



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

May 13, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Sekou Bourne**
Tax Registry No. 924971
Narcotics Borough Brooklyn North
Disciplinary Case No. 84900/09

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on September 10, 2009 and was charged with the following:

DISCIPLINARY CASE NO. 83568/08

1. Said Detective Sekou Bourne, while assigned to the 73rd Precinct, while on duty, on or about July 28, 2007, in the vicinity of 322 Legion Street, in Kings County, did abuse his authority as a member of the New York City Police Department in that said Detective wrongfully searched a closet in said residence without sufficient justification. (As amended)

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

ABUSE OF AUTHORITY

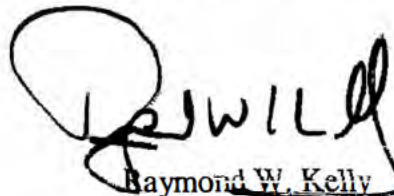
2. Said Detective Sekou Bourne, while assigned to the 73rd Precinct, while on duty, on or about July 28, 2007, in the vicinity of 322 Legion Street, in Kings County, did fail to maintain his activity log in that after an encounter with Mr. Zaire Page and Ms. Charline Daniels, said Detective did not make sufficient notations about the encounter in his activity log as provided for in Patrol Guide Section 212-08. (As amended)

P.G. 212-08, Page 1,

ACTIVITY LOGS

In a Memorandum dated January 7, 2010, Deputy Commissioner Karopkin found the Respondent Not Guilty of Specification No. 1, and accepted the Respondent's Pleading Guilty to Specification No. 2. Having read the Memorandum and analyzed the facts of this instant matter, I approve the findings, but disapprove the recommended penalty.

In light of the failure to properly maintain his Activity Log, the Respondent is to be issued a Schedule "B" Command Discipline, with these instant Charges/Specifications to be dismissed.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

January 7, 2010

MEMORANDUM FOR: Police Commissioner

Re: Detective Sekou Bourne
Tax Registry No. 924971
Narcotics Borough Brooklyn North
Disciplinary Case No. 84900/09

The above-named member of the Department appeared before me on September 10, 2009 and October 29, 2009, charged with the following:

1. Said Detective Sekou Bourne, while assigned to the 73rd Precinct, while on duty, on or about July 28, 2007, in the vicinity of 322 Legion Street, in Kings County, did abuse his authority as a member of the New York City Police Department in that said Detective wrongfully searched a closet in said residence without sufficient justification. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

2. Said Detective Sekou Bourne, while assigned to the 73rd Precinct, while on duty, on or about July 28, 2007, in the vicinity of 322 Legion Street, in Kings County, did fail to maintain his activity log in that after an encounter with Mr. Zaire Page and Ms. Charline Daniels, said Detective did not make sufficient notations about the encounter in his activity log as provided for in Patrol Guide Section 212-08. *(As amended)*

P.G. 212 08, Page 1, – ACTIVITY LOGS

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, and the Respondent was represented by Philip Karasyk, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 1 and Guilty to Specification No. 2. A stenographic transcript of the

trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification No. 1. The Respondent having pled guilty is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Charline Daniels and Kenya Duncombe. The Department also submitted into evidence a tape and transcript (Department's Exhibit [DX] 1A and 1B) of a Civilian Complaint Review Board (CCRB) interview of Sai-Kool Daniels that took place on August 23, 2007 and a tape and transcript (DX 2A and 2B) of a CCRB interview of Sai-Kool Daniels that took place on October 17, 2007.

Charline Daniels

Daniels testified that she resides at 322 Legion Street in Brooklyn, and has lived there for over 30 years. She lives there with her three children and two grandchildren. Daniels is currently not employed due to a disability. Prior to being disabled, Daniels worked in factories and did volunteer work.

Daniels stated that on July 28, 2007 around 7:15 in the evening she was home with her daughter-in-law, Kenya Duncombe, and her grandson, when Zaire Page ran into her apartment. Daniels declared that she knew Page since he was a child, but that they were not related. On the night in question, she did not invite Page to her apartment nor

was she expecting him. When Page ran into the apartment, Daniels explained that she was sitting in front of the computer while Duncombe was sitting on the couch in front of her. Her grandson was in the bedroom.

Daniels states she did not see Page enter the apartment but she did hear him running. At that point, she turned around and saw a white man looking inside the apartment and then run in. Daniels further explained that behind the man, a few more people, police officers, ran inside, and she noticed they were all going into the bathroom.

From the bathroom, Page was calling to Daniels and telling her to call 911. At that moment Daniels was standing at the doorway of the living room. She was able to see down the hallway, but not to the bathroom, which was located to the right at the end of the hallway. Although she could not see into the bathroom, she was able to hear the scuffling that was going on inside.

Daniels stated that there were about six to seven police officers in her apartment that evening, but she was not sure of the exact number. Some of the officers ran and some walked, down the hallway past the three closed closet doors, and they went into the bathroom. Daniels testified that while the police officers were going down the hallway, she did not see any of them open the closet doors.

Daniels declared that when Page was taken out of the bathroom she did not recall if he was in handcuffs nor if Page was injured. The only thing Daniels recalled was "them kicking him out." She denied that the Respondent escorted Page out of the apartment, and agreed that the Respondent stayed in the apartment. She then stated that the Respondent left and then returned to the apartment.

Daniels affirmed that parts of her apartment were searched after Page was

escorted out, not while the officers were escorting him out. She stated that the closets and garbage were searched and that the Respondent took part in that search. She observed from the doorway between the living room and hallway as the Respondent went through two of the closets, pulling out clothes. Daniels' son, Sai-Kool, and Duncombe were right next to her with Duncombe closer to the closets. She did not speak to the Respondent but remembered an exchange of screaming and cursing with other officers.

Daniels was able to recognize the Respondent in Court because he was the only African-American officer in her apartment on that particular day. She stated that right after the incident she called the police and made a complaint about the search of the apartment and the breaking of her toilet.

On cross-examination Daniels agreed that the Respondent went into her house and searched her closets, and that she was present at a photo lineup where she was shown pictures by CCRB of the officers that were possibly present at her apartment. She did not remember if the lineup took place on October 17, 2007. Daniels agreed that she remembered being asked by CCRB whether or not she could identify certain officers. However, when the Respondent's counsel asked her if she remembered saying that she did not recognize the first photograph shown to her by CCRB, she answered, "I'm not sure."

A portion of Daniels' interview with CCRB was read to her. Ultimately, Daniels did not remember saying that she did not recognize the officers in photographs 1 and 2. She recalled saying in the interview that she was not sure if she recognized the officer in photograph 3, but that if she had her glasses she would be able to recognize the individual. She also remembered that she had stated in regards to photograph 4 "...blond

hair. I'm behind my door. That was the shorter one. I don't know. He carried that bat. I don't know if he was the shorter one that carried that bat." She denied that this statement meant that her vision was obstructed because she was behind her door, and could not explain what she meant by her statement, saying, "I'm not quite sure. I don't understand."

Daniels denied that she could not identify any of the officers shown to her by CCRB, and said that if she saw the picture, she could remember which one of the officers she positively identified as being at the scene. She said she remembered identifying the Respondent, but could not presently remember if she was positive that it was him in the photograph. She did not remember stating that she was only seventy-five percent sure. She also did not remember if she was able to identify any of the officers in the photo array to one hundred percent certainty. After an excerpt from her CCRB interview was read, Daniels agreed that she remembered saying that she was seventy-five percent sure that she recognized him.

Daniels agreed that she was sitting in the living room in front of the computer when the incident initially took place, and that she had testified under direct examination that the first thing she heard was noise and running. She then stated that she heard someone entering her house and saying either, "I want to use the bathroom, I'm going to use the bathroom, [or] can I use the bathroom?" She was reminded that on direct examination, she testified that she did not hear anybody saying anything and only heard running. She conceded that the answer she gave on direct examination was not correct, "Not all of it."

Daniels testified that she was very angry when the police entered her home and

were not giving her a sufficient explanation for being there. She denied that she was so angry that she cursed at them, but then admitted, "I cursed at them when they cursed at me." She denied that she called one of the officers "a mother fucking liar," even when she was confronted with an excerpt of the transcript from her CCRB interview where she had stated "I'll tell you exactly what I said. I told him he was a MF liar." After looking at the transcript, she denied that her memory was refreshed, was not sure if the transcript was correct, and did not remember if she had made that statement.

Daniels testified that she knew Page since he was little. She further explained that when he entered her apartment on the night of the incident, her back was turned. When he ran past her she did not hear him yelling in the bathroom. When Page did yell, he asked Daniels to call his mother. She initially said she did not hear him screaming that the police were hitting him, and then said she could have heard that. When Page was being escorted out of the bathroom Daniels had an opportunity to see him. When asked if she saw any marks, scratches, or blood, she answered, "I didn't look." When asked, "You didn't look at him?" she answered, "I can't remember."

Daniels denied that she was on any medication before appearing in court today, then admitted that, "I am on my sugar medication, my high blood pressure and pain medicine." When asked what type of pain medication, she answered, "Gabapin and Arthrotec." She denied that the medication impaired her memory, or that she had any alcohol in the last twenty-four hours.

Daniels agreed that she testified that the Respondent went through her closet and stated that there was another officer also going through the closets. She described that officer as short with blond hair. She admitted to being told by the officers that they were

looking around her home in case Page dropped something, specifically crack cocaine. She declared that she did not know that Page was involved in illegal activities. Daniels agreed that after everybody ran into the bathroom the door was closed, preventing her from looking inside.

When asked again if she remembered who opened the closet doors, Daniels said it was the Respondent, and no one else. The counsel reminded Daniels that during her interview with CCRB, referring to the closets, she had stated, "Yes. They opened them" When asked if the Respondent was the only one checking the closet was incorrect, she answered, "He opened the first closet. He was right there." She then admitted to there being more than one person checking the closets. She said she was not positive about her testimony, but stated "I know when he (the Respondent) opened the closet." Upon further inquiry of her CCRB interview, she was asked, "Anybody beside the black male searching the closets?" and she had answered "I can't say that. I see him. All I see is that black man." She denied that she answered the question in that manner. Then she admitted that the transcript was correct.

Daniels testified that after Page was escorted out of the house, the Respondent came back inside. She explained that she only remembered her son being next to her at that point and that she did not remember Duncombe next to her, but that she was in the area, in the hall. Daniels remembered standing at the living room doorway while Page was being escorted out. She agreed that no closets were searched at that point. When asked if it was her testimony that the search of the closets took place when the detective came back, Daniels answered, "As they took Zaire out. After he went out." Then she was asked again, "As they took him out?" She stated, "They took Zaire out...They

searched the closet. They all went out. They came back.” She agreed that they searched the closet a second time, stating, “Yeah, they was looking in my hall. Yes, and through the garbage.” When asked if the closets were searched twice, once when Page was taken out and once when the detectives came back, Daniels answered, “They came back, yes. They searched the garbage.” She then denied that the detectives searched the closets when they came back into the house.

On redirect examination, Daniels stated that the closets were only checked once. Daniels affirmed that once Page was escorted out of the apartment, the closets were being searched by the Respondent. She explained that when she said in her CCRB interview, “I can’t say that. I see him. All I see is that the black man,” she meant that there were other officers in the hallway but because the Respondent was the only African-American officer, she remembered him.

Daniels admitted that on cross-examination she stated that a struggle took place in the bathroom, but denied that she actually saw what took place inside the bathroom. She could not remember Page ever telling her that he had been assaulted by the officers. She agreed that other people in and around her apartment made other allegations against the police officers.

Daniels admitted to being upset that the police entered her apartment but she was also upset with Page for going into her house uninvited. She explained she was upset at the fact that he went to her apartment and she did not know what was going on. She blamed both Page and the police for the incident. Daniels remembers having conversations with some of the officers, and them being cordial. She denied that she felt “wronged” to the point where she would fabricate anything about what happened that

night.

When Daniels was asked if she was behind a door at the time she was observing the Respondent going through her closets, she answered, "There was no door, doorway." She stated that she had a clear view but that she was not able to positively identify some of the other officers that were involved in the search.

On re-cross examination, Daniels admitted to being angry with Page for entering her home. She admitted that she never mentioned being angry at Page in any of the interviews she had with CCRB. She was then asked, did you tell CCRB that Page wanted to use the bathroom, she answered, "Yes." She admitted that she could not remember Page telling her that he was getting beat up while in the bathroom. All she remembered was Page telling her to call his mother. After Daniels was read an excerpt of the transcript of her CCRB interview where she stated that Page was calling out to her and saying that he was getting beaten up, she agreed that her recollection was refreshed.

Kenya Duncombe

Duncombe lives in Brooklyn and is about to start working at the Department of Transit¹ as an office assistant. Previously, she had worked for the Administration for Children's Services in the Daycare Division. She has never been arrested. Duncombe testified that she was present at Daniels' apartment on July 28, 2007, at about 7:15 p.m. Daniels, who is the witness' mother-in-law, resides at 322 Legion Street in Brooklyn, with her two sons and grandchildren. Duncombe testified that she knew Page from the neighborhood, that Daniels had known him since he was a child, and that Page does not reside at 322 Legion Street in Brooklyn.

¹ As in transcript.

Duncombe stated that on the incident date, she was sitting in the living room with Daniels and that her son was sleeping in the room. Duncombe heard noise, someone running up the stairs, and then saw a man running into the second floor apartment. The man ran through a hallway with three closet doors which were closed, and went into the bathroom. At the time, Duncombe did not know it was Page who had entered the apartment through the front door.

Duncombe declared that a second after Page ran down the hallway, an officer was behind him going towards the direction of the bathroom. The officer was described by the witness as short, medium build, stocky, with blond hair, and a moustache. The witness testified that she could not see what was happening but heard noise and "grabbing." She said that Page was "trying to fight them off." There were three or four police officers present at the scene and she heard them when they were trying to take Page out. While that was going on, Page was asking Daniels to call his mother. She said she did not see Page reach toward or go toward the three closets or hear or see any of those closets being opened, before Page was brought out of the bathroom.

Duncombe said that after the police officers came into the apartment, Daniels' son, Sai-Kool, entered and was between the kitchen doorway and the hallway when the officers and Page were in the bathroom. She said that he was in close proximity to her.

One of the police officers asked Daniels how she knew Page and what he did for a living and her response was, she knew him but did not know what he did for a living. Right after Daniels was questioned, Page was taken out of the bathroom and escorted out of the apartment, in handcuffs. Duncombe observed Page when he was taken out of the bathroom and stated that there were no noticeable injuries and he did not look injured.

After Page was taken out of the apartment, Daniels asked the police officers what they were there for and what was going on. She told them that they needed to leave her home. The officers were telling her no and pushed Daniels and Sai-Kool back. Duncombe explained that there was some tension, but that no one did any harm to anyone. She said that the Respondent was present in the house when this was taking place, although at one point, she did see him outside.

While Page was in the apartment and after he was taken out, Duncombe observed three detectives looking inside the closets. She described the three detectives as follows: a white detective, with blond hair, wearing a blue t-shirt and glasses; a second white detective, wearing a red, white and blue baseball shirt and baseball cap; and a third detective who was the only black officer at the scene, whom she identified as the Respondent. She said that while she was in the living room, she saw the Respondent open the closet and that he "just looked inside." She did not see the Respondent do anything else as far as a search of the apartment was concerned.

Duncombe was never shown any photographs by CCRB and was not asked by CCRB to identify any officer. She stated that CCRB did not show her anything regarding the statement she gave them. She said there were no other African-American officers at the location that day, other than the Respondent.

On cross-examination, the witness stated that her name was Duncombe and not Kenya Daniels. She said she did not know Page since childhood, that she only knew him for about seven years, and she knew him because Page was a friend of the family. She denied telling CCRB on August 23, 2007, that she had known Page "since he was a baby," and said that she was recounting a conversation between one of the officers and

Daniels at the scene of the incident. When asked if she knew about Page's conviction record and that he was a drug dealer, she said, "No".

Duncombe said she stayed at 322 Legion Street a lot, but it was not her residence. She denied that there were times when men would run into the house like they were being chased, or that she was aware of Page's conviction record, or that he is a drug dealer, or that he was incarcerated on a charge of murder.

Duncombe agreed that she was in the living room when she heard the commotion, that the apartment is on the second floor, and that the closets are all on the same floor. She said she did not come out of the living room when she heard the commotion. Then she further stated that when she saw Page, she thought he was just being funny. Once she saw the officer, she knew it was serious. She then got up and stood at the doorway. Duncombe explained that she stood there long enough to see what was happening but not the entire time. She only left the doorway when Page was brought out of the apartment in order to look through window in another room.

Duncombe said that to the best of her knowledge, she did not remember the Respondent walking Page out of the apartment. She also said that she did not remember that on August 23, 2007, when she was asked by CCRB, if she remembered the Respondent walking Page out of the building, and her answer being, "Everything happened so fast, I don't remember." At that moment Duncombe was shown the transcript of her CCRB interview and acknowledged that she had been asked those questions and had given those answers.

Duncombe agreed that "certain parts" of her memory were better in 2007 than it is in 2009, but that she did not forget who checked the closets. When she asserted that she

did see the Respondent come back to the apartment after Page was taken out, she was confronted with excerpts from her CCRB interview where she was asked “How did it end? How did it end? Did anyone come back up? Did either detectives or officers come back up there?” and she answered, “No.” She agreed that looking at the transcript refreshed her recollection.

Duncombe agreed that she had testified that she observed the Respondent open the closet and look inside, and that was all he did. She denied that he pulled out any clothes. She also denied that Sai-Kool was standing next to her when she made those observations and did not remember where he was. She said no clothes or contents of the closets were disturbed in any way.

On redirect examination, Duncombe agreed that after the Respondent searched the closet, he left and did not come back.

Sai-Kool Daniels

The following is a summary of Sai-Kool Daniels August 23, 2007, interview at CCRB, (DX 1A and 1B) and his second interview at CCRB on October 17, 2007, (DX 2A and 2B).²

The August 23, 2007 interview:

Sai-Kool told the CCRB investigator that he was born in 1975 and lives at 322 Legion Street in Brooklyn. On the day of the incident, at 7:15 p.m., he was on the stoop

² The transcript of the August 23, 2007 interview, DX 1B, had many significant errors and omissions. As a result, the Court using the tape recording of the interview (DX 1A), made hand written notes of the missing phrases on the original transcript (DX 1B). That methodology proved inadequate and thus the Court prepared a new transcript which it is deeming as Court Exhibit (CX 1) and which will be a part of this file. The summary of the August 23, 2007, interview as well as other references to that interview in this decision, are based upon the Court’s own review of the best evidence of what was said in that conversation; the tape (DX 1A). The transcript the Court has prepared and now preserved as an exhibit, was an aid to that process.

outside of his house talking to his friends, when one of them (Page), had to use the bathroom. He said the police appeared and ran into the house after his friend. He said he followed the police and asked them why they went into his house and was told that they were "looking for somebody." He was then told to move back.

Sai-Kool said the police chased Page into the bathroom and that he could be heard on the floor calling to Sai-Kool's mother Charline Daniels, by name. He said the police were pushing him back and he asked if they had "a warrant to went up in here and do you, why are you all in my house like that... And you didn't show me no badge or nothing, I didn't even know if they were cops or nothing."

Sai-Kool said that they the police were telling him to move back and as he was arguing with them, "they just picked him (Page) up and took him out. Now when they first took him up and took him out, they were leaving and left out with him, then they comes back and search through the house and I asked ... search warrant or whatever they like." The police said they could get one and his mother said, "Get one, you get one." "And they still did not leave they searching through the garbage, the closets, pulling out clothes out of the closet. The bathroom, they went back in there, they tried to go in the room, but the door was locked. They went in the other, all the closets. Downstairs in the buckets all that down there, threw the garbage out, looking at all the garbage, and then they went back outside."

Sai-Kool said that when they were going back outside he and his mother went down to get badge numbers and the officers told him it was nothing. He also said they brought guys from "outside-off the street" in the hallway. They "checking" them "stripping them down, telling them to take off their socks, their drawers and all that,

going through them like that.”

The questioner brought Sai-Kool back to the start of the incident. Sai-Kool recalled that before his friend (Page) went to use the bathroom nobody came over to talk to them and that they had been sitting there for about 15 minutes, “just out there talking.” The conversation had been about a basketball game in Bristol Park. Sai-Kool said he let Page in through the closed door and he turned around and a car just stopped, “like they was watching us or something.” Two officers got out, ran up the stoop and kicked in the door. He described the officers as two white guys in plainclothes. He said one of them used his feet to kick open the door.

Sai-Kool said he followed the two officers up to and into his apartment and in turn, he was followed by four or six additional officers. He said they went straight to the bathroom and he said that he was going to the bathroom too. He asked the officers why they were running through his house “wrecking my house like that.”

When asked what Page was saying in the bathroom, Sai-Kool stated that he (Page) was calling to his mother (Charline Daniels) saying, “Miss Charline help me, help me they are beating me up for no apparent reason.” Sai-Kool also said Page yelled that “They were digging in my ass for no apparent reason.” Sai-Kool further stated that the officers told him to shut up and that he (Page) was screaming, because “you know they were beating him up.”

Sai-Kool said the officers were pushing him, his mother and his sister back and that they took Page out in handcuffs and that “two of them, one was in front and one was in back walked him out. The rest stayed up there.”

Sai-Kool said he asked the police for their badge numbers and also if they had a

warrant. They said that they could get one and his mother told them to, "go get one."

Sai-Kool then said the officers, "left out and came back. I don't know if they went outside or whether they went in the hallway."

He said the officers came back and conducted a search. He said they went straight to the bathroom and searched the bathroom, "moving everything in the bathroom and then they came in the hallway, look in the hallway. One of the closets on the side was a little open and they opened it and said I said, "Why you all opening my closet?" They started opening other closets, throwing stuff out of the closet." Sai-Kool confirmed that this happened in the hallway. He also stated that they threw the clothes out of closets.

Sai-Kool said it was the "one black guy" doing that. He said there was "one Puerto Rican, I can't tell," but a moment later he confirmed that the one who was searching was Puerto Rican and described him as "another older guy." He said there were "like four (officers) in the hallway and "back there" in the bathroom, there were two more officers. "One guy" he said, was searching in the garbage, "and the other guy that came in the back was just started going through the closets. One closet was a little open and the officer looked in there. When Sai-Kool asked him "Why you all going through my closet?" The officer, he said, responded, "We can do what we want."

When the search was done, Sai-Kool said the officers went down the steps and he and his mother followed them. He said one of the officers was in his grandmother's house downstairs. He then said one of the officers sent him back and that is when they brought the guys in off the street. He stated that he and his mother did not go back upstairs and he heard the police telling the guys to take off their clothes, to take off their

socks.

He said that he saw one of the guys, his cousin Tyrell and another guy Boo, whose real name he did not know. Sai-Kool said they stripped Boo naked.

Sai-Kool said one of the officers told him that they could get “a statute or something and put a hold come back the whole house.” Sai-Kool said he told the officers “Do that whatever, get out of my hallway.”

Sai-Kool said that the officers called Tyrell a “little drug dealing nigger.” He said he saw Tyrell later, “he had no shoes on, no socks on, his pants were down here we was pulling his pants up. His hoodie was off, his shirt was off.”

He also said that the officers refused to provide him with their badge numbers.

The October 17, 2007 interview:

Sai-Kool was shown a group of photographs by the CCRB investigator that may or may not have contained pictures of the police officers whom he encountered. He was 60 percent sure that the officer in photograph 1, was at the incident. He recognized the officer in photograph 3, as the one running back and forth in the hallway. He said the officer in photograph 4, was the one who was calling them drug dealers, telling them that they should not have drug dealers in front of their house, pushing them back, called one of the individuals a nigger, and he was one of the officers in the bathroom, while his friend was screaming for Daniels. Sai-Kool said the officer in photograph 6, was among the last to come into the apartment and was preventing him from going to the back, laughing at everything and searching through the closets. Sai-Kool said he asked the officer in photograph 10 about the broken door and was told to go to the precinct and that

he should not have drug dealers selling drugs in front of his house. He did not remember or was unsure of the officers depicted in photographs 2, 5, 7, 8, 11, 12, and 13.

Photograph 9 was not discussed.

The Respondent's Case

The Respondent called Detectives Michael Cusumano and William Warren, and testified in his own behalf.

Detective Michael Cusumano

Cusumano testified that he is assigned to the Organized Crime Control Bureau, Asset Forfeiture Unit. In July 2007, he was working in Narcotics Borough Brooklyn North. He has been a police officer for a little over ten years and a detective for a little over four years.

On July 28, 2007, Cusumano was conducting narcotics enforcement in the 73 Precinct with Lt. Ryan, Sgt. Hopkins, the Respondent, Det. Warren, Det. Serrano, and a few other officers and undercovers. Cusumano was assigned that day to the "chase car," along with his partner, Serrano. He explained that a chase car is an unmarked car that responds to the location of a hand-to-hand drug transaction involving an undercover officer, in order to effect an arrest.

During the incident, Cusumano stated that he did not arrest Page but participated in the arrest. Cusumano explained that he had received a radio transmission, that a sale of narcotics to an undercover had occurred and he responded to that location. However, he did not recall the address of the location, or who was driving the chase car.

Cusumano stated that when he arrived at 322 Legion Street, Warren was at the front door of the building. Then, someone yelled, "Get the ram." He went to the car to get the ram but when he turned back, he realized Warren was already inside the building. Cusumano declared that he did not see Warren enter the front door of the building. He explained that after turning back, he went up the stairs to the second floor. When he reached the second floor, he stopped somewhat near the doorway of the apartment and at that point saw Warren in the hallway, escorting Page out of the apartment. He did not observe any closets, any open closets, or even seeing Warren in the apartment. He said he saw Warren in the hallway and watched Warren and Page go down the stairs. He denied that he saw any member of the service opening closet doors and stated that he was on the second floor no longer than 30 seconds.

On cross-examination Cusumano stated that when he arrived at 322 Legion Street there were two individuals there and they were not civilians. When asked if he saw any other member of the service on his way up the stairs, he stated, "I ran right up the steps." Once on the second floor, he saw Warren exiting the apartment with Page. Cusumano declared that he went three feet into the apartment and did not go in any further. When asked if there were any other members of the Department in the apartment, he answered, "No." He also testified that after Page and Warren went down the stairs, he immediately followed them. Cusumano stated that he heard the people inside the apartment but did not have any conversations with them, and he did not hear Warren speak to them.

When asked if he observed Page being placed in the prisoner van, he answered, "I don't recall," but he remembered seeing the van there. Cusumano recalled seeing Lieutenant Ryan on the scene but did not remember where he was located. He did not

know whether Ryan or Sergeant Hopkins went up to the second floor. He also stated that he did not see the Respondent go upstairs and that it was possible that the Respondent went up to the apartment. When asked if it was fair to say that he did not know what happened inside the apartment after he went down stairs, he said, "No."

Cusumano stated that if a confirmatory identification by the undercover was done, he would not be part of it and that he did not hear any radio transmission regarding that. He declared that he made memobook entries and that he somewhat recalled them. He was asked to paraphrase what he had written, and stated, "I wrote that the subject, Mr. Page, was resisting arrest, he was still struggling with arresting officer, the people at the scene that were outside were belligerent and saying things to us that were inappropriate." After he was handed his activity log by the Assistant Department Advocate to refresh his memory, he was asked if his recollection was refreshed and Cusumano answered, "Yes," and that it stated "Basically what I said."

On the re-direct examination, Cusumano stated that the people who were being hostile towards him were cursing and saying, "What are you doing to that man? He didn't do anything. Why are you hassling him?" Cusumano further stated that the people in the apartment did not directly say vulgarities towards him, but were uncooperative and belligerent. Lastly, he stated that he did not see Hopkins upstairs.

Detective William Warren

Warren joined the Department in July 2003 and was promoted to detective about 18 months ago. On July 28, 2007, Warren was working at his current command, Brooklyn North Narcotics, out of the 73 Precinct. That day, he was assigned to be the

arresting officer for the buy-and-bust operation. The people he remembered being on his team were Hopkins, the Respondent, Detectives Gould, and Parlo.

Warren stated that on the day in question, he responded to 322 Legion Street because of a radio transmission given of a possible buy concerning two individuals. The first individual was picked up a couple of blocks away from the scene and taken into custody. The second individual, later identified as Page, described to be wearing a purple hat, went to another location which was 322 Legion Street.

When Warren arrived at 322 Legion Street, he exited the vehicle and pursued Page into the building. He further explained that the door of the building was propped open, and that sometimes in buildings where there is illegal activity, the doors are left open so that someone being chased by the police can run into the building. Once inside they can slam the door shut and lock it. Although Page slammed the door, Warren immediately pushed through the door and observed Page drop an item on the floor, as he was going up the stairs. Warren did not stop to look and he continued the pursuit to the second floor. They went through another door, which led into an apartment and down a hall, which led to a bathroom. Once inside the bathroom, Warren and Page began to fight. Ten to fifteen seconds later, the Respondent joined him to help handcuff Page. Once Page was handcuffed, the Respondent and Warren walked Page out of the apartment and down the hallway and stairs. While Page was being escorted down the stairs, he was still screaming and trying to fight with the Respondent and Warren.

When asked if he observed any closets by the door, Warren declared that the hallway inside the apartment leading to the bathroom was "pitch black." He gave an example by saying, "If the individual had stopped the foot pursuit, I probably would have

banged into 'em." Warren stated he did not recall seeing Cusumano. Warren also testified that neither he nor the Respondent opened any closet doors.

Warren said that he found out that numerous people who have been arrested had given this address as their residence and these people had been charged with possession of guns, narcotics and robbery. He said 322 Legion Street is a private house with two apartments occupied by relatives. He stated that the address has, "been known to have Zaire Page going in there." He also stated that he did not get this information from the computer, but from street sources. As far as the demeanor of the residents in the apartment, he said, "I could hear screaming by a woman or a man, I had no contact with them. I was more focused with Zaire Page." He reiterated that at no time did he see the Respondent open any closets.

On cross-examination, Warren denied that to the best of his knowledge, any of the residents of the apartment were arrested on that particular day. He testified that the Respondent was the officer who helped him apprehend Page. When asked if there were other officers inside, he answered, "I don't know". Then he recalled that Hopkins and Ryan were inside, and that Gould was outside.

When asked if the Respondent was the only African-American officer working that day, Warren did not have an answer, because he did not remember what Serrano looked like. He was shown a compilation of photographs (DX 3) and identified Serrano, agreeing he was not African-American. Warren further stated that he remembered the Respondent exiting the bathroom, going down the stairs and out the front door with him. While going down the stairs, Warren recovered contraband where Page had thrown something earlier. Warren did not remember if the Respondent went back into the

apartment, because his attention was focused on Page and putting him in the van.

Warren said that when he got downstairs, he did not see Cusumano with the battering ram. He said he did not see anyone with the ram and there was some discussion about someone taking the ram. He recalled being interviewed by CCRB on November 16, 2007, and agreed that during the interview, he had stated that while he was putting Page inside the van, the other officers were around the van "gathering up the gear, somebody grabbed the ram to make sure somebody would not be locked inside." He said it was standard operating procedure for them to "grab certain gear." When he was concentrating on putting the prisoner in the van, he did not speak to anyone else.

The Respondent

The Respondent joined the Department on March 1, 2000. After he graduated from the Police Academy, he was assigned to the 75 Precinct, and then to the Narcotics Division in November 2004, and he has been there ever since. He has made 400 arrests in his career. He does not have any prior substantiated civilian complaints, nor any charges and specifications. He was promoted to the rank of Detective while assigned to the Narcotics Division.

On July 28, 2007, the Respondent was working a "four to twelve shift." He was designated the second arresting officer and was riding in a car with Ryan. He said he received a radio transmission looking for a male involved in a drug sale, later identified as Page, who was spotted by the undercover at 322 Legion Street. The Respondent and Ryan pulled up in front of 322 Legion Street, with Warren following in a second vehicle. Warren "jumped" out of his vehicle first, causing Page to run. Warren chased him into

the building and the Respondent following right behind them. They all ran, "up the stairs into an apartment, in through the back of the apartment, along the hallway and into a bathroom." The bathroom was at the end of the hallway to the right. Warren reached Page first. When the Respondent entered the bathroom he saw Warren struggling with Page and the Respondent proceeded to help Warren handcuff Page. As soon as Page was under control, he was searched and the bathroom was checked to ensure Page had not dropped anything. He then helped escort Page out of the apartment.

The Respondent stated that when he stepped out of the bathroom and into the hallway, he was checking the hallway for anything that Page might have dropped or thrown. The Respondent asserted that he did not check the closets or open any doors. He said two to five minutes had elapsed from the time Page was brought under control until he left the premises. He said there were other members of the service on the second floor, but did not recall who they were, "because there was a lot of yelling and commotion going on."

While Warren placed Page in the van, the Respondent stated he was outside the building asking Page's mother some questions. The Respondent declared that after speaking to Page's mother, he did not go back inside the house, go back upstairs, look in the closets, or pull clothing out of any closets, nor did he see anyone else doing so.

FINDINGS AND ANALYSIS

It is not in dispute that on July 28, 2007, the Respondent was part of a narcotics team attempting to arrest Zaire Page for activities related to the sale of narcotics to an undercover police officer. Page fled into a building at 322 Legion Street in Kings

County. He was pursued by officers on the team. Once inside this two story building, Page went up a flight of stairs and entered an apartment occupied by Charline Daniels and Kenya Duncombe. Page who did not live in the apartment but was known to Charline Daniels and Duncombe, fled down a hallway and into a bathroom at the rear of the apartment. He was placed under arrest there and subsequently removed from the apartment. At some point after the officers entered the apartment, Charline's son, Sai-Kool Daniels, entered the apartment.

The Department alleges that after Page was arrested, the Respondent, without consent or benefit of a search warrant, searched a closet or closets in the hallway of the Daniels' apartment. The Respondent acknowledges looking in the hallway for anything Page may have thrown but denies looking in or searching any closet. Indeed, he asserts that he left the apartment with Warren, who was dealing with Page who was continuing to struggle as he was being removed from the apartment. The Respondent denies returning to the apartment after he assisted in the removal of Page.

The Department presented two witnesses, Charline Daniels and Kenya Duncombe. The Department also entered into evidence the statements made to the CCRB by Sai-Kool Daniels. The principle problem with the Department's case is the fundamental difference in the testimony of the Department witnesses as to the nature of this search.

In her testimony Duncombe indicated that while Page was still in the apartment some of the officers were searching the closets. She further testified that after Page was taken out of the apartment the Respondent searched "the closets in the back." She described the search as follows: "He opened the closet, the door, just looked inside." She

later further clarified, that that was the full scope of the alleged search by the Respondent and that he did not “pull” anything out of the closet or disturb anything in them.

Duncombe indicated that after the search of the closet she did not see the Respondent search anything else in the apartment.

This is in sharp contrast to what Sai-Kool Daniels told the CCRB. Sai-Kool described a substantial search of the apartment in which the bathroom was searched by officers who returned after Page was taken out. In this search the officers attempted to enter a locked room and searched garbage pails. During this extensive search, closets were opened and the contents thrown out.

When asked who was doing the search of the closets and throwing clothes into the hallway, Mr. Daniels responded: “It was one black guy.” As the Respondent was the only black officer on the team, Sai-Kool Daniels was apparently referring to him. However, Sai-Kool Daniels also seems to describe the officer searching the closet as Puerto Rican.

It would appear that both Duncombe and Sai-Kool Daniels are talking about the same closets but the conduct is different. The matter gets more complicated when one reviews the testimony of Charline Daniels. She testified that two closets were searched, that the Respondent “went through her closet” and that clothes were pulled out of both closets. She further testified that the Respondent was not the only officer going through her closets and that he was aided by a short officer with blond hair. Later in her testimony, she indicated that only the Respondent opened the closets. She was then confronted with her statement to CCRB, that he was aided by another officer in opening the closet. After that, Charline Daniels admitted that she was not positive, only to be

confronted with another statement she made at the CCRB that she could only see the black man searching the closet.

There is also a question as to when the closet was searched or more correctly whether the officers left and then returned to conduct the search for which the Respondent is charged.

Sai-Kool's testimony on this issue is confusing. When he first addresses the issue he seems to say that all the officers left and then returned, saying: "they just picked him up and took him out, they were leaving out and left out with him, then they comes back and search through the house." However later in his statement when describing Page being removed, he said that two officers removed Page while the others remained and then the two came back. Then again at another point in his statement he indicates that: "They talking to us, me and my mother like we, what's your badge number, and search warrant and all that. They said we could go get one and my mother told them to get out, so they leave back out, they left out and came back in. I don't know if they went outside or whether they went in the hallway, right here, cause we was up here and went back and came back and searching." Thus it seems that he is saying that at some point unrelated to the removal of Page, the officers left and then returned to search the apartment.

Charline Daniels also indicates that the officers left and that the Respondent came back (T. 25-26). Duncombe's testimony is more confusing. She indicates that the search had started before Page was taken out but that some officers remained because she said, "After he left (apparently referring to Page) he (apparently referring to the Respondent) was still there..." (T. 91). Later she indicated that she did see the Respondent return to the apartment (T-101) only to be confronted with her previous statement to CCRB in

which she indicated that the officers did not come back up, (T. 101-102).

Thus there are inconsistencies about whether the Respondent merely looked in the closet or pulled clothes or other items out of the closet and whether he acted alone or with other officers in the search of the closets.

Additionally, there is some apparent conflict about whether the Respondent left the apartment and returned to conduct the search of the closet. This last inconsistency is significant because the Respondent, in addition to denying any search of the closet testified that he left the apartment with Warren, as he aided Warren in taking Page out and that he never returned.

There are other inconsistencies. Duncombe testified that as he was brought out, she heard Page asking "Ms. Charline" to call his mother saying, "they are arresting me I don't know why they are arresting me."

Sai-Kool Daniels statement about what occurred with Page and what Page said is very different and is part of a very serious allegation of misconduct, not charged in this case. Sai-Kool claimed that he could hear Page being beaten in the bathroom and that Page was yelling that the officers were "digging" in his "butt" or his "ass."

Charline Daniels description of what was said by Page is different than Duncombe's but it is also not what Sai-Kool stated. Charline Daniels first testified that Page said "Call 911, that's what I really remember. Call 911." Later in her testimony she recalled that he said, "Call my mother" but she could not remember him say that the police were beating him up. Yet a few minutes later when her statement to CCRB was read to her in which she testified: "He was calling my name. He was going to say, Ms. Charline, they are beating me up. I don't know why they beating me up. I kept hearing

him say that," she recalled making that statement.

It is difficult to understand how Charline Daniels could not remember a serious allegation of police brutality and had to be reminded of it from her earlier statement. Moreover, Charline Daniels' version does not include the charge that the officers were doing something with Page's rectum, or that Page made such a claim. Significantly there appears to be several versions of what was said by Page.

There are other troubling aspects of Ms. Daniels' testimony. On cross-examination she testified that she believed she heard Page say, "I want to use the bathroom, I'm going to use the bathroom, [or] can I use the bathroom", as he entered the apartment. After she was reminded that on direct examination she testified, she did not hear anybody saying anything and only heard running, she conceded that the answer she gave on direct examination was not correct, "Not all of it," (T. 42-43).

While this inconsistency is disturbing in and of itself, it is more disturbing when considered in light of what Sai-Kool Daniels stated during his CCRB interview. He indicated that after he and Page had been hanging out on the stoop for some time, Page indicated that he (Page) needed to use the bathroom and that after he let Page into the building, the police came and chased him. Thus the trip to the bathroom was not to avoid the police but to answer nature's call. It would appear that Charline Daniels' version of events as given to CCRB supported that version, which was abandoned at trial. Further the Department apparently agrees that entry was appropriate under the notion of "hot pursuit" and it is clear from the testimony at trial that Page's trip into the Daniels' apartment and down the hallway to the bathroom was an attempt to evade arrest.

In his closing argument the Advocate suggested that the witnesses came to Court

knowing that the only charge against the Respondent was the relatively minor offense of searching a closet without a warrant.³ He argued that coming to Court to testify solely on that issue would not be something someone would lie about. This argument may or may not make sense but in any event it is wholly outside of the record, as there is no testimony by the two witnesses who appeared in Court about what they knew about the charges or how it impacted on their decision to testify. Further it is clear that other serious charges had initially been made to CCRB. Indeed, the Advocate stated in his closing argument that “you know by the way, they beat Zaire Page.” There is no such charge in this case nor is there any evidence that Page was actually beaten. The comment had no place in this proceeding.

With regard to the notion that no other complaint was made, Sai-Kool Daniels told the CCRB that he and his mother exited the apartment and witnessed other persons being brought in off the street and being subject to search by officers in their hallway. “Stripping them down, telling them to take off their socks their drawers and all that going through them like that”, as Sai-Kool put it.

Putting aside what is irrelevant, it appears that there are a number of inconsistencies in the version of events put forward by the Department’s witnesses. Certainly different individuals recounting events are bound to have some inconsistencies. However, the inconsistencies in the Department’s evidence are significant as they go directly to the allegation against the Respondent. It is very different conduct for the Respondent to have pulled items out of the closet as opposed to simply opening the door. It also very different conduct if the Respondent searched the closet while Page was still

³ The Advocate identified the witnesses he was talking about as, “Ms. Daniels, Mr. Daniels and Ms. Duncombe” however only Ms. Daniels and Ms. Duncombe actually came to Court to testify in this matter, (see T. 166).

there or even as part of his initial entry than if he reentered the apartment to conduct an illegal search.

It certainly can be argued that whether the Respondent merely opened the closet or opened it and threw the contents out, the conduct would constitute a violation of the Daniels' right to privacy. Similarly, it could be argued that whether the Respondent opened the closet as part of his initial entry or if he returned to conduct the search, the conduct was, in either event, wrong.⁴ What is significant about these inconsistencies however is that they raise a concern that the story is contrived or that the conduct has been attributed to this Respondent because he was, as the only African-American officer on the team, easily subject to identification.

These inconsistencies therefore are sufficient to cast doubt on the veracity of the Department's case. Under the circumstances, the Department has not met its burden of establishing that the Respondent engaged in the conduct alleged by a preponderance of the evidence. The Respondent is found Not Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on March 1, 2000. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

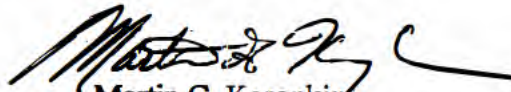
The Respondent has pled guilty to one specification alleging that he failed to

⁴ The initial entry into the Daniels' apartment was justified as "hot pursuit." A re-entry into the apartment or even a remaining in the apartment after the apprehension and removal of Page would have been a very serious violation in and of itself, yet no such charges were presented.

“make sufficient notations about the encounter in his activity log.” There is no indication in the record as to exactly what the Respondent actually wrote in his activity log and what was “insufficient” about it. However from the very language of the charge it would appear that the Respondent did note his activity but that his notation was somehow lacking. That being the case, this violation is highly technical.

This appears to be the kind of matter ordinarily handled at the Command level and thus something that would not ordinarily see its way to the Trial Room were it not linked to the much more serious allegation in Specification No. 1, a charge for which the Respondent has been found Not Guilty. As a result, this Court which is bound to make a recommendation according to the Administrative Code, recommends that the penalty for this one specification be a Reprimand.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner – Trials



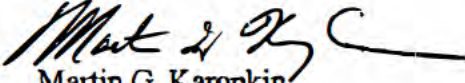
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: **CONFIDENTIAL MEMORANDUM
DETECTIVE SEKOU BOURNE
TAX REGISTRY NO. 924971
DISCIPLINARY CASE NO. 84900/09**

The Respondent was rated 4.5 "Highly Competent," 4.0 "Highly Competent," and 4.0 "Highly Competent" in his last three annual performance evaluations in 2006, 2007 and 2008 respectively. He has been awarded one Excellent Police Duty Medal in his career. [REDACTED]

[REDACTED]. He has no prior formal disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials