



POLICE DEPARTMENT

December 10, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Dominick Bizzarro
Tax Registry No. 923562
Patrol Borough Queens South Task Force
Disciplinary Case No. 83890/08

Police Officer Charles Cerami
Tax Registry No. 938200
Patrol Borough Queens South Task Force
Disciplinary Case No. 83891/08

The above-named members of the Department appeared before me on August 13, 2010, charged with the following:

Disciplinary Case No. 83890/08

1. Said Police Officer Dominick Bizzarro, assigned to Patrol Borough Queens South Task Force Unit, while on duty on or about 0115 hours on October 9, 2006, in the vicinity of the 127th Street and 89th Avenue, Queens County, abused his authority as a member of the New York City Police Department, to wit: said Police Officer Dominick Bizzarro, wrongfully and without just cause searched an individual known to the Department.

P.G. 203-10, Page 1, Paragraph 4 – PROHIBITED CONDUCT

2. Said Police Officer Dominick Bizzarro, assigned as indicated in Specification #1, at the time, date and location indicated in Specification #1, abused his authority as a member of the New York City Police Department, to wit: said Police Officer Dominick Bizzarro, wrongfully and without just cause searched the car of an individual known to the Department.

P.G. 203-10, Page 1, Paragraph 4 – PROHIBITED CONDUCT

Disciplinary Case No 83891/08

1 Said Police Officer Charles Cerami, assigned to Patrol Borough Queens South Task Force Unit, while on duty on or about 0115 hours on October 9, 2006, in the vicinity of the 127th Street and 89th Avenue, Queens County, did abuse his authority as a member of the New York City Police Department, to wit said Police Officer Charles Cerami wrongfully and without just cause searched an individual known to the Department

P G 203-10, Page 1, Paragraph 4 – PROHIBITED CONDUCT

2 Said Police Officer Charles Cerami, assigned as indicated in Specification #1, at the time, date and location indicated in Specification #1, did abuse his authority as a member of the New York City Police Department, to wit said Police Officer Charles Cerami, wrongfully and without just cause searched the car of an individual known to the Department

P G 203-10, Page 1, Paragraph 4 – PROHIBITED CONDUCT

The Department was represented by Nancy Lichtenstein, Esq , Department Advocate's Office and Roger C Smith, Civilian Complaint Review Board Respondents Bizzarro and Cerami were represented by John Tynan, Esq

The 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 83890/08

Respondent Bizzarro is found Not Guilty of Specification No 1 and Guilty of Specification No 2

Disciplinary Case No 83891/08

Respondent Cerami is found Not Guilty of Specification No 1 and Guilty of Specification No 2

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department did not call any witnesses. The Department offered a tape and transcript of the Civilian Complaint Review Board's (CCRB) interview of John Sherman, the complainant in this matter, and the tape and transcript of that interview were received into evidence as Department's Exhibit (DX) 1 and 1A, respectively.

Interview of John Sherman

Sherman was interviewed by the CCRB investigator on November 21, 2006. He stated during that interview that on October 9, 2006, at approximately 1:15 a.m. he went to his car to drive home. He said that he had parked at the end of the block of 129 Street and at the top of that block was a one way street. There were no stop signs at that point so he went to the end of the block. He stated:

I went to the end of the block, stopped, made a right hand turn. There was another stop sign. And over there, stopped there, made another right hand turn, and as I was traveling up the block there was stop sign at the top of that block. That was 127th Street and 89th Avenue. That's where the stop sign was there, that officer allegedly says I ran. So, I stopped there, waited because this street is like there is one way traffic, so even if there was no stop sign there, knowing that there isn't a stop sign there, you have to wait anyway to make right hand turn. You are not just going to

turn into traffic without having anything--perception of where you're going. I stopped there and made a right hand turn

Sherman stated that he was going about 20 miles per hour and about a minute to a minute-and-a-half later he saw a cop car. The cop car put on its lights. He claimed at that time of the night that there were a lot of cop cars around for reasons which he did not know. He further stated

I am in the midst of a least several other cars. So, the cops' lights go on so I figured I haven't done anything wrong, you know, so there's no reason for me to pull over. Plus I am not by myself, so I know that they are not addressing me. They never got on any type of loudspeaker or microphone and said, you know, for my specific car to pull over. So, I kept going and as I'm driving the car comes to the side of me and the officer in the passenger seat starts banging on my window while my car is in motion and while I am driving, telling me you know, pull over, pull over. So, I pull over to the side and the officer comes out and he says, "Sir is there a reason why you almost ran me off the road when you ran that stop sign?" And I said, "Officer, I don't understand what you are saying. I didn't run a stop sign. And you approached me from behind, so how is it possible for me to run you off the road?" And I was like, "I don't understand what you are saying." And he was like, "Yes you don't understand, you don't know how to f-ing drive. Get out of the car."

Sherman further told investigators that when he got out of the car

that's when he put me up against the side of that car, put my hands on the hood of the car, searched me, put my head into my car, and while all this is going on while he is searching me. He searched the outside of me, he searched the inside. My sweatshirt, patted me down, all of a sudden he took off my hat, and put his hands through my head, checking like in my hair if I had any illegal substances. And while that was going on, and he was still searching me, his partner went into my car and opened the doors up of my car, and in the front side and the back side, with a

flashlight looked through all my stuff. He didn't open the trunk of the car, but he look inside the trunk of the car.

He added that while the officers were doing all of that they were asking him where the drugs were and whether he was selling drugs or was high on drugs. He told the officers that this was the first time that he was ever stopped by the police and that he was really nervous and scared. He claimed that they also asked him if he stole the car, to which he told them that he did not and that he "had his registration and everything." He stated, "So, I got back in the car and then only after he searched me and all this happened, then he asked me for my license and registration." Sherman stated that at that point he gave the officer his insurance card and the officer went back to his car with the papers. Sherman believed the officers went back to the car to see if Sherman's vehicle was stolen. After a while, the officer then went back to Sherman and gave him two tickets, one for failure to comply and the second for failure to obey a stop sign. He told investigators that his car was a hatchback so the officers did not have to open up the back to look into the trunk, they could see it from inside of the car by shining their flashlights.

Sherman stated that he was wearing a black hooded sweatshirt. He further stated that the stop sign was at 129 Street and 87 Avenue. Pointing to a photograph that he had, Sherman stated to the investigator when the investigator noted that the picture reflected 129 Street and 89 Avenue, "Yes, that's where he said that I ran the stop sign."

Sherman reiterated that the officer asked for his license and registration after the search. He further explained that the officer did not remove anything from his sweatshirt and added that "his partner after he had finished patting me down, his partner came up to me and took my hat off, put his hands in my hair to check if I had any I guess illegal

substances hidden in my hair ” He noted that there were two officers who had stopped him that day

Sherman further explained that, while he was driving at approximately 20 miles an hour, the officers pulled up alongside of him in their car and one of the officers “approached me from the side and started to bang on my window ” When Sherman was asked by the investigator if he thought the car was passing him or something like that Sherman replied, “I didn’t, I guess I assumed, I was just like really shocked at the fact that they would even do that ” The investigator further asked him if the officer was to the left of his car and outside the lane when he tapped on his window Sherman replied, “Yes, this is actually a two way I was going this way and he went on the wrong side of the road and that’s when he started to bang on my car ”

Sherman further told investigators that, while he was being searched, one of the officers opened up the passenger door of his car and the doors in the back of the car He stated that the officer never entered into his vehicle and described how he was searching the car by saying, “Well, he had a flashlight and he opened up the doors of my car and he had his flashlight and he looked inside And he didn’t put his entire body inside of the car, but he was like inside of the car His legs didn’t physically go inside the car but I would say from like the waist up” indicating that the officer was leaning into the car When he was asked if the officer patted him down first or if he went into his sweatshirt first, he answered, “After I put my hands on the car, he patted me down and then he went inside second ” He further stated that the Officer went into the two pockets that were in his sweatshirt and felt around and “he went all the way down to my shoes ” He further

explained that the pockets that the officer went through were the pockets that were contained in his sweatshirt

The Respondents' Case

Respondents Bizzarro and Cerami testified in their own behalf

Respondent Bizzarro

Bizzarro is an 11-year member of the Department currently assigned to Queens South Task Force. He stated that during his career he has been involved in several hundred automobile stops while assigned to the 105 Precinct.

He testified that on October 9, 2006, he was on patrol with Respondent Cerami in a marked RMP¹. He acknowledged that the lights and sirens in that vehicle were functioning properly at that time. At approximately 1:15 a.m., he recalled making a car stop. He stated, "As I was driving eastbound on 89th Avenue approaching 127th Street, a hatchback type vehicle proceeded through the stop sign going northbound near 127th Street nearly sideswiping my vehicle." The intersection where he saw the car going through the stop sign was basically like a "T" where a vehicle is either forced to make a right turn or a left turn when entering that intersection. He further explained that the vehicle, (which he later learned that it was driven by Sherman), was going northbound on 127 Street while he was driving eastbound on 89 Avenue. As the vehicle made the turn on 89 Avenue, it went in the same direction as Bizzarro's vehicle, almost hitting the RMP. Bizzarro stated that his car was at the intersection of 127 Street when Sherman's

¹ *Radio motor patrol car*

vehicle approached and there were no other cars around because "that avenue is pretty dead" at that time

He described Sherman's car going "faster than usual " He acknowledged that it was not traveling at a speed that would have warranted a speeding ticket He stated that when he saw the car make the turn, "I swerved my car so that he couldn't hit me because he went through and tried to basically make the right If he went left he would have hit my car " Bizzarro then applied his brakes and put his overhead turret lights on Bizzarro then "proceeded to get on my loudspeaker and say pull over " He explained that he put the lights on approximately 30 seconds before he got on the speaker He reiterated that there were no other vehicles moving in the area at that time

After Bizzarro spoke over the loud speaker, Sherman " drove approximately two blocks maybe, yeah, about two blocks and he never stopped I went over the loudspeaker quite a few times I was like, 'Pull your vehicle over ' He went through the next street, which is like 128th I believe and didn't stop until 129th Street where I cut him off "

Bizzarro stated that he was driving the vehicle and when he pulled over in front of Sherman's car, he and Cerami both exited their vehicle at the same time When Bizzarro was asked, in the numerous car stops that he had conducted, how many times did he observe his partner roll down the window while driving and physically tap on a moving car to get them to stop, he replied, "That is totally absurd, that is just dangerous " He added that he had "never" seen that happen When asked if, on October 9, 2006, he specifically saw Cerami reaching out of the car and tapping on the moving car to stop it, Bizzarro replied, "Absolutely not, I wouldn't even allow that " When he was further

asked if that was part of his training to reach out and tap on a moving car he replied,
"Absolutely not "

Bizzarro testified that, when he and Cerami exited the vehicle, they approached the driver side of Sherman's vehicle. He stated that they were carrying flashlights, but did not have their guns drawn. He stated, " I approached the vehicle, he still had his window up I believe, I knocked on the window, I asked him was there any reason why you are not stopping, he didn't answer me. I asked him for his license and registration, he wasn't answering. After a few times of not answering me, I asked him to exit out of the vehicle." He stated he was not able to make eye contact with Sherman because Sherman was looking straight ahead and was not looking at the officers.

Sherman was alone in the vehicle and from the time Bizzarro first spoke to him to the time he asked him to exit the vehicle was "a few minutes. I asked him a few times for his information and he was just not answering me, he didn't give me no response." He added that Sherman's window was down.

After Sherman did not comply with Bizzarro's directive to exit the vehicle, Bizzarro opened the vehicle door and asked Sherman to step out again, which he did. Bizzarro stated that he then brought Sherman over to the hood of the vehicle and kept his car door open so that he could take a quick look inside of the vehicle to see if there were any weapons "because he was acting very nervous."

While Sherman was in front of the vehicle, Cerami stood watch over him. Bizzarro then went to the vehicle and he "basically looked at the seats, I looked in the luxury area of the vehicle, I looked under the seats, I placed my flashlight under the seat to see if there were any visible guns where he could have possibly grabbed any weapons

under the seat, I flashed a light in between the seats to see if there was any like if I could see any weapons in between the seats ” When he was asked if he looked in the glove box, Bizzarro stated, “Yes, I did ” When asked why he looked into the glove box, he stated, “Well, prior I had been a cop for six years at the time other car stops that I’ve had, I bumped into car stops where motorists had a BB gun in the glove box which is easily accessible, all you have to do is reach over and open the glove box ” He added that he did not climb into the car nor did he sit in the car He spent just a few moments with his body inside the car looking for the possibility of weapons When specifically asked how he positioned himself to look in the vehicle he stated, “When I looked under the front seats I was basically bent down in the street and put my flashlight to see if there was any visible guns that could have been there ” When he looked in the glove box the position of his body was that “I basically opened it with my hand and my body was still out of the vehicle and I put my flashlight in to see if I saw any weapons ”

When Bizzarro went back to Sherman, he “asked him I believe at that point after I had already frisked him and found his wallet and took his license out of his wallet since he wasn’t giving it to me and told him to sit back in his car and I will be right with you and we proceeded to go back to our vehicle ” He stated that the purpose of patting Sherman down was because he was nervous, he wasn’t cooperating with them, and he wasn’t giving any answers to their questions He further explained that “to me we were in a neighborhood in which a club was going on and the neighborhood had a high crime activity and because of clubs going on we were there because stuff happens at these clubs and actually later on that night there was a big fight that went on that we had to stop ”

Bizzarro further testified that when he patted down Sherman, he removed Sherman's wallet from his pants pocket. He reiterated that when he removed the wallet he then removed the license from the wallet and it was at that point that he went to look in the vehicle before allowing Sherman to re-enter it.

Bizzarro stated that he wrote Sherman two summonses, one for failure to stop at a stop sign, the other one for failure to obey a police order which was to stop the vehicle. Once he gave Sherman the summonses, Sherman was allowed to go on his way.

On cross-examination, Bizzarro explained that in regards to the club condition, "there was a club opening that night that was a big party. Our assignment was to patrol the area around the club for break-ins of cars or any illegal activity." He stated he was driving his vehicle in the vicinity of the area which was located east of 129 Street and 91 Avenue or 92 Avenue. The area where he stopped Sherman was about an avenue or two from where the club that was having the big party was located.

While Bizzarro stated that Sherman's rate of speed was faster than normal, he did not have radar to indicate exactly what his speed was. He did say that it could have been a summonsable high rate of speed, but he would have had to have a radar detector to determine that. He added that, "Based on visibility it was faster than normal. Usually people stop and he went straight through so yeah, I guess he was driving faster than he should have been considering he went through an intersection without stopping."

Bizzarro explained how Sherman went through the stop sign by stating that the turn was "basically like a T the letter T, you are either forced to go left or right at that point. He was turning right going eastbound. He was turning eastbound as I was going east." He added that he swerved his car to the left so that he wouldn't be hit by

Sherman's vehicle When Bizzarro applied the brakes to his car, Sherman applied the brakes also Bizzarro further testified that after he told Sherman to pull over to the right he never did so and kept on driving Bizzarro added, "Once he started moving and he proceeded in front of me I proceeded behind him with my turret lights already on because we were both stopped when I put my turret lights on " Bizzarro stated that, when Sherman's car started to move again, Sherman was not going at a high rate of speed and that Bizzarro had his turret lights on Bizzarro went on the loudspeaker several times and told Sherman to pull over his vehicle Sherman did not respond and "he proceeded about two blocks east where he was about to make a right turn and then I cut in front of him, which is kind of another T, the letter T, street where he could either go right or left I believe " Bizzarro further testified that before Sherman was able to proceed through that T intersection Bizzarro cut him off with his car

Bizzarro reiterated that when he got out of his car he approached Sherman's vehicle on the driver side and the driver side window was up at the time He then knocked on the window and Sherman lowered the window Bizzarro stated that as he approached the car and, prior to knocking on the window, Sherman was looking straight forward Bizzarro further explained, "I knocked on the window because he didn't put his window down I asked him to put his window down, he did but he was still looking straight at the time, not looking at me, not answering any of my questions I asked him, 'Why didn't you stop? Why didn't you stop at the stop sign?' He didn't answer me 'Why didn't you stop your vehicle, why did it take me two blocks for me to cut you off '" Bizzarro stated that Sherman just kept looking straight ahead of him and he then asked Sherman to exit his vehicle

Bizzarro stated he did not pull Sherman out of the vehicle, rather he just opened his door. Once Sherman was out of the car, Bizzarro stated, he "gave him a quick frisk. I patted him down." He also went into Sherman's pockets and retrieved a wallet. Bizzarro stated that he never asked Sherman to empty his pockets, rather he told him or asked him to give him his license and Sherman never did.

Bizzarro stated that when he was patting down Sherman and felt something in his pocket, he didn't know what it was. He stated that when he went into his pocket it was then he determined that it was a wallet. While Bizzarro did not know what the object was in Sherman's pocket, he did not believe it was a gun because it was not shaped like a gun. Bizzarro stated several times, that prior to taking the wallet out of Sherman's pocket, he did not know what the object was.

All I know we have been trained in our Department where there are legal training coming out that people have been using cell phones with bullets in them so even if it was hard and it ended up being a cell phone, a cell phone can be used as a gun and we have been trained in that. So yeah, I went into his pocket because it was hard. Whether it's a cell phone or whether it was his wallet, it could be used as a weapon.

Bizzarro stated that once he felt it was a wallet, he took it out. When asked why he took it out, he stated, "Through my experience as a police officer there had been razors in wallets that could hurt me. People put razors in wallets." Bizzarro added that while he was searching for weapons he was also searching for an ID which Sherman refused to give him.

With regard to searching the glove compartment in Sherman's car Bizzarro stated, "I put my flashlight yeah, in the glove compartment, right. It was closed. I looked, yeah, I just opened it up I saw there were no weapons and I shut it."

Respondent Cerami

Cerami is a five-year member of the Department currently assigned to the Queens South Task Force. On October 9, 2006, he was on patrol with his partner, Respondent Bizzarro. He stated that he was assigned to the 102 Precinct for a club detail which "is the surrounding areas of the club that they are having a function in. I guess the precinct was worried of crime being a little higher than normal due to club activity."

Cerami stated that he was the recorder that evening and that his responsibility was to listen to the radio for any jobs. He explained that, "If we pick up a job or if we go to a call that comes over the radio, my job is to write down the address, paperwork for the evening, if we do any accident report or there is a complaint made, I would do the complaint report."

Cerami acknowledged that on October 9, 2006, he and Bizzarro had an opportunity to conduct a car stop. He stated that, as the RMP passenger, he had a good view of the car coming at him. He explained that "as we were coming up the street the top of my head I've gone blank with the street locations but the street that Mr. Sherman was coming up was actually to my window when he came to the stop sign. To my right, I got a good view of the headlights coming at me." When he saw Sherman's car coming at him he yelled at Bizzarro to "look out." He stated that at that point they stopped Sherman's car by going to the left and it stopped short. He stated that "I did notice that the driver did kind of look at us you know, to his left and then, like I said, Officer Bizzarro put the lights on and reached over and pulled the car over to the right." He said the total time elapsed till the car was stopped was approximately three or four minutes and that the distance traveled was two to three blocks. Cerami further testified that he

was actually using the siren and the air horn in an attempt to stop Sherman's vehicle but it did not stop. He then stated, "After about two blocks that is when Officer Bizzarro actually went around and actually cut the other car off to make him stop."

Cerami testified that once the car was stopped, he got out and went to the passenger side of Sherman's car. He stated that Bizzarro went to the driver side and he could only hear a little bit of the conversation because he was on the other side of the car. When asked if, at any point while the RMP was moving, he leaned out of the window to knock or rap on the window of Sherman's car to get it to stop, Cerami replied, "That would have been pretty much impossible being that I was wearing my seat belt and for me to reach across two, three feet to knock on the window. Of a moving vehicle with a seat belt on I don't [that] long of an arm."

Cerami stated that when Bizzarro took Sherman out of the car, Cerami went back around to stand by Bizzarro and Sherman. He stated that he patted down Sherman at that point and he did so because of his training that he received at the Police Academy. He stated that his pat down took a minute to a minute-and-a-half. Cerami did not find anything nor did he go through Sherman's pockets or remove anything from him. He stated that he stayed with Sherman the whole time while Bizzarro was looking inside the automobile from the outside.

Cerami acknowledged that once Bizzarro finished looking in the car he also looked in the car but he did not enter the car. He explained that he looked into the car "with my flashlight basically just looking under the seat, in the center console." When asked if he had opened the glove box or the center console he replied "I would say I did."

After he finished the search, he stated, he returned to his RMP, and "at that point, Officer Bizzarro wrote Mr Sherman some summonses I ran the plate of the car and I ran his driver's license to see if it was actually a valid driver's license " He stated that the license was valid and the car was registered

On cross-examination, Cerami testified that when he saw Sherman's vehicle at the intersection, "I reached out to hit Officer Bizzarro because I wasn't aware because I am looking to my right and I don't have eyes in back of my head so I don't know what he was looking at, Officer Bizzarro, so I wanted to make sure that he saw the same thing I saw and that was a vehicle coming straight towards our RMP " He further stated that he saw the car coming out through the stop sign, indicating that it was coming at a right angle to his vehicle Cerami stated that, at that point, Sherman made a right hand turn as Cerami and Bizzarro were heading straight on the roadway He added that, if Sherman had not made the right turn but went straight, he would have hit a car in front of the RMP He further stated that when Sherman's car approached them, the RMP was a little past the intersection He acknowledged that Sherman's car went through the stop sign and that the RMP had to veer off to avoid Sherman hitting him with his vehicle At one point, the RMP was one car length behind Sherman's vehicle He stated that, at that time, he was operating the siren and the air horn, but it was Bizzarro that was telling Sherman to pull over

Once Sherman's vehicle was stopped, Cerami reiterated that when he exited the RMP, he walked past the driver side to go around Sherman's vehicle to position himself on the passenger side of his vehicle He testified that when Sherman was asked to step out of the vehicle he did not physically resist getting out of the vehicle It was when

Bizzarro opened the door that Sherman then stepped out of the vehicle. When that occurred, Cerami came around to the driver's side of the vehicle to join Bizzarro and Sherman. Cerami stated that when he conducted a frisk of Sherman he did not go into his pockets. When asked if he, at any point, removed Sherman's hat, he replied, "Yes, I did that as part of the search because if you do a search you start at the top and work your way down. If he has a hat on you have to remove the hat." Cerami acknowledged that after removing Sherman's hat, he checked through his hair. Cerami further testified with regard to searching the vehicle, he stated, "I did look in the vehicle, I didn't recall whether I opened or closed the glove box. When asked if he looked in the glove box, he stated, "I would say yes I did," and he acknowledged that he participated in the entire search of both Sherman's person and vehicle.

FINDINGS AND ANALYSIS

Disciplinary Case Nos. 83890/08 and 83891/08

Respondents Bizzarro and Cerami were each charged with identical allegations in their respective disciplinary cases. Under Specification No. 1, they were charged with wrongfully searching Sherman and under Specification No. 2, they were charged with wrongfully searching his car.

Sherman failed to appear to testify at this Department trial and his interview with the CCRB investigators was admitted into evidence (DX 1 and 1A).

Sherman's hearsay statements essentially claim that he did not illegally go through a stop sign at 127 Street and 89 Avenue. When the Respondents turned on the

RMP's turret lights, he did not think that it was meant for him to stop because he did not believe he did anything wrong and because there were other cars on the road. He also stated that they did not use a loudspeaker to tell him to pull over. Instead, according to Sherman, the officers pulled alongside his car, while the vehicles were in motion, and one of them reached out of their window and tapped on his driver side window in an effort to get him to stop.

Sherman stated that, after he was stopped, he was told to get out of his car and was put against the side of the vehicle. At that point, he claimed, one of the officers patted him down and searched the inside and outside of his sweatshirt. His hat was taken off and the officer put his hands through his hair. He stated that the only pockets that the officer searched were the pockets in his sweatshirt. The rest of his clothes were just patted down and nothing was removed from any other pockets.

He further told the investigators that while one officer searched him, the other officer opened the door to his car and without entering the vehicle with his "entire body" he leaned in and used his flashlight to look through his "stuff" in the vehicle. He further claimed that, after he was searched, the officer asked him for his license and registration.

The Respondents testified that Sherman went through the stop sign without stopping and almost hit their RMP as they were driving on patrol. They tried to stop him using the turret lights and the RMP's loudspeaker but Sherman refused to stop. They denied that they would do something as dangerous as reach out of the RMP's window while in motion to tap on Sherman's window. Finally, they pulled their vehicle in front of his, which caused Sherman to come to a full stop.

The Respondents claimed that once Sherman was stopped, he was unresponsive to their commands to exit the vehicle and identify himself. They candidly told this Court that they patted down Sherman for their safety and after feeling a hard object in his pocket they removed his wallet. They then removed his driver's license to obtain his identity.

The Respondents also testified that they both, at different times and without physically entering the vehicle, shined their flashlights inside Sherman's car and they both opened the glove box and searched its contents for possible weapons that could be used on them.

This Court finds that it need not pass judgment on the credibility of each and every hearsay statement made by Sherman to the investigators. The Respondents are charged with wrongfully searching Sherman and his car, which they openly admit to doing. I credit their testimony as to Sherman's erratic driving and uncooperative and somewhat strange behavior where he would not respond to their directives to exit his vehicle and identify himself. I further credit their testimony and find them justified where they stated that they patted down Sherman for their safety and removed his wallet to check for possible weapons such as razor blades. Under the circumstances of this particular car stop this Court does not fault the Respondents for taking precautions to protect themselves against the possibility of an uncooperative motorist doing harm to them.

This Court, however, does not condone the fact that each Respondent opened and searched the glove box of Sherman's vehicle. While they had the right to lean in and shine their flashlights to inspect the seats and any area where Sherman could possibly

reach for a weapon they did not possess any information that gave them reasonable suspicion that there was a weapon or contraband in the vehicle's glove box, nor was the vehicle going to be impounded pursuant to Sherman's arrest that would justify an inventory search of the vehicle²

Accordingly, the Respondents are found Not Guilty of Specification No 1 and Guilty of Specification No 2

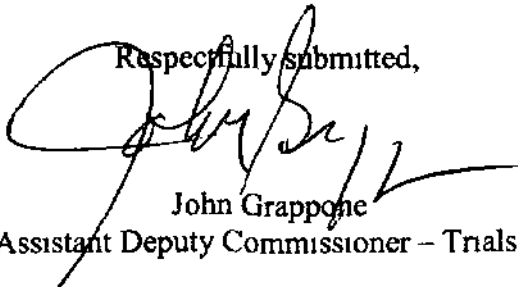
PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined See *Matter of Pell v Board of Education*, 34 NY 2d 222 (1974) Respondent Bizzarro was appointed to the Department on July 7, 1999 and Respondent Cerami was appointed to the Department on July 11, 2005 Information from their personnel records that was considered in making this penalty recommendation is contained in an attached confidential memorandum

Respondents Bizzarro and Cerami have been found Guilty of wrongfully searching Sherman's vehicle

Based on the foregoing, I recommend that the Respondents each forfeit 5 vacation days

APPROVED
JUN 09 2011
RAYMOND W KELLY
POLICE COMMISSIONER

Respectfully submitted,

John Grappone
Assistant Deputy Commissioner - Trials

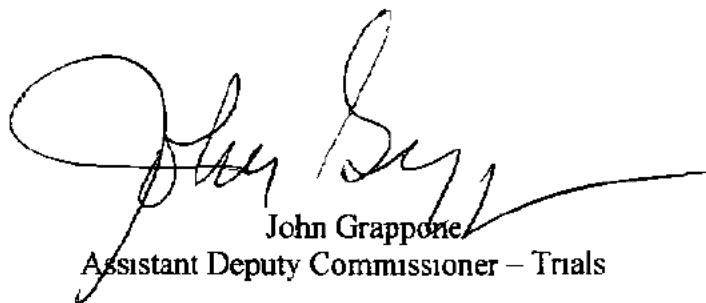
² See Legal Bureau Bulletin, Vol 35, No 3 (August, 2005) citing the New York Court of Appeals decision in *People v Johnson*, 1 NY 3d 252 (2003), and Legal Bureau Bulletin, Vol 24, No 4 (July, 1994) discussing the New York Court of Appeals decision in *People v Galak*, 81 NY 2d 463 (1993)

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER DOMINICK BIZZARRO
TAX REGISTRY NO 923562
DISCIPLINARY CASE NO 83890/08

On the Respondent's last three annual performance evaluations, he received an overall rating of 3.5 "Highly Competent/Competent" twice and 3.0 "Competent" once. He has been awarded five medals for Excellent Police Duty and two medals for Meritorious Police Duty [REDACTED].
[REDACTED] He has no prior formal disciplinary record.

For your consideration

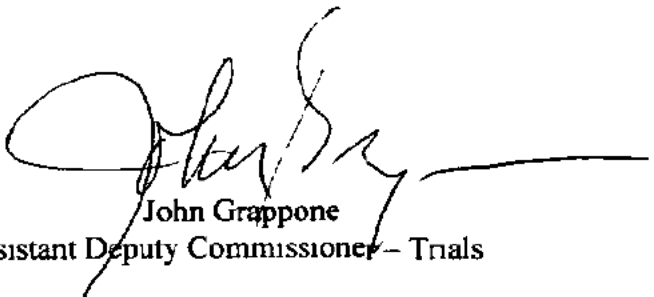

John Grappone
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHARLES CERAMI
TAX REGISTRY NO 938200
DISCIPLINARY CASE NO 83891/08

The Respondent has been awarded one medal for Meritorious Police Duty [REDACTED]
[REDACTED] He has no prior formal
disciplinary record His personnel file does not contain any record of evaluation

For your consideration


John Grappone
Assistant Deputy Commissioner – Trials