



POLICE DEPARTMENT

October 20, 2021

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In the Matter of the Charges and Specifications :

- against - :

Detective Jovaniel Cordova :

Tax Registry No. 946459 :

Brooklyn South Warrant Squad :

Case No.

2019-20818

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Detective Jovaniel Cordova, on or about March 29, 2018, at approximately 0510, while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] Street in Kings County, abused his authority as a member of the New York City Police Department, in that he entered the home of an individual ("the fiancée"), located on [REDACTED] Street in Kings County, without sufficient legal authority.

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

**PUBLIC CONTACT – PROHIBITED
CONDUCT**

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 22, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The CCRB offered into evidence a recorded interview of the fiancée, as well as documentary evidence. Respondent called Sergeant Jason Sanchez Escobar as a witness, introduced the prior recorded statement of Detective Greg Desideri, and 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, I find Respondent Not Guilty of the charged misconduct.

ANALYSIS

In early March 2018, an individual ("the parolee") was paroled from Riker's Island. Prior to being released, the parolee had applied to use the first-floor, [REDACTED] apartment of his fiancée as his parole address, but that request was denied by parole because of prior domestic violence incidents at the location. Instead, parole referred him to a men's shelter in Queens as his residence.

Later that month, a parole warrant was issued for the parolee. Armed with that warrant, Respondent and his colleagues from the Warrant Squad went to the [REDACTED] Street apartment in Kings County in an attempt to apprehend the parolee. It is undisputed that Respondent, without consent, entered the apartment and apprehended the parolee. At issue is whether Respondent had sufficient legal authority to do so. I find that he did.

Neither the parolee nor his fiancée appeared to testify at trial. Instead, the CCRB offered into evidence a recording of an interview it conducted with the fiancée on April 27, 2018, along with an accompanying transcript (CCRB Ex. 1 & 1A). It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the witness's demeanor. In the absence of live testimony from the fiancée here, this Tribunal carefully considered her prior recorded statement.

According to the fiancée, she and the parolee, who she repeatedly referred to in the interview as her "fiancé," were sleeping when the doorbell rang; they realized it was the police since it was 0500 hours. She opened the door but would not allow the officers to enter, so they pushed their way into the apartment, and apprehended the parolee. The entire encounter lasted approximately 15 minutes. The fiancée stated that the apartment was not the parolee's "parole address," though she acknowledged that he did have mail forwarded there. (CCRB Ex. 1A at 4-6, 13, 17, 32-33)

A copy of the parole warrant was introduced into evidence (CCRB Ex. 2). The warrant lists the parolee's address as a men's shelter for individuals paroled from jail with nowhere else to go. Under the "Arrest History" section of the warrant, there is a column for the parolee's last

known residence at the time of those prior arrests. Several arrest charges for a two-day span in March 2017, a year before this incident, are listed; one has the [REDACTED] Street apartment as his last known address, but for several other charges a different address is indicated. Additionally, a Domestic Incident Report ("DIR") involving the parolee and his fiancée, dated March 24, 2018, was admitted into evidence (CCRB Ex. 3). The DIR provides no address for the suspect, the parolee, but states that he and the fiancée did not live together. The report describes the parolee as the fiancée's "ex-boyfriend."

Respondent testified that he was assigned to handle the parolee's case on March 26, 2018, since he was part of the team that handles parole warrants. The parolee had absconded from parole, and a warrant had been issued. Respondent recalled that he already was familiar with the parolee from a previous parole warrant incident: in 2017, Respondent had assisted a colleague in an attempt to apprehend the parolee at the same [REDACTED] Street apartment, where the parolee was residing, but the parolee apparently escaped out a window. (Tr. 34-41, 94, 101, 104, 108-09)

When Respondent was assigned this matter in 2018, he conducted multiple computer checks in order to determine where the parolee was living at the time. Some of those inquiries, such as a DMV search, did not yield any useful information. However, Respondent testified that he discovered two DIR's from 2017 involving the parolee, one of which listed the [REDACTED] Street apartment as his residence; Respondent did not, however, produce a copy of that report for trial. Respondent reviewed the parole warrant, which did not provide much guidance; it listed only the men's shelter address, the location from which the parolee had absconded. Respondent testified that he spoke with parole, and learned that prior to being paroled in early March 2018, the parolee had applied to use the [REDACTED] Street apartment as his address; parole had denied that request

since the parolee had prior domestic violence incidents with his fiancée at the location. Instead, parole had referred him to the men's shelter, but visits to the location revealed that the parolee was not there, and a warrant was issued. (Tr. 41-48, 53-54, 68-69, 74-76, 82)

Based on his investigation, Respondent believed that the parolee was residing at the [REDACTED] Street apartment, and so, in the early morning hours of March 29, 2018, he and several colleagues went to the location to execute the parole warrant. Respondent had Detective Desideri cover the rear in order to prevent the parolee from escaping again. Respondent testified that before entering the apartment, he spoke with the building's superintendent in the hallway, who informed him that the parolee did, in fact, reside there with his girlfriend, and that he was often in the hallway smoking cigarettes. (Tr. 54-58, 88-89, 94-101, 106-07, 112-17)

Having confirmed that the parolee resided at the location, Respondent knocked on the apartment door, which was answered by the fiancée. Respondent informed her that he had a parole warrant for the parolee, and asked for him to come out. She refused to cooperate, claiming that the parolee was not home. Respondent testified that a few minutes later, Desideri informed him over the radio that the parolee was inside, trying to come out the window. Having received confirmation that the parolee was actually present inside the apartment, Respondent instructed the fiancée to step aside, and he entered the apartment, admittedly without her consent. Once inside, the parolee charged at Respondent, and threatened to kill the detective. A struggle ensued, and the parolee was taken into custody. Subsequently, the parolee filed a lawsuit against Respondent, which is still pending. (Tr. 59-66, 105, 111)

Detective Greg Desideri was out sick at the time of this trial. A recording of his CCRB interview of September 25, 2018, along with the accompanying transcript, were admitted into evidence (Resp. Ex. A & A1). Desideri stated that he was covering the back window of the

apartment since the parolee had been known to jump out a window to flee in the past. Two detectives went to the front door and knocked. Desideri observed the parolee open the curtains of the window, look toward Desideri, and then close the curtains. Desideri informed his colleagues, over the radio, that he had observed the parolee inside the apartment. A couple of minutes later, Desideri heard a commotion inside the apartment, ran to the entrance, and observed the parolee in custody. (Resp. Ex. A1 at 7-8, 11, 15-19)

Sergeant Jason Sanchez-Escobar testified that he was part of the team assisting Respondent on March 29, 2018. He confirmed that Desideri informed them over the radio that he had observed the subject at the back window, after which the detectives entered the apartment and the parolee was apprehended. (Tr. 126-28, 130-31)

Although many of the details in this matter were undisputed, one area of contention involved Respondent's testimony regarding the conversation he had with the super of the building shortly before executing the warrant, in which she confirmed that the parolee did, in fact, reside there. Counsel for the CCRB points out that Respondent did not prepare a police report reflecting this conversation. However, Respondent explained that he was concerned for the super's safety, and since she was not an eyewitness in the case he decided not to prepare a report that revealed the super's name and her cooperation. After listening carefully to Respondent's testimony, I credit his account, in which he specifically identified the super by name, and was detailed as to the substance of what she told him: namely, that the parolee lived there with his girlfriend, and often was in the hallway smoking cigarettes. (Tr. 99-100, 112-13)

With that in mind, we turn to the one specification in this matter.

Specification 1 charges Respondent with entering the [REDACTED] Street home of the fiancée without sufficient legal authority. It is undisputed that Respondent, armed with a parole warrant

for the parolee, entered the location without the fiancée's consent and apprehended the parolee inside. It is well-settled that a parole warrant permits an officer to enter into premises to apprehend a subject, provided the officer reasonably believes that the subject resides at the location, and that at the time of the entry the officer reasonably believes the subject to be present.

Based on the credible evidence presented at trial, I find that Respondent did have a reasonable belief that the parolee was residing at the [REDACTED] Street apartment at the time the warrant was executed on March 29, 2018, and that the parolee was actually present inside at the time. Counsel for the CCRB suggests that Respondent should have conducted a more thorough investigation before entering the apartment. However, Respondent testified credibly that he was familiar with the parolee from a previous case a year earlier, where he assisted a colleague in trying to apprehend the parolee at the same [REDACTED] Street apartment, where the parolee was residing with his fiancée. Respondent also relied upon a DIR from 2017 that listed this apartment as the parolee's address. From his experience, Respondent believed that the parolee was residing at the [REDACTED] Street apartment with his fiancée on March 29, 2018.

This Tribunal is mindful that a DIR from March 24, 2018, just five days prior to the execution of the warrant, stated that the parolee did not reside at the location, though it did not provide an actual address. Also, the parole warrant did not specify the [REDACTED] Street apartment as the parolee's residence, as parole had rejected that location as a suitable address. However, the fact that the apartment was not officially recognized as the parolee's address by parole did not mean that the parolee was not, in reality, residing there at the time. After the parolee absconded from the men's shelter, it was not unreasonable for Respondent to go to the [REDACTED] Street apartment to investigate whether the parolee had returned to live there with his fiancée, at the very same address he had specifically requested to be his residence.

Upon arrival, Respondent first spoke with the super of the building, who informed Respondent that the parolee did, in fact, reside at the location. Additionally, Detective Desideri, who was watching the rear window in case the subject tried to escape, observed the parolee inside the apartment and relayed that information to Respondent. Counsel for the CCRB argues that just because a subject is, in fact, found inside a location *after* an officer enters does not validate an otherwise improper entry. However, Respondent's conversation with the super, and Detective Desideri's observation of the parolee, both occurred *before* Respondent entered the location, and therefore provided significant support for Respondent's actions in this matter. This was not a situation where Respondent unreasonably barged into the apartment based only on his experience with the parolee a year earlier. Rather, he took the time to gather important information from the building's super, which, combined with Desideri's observation of the parolee standing at the window inside the apartment, *at approximately 0500 hours*, provided Respondent with sufficient legal authority to enter the apartment.

Based on the totality of circumstances, it was reasonable for Respondent to believe that the parolee was living at the [REDACTED] Street apartment, and that he was present inside at the time the warrant was executed. Accordingly, I find Respondent Not Guilty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED
NOV 18 2021

DERMOT SHEA
POLICE COMMISSIONER