

201306519

Franky Joseph

On June 29, 2014, a resident at a single-room occupancy shelter in Brooklyn reported that a television and gaming console had been stolen from his room. PO Franky Joseph and his partner responded, and went door to door asking residents to search their rooms. The officers stated to the residents that it was the policy of the shelter to allow their rooms to be searched when a crime is reported. Most residents allowed the officers to search their rooms, and multiple residents told the CCRB that the officers had entered their rooms and looked in closets and under beds. One man protested that the officers could not search his room without a warrant. The officers entered and searched his room. The stolen items were not recovered.

When PO Joseph's partner was interviewed, he made a statement consistent with the above. He stated that the building's night manager (who accompanied the officers on the search) had told the officers about the policy on searching rooms. The night manager stated he did not know there was such a policy, and that he had not told the officers of such a policy.

PO Joseph himself stated that the officers did not enter or look inside any room. He stated only that the officers knocked on doors and spoke to residents, but never entered any room, including the room of the man who protested.

The CCRB found that the officers had improperly searched the man's room after confirming that there was no building policy allowing officers to search the rooms, and found that PO Joseph had made a false official statement when he denied that the officers entered any other rooms, even though the residents, his partner, and the building manager all confirmed that they had.

PO Joseph was issued a Command Discipline by the NYPD for the improper search.

The NYPD downgraded the false official statement to a "misleading" statement and compelled PO Joseph to forfeit twenty-five vacation days.

The letter from the Brooklyn DA regarding PO Joseph notes only the finding that he made a misleading statement.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sophia Manuel	Team: Team # 4	CCRB Case #: 201406519	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sun, 06/29/2014 10:00 PM	Location of Incident: [REDACTED]	Precinct: 81	18 Mo. SOL 12/29/2015	EO SOL 12/29/2015	
Date/Time CV Reported Sun, 06/29/2014 10:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/30/2014 1:59 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Franky Joseph	30527	§ 87(2)(b)	081 PCT
2. POM Joel Edouard	24576	§ 87(2)(b)	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Franky Joseph	Abuse of Authority: PO Franky Joseph entered and searched § 87(2)(b) [REDACTED] in Brooklyn.	A . § 87(2)(g) [REDACTED]
B . POM Joel Edouard	Abuse of Authority: PO Joel Edouard entered and searched § 87(2)(b) [REDACTED] in Brooklyn.	B . § 87(2)(g) [REDACTED]
C . POM Joel Edouard	Abuse of Authority: PO Joel Edouard entered and searched § 87(2)(b) [REDACTED] in Brooklyn.	C . § 87(2)(g) [REDACTED]
D . POM Franky Joseph	Abuse of Authority: PO Franky Joseph entered and searched § 87(2)(b) [REDACTED] in Brooklyn.	D . § 87(2)(g) [REDACTED]
E . POM Franky Joseph	Other: PO Franky Joseph intentionally made a false official statement to the CCRB.	E . § 87(2)(g) [REDACTED]

Case Summary

On June 29, 2014, § 87(2)(b) called 311 and was transferred to IAB, where he filed this complaint (encl. 9). On June 30, 2014, § 87(2)(b) filed the same complaint in person at the CCRB (encl. 7-8). On June 29, 2014, PO Joel Edouard and PO Franky Joseph of the 81st Precinct investigated a burglary at § 87(2)(b)'s building, located at § 87(2)(b) in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Franky Joseph entered and searched § 87(2)(b) in Brooklyn.**
- **Allegation B – Abuse of Authority: PO Joel Edouard entered and searched § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
- **Allegation C – Abuse of Authority: PO Joel Edouard entered and searched § 87(2)(b) in Brooklyn.**
- **Allegation D – Abuse of Authority: PO Franky Joseph entered and searched § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
- **Allegation E – Other Misconduct: PO Franky Joseph intentionally made a false official statement to the CCRB.**
§ 87(2)(g)

§ 87(2)(b) rejected mediation.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on June 30, 2014 (encl. 10-13). § 87(2)(g)
On June 29, 2014, at approximately 10:00 p.m., § 87(2)(b) was in his apartment, located at § 87(2)(b) § 87(2)(b) in Brooklyn. § 87(2)(b)'s building is a shelter, consists of private single rooms with shared § 87(2)(b). Each single room has a sink with cabinets and a closet. § 87(2)(b) heard a knock on his door. He asked, "Who is it?" An officer said, "Police. Open up the door." § 87(2)(b) opened the door and saw two black male officers, approximately 5'7" tall with stocky builds. He later read on their uniforms that they were PO Joseph, shield number 30527, and PO Edouard, shield number 24576. § 87(2)(b) did not recall which officer matched which name. One had a moustache and bald head. They were standing with a Hispanic male who § 87(2)(b) recognized as a staff member of the building and who was identified by the investigation as § 87(2)(b).

§ 87(2)(b) asked, "Do you have a search warrant?" The officers said, "No." § 87(2)(b) said, "Well what do you want?" The officers said, "We're conducting an investigation." The officers did not provide any other information. § 87(2)(b) said that the officers needed a search warrant in order to conduct an investigation in his apartment.

§ 87(2)(b) was wearing only his underwear, so he was hiding his body behind the door. He said, "Give me a minute and let me put on my bathrobe." § 87(2)(b) closed the door and put on his bathrobe. Then he opened the door partially to continue talking to the officers. The officer with the moustache said they wanted to enter his apartment. § 87(2)(b) said, "You can't come in here unless you have a search warrant." The officer with the moustache put his hand on the door. § 87(2)(b) interpreted this motion as the officer telling him that if he tried to close the door, officers would hold the door open and enter anyway.

Not wanting a fight, § 87(2)(b) stepped aside. Both officers entered his apartment. The officer with the moustache took out a flashlight and looked under § 87(2)(b)'s bed. The officer opened the cabinet under his sink and looked inside. He opened the closet and looked inside. He touched § 87(2)(b)'s luggage, but did not open it. § 87(2)(b) said, "Let me know what you're looking for. Maybe I can help you." The officers did not reply. § 87(2)(b) said, "Let me get your shield numbers and names." The officers did not say anything, but did not try to prevent him from copying down their names and shield numbers.

The officers exited the apartment and walked down the hall to the elevator with § 87(2)(b). § 87(2)(b) asked § 87(2)(b) why he let the officers through security into the building and led them to § 87(2)(b)'s door. § 87(2)(b) said that the superintendent told him to let the officers in. § 87(2)(b) called 311 and filed a complaint with IAB. The IAB officer gave him his phone number and log number 14-22463.

Witness: § 87(2)(b)

- § 87(2)(b)

Unverified CCRB Statement

§ 87(2)(b) was interviewed at § 87(2)(b) in Brooklyn on August 25, 2014 (encl. 15-17). He signed the verification form but refused to show his identification, so his statement could not be verified. § 87(2)(g)

§ 87(2)(b) He provided additional details during a phone call on October 23, 2014 (encl. 76).

On June 29, 2014, § 87(2)(b) who lives in § 87(2)(b) called 911 because his television and Play Station were stolen from his apartment. He told officers that he believed a tenant in the building stole the items. Two black male officers arrived. They were identified by the investigation as PO Edouard and PO Joseph. § 87(2)(b) who was the security guard at the desk that day, made a notation in the book and went upstairs with the officers. It is procedure for § 87(2)(b) to accompany officers as they conduct their investigation. The officers went with § 87(2)(b) to § 87(2)(b) room and interviewed him about the burglary. § 87(2)(b) thought the officers behaved improperly because they investigated the case by loudly banging on the doors of all the apartments on the fourth floor, although it was late at night. When residents answered the door, the officers shined their flashlights inside. All of the tenants who answered their doors stayed in the hallway and watched the officers knock on the other doors. One female resident came to the door and argued with the officers because she was upset that they woke her up.

Both officers entered § 87(2)(b) and § 87(2)(b) and possibly one or two other apartments (during his phone statement, he said that officers entered § 87(2)(b) and § 87(2)(b)). The officers did not ask for consent. § 87(2)(b) did not think any of these tenants said that they did not want

officers to enter. The officers looked around inside the apartments with their flashlights, but did not touch anything.

When the officers banged hard on the door of § 87(2)(b) the tenant, identified by the investigation as § 87(2)(b) opened the door. He was angry at the officers for banging on his door. He also tried to argue with § 87(2)(b) who was standing next to the officers with § 87(2)(b). § 87(2)(b) seemed to think that § 87(2)(b) had knocked on the door, because § 87(2)(b) asked for his name. § 87(2)(b) said, "No. I'm not giving you. I wasn't the one who banged on the door." He explained to § 87(2)(b) that when a police incident happens, § 87(2)(b) has to be present for the investigation. § 87(2)(b) continued arguing with § 87(2)(b). The officers did not ask to enter § 87(2)(b)'s apartment and did not try to enter (during his phone statement, § 87(2)(b) said that officers wanted to enter, but § 87(2)(b) did not let them). He stood in the doorway, blocking officers from entering. They shined their flashlights inside the apartment, but did not enter (during his phone statement, § 87(2)(b) said that the officers did not even shine their flashlights inside). § 87(2)(b) did not recall whether § 87(2)(b) asked for the officers' names or shield numbers. The officers left then left § 87(2)(b)'s door.

§ 87(2)(b) told the officers that if they were knocking on all the doors on the fourth floor, they might as well knock on all the doors in the building. The officers said they did not have time. They left the building without knocking on doors on any other floor. § 87(2)(b) was with the officers the whole time they were in the building. No other staff person was present for the officers' investigation in the building. § 87(2)(b) did not know whether the building had a policy regarding allowing officers to enter rooms without residents' consent. He did not recall telling PO Edouard and PO Joseph that the building had such a policy.

Witness: § 87(2)(b)

- § 87(2)(b)

Phone Statement

§ 87(2)(b) provided a brief telephone statement on September 23, 2014 (encl. 20). On June 29, 2014, he called 911 because he was robbed. Two officers, identified by the investigation as PO Joseph and PO Edouard, came and spoke with him. They knocked on the doors of his neighbors while he stood beside his own room. Several neighbors answered the door, and the officers looked in their rooms. § 87(2)(b) thought the officers only looked from outside in the hallway. He did not think the officers used flashlights or stepped into any rooms. However, he could not see everything that was happening because he remained by his own room. § 87(2)(b) only remembered one neighbor becoming upset with the officers. That neighbor, who was identified by the investigation as § 87(2)(b) exited his room and yelled at officers for knocking on his door. § 87(2)(b) did not see officers enter § 87(2)(b)'s room. The officers wrote a police report and left. § 87(2)(b) was upset that the officers did not look inside of every room on his floor because he thinks one of his neighbors stole his belongings. § 87(2)(b) did not see any other officers arrive at his building.

Witness: § 87(2)(b)

- § 87(2)(b)

Phone Statement

§ 87(2)(b) provided two brief phone statements on August 29, 2014 (encl. 18-19). On December 10, 2014, officers, identified by the investigation as PO Edouard and PO Joseph, knocked on her door. She opened the door and saw them standing with the security guard,

identified by the investigation as § 87(2)(b) PO Edouard and PO Joseph said that her neighbor's television was stolen and that they were going into everyone's room. They said that they had the right to enter all of the rooms as part of the investigation. § 87(2)(b) initially said in the phone call that she told officers that they could come and check her room. § 87(2)(b) later said that she did not give or deny consent, but left her door wide open as the officers walked in. Regardless, § 87(2)(b) said that she did not know the law, and so did not tell officers that they could not enter her room after they told her that they had the right to. The officers looked under her bed and opened her closet. While officers were inside her room, she called her husband, § 87(2)(b) who was downstairs. She told him officers were in his room. § 87(2)(b) said officers could not enter their room without a search warrant. § 87(2)(b) relayed this information to PO Joseph and PO Edouard, but they insisted that they could check her room without a search warrant. § 87(2)(b) came upstairs while officers were still in their room. He asked the officers if they had a search warrant. They said they did not need one.

After they left § 87(2)(b)'s room, they went to § 87(2)(b). The man in § 87(2)(b) identified by the investigation as § 87(2)(b) told the officers, "You're not going to search my room because you don't have a search warrant." § 87(2)(b) stayed in her room, so she did not see what happened, but § 87(2)(b) later told her that § 87(2)(b) did not let the officers enter. § 87(2)(b) stood next to the officers the whole time they were in the building and he did not say anything. The officers left the building.

Witness: § 87(2)(b)

- § 87(2)(b)

Phone Statement

§ 87(2)(b) provided a brief phone statement on August 29, 2014 (encl. 18). On June 29, 2014, he was at the store when § 87(2)(b) called him, panicking about two officers, identified by the investigation as PO Joseph and PO Edouard, entering their room. § 87(2)(b) returned to their apartment while officers were inside the apartment. He told the officers that they had no right to enter an apartment without a warrant. After leaving § 87(2)(b)'s room, PO Edouard and PO Joseph went to § 87(2)(b). The man who lived in § 87(2)(b) identified by the investigation as § 87(2)(b) said, "You can't come in my room. Show me a warrant." He did not allow the officers into his room. They did not enter.

Multiple attempts were made to schedule sworn statements with § 87(2)(b) and § 87(2)(b). On August 29, 2014, she and § 87(2)(b) scheduled to come to the CCRB on September 4, 2014. They missed their appointment. A missed appointment letter was mailed to them on September 4, 2014. On September 8, 2014, they were called. § 87(2)(b) answered and said he forgot about the appointment. He requested that they be interviewed at their church in Brooklyn. He said he would call the CCRB to schedule an appointment after he spoke with § 87(2)(b). § 87(2)(b) and § 87(2)(b) were called on September 16, 2014. They did not answer, and voicemail messages were left asking them to call the CCRB. § 87(2)(b) called back on September 16, 2014. She stated that she did not wish to participate in the investigation. § 87(2)(b) called back on September 16, 2014, and said he wanted to provide a sworn statement, but had to wait until after he returned from the hospital the following week before scheduling an appointment. § 87(2)(b) was called on October 1, October 7, October 17, October 23, and October 28, 2014. Each time, a recording stated that the number was not in service. A final please call letter was mailed to § 87(2)(b) on October 17, 2014. § 87(2)(b) did not contact the CCRB.

Attempts to Contact Civilians

Multiple attempts were made to contact the remaining residents of the fourth floor of § 87(2)(b). A Lexis Nexis search did not yield any names or phone numbers for the residents. First please call letters were mailed to the residents on August 26, 2014. On September 3, 2014, § 87(2)(b) called the CCRB. He said he was downstairs when officers were investigating the burglary. He did not see the officers on the § 87(2)(b). Another tenant, whose name he refused to provide, told him that officers got a key from the building staff and opened and searched every room on the § 87(2)(b). Final please call letters were mailed to the residents of the fourth floor on September 16, 2014. Besides § 87(2)(b) no residents contacted the CCRB. Letters sent to Apartments § 87(2)(b) and § 87(2)(b) were returned to the CCRB by USPS.

NYPD Statements:

Subject Officer: PO JOEL EDOUARD

- *At the time of the incident, PO Edouard was § 87(2)(b) old. He is a black male 5'8" tall and 175 pounds, with brown hair and hazel eyes.*
- *On June 29, 2014, PO Edouard worked from 4:00 p.m. to 12:00 a.m., assigned to Sector FE with PO Joseph. They were in uniform and assigned to marked RMP number 3648.*

Memo Book

PO Edouard wrote the following entries in his memo book: at 9:41 p.m., he received a radio call regarding a past burglary at § 87(2)(b). He wrote that he closed it as 90X, which means unfounded, but said that the notation was an error (encl. 27-29).

CCRB Statement

PO Edouard was interviewed at the CCRB on October 23, 2014 (encl. 30-32). At 9:41 p.m. on June 29, 2014, PO Edouard and PO Joseph received a call regarding a past burglary at § 87(2)(b) in Brooklyn. That location is a shelter in which every resident has his or her own room. When the officers arrived, they met the building staff person, identified by the investigation as § 87(2)(b). He was the only building staff member working at the time. He was probably the night manager, watching the doors at night, while the "big boss" had an office elsewhere. PO Edouard forgot which floor the burglary occurred on, but thought it was the third floor. PO Edouard and PO Joseph went to the third floor with § 87(2)(b) who remained with them throughout their time in the building, except when he briefly went downstairs while the officers spoke with § 87(2)(b).

PO Edouard and PO Joseph met § 87(2)(b) who explained to them that he had left his apartment locked on an earlier date. When he returned on June 29, a television which he had recently purchased was missing from his room. The officers asked § 87(2)(b) how long he had the television, how long he was gone, and when exactly he discovered it missing. PO Edouard did not recall § 87(2)(b) telling officers who he suspected took the television. § 87(2)(b) opened his room and showed the officers where the television had been. The officers examined his room and found no sign of forced entry at the door. His window faced the street, so a burglar could not have climbed in. § 87(2)(b) did not say that any other items were taken from his room. PO Edouard did not recall any mention of a Play Station.

PO Edouard and PO Joseph wanted to talk to residents of the shelter to see if they knew anything about the burglary. § 87(2)(b) told PO Edouard and PO Joseph that the building's policy was for officers to "check" every resident's room when something goes missing. § 87(2)(b) said that his manager wanted officers to check all the rooms and that all the residents of the building knew that this was the policy. PO Edouard understood this policy to mean that officers

had the right to enter all of the rooms without consent and with the building staff present. The officers did not ask § 87(2)(b) to show them any documentation of this policy. PO Edouard did not recall speaking to any supervisor on the phone regarding this policy. PO Edouard had never been to this particular shelter before. He explained that every shelter has its own policy.

PO Edouard believed that he was not just permitted but required by the building policy to check inside every room. He and PO Joseph knocked on all the doors on the third floor. About five or six residents answered, and the officers told them what they were investigating and said that according to shelter policy, they were supposed to check the rooms. With the exception of § 87(2)(b) all of the residents allowed the officers to enter their rooms, saying, “Yes, you can check. No problem.” Besides with § 87(2)(b) there were no arguments with residents about checking their rooms. PO Edouard did not recall anyone besides § 87(2)(b) saying that they did not want the officers to enter their rooms. The officers entered the rooms of each of the five or six residents with whom they spoke (some shared rooms, so the officers may have entered under five or six rooms). Some residents were not home and did not answer the door. The officers did not ask § 87(2)(b) to unlock their doors, even though he had keys to all the rooms, “because if there is nobody there, I’m not going to go into a room where there is nobody there.” The rooms were approximately five by seven feet and the missing television was large, so the officers did not have to check extensively. Both officers, or in some cases only PO Edouard, would enter the room, look under the bed, and ask the resident to open the closet. The residents opened the closets. PO Edouard did not recall opening any closet himself. He denied that he or PO Joseph opened any cabinets or drawers. If the room was not well lit, PO Edouard and PO Joseph probably used flashlights. Then the officer(s) would thank the resident and leave the room.

A number of the residents exited their rooms after the officers left their rooms. Those residents remained in the hallway while the officers continued their search. The residents complained that there are frequent burglaries in their building. Some residents said that they suspected management of stealing their belongings because management had keys to their rooms. Besides § 87(2)(b) no resident complained about the officers’ actions. PO Edouard thought that everyone understood the policy of the shelter and so did not complain about officers entering their rooms.

When PO Edouard and PO Joseph knocked on § 87(2)(b) s door and identified themselves, he yelled through the door. The officers explained their investigation to him and said, “We’re here with the shelter manager. You know the policy of the shelter. If there’s a theft, we are allowed to check your room. We need to check your room.” § 87(2)(b) yelled something through the door. PO Edouard did not recall exactly what § 87(2)(b) said, but he was very angry at the officers for knocking on his door. He said, “I’m naked.” The officers said, “OK. Just put something on.” § 87(2)(b) opened the door, holding a pen and pad of paper. He asked for the officers’ names and shield numbers. PO Edouard displayed his shield so that § 87(2)(b) could copy down his information. He usually shows his shield rather than providing the number verbally because he believes it is easier for people to copy down. He did not recall providing his information verbally. PO Joseph usually verbally states his name and shield number when asked. PO Edouard did not recall how PO Joseph responded in this instance. § 87(2)(b) wrote down their information.

PO Edouard did not recall § 87(2)(b) asking about a search warrant. PO Edouard did not think § 87(2)(b) wanted the officers to enter his room. § 87(2)(b) probably said explicitly that he did not want officers to enter.

Throughout the officers’ interaction with § 87(2)(b) was standing beside them. § 87(2)(b) was not saying anything.

The door of § 87(2)(b) s room was open all the way and § 87(2)(b) was standing against the door. There was space for officers to walk past him and into the room. PO Joseph entered § 87(2)(b)

§ 87(2)(b)'s room, followed by PO Edouard. The officers did not push the door open because it was already open all the way. They looked inside § 87(2)(b)'s closet and under his bed. PO Edouard did not recall whether they used flashlights. Finding nothing, they walked out of his room. The whole time officers were searching his room, § 87(2)(b) was talking to them. PO Edouard denied opening any cabinets or drawers in § 87(2)(b)'s room.

When the officers entered § 87(2)(b)'s room, § 87(2)(b) was near the door to § 87(2)(b)'s room, in the hallway, and did not enter the room. The other residents were in the hallway, but they were behind a divider at the other end of the hallway, so some of them may not have been able to see officers enter § 87(2)(b)'s room.

PO Edouard and PO Joseph entered one more room after § 87(2)(b)'s. PO Joseph prepared a complaint report and a lost/stolen property report. PO Edouard did not write down § 87(2)(b)'s name. He did not know if PO Joseph wrote § 87(2)(b)'s. PO Edouard thought § 87(2)(b) was some sort of night manager or security guard, but not high ranking in the building.

PO Edouard and PO Joseph left. They did not go to any floors besides the floor where the burglary occurred. There were too many rooms for the officers to check all of them. No other officers went to § 87(2)(b) while PO Edouard and PO Joseph were there.

Subject Officer: PO FRANKY JOSEPH

- *At the time of the incident, PO Joseph was § 87(2)(b) old. He is a black male, 5'7" tall and 190 pounds, with black hair and brown eyes.*
- *On June 29, 2014, PO Joseph worked from 3:00 p.m. to 11:35 p.m., assigned to Patrol in the 79th Precinct. He was in uniform and assigned to marked RMP number 3648.*

Memo Book

PO Joseph wrote the following memo book entries: at 9:41 p.m., he responded to a past burglary at § 87(2)(b) § 87(2)(b). At 11:07 p.m., he prepared a complaint report and another report (encl. 21-23).

CCRB Statement

PO Joseph was interviewed at the CCRB on August 29, 2014 (encl. 24-26). On June 29, 2014, at approximately 9:41 p.m., he and PO Edouard responded to a radio run regarding a past burglary at § 87(2)(b) § 87(2)(b). This building is a shelter in which each resident has his own apartment, which is only one room. The door to each room locks and has a number. PO Joseph and PO Edouard took the elevator to the fourth floor and met the complainant, identified by the investigation as § 87(2)(b) at § 87(2)(b), § 87(2)(b) complained that his apartment was burglarized. He said that he left his apartment and when he returned, his television, Play Station, and other items were missing. § 87(2)(b) did not suspect any particular person of having stolen his belongings. PO Joseph and PO Edouard went inside § 87(2)(b)'s room, where he showed them a mark left by the television on its stand. PO Joseph looked under § 87(2)(b)'s bed because sometimes complainants "steal their own stuff" if they have renter's insurance and they want to make a police report.

PO Joseph and PO Edouard investigated the burglary by knocking on the door of every apartment in the building, starting with the fourth floor. The officers never split up. They had to ask every resident in the building if they had heard or seen anything regarding the robbery. PO Joseph did not suspect that another resident had stolen the items, but he wanted to know if they saw the burglar. There are about six floors and about ten apartments on each floor. A manager or security guard, identified by the investigation as § 87(2)(b) went around with PO Joseph and PO Edouard as they knocked on every door. No one else went with them.

A number of residents responded to the officers' knocking by opening their doors and speaking with the officers. PO Edouard and PO Joseph talked to every resident in the building who was home. No resident said they witnessed the burglary. PO Joseph did not ask to look inside any resident's apartment. He did not look inside any apartment, even from the hallway. Neither PO Joseph nor PO Edouard stepped inside any apartment besides § 87(2)(b). They did not attempt to enter any apartment. PO Joseph did not recall whether any tenant invited the officers to check his room. He did not shine a flashlight into any room.

PO Joseph recalled knocking on the door of § 87(2)(b) in which a woman and her husband, identified by the investigation as § 87(2)(b) and § 87(2)(b) resided. They told him that the management company has keys to all the rooms, so they suspected that someone from the management company stole the § 87(2)(b) and § 87(2)(b) were upset because it was late at night. PO Joseph did not think they were upset for any other reason. PO Joseph did not ask to look inside of § 87(2)(b). He did not go inside of § 87(2)(b) nor did PO Edouard.

PO Joseph or PO Edouard knocked on § 87(2)(b)'s door. § 87(2)(b) opened the door and spoke with the officers, who remained in the hallway. § 87(2)(b) said, "I'm sleeping. Why are you waking me up? You don't have a search warrant to enter my apartment." PO Joseph said, "I just need to ask you a few questions." PO Joseph asked § 87(2)(b) "Did you see anybody go into Room 410? Did you see anybody removing any items anywhere?" § 87(2)(b) said, "No." He said, "I want your badge and your name." PO Joseph said, "Officer Joseph. Shield number 30527." § 87(2)(b) also asked PO Edouard for his name and shield number. PO Edouard verbally provided his name and shield number. § 87(2)(b) said, "I'm going to sue you for knocking on my door." Neither PO Joseph nor PO Edouard ever asked to go inside of or search § 87(2)(b)'s room. Neither officer entered his room or shined his flashlight inside. Neither officer had his flashlight in his hand because the lights were on in the hallway and apartments.

§ 87(2)(b) was with the officers the entire time that they were knocking on doors and talking to residents. At one point, while the officers were on the fourth floor, § 87(2)(b) left to let a tenant into the building. After two or three minutes, he returned. PO Joseph did not recall which tenant he was talking to at the time that § 87(2)(b) left. PO Joseph did not speak with any staff besides the § 87(2)(b). PO Joseph did not recall whether any other staff was present that evening.

PO Joseph and PO Edouard were unable to determine who stole the items. They called Sgt. Fernandez and explained the situation to him. PO Joseph did not recall whether Sgt. Fernandez came to the building. Sgt. Fernandez told them to classify the job as 93C and 93Q, which means they prepared a complaint report and a form that § 87(2)(b) had to fill out listing the items which were missing and his contact information. No other officer responded to the scene.

NYPD Documents

911 Call

§ 87(2)(b) called 911 and asked officers to respond to his room, located at § 87(2)(b). He had just returned home and discovered that he was robbed overnight, while he was staying elsewhere. His new television and Play Station were missing. He did not know whether anything else was missing. No one was injured (enc. 33).

Complaint Report

PO Joseph prepared complaint report number § 87(2)(b) for a burglary inside § 87(2)(b). The burglary occurred between 12:00 p.m. on June 28 and 8:00 p.m. on June 29, 2014. It was reported at 10:21 p.m. on June 29, 2014. § 87(2)(b) stated that unknown perpetrators entered his apartment without permission or authority and removed a 40-inch plasma television and a Play Station. The unknown perpetrators fled through

unknown directions. A canvass was done of the building with negative results. PO Joseph spoke with many of the tenants. No one heard or saw anything. There was no sign of forced entry (encl. 34-38).

NYPD Event

§ 87(2)(b) called 911 at 9:08 p.m. on June 29, 2014. He said that his television and Play Station were taken overnight. Unit 81F-3 was dispatched and arrived at 10:26 p.m. At 11:09 p.m., Unit 81F-3 prepared a report (encl. 38-41).

Attempts to Verify Building Policy

Multiple attempts were made to ascertain whether § 87(2)(b) had the policy that PO Edouard described. The building was called on October 23, 2014. A female staff person answered and said she did not know about a building policy allowing officers to enter rooms without residents' consent. She said she would find out and call the CCRB. § 87(2)(b) also came to the phone and said he was not aware of such a policy. On November 21, 2014, § 87(2)(b) was called and again he said that he was not aware of such a policy and that he was only the maintenance person. Lexis Nexis results found that building is held by § 87(2)(b), owned by § 87(2)(b). The company was called on December 1, 2014, but the number was not in service. A please call letter was mailed to § 87(2)(b) on December 1, 2014. The building staff was called again on December 1, 2014. A female answered and said the manager was not in. She refused to provide his phone number, but took a message for him to call the CCRB. She said his name was Juan Acosta. During a phone call on December 3, 2014, with § 87(2)(b), who oversees housing at the Department of Homeless Services, § 87(2)(b) stated that § 87(2)(b) is not under DHS and so she would not know the building's policies. No staff from § 87(2)(b) or § 87(2)(b) contacted the CCRB.

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of October 30, 2014, with regard to the incident (encl. 50).

Civilians Criminal History

- As of November 12, 2014, of Court Administration records reveal the following criminal convictions for § 87(2)(b) (encl. 51-63):

- § 87(2)(b)
[REDACTED]
- [REDACTED]

Civilians CCRB History

- § 87(2)(b) has filed the following CCRB complaint (encl. 4):

- § 87(2)(b)
[REDACTED]

Subject Officers CCRB History

- PO Franky Joseph has been a member of the service for eight years and there are two substantiated CCRB allegations against him (encl. 1-2):

- In CCRB case number 201206906, stop and search of person allegations were substantiated. The board recommended charges. The case is with the CCRB Administrative Prosecution Unit.
- PO Joel Edouard has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. 3).

Conclusion

Identification of Subject Officers

- PO Joseph and PO Edouard acknowledged interacting with § 87(2)(b) and knocking on all the doors on the floor of the alleged burglary. They were the only officers in the building at the time of the incident. Allegations A-D are, therefore, pleaded against them.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Franky Joseph entered and searched

§ 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: PO Joel Edouard entered and searched

§ 87(2)(b) § 87(2)(b) in Brooklyn.

§ 87(2)(g)

Whether § 87(2)(b) consented to the entry and search is in dispute. In her phone statement, § 87(2)(b) wavered regarding whether she gave consent. § 87(2)(b)

Allegation C – Abuse of Authority: PO Joel Edouard entered and searched

§ 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation D – Abuse of Authority: PO Franky Joseph entered and searched

§ 87(2)(b) § 87(2)(b) in Brooklyn.

It is undisputed that PO Joseph and PO Edouard conducted an investigation into a past burglary by knocking on all the doors on the floor where the alleged burglary took place. The officers knocked on § 87(2)(b)'s door, and he answered. Whether PO Edouard and PO Joseph entered and searched § 87(2)(b)'s apartment is in dispute.

§ 87(2)(b) and PO Edouard testified that PO Edouard and PO Joseph knocked on § 87(2)(b)'s door and told him that they needed to check his room as part of an investigation. There was no search warrant. § 87(2)(b) expressed that he did not want the officers to enter. However, when officers persisted, § 87(2)(b) did not physically block them from entering because he did not want the situation to escalate. Both officers entered his room and looked inside his closet and under his bed. According to § 87(2)(b) they also opened his cabinet, but PO Edouard denied this.

PO Joseph denied that he or PO Edouard entered § 87(2)(b)'s apartment or any other apartment at § 87(2)(b) besides § 87(2)(b)'s apartment. PO Joseph acknowledged § 87(2)(b) being angry and threatening to sue the police, but PO Joseph stated that § 87(2)(b) was only upset that officers knocked on his door.

§ 87(2)(b) and § 87(2)(b) who did not cooperate in providing sworn statements, said that § 87(2)(b) refused to allow officers into his room and that the officers ultimately did not enter. § 87(2)(b) and § 87(2)(b) did not see officers enter § 87(2)(b)'s apartment.

Because PO Edouard acknowledged entering and searching § 87(2)(b)'s apartment with PO Joseph in a manner consistent with that alleged, the investigation determined by a preponderance of the evidence that PO Edouard and PO Joseph did enter and search his room.

According to PO Edouard, the officers did not need consent to enter § 87(2)(b)'s room because § 87(2)(b) told them that the building's policy was that officers should enter every room when conducting a burglary investigation. PO Edouard did not obtain any written or verbal confirmation that this was the policy. Neither he nor PO Joseph documented in memo books or reports that this was the building's policy. They did not speak with any building staff besides § 87(2)(b). PO Edouard had never been to the building before. PO Joseph did not testify that § 87(2)(b) said this was the policy. § 87(2)(b) denied knowledge of such a policy and did not recall telling the officers that such a policy existed. Another staff person also denied knowledge of such a policy. Despite multiple attempts, the investigation was unable to receive confirmation from the building's management or owner that such a policy did or did not exist.

Two pertinent recognized exceptions to the warrant requirement are exigent circumstances and hot pursuit. *People v. McBride*, 14 N.Y.3d 440 (2010) (encl. A-G). Third-party consent is also a recognized exception to the warrant requirement, if the third-party possesses common authority over or other sufficient relationship to the premises or effects sought to be inspected. The lessor of real or personal property lacks the requisite authority to consent to a warrantless search of the leased property. *People v. Ponto*, 103 A.D.2d 573 (2nd Dept., 1984) (encl. H-K).

§ 87(2)(g)

According to PO Edouard, § 87(2)(b) gave the officers consent to enter § 87(2)(b)'s apartment when § 87(2)(b) told the officers that the building had a policy allowing officers to enter all apartments. However, § 87(2)(b) denied knowledge of a building policy allowing officers to enter apartments and did not recall telling officers that such a policy existed. § 87(2)(g)

§ 87(2)(g)

Allegation E – Other Misconduct: PO Franky Joseph intentionally made a false official statement to the CCRB.

§ 87(2)(g)

PO Joseph and PO Edouard entered multiple apartments in § 87(2)(b). Even § 87(2)(b) stated that the officers

looked inside multiple rooms, though he did not clarify whether they entered the rooms. However, in PO Joseph’s statement to the CCRB, he repeatedly denied that he or PO Edouard entered any room besides § 87(2)(b) s room. He acknowledged speaking with § 87(2)(b) and § 87(2)(b) but denied entering, asking to enter, or looking inside their rooms. § 87(2)(g) PO Joseph’s CCRB interview took place only two months after the incident and § 87(2)(g) he demonstrated a recollection of the incident, including conversations with § 87(2)(b) and § 87(2)(b) Furthermore, PO Joseph did not state that he did not recall whether he and PO Edouard entered rooms. Rather, he explicitly denied that they entered the rooms, asked to enter the rooms, or even looked inside them. § 87(2)(g)

Section 203-08 of the Patrol Guide states that “the intentional making of a false statement is prohibited” and an officer may be terminated for providing a false official statement (encl. L).

§ 87(2)(g)

Team: _____

Investigator: _____
 Signature Print Date

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date



Eric Gonzalez
District Attorney

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(718) 250-2000
WWW.BROOKLYNDA.ORG

[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: FRANKY JOSEPH

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 06/16/2012, AGAINST MOS JOSEPH:
ALLEGATION(S):

1. DEPARTMENT RULES VIOLATION – COURT NON-APPEARANCE

CASE STATUS: CLOSED ON 10/19/2012

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE ISSUED

Disclosure # 2:

MOS JOSEPH ENTERED A PLEA OF GUILTY TO THE FOLLOWING CHARGES AND SPECIFICATIONS ARISING FROM AN INCIDENT ON OR ABOUT 05/29/2012, WHILE MOS JOSEPH WAS ASSIGNED TO THE 81ST PRECINCT AND ON DUTY:

ALLEGATION(S):

1. MOS JOSEPH, AT APPROXIMATELY 2130 HOURS, AT A LOCATION KNOWN TO THE DEPARTMENT IN KINGS COUNTY, ABUSED HIS AUTHORITY AS A MEMBER OF THE NEW YORK CITY POLICE DEPARTMENT IN THAT HE STOPPED AN INDIVIDUAL KNOWN TO THE DEPARTMENT WITHOUT SUFFICIENT LEGAL AUTHORITY

2. MOS JOSEPH, AT APPROXIMATELY 2130 HOURS, AT A LOCATION KNOWN TO THE DEPARTMENT IN KINGS COUNTY, ABUSED HIS AUTHORITY AS A MEMBER OF THE NEW YORK CITY POLICE DEPARTMENT IN THAT HE SEARCHED AN INDIVIDUAL KNOWN TO THE DEPARTMENT WITHOUT SUFFICIENT LEGAL AUTHORITY

CASE STATUS: CLOSED ON 11/10/2014

ACTION TAKEN: FORFEITURE OF TWO (2) VACATION DAYS

Disclosure # 3:

THE NYPD ENTERED A DISPOSITION OF ADMINISTRATIVELY CLOSED, ARISING FROM CCRB CASE #201206906, DATED 11/26/2013, AGAINST MOS JOSEPH:

ALLEGATION(S):

1. MOS JOSEPH, ASSIGNED TO THE 81ST PRECINCT, WHILE ON DUTY ON MAY 29, 2012, AT AROUND 2130

HOURS, IN THE VICINITY OF MALCOLM X BOULEVARD AND MADISON STREET, KINGS COUNTY, FAILED TO PREPARE MEMO BOOK ENTRIES RELATING TO THE STOP OF AN INDIVIDUAL KNOWN TO THE DEPARTMENT

2. MOS JOSEPH, ASSIGNED TO THE 81ST PRECINCT, WHILE ON DUTY ON MAY 29, 2012, AT AROUND 2130 HOURS, IN THE VICINITY OF MALCOM X BOULEVARD AND MADISON STREET, KINGS COUNTY, FAILED TO PREPARE A UF-250, STOP, QUESTION AND FRISK REPORT, REGARDING THE STOP OF AN INDIVIDUAL KNOWN TO THE DEPARTMENT

DISPOSITION: ADMINISTRATIVELY CLOSED

CASE STATUS: CLOSED ON 08/01/2016

Disclosure # 4:

MOS JOSEPH ENTERED A PLEA OF GUILTY TO THE FOLLOWING CHARGES AND SPECIFICATIONS ARISING FROM AN INCIDENT ON OR ABOUT 08/29/2014:

ALLEGATION(S):

1. MOS JOSEPH, AT A LOCATION KNOWN TO THE DEPARTMENT IN NEW YORK COUNTY, DID WRONGFULLY ENGAGE IN CONDUCT PREJUDICIAL TO THE GOOD ORDER, EFFICIENCY AND DISCIPLINE OF THE DEPARTMENT, TO WIT: WHILE BEING INTERVIEWED AT THE CIVILIAN COMPLAINT REVIEW BOARD REGARDING A POLICE INCIDENT WHICH OCCURRED ON OR ABOUT 06/29/2014, DID MAKE INACCURATE AND MISLEADING STATEMENTS

CASE STATUS: CLOSED ON 11/16/2016

ACTION TAKEN: FORFEITURE OF TWENTY-FIVE (25) VACATION DAYS

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 # 5:

CCRB CASE: 201113054

REPORT DATE: 10/06/2011

[REDACTED]

[REDACTED]

[REDACTED]

Disclosure # 6:

CCRB CASE: 201206906

REPORT DATE: 05/29/2012

INCIDENT DATE: 05/29/2012

CCRB SUBSTANTIATED ALLEGATION(S):

1. ABUSE - STOP
2. ABUSE - SEARCH (OF PERSON)

NYPD DISPOSITION: ADMINISTRATIVE PROSECUTION UNIT GUILTY, FORFEIT VACATION 2 DAYS

OTHER MISCONDUCT NOTED:

1. OTHER MISCONDUCT NOTED - FAILURE TO PRODUCE STOP AND FRISK REPORT
2. OTHER MISCONDUCT NOTED - FAILURE TO PREPARE A MEMO BOOK ENTRY

Disclosure # 7:

CCRB CASE: 201406519

REPORT DATE: 06/30/2014

INCIDENT DATE: 06/29/2014

CCRB SUBSTANTIATED ALLEGATION(S):

1. ABUSE - PREMISES ENTERED AND/OR SEARCHED

NYPD DISPOSITION: COMMAND DISCIPLINE - A

OTHER MISCONDUCT NOTED:

1. OTHER MISCONDUCT NOTED - OTHER MISCONDUCT

Disclosure # 8:

CCRB CASE: 201407434

REPORT DATE: 07/24/2014

INCIDENT DATE: 07/23/2014

CCRB SUBSTANTIATED ALLEGATION(S):

1. FORCE - CHOKEHOLD

NYPD DISPOSITION: ADMINISTRATION PROSECUTION UNIT CLOSED: RETAINED, WITH DISCIPLINE, INSTRUCTIONS

Eric Gonzalez
District Attorney
Kings County