201311965
Andre Washington

A stolen iPhone had been tracked to a house. Sergeant Washington supervised two officers who approached the house, where the phone was recovered in a backyard barbeque. The officers then went to the front of the house, where the homeowner had opened the door. The officers entered the home and searched it. One officer stated that he had seen wet footprints inside the house and thought they may have been left by the phone thief. The officers offered no explanation as to why they had searched the house other than the recovered cell phone and the wet footprints.

The person whose cell phone had been stolen was brought to the house and confirmed that the homeowner had not stolen the phone.

The officers asked to view the man's security camera footage, but he refused. Later viewing of the footage confirmed that a man on a bicycle had entered the property and placed the phone in the grill before the other officers arrived.

Sergeant Washington testified in his CCRB interview that when he came to the door of the house the officers had already entered. But the homeowner's security system showed that he had entered the house before the officers, opening the door for the second officer after Sergeant Washington was already inside.

The CCRB found that Sergeant Washington and both of the officers he supervised had abused their authority when they searched the man's home without a warrant or a valid exception to the warrant requirement.

The CCRB also found thar Sergeant Washington lied about following the officers entering the house when in fact he had entered before them.

The NYPD resolved the incident by issuing Sergeant Washington a Command Discipline-B. He has since been promoted to Lieutenant.

The NYPD did not discipline Sergeant Washington for the false statements and the CCRB allegations are listed only as "other misconduct" in a letter from the district attorney.

Interview Details

[redacted] was interviewed at the CCRB on February 12, 2014.

On December 23, 2013, at approximately 11:10 a.m., [redacted] was asleep in his home, located at [redacted] in Queens, when he was awoken by banging on his front door and repeated ringing of his doorbell. [redacted] looked out the window and saw two marked patrol vehicles outside his house and saw officers walking around his front yard and driveway, which does not have a surrounding gate and is easily accessible for individuals to walk into. [redacted] who had just been wearing boxer shorts, went downstairs and opened the front door.

Upon opening the front door, [redacted] saw PO Brian Lapp, identified by name and shield number and described as a white man in uniform, approximately 23 or 24 years old, 5'8" tall, 160 pounds and clean shaven, pointing his gun at [redacted] midsection. [redacted] put his hands up and asked what was going on and PO Lapp asked [redacted] to step outside. [redacted] saw two uniformed officers, identified by name and badge numbers as Sgt. Andre Washington and PO Ana Maradiaga, coming from the right side of his house and another uniformed officer, PO4, coming from the left. Sgt. Washington was described as a black man, approximately 6'2" tall, 230 pounds, with black hair. PO Maradiaga was described as a white woman, approximately 24 or 25 years old, short, 160 pounds, with blonde hair in a bun. PO4 was described as a Hispanic man, approximately 28 years old, 5'10" tall, 180 pounds, with black hair and his shield number was provided as 31772.

PO Lapp asked [redacted] if he lived in the home and asked him to provide his name, age and who else lived in the house. [redacted] confirmed that he lived in the house and told PO Lapp that his [redacted], [redacted], [redacted], and [redacted] were all inside the house. PO Lapp asked [redacted] where his [redacted]-year-old son was and [redacted] asked one of his daughters, "Where's Pop?" referring to [redacted] was informed that his son was at basketball practice and was not home, which he told PO Lapp.

Sgt. Washington told [redacted] that there had been a stolen iPhone tracked to [redacted] residence and found in his backyard. Sgt. Washington did not tell [redacted] how the phone was tracked to his house. [redacted] told PO Lapp, "I'm a grown man, I make $200,000 dollars a year. I own four properties," as his reason why he did not need to steal a cell phone. [redacted] told PO Lapp that [redacted] mother was a police officer in the 75th Precinct and that he would not need to steal a cell phone either as [redacted] gives him a lot of money, while reiterating that [redacted] was not even home at the moment. [redacted] also stated that if it was determined that [redacted] stole the cell phone, the officers should arrest him for it as [redacted] does not condone stealing.

PO Lapp told [redacted] "You're fucking lying" and went towards the front door. [redacted] told PO Lapp that he could not search his house and PO Lapp replied, "I can do anything I want" and stated that he was conducting a police investigation. PO Lapp opened the gate to [redacted] front door and walked inside to the left of the house with his gun drawn. Approximately ten seconds later, PO Maradiaga entered the home and walked upstairs. [redacted] did not observe either officer search his home but his stepdaughter, Imani Reese, told [redacted] that she followed PO Lapp around the house and that he did not point his gun at any point and that PO Maradiaga did not draw her weapon.

[redacted] waited outside with Sgt. Washington while PO4 stood off to the side. [redacted] asked Sgt. Washington if he had to wait outside, as it was cold and raining and he only had boxer shorts on. Sgt. Washington told [redacted] that he had to wait outside until the person whose phone was stolen could come by in a patrol car and confirm that [redacted] did not steal the phone. Approximately ten minutes later, PO Lapp and PO Maradiaga walked out of [redacted] home and Sgt. Washington heard something on his radio and told [redacted] "Ok, you're fine. You can go back into the house." Sgt. Washington told [redacted] that he saw cameras were set up and asked [redacted] if he could view the footage and [redacted] refused to show him the footage since Sgt. Washington could have asked earlier before PO Lapp and PO Maradiaga entered his home. The officers then returned to their patrol vehicles and [redacted] went upstairs and got dressed.

A short time later, one of [redacted] daughters went outside to walk their dog and upon coming back into the house, she heard the officers' who were still parked outside [redacted] home, talking about obtaining a search warrant. She went back inside and told [redacted] who went downstairs and approached PO Lapp. [redacted] did not recall if PO Lapp was inside or outside of a patrol vehicle. [redacted] asked what PO Lapp was doing and that his son was not home and did not steal the cell phone. PO

Interview Details

Lapp replied, "You're a fucking liar, we're going to get a search warrant" and took a few steps towards [redacted] did not want to get into a confrontation with PO Lapp and returned to his home.

Approximately 30-40 minutes later, [redacted] heard knocking on his front door and he went downstairs and saw another uniformed officer, PO5, standing outside his door with Sgt. Washington. [redacted] did not want to open his door and spoke to PO5 through a window. PO5, who identified himself as a lieutenant and was wearing a blue uniform, was described as a Hispanic man, approximately 5'11" tall and 190 pounds, asked [redacted] if he could come inside since it was cold and raining. [redacted] told PO5 that Sgt. Washington had made him wait outside before and that he would allow PO5 to come inside but no other officers. PO5 stated that he was not aware that Sgt. Washington had done that and that he would speak to his officers about making [redacted] wait outside and apologized on their behalf.

PO5 asked [redacted] if he could see footage of the incident and [redacted] showed PO5 the footage, which showed an unknown man on a bicycle go to [redacted] backyard and "stash" the stolen phone. Approximately 15 minutes later, officers can be seen looking through [redacted] backyard and ultimately finding the phone. The subsequent interaction between PO Lapp and [redacted] can also be seen, including PO Lapp pointing his gun at [redacted] later discovered on surveillance footage recorded later that the individual who had dropped the phone in his backyard had gone back to recover it but left later without picking anything up as it had already been recovered by the officers. After PO5 viewed the footage, he told [redacted] that he would have detectives come by in the following days to view the footage. All of the officers then left with no further interaction with [redacted]

[redacted] had difficulty sleeping for several days following the incident as he believed that there was a possibility his children could have been shot during the incident and ultimately went to [redacted] Hospital to see a psychiatrist, but was unsure of the date.

[redacted] has footage of the incident but will not provide it until the investigation has been completed as he would like officers to be interviewed prior to the investigator viewing the footage. Upon the completion of the investigation, [redacted] will bring a DVR player to the CCRB and will let the investigator view the footage.

Interview Details

PO Brian Lapp was interviewed at the CCRB on May 5, 2014.

Memo Book

At 10:27 a. m., there was a past larceny at [redacted]. At 10:34 a m., PO Lapp arrived at the location. PO Lapp canvassed with the complainant and their iPhone was tracked to the backyard of [redacted]. The phone was returned. The owner was immediately verbally combative. At 11:20 a m., a directed patrol was conducted at [redacted] and SPRINT job number [redacted] was generated.

PO Lapp worked from 7:05 a.m. until 3:40 p m. on December 23, 2013. He was assigned to Sector F and worked with PO Ana Maradiaga. They were assigned to marked patrol vehicle number [redacted] and they were in uniform.

CCRB Testimony

On December 23, 2013, at approximately 10:27 a.m., PO Lapp responded to a report of a past robbery at [redacted] in Queens. The victim's phone was taken out of their pocket and they were thrown against a wall by a young black male on a bike. PO Lapp believed that the victim was also punched once in the face but was "not positive" about this fact. The description of the suspect was provided by the victim, who accompanied PO Lapp and PO Maradiaga in their vehicle with his brother as they used the victim's brother's cell phone to track the victim's phone using a "track my iPhone" application. The victim did not have any physical injuries and did not receive any medical treatment. PO Lapp did not see the suspect who stole the phone.

The tracking signal was never lost as the phone was tracked to [redacted]. PO Lapp could not estimate how long it took him to arrive at [redacted] PO Lapp and PO Maradiaga did not go to any other locations and eventually met up with PO Brian Lyons. PO Lapp did not recall who PO Lyons' partner was. PO Lapp did not receive any information at the location in regard to where the suspect had gone or whether he had entered the home. PO Lapp entered the backyard of the home and loud pinging could be heard. PO Lapp then went to the front door of the house with PO Maradiaga as PO Lyons began to look for the phone and ultimately found it beneath a barbecue grill under the grease trap. PO Lapp was not present when the phone was recovered.

PO Lapp did not see anything outside indicating that someone had gone into the house while he was in the backyard. PO Lapp knocked once on the front door and [redacted] who PO Lapp assumed to be the homeowner, and [redacted] who appeared to be approximately 18-years-old, immediately came downstairs. PO Lapp's gun was drawn as the crime he had been responding in regard to was violent and he needed to determine whether [redacted] was not violent. PO Lapp did not point his gun at [redacted] was immediately combative upon answering the door and was yelling. PO Lapp did not recall any specific statements made by [redacted] PO Lapp called for assistance and Sgt. Andre Washington responded to the scene. PO Lapp did not recall who Sgt. Washington's operator was.

Upon Sgt. Washington's arrival, PO Maradiaga and Sgt. Washington proceeded to speak with [redacted] who remained combative and continued to yell. PO Lapp spoke with [redacted] who was standing approximately five feet behind [redacted] inside the house, and asked her for permission to enter the home, which she provided. PO Lapp then entered the home, which [redacted] verbally protested. PO Lapp initially stated that his gun was unholstered until he entered the home, but later stated that his gun was placed back in its holster when [redacted] and [redacted] came downstairs and ultimately did not recall if his gun was drawn when [redacted] provided consent for him to enter the home.

PO Lapp was informed by either [redacted] or [redacted] that [redacted], [redacted]-year-old stepson, lived in the home and when asked where [redacted] was, [redacted] and [redacted] provided different locations where he currently was. PO Lapp noticed that there were wet footprints (it had been raining that day) leading up the carpeted stairs to a closed door, which he followed. PO Lapp asked [redacted] to follow him up the stairs and she did so. PO Maradiaga subsequently entered the home and was not far behind PO Lapp. PO Lapp knocked on the door and was told by [redacted] that the door was locked and that room was [redacted] which she did not give PO Lapp permission to enter. PO Lapp then returned downstairs and went outside the front door. PO Lapp did not search any areas of the house and was inside for approximately one minute.

Sgt. Washington instructed PO Lapp to wait outside as he spoke with [redacted] and had not given him any prior instructions. After returning downstairs, PO Lapp did not have any further interaction with [redacted] and left the scene. PO Lapp did not

Interview Details

recall how long he was at the scene. PO Lapp did not tell [redacted] he was “fucking” lying or call him a “fucking liar” and did not use profanity at any point during the incident. PO Lapp did not hear any other officer make the aforementioned statements. Lt. Richard Torres subsequently responded to the scene, but PO Lapp did not recall his role in the incident and did not observe him enter [redacted] home.

PO Lapp did not hear any discussion about obtaining a search warrant and did not know any reason why a search warrant was not obtained. PO Lapp did not know if the individual that stole the phone was ever apprehended and stated that [redacted] did not come home while he was present at [redacted]

Interview Details

Sgt. Andre Washington was interviewed at the CCRB on May 21, 2014.

Memo Book

At 10:27 a.m., there was a report of a past larceny at [redacted] and Sector C responded. At 10:28 a.m., the job was changed to a larceny in progress. At 10:30 a.m., Sector C was tracking the iPhone. At 10:45 a.m., The iPhone was tracked to [redacted] At 10:50 a m., the iPhone was pinged and was recovered in a barbecue grill in the backyard. At 11 a.m., the owner answered the door and was pulled outside for a show-up, which yielded negative results. At 11:05 a.m., the father was interviewed. He was very upset and irate because he was in the rain and PO Lapp went inside his house. At 12 p m., the civilian was transported back to the stationhouse with Sector C.

Sgt. Washington worked from 6:25 a.m. until 3:52 p m. on December 23, 2013. He was assigned as the Patrol Supervisor and worked with PO Ana Maradiaga. They were assigned to a marked patrol vehicle and were in uniform.

CCRB Testimony

On December 23, 2013, at approximately 10:27 a.m., Sgt. Washington received a call over the radio regarding a stolen iPhone. Sgt. Washington did not recall any additional information as to how the phone was stolen as it was not noted in his memo book. Sgt. Washington and his operator, PO Maradiaga, met up with PO Lapp and PO Lyons, who were tracking the phone with the complainant, and were directed towards [redacted] Sgt. Washington did not see the person who stole the phone and did not receive any information regarding who had stolen the phone from the complainant, who did not have any visible injuries and did not complain of any injuries.

Upon arriving at the scene, Sgt. Washington, PO Maradiaga, PO Lapp and PO Lyons all listened for pinging coming from the phone and looked for it in the backyard of [redacted] Sgt. Washington noted that the backyard was accessible as it was an open space. Sgt. Washington did not see which officer recovered the phone, which was recovered from inside a barbecue grill near the gas container. After the phone was recovered, Sgt. Washington waited between the backyard and the front of the house just in case anyone attempted to leave through the backdoor of the house. While standing in this position, Sgt. Washington heard PO Maradiaga say, "Sarge, they opened the door."

Sgt. Washington approached the front door alone with his gun in its holster and upon arriving, was met by [redacted] identified himself as the homeowner and told Sgt. Washington that PO Lapp had gone inside his house with his gun drawn and spoke discourteously towards him. [redacted] was very irate and upset. Sgt. Washington did not observe any interaction between PO Lapp and [redacted] and did not observe PO Lapp point his gun at [redacted] Sgt. Washington did not hear PO Lapp tell [redacted] he was "fucking lying" or call him a "fucking liar."

Sgt. Washington could not see PO Lapp or PO Maradiaga inside the house and did not give them instructions at any point, and specifically, did not give them instructions to enter the home or to wait outside. Sgt. Washington did not follow PO Lapp and PO Maradiaga inside the house as [redacted] was by the front door and he did not see a need for himself to enter as PO Lapp and PO Maradiaga were already inside the house.

Sgt. Washington informed [redacted] that there had been a robbery and that the phone was tracked to his backyard and asked [redacted] to step outside so that the complainant could say whether or not [redacted] was the individual who stole his phone. [redacted] remained upset and irate that he had to stand in the rain but after the show-up was conducted with negative results, [redacted] was told he could step back inside. Approximately 30 seconds later, PO Lapp and PO Maradiaga returned downstairs and PO Lapp told Sgt. Washington that [redacted] stepdaughter had given him consent to enter the home and that he had followed wet footprints upstairs to a locked door. Sgt. Washington recalled seeing [redacted] stepdaughter somewhere in the house but did not have any interaction with her nor did he observe any other officer have one.

PO Lapp attempted to explain to [redacted] why he was there but Sgt. Washington, sensing there was tension between PO Lapp and [redacted] sent PO Lapp back to his patrol vehicle in an attempt to deescalate the situation. There was no further interaction between PO Lapp and [redacted] Sgt. Washington noticed that [redacted] had cameras set up outside his home and asked if he could view the footage on the cameras and [redacted] refused, noting that the officers could have seen the footage if PO Lapp had been nicer.

Interview Details

There was no discussion to obtain a search warrant while Sgt. Washington was at the scene, which was for approximately an hour and 15 minutes. The officers then left the scene with no further interaction with [redacted] Sgt. Washington did not know if the individual who stole the phone was ever apprehended.

Interview Details

PO Ana Maradiaga was interviewed at the CCRB on May 21, 2014.

Memo Book
At 10:27 a.m., a past larceny at 108th and Sutphin Boulevard. "Cell phone taken. Picked up by Sector Charlie. Tracked phone corner of 177th and Baisley Boulevard at 10:45 a.m. Pinned phone at 10:50 a.m. and was recovered from grill at [redacted] Knocked on door, interview conducted of owner who lives at that house by PO Lapp. Went inside house. I walked behind him so he would not go alone. I told Sgt. Washington I will go with him. As we approach stairs, we saw wet footsteps on rug that led to a locked room. PO Lapp knocked on door but nobody answered. Owner of house got very upset and was not cooperating with us. Cameras at house, he refused to let us see it, evading questions. PO Lyons at scene, Lt. Torres, PO Lapp and PO Casal. Victim brought to 103 to speak to squad."

PO Maradiaga worked from 7 a m. until 3:40 p.m. on December 23, 2013. She was assigned as the Sergeant's Operator and worked with Sgt. Andre Washington. They were assigned to marked patrol vehicle number 4677 and were in uniform.

CCRB Testimony
On December 23, 2013, at approximately 10:27 a.m., PO Maradiaga received a call regarding a stolen cell phone. PO Maradiaga was not informed on how the phone was stolen, whether force or a weapon was used, and was not provided with a description of the suspect. PO Maradiaga did not see the person who stole the phone. PO Maradiaga was not involved in tracking the phone, which was handled by PO Lapp and PO Lyons, as they had the complainant whose phone was stolen in their car. PO Maradiaga noted that the complainant only spoke Spanish and after later interacting with him, did not notice any visible injuries on him nor did he complain of any or receive medical treatment.

Approximately 10 to 15 minutes later, PO Maradiaga and Sgt. Washington arrived at [redacted] PO Maradiaga did not know if the signal was ever lost and did not visit any other locations in her attempt to locate the phone. Sgt. Washington began to "ping" the phone and the officers listened for the sound in an attempt to locate the phone. The phone was eventually tracked to and recovered from a barbecue grill in the backyard by PO Lyons. PO Maradiaga stated that the backyard was an open area but did not recall if the home had a backdoor or if the yard had a back entrance. There was no conversation with Sgt. Washington once the phone was recovered.

After the phone was recovered, PO Maradiaga went to the side door of the house and knocked once as PO Lyons watched her. After no one answered, PO Maradiaga walked around the house to the front door with her gun in its holster and saw that [redacted] had already opened the door and was speaking with PO Lapp. PO Maradiaga did not notice anything in the backyard that would have indicated that someone had entered the home. Upon reaching the front door, PO Maradiaga heard PO Lapp explaining to [redacted] who was upset, why the officers were there.

PO Maradiaga did not recall if PO Lapp's gun was out of its holster as he spoke with [redacted] and did not observe him point it at [redacted] PO Maradiaga did not hear PO Lapp tell [redacted] he was "fucking lying", call him a "fucking liar" or use profanity at any point during the incident. Shortly after, Sgt. Washington arrived at the front door. PO Maradiaga did not have a conversation with [redacted] but recalled that he said "my house", which she interpreted as meaning he was the homeowner. After Sgt. Washington arrived at the front door, PO Lapp went inside the home. PO Maradiaga did not recall if PO Lapp asked permission to enter the home or if his gun was out of its holster but recalled that [redacted] did not protest the entry and did not say that PO Lapp could not enter his home.

PO Maradiaga looked at Sgt. Washington, who was standing right next to her, and told him that she was going in after PO Lapp. Sgt. Washington said "ok" and PO Maradiaga entered the home with her gun in its holster. PO Maradiaga's reason for entering the home was that as per police procedure, she could not let PO Lapp go inside the home alone. PO Maradiaga stated that Sgt. Washington was aware that she was entering the home, but had not given any instructions to her or PO Lapp and more specifically, had not instructed them to enter the home or to wait outside.

Upon entering the home, PO Maradiaga and PO Lapp followed wet footprints up carpeted stairs to a door. PO Maradiaga also observed a second room with an open door. PO Lapp knocked on the closed door once and there was no answer. PO Maradiaga observed a female at the top of the stairs, who PO Maradiaga believed to be approximately 15-years-old. PO Lapp and PO Maradiaga asked the female whose room they were standing outside and the female responded that it was her brother's room and

Interview Details

that he was not home. PO Lapp and PO Maradiaga asked the female to open the door and she refused because it was not her room.

PO Maradiaga and PO Lapp then returned downstairs after being inside the home for "five minutes or less." PO Maradiaga did not search the home and did not recall if PO Lapp went inside the open door. PO Maradiaga stated that the female had not gone downstairs with [redacted] and she did not observe any conversation between her and PO Lapp at any point until they were both upstairs inside the home. No information was received about [redacted] having a son until the female mentioned that the room belonged to her brother.

Once outside, [redacted] continued to be upset that the officers were there. PO Maradiaga did not observe any further interaction between PO Lapp and [redacted] and did not recall seeing PO Lapp being sent back to his patrol vehicle by Sgt. Washington. There was no discussion about obtaining a search warrant while PO Maradiaga was at the scene. PO Maradiaga did not know if a show-up was conducted with [redacted] at the scene.

Lt. Torres and PO Casal responded to the scene but PO Maradiaga did not recall the extent of Lt. Torres' involvement at the scene. PO Maradiaga did not know if the individual who stole the phone was apprehended and did not observe [redacted] son come home during the incident. The officers then left the scene with no further interaction with [redacted]

Interview Details

Imani Reese was interviewed at the CCRB on June 16, 2014.

On December 23, 2013, at approximately 11:10 a.m., [redacted] was awoken by banging on the front door of her home, located at [redacted] in Queens. [redacted] woke up her stepfather, [redacted] and the two went downstairs to the front door. [redacted] stood a few feet behind [redacted] as he opened the door. [redacted] saw five uniformed officers, PO1 through PO5, standing outside the front door.

PO1 was described as a white man in his 40s, approximately 5'11" tall, 185 pounds, with black and gray hair and brown eyes. PO2 was described as a black or Hispanic man, approximately 5'9" tall, 175 pounds, with brown hair and brown eyes. PO3 was described as a white man, approximately 5'5" tall, 175 pounds, with black or blonde hair. PO4 was described as a white man in his 20s, approximately 5'11" tall, 150 pounds, with blonde hair. PO5 was described as a Hispanic or white woman, approximately 5'5" tall, 150 pounds, with black hair in a ponytail.

PO4 asked [redacted] to step outside and if his son was home and [redacted] said he did not know where his son was then stepped outside with his hands up. PO4 then drew his gun and pointed it downwards and did not point it at [redacted] No other officer drew their gun. PO1 told [redacted] that a stolen iPhone was found in their backyard and [redacted] did not recall how [redacted] responded. Approximately five minutes later, PO4 then entered the home with his gun still drawn and pointed downwards. [redacted] did not hear any additional verbal interaction between [redacted] and the officers. [redacted] did not hear PO4 say anything prior to entering the home, nor did he ask her for permission to enter the home at any point. [redacted] did not hear any officer instruct PO4 to enter the home.

PO5 entered the home behind PO4 and PO4 asked [redacted] who was home, to which she replied that three little children were in the house. PO4 then asked [redacted] if her brother was home and [redacted] replied that she did not know. PO4 and PO5 then went upstairs to the second and third floors of the home and entered all six bedrooms, a closet and two bathrooms. [redacted] followed behind the officers and did not recall seeing them search any areas of the rooms they entered. After approximately 15 minutes, the officers went downstairs and left the home. PO4's gun was drawn the entire time he was inside the house.

As they were leaving the home, [redacted] asked PO4 and PO5 to provide their names and shield numbers and they did so. [redacted] went upstairs to get [redacted] some clothes as he had only been wearing boxer shorts and when she returned, several of the officers' vehicles were leaving. Approximately 30 minutes later, [redacted] went outside to walk her dog and saw PO4 and PO1 inside a marked patrol vehicle outside the home. [redacted] passed by the vehicle and heard PO4 say that they were waiting for a search warrant.

[redacted] returned home and there was no further interaction with any officer.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☑ Force ☑ Discourt. ☐ U.S.
Kevin O'Connor (Int)	Team # 2	201311965	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	Precinct:	18 Mo. SOL	EO SOL
Monday, 12/23/2013 11:10 AM	§ 87(2)(b)	103	6/23/2015	6/23/2015

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Tue, 12/24/2013 2:42 PM	CCRB	Phone	Tue, 12/24/2013 2:42 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Lapp	01940	949198	103 PCT
2. POF Ana Maradiaga	12724	947207	103 PCT
3. SGT Andre Washington	2412	946385	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Lyons	31772	953026	103 PCT
2. POM Daniel Casal	28160	928032	103 PCT
3. LT Richard Torres	00000	919786	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Andre Washington	Abuse of Authority: Sgt. Andre Washington entered and searched the backyard of § 87(2)(b) in Queens.	A . § 87(2)(g)
B . POM Brian Lapp	Force: PO Brian Lapp pointed his gun at § 87(2)(b) .	B . § 87(2)(g)
C . POM Brian Lapp	Discourtesy: PO Brian Lapp spoke discourteously to § 87(2)(b) .	C . § 87(2)(g)
D . POM Brian Lapp	Abuse of Authority: PO Brian Lapp entered and searched § 87(2)(b) in Queens.	D . § 87(2)(g)
E . POF Ana Maradiaga	Abuse of Authority: PO Ana Maradiaga entered and searched § 87(2)(b) in Queens.	E . § 87(2)(g)
§ 87(4-b), § 87(2)(g)		
G . SGT Andre Washington	Other: Sgt. Andre Washington intentionally provided a false official statement to the CCRB when he stated he was not present during the entry into § 87(2)(b) in Queens.	G . § 87(2)(g)

Case Summary

On December 24, 2013, § 87(2)(b) called the CCRB and filed the following complaint (encl. 5A-B).

On December 23, 2013, § 87(2)(b) was awoken by knocking on the front door of his home, located at § in Queens. § 87(2)(b) went downstairs and was approached by PO Brian Lapp, PO Ana Maradiaga and Sgt. Andre Washington. The following allegations resulted:

- **Allegation A- Abuse of Authority: Sgt. Andre Washington entered and searched the backyard of § 87(2)(b) in Queens.**
  § 87(2)(g)
- **Allegation B- Force: PO Brian Lapp pointed his gun at** § 87(2)(b)
- **Allegation C- Discourtesy: PO Brian Lapp spoke discourteously to** § 87(2)(b)
  § 87(2)(g)
- **Allegation D- Abuse of Authority: PO Brian Lapp entered and searched** § 87(2)(b) **in Queens.**
- **Allegation E- Abuse of Authority: PO Ana Maradiaga entered and searched** § 87(2)(b) **in Queens.**
  § 87(2)(g)
- § 87(4-b), § 87(2)(g)
- **Allegation G- Other: Sgt. Andre Washington intentionally provided a false official statement to the CCRB when he stated he was not present during the entry into** § 87(2)(b) **in Queens.**
  § 87(4-b), § 87(2)(g)

This case was not eligible for mediation.

Results of Investigation

§ 87(2)(b) Surveillance Footage

§ 87(2)(b) provided surveillance footage of his home to the investigator on June 18, 2014.

In the video, shot from camera five of § 87(2)(b) home surveillance footage system, PO Lapp can be seen approaching the front door with his hand on his weapon between 11:06 a.m. and 11:07 a.m. on December 23, 2013. PO Maradiaga enters the picture a short time later and signals for someone to come to the front door of the house. Sgt. Washington soon enters the picture at 11:07 a.m. as § 87(2)(b) exits through the front door, shirtless, with his hands up.

PO Lapp begins to speak with § 87(2)(b) before stepping into the doorway and leaning inside at 11:08 a.m. PO Lapp talks with § 87(2)(b) again for approximately one minute before opening the front door and going inside at 11:09 a.m. Seconds after PO Lapp enters the home, Sgt. Washington closes the front door behind PO Lapp and begins talking to § 87(2)(b) Sgt. Washington opens the door and PO Maradiaga enters the home, approximately 20 seconds after PO Lapp enters.

At 11:10 a.m., Sgt. Washington opens the front door a second time and § 87(2)(b) re-enters his home. At 11:12 a.m., PO Lapp exits through the front door immediately followed by PO Maradiaga. After exiting the home, PO Lapp talks to § 87(2)(b) and appears to hold his badge up to display his name. The officers remain outside the front door speaking with § 87(2) for approximately another six minutes before leaving the scene.

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

Civilian Statement

§ 87(2)(b) was interviewed at the CCRB on February 12, 2014 (encl. 8A-H).

On December 23, 2013, at approximately 11:10 a.m., § 87(2)(b) was asleep in his home, located at § in Queens, when he was awoken by banging on his front door and repeated ringing of his doorbell. § 87(2)(b) looked out the window and saw two marked patrol vehicles outside his house and saw officers walking around his front yard and driveway, which does not have a surrounding gate and is easily accessible for individuals to walk into. § 87(2) who had just been wearing boxer shorts, went downstairs and opened the front door.

Upon opening the front door, § 87(2)(b) saw PO Lapp, described as a white man in uniform, approximately 23 or 24 years old, 5'8" tall, 160 pounds and clean shaven, pointing his gun at § 87(2)(b) midsection. § 87(2)(b) put his hands up and asked what was going on and PO Lapp asked § 87(2)(b) to step outside. § 87(2)(b) saw Sgt. Washington and PO Maradiaga coming from the right side of his house and another uniformed officer, PO4, coming from the left. Sgt. Washington was described as a black man, approximately 6'2" tall, 230 pounds, with black hair. PO Maradiaga was described as a white woman, approximately 24 or 25 years old, short, 160 pounds, with blond hair in a bun. PO4, identified via investigation as PO Brian Lyons, was described as a Hispanic man, approximately 28 years old, 5'10" tall, 180 pounds, with black hair.

PO Lapp asked § 87(2)(b) if he lived in the home and asked him to provide his name, age and who else lived in the house. § 87(2)(b) confirmed that he lived in the house and told PO Lapp that his 18-year-old stepdaughter, § 87(2)(b) § -year-old stepson, § 87(2)(b) § 87(2)(b) § -year-old daughter, § 87(2)(b) § 87(2)(b) § -year-old son, § 87(2)(b) and § -year-old daughter, § 87(2)(b) § 87(2)(b) were all inside the house. PO Lapp asked § 87(2)(b) where his § -year-old son was and § 87(2)(b) asked one of his daughters, "Where's Pop?" referring to § 87(2)(b) § 87(2)(b) was informed that his son was at basketball practice and was not home, which he told PO Lapp.

Sgt. Washington told § 87(2)(b) that there had been a stolen iPhone tracked to § 87(2) residence and found in his backyard. Sgt. Washington did not tell § 87(2)(b) how the phone was tracked to his house. § 87(2)(b) told PO Lapp that neither he nor § 87(2)(b) stole the phone.

PO Lapp told § 87(2)(b) "You're fucking lying" and went towards the front door. § 87(2) told PO Lapp that he could not search his house and PO Lapp replied, "I can do anything I want" and stated that he was conducting a police investigation. PO Lapp opened the gate to § 87(2) front door and walked inside to the left of the house with his gun drawn. Approximately

ten seconds later, PO Maradiaga entered the home and walked upstairs. § 87(2)(b) did not observe either officer search his home.

§ 87(2)(b) waited outside with Sgt. Washington while PO Lyons stood off to the side. § 87(2)(b) asked Sgt. Washington if he had to wait outside, as it was cold and raining and he only had boxer shorts on. Sgt. Washington told § 87(2)(b) that he had to wait outside until the person whose phone was stolen could come by in a patrol car and confirm that § 87(2)(b) did not steal the phone. Approximately ten minutes later, PO Lapp and PO Maradiaga walked out of § 87(2)(b) home and Sgt. Washington heard something on his radio and told § 87(2)(b) "Ok, you're fine. You can go back into the house." Sgt. Washington told § 87(2)(b) that he saw cameras were set up and asked § 87(2)(b) if he could view the footage and § 87(2)(b) refused to show him the footage since Sgt. Washington could have asked earlier before PO Lapp and PO Maradiaga entered his home. The officers then returned to their patrol vehicles and § 87(2)(b) went upstairs and got dressed.

A short time later, § 87(2)(b) went outside and upon coming back to the house, she heard the officers who were still parked outside § 87(2)(b) home talking about obtaining a search warrant. She went back inside and told § 87(2)(b) who went downstairs and approached PO Lapp. § 87(2)(b) asked what PO Lapp was doing and that his son was not home and did not steal the cell phone. PO Lapp replied, "You're a fucking liar, we're going to get a search warrant" and took a few steps towards § 87(2)(b) did not want to get into a confrontation with PO Lapp and returned to his home.

Approximately 30-40 minutes later, § 87(2)(b) heard knocking on his front door and he went downstairs and saw another uniformed officer, PO5, standing outside his door with Sgt. Washington. § 87(2)(b) did not want to open his door and spoke to PO5 through a window. PO5, identified via investigation as Lt. Richard Torres, was described as a Hispanic man wearing a blue uniform, approximately 5'11" tall and 190 pounds. Lt. Torres asked § 87(2)(b) if he could come inside and § 87(2)(b) allowed him inside.

Lt. Torres asked § 87(2)(b) if he could see footage of the incident and § 87(2)(b) allowed Lt. Torres to view the video. The footage showed an unknown man on a bicycle go to § 87(2)(b) backyard and hide the stolen phone. After Lt. Torres viewed the footage, he told § 87(2)(b) that he would have detectives come by in the following days to view the footage. All of the officers then left with no further interaction with § 87(2)(b)

Witness: § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

Civilian Statement

§ 87(2)(b) was interviewed at the CCRB on June 18, 2014 (encl. 9A-F).

PO Lapp asked § 87(2)(b) to step outside and if his son was home and § 87(2)(b) said he did not know where his son was before stepping outside with his hands up. PO Lapp then drew his gun and pointed it downwards and did not point it at § 87(2)(b) No other officer drew their gun. PO1, described as a white man in his 40s, approximately 5'11" tall, 185 pounds, with black and gray hair and brown eyes, told § 87(2)(b) that a stolen iPhone was found in their backyard and § 87(2)(b) did not recall how § 87(2)(b) responded. Approximately five minutes later, PO Lapp then entered the home with his gun still drawn and pointed downwards. § 87(2)(b) did not hear any additional verbal interaction between § 87(2)(b) and the officers. § 87(2)(b) did not hear PO Lapp say anything prior to entering the home, nor did he ask her for permission to enter the home at any point. § 87(2)(b) did not hear any officer instruct PO Lapp to enter the home.

PO Maradiaga entered the home behind PO Lapp and PO Lapp asked § 87(2)(b) who was home, to which she replied that three little children were in the house. PO Lapp asked § 87(2)

§ 87(2)(b) if her brother was home and § 87(2)(b) replied that she did not know. PO Lapp and PO Maradiaga went upstairs to the second and third floors of the home and entered all six bedrooms, a closet and two bathrooms. § 87(2)(b) followed behind the officers and did not recall seeing them search any areas of the rooms they entered. After approximately 15 minutes, the officers went downstairs and left the home. PO Lapp's gun was drawn the entire time he was inside the house.

As they were leaving the home, § 87(2)(b) asked PO Lapp and PO Maradiaga to provide their names and shield numbers and they did so. § 87(2)(b) went upstairs to get § 87(2) some clothes as he had only been wearing boxer shorts and when she returned, several of the officers' vehicles were leaving. Approximately 30 minutes later, § 87(2)(b) went outside to walk her dog and saw PO Lapp and PO1 inside a marked patrol vehicle outside the home. § 87(2) passed by the vehicle and heard PO Lapp say that they were waiting for a search warrant. § 87(2)(b) returned home and there was no further interaction with any officer.

NYPD Statements:

Subject Officer: POLICE OFFICER BRIAN LAPP

- § 87(2) *-year-old white man, 5'10" tall, 140 pounds, with blond hair and blue eyes.*
- *PO Lapp worked from 7:05 a.m. until 3:40 p.m. on December 23, 2013. He was assigned to Sector F and worked with PO Maradiaga. They were assigned to marked patrol vehicle number 4672 and were in uniform.*

Memo Book (Encl. 10A-B)

At 10:27 a.m., there was a past larceny at § [redacted]. At 10:34 a.m., PO Lapp arrived at the location. PO Lapp canvassed with the complainant and his iPhone was tracked to the backyard of § [redacted]. The phone was returned. The owner was immediately verbally combative. At 11:20 a.m., a directed patrol was conducted at § [redacted].

CCRB Testimony (Encl. 11A-D)

PO Lapp was interviewed at the CCRB on May 5, 2014.

On December 23, 2013, at approximately 10:27 a.m., PO Lapp responded to a report of a past robbery at § [redacted] in Queens. The victim's phone was taken out of his pocket and he was thrown against a wall by a young black male on a bike. PO Lapp believed that the victim was also punched once in the face but was "not positive" about this fact. The description of the suspect was provided by the victim, who accompanied PO Lapp and PO Maradiaga in their vehicle with his brother as they used the victim's brother's cell phone to track the victim's phone using a "track my iPhone" application. The victim did not have any physical injuries and did not receive any medical treatment. PO Lapp did not see the suspect who stole the phone.

The tracking signal was never lost as the phone was tracked to § [redacted]. PO Lapp could not estimate how long it took him to arrive at § [redacted]. PO Lapp and PO Maradiaga did not go to any other locations and eventually met up with PO Lyons. PO Lapp did not receive any information at the location in regard to where the suspect had gone or whether he had entered the home. PO Lapp entered the backyard of the home and loud pinging could be heard. PO Lapp went to the front door of the house with PO Maradiaga as PO Lyons began to look for the phone and ultimately found it beneath a barbecue grill under the grease trap. PO Lapp was not present when the phone was recovered.

PO Lapp did not see anything outside, indicating that someone had gone into the house while he was in the backyard. PO Lapp knocked once on the front door and § 87(2)(b) who PO

Lapp assumed to be the homeowner, and § 87(2)(b) who appeared to be approximately § -years-old, immediately came downstairs. PO Lapp's gun was drawn as the crime he had been responding to was violent and he needed to determine whether § 87(2)(b) was not violent. PO Lapp did not point his gun at § 87(2)(b) was immediately combative upon answering the door and was yelling. PO Lapp did not recall any specific statements made by § PO Lapp called for assistance and Sgt. Washington responded to the scene. PO Lapp did not recall who Sgt. Washington's operator was.

Upon Sgt. Washington's arrival, PO Maradiaga and Sgt. Washington proceeded to speak with § 87(2)(b) who remained combative and continued to yell. PO Lapp spoke with § who was standing approximately five feet behind § 87(2)(b) inside the house, and asked her for permission to enter the home, which she provided. PO Lapp then entered the home, which § 87(2)(b) verbally protested. PO Lapp initially stated that his gun was unholstered until he entered the home, but later stated that his gun was placed back in its holster when § 87(2)(b) and § 87(2)(b) came downstairs and ultimately did not recall if his gun was drawn when § provided consent for him to enter the home.

PO Lapp was informed by either § 87(2)(b) or § 87(2)(b) that § 87(2)(b) § 87(2)(b) § -year-old stepson, lived in the home and when asked where § 87(2)(b) was, § and § 87(2)(b) provided different locations where he currently was. PO Lapp noticed that there were wet footprints (it had been raining that day) leading up the carpeted stairs to a closed door, which he followed. PO Lapp asked § 87(2)(b) to follow him up the stairs and she did so. PO Maradiaga subsequently entered the home and was not far behind PO Lapp. PO Lapp knocked on the door and was told by § 87(2)(b) that the door was locked and that room was § s, which she did not give PO Lapp permission to enter. PO Lapp returned downstairs and went outside the front door. PO Lapp did not search any areas of the house and was inside for approximately one minute.

Sgt. Washington instructed PO Lapp to wait outside as he spoke with § 87(2)(b) and had not given him any prior instructions. After returning downstairs, PO Lapp did not have any further interaction with § 87(2)(b) and left the scene. PO Lapp did not recall how long he was at the scene. PO Lapp did not tell § 87(2)(b) he was "fucking" lying or call him a "fucking liar" and did not use profanity at any point during the incident. Lt. Richard Torres subsequently responded to the scene, but PO Lapp did not recall his role in the incident and did not observe him enter § 87(2)(b) home.

PO Lapp did not hear any discussion about obtaining a search warrant and did not know any reason why a search warrant was not obtained. PO Lapp did not know if the individual that stole the phone was ever apprehended and stated that § 87(2)(b) did not come home while he was present at § .

Subject Officer: **SERGEANT ANDRE WASHINGTON**

- § 87(2)(b) *-old black man, 6'6" tall, 315 pounds, with black hair and brown eyes.*
- *Sgt. Washington worked from 6:25 a.m. until 3:52 p.m. on December 23, 2013. He was assigned as the Patrol Supervisor and worked with PO Maradiaga. They were assigned to a marked patrol vehicle and were in uniform.*

Memo Book (Encl. 12A-C)

Sgt. Washington had extensive memo book entries consistent with his testimony.

CCRB Testimony (Encl. 13A-D)

Sgt. Washington was interviewed at the CCRB on May 21, 2014.

On December 23, 2013, at approximately 10:27 a.m., Sgt. Washington received a call over the radio regarding a stolen iPhone. Sgt. Washington did not recall any additional

information as to how the phone was stolen as it was not noted in his memo book. Sgt. Washington and PO Maradiaga met up with PO Lapp and PO Lyons, who were tracking the phone with the complainant, and were directed towards [redacted]. Sgt. Washington did not see the person who stole the phone and did not receive any information regarding who had stolen the phone from the complainant, who did not have any visible injuries and did not complain of any injuries.

Upon arriving at the scene, Sgt. Washington, PO Maradiaga, PO Lapp and PO Lyons all listened for pinging coming from the phone and looked for it in the backyard of [redacted]. Sgt. Washington noted that the backyard was accessible as it was an open space. Sgt. Washington did not see which officer recovered the phone, which was recovered from inside a barbecue grill near the gas container. After the phone was recovered, Sgt. Washington waited between the backyard and the front of the house just in case anyone attempted to leave through the backdoor of the house. While standing in this position, Sgt. Washington heard PO Maradiaga say, "Sarge, they opened the door."

Sgt. Washington approached the front door alone with his gun in its holster and upon arriving, was met by § 87(2)(b) identified himself as the homeowner and told Sgt. Washington that PO Lapp had gone inside his house with his gun drawn and spoke discourteously towards him. § 87(2)(b) was very irate and upset. Sgt. Washington did not observe any interaction between PO Lapp and § 87(2)(b) and did not observe PO Lapp point his gun at § 87(2) Sgt. Washington did not hear PO Lapp tell § 87(2)(b) he was "fucking lying" or call him a "fucking liar."

Sgt. Washington could not see PO Lapp or PO Maradiaga inside the house and did not give them instructions at any point, and specifically, did not give them instructions to enter the home or to wait outside. Sgt. Washington did not follow PO Lapp and PO Maradiaga inside the house as § 87(2)(b) was by the front door and he did not see a need for himself to enter as PO Lapp and PO Maradiaga were already inside the house.

Sgt. Washington informed § 87(2)(b) that there had been a robbery and that the phone was tracked to his backyard and asked § 87(2)(b) to step outside so that the complainant could say whether or not § 87(2)(b) was the individual who stole his phone. § 87(2)(b) remained upset and irate that he had to stand in the rain but after the show-up was conducted with negative results, § 87(2)(b) was told he could step back inside. Approximately 30 seconds later, PO Lapp and PO Maradiaga returned downstairs and PO Lapp told Sgt. Washington that § 87(2)(b) stepdaughter had given him consent to enter the home and that he had followed wet footprints upstairs to a locked door. Sgt. Washington recalled seeing § 87(2)(b) stepdaughter somewhere in the house but did not have any interaction with her nor did he observe any other officer have one.

PO Lapp attempted to explain to § 87(2)(b) why he was there but Sgt. Washington, sensing there was tension between PO Lapp and § 87(2)(b) sent PO Lapp back to his patrol vehicle in an attempt to deescalate the situation. There was no further interaction between PO Lapp and § 87(2)(b) Sgt. Washington noticed that § 87(2)(b) had cameras set up outside his home and asked if he could view the footage on the cameras and § 87(2)(b) refused, noting that the officers could have seen the footage if PO Lapp had been nicer.

There was no discussion to obtain a search warrant while Sgt. Washington was at the scene, which was for approximately an hour and 15 minutes. The officers then left the scene with no further interaction with § 87(2)(b) Sgt. Washington did not know if the individual who stole the phone was ever apprehended.

<u>Subject Officer:</u> POLICE OFFICER ANA MARADIAGA

- § 87(2)(b)*-year-old Hispanic woman, 5' tall, 140 pounds, with blond hair and brown eyes.*

- *PO Maradiaga worked from 7 a.m. until 3:40 p.m. on December 23, 2013. She was assigned as the Sergeant's Operator and worked with Sgt. Washington. They were assigned to marked patrol vehicle number 4677 and were in uniform.*

Memo Book (Encl. 14A-D)
PO Maradiaga had extensive memo book entries consistent with her testimony.

CCRB Testimony (Encl. 15A-D)
PO Maradiaga was interviewed at the CCRB on May 21, 2014. § 87(2)(g)

After the phone was recovered, PO Maradiaga went to the side door of the house and knocked once as PO Lyons watched her. After no one answered, PO Maradiaga walked around the house to the front door with her gun in its holster and saw that § 87(2)(b) had already opened the door and was speaking with PO Lapp. PO Maradiaga did not notice anything in the backyard that would have indicated that someone had entered the home. Upon reaching the front door, PO Maradiaga heard PO Lapp explaining to § 87(2)(b) who was upset, why the officers were there.

PO Maradiaga did not recall if PO Lapp's gun was out of its holster as he spoke with § 87(2) and did not observe him point it at § 87(2)(b) PO Maradiaga did not hear PO Lapp tell § 87(2)(b) he was "fucking lying", call him a "fucking liar" or use profanity at any point during the incident. Shortly after, Sgt. Washington arrived at the front door. PO Maradiaga did not have a conversation with § 87(2)(b) but recalled that he said "my house", which she interpreted as meaning he was the homeowner. After Sgt. Washington arrived at the front door, PO Lapp went inside the home. PO Maradiaga did not recall if PO Lapp asked permission to enter the home or if his gun was out of its holster but stated that § 87(2)(b) did not protest the entry and did not say that PO Lapp could not enter his home.

PO Maradiaga looked at Sgt. Washington, who was standing right next to her, and told him that she was going in after PO Lapp. Sgt. Washington said "ok" and PO Maradiaga entered the home with her gun in its holster. PO Maradiaga's reason for entering the home was that as per police procedure, she could not let PO Lapp go inside the home alone. PO Maradiaga stated that Sgt. Washington was aware that she was entering the home, but had not given any instructions to her or PO Lapp and more specifically, had not instructed them to enter the home or to wait outside.

Upon entering the home, PO Maradiaga and PO Lapp followed wet footprints up carpeted stairs to a door. PO Maradiaga also observed a second room with an open door. PO Lapp knocked on the closed door once and there was no answer. PO Maradiaga observed a female at the top of the stairs, who PO Maradiaga believed to be approximately § 87(-years-old. PO Lapp and PO Maradiaga asked the female whose room they were standing outside and the female responded that it was her brother's room and that he was not home. PO Lapp and PO Maradiaga asked the female to open the door and she refused because it was not her room.

PO Maradiaga and PO Lapp then returned downstairs after being inside the home for "five minutes or less." PO Maradiaga did not search the home and did not recall if PO Lapp went inside the open door. The female had not gone downstairs with § 87(2)(b) and PO Maradiaga did not observe any conversation between her and PO Lapp at any point until they were both upstairs inside the home. No information was received about § 87(2)(b) having a son until the female mentioned that the room belonged to her brother.

Once outside, § 87(2)(b) continued to be upset that the officers were there. PO Maradiaga did not observe any further interaction between PO Lapp and § 87(2)(b) and did not recall seeing PO Lapp being sent back to his patrol vehicle by Sgt. Washington. There was no

discussion about obtaining a search warrant while PO Maradiaga was at the scene. PO Maradiaga did not know if a show-up was conducted with § 87(2)(b) at the scene.

Lt. Torres and PO Casal responded to the scene but PO Maradiaga did not recall the extent of Lt. Torres' involvement at the scene. PO Maradiaga did not know if the individual who stole the phone was apprehended and did not observe § 87(2)(b) son come home during the incident. The officers then left the scene with no further interaction with § 87(2)(b)

Officers Not Interviewed

PO Lyons, PO Casal and Lt. Torres were not interviewed. The investigation determined that PO Lyons was not present during the gun pointed and discourtesy allegations and his testimony would not affect the disposition of the entry allegation, where an affirmative finding was reached. PO Casal and Lt. Torres were not present during any of the allegations. In addition, § 87(2)(b) did not allege any misconduct by PO Casal, PO Lyons or Lt. Torres.

NYPD Documents

Event #§ 87(2)(b) (Encl. 16A-C)

According to the event, at 11:56 a.m., Sector 113F had a directed visibility patrol at § 87(2)(b) . The disposition of the call was a non-crime corrected.

Status of Civil Proceedings (Encl. 8D-E)

- § 87(2)(b) filed a Notice of Claim with the City of New York on January 8, 2014, claiming an improper search of his premise and property, threat of arrest, threat of imprisonment, menacing with a gun, an illegal search, harassment, excessive force and disrespect and seeking two million dollars as redress.

Civilian Criminal History

- As of July 10, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)

Civilian CCRB History (Encl. 3)

- This is the first CCRB complaint filed by § 87(2)(b)

Subject Officers CCRB History (Encl. 2A-C)

- PO Lapp has been a member of the service for four years and there is one CCRB allegation substantiated against him.
    - In CCRB case number 201207249, a force allegation was substantiated against PO Lapp. The CCRB Board recommended command discipline and no disciplinary action was taken by the NYPD.
- Sgt. Washington has been a member of the service for six years and there are no substantiated CCRB allegations against him.
- PO Maradiaga has been a member of the service for six years and there are no substantiated CCRB allegations against her.

Conclusion

Identification of Subject Officers

- As Sgt. Washington was the lead supervisor on scene and oversaw the entry into the backyard, **Allegations A, F and G** are pleaded to him.
- As § 87(2)(b) identified PO Lapp as the officer who pointed his gun at him and spoke discourteously towards him, **Allegations B and C** are pleaded to him.

- PO Lapp and PO Maradiaga acknowledged entering § 87(2)(b) home. As such, **Allegations D and E** are pleaded to them.

Investigative Findings and Recommendations

Allegation A- Abuse of Authority: Sgt. Andre Washington entered and searched the backyard of § 87(2)(b) in Queens.

It is undisputed that Sgt. Washington entered and searched the backyard of 177-§

§ 87(2)(b) did not observe any search of his backyard but was informed by Sgt. Washington that a stolen cell phone was tracked to and recovered from his backyard.

Sgt. Washington stated that upon arriving at the scene, he, along with PO Maradiaga, PO Lapp and PO Lyons all listened for pinging coming from the stolen phone and looked for it in the backyard of § . PO Lapp and PO Maradiaga both acknowledged entering the backyard with Sgt. Washington to search for the stolen cell phone, which was subsequently recovered inside a barbecue grill in the backyard of § 87(2)(b) home.

A warrantless search and seizure in a protected area may be lawful under some circumstances, pursuant to the emergency doctrine. The exception applies where the police have reasonable grounds to believe there is an emergency at hand and an immediate need for their assistance for the protection of life or property, are not primarily motivated by intent to arrest and seize evidence, and have a reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Rossi 99 A.D. 3d 947 (2nd Dept., 2012) (encl. 1Z(i-xi)).

§ 87(2)(g)

Allegation B- Force: PO Brian Lapp pointed his gun at § 87(2)(b)
Allegation C- Discourtesy: PO Brian Lapp spoke discourteously towards § 87(2)(b)

It is undisputed that PO Lapp was the first officer to approach § 87(2)(b) front door and did so with his gun drawn.

§ 87(2)(b) alleged that upon opening his front door, he observed PO Lapp standing outside pointing his gun at § 87(2)(b) midsection. § 87(2)(b) immediately put his hands up and walked outside. § 87(2)(b) also alleged that after being informed that a stolen cell phone was found in his backyard, § 87(2)(b) told PO Lapp that neither he nor his stepson had stolen the phone. PO Lapp replied, "You're fucking lying." PO Lapp later called § 87(2)(b) a "fucking liar." § 87(2)(b) did not hear any additional verbal interaction between PO Lapp and § 87(2)(b) after PO Lapp asked § 87(2)(b) to step outside.

PO Lapp denied pointing his gun at § 87(2)(b) or using profanity at any point during the incident. Neither Sgt. Washington nor PO Maradiaga observed PO Lapp point his gun at § 87(2) or make the aforementioned statements. Due to the angle of the camera which recorded the interaction between PO Lapp and § 87(2)(b) it cannot be determined through the video footage where PO Lapp's gun was pointed. Furthermore, the footage contained no audio.

§ 87(2)(g)

Allegation D- Abuse of Authority: PO Brian Lapp entered and searched § 87(2)(b) in Queens.

Allegation E- Abuse of Authority: PO Ana Maradiaga entered and searched § 87(2)(b) in Queens.

It is undisputed that PO Lapp and PO Maradiaga entered § . It is disputed whether § 87(2)(b) provided consent for PO Lapp to enter.

§ 87(2)(b) stated that after telling PO Lapp that he could not search his house, PO Lapp replied, "I can do anything I want" and proceeded to enter § 87(2)(b) home without his permission, with his gun drawn. PO Maradiaga followed PO Lapp inside the house. § 87(2)(b) stated that she did not speak with PO Lapp at any point and did not provide consent for him to enter the home. § 87(2)(b) also stated that PO Lapp entered the home with his gun drawn.

PO Lapp stated that he spoke with § 87(2)(b) who was standing inside the house, approximately five feet behind § 87(2)(b) and asked her for permission to enter the home, which she provided. PO Lapp initially stated that his gun was drawn until he went inside the house, but later stated that he did not recall whether or not his gun was still drawn when § provided consent for him to enter the home.

PO Maradiaga stated that once Sgt. Washington arrived at the front door, PO Lapp went inside the home. PO Maradiaga did not recall if PO Lapp asked permission to enter the home or if his gun was out of its holster. PO Maradiaga then entered the home behind PO Lapp as she could not let PO Lapp enter the home alone. Sgt. Washington denied observing PO Lapp or PO Maradiaga enter the home but stated that PO Lapp told him upon leaving the home that § had given him permission to enter.

A warrantless entry into a home must be based on voluntary consent or exigent circumstances, Kirk v. Louisiana 536 U.S. 635 (2002) (encl. 1A-C). Consent that is obtained as a product of harassment or intimidation does not constitute voluntary consent, Florida v. Bostick 501 U.S. 429 (1991) (encl. 1D-P). There are six factors to consider when determining whether a warrantless entry into a home to execute an arrest is justifiable: the violent nature of the alleged crime, whether the suspect is reasonably believed to be armed, a clear showing of probable cause to believe the suspect committed the offense, strong reason to believe that the suspect is present at the premises, a likelihood that the suspect will escape if not expeditiously apprehended and the peaceful circumstances of the entry. People v. McBride, 14 N.Y. 3d 440 (2010) (encl. 1S-Y).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation G- Other: Sgt. Andre Washington intentionally provided a false official statement to the CCRB when he stated he was not present during the entry into § 87(2)(b) in Queens.

During his CCRB statement, Sgt. Washington stated that he had entered and searched the backyard of § 87(2)(b) residence and by the time he had approached § 87(2)(b) front door, PO Lapp and PO Maradiaga had already gone inside the house.

§ 87(4-b), § 87(2)(g) The intentional making of a false official statement is prohibited and will be subject to disciplinary action. Patrol Guide Procedure Section 203-08 (encl. 1R).

§ 87(4-b), § 87(2)(g)

§ 87(2)(g) In the video, Sgt. Washington can be seen closing the front door behind PO Lapp after he makes entry into the home and also opening the door for PO Maradiaga as she makes entry.

§ 87(2)(g), § 87(4-b)

Team: _____

Investigator: _____ _____ _____
Signature Print Date

Supervisor: _____ _____ _____
Title/Signature Print Date

Reviewer: _____ _____ _____
Title/Signature Print Date

Reviewer: _____ _____ _____
Title/Signature Print Date

DISTRICT ATTORNEY
KINGS COUNTY
350 JAY STREET
BROOKLYN, NY 11201-2908
(718) 250-2000
WWW.BROOKLYNDA.ORG

Eric Gonzalez
District Attorney

[INSERT NAME]
Assistant District Attorney

[INSERT DATE]

[INSERT D/C INFO]

Re: [INSERT CASE NAME]
Kings County Dkt./Ind. No. [#########]

In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: ANDRE WASHINGTON

MOS TAX: [redacted]

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

Disclosure # 1:
THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 10/02/09, AGAINST MOS WASHINGTON:
1. MOS WASHINGTON, ASSIGNED TO 75TH PRECINCT, ON OR ABOUT OCTOBER 2, 2009, HAVING MADE A VEHICLE STOP, AND SUBSEQUENT ARREST OFA PERSON KNOWN TO THE DEPARTMENT (KTD) FAILED TO CONDUCT AN INVENTORY SEARCH OF THE VEHICLE BEFORE RELEASING SAID VEHICLE TO 3RD PARTY (FRIEND OF PERSON KTD).
2. SAID S/O DID FAIL AND NEGLECT TO MAKE ACCURATE AND COMPLETE ACTIVITY LOG ENTRIES REGARDING THE VEHICLE STOP, ARREST OF PERSON KTD, AND THE RELEASE OF PERSON KTD VEHICLE.

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE AND LOSS OF TWO VACATION DAYS.

Disclosure # 2:
THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 05/06/13, AGAINST MOS WASHINGTON:
1. TRAFFIC VIOLATION BUREAU-NO COPY SUMMONS
2. MEMOBOOK INCOMPLETE

CASE STATUS: CLOSED ON 5/6/13.

Disclosure # 3:
THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), (CCRB CASE NO. 201311965) DATED 12/23/13, AGAINST MOS WASHINGTON:
1. MOS WASHINGTON, ASSIGNED TO THE 113TH PRECINCT, ON 12/23/13, SAID S/O IMPROPERLY ENTERED AND SEARCHED THE BACKYARD OF THE LOCATION OF THE TIME, DATE.
2. MOS WASHINGTON, FAILED TO SUPERVISE OFFICERS AS REQUIRED.

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE, LOSS OF TWO HOURS.

Disclosure # 4:
THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 4/23/17, AGAINST MOS WASHINGTON:
ALLEGATION:
1. MOS WASHINGTON, ON OR ABOUT APRIL 23, 2017, WHILE ASSIGNED TO THE 113 PRECINCT ENGAGED IN CONDUCT PREJUDICIAL TO THE GOOD ORDER, EFFICIENCY OR DISCIPLINE OF THE DEPARTMENT, TO WIT: SAID MOS FAILED TO MAKE A PROMPT AND PROPER NOTIFICATION TO THE IAB COMMAND CENTER AND TO PROVIDE PERTINENT INFORMATION RELATED TO THE INVOLVEMENT OF A MEMBER OF SERVICE IN A MOTOR

VEHICLE ACCIDENT WITH SERIOUS PHYSICAL INJURY, WHERE A CIVILIAN WAS LIKELY TO DIE AND IN WHICH ALCOHOL WAS INVOLVED.

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE AND LOSS OF THREE (3) VACATION DAYS.

Disclosure # 5 (PENDING):

THE FOLLOWING ALLEGATION(S), DATED 11/13/20, ARE PENDING AGAINST MOS WASHINGTON:

[redacted]

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH OCTOBER 13, 2020, THE PEOPLE ARE AWARE OF THE FOLLOWING CCRB SUBSTANTIATED AND/OR PENDING ALLEGATIONS AGAINST THIS OFFICER:

Disclosure # 6:

CCRB CASE: 201311965
REPORT DATE: 12/24/13
INCIDENT DATE: 12/23/13
CCRB SUBSTANTIATED ALLEGATION(S)

1. ABUSE—PREMISES ENTERED AND/OR SEARCHED
2. OMN—OTHER MISCONDUCT-OTHER MISCONDUCT
   NYPD DISPOSITION/PENALTY: B-CD ISSUED
3. OMN—OTHER MISCONDUCT—OTHER MISCONDUCT

Eric Gonzalez
District Attorney
Kings County