July 9, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Bennett Shelley**
Tax Registry No. 947489
Strategic Response Group
Disciplinary Case No. 2015-14489

Lieutenant Michael Raso
Tax Registry No. 933235
Strategic Response Group
Disciplinary Case No. 2015-14490 & 2015-14636

The above named members of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on October 26 and 27, 2016, and was charged with the following:

DISCIPLINARY CASE NO. 2015-14489

1. Said Police Officer Bennett Shelley, on or about March 16, 2015, at approximately 23:30 hours, while assigned to the 47th Precinct and on duty, in the vicinity [redacted] Bronx County, abused his authority as a member of the New York City Police Department in that he frisked Person A, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 **STOP AND FRISK**

2. Said Police Officer Bennett Shelley, on or about April 1, 2015, at approximately 01:37 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked Person A, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 **STOP AND FRISK**

DISCIPLINARY CASE NO. 2015-14490

1. Said Lieutenant Michael Raso, on or about April 1, 2015, at approximately 01:37 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked Person A, without sufficient legal authority. **P.G. 212-11, Page 1, Paragraph 2 STOP AND FRISK**

2. Said Lieutenant Michael Raso, on or about April 1, 2015, at approximately 01:37 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] Bronx County, abused his authority as a member of the New York City Police Department, in that he performed a search of a vehicle operated by Person A, without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 2 **STOP AND FRISK**

DISCIPLINARY CASE NO. 2015-14636

1. Said Lieutenant Michael Raso, on or about June 27, 2015, at approximately 2330 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he authorized the entry into a private residence, at the above-mentioned location, without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 **PUBLIC CONTACT – PROHIBITED CONDUCT**

2. Said Lieutenant Michael Raso, on or about June 27, 2015, at approximately 2330 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he authorized the seizure of a sound reproduction device belonging to Leon Brown without sufficient legal authority.
P.G. 214-23, Page 1, Paragraphs (1)-(10) **UNNECESSARY NOISE VIOLATIONS**

In the Memorandum, Assistant Deputy Commissioner Nancy R. Ryan found Police Officer Bennett Shelley Guilty of Specification No. 1 and Not Guilty of Specification No. 2 in Disciplinary Case No. 2015-14489. Lieutenant Raso was found Guilty of Specification No. 1 and Not Guilty of Specification No. 2 in Disciplinary Case No. 2015-14490 and Not Guilty of both Specifications in Disciplinary Case No. 2015-14636.

Having read the Memorandum and analyzed the facts of this matter, I approve the findings and the penalty for Police Officer Shelley in Disciplinary Case No. 2015-14489. I also approve the findings regarding Lieutenant Raso in Disciplinary Case No. 2015-14636. However, in Disciplinary Case No 2015-14490, I disapprove the Guilty finding in Specification No. 1, and I approve the Not Guilty finding in Specification No. 2.

Lieutenant Raso frisked an individual in connection with the issuance of a Criminal Court summons. I have determined that Lieutenant Raso's actions were reasonable, in consideration of the relevant Patrol Guide provisions in effect at that time, and under the totality of the circumstances. Therefore, Lieutenant Raso will be found Not Guilty in this matter.

James P. O'Neill
Police Commissioner

POLICE DEPARTMENT CITY OF NEW YORK

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Bennett Shelley
Tax Registry No. 947489
Strategic Response Group
Disciplinary Case No. 2015-14489

Lieutenant Michael Raso
Tax Registry No. 933235
Strategic Response Group
Disciplinary Case No. 2015-14490 & 2015-14636

Charges and Specifications:

Disciplinary Case No. 2015-14489

1. Said Police Officer BENNETT SHELLEY, on or about March 16, 2015, at approximately 23:30 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked Person A, without sufficient legal authority.

   P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

2. Said Police Officer BENNETT SHELLEY, on or about April 1, 2015, at approximately 01:37 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked Person A, without sufficient legal authority.

   P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

Disciplinary Case No. 2015-14490

1. Said LT. MICHAEL RASO, on or about April 1, 2015, at approximately 01:37 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] abused his authority as a member of the New York City Police Department, in that he frisked Person A, without sufficient legal authority.

   P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

2. Said LT. MICHAEL RASO, on or about April 1, 2015, at approximately 01:37 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] abused his authority as a member of the New York City Police Department, in that

he performed a search of a vehicle operated by Person A, without sufficient legal authority

P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

Disciplinary Case No. 2015-14636

1. Said LT. MICHAEL RASO, on or about June 27, 2015, at approximately 2330 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he authorized the entry into a private residence, at the above-mentioned location, without sufficient legal authority.

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

2. Said LT. MICHAEL RASO, on or about June 27, 2015, at approximately 2330 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [redacted] engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he authorized the seizure of a sound reproduction device belonging to Leon Brown without sufficient legal authority.

   P.G. 214-23, Page 1, Paragraphs (1)-(10) - UNNECESSARY NOISE VIOLATIONS - GENERAL PROHIBITIONS

Appearances:

For CCRB-APU: Simone Manigo, Esq.
Civilian Complaint Review Board
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For the Respondents: Craig Hayes Esq.
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Philip Karasyk, Esq.
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Hearing Dates:

October 26, 2016 and October 27, 2016

Decision:

Case No. 2015-14489 – Guilty of Specification 1; Not Guilty of Specification 2.
Case No. 2015- 14490 – Guilty of Specification 1; Not Guilty of Specification 2.
Case No. 2015-14636 – Not Guilty of Specifications 1 and 2.

Trial Commissioner:
ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 26, 2016 and October 27, 2016. Respondents, through their respective counsel, entered pleas of Not Guilty to the subject charges. CCRB called Leon Brown and Carresse Warren as witnesses for Case No. 2015-14636. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Shelley Guilty of Specification 1 and Not Guilty of Specification 2 in Case No. 2015-14489. I find Respondent Raso Guilty of Specification 1 and Not Guilty of Specification 2 in Case No. 2015- 14490 and Not Guilty of both specifications in Case No. 2015-14636.

FINDINGS AND ANALYSIS

There are three dates, March 16, 2015, April 1, 2015 and June 27, 2015, where incidents are alleged to have happened in these cases. I will address each date separately.

March 16, 2015 – (Specification 1 of Disciplinary Case 2015-14489)

The only Respondent charged with misconduct for this date is Respondent Shelley. The specification is that Respondent Shelley frisked Person A without sufficient legal authority. Despite being subpoenaed and notified of the court date by CCRB, Person A did not appear to testify. A transcript and audio recording of his interview with a CCRB investigator

were admitted into evidence as CCRB Exhibits ("CCRB Exs.") 1A & 1B. The investigator who actually conducted the interview is no longer employed by CCRB, and also did not testify.

In his CCRB interview, Person A stated that at about 10:40 PM, he was talking to a friend in front of the friend's house near [redacted] He had just come from a deli and had only a bottle of water, his ID, car keys, money and a phone on him. (CCRB Ex. 1A, 4-7) He had nothing in his hands. (CCRB Ex. 1A, 9) A car with three undercover police officers drove up to him and the driver asked him his name. He stated that he recognized these undercovers were police officers because, "they always stop me with that car." (CCRB Ex. 1A, 13) He specifically knew Respondent, who he saw in the back seat of the car, because, "he used to go to court with me. . . ." (CCRB Ex. 1A, 19) Person A recalled that as soon as he told the officers his name, they got out of the car and Respondent frisked him. He described Respondent's actions as first patting him down by touching his back and his waist and then going into his pockets. (CCRB Ex. 1A, 14-15) Person A stated that Respondent pulled the car keys out of his back pocket and used them to open the car, which Respondent and the passenger in the police car then searched. (CCRB Ex. 1A, 16-18) (Note – There is no unlawful search of either Person A or his car charged in this case.)

At trial, Respondent Shelley attempted to explain his reasons for frisking Person A. He testified that he was assigned to Anti-Crime on March 16, 2015, and was in plain clothes in the rear middle seat of an unmarked car with Sergeant Casey and Officer Whalen. He was familiar with the neighborhood and many of the people in the area, as it was one of his major posts during his two years of Impact assignments. (Tr. 51-52) He described it as a high narcotics trafficking and violent area. (Tr. 53)

On this day, at approximately 11:00 PM, he observed two males on the sidewalk, who were leaning against a car parked on a hydrant and talking while looking at something in their hands. Respondent was still in the car about a half block away when he saw the object. He was not sure of the dimensions or color of the object or how it was being held, nor could he describe the object in any other way. He further testified that as soon as the males made eye contact with the police vehicle, they turned away and put the object away. (Tr. 53, 66-67)

The officers pulled their vehicle up alongside the men and the driver, Officer Whalen, pointed out the double parked cars and asked the men their names. Respondent Shelley slid over to get a better look at the men and recognized Person A from a previous firearm arrest. (Tr. 50, 54, 68) When Respondent heard Person A give a false name to Officer Whalen, it raised his suspicion even further. He went on to explain that Person A is from [redacted] which he noted was "the area the crew would come from to do shootings" in the location where Person A now was present. (Tr. 54)

Respondent exited the car and approached the male who was with Person A. He recognized this male as someone who had been involved in a recent shooting in a bodega. Respondent frisked this male in the area that he had been unable to see previously when the man turned and put the object away, "to make sure there was no weapon they were hiding at the time." The frisk yielded no results. (Tr. 55)

Respondent testified on direct examination that he knew Person A was also frisked in the area that had not been visible to the officers from the vehicle, though he did not recall if he had personally conducted the frisk. (Tr. 55) On cross-examination, however, Respondent Shelley agreed that he did frisk Person A. (Tr. 71) He asserted that the frisks were legally justifiable, because, "[b]oth of them were known to me as being involved in shootings, Person A

from [redacted] from an area that was having issues with the area he is in now Most of the times, they would come with some sort of weapon to protect themselves, and I see these two individual talking, hiding an object as soon as they see a police vehicle pull up, then when asked about pedigree lie about their name immediately until I can move over and see who it was." (Tr. 56) He contended that this combination of factors made him think that, "the item that I didn't know what it was that they concealed as soon as they saw a police vehicle was possibly a weapon." (Tr. 68)

Respondent acknowledged on cross-examination that there had been no radio calls that Person A was involved in any type of shooting or gang activity that day. (Tr. 65) He also acquiesced that he did not see anything indicative of a weapon that day. (Tr. 70)

The first issue to be addressed is whether Respondent actually frisked Person A, who specifically stated it was Respondent Shelley who frisked him, was clear in his statement that he knew Respondent from a previous encounter. (CCRB Ex. 1A at 10, 19) Respondent, through his own testimony, confirmed that he and Person A were known to each other and that he had previously arrested Person A. (Tr. 50, 68) While Respondent indicated on direct examination that he was not sure if he was the officer who frisked Person A, he admitted on cross-examination that he had indeed frisked Person A. Based on Person A's unequivocal naming of Respondent Shelley, an individual known to him, as the officer who frisked him, along with Respondent Shelley's initial failure to deny that he frisked Person A coupled with his admission of doing so during cross-examination, I find that the preponderance of the credible evidence indicates Respondent Shelley did frisk Person A.

The question then becomes whether he had sufficient legal authority to do so. Patrol Guide Procedure 212-11 (from effective date 8/1/13) states that: When a uniformed member of

the service reasonably suspects a person has "committed, is committing or is about to commit a felony or a Penal Law misdemeanor," that officer may frisk a person if they "reasonably suspect [they] or others are in danger of physical injury." The Patrol Guide specifically outlines the following factors as contributing to reasonable suspicion:

a. The demeanor of the suspect.
b. The gait and manner of the suspect.
c. Any knowledge the officer may have of the suspect's background and character.
d. Whether the suspect is carrying anything and what he is carrying.
e. Manner of dress of suspect including bulges in clothing.
f. Time of day or night.
g. Any overheard conversation of the suspect.
h. The particular streets and areas involved.
i. Any information received from third parties.
j. Proximity to scene of crime.

According to Respondent Shelley, Person A was initially called over to the police car to be questioned about a car parked near a hydrant and about the object they saw him hide. (Tr. 66) At that point in the encounter, there was no reasonable suspicion articulated by Respondent Shelley that Person A had committed, was committing or was about to commit a felony or a Penal Law misdemeanor.

It appears to be Respondent's position that several of these factors, which may have contributed to reasonable suspicion that Person A was committing the felony of gun possession, became apparent as the encounter with Person A continued. Once Respondent Shelley recognized Person A, he took into consideration his prior arrest for gun possession. Person A's demeanor also gave Respondent pause when he realized that Person A had lied about his name. He also testified that the particular area where the interaction transpired was "feuding" with people from Person A's neighborhood. (Tr. 52) A fourth factor heightening Respondent Shelley's suspicion was that he had seen Person A carrying "some object."

Finally, he was concerned that the man Person A was with had been involved in a recent shooting.

While these factors recounted by Respondent Shelley are important, Respondent Shelley did not fully articulate in his testimony the key requirement for conducting a frisk, which is that he felt that he or others were in danger of physical injury. *See People v. Manning*, 51 A.D.2d 933 (1st Dep't 1976) (the fact that police officers knew that a defendant had a criminal record and was known to carry a gun was not justification for stopping and frisking the individual); *see also Matter of Darryl C.*, 98 A.D.3d 69, 76-77 (1st Dep't 2012) ("Vague concerns about age and gender, presence in a bad neighborhood, and nervousness upon being confronted, all fall short of a reasonable suspicion that [a defendant] personally presented an actual and specific danger to the officer's safety.") Respondent did not see anything that he could say resembled a weapon and confirmed on cross-examination that he did not see anything even indicative of a weapon that day. In fact, on further cross-examination, he admitted that even after seeing the object, the primary objective in approaching Person A was to question him about the vehicle that was parked in front of the hydrant. (Tr. 66-69) As there was no sufficient justification for a frisk, I therefore find that Respondent is Guilty of Specification 1 of Case No. 2015-14489.

April 1, 2015 (Specification 2 – Case No. 2015-14489; and Specification 1 and 2 of Case No. 2015-14490)

On this date, Respondent Shelley and Respondent Raso are both charged with unlawfully frisking Person A and Respondent Raso is charged with unlawfully searching Person A's car. Person A did not appear to testify concerning this incident, but, as noted previously, his interview with a CCRB investigator was introduced into evidence.

Person A told the CCRB investigator that he was going to the store with a friend in the vicinity of [redacted] at around 11:00 PM. (The investigator asked about the incident on March 31st; the charged date is on or about April 1, 2015). (CCRB Ex. 1A, 22-23) He parked his car and as he was walking across the street, he saw the black police car with Respondent Shelly and Respondent Raso inside. (CCRB Ex. 1A, 25) They told him to get back to his car. Person A alleged that when he asked why, Respondent Raso opened the car door and hit him in the hand. (CCRB Ex. 1A, 27) He told the investigator that he then put his hands in the air and Respondent Raso grabbed him by his jeans, pulled him back to his car, and frisked him. He noted that he did not have any ID on him and only had his car keys in a back pocket. (CCRB Ex. 1A, 28-29)

Person A recalled that after Respondent Raso patted him down, he asked him where his keys were and he responded they were in his back pocket. As he started to reach for them, Respondent Raso "just took" them and opened the car. Person A alleged that Respondent Shelley then came and frisked him and asked where his ID was. He told him it was in the center console. He asserted that both Respondents then searched his car, with Respondent Raso searching the trunk. (CCRB Ex. 1A, 29 33) When asked if he gave the officers permission to search his car, Person A responded, "No. I didn't give them permission. I didn't give them permission to dig in my car. Nothing." (CCRB Ex. 1A, 33)

Respondents provided a markedly different narrative of the encounter. Respondent Raso testified that he was driving in the vicinity of [redacted] on April 1, 2015, at approximately 1:20 AM, when he observed a male, who he later learned was Person A, urinating near a car. After Respondent Shelley confirmed that the male was urinating,

Respondent Raso turned his car around with the intention to stop Person A and issue him a summons. (Tr. 27)

As Person A crossed in front of the police car. Respondent Shelley identified him to Respondent Raso as the person they arrested about ten months ago for possession of a loaded firearm. Respondent Raso asked Person A to stop but he just kept walking. When he repeated his direction to stop, Person A started walking towards the police car and said he was going to file a CCRB complaint against Respondent Shelley. Respondent Raso then remembered that he had also received information from a previous 911 call that the caller had been shot by someone with Person A's address. (Tr. 26-28, 31-32, 35-36, 62) He exited the RMP and Person A stopped walking. Respondent Raso, "conducted a frisk of his waistband and his chest area, and just areas that I couldn't visibly see that he could possibly be concealing a firearm. Because just to . . . be sure that he did not have a weapon on him at this point." (Tr. 28) He did not recover any weapons. (Tr. 36) Respondent Raso agreed on cross-examination that he frisked Person A because of his past dealings with him. He further acquiesced that he did not see any bulges on Person A nor did he see anything in his hands. The only thing he actually observed Person A do was walk "aggressively" towards the police car. (Tr. 31)

After the frisk, Respondents escorted Person A to his car to issue him the summons. Respondent Raso testified that he asked Person A for ID and he responded that he did not have any on him. Respondent Raso explained to him that if he did not have ID, they would have to bring him back to the precinct and issue the summons there. At that point, Person A gave Respondent Raso his car keys and told him his ID was in the center console. Respondent Raso entered the car and checked the console but the ID was not there. He informed Person A that he had not located the ID in the console but Person A insisted, "it's in the car, just get the ID . .

. ." Respondent Raso returned to the car and, within seconds, found the ID in a piece of clothing that was on the back seat. He then closed the vehicle and Respondent Shelly issued Person A a summons for public urination. (Tr. 28-29)

On cross-examination, Respondent Raso acknowledged that the first time he asked Person A for permission to go into the car to retrieve the ID, he had refused. He acquiesced, however, after Respondent Raso explained that if he could not produce ID, the procedure that would involve handcuffing him, taking him back to the precinct and placing him into a cell, thereby subjecting him to the possibility that somebody might assault him. Respondent Raso explained to Person A that he was "working to release him from the scene." (Tr. 38-41)

Respondent Shelley testified to essentially the same sequence of events as testified to by Respondent Raso, from their initial sighting of Person A to the frisk by Respondent Raso. On both direct and cross examination, Respondent Shelley denied that he frisked Person A. (Tr. 48-51, 60) On cross-examination, a question and answer from Respondent Shelley's CCRB interview was read into the record, as follows: "Question: Okay, you can see it. Okay. You said that, that you frisked him . . . Answer: Yes." Respondent Shelley suggested that if the investigator had been asking whether he himself had frisked Person A, he might have misheard him. He reiterated that he recalled only that Person A was frisked. (Tr. 58) Respondent Shelley further testified that he observed Respondent Raso frisk Person A so he knew he had no weapon on him. (Tr. 61)

Respondent Shelley is charged with the unlawful frisk of Person A on this date. I find him Not Guilty of that specification. In his testimony at trial, he denied that he frisked Person A on April 1, 2015. I credit that denial. In addition to the convincing manner in which he testified, I find that it is more likely than not that Respondent Shelley would not frisk Person A

after he saw his superior, Respondent Raso, frisk Person A. It makes sense that once the Lieutenant (Respondent Raso) had found no weapons during a frisk, there would then be no reason for Respondent Shelley to verify whether his Lieutenant had missed something. The fact that Respondent Shelley responded yes to a question during his CCRB interview when asked if "you" frisked him is not dispositive as he was being questioned about an incident that involved both him and Respondent Raso and in the answer preceding that question, Respondent Shelley was discussing what "we" did.

Respondent Raso admitted that he did frisk Person A. As discussed above, Patrol Guide Procedure 212-11 (from effective date 8/1/13) states that: "When a uniformed member of the service reasonably suspects a person has "committed, is committing or is about to commit a felony or a Penal Law misdemeanor," that officer may frisk a person if they "reasonably suspect [they] or others are in danger of physical injury." Also as noted above, while knowledge of a suspect's background, which in this case was the knowledge that Person A had previously possessed a loaded firearm, is one factor that may be considered when determining if reasonable suspicion exists, it alone is not sufficient. Police officers may not frisk someone they observe on the street merely because they know that person previously possessed a weapon. In this case,

Respondent Raso admitted that he frisked Person A based on his past dealings with him. He added that Person A walked aggressively towards the car, but he also testified that Person A had stopped before he frisked him. Respondent Raso never articulated any other factors which would have lead him to reasonably suspect that he or others were in danger of physical injury. I therefore find that Respondent Raso did unlawfully frisk Person A and is Guilty of Specification 1 of Case No. 2015-14490.

With regard to the charge pertaining to the search of Person A's car. I credit Respondent Raso's testimony that he did not search Person A's car. but rather went into the car with Person A's permission to retrieve his ID. Respondent Raso testified in a credible manner based on both his demeanor and straightforward responses to questions on both direct and cross- examination. For example, he admitted that Person A first told him he could not go into the car to get the ID. In addition, there is corroboration for Respondent Raso's version of events in that Person A told the CCRB investigator that he did not have his ID on him when he was stopped. I find that CCRB has not proven by a preponderance of the credible evidence that Respondent Raso unlawfully searched Person A's car, and I therefore find him Not Guilty of Specification 2 of Case No. 2015-14490.

June 27, 2015 (Specifications 1 and 2 of Case No. 2015-14636)

It is undisputed that on the evening of June 27, 2015, there was a party going on in the backyard of [redacted] in the Bronx. An estimated 25 to 100 people were there, including the family that lived next door at [redacted] (Tr. 116, 159) Music was being played on two speakers in the backyard by Mr. Leon Brown, who lived at the address with [redacted] and Ms. Carresse Warren. (Tr. 114) Police officers arrived at the party and seized the speakers. There is a video clip of the police going into the basement area of the house to take the speakers as Mr. Brown was in the process of moving them from the backyard area to the basement. (CCRB Ex. 3) The issues in the case are whether Respondent Raso authorized entry into a private residence and/or authorized seizure of the speakers without sufficient legal authority.

Mr. Brown testified that he was the DJ at the party that evening. The music was playing through two 15 inch speakers, which were located in the backyard from around 7:00 PM until

10:00 PM. (Tr. 116-17) Police officers arrived at approximately 10 PM and Mr. Brown recalled they told him to turn off the music because "they had been there already and that's the second time so I have to turn it off." Mr. Brown stated he turned off the music. He did not recall if the police had also been to his house the prior week. (Tr. 118)

Mr. Brown testified on direct examination that the police next asked him to pack up the speakers because they were going to take them. (Tr. 118) He packed them up and one officer, who he could not describe, told him he was going to the front yard "to make a confirmation" as to whether there had been a prior warning. (Tr. 119) On redirect examination, Mr. Brown explained that this officer told him he was going to take the speakers but at the same time stated that he "was going to make a call to confirm if he [was] supposed to take them or not. (Tr. 141) Mr. Brown said the music was already off before this officer spoke to him because he understood that when the police show up, "you have to turn it off and let them talk. After you turn it off, you can turn it back on after they leave." (Tr. 120)

While he was standing there waiting, another officer instructed him to pack up the speakers. He started packing them up and bringing them into the basement with help from his brother. (Tr. 121) Mr. Brown testified that he walked past an officer to go into the basement and after putting the speakers in the basement, he went back for his laptop. As he was bringing that into the basement, the officer started walking behind him. He did not realize he was being followed and was inside talking to his brother, [redacted], when he heard his "baby mother" screaming out. She was telling the officer not to go into the house. Mr. Brown then turned and told the officer not to come in because he did not have a warrant. (Tr. 121-22) He contended that the officer told him to get out of his way and started holding him by the neck to push him into the house. This officer, and another officer at the scene, attempted to hold him in a corner in

order to get the speakers and remove them from the basement even though he had not given them permission to do so. (Tr. 123-25) While the officers were in the basement, his brother took video footage. (CCRB Ex. 3)

On cross-examination, Mr. Brown acknowledged that the police had been at his house many times before that day about noise complaints and that he was aware that a number of his neighbors had made complaints about noise from his home on multiple occasions. (Tr. 133) He also confirmed that the police had confiscated his speakers on a prior occasion in 2013. (Tr. 134) When pressed, he estimated that the police had come to his house about three times prior to June 27, 2015, because of noise complaints, and that one of those visits occurred a week or two before June 27, 2015. (Tr. 134-35) Mr. Brown further conceded on cross-examination that despite the fact the police had already taken his speakers, he continued to play music at the level he thought was acceptable, insisting his music was "not loud " (Tr. 136) With regard to June 27, 2015, Mr. Brown agreed that he packed up his speakers and started to walk them into his house that night despite the fact that the police told him they intended to take them. (Tr. 138-40)

Carresse Warren, who lived at [redacted] with her brother, Person B, and her daughter's father, Leon Brown, also testified. She estimated police came to the house, "about four to five times in the summertime," but noted that Mr. Brown was not at the home at those times. Ms. Warren testified that the police would come concerning noise complaints and, "the majority of time write summonses." (Tr. 144) She further recalled on direct examination that the last time police were at her home before this incident was in 2014 when they took speakers and wrote a summons. (Tr. 145)

On June 27, 2015, they were having a party in the backyard for their next door neighbor's anniversary. (Tr. 145) Ms. Warren described that there was a driveway that separated their

house from the neighbors and the backyard is, "like a lot type of setup." (Tr. 146) The music had already been turned down because someone was making a speech when the police arrived. (Tr. 146-47) She recounted that the police came into the backyard and an officer named Steven or Stevenson told her brother that they could still have the party but without music. She testified that once Mr. Brown saw the police lights, he started packing up and moving his equipment into the basement. (Tr. 147-49) She contended that police had not been at the residence earlier that evening and none of the neighbors had come over to complain about the noise level of the music. (Tr. 148)

Ms. Warren testified that she then "saw" two officers talking about going to see where the speakers were being put. One officer proceeded to walk through the back door and Ms. Warren told him "you can't go inside . . . without a warrant." (Tr. 150) She called to Mr. Brown to shut the door but by that time, the officer was already in front of him so Mr. Brown continued to talk to him. Ms. Warren testified that as she was holding her three year-old, the officer "pushed my daughter's father. Literally bombarded him into getting his way into the house." (Tr. 150) Three or four other officers then came in and everything calmed down. (Tr. 152) She subsequently reported the incident to the CCRB. (Tr. 153)

On cross-examination, Ms. Warren acknowledged that on the night of the party, she was aware that the police had come to the house about a week before for noise complaints. (Tr. 158) She also agreed that she heard two officers saying they were going to take the speakers, but testified that Mr. Brown was putting the speakers away before that. (Tr. 160) She stated that Mr. Brown was on his way out of the basement when the officer tried to push his way inside. (Tr. 162) She further noted that Mr. Brown was not with her when she heard the police say they were going to take the speakers. (Tr. 163)

Respondent Raso was assigned as the Special Operations Lieutenant in the 47 Precinct on June 27, 2015. He stated he was familiar with the location of [redacted] from having responded there himself approximately five times for complaints, including loud music. (Tr. 170-71) As part of his duties, he also familiarized himself with 311 reports and had reviewed several pertaining to noise complaints at this address and [redacted] which he described as having an adjoining back yard. (Tr. 179, 193-95)

Respondent Raso recounted that he had been to [redacted] approximately a week before June 27, 2015, due to a noise complaint. His precinct commander directed him to the location to see if he could resolve the noise problem. When he arrived on that earlier date, he recalled there was a loud party going on and he spoke to Person B, who was a party participant residing at the address. Respondent Raso testified that he explained to Person B that there were numerous complaints about noise at the location. He informed Person B that if he had to come back to the location, someone would receive a summons and the speakers and sound equipment could be seized. Following this conversation, the music was turned down that evening. (Tr. 172-73)

On June 27, 2015, Respondent Raso again received a call from his precinct commander informing him that a community member hade made a noise complaint concerning [redacted] The commander told Respondent Raso that the problem had to be solved and specified that these problems cannot always be solved with warnings, so that "if the need to issue a summons and remove the property [was] reasonable," that is what should be done. (Tr. 204-05) On cross-examination, Respondent Raso acknowledged that in his CCRB interview when asked if the commander gave him any instructions about how to handle the noise complaint, he answered, "No." (Tr. 216-18) Respondent Raso contacted Sergeant Api and told him he was

going to respond to the location and that he should have his personnel on standby to respond to the location. (Tr. 205)

Respondent Raso went to the complainant's home at [redacted] When he arrived, he heard loud music, which he identified as coming from [redacted] The complainant told Respondent Raso that the loud noises kept happening at the location despite his frequent complaints over a long period of time. While inside the complainant's house, Respondent Raso felt vibrations from the music coming from [redacted] and he also observed the complainant's two young children who were awake, appeared to have been crying, and looked exhausted. (Tr. 206-07)

After interviewing the complainant, Respondent Raso called Sergeant Api and told him to respond to the location and instructed that if it was established that the party hosts were the same individuals who had previously been warned, a summons would be issued and the sound devices would be removed. (Tr. 207) Respondent Raso recalled he then left the area for a short time, either for a call or a priority radio run or to return to the stationhouse, as he had explained at his CCRB interview. (Tr. 225) By the time he returned, Sergeant Api was already at the residence and officers had two speakers in their possession in the backyard. Respondent Raso identified Mr. Bynum, as both a host of the party and the male to whom he had issued a warning the prior week, a fact that Person B acknowledged when Respondent pointed it out. At that point, he made the decision to seize the speakers and issue a summons. He directed Sergeant Api to have his personnel take the speakers and load them into a van. (Tr. 207-10, 226) Respondent Raso was later informed that in order to prevent the speakers from being locked away in the house, an officer entered the house and removed the speakers. (Tr. 210, 238) He did not believe the officers forced their way into the home to take the speakers. (Tr. 239)

Respondent Raso was questioned on cross-examination about his understanding of Patrol Guide Section 214-23 (Unnecessary Noise Violations – General Prohibitions). He agreed the Patrol Guide required interviewing the complainants as a first step before making a determination that the noise was unreasonable. He believed that he third step of attempting to correct the condition by warning the violator had already been satisfied in this case by his warnings on prior occasions. He acknowledged, though, that he did not attempt to correct the condition by once again warning the violators on June 27, 2015. (Tr. 221-24)

Respondent Raso is charged with two specifications concerning this incident. I will address Specification 2, dealing with the seizure of the speakers, first. I find that Respondent Raso did in fact authorize the seizure of these sound reproduction devices as he was the ranking officer, who directed Sergeant Api that the speakers should ultimately be removed from the property. However, I also find that he had sufficient legal authority to do so. He interviewed the complainants, thereby verifying his own knowledge of prior complaints and belief that the noise situation was a persistent problem. On that night, he also personally confirmed that the noise was unreasonable as it was so loud that he could feel a neighboring house vibrating from the sound.

It is true that the Patrol Guide does state that there must be an attempt to correct the situation by warning the violator. However, the Patrol Guide does not specify that the warning must immediately precede the seizure. In this case, Respondent Raso had attempted to correct the situation just a week prior to the night the speakers were seized. As even Mr. Brown himself testified, after police showed up on prior occasions and gave warnings, he would simply turn down the music until the police left and then turn it back up. In a situation where there had been prior complaints, where speakers had previously been seized, and the problem still persisted, it

does not seem likely that issuing another warning on June 27, 2015, would have corrected the continuing violation. As I find that Respondent Raso did follow the Patrol Guide procedures of interviewing the complainants, determining the noise was unreasonable, issuing a prior warning the week before and issuing a summons for a violation that evening, I thus find him not guilty of Specification 2.

Specification 1 charges that Respondent Raso authorized the entry into a private residence without sufficient legal authority. Respondent Raso by all accounts was not at the scene when the officers went into the basement area to retrieve the speakers. There is also no evidence that he directed the officers to enter the basement. Counsel for CCRB indicated their position is essentially that the proof for this specification follows from the fact that Respondent gave an order to take the speakers. That authorization to take the speakers, however, is directly addressed by the second specification. I do not find that by proving Specification 2, Specification 1 is automatically proven. Therefore, I find that the CCRB has not met its burden of proof and find Respondent Raso not guilty of Specification 1.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Shelley was appointed to the Department on July 8, 2008, and Respondent Raso was appointed on July 1, 2003. Information from their personnel record that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Respondent Shelley and Respondent Raso have each been found guilty of frisking Person A without sufficient legal authority. Consistent with Department precedent, I recommend that Respondent Shelley and Respondent Raso forfeit two vacation days each. In making this

recommendation, I note that in the normal course, a supervisor would receive a higher penalty than a subordinate charged with the same misconduct. However, Respondent Raso's exceptional service history as detailed in the attached confidential memorandum, including receipt of the Department's Combat Cross, warrants a mitigated penalty. *See Disciplinary Case No. 2013-9621* (March 11, 2015) (Nine-year police officer forfeited two vacation days for frisking complainant without sufficient legal authority); *Disciplinary Case No. 2014-11138* (September 22, 2015) (Seven-year police officer forfeited two vacation days for frisking complainant without sufficient legal authority).

Additionally, it is clear that both Respondents would benefit from re-instruction on the Department's procedures for conducting frisks. Accordingly, it is this Court's hope that such re-instruction will be included in the final penalty imposed.

Respectfully submitted,

Nancy R. Ryan
Assistant Deputy Commissioner Trials

DISAPPROVED
JUL 09 2018
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER BENNETT SHELLEY
TAX REGISTRY NO. 947489
DISCIPLINARY CASE NO. 2015-14489

On his last three annual performance evaluations, Respondent Shelley received an overall rating of 5.0, "Extremely Competent," in 2016, and 4.5, "Extremely Competent/Highly Competent," ratings in 2014 and 2015. He has been awarded 17 medals for Excellent Police Duty and two medals for Meritorious Police Duty. [redacted]

Respondent Shelley has no prior formal disciplinary history. He does, however, have a monitoring record. From September 16, 2010, to March 7, 2013, Respondent Shelley was on Level 1 Force Monitoring for having received three or more CCRB complaints in one year. From March 7, 2013, to September 12, 2014, he was placed on Level 2 Force monitoring for receiving additional CCRB complaints.

Nancy R. Ryan
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT MICHAEL RASO
TAX REGISTRY NO. 933235
DISCIPLINARY CASE NO. 2015-14490 & 2015-14636

On his last three performance evaluations, Respondent Raso twice received overall ratings of 5.0, "Extremely Competent," and once received an overall rating of 4.5, "Extremely Competent/Highly Competent." He has been awarded 39 medals for Excellent Police Duty, ten medals for Meritorious Police Duty, one medal for Exceptional Merit, two Honorable Mentions, one medal for Merit/Valor, and one Combat Cross. [redacted]

From April 6, 2007, to July 22, 2008, Respondent was placed on Level 1 Force Monitoring for having received three or more CCRB complaints in one year.

He has no prior formal disciplinary history.

Nancy R. Ryan
Assistant Deputy Commissioner Trials