



POLICE DEPARTMENT

April 22, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Dagoberto Rodriguez
Tax Registry No. 944944
7 Precinct
Disciplinary Case No. 2013-9624

Police Officer Spencer Garrett
Tax Registry No. 938538
7 Precinct
Disciplinary Case No. 2013-9625

The above-named members of the Department appeared before me on February 25, May 6, and December 17, 2014, charged with the following:

Disciplinary Case No. 2013-9624

1. Said Police Officer Dagoberto Rodriguez, on or about March 2, 2012 at approximately 1541 hours, while assigned to the 7 Precinct and on duty, in the vicinity of [REDACTED], New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

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

2. Said Police Officer Dagoberto Rodriguez, on or about March 2, 2012 at approximately 1541 hours, while assigned to the 7 Precinct and on duty, in the vicinity of [REDACTED], New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said apartment without sufficient legal authority.

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

Disciplinary Case No. 2013-9625

1. Said Police Officer Spencer Garrett, on or about March 2, 2012 at approximately 1541 hours, while assigned to the 7 Precinct and on duty, in the vicinity of [REDACTED], New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

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

2. Said Police Officer Spencer Garrett, on or about March 2, 2012 at approximately 1541 hours, while assigned to the 7 Precinct and on duty, in the vicinity of [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said apartment without sufficient legal authority.

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

The Civilian Complaint Review Board (CCRB) was represented by Nicole Junior, Esq., Respondents were represented by John Tynan, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9624

Respondent Rodriguez is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

Disciplinary Case No. 2013-9625

Respondent Garrett is found Not Guilty of Specification No. 2 and it is recommended that Specification No. 1 be Dismissed.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that Felipe Marrero is the grandson of [REDACTED] and Aida Quintana and that on March 2, 2012 they were residing together in [REDACTED] at [REDACTED], Manhattan (the apartment). Marrero is the father of Minor A and on March 2, 2012, Minor A, who was then four years old, was staying with her father and her great-grand parents in the apartment.

On March 2, 2012, Minor A's mother Person B filed a petition with the [REDACTED] County Family Court (Family Court) and was granted a Writ of Habeas Corpus against Marrero by Family Court Judge Jody Adams which ordered that Minor A "be returned to the mother forthwith" and directed "Police to serve writ" on Marrero.

(CCRB Exhibit 1)

It is further not disputed that Respondents were on duty, in uniform, assigned to the 7 Precinct on March 2, 2012, and that they were ordered to serve the Writ. At about 1540 hours, Respondents, accompanied by Person B, arrived at the front door to the apartment and knocked on the door.

CCRB called Aida Quintana, Marrero and Imperatrice as witnesses.

Aida Quintana

Quintana testified that when the doorbell to her apartment rang, her husband's health aide, Person C, asked who it was but no one answered. Quintana told Person C, not to buzz anyone in. Quintana explained that her apartment door was not locked at that time because she was waiting for her granddaughter to arrive. Two officers

“pushed” in her apartment door and came inside. Quintana did not give permission to them to enter or remain inside her apartment. As Quintana went to get Marrero, who was in a bedroom, she saw the officers enter the kitchen and the living room. One of the officers then entered Quintana’s bedroom where Minor A was hiding. The officer took Minor A and left the apartment.

On cross examination, Quintana asserted Respondents were inside the apartment for about five minutes before they told her why they were there. After the officers took Minor A, the officers told Marrero about the court order. The officers did not speak to her or to Person C, while they were in the apartment. She agreed that Marrero was upset that the officers had taken Minor A because Marrero had court papers which granted him custody of Minor A. Quintana denied that Marrero had cursed at the officers. Quintana agreed that more police officers arrived in the apartment about ten minutes after the officer who took Minor A arrived. She further agreed that when Minor A saw Person B she yelled “Mommy!” Although v was in the kitchen when the officers entered the apartment, Minor A went into Quintana’s bedroom and hid under a blanket. After the officers removed Minor A from the apartment, one of the officers handed Marrero court papers.

Felipe Marrero

Marrero testified that he was asleep in Quintana’s bedroom when she woke him up and told him that officers were in the house. Unable to immediately find court papers that he had served on Person B, he rushed out to the living room and saw Respondent Rodriguez inside of the apartment standing in the hallway holding a document in his left

hand. Respondent Rodriguez waved the document at Marrero when Marrero entered the living room. Marrero asked him who had given him permission to enter the apartment. Respondent Rodriguez stated that he was there to serve him with a Writ. Marrero told Respondent Rodriguez to leave the apartment. Respondent Rodriguez told Marrero that the door had been open and he was there "to get the child."

Marrero had joint custody documents that he wanted to show the officers. Marrero asked Respondent Rodriguez to meet him at the front door. While Marrero looked in the main bedroom for the custody papers, Respondent Rodriguez walked further inside the apartment until he was standing directly behind Marrero in the kitchen. Respondent Garrett was standing behind Respondent Rodriguez.

Marrero and Respondent Rodriguez were in the kitchen for about 15 minutes before going to the living room where Marrero again told Respondent Rodriguez that he did not have permission from anyone to be inside of the apartment. Respondent Rodriguez tried to enter the bedroom, but Marrero blocked him by standing in front of the door. Respondent Rodriguez eventually got in and took Minor A with him. Minor A had been hiding under the bed sheets.

Marrero recalled that Respondent Garrett handed him the Writ 30 minutes after the officers entered the apartment and after Respondent Rodriguez had taken Minor A out of the apartment. Marrero observed that Respondents ignored Quintana when she asked them to leave the apartment. [CCRBX 2A through 2D, four photographs, are received into evidence. These photographs depict various locations within the apartment.]

On cross-examination, Marrero acknowledged that his mother had previously taken out an order of protection against him, alleging that he had [REDACTED]

██████ but the order was not in effect on March 2, 2012. Minor A entered the bedroom when Quintana woke him up. Minor A was crying but he did not hear Minor A call for her mother. While Respondents were still inside the apartment, Marrero telephoned the Internal Affairs Bureau (IAB) and stated that Respondents had entered his apartment without permission. When Marrero testified that he had not yet been handed the Writ when he was talking to IAB on the phone, he was confronted with the recording of this conversation during which he stated that the officer was serving him with papers because "my daughter's mother had left and the papers were because she made up a story in court to reclaim the child ..." and that the door was "open." Marrero clarified that the door was closed but unlocked. After Respondent Rodriguez left the apartment with Minor A, Marrero showed his court papers [Respondents Exhibit (RX) A] to Respondent Garrett who then apologized to Marrero and told him that Respondent Rodriguez was a "hot head."

Sergeant Joseph Imperatrice

Imperatrice testified that he did not order Respondents to remove a child from the apartment.

On cross-examination, Imperatrice agreed that after Respondents told him what they had done at the apartment, he did not find anything wrong with what Respondents told him about their actions. Imperatrice spoke with the residents at the apartment but he did not speak to Marrero.

Respondents testified on their own behalf.

Respondent Garrett

Respondent Garrett recalled that as he, Respondent Rodriguez and Person B approached the door, he heard a child's voice inside the apartment. The door was slightly ajar and it opened up when he knocked on it. He saw Minor A inside. Minor A saw Person B and yelled "Mommy." Person B became animated when she saw Minor A. Respondent Garrett told Person B to wait in the hallway. Respondent Garrett saw an elderly woman remove Minor A from his line of sight. Because he could not see Minor A anymore, he went inside the apartment to explain the situation to the occupants. He went into the kitchen area where a few occupants were sitting, introduced himself, and explained he had a court order to retrieve Minor A and return her to Person B. The occupants started yelling and Marrero came out of a room and began cursing, screaming and "basically walking directly up to me pretty much right in my face." He told Marrero about the court order and that any issues regarding the order had to be raised in Family Court. Marrero responded by "cursing violently" and telling him to get out of the apartment. Respondent Garrett again explained the situation to Marrero.

Minor A was inside a bedroom located in the rear of the apartment. When Respondent Garrett started to walk toward the room, Minor A's grandmother and another female stood in front of him. Respondent Garrett radioed for assistance. While the grandmother and the other female were standing in front of Respondent Garrett, Respondent Rodriguez went into the bedroom and carried Minor A out. As Respondent Rodriguez was walking out of the apartment with Minor A, Marrero walked up to

Respondent Rodriguez, but Respondent Garrett told Marrero that the court order directed that Minor A had to be returned to Person B. Marrero presented Respondent Garrett with a similar court order. Respondent Garrett prepared a notice of personal service (RX A) and served Person B with Marrero's court order when they were outside of the building. Respondent Garrett did not open any closets, any doors or search any areas while he was in the apartment.

On cross-examination, Respondent Garrett testified that Imperatrice had ordered him and Respondent Rodriguez to remove Minor A from the apartment. Respondent Garrett was confronted with answers he had provided at his April 17, 2012 CCRB interview. At this interview, Respondent Garrett stated that the apartment door had been "breached." He testified that no one inside of the apartment had opened the door or asked the officers to come inside, and that Respondent Rodriguez had entered the apartment first. Respondent Garrett agreed that while they were inside the apartment Marrero had asked them to leave. He agreed that before they entered the apartment, he did not hear any screams or wailing emanating from a child, and that after Respondent Rodriguez removed Minor A from the apartment he did not observe any bruises on Minor A and Minor A did not claim that anyone had hurt her. Respondent Garrett agreed that he had read the Writ and was aware of what it stated. He also acknowledged at his CCRB interview that Respondent Rodriguez had entered the apartment first.

Respondent Rodriguez

Respondent Rodriguez testified that when they arrived at the apartment door, he knocked on the door and announced himself and his partner. He asserted that the door

was already open about six inches before his knocking opened it more. He heard voices inside. Minor A spotted Person B through the open door and began crying “Mommy! Mommy!” Person B then loudly told him, “They have my daughter!” He decided to enter the apartment when he saw “somebody grab Minor A.” He walked into the apartment and down a hallway to the kitchen/living room area where Quintana told him, “You can’t come into our house.”

When Marrero came into the living room, Respondent Rodriguez tried to show Marrero the Writ but Marrero refused to look at it. Marrero finally took the Writ but he threw it onto a sofa. Although he could no longer see Minor A, he heard her crying from behind a closed door. He asked Marrero numerous times if he could see Minor A but Marrero refused. While Marrero was on the telephone, he attempted to open the door to the room in which he heard Minor A crying, but he was pushed away by Quintana. He asked Respondent Garrett to call for backup. When backup arrived, Quintana moved away from the door and he entered the room and removed Minor A.

On cross-examination, he asserted that he believed that Minor A was in danger and he wanted to make sure that she was safe. He agreed that he and Respondent Garrett had repeatedly knocked on the door “pretty hard” but that no one had responded to these knocks. He asserted that although he touched the door knob, he did not turn it. He was confronted with the fact that at his April 17, 2012 CCRB interview, he had stated that they had turned the door knob. He agreed that no inside the apartment had said “come in” and that although both Quintana and Marrero told him to leave, he had refused to leave.

FINDINGS AND ANALYSIS

Both Respondents are charged with having entered the apartment without sufficient legal authority. The plain language contained in the Writ issued against Marrero by the Family Court Judge establishes that the sole duty Respondents had was “to serve (the) writ” on Marrero. (CCRB Exhibit 1) Although the Writ required Marrero to return Minor A to Person B “forthwith,” the Writ provided no authorization empowering the police officers who served the Writ to seize Minor A and personally return Minor A to Person B, as Respondent Rodriguez admittedly did.

It is clear from all of the testimony that Respondent Rodriguez, on his own volition, decided to enter the apartment even though he had received no permission from any occupant to do so, pick up Minor A and bring her to Person B who was standing in the hallway outside the apartment. Although at this trial Respondent Rodriguez attempted to justify his unauthorized entry by asserting that the door was partially open and that he did not turn the door knob to open the door, his trial testimony is belied by his admission at his CCRB interview that the door knob was turned. I also reject Respondent Rodriguez’ assertion that the reason that he entered the apartment was because he truly believed that Minor A was in danger inside the apartment. At his CCRB interview, when Respondent was asked if he heard anything before he opened the door, he answered “No.”

Based on the above, I find Respondent Rodriguez guilty of having entered the apartment without sufficient legal authority.

As to Respondent Garrett, it is clear that Respondent Rodriguez entered the apartment first, as Respondent Garrett acknowledged at his CCRB interview. Although in his testimony at this trial Respondent Garrett attempted to provide what support he

could for his partner's impulsive action, I find that Respondent Rodriguez entered the apartment and seized Minor A without consulting his more experienced partner. This finding is supported by Marrero's testimony that after Respondent Rodriguez had entered, seized Minor A, and exited the apartment, he showed court papers establishing his custody rights regarding Minor A to Respondent Garrett who then apologized to Marrero and told him that Respondent Rodriguez was a "hot head." Marrero also testified that Respondent Garrett stood "behind" Respondent Rodriguez. Thus, although Respondent Garrett followed Respondent Rodriguez through the entry door to the apartment, I find that he did so only because if he had remained in the hallway and one of the occupants had closed the door and locked it, he would have been unable to come to his impulsive partner's assistance if the situation inside the apartment escalated and his partner was attacked by one or more of the occupants. Respondent Garrett's action of physically backing up his partner as he entered the apartment constituted a sound and necessary safety tactic since he was aware that his partner would be confronting an unknown number of angry occupants.

Based on the above, it is recommended that the charge that Respondent Garrett entered the apartment without sufficient legal authority be dismissed.

Both Respondents are also charged with having searched the apartment without sufficient legal authority. I find both Respondents not guilty. Neither Quintana nor Marrero asserted that Respondents had ransacked the apartment by going through every room, looking under every bed, and looking into every closet, searching for the diminutive Minor A. On the contrary, Marrero testified that he and Respondent Rodriguez remained in the kitchen together for about 15 minutes before they went into to the living

room together. It is apparent from the record that everyone knew that Minor A was inside the bedroom from which Respondent Rodriguez eventually removed her. Based on the above, both Respondents are found not guilty of having searched the apartment.

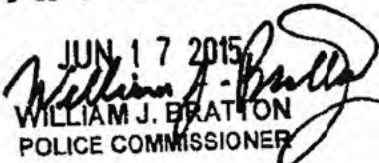
PENALTY

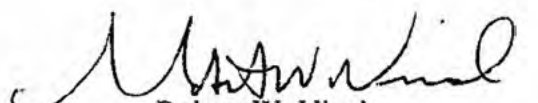
In order to determine an appropriate penalty, Respondent Rodriguez' service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Rodriguez was appointed to the Department on July 9, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent Rodriguez has been found Guilty of entering an apartment without sufficient legal authority. However, his misconduct of entering the apartment without permission or legal authorization is mitigated by the circumstances presented here. I credit his testimony that when Person B, who was standing in the hallway outside the door to the apartment, either spotted or heard Minor A inside the apartment, she exclaimed, "That's my daughter!" Although Respondent Rodriguez' claim that he had a right to enter the apartment because he needed to see that Minor A "was okay" does not justify his entry, it is clear that his improper entry was performed for an altruistic reason: to return Minor A to her mother. Therefore, it is recommended that Respondent Rodriguez receive a reprimand as a penalty in this case.

Respectfully submitted,

APPROVED

JUN 17 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

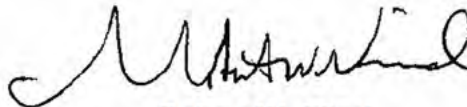

Robert W. Vinal
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DAGOBERTO RODRIGUEZ
TAX REGISTRY NO. 944944
DISCIPLINARY CASE NO. 2013-9624

Respondent received an overall rating of 4.0 on his 2014 performance evaluation, 4.0 on his 2013 evaluation, and 4.0 on his 2012 evaluation. He has no medals. [REDACTED]
[REDACTED] He has no monitoring records and no formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials