

201211316  
David Rojas

Officers observed a teenager engage with someone they knew to sell drugs. Believing they had observed a drug sale, the officers followed the teens to a building where they stopped them and searched them. The officers asked one teen if he lived in the building, and he stated he did and provided his apartment number. The officers went up to the apartment and spoke to the teen's mother. The teen stated that while his mother had not given the officers permission to search his room in the apartment, they had done so anyway. One officer stated that the mother had given them permission and they had searched the apartment, including the teen's room. No contraband was found. In his CCRB interview, PO Rojas stated that the officers did not go beyond the living room entryway of the apartment and did not search the boy's room, even though other officers testified that they had.

The CCRB found that the officer who searched the boy's room had done so without probable cause, and substantiated an allegation that he had abused his authority when he searched the boy's bedroom. It also found that PO Rojas had made a false statement when he said that the officers had not searched the bedroom at all, despite testimony from the other officer that they had.

The NYPD did not penalize either officer. The officer who illegally searched the boy's room was promoted to Lieutenant and works for the Internal Affairs Bureau, while Detective Rojas has subsequently left the NYPD.

On October 4, 2012, [REDACTED] was interviewed over the phone. [REDACTED] is a [REDACTED]-year-old Hispanic male who is 5'6" tall and weighs 140 pounds. He has brown hair and brown eyes.

On August 15, 2012, at approximately 10:00 am, [REDACTED] left his residence, located at [REDACTED] in the Bronx and went to a store on [REDACTED] to buy groceries. [REDACTED] mother, [REDACTED] gave him her debit card to take out money for the phone bill. [REDACTED] took \$100 out of the store's ATM. When he exited the store, [REDACTED] encountered a friend, [REDACTED] who was standing outside of the store. [REDACTED] wanted to buy marijuana and asked [REDACTED] if he knew where to buy some. [REDACTED] walked two blocks from the store and entered the courtyard of a building complex, where a dealer [REDACTED] knows hangs out. [REDACTED] introduced [REDACTED] and the drug dealer, who [REDACTED] could not identify, and then continued home. [REDACTED] did not observe or participate in any drug transaction while inside the courtyard.

When [REDACTED] entered his building, he was stopped by two plainclothes officers, Det. Gomez and PO2. The officers accused [REDACTED] of selling drugs and began searching [REDACTED]. The officers searched in [REDACTED] pockets and his grocery bags. There was nothing recovered. After five to ten minutes, the officers allowed [REDACTED] to leave.

After returning to his apartment, [REDACTED] soon exited to bring his friend a carton of eggs and to store his bicycle in the back of the building. In the lobby, [REDACTED] was approached by Det. Gomez and another officer, PO3. PO3 stated, "Get the fuck against the wall." [REDACTED] was placed against a wall in the lobby. [REDACTED] friend who was waiting for him in the lobby, [REDACTED] was also placed against the wall. Both officers searched inside their pockets. Nothing was recovered. [REDACTED] was ordered to go home. Det. Gomez stated to [REDACTED] "Motherfucker, where's it at? Don't make me make the phone call." The officers informed [REDACTED] that they believed he was selling marijuana and that they had caught [REDACTED] but not the dealer. [REDACTED] denied selling drugs. The officers removed the \$100 [REDACTED] had in his pocket and placed it in a yellow envelope, noting that it was evidence. [REDACTED] explained that he took the money out to pay the phone bill and could show them the ATM receipt. [REDACTED] was soon placed in handcuffs.

Det. Gomez then went upstairs to [REDACTED] apartment while [REDACTED] remained in the lobby. According to [REDACTED] the officers entered the apartment without consent. [REDACTED] however, did not witness this portion of the incident. § 87(2)(a) 160.50

#### **Officer Descriptions**

Det. Gomez: Hispanic, 5'5", glasses, "Dominican"

PO2: Hispanic male, 5'10 – 6'0",

PO3: Hispanic male, 5'5", glasses, 40-45

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## Interview Details

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On April 17, 2013, Det. Jesus Guzman was interviewed at the CCRB. Det. Guzman is a 36-year-old Hispanic male who is 5'5" tall and weighs 180 pounds. He has brown hair and brown eyes.

On August 15, 2012, Det. Ortiz worked a tour that began at 5:27 a.m. and ended at 2:00 p.m. He and his partner, Det. Gregory Larson, were dressed in plainclothes and assigned to a buy and bust team in a maroon Ford van. He had the following memo books entries regarding the incident:

1005 92C x 2 I/O [REDACTED]

1005 92C F/O [REDACTED]

Det. Guzman did not have any independent recollection of the incident. When shown a photo of [REDACTED] Det. Guzman stated the [REDACTED] looked familiar. When asked if he had any interaction with [REDACTED] Det. Guzman stated, "I'm sure since he was placed under arrest." Det. Guzman was involved in the investigation of the alleged sale between [REDACTED] and two other individuals, but he did not recall if he made the observations that lead to this investigation. Det. Guzman did not recall entering [REDACTED] residence and noted that his job was making sure the prisoners were secured. He did not recall any difficulty with placing [REDACTED] in custody. Det. Guzman assumed [REDACTED] was field searched after being placed into custody, but did not recall if [REDACTED] was searched prior to being arrested.

Det. Guzman denied using or hearing any officer use rude language towards [REDACTED]

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## Interview Details

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On April 17, 2013, Sgt. Patricio Ovando was interviewed at the CCRB. Sgt. Ovando is a 37-year-old Hispanic male who is 5'8" tall and weighs 200 pounds. He has black hair and brown eyes.

On August 15, 2012, Sgt. Ovando worked a tour that began at 5:30 a.m. and ended at 2:05 a.m. He and his partner, Det. Ariel Ortiz, were assigned to a buy and bust team. They were dressed in plainclothes and assigned to a blue Toyota sedan. He had the following entries in his memo book regarding the incident:

1005 92C x 2, 1 m/h, 1 m/b @ [REDACTED] and 1 m/h @ [REDACTED]  
[REDACTED] sale A/O Det. Ortiz

Sgt. Ovando was driving south on [REDACTED] when he observed a Hispanic male wave down a black male and a second Hispanic male from [REDACTED]. The group met and walked into the courtyard of a nearby building complex. The officers were on the same side of the road as the building. They parked their vehicle outside the courtyard and observed the males, who were about a car length away. During their observation, which lasted five to ten minutes, the officers saw an exchange in which the first Hispanic male from [REDACTED] received U.S. currency and gave an object to one of the other two males (Sgt. Ovando could not recall which male received the object). Sgt. Ovando could not identify the object being passed at the time, stating, "I couldn't see, I know it was an object but obviously it was narcotics being passed." Sgt. Ovando could tell the object was narcotics based on this interaction he observed men.

Sgt. Ovando and Det. Ortiz did not feel safe approaching the group of men alone and called the filed team for back-up. Before back-up arrived, the men separated. Sgt. Ovando and Det. Ortiz followed the second Hispanic male and black male as they continued down [REDACTED]. The other Hispanic male walked down [REDACTED]. The second Hispanic male and black male soon approached a building on [REDACTED]. The officers exited their vehicle and walked towards the building, fearing they would lose the men. The officer reached the two men after they entered and the two men opened the door for the officers. It was at this point that the officers identified themselves and explained that they had been observing the men and were conducting an investigation. The two men "weren't surprised at all". The officers told the two men that they had observed them coming from the courtyard. The men admitted coming from there, with one stating, "I met my boy." Neither admitted to buying or selling drugs. One of the men voluntarily admitted to having a bag of marijuana on his person and gave it to the officers. Sgt. Ovando could not remember if the individual who did not have marijuana on him made any statements. The prisoner van was called and the two men were placed into custody.

Sgt. Ovando and other members of the field team (who he could not identify) responded to [REDACTED] and saw the first Hispanic male exiting a building alone. The Hispanic male was considered under arrest upon approach. He was handcuffed immediately and then frisked and searched. Sgt. Ovando did not recall if anything was recovered from the Hispanic male. He denied that he or any other officer spoke rudely to the male. The male was cooperative and seemed "comfortable" with the explanation given to him regarding his arrest. Det. Ortiz was the arresting officer. [REDACTED] lived at the address where he was in custody, so the officers went to his apartment to verify his address. His mother answered the door and the officers asked if they could talk inside the apartment to give her privacy concerning her son's arrest. The woman thanked them for consideration and allowed them inside the apartment. The officers explained that her son was arrested for selling drugs. She replied, "I know he smokes marijuana, but I don't know anything other than that. That's his room over there, officer, feel free to look around." The bedroom door was open and the officers entered. They searched around the room, but did not recover any contraband.

Back on scene, Sgt. Ovando decided to void the arrest of one of the males arrested on [REDACTED]. He did this because he determined that this third individual was not the buyer or seller in the transaction. His record was checked and he was let go.

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## Interview Details

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On May 9, 2013, Det. Ariel Ortiz was interviewed at the CCRB. Det. Ortiz is a 33-year-old Hispanic male who is 5'11" tall and weighs 225 pounds. He has brown hair and brown eyes.

On August 15, 2013, Det. Ortiz worked a tour that started at 5:27 a.m. and ended at 2:00 p.m. He and his partner, Sgt. Patricio Ovando, were dressed in plainclothes and assigned to a Buy and Bust team in an unmarked vehicle. Det. Ortiz was assigned as the arresting officer. He had the following entries in his memo book regarding the incident:

1005 92C [REDACTED]  
92C (voided) – [REDACTED]  
1020 92C – [REDACTED]

While patrolling in their vehicle, Det. Ortiz and Sgt. Ovando observed [REDACTED] and [REDACTED] standing on the corner or at the middle of the block on the street they were driving down. During this observation, Det. Ortiz saw [REDACTED] receive money from [REDACTED] and subsequently give [REDACTED] a bag of marijuana. Det. Berroa “had a perfect view” of the transaction and could identify the object passed to [REDACTED] as a bag of weed at the time of observation. After the transaction, [REDACTED] and [REDACTED] walked in separate directions.

Det. Ortiz and Sgt. Ovando decided to follow [REDACTED] since he had the marijuana on him. They stopped [REDACTED] and [REDACTED] who left with [REDACTED] and explained that they had seen [REDACTED] buy marijuana from [REDACTED]. [REDACTED] admitted to buying marijuana and removed a bag of marijuana from his person and gave it to the officers. [REDACTED] and [REDACTED] were placed under arrest and the officers called for the prisoner van.

When the prisoner van arrived, Det. Ortiz and Sgt. Ovando left the scene to pursue [REDACTED]. They soon observed [REDACTED] walking into a building. They entered the lobby and explained to [REDACTED] who was alone, that he was being arrested for selling marijuana. [REDACTED] was “very nice” and did not fight or curse at the officers. He was placed into custody and then frisked and searched. [REDACTED] and [REDACTED] were also frisked and searched following their arrests. Nothing else was recovered from the men. [REDACTED] was arrested because the officers thought he was a “steerer” and facilitated the transaction. After speaking to [REDACTED] and [REDACTED] it was determined by Sgt. Ovando that [REDACTED] did not play any part in the arrest and his arrest was voided on the scene.

Det. Ortiz denied stating or hearing any officer state “Get the fuck against the wall” or “Motherfucker, where’s it at?” to [REDACTED] during their interaction. He also denied entering [REDACTED] residence or interacting with any of his family members. After [REDACTED] was placed into custody, Det. Ortiz stayed with him by the prisoner van. He did not recall if any officers went to [REDACTED] apartment.

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## Interview Details

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On May 29, 2013, Detective David Rojas was interviewed at the CCRB. Det. Rojas is a 41-year-old Hispanic male who is 5'7" tall and weighs 180 pounds. He has brown eyes and is bald.

On August 15, 2012, Det. Rojas worked a tour that began at 5:27 a.m. and ended at 2 p.m. He was dressed in plainclothes and assigned as the ghost officer. He worked on foot. Det. Rojas had the following entries in his memo book regarding the incident:

1005 2UA [REDACTED] + v/O [REDACTED]

Det. Rojas received a radio transmission from Sgt. Ovando that either he or Det. Ortiz observed a drug transaction. Det. Rojas was given a description and the direction of flight of the buyer and was instructed to arrest the buyer. Det. Rojas located the buyer and followed him on foot. He soon apprehended the buyer on [REDACTED]. Det. Rojas then walked over to [REDACTED] to assist in apprehending the seller. The seller "surfaced" at [REDACTED] and was placed into custody by Det. Rojas and other members of the team. The officers did not have any difficulty placing either of the individuals under arrest and denied any officers using rude language. Det. Rojas did not recall interacting with any other individuals during these apprehensions. Det. Rojas did not recover any drugs during either arrest, and noted that the recovery was most likely done by Det. Ortiz as the arresting officer. The seller lived at [REDACTED] so Det. Rojas and Sgt. Ovando went to his apartment to give his property (possibly a cell phone and keys) to his family. A family member opened the door and Det. Rojas identified himself and asked if he could speak with the family inside. Det. Rojas and Sgt. Ovando were given permission to enter the apartment. Det. Rojas did not remember which family member opened the door or who he spoke to in the apartment. Det. Rojas explained what had occurred and returned the seller's property. The family noted that they knew the seller smoked marijuana, but was not aware of any drug dealing activity. While in the apartment, Det. Rojas and Sgt. Ovando were only in the living room. Det. Rojas denied that the officers entered or searched in any other room. Det. Rojas did not recall if any member of his team wears eyeglasses.

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## Interview Details

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On May 22, 2013, Det. Josue Perez was interviewed at the CCRB. Det. Perez is a 32-year-old Hispanic man who is 6'3" tall and weighs 270 pounds. He has black hair and brown eyes.

On August 15, 2012, Det. Perez worked a tour that began at 5:27 a.m. and ended at 2 p.m. He and his partner, Det. Jesus Guzman, were dressed in plainclothes and assigned to the prisoner van. He had the following entries in his memo book:

115 10-92C x [REDACTED] A/O Ortiz

Det. Perez and his partner were watching three prisoners in the van when they were radioed over to the location. When he arrived, there were two individuals already in handcuffs. Det. Perez was not present for the circumstances that lead to these individuals' arrest and could not identify them. He did not recognize [REDACTED] or [REDACTED] when shown their photo.

Det. Perez conducted a field search of the men and placed them into the prisoner van. Following this, he left the scene to participate in a buy and bust. Det. Perez denied entering [REDACTED] and did not enter any apartments in regards to these arrests. He denied the discourtesy allegation. He noted that Sgt. Ovando wears eyeglasses, but not usually in the field. He, Det. Ortiz, Det. Rojas, and Det. Guzman did not wear eyeglasses.