201501935
Diana Pichardo

A little after midnight on March 8, 2015, David Rivera heard a commotion in the stairwell of his building. He and another person on his floor both exited their apartments and saw police officers struggling to arrest two men in the stairwell. Mr. Rivera and his neighbor took out their phones and started recording.

Other officers arrived to help the officers secure the men they were arresting. Among these was Sergeant Diana Pichardo. Sergeant Pichardo drew her gun on Mr. Rivera as he was recording her, and ordered him back into his apartment. Later, as confirmed by security footage, she followed him into the apartment, forcibly took his phone, searched his apartment and arrested him for Obstructing Governmental Administration.

Despite the fact the entire incident was captured on video (both cell phone video and security video), Sergeant Pichardo made two separate false statements to the CCRB. First, she stated that she entered the apartment at the order of her Captain, who was demonstrated not to have arrived for several minutes after Sergeant Pichardo entered the apartment. Second, she stated that she did not point her gun at Mr. Rivera and order him into the apartment until she had warned him "multiple times" to back up, claiming that the video did not contain the earlier warnings. When the video begins, Sergeant Pichardo is not focused on those taking it, and it captures her turning towards them, pointing her gun directly at them, and ordering them to "Get the fuck up, move the fuck up" as soon as she does.

The CCRB substantiated allegations that Sergeant Pichardo improperly pointed her gun, improperly entered the apartment, and spoke discourteously to the man. It further found that "there is evidence to suggest that Sgt. Pichardo provided a false official statement," per its changed policy.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☑ Force ☑ Discourt. ☐ U.S.
Monique West	Squad #2	201501935	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	Precinct:	18 Mo. SOL	EO SOL
Sun, 03/08/2015 12:27 AM	[redacted]	60	09/08/2016	9/8/2016

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Tue, 03/17/2015 3:14 PM	CCRB	Phone	Tue, 03/17/2015 3:14 PM

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

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

Subject Officer(s)	Shield	TaxID	Command
1. SSA Diana Pichardo	02816	§ 87(2)(b)	PSA 1
2. POM Darnell Forrester	24294	§ 87(2)(b)	PSA 1
3. POM Ronald Remo	13478	§ 87(2)(b)	PSA 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Emilio Aponte	6470	§ 87(2)(b)	060 DET
2. CPT Robert Ohare	00000	§ 87(2)(b)	PBMS

Officer(s)	Allegation	Investigator Recommendation
A . POM Ronald Remo	Abuse of Authority: Inside of § 87(2)(b) in Brooklyn, PO Ronald Remo stopped § 87(2)(b) and § 87(2)(b).	A . § 87(2)(g)
B . POM Darnell Forrester	Abuse of Authority: Inside of § 87(2)(b) in Brooklyn, PO Darnell Forrester stopped § 87(2)(b) and § 87(2)(b).	B . § 87(2)(g)
C . POM Darnell Forrester	Force: Inside of § 87(2)(b) in Brooklyn, PO Darnell Forrester used a chokehold against § 87(2)(b).	C . § 87(2)(g)
D . POM Ronald Remo	Discourtesy: Inside of § 87(2)(b) in Brooklyn, PO Ronald Remo spoke discourteously to § 87(2)(b).	D . § 87(2)(g)
E . POM Ronald Remo	Abuse of Authority: Inside of § 87(2)(b) in Brooklyn, PO Ronald Remo threatened § 87(2)(b) with the use of force.	E . § 87(2)(g)
F . POM Ronald Remo	Force: Inside of § 87(2)(b) in Brooklyn, PO Ronald Remo used physical force against § 87(2)(b).	F . § 87(2)(g)
G . POM Darnell Forrester	Force: Inside of § 87(2)(b) in Brooklyn, PO Darnell Forrester used physical force against § 87(2)(b).	G . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
H . SSA Diana Pichardo	Discourtesy: Inside of § 87(2)(b) in Brooklyn, Sgt. Diana Pichardo spoke discourteously to § 87(2)(b) and individuals.	H . § 87(2)(g)
I . SSA Diana Pichardo	Force: Inside of § 87(2)(b) in Brooklyn, Sgt. Diana Pichardo pointed her gun at § 87(2)(b) and § 87(2) .	I . § 87(2)(g)
J . SSA Diana Pichardo	Discourtesy: Inside of § 87(2)(b) in Brooklyn, Sgt. Diana Pichardo spoke discourteously to § 87(2)(b) .	J . § 87(2)(g)
K . SSA Diana Pichardo	Abuse of Authority: Sgt. Diana Pichardo entered and searched § 87(2)(b) in Brooklyn.	K . § 87(2)(g)
L . SSA Diana Pichardo	Abuse of Authority: Sgt. Diana Pichardo entered and searched § 87(2)(b) in Brooklyn.	L . § 87(2)(g)
M . SSA Diana Pichardo	Abuse of Authority: Inside of § 87(2)(b) in Brooklyn, Sgt. Diana Pichardo refused to provide her name to § 87(2)(b) .	M . § 87(2)(g)
N . SSA Diana Pichardo	Discourtesy: Inside of the PSA 1 stationhouse, Sgt. Diana Pichardo spoke discourteously to § 87(2)(b) , § 87(2)(b) , § 87(2)(b) and § 87(2)(b) .	N . § 87(2)(g)
O . SSA Diana Pichardo	Other: There is evidence suggesting Sgt. Diana Pichardo provided a false official statement in violation of PG 203-08.	O . § 87(2)(g)

Case Summary

On March 8, 2015, at approximately 12:27 a.m., PO Darnell Forrester and PO Ronald Remo of PSA 1 stopped § 87(2)(b) and his son, § 87(2)(b) inside of § 87(in Brooklyn while conducting a robbery investigation (**allegations A and B**). § 87(2)(b) § 87(2)(b) s neighbor, and § 87(2)(b) exited separate apartments and began to record the incident. During their interaction, PO Forrester allegedly used a chokehold against § 87(2) (**allegation C**). PO Remo said, "Give me your fucking hands" (**allegation D**) and allegedly said, "or if not, I'm going to fucking tase you" (**allegation E**). PO Remo and PO Forrester punched § 87(2)(b) in the face (**allegations F and G**). Additional officers, including Sgt. Diana Pichardo of PSA 1, arrived on scene. Sgt. Pichardo allegedly yelled, "Get the fuck back in your apartments and lock your fucking doors" (**allegation H**). Sgt. Pichardo pointed her gun at § 87(2)(b) and § 87(2)(b) (**allegation I**) and said, "Get the fuck back" (**within allegation H**). Sgt. Pichardo repeatedly spoke discourteously to § 87(2)(b) (**allegation J**). § 87(2)(b) § 87(2)(b) and his other son, § 87(2)(b) § 87(2)(b) were all arrested for gang assault and assault of a police officer. Sgt. Pichardo and officers entered and searched § 87(2)(b) s and § 87(2)(b) § 87(2)(b) s apartments under the authority of Sgt. Pichardo (**allegations K and L**). Sgt. Pichardo allegedly refused to provide her name to § 87(2)(b) (**allegation M**). At the PSA 1 stationhouse, Sgt. Pichardo spoke discourteously to § 87(2)(b) § 87(2)(b) and § 87(2)§ 87(2)(b) (**allegation N**). There is evidence to suggest that Sgt. Pichardo provided a false official statement in violation of PG 203-08 (**allegation O**). The District Attorney's office declined to prosecute § 87(2)(b) (Board Review 01). The other criminal cases stemming from this incident are still pending (Board Review 02).

This case was reassigned to the undersigned from Inv. Simon Wang after media attention turned this case into a sensitive case. This case is being submitted for closure more than 90 days after it was filed due to the substantial amount of evidence and witnesses in this case.

Mediation, Civil and Criminal Histories

- Due to the open criminal cases and lawsuits stemming from this case, it was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim regarding this incident claiming damages and pain and suffering and seeking one million dollars as redress (Board Review 03). The status of this claim is pending and will be added upon receipt.
- § 87(2)(b)
- § 87(2)(b) and § 87(2)(b) § 87(2)(b) have no prior criminal convictions.

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint involving § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) (Board Review 06).
- PO Darnell Forrester has been a member of the NYPD for four years, has had six previous CCRB allegations involving four cases with no substantiated allegations.

§ 87(2)(g) (see officer history).

- This is the first CCRB complaint against PO Ronald Remo during his four year tenure with the NYPD (see officer history).
- Sgt. Diana Pichardo has been a member of the NYPD for 13 years, has had nine previous CCRB allegations involving seven cases with no substantiated allegations. § 87(2)(g) see officer history).

Potential Issues

- § 87(2)(b) the criminal attorney for § 87(2)(b) and § 87(2)(b) § 87(2)(b) did not permit them to provide statements to the CCRB.
- § 87(2)(b) s girlfriend, was in his apartment at the time of the incident but refused to provide a statement to the CCRB.
- § 87(2)(b) § 87(2)(b) s sister-in-law's husband, witnessed the incident but refused to cooperate with the undersigned's attempts to interview him.

Findings and Recommendations

Explanation of Subject Officer Identification

- PO Remo and PO Forrester admitted to stopping § 87(2)(b) § 87(2)(b) and § 87(2)(b) Therefore, allegations A and B are pleaded against them.
- PO Forrester and PO Remo were the only officers present at the beginning of the incident. Additional officers didn't arrive until after the alleged force was used. PO Remo is an Asian male and PO Forrester is a black male with braids. The civilian witnesses described the officer who used a chokehold against § 87(2)(b) as a black or dark skinned Hispanic male. Therefore, allegation C is pleaded against PO Forrester. § 87(2)(b) described the officer who threatened to tase § 87(2)(b) as the Asian officer. Therefore, allegations D and E are pleaded against him. PO Remo and PO Forrester both admitted to using force against § 87(2)(b) Therefore, allegations F and G are pleaded against them.
- § 87(2)(b) described a Hispanic female officer in plainclothes as the officer who allegedly used various profanities towards him and other individuals and refused to provide her name to him. She was the same officer who pointed her gun at him. He pointed this officer out in video footage from his apartment surveillance cameras. § 87(2)(b) § 87(2)(b) described a dark skinned black or Hispanic female in plainclothes as the officer who spoke rudely to him at the stationhouse. He pointed this woman out in video footage from § 87(2)(b) s cell phone. These videos were shown to Sgt. Pichardo who identified herself as the officer they referred to. She also identified her voice as the one who used profanity in the cell phone video. Therefore, allegations H, I, J, M and N are pleaded against her.
- § 87(2)(b) stated that the same female officer who drew her gun, knocked on § 87(2)(b) § 87(2)(b) s apartment and asked permission to enter. Sgt. Pichardo stated that she and Capt. O'Hare made the decision together to enter the apartments; however, Capt. O'Hare denied speaking to her about this. In fact, he stated that upon his arrival, officers had already entered both apartments. Sgt. Pichardo is heard in video footage, prior to the apartments being entered, yelling, "I want all these motherfuckers out. I'm going to get in that fucking apartment." She later stated, "I want them all arrested in that apartment." Seconds later, officers are seen walking in the direction of the apartments.

(The embedded clips below are not as clear as the originals which are uploaded into CTS. The full video and video clips are available to view in CTS utilities.)

201501935_20151109_1512_DM.mp4

(The following is a clip of the audio from the video above. The audio in this clip has better sound quality than the video above)

201501935_20150501_1158_DM-region-000.wav

Therefore, allegations K and L are pleaded against Sgt. Pichardo.

Allegations not pleaded

- **Force- Breathing restricted-** The chokehold allegation was unfounded and § 87(2) is the only person who could explain what or who caused his breathing to be restricted. Since he did not provide a statement, this allegation is not pleaded.
- **Force:** § 87(2)§ 87(2)(b) stated that he learned from watching the video footage that PO Forrester punched § 87(2)§ 87(2)(b) twice. The video does not show this, § 87(2)§ 87(2)(b) did not see personally see this happen and § 87(2)§ 87(2)(b) did not provide a statement to the CCRB (see Board Review 05 for full video). Therefore, this allegation is not pleaded.
- **Abuse of Authority- Refusal to provide name:** Video footage shows § 87(2)(b) ask an officer for his name. § 87(2)(b) did not make this allegation and due to the background noise, it is unclear whether the officer answered him. Therefore, this allegation is not pleaded.
- **Search- Cell phone:** § 87(2)(b) alleged that an officer told him that the stationhouse that they saw the video on his cell phone. A search warrant was obtained for the cell phone and the CCRB has no concrete evidence that the search occurred prior to the search warrant being obtained. Therefore, this allegation is not pleaded.

Allegation A- Abuse of Authority: Inside of § 87(in Brooklyn, PO Ronald Remo stopped § 87(2)(b) § 87(2)(b) **and** § 87(2)(b)
Allegation B- Abuse of Authority: Inside of § 87(in Brooklyn, PO Darnell Forrester stopped § 87(2)(b) § 87(2)(b) **and** § 87(2)(b)

It is undisputed that PO Remo and PO Forrester stopped § 87(2)§ 87(2)(b) and § 87(2) in the third floor hallway of § 87(§ 87(2)§ 87(2)(b) stated that he had been hosting a family gathering in his home, located at § 87(§ 87(2)§ 87(2)(b) escorted his wife and sister-in-law downstairs and then took the elevator back up to the third floor. He did not recall whether his son, § 87(2)(b) joined him in the elevator or was standing outside of the elevator when he arrived on the third floor but once § 87(2)§ 87(2)(b) was off of the elevator on the third floor, § 87(2)(b) was with him. Together they walked back towards § 87(2)§ 87(2)(b) s apartment. As they passed the stairway, PO Remo and PO Forrester allegedly jumped out of the stairway and grabbed them to place them in handcuffs. The officers did not say anything to them prior to grabbing them. No one else was in the hallway at this time (Board Review 07).

§ 87(2)(b) did not provide a statement to the CCRB.

PO Forrester and PO Remo stated that they were in the vicinity of the Marlboro Houses after responding to a robbery and an assault in progress. According to PO Forrester, § 87(2)(b) , the victim, described the perpetrators as three male Hispanics in their 20s who fled into the housing development. PO Remo initially stated that the victim provided descriptions of the perpetrators. After further questioning, PO Remo stated that § 87(2)(b) told them that the perpetrators were slightly older and of multiple races. PO Remo did not recall whether § 87(2)(b) told them which races.

According to PO Forrester, the victim pointed in the direction that the perpetrators fled. In that direction were three buildings that included [redacted] § 87([redacted] They decided to conduct a vertical patrol of that building first because it was the closest one in the direction that the victim pointed; however, they intended to eventually conduct a vertical patrol of the other two buildings as well. PO Remo stated that he and PO Forrester began a canvass of the area for the suspects. As they stood in front of [redacted] § 87([redacted] they saw several figures inside of the third floor hallway through the window. PO Remo could not tell by looking through the window, the age or races of the figures. PO Remo saw the figures hands go up to their faces which led him to believe that they were smoking. Because the building was one or two buildings east of where the robbery and assault occurred, they decided to conduct a vertical patrol of that building.

PO Forrester stated that they went up to the roof and worked their way down. When they arrived on the third floor, they observed § 87(2)§ 87(2)(b) and § 87(2)(b) standing in the hallway. § 87(2)(b) bladed his body upon sight of the officers and shoved something into his left jacket pocket, keeping his hand in that pocket. PO Forrester did not see any part of the object or know what it was. § 87(2)§ 87(2)(b) looked nervous but did not do anything. Without approaching them, PO Forrester asked them if they lived there. § 87(2)(b) attempted to run past PO Forrester. PO Forrester grabbed him by his shoulder and tried to pull his right arm behind his back. PO Forrester was informed by PO Remo that § 87(2)§ 87(2)(b) was placed under arrest because he began to pull PO Forrester as he attempted to handcuff § 87(2)(b) PO Forrester did not witness this.

PO Remo stated that when they arrived on the third floor they observed § 87(2)§ 87(2)(b) and § 87(2)(b) in the same area near the window where he had initially observed them. He did not observe them smoking but smelled cigarette smoke in the area. As soon as § 87(2)§ 87(2)(b) and § 87(2)(b) saw the officers, they ran towards the end of the hallway. There were no exits in that direction and only apartments. PO Remo and PO Forrester ran after them and asked them to stop. Neither one of them said anything to § 87(2)§ 87(2)(b) or § 87(2)(b) prior to them running. The reason for stopping them was to question them in regards to the robbery and about whether they lived in the building. After running, § 87(2)(b) placed both of his hands in the front part of the waistband of his sweatpants (Board Review 08 and 09).

PO Remo and PO Forrester provided conflicting details of exactly what happened prior to them stopping § 87(2)§ 87(2)(b) and § 87(2)(b) The only thing they agreed on is that at least one of them attempted to flee. The additional factors they provided are contradictory and are therefore not credited as facts in this investigation.

Video footage did not capture the stop of § 87(2)§ 87(2)(b) and § 87(2)(b)

In order to approach an individual to request information, an officer needs an objective credible reason for that interference not necessarily indicative of criminality. Officers can forcibly stop and detain an individual based on a reasonable suspicion that he has committed, is committing, or is about to commit a crime. People v DeBour, 40 NY2d 210. Mere presence inside a NYCHA building does not provide reasonable suspicion of a crime. People v. Ortiz, 2011 NY Slip Op 51036U (Crim. Ct. Kings Cty., 2011). Where the police are justified in making a DeBour level one, request for information, flight, even if coupled with equivocal circumstances, does not

escalate the situation to a level two encounter which would justify police pursuit. People v Almonte, 30 Misc. 3d 1234A (Sup Ct, Bronx County 2011) (Board Review 10).

§ 87(2)(g)

Allegation C- Force: Inside of [redacted] in Brooklyn, PO Darnell Forrester used a chokehold against § 87(2)(b)

§ 87(2)(b) admitted that § 87(2)(b) resisted arrest by refusing to give the officers his hands. § 87(2)§ 87(2)(b) alleged that as PO Forrester attempted to restrain § 87(2) PO Forrester placed his hand across § 87(2)(b) s chest and then around the front of his neck. § 87(2)(b) allegedly screamed for help and told PO Forrester that he was choking him and he could not breathe and pleaded for PO Forrester to let him go. § 87(2)§ 87(2)(b) reviewed the video footage from § 87(2)(b) s cell phone and pointed out the exact moment where the allegation that he was referring to occurred.

§ 87(2)(b) stated that he was in his apartment when he heard commotion out in the hallway. He looked in the hallway and saw what appeared to be a fight. § 87(2)(b) went back inside his apartment and quickly returned to the hallway with his phone and began recording the incident. § 87(2)(b) saw § 87(2)(b) on the floor with PO Forrester face-down on top of him. PO Forrester had an arm around § 87(2)(b) s upper torso. He could not tell whether PO Forrester's arm was around § 87(2)(b) s neck. § 87(2)(b) screamed that he could not breathe (Board Review 11).

In video footage from § 87(2)(b) s cell phone, PO Forrester is seen with his arm around § 87(2)(b) s chest and then hooked around the back of § 87(2)(b) s neck, with his left arm resting on § 87(2)(b) s left shoulder. PO Forrester's arm is never pulled around the front of § 87(2)(b) s neck or throat. § 87(2)(b) stated that he could not breathe prior to this and minutes after this but never at this moment or while an arm was around his neck.

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PO Forrester denied placing his arm around § 87(2)(b) s neck and PO Remo denied seeing PO Forrester do this.

§ 87(2)§ 87(2)(b) who made this allegation, pointed out the exact point in the video at which this allegation he was referring to occurred. § 87(2)(g)

Allegation D- Discourtesy: Inside of [redacted] in Brooklyn, PO Ronald Remo spoke discourteously to § 87(2)(b)

Allegation E- Abuse of Authority: Inside of [redacted] in Brooklyn, PO Ronald Remo threatened § 87(2)(b) **with the use of force.**

Allegation H- Discourtesy: Inside of [redacted] in Brooklyn, Sgt. Diana Pichardo spoke discourteously to § 87(2)(b) **and individuals.**

§ 87(2)§ 87(2)(b) alleged that after PO Forrester placed § 87(2)(b) in a chokehold, PO Remo said, "Give me your fucking hands or if not, I'm going to fucking tase you."

Video footage from § 87(2)(b) s cell phone revealed that Ronald Remo yelled, "Give me your fucking hands" to § 87(2)(b) The officers had been struggling with § 87(2)(b) for an unknown time prior to the start of the video and had been dealing with resistance from § 87(2) and physical interference from § 87(2)§ 87(2)(b) Prior to making this statement; video footage shows § 87(2)(b) refusing to give officers his arms after multiple requests. He moved his entire body and at one point placed his arm around PO Remo's neck. PO Remo did not threaten to tase § 87(2)(b)

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PO Remo and PO Forrester's statements corroborated the resistance from § 87(2)(b) and the interference of § 87(2)§ 87(2)(b) as shown in the video. PO Remo stated that he would not be surprised if he used profanity because the situation was stressful; however, he did not recall exactly what he said. PO Forrester stated that he did not hear any officer use profanity at any time.

§ 87(2)(b) alleged that back-up arrived, Sgt. Pichardo yelled, "Get the fuck back in your apartments and lock your fucking doors." He later alleged that she specifically yelled at him numerous times to "get the fuck back."

Video footage revealed that as soon as Sgt. Pichardo arrived on scene, she yelled at § 87(2) § 87(2)(b) to, "Get your fucking hands off of him" as he dragged PO Remo. Seconds later, she grabbed § 87(2)(b) and told him to, "Get the fuck up." At the time she drew her weapon, she yelled at § 87(2)(b) to "get the fuck up" and "move the fuck up" repeatedly (see clip 1513A_DM on page 9 of this report).

Sgt. Pichardo stated that it was possible that she used profanity as a command although she did not recall any specific statements she made.

An officer may not use profanity toward a civilian without a justifiable reason to do so, such as the need to maintain control or gain compliance during a stressful street encounter. NYPD v. Carey, OATH Index No. 579/99 (Board Review 10).

Only officers with the rank of sergeant and above are authorized to carry tasers. PO Remo's rank is police officer; therefore, he did not have a taser and video footage confirms that he did not make the statement.

§ 87(2)(g)

§ 87(2)(g)

Allegation F- Force: Inside of [redacted] in Brooklyn, PO Ronald Remo used physical force against [redacted]

Allegation G- Force: Inside of [redacted] in Brooklyn, PO Darnell Forrester used physical force against [redacted]

It is undisputed that PO Remo and PO Forrester punched [redacted] who was actively resisting, as they attempted to place him in handcuffs.

[redacted] stated that [redacted] was moving his arms in opposite directions and yelling in a high pitch voice while PO Remo and PO Forrester struggled to place him in handcuffs at which point PO Remo punched [redacted] once in the face.

[redacted] stated that he did not personally witness this.

PO Remo stated that he and PO Forrester attempted to restrain [redacted] who was wrestling with them by grabbing his arms and his clothing. [redacted] got on top of PO Remo and placed his arm around PO Remo's head. PO Remo in return punched him once in the face.

PO Forrester stated that initially [redacted] was throwing punches at the officers and swinging his elbows at him. He stated that the video footage did not show this part of the incident. PO Forrester punched [redacted] in the face at this point and [redacted] in turn, stopped punching him. PO Forrester did not recall how many times he punched [redacted]

None of the civilians made this allegation against PO Forrester and this was not caught on camera.

In the video, PO Remo is seen throwing a punch in the direction of [redacted] s face. [redacted] was standing in the way of the camera and it was not seen exactly where this punch landed or whether it made contact. Video footage confirms that [redacted] was actively physically resisting prior to this and even had his arm around PO Remo's neck at one point. Every time the officers attempted to get him down to the ground, he stood back up. Prior to PO Remo punching him, the officers still had no control over [redacted]

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According to Patrol Guide Procedure 203-11, only the amount of force necessary to overcome resistance should be used to effect an arrest (Board Review 10).

It is undisputed that [redacted] was actively physically resisting at the time that PO Remo punched him. [redacted]

Allegation I- Force: Inside of [redacted] in Brooklyn, Sgt. Diana Pichardo pointed her gun at [redacted] and [redacted]

It is undisputed that Sgt. Pichardo pointed her gun at [redacted] as he recorded the incident.

[redacted] alleged that after Sgt. Pichardo yelled for them to get back in their apartments and lock their doors, she pointed her gun at him and told him to "get the fuck back." He walked back until he was approximately 30 feet away from the officers. Sgt. Pichardo

holstered her gun but then pointed at him again seconds later and yelled, "Get the fuck back in your apartment." § 87(2)(b) alleged that Sgt. Pichardo pointed her gun at him and § 87(2)(b)

Sgt. Pichardo stated that upon her arrival, she saw § 87(2)(b) two to three feet away from them, recording the incident. There was one apartment to her right and one apartment to her left. She later learned that his apartment was the one to his left. § 87(2)(b) came closer and she told him several times to move back and to go inside of his apartment. § 87(2)(b) would step back every time she made the command but then walk forward again after she would go back to help her officers. A light skinned Hispanic male came out of one of the apartments and stood behind § 87(2)(b) Sgt. Pichardo pointed her weapon in their direction and commanded him to show her his hands multiple times. Once she saw their hands, she holstered her weapon (Board Review 12).

None of the other officers interviewed saw Sgt. Pichardo point her weapon at anyone.

Video footage from § 87(2)(b) s cell phone, at 33 seconds into the video, revealed that Sgt. Pichardo said, "Get the fuck up. Move the fuck up" as she pointed her weapon in his direction. She did not make any other commands and as he backed up, she holstered her weapon.

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Video footage from a second cell phone revealed that § 87(2)(b) had nothing in his hands but his cell phone and there appeared to be no one behind him aside from the person who recorded this video. At the time that the gun was drawn, this person was to the right of § 87(2) and not in the direction of where Sgt. Pichardo pointed her weapon.

(The following clip was received by the CCRB with poor quality.)

201501935_20151109_1513B_DM.mp4

The Department permits an officer broad discretion to display his weapon whenever he feels that his life or the life of another is endangered. Police Department v. Gliner, OATH Index No. 955/00 (Sept. 6, 2000) (Board Review 10).

Video footage revealed that Sgt. Pichardo did not make the command to, "Show me your hands" as she stated; § 87(2)(g)

Allegation J- Discourtesy: Inside of [redacted] § 87([redacted] in Brooklyn, Sgt. Diana Pichardo spoke discourteously to § 87(2)(b)

It is undisputed that Sgt. Pichardo used profanity towards § 87(2)(b) [redacted] alleged that after Sgt. Pichardo pointed her gun, he backed into the door frame of his apartment and a male officer held his foot in the door, preventing him from closing it. Sgt. Pichardo alleged approached, yelling expletives that he could not recall. § 87(2)(b) asked, "Why did you pull you fucking gun on me? Sgt. Pichardo responded, "You shouldn't be fucking recording and get in your fucking apartment" before snatching his phone out of his hand. § 87(2) screamed for her to give him his "fucking phone." Sgt. Pichardo yelled, "You're not getting your fucking phone." § 87(2)(b) was removed from the apartment and arrested. When he was brought downstairs, he asked Sgt. Pichardo for his cell phone and for a sergeant. She allegedly responded, "I am the fucking sergeant. Fuck you. You ain't getting your phone."

Sgt. Pichardo stated that if she did use profanity, she only used it as a command and never as a discourtesy.

In the video, Sgt. Pichardo can be heard saying, "I want all these motherfuckers out. I'm going to get in that fucking apartment" (see clip 1158_DM on page 4 of this report). After snatching § 87(2)(b) s phone out of his hands, she says, "This fucking phone, motherfucker. Who the fuck you think I am? You crazy?"

201501935_20151109_1513D_DM.mp4

Sgt. Pichardo acknowledged after watching the video footage that the female voice making these statements was hers.

Officers are to be courteous and respectful in their interactions with the public. Patrol Guide Procedure 203 -09. An officer may not use profanity toward a civilian without a justifiable reason to do so, such as the need to maintain control or gain compliance during a stressful street encounter. NYPD v. Carey, OATH Index No. 579/99.

§ 87(2)(g)

Allegation K- Abuse of Authority: Sgt. Diana Pichardo entered and searched [redacted] Apt. 3C in Brooklyn.

It is undisputed that officers entered and searched apartments 3C inside of [redacted] in Brooklyn following the arrest of § 87(2)(b) [redacted] alleged that after he was pulled out of his apartment and arrested, multiple officers entered his apartment.

Sgt. Pichardo stated that after PO Remo and PO Forrester told her that there were probably more people involved in their assault in addition to the ones they apprehended however they were unable to tell her exactly who they were. She stated that she and Capt. O'Hare made the decision to enter the apartments at the end of the hallway to search for outstanding perpetrators. Her intention was to conduct a line-up of anyone found in those apartments to see if they were involved. She stated that this did not require a warrant because it was an emergency.

According to Capt. O'Hare, he did not make the decision to enter any of the apartments and the apartments had already been entered by officers upon his arrival to the scene (Board Review 14).

Video footage from § 87(2)(b) [redacted]s apartment captures Sgt. Pichardo, at three minutes and 57 seconds into the video, scream, "I want all these motherfuckers out. I'm going to get in that fucking apartment" (see clip 1158_DM on page 4 of this report).

The courts have established that warrantless entries into private homes are presumed unconstitutional. Exceptions to this rule include consent, hot pursuit, exigent circumstances, as established in People v. McBride, 14 N.Y.3d 440 (2010), and an emergency situation, as established in People v. Dallas, 8 N.Y.3d 890 (2007). In regards to emergency circumstances, courts utilize a three-part test: "(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) The search must not be primarily motivated by intent to arrest and seize evidence; (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." Dallas, at 891 (encl. 1H -I). In regards to the exigent circumstances exception, the courts utilize a six -part test: "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause ... to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry." McBride, at 446 (Board Review 10).

§ 87(2)(g) [redacted]

Allegation L- Abuse of Authority: Sgt. Diana Pichardo entered and searched [redacted] Apt. 3B in Brooklyn.

It is undisputed that officers entered § 87(2)(b) [redacted] in Brooklyn. § 87(2)§ 87(2)(b) [redacted] stated that his wife's cousin, § 87(2)(b) [redacted] informed him that officers entered his apartment following his arrest. § 87(2)(b) [redacted] who did not reside at the apartment, stated that after § 87(2)§ 87(2)(b) [redacted] had been arrested, Sgt. Pichardo knocked on his apartment door

and asked to check the apartment to see if anyone else was in there. § 87(2)(b) told her that they could search the apartment as long as they did not wake up his nephew (Board Review 15).

Sgt. Pichardo provided the same reason for entering this apartment as she did for entering § 87(2)(b) s apartment; however, she did not recall whether she personally entered this apartment.

Consent is one exception to the warrant requirement when entering a residence. People v. Lewis, 94 A.D.2d 44 (t" Dept. 1983). Even if the third party providing consent in fact lacked actual authority, apparent authority can nonetheless validate an entry if the person reasonably appeared to the police to possess authority to consent to the entry. US V. Turner, 14 Cr. 43, U.S. Dis. Lexis 75088 2014) (Board Review 10).

§ 87(2)(g)

Allegation M- Abuse of Authority: Inside of § 87(in Brooklyn, Sgt. Diana Pichardo refused to provide her name to § 87(2)(b)

alleged that after prior to being placed in the prisoner van, he asked Sgt. Pichardo for her name but she did not respond.

Sgt. Pichardo admitted that she was present when § 87(2)(b) was brought downstairs but stated that she had no conversation with him and did not recall if he asked her for her name.

None of the civilians or officers interviewed witnessed this interaction.

§ 87(2)(g)

Allegation N- Discourtesy: Inside of the PSA 1 stationhouse, Sgt. Diana Pichardo spoke discourteously to § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b)

alleged that he saw Sgt. Pichardo inside of the PSA 1 stationhouse where she said to him and the other three men he was arrested with, "These motherfuckers don't get no phone calls, no food, no water. They can suck their own dicks and drink their own piss."

§ 87(2)(b) § 87(2)(b) did not make this allegation.

Sgt. Pichardo denied making the alleged statement. She stated that she did not return to PSA1 until 2:50 a.m. and she did not believe any of the arrestees from this incident were at the PSA 1 at that point and had already been transferred to the 60th Precinct detective squad which she did not recall going to. None of the officers interviewed heard Sgt. Pichardo make those statements to the arrestees.

According to the prisoner holding pen roster, § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were at the PSA 1 stationhouse until 4:55 a.m (Board Review 13).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [redacted]

Allegation O- Other Misconduct: There is evidence suggesting Sgt. Diana Pichardo provided a false official statement in violation of PG 203-08.

The CCRB recommends that the NYPD conduct further investigation as there is evidence to suggest that Sgt. Pichardo provided a false official statement. The evidence is as follows:

Sgt. Pichardo provided two false statements during her CCRB interview. The following exchange occurred during Sgt. Pichardo's CCRB interview:

Investigator: "Who made the decision to enter those apartments to search for this individual?"

Sgt. Pichardo: "Me and my captain…"

Capt. O'Hare stated that by the time he arrived officers had already entered the apartments. He did not talk to Sgt. Pichardo in regards to entering the apartments and did not make the decision to do so.

The following exchange took place later in the interview:

Investigator: "According to the video, at what point did he commit the OGA that he was not moving back?"

Sgt. Pichardo: "It's not on video all the times I told him. That's just not. I told him multiple times to back up. That's just not. Whatever you have on your video, it's not all he recorded. It wasn't just the one time and he went back to his apartment. Absolutely not. By the time I drew my gun, I had told him multiple times to back up…It's not there."

Investigator: "Are you saying it's been cut from the video?"

Sgt. Pichardo: "I don't know what he did but it's just not me telling him once and he complied and went to his apartment. That's not what happened."

Patrol Guide Procedure 203-08 prohibits officers from intentionally making false official statements to the CCRB (Board Review 19). In order to prove a false official statement, it must be shown that a statement was: 1) made in the course of an official investigation; 2) material to the investigation, and; 3) intentionally false. Dept. of Correction v. Centeno, OATH Index No. 2031/04 (2005) (Board Review 10).

§ 87(2)(g) [redacted]

Squad: 2

Investigator: _____ _____ _____
Signature Print Date

Supervisor: _____ _____ _____
Title/Signature Print Date

Reviewer: _____ _____ _____
Title/Signature Print Date

June 8, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Diana Pichardo**
Tax Registry No. 930958
Housing Police Service Area 1
Disciplinary Case No. 2015-15012

The above named member of the service appeared before Assistant Deputy Commissioner Paul M. Gamble on September 22 and 23, 2016, and was charged with the following:

DISCIPLINARY CASE NO. 2015-15012

1. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted] Kings County, wrongfully used force, in that without police necessity, she pointed her gun at David Rivera.

P.G. 203-11 **USE OF FORCE**

2. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of 2294 West 8th Street, Kings County, abused her authority as a member of the New York City Police Department, in that she entered [redacted] in Brooklyn, without sufficient legal authority.

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

3. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity o[redacted] Kings County, abused her authority as a member of the New York City Police Department, in that she searched [redacted] in Brooklyn, without sufficient legal authority.

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

4. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted] Kings County, was discourteous, in that she spoke discourteously to David Rivera, stating, "You shouldn't be fucking recording and get in your fucking apartment:" "You're not getting your fucking phone;" "I am the fucking sergeant. Fuck you; you ain't getting your phone;" and "This fucking phone, motherfucker. Who the fuck do you think I am? You crazy?"

P.G. 203-09, Page 1, Paragraph 2 **PUBLIC CONTACT - GENERAL**

5. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted] Kings County, wrongfully used force, in that without police necessity, she pointed her gun at [redacted]

P.G. 203-11 **USE OF FORCE**

In a Memorandum dated January 4, 2017, Assistant Deputy Commissioner Paul M. Gamble found Sergeant Diana Pichardo Guilty of Specification Nos. 2 and 3, Guilty in Part of Specification No. 4 and Not Guilty of Specifications No. 1 and 5 in Disciplinary Case No. 2015-15012. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Sergeant Pichardo.

With consideration of the totality of circumstances, including the mitigation offered, the nature of the serious line-of-duty injuries suffered by the officers under Sergeant Pichardo's supervision, and her otherwise good service and performance history with the Department, I deem that a lesser penalty is warranted. Therefore, Sergeant Pichardo is to forfeit ten (10) vacation days, as a disciplinary penalty.

James P. O'Neill
Police Commissioner

POLICE DEPARTMENT CITY OF NEW YORK

January 4, 2017

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Diana Pichardo
Tax Registry No. 930958
Housing Police Service Area 1
Disciplinary Case No. 2015-15012

Charges and Specifications:

1. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted] Kings County, wrongfully used force, in that without police necessity, she pointed her gun at David Rivera.

   P.G. 203-11 – USE OF FORCE

2. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, abused her authority as a member of the New York City Police Department, in that she entered [redacted] in Brooklyn, without sufficient legal authority.

   P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

3. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted] Kings County, abused her authority as a member of the New York City Police Department, in that she searched [redacted] in Brooklyn, without sufficient legal authority.

   P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

4. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted] Kings County, was discourteous, in that she spoke discourteously to David Rivera, stating, "You shouldn't be fucking recording and get in your fucking apartment:" "You're not getting your fucking phone;" "I am the fucking sergeant. Fuck you; you ain't getting your phone;" and "This fucking phone, motherfucker. Who the fuck do you think I am? You crazy?"

   P.G. 203-09, Page 1, Paragraph 2 – DISCOURTESY

5. Said SSA Diana Pichardo, on or about March 8, 2015, at approximately 0027 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, wrongfully used force, in that without police necessity, she pointed her gun at Person A.

P.G. 203-11 USE OF FORCE

Appearances:

For CCRB-APU: Suzanne O'Hare, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondent: Andrew C. Quinn, Esq.
The Quinn Law Firm
Crosswest Office Center
399 Knollwood Road Suite 220
White Plains, NY 10603

Hearing Dates:
September 22 and 23, 2016

Decision:
Not Guilty of Specifications 1 and 5; Guilty of Specifications 2 and 3; Guilty in part of Specification 4.

Trial Commissioner:
ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 22 and 23, 2016. Respondent, through her counsel, entered pleas of Not Guilty to the subject charges. CCRB called David Rivera, Justina Rosado and Captain Robert O'Hare as witnesses. Respondent called Police Officer Darnell Forrester, Police Officer Ronald Remo as witnesses and Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of wrongfully using force against David Rivera and

Person A. I find Respondent Guilty of entering and searching David Rivera's apartment without sufficient authority. Finally, I find Respondent Guilty of discourtesy toward David Rivera.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute. On March 8, 2015, at approximately 0030 hours, Police Officers Darnell Forrester and Ronald Remo, both assigned to Police Service Area 1 ("PSA 1"), were conducting vertical patrols in the Marlboro Houses, a New York City Housing Authority building in Brooklyn located at [redacted] (T. 15, 170.194). The officers were canvassing the area for potential suspects involved in an assault and robbery when they encountered two individuals on the third floor landing, later identified as Person B and C (T. 171, 182, 194). When the officers approached and questioned these individuals, a violent and chaotic struggle ensued and spilled into the third floor hallway, involving at least one other individual, Person D(T. 173-174, 195-197).

At that time, David Rivera[1] was with his girlfriend Justina Rosado in his apartment located on the [redacted] floor when he heard a commotion in the hallway (T. 15-17). Rivera opened his apartment door to see what was happening and then quickly went back into his apartment to get his cellphone. He then exited his apartment, walked down the hallway and began recording the incident on his cell phone (T. 18; CCRB Ex. 1-5). Another individual, Person A who had exited the apartment directly across from David Rivera's, stood behind Rivera also recording the incident on a cell phone (T. 22-23).

[1] Thecomplainant in this case, David Rivera, has no relation to Person C or D. (T. 19).

Approximately two and half minutes after David Rivera entered the hallway and began recording, additional officers arrived in response to a 10-85 call for assistance from officers Forrester and Remo. Respondent, an Anti-Crime Sergeant assigned to PSA 1, was one of the responding officers (T. 223). Officers flooded the narrow hallway and Persons B. C and D were arrested.

At some point shortly after her arrival, Respondent ordered David Rivera and Person A to move back away from the scene as she briefly removed her firearm from its holster and pointed it in their direction (T. 27, 229). Rivera and Person A oth retreated back down the hallway and eventually entered their respective apartments. Rivera, however, remained in the doorway of his apartment and continued recording what was occurring in the hallway (T. 28). Shortly thereafter, Respondent approached Rivera's apartment with other officers, grabbed his cell phone, and placed him under arrest for Obstructing Governmental Administration (T. 32, 233- 234).

Following Rivera's arrest, Respondent and approximately twelve other officers entered and searched Rivera's apartment with Rosado present (T. 237). The officers' entry and search was captured on a closed circuit recording system installed in Rivera's apartment.[2] Three motion activated cameras capture the doorway and vestibule area, the living room, and the bedroom of Rivera's apartment. The recordings from that morning were stored on a digital video recorder and entered into evidence as part of CCRB Exhibit 1 (T. 52-55; CCRB Ex. 1-2, 1-3, 1-4).

The Brooklyn District Attorney's Office declined to prosecute Rivera on the charge of Obstructing Governmental Administration (CCRB Ex. 2). Rivera currently has a civil rights lawsuit against the City of New York pending in connection with his arrest. (T. 52).

[2] The recordings from the closed circuit cameras do not contain an audio portion.

A summary of the relevant portions of the cell phone video footage captured by both Rivera and [redacted] is described below:

CCRB Ex. 1-8 is the footage recorded from Rivera's cell phone.

2:34 – 3:03 Respondent arrives in the hallway with a number of other officers and attempts to gain control over the situation. At this point Rivera is standing in the hallway.

3:04 – Respondent removes her firearm from its holster and points it toward the direction of Rivera, causing him to back away toward his apartment door.

3:23 – 3:39 A plainclothes officer stands in front of Rivera and then begins to walk toward him down the hallway yelling, "Clear the hallway. Clear the hallway now. That is my order, you come out again you're getting locked up." Rivera re-enters his apartment but leans out the open door to continue filming.

3:42 – 4:35 Rivera remains in his apartment, leaning out his doorway and continues filming

4:36 – 6:15 A group of officers approaches Rivera's apartment door. Rivera is now inside his apartment filming the interaction with the officers.

6:18 – 6:23 Respondent approaches the apartment door and asks Rivera, "Who are these people to you?" while gesturing to the other end of the hallway. Respondent then swings her hand toward Rivera, seemingly hitting the cell phone being used to record and the footage ends.

CCRB Ex. 1-9 is the much shorter (43 seconds) footage allegedly recorded from the cell phone Person A was using that morning. The footage captured is almost identical to the corresponding portion recorded on Rivera's phone.

Rivera testified that upon hearing the commotion in the hallway that morning, he walked to his apartment door and opened it slightly to see if he could get a sense of what was going on

outside (T. 17-18). He heard a man "yelling in distress," but was unable to make out what he was saying (*Id.*). He went back into his apartment, put on some clothes, grabbed his cellphone, began a video recording, and walked into the hallway (T. 18). Rivera also noticed another individual in the hallway, whom he later learned was Person A, standing right behind him, holding a cellphone and apparently recording (T. 22-23, 65). The two men were about 10 to 12 feet from where the struggle was occurring (T. 23).

According to Rivera, after he stood in the hallway for about three minutes, Respondent and approximately 30 other officers arrived in the hallway (T. 23-24). Respondent appeared "unraveled," screaming, "Get the fuck off him, get the fuck off him" (T. 25). According to Rivera, Respondent un-holstered her firearm, pointed it at him and re-holstered it (T. 27). Respondent then turned toward Rivera and Person A again un-holstered her firearm, pointed it at Rivera, with her finger on the trigger and said, "Get the fuck back" (T. 25). Rivera testified that both he and Person Ammediately moved back an additional 15 feet (T. 26). Another officer then walked toward them, stopped in front of them, turned around with his back facing them and put his hand up on the wall (T. 26-27). In response, Rivera raised his cell phone up higher to get a clear shot of what was happening down the hall (T. 27). The officer then ordered Rivera and Person A to go back into their apartments, indicating that if they returned to the hallway, they would be arrested (T. 27).

Rivera retreated into his apartment, but stood in the doorway with his door open and continued to record what was happening in the hallway (T. 28). According to Rivera, he heard Respondent "screaming obscenities," stating that she wanted "everyone in that apartment" and "that phone" (T. 28). A uniformed officer then approached Rivera's door, told him to close the door, and then reached in, trying to pull the door shut. However, Rivera had placed his foot in

front of his door, preventing the officer from closing the door (T. 28). The officer then placed his foot in front of Rivera's door, refusing to move, despite Rivera's repeated requests that he do so (T. 29). In fact, Rivera testified that he asked the officer to take his foot out of his door 18 times (T. 29).

Next, a plain-clothes police officer approached Rivera's door, also placing his foot in front of the door, and began telling Rivera to relax (T. 31). Rivera testified that he explained to the officers that he was relaxed and continued to ask that the officers stop blocking his door (T. 31). Respondent then approached and asked Rivera, "Who are these people to you?" in reference to the people who were involved with the officers in the hallway (T. 32). Before he had a chance to respond to her question, Respondent "immediately thrusted [sic] her hand in and ripped [Rivera's] phone from [his] hand" (T. 32). As Respondent took Rivera's phone, she said to him, "and that fucking phone. What are you fucking crazy[?] You motherfucker" (T. 32). The uniformed officer then stepped into Rivera's apartment as he pushed his arm on Rivera's chest (T. 33). Rivera asked Respondent multiple times for his phone back and Respondent replied each time by saying, "You're not getting your fucking phone" (T. 33). Rivera turned to one of the officers and told him that he had been a witness to Respondent robbing Rivera in his own apartment. Upon hearing that, Respondent said to the officer, "He goes, too" (T. 33). Rivera was then pulled out of his apartment, into the hallway, and placed up against a wall by three officers (T. 33). He was handcuffed, searched, and brought down to the lobby of the building (T. 33-34). The interaction between Rivera and the police officers who arrested him is captured on CCRB Ex. 1-6 from approximately 12:39:08 to 12:41:08. In the lobby, he again saw Respondent and told her that he wanted to speak to her sergeant and he wanted his phone back.

Respondent replied by saying, "I am the fucking sergeant. You're not getting your fucking phone" (T. 34).

Rivera was brought to a police van, where both he and Person C were transported to Housing PSA 1 (T. 34-35). As Rivera waited in a detention room, Respondent walked in and yelled out, "These motherfuckers don't get nothing to eat, they don't make no phone calls, and if they're thirsty they can suck their own dicks" (T. 36, 93).

Forty-five days after his arrest, Rivera retrieved his cell phone from the Property Clerk's Office (T. 36). The video recording he took on March 8, 2015, remained intact (T. 36-37).

According to Rivera, sometime in October of 2015, he found that a compact disk that had been slipped under his apartment door. Attached to the compact disk was an unsigned note that read, "This can help you" (T. 44). Rivera testified that the compact disk contained video from March 8, 2015, taken from a vantage point directly behind where Rivera was standing during the incident (T. 45; CCRB Ex. 1-9). According to Rivera, only Person A was standing behind him in the hallway on March 8, 2015 (T. 45-46).

On cross-examination, Rivera testified that at no point did he see Person A put his hands on any of the officers or other participants in the altercation (T. 75). Rivera also testified that he did not recall Respondent yelling " Show me your hands" at any point (T. 79).

Justina Rosado testified that after Rivera returned to his apartment door, she heard both him, and who she believed to be police officers, yelling in the doorway (T. 114). She went to the bedroom to dress herself and when she returned to the living room area, partially dressed, three officers were walking into the apartment (T. 115). She told the officers that she was not dressed and the officers walked out (CCRB Ex. 1-6, 12:41:11-12:41:45; T. 115). Rosado finished dressing in the living room and the officers returned to the apartment door (CCRB Ex. 1-6,

12:44:35; T. 116). Respondent was standing in the hallway with additional officers and asked Rosado if anyone else was inside the apartment (T. 117). When Rosado explained that she was the only one there, Respondent pushed past her, entered the apartment, and searched for at least five minutes (CCRB Ex. 1-6, 12:45:25-12:52:04; T. 117, 119). Respondent left the apartment at one point and returned by herself. She then asked Rosado to unlock Rivera's cell phone, which she was holding (CCRB Ex. 1-6, 12:53:04; T. 120). When Rosado told Respondent that she did not know the password, Respondent left (CCRB Ex. 1-6, 12:53:16; T. 120). The interaction between the police officers and Rosado, then Respondent and Rosado, is captured on CCRB Ex. 1-6 from approximately 12:41:40 to 12:53:18.

Person A did not appear to testify before this tribunal.[3] A transcript of an interview conducted by CCRB investigators on June 15, 2015, was entered into evidence (CCRB Ex. 3A-3D). In his interview, Person A stated that on March 8, 2015, he was visiting his cousin [redacted] apartment when he heard a voice in the hallway calling for help (CCRB Ex. 3C, p. 3, 17). Person A went into the hallway to investigate and saw a struggle between some men and two police officers (*Id.*, p. 4). Person A stated that he did not try to approach the fight because he "didn't want to get hit" (*Id.*, p. 8). Both Person A and Rivera were recording the incident on cell phones (*Id.*, p. 12). At some point more officers arrived in the hallway, including Respondent, who un-holstered her firearm, pointed it at both he and Rivera, and ordered them to go back into their apartments (*Id.*, p. 19). Person A retreated into the apartment across from David Rivera's, closed the apartment door and did not return to the hallway (*Id.*, p. 16-17). Sometime thereafter, approximately seven officers entered and searched the apartment Person A was in (*Id.*, p. 22-24).

[3]The CCRB entered into evidence proof of attempted service of a subpoena for Person A to testify at trial (CCRB Ex. 3E).

Captain Robert O'Hare, Commanding Officer of Patrol Borough Manhattan South, Times Square Unit, is the former Executive Officer of PSA 1 (T. 141). At approximately 0030 hours on March 8, 2015, O'Hare overheard radio transmissions from Respondent which caused him to proceed to the Marlboro Houses (T. 142). Upon his arrival, O'Hare encountered Officer Forrester outside the building's lobby being treated by EMS personnel (T. 144). Despite his attempts to communicate with Forrester, O'Hare was unable to elicit a response from him regarding what had happened (T. 144). O'Hare then entered the lobby and came across Respondent and Officer Remo (T. 146). Respondent provided O'Hare with preliminary information she had received when she arrived on the scene: namely, that officers were canvassing the area in connection to a robbery that had occurred in the Marlboro Houses (T. 147). Respondent and Remo then led O'Hare to the [redacted] floor of the building, where Respondent informed him that there were officers in one of the apartments along the hallway where the incident occurred (T. 151).

When O'Hare entered Rivera's apartment, other police officers were already present (T. 152). Respondent had told O'Hare that there were cameras inside of the apartment and that there was one room inside the apartment that was locked (T. 153). At that point, O'Hare did not know how many suspects they were looking for (T. 153). O'Hare recalled that upon entering the apartment, he encountered an older woman sitting in the kitchen area who told him that the person with the key to the locked room would arrive shortly (T. 153). According to O'Hare, he reminded Respondent to advise the officers to search only for a place where a person could have been hiding (T. 153). At no point did O'Hare order Respondent to enter the apartment (T. 155).

It was O'Hare's understanding at the time that the officers in the apartment were attempting to locate another individual who was involved in the hallway assault, and who may

have needed medical attention as a result (T. 156). Officer Remo had indicated that the only place a person could have gone was into one of those two apartments based on the layout of the hallway and the placement of the exits (T. 158). At the time, O'Hare did not see anyone actively objecting to the officers' presence in the apartment (T. 157).

Police Officers Forrester and Remo testified regarding the circumstances leading up to their encounter with Persons B, C and D Their individual recollections of the encounter are similar and were not contested at trial. Certain portions of their respective testimonies were, however, of particular evidentiary value. Police Officer Forrester testified that he told Respondent that a bald male Hispanic, wearing a white t-shirt and holding a phone was involved in the altercation (T. 177, 180). Officer Forrester also testified that he saw this same man go into David Rivera's apartment but that he did not see any other persons enter that apartment (T. 185-186). Officer Forrester conceded that he was in a daze after the altercation and did not have a clear recollection of what happened to him after Respondent arrived on the scene (T. 179). This assertion corroborates Captain O'Hare's assertion that Officer Forrester was uncommunicative when he attempted to speak with him on the ground floor of the apartment building.

Officer Remo testified that he observed a male Hispanic with a bald head, wearing a t-shirt and basketball shorts who was in the immediate vicinity of the fight and was standing "fairly close" (T. 199). This description corroborates Officer Forrester's description of David Rivera, which is further corroborated by Rivera's appearance on the video recordings[4]. Officer Remo also testified that while he did not see anyone enter David Rivera's apartment, he later

[4] David Rivera identified himself from the video recordings.

entered the apartment with Respondent in order to apprehend supposed outstanding subjects (T. 211).

Respondent testified that on the date in question she heard a radio transmission of officers in need of assistance. No location was given, but she recognized the voices as belonging to officers Forrester and Remo (T. 221). Respondent had been with the officers about thirty minutes prior to the radio transmission and knew that they were in the Marlboro Houses (T. 221). Respondent estimated that she was at the Marlboro houses within three minutes of hearing the radio transmission (T. 222). She was concerned because neither Forrester nor Remo had provided any follow up radio transmissions (T. 222). Respondent was unaware of the officers' exact whereabouts and as a result she directed other responding units to canvass all the buildings in the Marlboro Houses complex until the officers were found (T. 222). She noticed their RMP parked in front of one building and entered immediately (T. 221).

Respondent ascended the stairs and on the first landing she checked, she saw Person D dragging Officer Remo on the floor of the hallway and Person B on top of Officer Forrester punching him (T. 223, 231-232). Respondent immediately attempted to help the officers handcuff the men who they were struggling with, while at the same time trying to transmit their location over the radio (T. 224). Respondent then noticed that there were more people at the other end of the hallway (T. 225). She distinctly recalled seeing David Rivera holding his phone and moving closer to the struggle (T. 226). She told Rivera at one point to either move back or go back into his apartment because she "did not want him at the scene" (T. 226). She acknowledged that she used profanity when ordering Rivera to back away because she "wanted to make [her] point" (T. 227). According to Respondent, Rivera did not follow her order to move back (*Id.*).

As she was ordering Rivera to move back, another individual emerged from one of the apartments at the end of the hallway and stood behind Rivera, later identified as Person A (T. 229). Respondent testified that she could only see one of Person A's hands and immediately ordered him to show her his hands. When Person A did not comply with her order, Respondent drew her firearm and pointed it at Person A then showed Respondent her hands and she re-holstered her firearm (T. 229).

Once the struggle ended and those involved were handcuffed and removed from the hallway, Respondent escorted Forrester downstairs to the front of the building to await EMS Personnel (T. 232). At one point, Forrester told Respondent that Rivera had been pulling him, and Respondent then directed other officers to arrest Rivera (T. 228).

Respondent then returned to the third floor to conduct a search of the apartments along the hallway for outstanding perpetrators (T. 233). Before arriving at his apartment, Respondent could hear Rivera arguing with other officers (T. 233). Respondent testified that she had already instructed other officers to arrest Rivera for Obstructing Governmental Administration for pulling Forrester and his alleged involvement in the officers' being assaulted (T. 234). Additionally, Respondent testified that Rivera did not comply with any of the orders given to him by her and other officers, which directly interfered with her ability to assist on the scene (T. 235). According to Respondent, she could have done a better job helping both Forrester and Remo if Rivera had not been there (T. 235).

When Respondent arrived at Rivera's apartment, she grabbed the phone from his hand and attempted to handcuff him (T. 233-234). Rivera resisted and other officers then assisted Respondent in handcuffing him (T. 234). Respondent testified that she grabbed Rivera's phone

because his hands needed to be free so that he could be handcuffed and his phone needed to be vouchered (T. 234).

Once Rivera had been arrested, Respondent entered and searched his apartment to look for outstanding perpetrators (T. 236). She testified that based on the assault of the officers and the fact that they were injured, exigent circumstances existed to justify their entry and search of the apartments (T. 236). Though Respondent recalled that Justina Rosado was present in Rivera's home and that she spoke to Rosado, she did not recall the substance of their conversation (T. 237). According to Respondent, Rosado was very nice and did not object to their presence in the apartment (T. 237). A search was also conducted of the apartment across the hall (T. 236).

On cross-examination, Respondent testified that she was told by both Forrester and Remo that Rivera was involved in the incident (T. 240).

Respondent estimated that when she drew her firearm, both Rivera and Person A were standing between 12 to 15 feet away from her in the hallway (T. 243-244). She asserted that she only pointed her firearm at Person A, and not Rivera (T. 246). However, when confronted with a statement given to the CCRB on July 29, 2015, Respondent acknowledged that she told CCRB investigators that she pointed her firearm at both Rivera and Person A (T. 246-247). On cross-examination, Respondent testified that Forrester was the officer who told her that Rivera was a participant in the assault (T. 256).

Respondent stated that she could not recall if she asked Rosado for the pass code on the phone she was holding (T. 268).

Respondent denied ever pointing her firearm at Rivera and testified that she did not care that Rivera was recording the incident (T. 227, 230).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]).

I find David Rivera credible because his testimony was logical, forthright, and consistent with the other evidence in the case. While I am mindful that he has an interest in the case based upon the pendency of a civil action arising from this incident, his testimony was corroborated in large part by the video recordings from his cellular phone, Person A's cellular phone and the closed circuit cameras in his apartment. I further find Justina Rosado's testimony credible on the issue of Respondent's entry into Rivera's apartment, largely because her testimony was also corroborated by the video recording from the closed circuit cameras in the apartment.

I find the testimony of Captain O'Hare credible and forthright. He may be considered a disinterested witness in this case. His testimony tended to establish that: (1) Respondent went to the apartment building to assist officers she believed to be in distress; (2) Officer Forrester was uncommunicative at the scene; (3) Officer Remo provided information to Respondent regarding the incident; and (4) police officers had already entered Rivera's apartment before Captain O'Hare arrived at the scene.

I find Officers Forrester and Remo credible, as they both testified forthrightly and readily admitted to certain gaps in their recollections, many of them being understandable considering the nature of the altercation they were involved in and their compromised ability to focus on observations of suspects in the middle of a fight. Both officers conceded that before this incident, they had never been involved in a physical altercation of such intensity. Even with

their diminished powers of observation, their testimonies were corroborated by the video evidence in CCRB Exhibits 1-8 and 1-9.

I find Respondent's testimony to a great extent irreconcilable with the video evidence and unworthy of belief, particularly as it pertained to the entry into Rivera's apartment. I find her denial that she pointed her firearm at Rivera, given the dimensions of the hallway, the proximity of Rivera to Person A, and her earlier admission to CCRB that she had pointed her firearm at both of them. to be disingenuous and tailored to avoid responsibility for her conduct. I further find disingenuous Respondent's assertion that she did not recall whether she had a conversation with Rosado about Rivera's phone in that her assertion was contradicted by the video recording showing Respondent displaying a cellular phone to Rosado and appearing to say something to her. *1. Use of Force*

The Patrol Guide provision governing the use of force at the time of this incident was Section 203-11, which reads in pertinent part:

All members of the service at the scene of a police incident must:

a. Immediately establish firearms control
b. Use minimum necessary force
c. Employ non-lethal alternatives, as appropriate.

Based upon the credible, relevant evidence in the record, I find that CCRB has not met their burden of proving by a preponderance of the evidence that Respondent pointed her firearm at Rivera and Person A without justification. Based upon Rivera's credible testimony, corroborated by Person A' statement and the video recording, Respondent drew her weapon and pointed it at both men as she yelled for them to get back. Neither the audio or video portions of CCRB

Exhibits 1-8 and 1-9 appear to show Respondent asking to see Person A's hands, contrary to her testimony.

Notwithstanding Respondent's gratuitous attempt to justify her conduct, the video evidence dramatically depicts a scene which was dynamic and over which Respondent initially had little control. Having just arrived on scene, Respondent had no idea whether David Rivera and Person A, while filming the scene in her presence, had a role in the assault. The camera perspective in CCRB Exhibit 1-8 briefly shows David Rivera drawing closer to Respondent as she was attempting to assist officers Forrester and Remo, who were still being assaulted. While it is difficult to pinpoint exactly how close Rivera got to Respondent, it would not have been unreasonable for her to become concerned that he was too close for her to safely continue to assist the officers being assaulted without running the risk that either he or Person A might join the fray. Under these chaotic circumstances, in which officers were being assaulted, drawing her weapon was a reasonable means of gaining spatial control over the narrow hallway, preventing Rivera and Person A from advancing any closer.

Accordingly, I find Respondent Not Guilty of Specifications 1 and 5.

2. Entry and Search of Rivera's Apartment

"[S]ubject only to carefully drawn and narrow exceptions, a warrantless search of an individual's home is *per se* unreasonable and hence unconstitutional" (*People v. Jenkins*, 24 N.Y.3d 62, 64 [2014]). Under the exigent circumstances exception, police may act without a warrant where they possess probable cause to search but "urgent events make it impossible to obtain a warrant in sufficient time to preserve evidence or contraband threatened with removal or destruction" (*People v. Jenkins*, 24 N.Y.3d 62, 64-65). The exigent circumstances exception may, in an appropriate case, justify a warrantless entry to "arrest a wrongdoer" (*People v.*

Jenkins, 24 N.Y.3d at 65, fn. 2). The emergency doctrine permits a warrantless entry where the primary purpose of the entry is to protect life and property (*Id.*; *see People v. Mitchell*, 39 N.Y.2d 173 [1976]).

In this case, Respondent asserted that she entered Rivera's apartment to search for other suspects or wounded police officers. Respondent testified that she received information from one or both officers, after she had them transported to the ground floor, which led her to believe that David Rivera was involved in the assault. Based upon that assertion, she directed police officers under her authority to place Rivera under arrest. CCRB Exibit 1-6 unequivocally establishes that Rivera was placed under arrest just inside the threshold of his apartment.

There is no evidence in the record upon which Respondent could reasonably rely to assert that there were individuals believed to have taken part in the assault, aside from David Rivera, inside his apartment (*compare Maryland v. Buie*, 494 US 325, 327 [1990]; *People v. Harper*, 100 AD3d 772, 774 [officer attempting to conduct such a post-arrest sweep must possess a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted' the officer in believing" that the area swept harbored an individual posing a danger to the officer or others]). Respondent conceded in her testimony that she had no idea whether there were other assailants to be apprehended but that she intended to search the apartments at the end of the hallway. While Officer Forrester told Respondent that he had seen David Rivera go into his own apartment, he did not tell her that anyone else had entered with him. Even Officer Remo, who conceded that he did not see anyone go into Rivera's apartment, entered the apartment to look for possible participants in the assault. Captain O'Hare similarly admitted he had no idea how many perpetrators they were looking for.

In addition to lacking probable cause to believe suspects or evidence would be found in Rivera's apartment, there was no evidence of an exigency present. Respondent testified that, "We don't wait for warrants when we have emergency circumstances . . . I have two cops who got hurt. We're not going to work [sic] for a search warrant to look for perps [sic]. When a cop gets hurt, we don't do that" (T. 236). Respondent's assertion that there was an exigency is belied by the initial entry of police officers immediately after Rivera's arrest who then retreated from the apartment when Rosado informed them that she was not dressed.

Moreover, there is no evidence in the record that would support a belief that there was additional evidence to be found in the apartment that could be destroyed if not seized immediately. Respondent seized the only evidence arguably relevant to the assault, namely the video recording contained on Rivera's mobile phone, as he was being arrested. Thus, the record failed to support a finding that Respondent had probable cause, but also any particularized information that suspects or evidence subject to destruction or loss would be found inside Rivera's apartment. It was only after police officers entered the apartment that they discovered that Rivera had video cameras inside. Accordingly, Respondent's entry into Rivera's apartment, as well as the entries of the police officers under her authority, did not qualify under the exigent circumstances exception.

Second, Respondent's assertion that she entered Rivera's apartment pursuant to the emergency exception to search for injured police officers is also unsupported by the record. Respondent testified that she observed two police officers being assaulted in the hallway and that she rescued both officers. At no time did Respondent testify that she was looking for any officers other than Remo and Forrester; accordingly, her argument that her entry into Rivera's apartment was permissible under the emergency exception lacks factual, let alone, legal, support.

Under the emergency exception, "the police may make a warrantless entry into a protected area if (1) they have reasonable grounds to believe that there was an emergency at hand and an immediate need for their assistance for the protection of life or property, (2) the search was not primarily motivated by an intent to arrest and seize evidence, and (3) there was some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched" (*People v. Mitchell*, 39 N.Y.2d 173, 177-178 [1976]). While it is undisputed that two police officers were physically assaulted in the hallway, that fact, either alone, or in combination with the totality of circumstances present at the time, did not provide a legal basis for a warrantless entry into David Rivera's apartment.

Finally, there is no factual or legal support in the record for Respondent's argument that Rosado's failure to object to the entry is tantamount to consent. Rosado testified credibly that Respondent never sought her consent to enter the apartment. Respondent testified that she could not remember the substance of any conversation she had with Rosado, making it more likely that Rosado's recollection of the interaction is credible. Moreover, the video evidence unequivocally shows Respondent pushing past Rosado and leading a stream of police officers into Rivera's apartment. Respondent's assertion that Rosado did not object seems like a gratuitous afterthought. This evidence is more consistent with acquiescence to "overbearing official pressure" than implied consent (*People v. Gonzalez*, 39 N.Y.2d 122, 128 [1976]).

Accordingly, I find Respondent Guilty of Specification 2.

Based upon the credible evidence in the record, I find that Respondents searched Rivera's apartment without sufficient legal authority. It is undisputed that Respondent did not have a search warrant for Rivera's apartment. As discussed above, there is insufficient factual and legal support in the record tending to establish any of the above-described exceptions to the warrant

requirement. Accordingly, any search of the apartment was tainted by the initial unlawful entry.

I therefore find Respondent Guilty of Specification 3.

3. Discourtesy

Based upon the relevant credible evidence in the record, I find that Respondent was discourteous to Rivera. While the only evidence of alleged discourtesy was Rivera's in-court testimony, the tribunal has found him credible with respect to other aspects of the incident. I find that Respondent's statement, "You shouldn't be fucking recording and get in your fucking apartment," was made in the context of a dynamic situation over which Respondent was still attempting to gain control. In previous cases, Respondents' use of such language in similar situations has been deemed excusable; accordingly, I find her Not Guilty of discourtesy with respect to that statement.

I do find Respondent Guilty of discourtesy for the statements, "You're not getting your fucking phone," "I am the sergeant; fuck you, you ain't getting your phone," and "This fucking phone, motherfucker; who the fuck do you think I am? You crazy?" These statements were made after David Rivera was placed under arrest and served no legitimate purpose but to belittle his requests for the return of his property.

Thus, I find Respondent Guilty in part of Specification 4.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has requested that Respondent forfeit 30 vacation days. Respondents have forfeited between three and eight vacation days for unauthorized entry and search of a residence

(*Disciplinary Case Nos. 2014-12486, 2014-12484, 2014-12485 & 2014-12483* [Sept. 16, 2016][Ten-year detective (Respondent 1), seven-year detective (Respondent 2), and eighteen-year sergeant (Respondent 3) forfeit 8 vacation days each for (i) entering a residence without sufficient legal authority, and (ii) searching said residence without sufficient legal authority. Respondents, members of a warrant squad, entered a private residence ostensibly under the authority of an arrest warrant one of respondents had executed the month before. Despite the previous arrest, the warrant was erroneously categorized as active in the CRIMS database. Respondents' jointly-held belief, that so long as the arrest warrant appeared in a database as active it possessed its original force, was incorrect. Based on their personal knowledge of the previous execution of the arrest warrant, their mistake was neither reasonable nor made in good faith]; *Disciplinary Case Nos. 2014-12437, 2014-12438 & 2014-12439* [Oct. 13, 2015][Seventeen-year detective with no prior disciplinary record forfeits three vacation days for entering an apartment without sufficient legal authority. Under an outstanding bench warrant for the suspect there was insufficient evidence from which to draw a conclusion that the apartment was the suspect's residence. Respondent's teammates forfeited five vacation days each for both entering and searching the apartment]; *Disciplinary Case No. 2013-10901* [Sept. 22, 2015][Sixteen-year Captain with no prior disciplinary record forfeits eight vacation days for entering an apartment without sufficient legal authority. Under the totality of the circumstances faced by Respondent upon his arrival at the scene, there was not an urgent need to kick in the door and enter the apartment without a warrant. Instead, the scene could readily have been safeguarded until police obtained proper authorization to enter]).

Respondents in previous cases involving discourtesy have suffered penalties from reinstruction to the loss of eight vacation days (*Disciplinary Case No. 2014-12034* [Mar. 2,

2016][Thirty-year police officer with no prior formal disciplinary history negotiated with CCRB to receive reinstruction for (i) being discourteous to an individual, and (ii) threatening an individual with the use of force. While driving to work, Respondent's route was obstructed by a nearby school conducting a fire drill and children crossing the street. After identifying herself as a police officer. Respondent asked if she could pass the road block and was told that she had to wait until the fire drill was completed. Respondent became agitated and quickly accelerated her vehicle toward one of the school's staff members before abruptly braking and honking her horn. She began angrily yelling at the school's staff and at one point stated, "I'm not going to do whatever the fuck y'all want me to do"]; *Disciplinary Case No. 2015-13502* [July 29, 2016][Fourteen-year police officer negotiated with CCRB a penalty of two vacation days for stating to an individual, "WHO ARE YOU TO ASK AN OFFICER DOING HIS JOB WHAT'S RIGHT AND WRONG. WHO DO YOU THINK YOU ARE? THAT IS NONE OF YOUR FUCKING BUSINESS"]; *Disciplinary Case No. 2015-13210* [Aug. 15, 2016][Twelve-year police officer, with no prior disciplinary history forfeited seven (7) vacation days for using offensive language toward a civilian and improperly issuing a disorderly conduct summons to said individual without sufficient legal authority. Disinterested witnesses corroborated complainant's allegation that Respondent told him to "shut the fuck up" and told him, "I don't give a fuck about your son"]; *Disciplinary Case No. 2014-11416* [Sept. 10, 2015][Thirteen-year police officer with one prior adjudication forfeits eight vacation days for discourteously telling a prisoner in the holding cell, "I own you," and, "My dog has enough sense not to pee in its cage"]).

At the outset, the tribunal finds Respondent's actions in locating and coming to the assistance of police officers under her authority to be laudable and in keeping with the ethos of

this Department. The tribunal further accepts Respondent's characterization of the scene she was presented with upon arriving at the [redacted] floor of [redacted] as startling.

At the time Respondent entered David Rivera's apartment, she was well aware that she possessed no search warrant but, as the video evidence demonstrated, she pushed her way in determined to conduct an immediate search for an undetermined number of suspects whose very existence was in doubt.

I further find that Respondent allowed the concededly startling visual impact of witnessing Forrester and Remo being assaulted to impair her professionalism, which was manifested in her use of discourteous language after Rivera's arrest. Respondent used provocative language to flaunt her authority and goad a person who was already in custody.

Based upon the foregoing, I recommend that Respondent forfeit 15 vacation days.

Respectfully submitted.

Paul M. Gamble
Assistant Deputy Commissioner Trials

DISAPPROVED
JUN 08 2017
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT DIANA PICHARDO
TAX REGISTRY NO. 930958
DISCIPLINARY CASE NO. 2015-15012

On her last three annual performance evaluations, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent." She has been awarded nine medals for Excellent Police Duty and four medals for Meritorious Police Duty. [redacted]

She has no prior disciplinary history.

Paul M. Gamble
Assistant Deputy Commissioner Trials