The City of New York

POLICE DEPARTMENT

January 21, 2020

In the Matter of the Charges and Specifications :

- against - :

Detective Roberto Pagan : Case No. 2018-19867
Tax Registry No. 946089 :
Staten Island Warrant Squad :

Detective Salvator Granata : Case No. 2018-19866
Tax Registry No. 936692 :
Staten Island Warrant Squad :

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondents: Marissa Gillespie, 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

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-19867

1. Detective Roberto Pagan, on or about January 29, 2018, at approximately 0614 hours, while assigned to WARRSEC and on duty, in the vicinity of [redacted], Richmond County, abused his authority as a member of the New York City Police Department, in that he entered the [redacted] floor apartment of Person B located at [redacted], Richmond County, without sufficient legal authority.
   P.G. 203 10, Page 1, Paragraph 5 PUBLIC CONTACT - PROHIBITED CONDUCT

2. Detective Roberto Pagan, on or about January 29, 2018, at approximately 0614 hours, while assigned to WARRSEC and on duty, in the vicinity of [redacted] Richmond County, abused his authority as a member of the New York City Police Department, in that he searched the [redacted] floor apartment of Person B located at [redacted], Richmond County, without sufficient legal authority.

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

Disciplinary Case No. 2018-19866

1. Detective Salvator Granata, on or about January 29, 2018, at approximately 0614 hours, while assigned to WARRSEC and on duty, in the vicinity of [redacted], Richmond County, was discourteous, in that he spoke discourteously to Person B and said, "Like you pay taxes," inside of [redacted], Richmond County, without sufficient legal authority.
   P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT - GENERAL

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 19, 2019. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. Respondents testified on their behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having carefully reviewed all testimony and evidence in this matter, I find Respondents Guilty of the charged misconduct. I

recommend a penalty of seven (7) vacation days for Respondent Pagan and three (3) vacation days for Respondent Granata.

ANALYSIS

The following is a summary of the facts which are not in dispute. At all relevant times during the period under consideration, Respondents were members of the Staten Island Warrant Squad (T. 34, 104). On January 8, 2018, Respondent Pagan was assigned an I-Card case for Person A from the Staten Island Grand Larceny Squad (CCRB Ex. 3). Respondent Pagan attempted to learn Person A's whereabouts by searching various databases, including OmniForm, Person A's prior arrest history, and TLO. Respondent Pagan came to suspect that Person A may be residing at an address on [redacted] in Staten Island (T. 105-106).

On January 18, 2018, Respondent Pagan visited the [redacted] location with Respondent Granata. Respondent Pagan knocked on the door and was greeted by two women, (CCRB Ex. 1-A at 29). When he informed them that he was there to speak to Person A, they explained to him that Person A did not reside at their home, but they did know him as they were related to Person A's [redacted] Person B. Person B's sister called her on the telephone and gave the phone to Respondent Pagan, who then had a conversation with Person A and Person B. During the conversation, he explained that there was an I-Card for Person A who told Respondent Pagan that he would make arrangements at a later date to "take care of it," although he later refused to meet with Respondent Pagan in a subsequent phone call. Once the call ended, Respondent Pagan asked the women whether he could enter and look around. They refused to permit him entry and Respondents left the [redacted] residence (T. 35-37, 106-109).

Respondent Pagan claimed that he then received "an anonymous tip inside the office that Person A could be living at..[redacted]." Following up on that tip, he ran a search on the address to see if there were any additional wanted subjects for active warrants or I-Cards at the location, which led to the discovery of an active bench warrant for Person C issued on August 30, 2012[1] (CCRB Ex. 2). In order to determine whether Person C still lived at [redacted], Respondent Pagan ran further computer checks on her. A search of the TLO System showed [redacted] as one of her most recent addresses from 2012 to the time of the search. Respondent Pagan learned from the OmniForm database that Person C had provided the [redacted] address as her residence at the time of her arrest; he also obtained a copy of a "C" summons issued to Person C on May 18, 2012, which listed her address as [redacted] (Resp. Ex. A; T. 109-113, 149-151, 169 171).

On January 29, 2018, at about 0615 hours, Respondent Pagan visited [redacted] with Respondent Granata, Detective White and another detective. Respondent Pagan admittedly had not looked at a photograph of Person C and was uncertain about her appearance, should he find her (T. 115). Respondent Pagan knocked on the door of the [redacted] and Person B, a Hispanic female, opened the door. Respondent Pagan, Respondent Granata, and Detective White entered the apartment, and searched it. The circumstances of the entry and search are at issue (T. 39-40, 42, 113-115, 121; CCRB Ex. 1A at 4).

The three detectives later left her apartment at Person B's demand. As Respondent Granata was walking upstairs to continue his investigation on the second floor, he responded to a comment made by Person B. The specific words he spoke, as well as

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[1] While [redacted] is described as a White female on the warrant, there was no photograph on the warrant which could be used for future identification of the subject.

whether they were discourteous to Person B are also at issue (T. 45, 50-51; CCRB Ex. 1A at 8-9).

The following is a summary of the relevant trial evidence.

The Tribunal received in evidence Person B's statement made to CCRB on February 1, 2018 (CCRB Ex. 1A,1 B). Person B stated in her interview that on January 29, 2018, she had been living at her apartment at [redacted] for about three months, and occupied the top level of a [redacted] in the building with [redacted], and Person A Her [redacted] and b [redacted] occupied the [redacted]. She stated that after she heard a knock on the door at approximately 0614 hours, she opened it and a blonde, white male police officer (determined later to be Respondent Pagan) quickly placed his foot in the doorway asking if Person C resided there. She told him that she did not know Person C. Respondent Pagan insisted, "No. You definitely do. You definitely do. That's you." Person B again denied that she was Person C, offered to retrieve her ID as proof of her identity, and told Respondent Pagan that she would not let him in without a warrant (CCRB Ex. 1A, p. 3-4, 10, 15). [2]

Person B stated that she had her hand on the door handle and that the door was opened approximately 18 inches. As she attempted to close the door, Respondent Pagan pushed back against the door until it opened fully, then entered the apartment with two other male officers. One officer (determined later to be Respondent Granata) spoke with Person B near the doorway while Respondent Pagan and Detective White walked further into the apartment (CCRB Ex. 1A at 4, 17, 26-27).

[2] The Tribunal admitted Person B's New York State driver license in evidence (CCRB Ex. 1C).

Person B asserted that she asked to see a warrant several times, and repeated that she did not know Person C. Respondent Granata showed her a piece of paper and said, "This is your warrant. This is what you wanted." Person B told Respondent Granata that the paper was not a warrant, and claimed that it only had Person C's name and the address, [redacted], typed in a gray box without letterhead or a signature. She stated that three other sheets of paper were attached to the warrant, but she was not able to view what they may have contained. The officer asked her how she knew what a warrant looked like, and Person B told him that she knew her legal rights. Person B claimed that the officer laughed at her and said, "You have no rights" (CCRB Ex. 1A at 4, 50, 52, 58-59, 71-72).

While Person B examined the purported warrant, Respondent Pagan and Detective White searched several rooms of her apartment.[3] She claimed that they opened the bathroom door, walked into the bathroom as well as the three bedrooms on the top floor, and looked through the closets. Person B further asserted that the two officers also searched her backyard and kitchen. She did not see the two officers searching the kitchen cabinets, but she recalled hearing them being opened and slammed. Person B conceded that some of her kitchen cabinets are large enough that a human could fit inside them (CCRB Ex. 1A at 4-5, 17, 36-38, 42).

Person B called 911 to report that there were three police officers inside her home who had entered without a warrant. She explained that she wanted verification that the officers were authorized to be there (CCRB Ex. 1A at 5-6, 54). A recording of the 911 call was admitted into evidence along with a corresponding transcript (CCRB Ex. 4, 4A). On the

[3] The Tribunal admitted in evidence a drawing [redacted] made during her CCRB interview of the floorplan of her apartment. The drawing depicted [redacted] (CCRB Ex. 1D).

recording, Person B told the 911 operator that police officers were at her home with a warrant, but "it [did not] look like an actual warrant. [It was] just a picture with somebody's ID profile. And [she] want[ed] their ID number, their badge number and everything." She also told the 911 operator that "they actually forced themselves in the home. They put their foot in the door and said that it was a warrant and wouldn't leave...And [she] didn't give them authorization for anything. [She knew her] rights... [She wanted] their badge numbers." The 911 operator transferred Person B to an Internal Affairs Bureau ("IAB") officer who told her that he was going to have a supervisor respond to the location (CCRB Ex. 4A at 2-3, 5-6).

After the 911 call ended, Person B stated that the officer with brown hair wearing a cap (determined later to be Detective White) went into the [redacted] living quarters, where he questioned her [redacted] and [redacted]. Person B stood in her living room and asked Respondents several times to see the warrant. She claimed Respondents ignored her when she asked them to provide their names and badge numbers, but conceded that the officers' badges were visible on the left side of their jackets in the chest area (CCRB Ex. 1A at 6-7, 55-56, 62-64, 80).

According to Person B, Detective White then called Respondent Pagan to join him downstairs while she continued to argue with Respondent Granata. Person B's 13-year-old [redacted] told her that she overheard Respondent Pagan and Detective White say "Person A," the name of her [redacted], whom she asserted was in Florida at the time of this incident. Person B then asked Respondent Granata, "You're looking for Person C. Now, what's this with Person A?" She reiterated to him that she still needed to see a warrant and that she knew her rights. The two officers emerged from the basement with her [redacted], and

Person B demanded that the officers "[g]et out of [her] house." Person B claimed that Respondent Granata smirked and shrugged. She stated that she retrieved her cell phone from her bedroom, returned to the front door area and began a video recording because she did not know what else to do (CCRB Ex. 1A at 7-8, 29, 55-56, 67-69).

Person B's video recording was admitted into evidence as CCRB Ex. 5. The following is a summary of the events depicted on the video.

00:02	Person B said, "I want your badge number and your car."
00:04	Respondent Granata recited his badge number to Person B. Respondent Granata
00:08	said, "So, where's Person A?"
00:09	Person B claimed that she was not shown a warrant.
00:11	Respondent Granata told Person B several times that he showed her the warrant, but she argued that they only showed her the warrant for Person C. Respondent
00:17	Granata asked Person B, "So, where's Person C? I mean where's Person A?" Person B said, "You were looking for Person C right?"
00:19	Respondent Granata said, "And Person A."
00:21	Person B asked to see the warrant several times.
00:22	Respondent Granata told Person B that he already showed the warrant to her and
00:24	shuffled the pieces of paper in his hands. Person B said, "You showed me for Person C [redacted] or Person C or Person C
00:25	whoever. That's who you showed me for." Person B said, "Get out of my house" to the officers, and stated that
00:37	"They forced themselves in." Respondents left her apartment, entered the common area of the residence, and
00:41	began walking upstairs to the second floor. Person B followed them into the common area of the building and said, "Perfect.
00:54	This is what my tax paying money goes to." The beginning portion of Respondent Granata's statement was not clearly heard
00:56	on the video but he appears to say, "Yeah, you pay taxes." Person B yelled, "Yeah, I do. Oh, is that a racial comment? That's a racial slur?
00:58	Excuse me? I'm sorry? I don't pay my taxes?"

(CCRB Ex. 5 at 00:00-01:10).

Respondent Pagan testified that on January 29, 2018, he knocked on the door of the [redacted] at [redacted], and a Hispanic female (determined later to be Person B opened the door. At that point, he believed there to be a "reasonable probability"

that Person C's residence was still [redacted] based on the results of the computer checks (T.170 171). Respondent Pagan identified himself as a member of service, and told Person B that "there was a bench warrant for the location, and that we need to make sure that this person's not in there" (T. 117). He asserted that Person B did not identify herself and attempted to close the door, and he placed his foot in the doorway to prevent it from closing. According to Respondent Pagan, when she opened the door again he removed his foot. Person B asked why the detectives were there, and Respondent Pagan explained to her that they had an active bench warrant for a subject that they had reason to believe resided at this location. She proceeded to provide her name and inform him that she was not Person C. Respondent Pagan testified that he recognized Person B's name and thought that Person A may have been inside the home because he knew that Person B and Person A were in a relationship (T. 113-117, 140-142).

Respondent Pagan testified that he told Person B that he had the authority to enter her home based on the bench warrant, which resulted in her consenting to the detectives entering her apartment. Respondent Pagan testified that Person B did not verbally invite them into the apartment, but "she stepped back and motioned with her hand, basically, showing [him] that... [he] was allowed to enter". He claimed that Person B did not voice any objection when he entered the apartment, and she did not indicate, at any point, that she had no choice but to let him inside the apartment. Respondent Pagan asserted that neither he nor any other member of service physically forced their way into the apartment (T. 120-123, 142 145, 152-153).

Respondent Pagan testified that he searched the areas on the [redacted] level where someone may have hidden, including the bedrooms. He then went [redacted] to search the

[redacted], where he encountered an elderly male who identified himself as [redacted]. Respondent Pagan asked him about the bench warrant for Person C. After he told Respondent Pagan that he did not know Person C, Respondent Pagan asked him if he knew about the I-Card subject, Person A. Respondent Pagan asserted that Person B went "berserk" and became very upset when he asked about Person A, screaming and demanding that the detectives get out of the house (T. 121-124, 154-156).

Respondent Granata's testimony was largely duplicative of Respondent Pagan's, on the issue of implicit consent, he also testified that Person B gestured for the detectives to enter her apartment. Respondent Granata testified that he showed Person B a copy of the bench warrant, then attempted to build a "rapport" with her for two to three minutes as he explained the legality of the warrant and his purported authority to enter into her apartment. He conceded that after he and the other detectives entered the apartment, they proceeded to do a "brief, quick check on the first floor." Respondent Granata stated that he remained standing in the door frame of the [redacted] front door with Person B and [redacted] while Respondent Pagan went downstairs to search the [redacted] of the apartment. He claimed that Person B did not seem to have an issue with the detectives' being inside her residence until Respondent Pagan went to the [redacted]. Respondents and Detective White then left the apartment to continue their investigation on the [redacted] floor (T. 42-45, 73, 78, 82-83, 99).

Respondent Granata testified that he went upstairs to see whether the subjects they were looking for lived in the [redacted] apartment. Unbeknownst to him, Person B was recording Respondents while they were walking up the stairs. Respondent Pagan remembered Person B screaming and cursing, but did not recall what she said. Respondent

Granata asserted that Person B was using profanity, being vulgar, and behaving irrationally. He heard her state, "This is where my tax paying money goes to" (T. 89; CCRB Ex. 5 at 00:54-00:55). He claimed that his response to Person B was, "Yeah, I pay taxes too," rather than "Like you pay taxes" (T. 50-51; CCRB Ex. 5 at 00:56-00:57). Person B ecame very upset and Respondent Granata had no further conversation with her. As there was "nothing more to be said to [Person B]," he shifted his attention to the individual that opened the door to the [redacted] floor apartment, and completed interviewing the [redacted] floor occupants. Respondents and Detective White left the residence then met a patrol sergeant who had responded to the location as a result of Person B's 911 call. Respondents explained to the sergeant what had transpired inside the apartment, then left the location (T. 45, 48, 50-51, 88-92, 124-125).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. In a hearsay case of this nature, particular attention must be paid to the evidence. This Tribunal has held many times that while hearsay is admissible in administrative proceedings, and may be the sole basis for a finding of fact, it must be carefully evaluated before it is relied upon. The more important the evidence is to the case, the more critically it should be assessed (*Police Department v. Acosta*, OATH Index No. 464/00 [Jan 7, 2000]). Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]).

I find that Person B's statement to CCRB, although hearsay, possesses sufficient indicia of reliability to be generally credible. On the issue of Respondent Pagan's claim of authority to enter Person B's apartment, her factual assertions were

corroborated by his in-court testimony. Her claim that Respondent Granata made a disparaging remark was partially corroborated by the video recording she made as the police officers left her apartment.

I further find Respondent Pagan to also be credible, even considering his interest in this litigation.

Finally, I find Respondent Granata's testimony to be credible, except with respect to the words he spoke to Person B on the stairway to the [redacted] floor of the premises. I find his testimony in that regard to be self-serving and inconsistent with other credible evidence in the case.

On the issue of consent, Person B's denial that she consented appears to be irreconcilable with Respondent Pagan's assertion that she did consent, albeit implicitly rather than expressly. As set forth more fully below, the resolution of the consent issue is a mixed question of law and fact for which I will assume that both parties were truthful from their various perspectives.

Disciplinary Case No. 2018-19867

1. Entry Without Sufficient Legal Authority

I find that CCRB has met their burden of proof by a preponderance of the relevant, credible evidence that Respondent Pagan entered and searched Person B's apartment without sufficient legal authority.

Unlawful Entry

An arrest warrant generally affords a police officer authority to enter a dwelling in which the subject of the arrest warrant lives, when there is reason to believe that she is there (*Payton v. New York*, 445 U.S. 573, 603 [1980]). Criminal Procedure Law § 530.70 (2) provides that a bench warrant "must be executed in the same manner as a warrant of arrest, as provided in CPL

§ 120.80, covering arrest warrants." Officers in possession of a bench warrant are allowed to enter a residence if they reasonably believe the target to be present, just as they would for an arrest warrant (*see People v. Jones*, 99 A.D.3d 1254 [4th Dep't. 2012][police lawfully entered defendant's house to execute a bench warrant for defendant's brother, where officers reasonably believed that the brother, who resided at the same house, was present when they entered]; *People v. Cabral*, 147 Misc. 2d 1000, 1004 n.3 [Sup. Ct., Kings County 1990][nature, function and manner of bench warrant are similar to arrest warrant]). A reasonable belief, for these purposes, is based upon an assessment of the totality of the circumstances (*see People v. Paige*, 77 A.D.3d 1193, 1194 [3rd Dept. 2010], *aff'd*, 16 N.Y.3d 816 [2011]).

Respondent Pagan would have been permitted to enter Person B's's apartment based on the authority provided by the bench warrant, if he reasonably believed Person C lived at [redacted] on January 29, 2018. I do not find, however, that such belief was reasonable based on the information known to Respondent Pagan at the time. His belief was primarily based on locating a 2012 bench warrant and 2012 "C" summons for Person C that listed her address as [redacted]. Respondent Pagan testified that he ran several computer checks which led him to conclude that there was a "reasonable probability" that Person C still resided at [redacted] in 2018. The quantum of evidence provided by the computer checks to which he testified, however, is insufficient to support his surmise that the location was still Person C's residence in 2018 (*see Disciplinary Case Nos. 2014-12437, 2014-12438 & 2014-12439* [Oct. 13, 2015][Seventeen-year detective with no prior disciplinary record forfeits three vacation days for entering an apartment without sufficient legal authority. Respondent lacked the authority to forcibly enter the apartment. Under the outstanding bench warrant for the suspect there was insufficient evidence from which to draw a conclusion that the apartment was the suspect's

residence]; *compare Disciplinary Case Nos. 2016 15180 & 2016-15182* [May 23, 2017][Fifteen-year detective & eight-year detective found Not Guilty of entering and searching a bedroom without police necessity after detectives developed specific information that the subject of the bench warrant listed the location as her residence and that she was likely to be present at the time]).

While Respondent Pagan asserted that the [redacted] address was listed as one of the most recent addresses that resulted from the TLO System search, he conceded that he did not take any further steps to verify that information. Solely relying on the limited computer checks that suggested [redacted] as one possible address for Person C was an insufficient basis upon which to conclude that she still lived at the location six years after the issued bench warrant. Diligently investigating Person C's whereabouts would have eliminated the mere possibility that she lived at [redacted]. As such, the information was insufficient to support a reasonable belief that Person C resided at [redacted] on January 29, 2018.

Finally, Respondent Pagan conceded that he had not reviewed a photograph of Person C prior to going to [redacted]. When he asserted to Person B that she was, in fact, Person C, he did so without any factual basis. Moreover, when she denied being Person C and offered to show him identification, Respondent Pagan ignored her proffer and pivoted into his mistaken claim of authority to enter the apartment based upon the existence of the 2012 bench warrant. The brevity of Respondent Pagan's prior investigation did not rise to the level of due diligence required to empower him to use a six-year old bench warrant to forcibly enter Person B's apartment and search for Person C.

Based upon the totality of the evidence, Respondent Pagan could not have reasonably believed that Person C was present at [redacted] on January 29, 2018; accordingly, the 2012 bench warrant provided no authority for him to enter Person B's apartment.

Implicit Consent

I next turn to Respondent Pagan's claim that he obtained implicit consent to enter the apartment from Person B. Warrantless arrests, searches, and seizures inside a home are "presumptively unreasonable" (*Payton v. New York*, 445 U.S. 573 [1980]). The Fourth Amendment, however, is not violated every time police enter a private residence without a warrant as certain exceptions are recognized under the law. A well-established exception to the warrant requirement exists where police have obtained the voluntary consent of a party possessing the requisite authority over the premises that police are seeking to inspect (*see People v. Adams*, 53 N.Y.2d 1 [1981], *citing Schneckloth v. Bustamonte*, 412 U.S. 218 [1973]["It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent"]; *see also People v. Feerick*, 93 N.Y.2d 433, 451 [1999]). However, "consent to a search, a relinquishment of constitutional protection...against unjustified official intrusion, must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent" (*People v. Gonzalez*, 39 N.Y.2d 122, 124 [1976]; *see also Disciplinary Case No. 80206/04* [August 17, 2005][no voluntary consent was given where door was opened in response to Respondent's implicit threat that he would break down the door]).

It is unclear whether Person B implicitly consented to the entry of her apartment, based upon the conflicting testimony presented by both Respondents and Person B. It is unnecessary, however, to resolve this as a credibility issue because any putative

consent was vitiated by Respondent Pagan's mistaken claim of authority. The proponent of a consent exception to the Fourth Amendment "bears a heavy burden" (*see People v. Whitehurst*, 25 N.Y.2d 389, 391 [1969]; *see also People v Packer*, 49 A.D.3d 184, 186 [1st Dept.] *aff'd* 10 N.Y.3d 9125 [2008]["It is a basic premise of the law of search and seizure that police-initiated intrusions must be justified at their inception"]). Person B, "unadvised of her actual legal prerogatives," could have relied upon Respondent Pagan's erroneous assertion that the bench warrant authorized him to forcibly enter her apartment and concluded that she had no choice but to allow the detectives to enter (*Packer* at 188).

Despite Respondent Pagan's infirm assertion of authority, it was appropriate for him to seek to "establish a rapport" with Person B: enlisting the cooperation of the public is an invaluable element of proactive policing which inures to the benefit both of Members of Service and the citizens they protect. Any such rapport, however, will be based upon trust that the investigative steps police officers take before they ask for the public's help have minimized the likelihood that a citizen's assistance will aid in the apprehension of the wrong person.

Accordingly, I find Respondent Pagan Guilty of Specification 1.

2. *Search Without Sufficient Legal Authority*

I find that CCRB has also established by a preponderance of the relevant, credible evidence that Respondent Pagan searched Person B's apartment without sufficient legal authority. Once Respondent Pagan entered Person B's apartment, it is undisputed that he searched its interior rooms for the presence of Person C and Person A. As set forth above, the bench warrant provided no authority to enter, let alone search Person B's's apartment, and any action premised upon Respondent Pagan's claim of authority provided by the bench warrant was tainted.

Despite the assertion at trial that Respondent Pagan developed a "rapport" with Person B which resulted in her consent, any such "rapport" preceded by an erroneous assertion of lawful authority would not be voluntary but, in fact, a submission to his claim of authority (*see Bumper v. North Carolina*, 391 U.S. 543, 550 [1968]["When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion -- albeit colorably lawful coercion. Where there is coercion there cannot be consent"]; *People v. Gonzalez*, 39 N.Y.2d 122, 128 [1976]["Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle"]).

Lacking sufficient authority to enter Person B's apartment, and in the absence of obtaining voluntary consent to search or obtaining a search warrant, Respondent Pagan searched her apartment without sufficient legal authority. Accordingly, any search of the apartment was tainted by the initial unlawful entry. I, therefore, find Respondent Pagan Guilty of Specification 2.

Disciplinary Case No. 2018-19866

1. Discourtesy

I find that CCRB has met its burden of proof by a preponderance of the relevant, credible evidence that Respondent Granata was discourteous to Person B without sufficient legal authority. As established by the footage in CCRB Ex. 5, Respondent Granata made the statement "You pay taxes" in response to Person B's's comment "Perfect. This is what my tax paying money goes to." Although Respondent Granata's statement was not clearly captured in its entirety, the end portion of his comment can be heard with clarity, and it aligns

with Person *B*'s claim that he said, "Like you pay taxes." It is unlikely that Respondent Granata said, "I pay taxes too," as the audio portion of the video evidence did not demonstrate that he said "too" when he made the remark. Thus, it is more likely than not that Respondent Granata made the discourteous statement that Person *B* claimed he made.

Respondent Granata's statement was made after he had left Person *B*'s apartment, and she followed him into the common area hallway. The investigation with Person *B* and her apartment had concluded at that point, as Respondent Granata and the two detectives were walking upstairs to take their investigation to the [redacted] floor. Thus, Respondent Granata's statement was gratuitous and served no legitimate purpose.

While it would be speculative to opine on what Respondent Granata may have meant when he made the statement, it is reasonable to infer that the remark was unprofessional. Patrol Guide § 203-09 requires Members of Service to interact with the public "in a professional manner." Making a disparaging, possibly classist statement deviates, from that standard.

Accordingly, I find Respondent Granata Guilty of Specification 1.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined (*see Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent Pagan was appointed to the Department on January 7, 2008, and Respondent Granata was appointed to the Department on January 10, 2005. Information from their personnel records that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

Respondent Pagan has been found guilty of entering and searching an apartment without sufficient legal authority. CCRB has requested that Respondent Pagan forfeit 25 vacation days.

I find this recommendation to be excessive in light of the penalties issued in similar cases involving unlawful entry and unlawful search of a residence (*see Disciplinary Case No. 2015-15012* [June 8, 2017][Fifteen-year sergeant, with no prior disciplinary history, forfeited 10 vacation days after being found Guilty of (i) wrongfully entering an apartment without sufficient legal authority and (ii) searching said apartment without sufficient legal authority]; *Disciplinary Case Nos. 2014-12282, 2014-12283 & 2014-12284* [October 24, 2016][Twelve-year detective, nine-year detective and eight-year detective, with no prior disciplinary records, forfeited seven (7) vacation days each for wrongfully searching an apartment without sufficient legal authority. All Respondents were found Not Guilty of entering the premises without sufficient legal authority]; *Disciplinary Case Nos. 2014-12437, 2014-12438 & 2014-12439* [Oct. 13, 2015][Seventeen-year detective with no prior disciplinary record forfeits three (3) vacation days for entering an apartment without sufficient legal authority. Under an outstanding bench warrant for the suspect there was insufficient evidence from which to draw a conclusion that the apartment was the suspect's residence. Respondent's teammates forfeited five vacation days each for both entering and searching the apartment]).

I note that Respondent Pagan has a prior formal disciplinary record.

Respondent Granata has been found Guilty of making a discourteous statement to Person B without sufficient legal authority. CCRB has recommended that Respondent Granata forfeit ten vacation days, but I find this penalty recommendation to be excessive for the single specification of discourtesy. Cases involving police officers speaking discourteously support a lesser penalty when profanity is not used and the charge of making a discourteous statement is not in conjunction with additional charges of misconduct, which would warrant a higher penalty (*see Disciplinary Case No. 2018-18951* [Nov. 20, 2019][Fourteen-year

police officer with prior discipline forfeited three (3) vacation days for speaking discourteously and profanely to two civilians. ADCT found that her gratuitous use of profanity was unprofessional, and police officers have an obligation to communicate with members of the public with a greater degree of sensitivity and respect]; *Disciplinary Case No. 2015-13210* [Aug. 15, 2016][Twelve-year police officer, with no prior disciplinary history forfeited seven (7) vacation days for using offensive language toward a civilian and improperly issuing a disorderly conduct summons to said individual without sufficient legal authority. Disinterested witnesses corroborated complainant's allegation that Respondent told him to "shut the fuck up" and told him, "I don't give a fuck about your son"]).

I find that Respondent Pagan's failure to adequately interrogate the databases, to which he had access, to develop a more reliable profile of Person C's likely whereabouts was professional dereliction. I am mindful that he candidly testified that the true object of his investigative efforts was Person A and that the Person C bench warrant was merely a possible means of gaining access to [redacted]. While the forward-leaning posture of his investigation was permissible, his lack of thoroughness undermined his laudable effort to locate a suspect in a criminal offense. I therefore recommend a penalty of seven (7) vacation days.

Respondent Granata's comment to Person B, in addition to being gratuitous and serving no legitimate law enforcement purpose, threatened to erode the public trust which Members of Service work hard to build and maintain. I therefore recommend that he forfeit three (3) vacation days.

APPROVED
JUN 26 2020
DERMOT SHEA
POLICE COMMISSIONER

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE SALVATOR GRANATA
TAX REGISTRY NO. 936692
DISCIPLINARY CASE NO. 2018-19866

Respondent Granata was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, he received 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2017, 2018, and 2019. He has been awarded 11 medals for Excellent Police Duty and one medal for Meritorious Police Duty. [redacted]

Respondent Granata has no formal disciplinary history.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ROBERTO PAGAN
TAX REGISTRY NO. 946089
DISCIPLINARY CASE NO. 2018-19867

Respondent Pagan was appointed to the Department on January 7, 2008. On his last three annual performance evaluations, he received 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2017, 2018, and 2019. He has been awarded one medal for Excellent Police Duty and has received one Commendation. [redacted]

In 2009, Respondent Pagan forfeited 32 pre-trial suspension days without pay and agreed to cooperate with counseling after pleading Guilty to engaging in a physical altercation [redacted].

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials