking into rooms (Id.). Cruz testified that she never heard Jones give Respondents permission to search her apartment (T. 77). Cruz testified on cross-examination that Person B was her godson (T. 83).

As set forth above, Respondent Horne testified that he had indeed visited Person A's mother's apartment and was told that Person A resided "somewhere else" (T. 172). This testimony corroborates Cruz' assertion that Respondent Horne made a similar representation to Jones, but went further in representing that Person A's mother had directed him to her apartment as Person A's residence.

Jones testified that when she asked to see a search warrant, Respondent Horne did not show her any document. When Cruz was confronted on cross examination with the assertion that Respondents had shown her a warrant, Cruz responded that she had been shown a picture, which was on a piece of paper which was initially folded, then opened, but that she had not been shown a warrant (T. 78, 81, 83). Horne further testified that he showed Cruz "a photo" of Person A, which she recognized (T. 184). Respondent Horne was shown the arrest warrant (Respondents' Exhibit B) and asked how he presented the photo to Cruz. Respondent Horne testified "I had it in one -- first it was facing me and then I turned it upside down so that way she

can see the individual and see who it was that I was looking for" (T. 185). I find Respondent Horne's description of the physical contortions he made with the arrest warrant to show Cruz only the photograph consistent with her representation that she was only shown a photograph and not the warrant itself. While Respondent Horne is not charged with a violation of Patrol Guide Section 208-42 for failure to show the arrest warrant upon request, I find that he did not show the full warrant to either Cruz or Jones in an attempt to prevent them from scrutinizing his purported authority too closely. Such disingenuousness, in the absence of an actual justification for withholding such information, reflects negatively on his credibility.

Respondent Horne testified that when he entered Jones' apartment, he stated, "Excuse me, ma'am. Sorry to bother you early in the morning but I have a warrant" (T. 187). Respondent Horne then asked Jones if she knew Person B and Person A. After Jones acknowledged knowing them but denied that either Person B or Person A was present, he told Jones, "Ma'am, I just want to know if she is here or not or if you can help me in my investigation, so that way I can find out where this individual is located" (T. 188). According to Respondent Horne, Jones, though visibly upset, led him through the apartment, opening doors to bedrooms, identifying whose rooms they were and asserting they were empty (T. 188 189).

I find that Respondent Horne represented to Jones that he had a warrant, which a reasonable person would interpret as lawful authority to search. He made no effort to clarify that he had an arrest warrant, as opposed to a search warrant, or that the arrest warrant was for another address. These findings of fact align with Respondent Horne's incorrect assertion that he had lawful authority to enter Jones' apartment and look for Person A therein based upon his possession of a bench warrant. Respondent Horne's counsel argued that the tribunal adopt his

position that he was authorized to enter the apartment and conduct a limited search for Person

A. I decline to do so.

As set forth above, the warrant provided no authority to enter, let alone search, Jones' apartment. Accordingly, any action premised upon Respondent Horne's erroneous claim of authority was tainted. Despite Respondent Horne's assertion at trial that he sought Jones' "cooperation," any such so-called cooperation, preceded by an erroneous assertion of lawful authority would not be voluntary at all but a submission to their claim of authority (*Bumper v. North Carolina*, 391 U.S. 543, 550 [1968])["When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion -- albeit colorably lawful coercion. Where there is coercion there cannot be consent"]; *People v. Gonzalez*, 39 N.Y.2d 122, 128 [1976])["Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle"]).

I credit Jones' testimony that she demanded to see a search warrant and that Respondents searched her apartment over her objection, while erroneously implying that they had authority to search. This testimony was corroborated in large measure by Cruz, who this tribunal finds to be a neutral witness, despite Respondents' argument that she was biased and that she colluded with Jones. Jones' testimony clearly indicates that while she stood silent as Respondents entered her apartment with Cruz, she attempted to assert her right to be free from a search of her apartment but acquiesced to Respondents' incorrect claim of authority.

Based upon the record before the tribunal, CCRB has met their burden of establishing by a preponderance of the evidence that Respondents searched Jones' apartment without sufficient legal authority. Accordingly, I find Respondents Guilty of Specification 2.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Arana was appointed to the Department on July 9, 2007; Respondent Horne on July 21, 2008; and Respondent Sadarangani on January 20, 2004. Information from their personnel records that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has requested that each Respondent forfeit seven days as a penalty. Although the willful nature of this misconduct calls for a serious sanction, I find this recommendation excessive. In a previous case, a respondent forfeited three vacation days for an unlawful search (*See Disciplinary Case Nos. 2014-12349 & 2014-12350* [September 21, 2015]) Thirty-year detective with two prior adjudications forfeits three vacation days for searching an apartment without sufficient legal authority. By opening the door wide for the police to enter, complainant gave the officers consent to come inside. Once she asked them to leave, however, consent was effectively revoked, and Respondent's subsequent warrantless search should not have occurred)).

I find that Respondents' reliance upon an arrest warrant, which had no connection to the premises, as a basis for their search is an aggravating factor. Respondents, unlike other police officers, are members of a specialized unit, the mission of which is to apprehend individuals wanted for serious crimes. Respondents are seasoned investigators and should be considered de facto subject matter experts on the proper procedure for execution of arrest warrants. While ingenuity and initiative in criminal investigations are characteristics which should be celebrated,

DETECTIVE FELIX ARANA
DETECTIVE TYRONE HORNE
DETECTIVE VICTOR SADARANGANI

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the employment of such traits to circumvent the mandates of the law do not serve this Department or the public well. Based upon the foregoing, I recommend that each Respondent forfeit five vacation days.

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE VICTOR SADARANGANI
TAX REGISTRY NO. 934143
DISCIPLINARY CASE NO. 2014-12283

On his last three performance evaluations, Respondent received the following overall ratings: 4.5 "Extremely Competent/Highly Competent," 3.5 "Highly Competent/Competent," and 4.0 "Highly Competent." He has received one medal for Meritorious Police Duty. [REDACTED]

Respondent has no prior disciplinary history.

Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE FELIZ ARANA
TAX REGISTRY NO. 944249
DISCIPLINARY CASE NO. 2014-12284

On his last three performance evaluations, Respondent once received an overall rating of 3.5 "Highly Competent/Competent" and twice received an overall rating of 4.0 "Highly Competent." He has received three medals for Excellent Police Duty and two medals for Meritorious Police Duty. [REDACTED]

Respondent has no prior disciplinary history.

Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE TYRONE HORNE
TAX REGISTRY NO. 947774
DISCIPLINARY CASE NO. 2014-12282

On his last three performance evaluations, Respondent once received an overall rating of 3.5 "Highly Competent/Competent" and twice received an overall rating of 4.0 "Highly Competent." [REDACTED]

On October 29, 2014, Respondent was placed on Level 1 Force Monitoring for having three or more CCRB complaints in a year, which remains ongoing.

Paul M. Gamble
Assistant Deputy Commissioner Trials