201607488 Elvis Cole

A woman observed a man being arrested in the Bronx and approached him and the officers to ask what was going on. The man declined her help and the officers brought the man to a prisoner van. The woman took photographs of the incident. The man was taken away in the prisoner van and she later saw him; he told her he had been driven a few blocks away and released. Because there was no documented arrest that day, and no stop-and-frisk form prepared by the officers, the CCRB had to determine what happened almost entirely from officer testimony. All of the officers involved had been on a buy-and-bust operation (where an undercover officer buys narcotics and then provides other officers with a description of the person from whom he bought the drugs). While two officers recalled the incident, they stated that the man had been found with drugs, arrested, and transported to the precinct. In fact no arrest paperwork, or any other paperwork had been completed. Occasionally during a buy-and-bust, when officers arrest someone based on an undercover's description, that person is released when it turns out to be the wrong person, but in that case the team prepares paperwork documenting the stop. Officer Cole, in his interview, not only stated that he did not remember the incident, he stated that he could not recognize any of the officers in any of the photographs the woman took-including a photograph of himself that multiple other officers identified as him.

The CCRB found that the arresting officers abused their authority and that Officer Cole made a false official statement in his CCRB interview.

Complainant/Victim:

is a year-old black woman, standing 5'9 tall, weighing 170 lbs., and with brown hair and brown eyes. is currently unemployed.

provided a statement at the CCRB on September 19, 2016. Her statement is summarized below (12:15pm-12:55pm). The interview was conducted by Inv. Ellman, with Inv. Petrinovic present.

On August 28, 2016 at approximately 3:30 pm, and a was standing near the entrance of the and a more in the Bronx, which are adjacent to accord to the speaking in the courtyard with a group of young men she was familiar with from work in the neighborhood. After approximately five minutes, according turned around to see M1 encircled by approximately five plainclothes police officers; she stated that nothing of note transpired prior to the officers' arrival.

saw M1 holding a plastic grocery bag open for the officers to look into; she was unsure if any of the officers reached into the bag, but did not believe anything was taken from the bag. Shortly thereafter, she saw M1 remove items from his pockets but did not hear any of the officers issue a command for him to do so. **Mathematical asked** M1, who she stated was calm and compliant, if he had given the officers permission to search through his possessions, and he responded that he had not. **Mathematical did not see an officer physically put his hands in M1's pocket, and did not believe anything was taken from his pockets**.

believes that M1 was handcuffed shortly after these searches. She asked M1 if he wanted her to call anyone on his behalf, and he said that he did not. Two officers, PO1 and an unknown officer, walked M1 to underneath the **second second**, train station. There, there were two unmarked vans parked, and M1 was taken to the rear of the large, navy van; the other van was a silver Nissan minivan. **Second** did not recall seeing the vans arrive at the location, and believed that there were additional officers who remained at the vans while the other officers approached M1.

At this time, M1 remained calm and quiet. Upon arrival at the vehicle, was attempting to speak with PO1, and was speaking to him about the activism she was doing in the community; in return, PO1 told was to "get a job." PO1 then conducted a frisk of M1's body. At this time, while M1's hands are handcuffed behind his back, PO1 grabbed M1's genitals, and pulled them so as to make a motion to who was standing across the street.

estimated that the interaction was approximately three minutes in total. **The provided** pictures she took of the officers departing the location. In Photograph 1, she identified PO1 as the white officer with a frontwards facing hat on the far left side of the image; She did not recall the driver of the vehicle in Photograph 2.

PO1:White/Male/Plainclothes/Large/Officer on far left of Photo 1 M1: Black/Male/Black shirt, gray pants, gray shoes

stated that she later learned the identity of the man who was arrested. He indicated to that the officers handcuffed him, placed him in the van, and transported him only a few blocks before releasing him.

Mediation was presented to at 36:00, and she accepted.

On August 26, 2016, Det. French worked with Lt. Braithwaite and other Bronx Narcotics officers on a buy-and-bust operation. Det. French worked in plainclothes from 1127x2000 and was assigned an unmarked red Toyota.

Det. French's Memo Book

1330 TAC-UP for B+B	
1430 84 v/o	
1550 1 under s/w	. Det. Marte recovered 3 zips crack from deft right hand
1555 stopped one male.	·

Det. French's CCRB Statement

On August 26, 2016, Det. French was assigned to the leader car of a buy-and-bust operation with Lt. Braithwaite. At approximately 2 p.m., Det. French and Lt. Braithwaite parked in an unmarked red Toyota in the vicinity of 1 in the Bronx, where an undercover officer was attempting to purchase narcotics. Det. French could not recall who the undercover officer was on that day, and stated that there are usually one or ghost two officers that trail the undercover officer to ensure his safety. Once an undercover officer makes a purchase, the ghost officers then relay to the chase and leader cars the height, weight and clothing of the individual to be arrested, though Det. French stated that the leader car is not necessarily notified or every stop or arrest made. Further, he stated that it is unlikely that an officer would conduct a warrant-check on an individual while in the field.

At 3:55 p.m., Det. French arrested **a** purchase from the individual, and Det. French and other officers physically apprehended the man after receiving information from the ghost. After this arrest, **b** was placed in the prisoner van and Det. French resumed his operation; Det. French's next arrest was at 6:10 p.m. **b** was Det. French's first stop and civilian interaction of the day, though he stated that he was also the arresting officer for an arrest at approximately the same time by Det. Marte, for which he was not present. Det. French did not hear of Det. Marte's team making any additional arrests or stops, and knew no information of a false arrest followed by the release of a civilian. Det. French did not interact with any civilians other than those he arrested, and stated he knew of no arrest that garnered a crowd of civilians.

Det. French identified Det. Cole as the officer in the passenger seat of Photo 2. He stated that he believed Det. Marte was in the foreground of Photo 1, and that the vehicle shown in Photos 1 and 3 is likely a prisoner van.

PO Cole is a 5'10 white male with black hair and blue eyes. On August 26, 2016, PO Cole was assigned the prisoner transport van in a buy-and-bust operation, an unmarked black van with RMP PO Cole was in plainclothes and worked from 1127x2000; he could not recall with whom he was working.

PO Cole's Memo Book

1410: 84 B&B 1900: observed

with crack cocaine in right hand in plainview.

PO Cole's CCRB Statement

Neg

On August 26, 2016, PO Cole was assigned to the prisoner van as part of a buy-and-bust operation. In this capacity, PO Cole and his partner, who he could not recall, are notified after an arrest has been made and transport the perpetrators to the precinct stationhouse for processing.

Prior to entering the field, PO Cole was present at a TAC meeting regarding the operation, yet he could not recall who all was present. After, he drove to a location in the vicinity of subway station, which is a known area of drug sales. However, PO Cole stated that there was no specific location of focus for the operation, and that a buy-and-bust tour can encompass an entire precinct.

PO Cole could not recall any details between the TAC meeting and an arrest he made at 7 p.m. PO Cole stated that he was likely parked in the vicinity of **Sector Cole** stated that it was not abnormal for a buy-and-bust operation to be fruitless after multiple hours, nor was it abnormal for a team to remain in a location despite no prior success. PO Cole did not recall hearing of any other vehicles making stops, nor could he recall who all his van transported in the time prior to his 7 p.m. arrest. Further, PO Cole stated that had something of significance occurred during this time window, he would have documented it in his memo book.

PO Cole was presented with the roll call for the operation, yet even with this information he could not recall which officers served as Ghosts, in the leader car, or who accompanied him in the prisoner van. PO Cole was then presented with photographs taken of the incident. PO Cole could not identify any officers in Photo 1, and, when asked about officers specifically listed on the roll call, he stated that the photo was too blurry for him to make an identification. When presented with Photo 2, PO Cole did not identify himself as the passenger of the vehicle, and stated that the photo did not prompt him to recall who was in the prisoner van with him on that day. PO Cole was then presented with an official picture of Det. Flynn, yet again stated that the photo was too blurry for him to make an identification.

PO Cole did not recall being involved in an erroneous arrest and release, an arrest that involved a crowd, or a verbal dispute with a black woman, and stated that he knew of no such events taking place with other officers during the operation.

PO Cole has two tattoos on his left forearm, one of a rose and one of his daughter's date of birth.

PO MacCalla is a 6'2, 220 lbs. black main, with black hair and brown eyes. On August 26, 2016, PO MacCalla was assigned to be the Ghost of a buy-and-bust operation in the 48th Precinct. PO MacCalla worked from 1327x2000 with PO Lizardo and was in street clothes.

PO MacCalla's Memo Book

1345 TAC Ghost w/ PO Lizardo 1400 V/O 48th Precinct 1900 84 @ 48th Precinct

PO MacCalla's CCRB Statement

On August 26, 2016, PO MacCalla was § 87(2)(e)

PO MacCalla stated that the operation began around 2 p.m., and spanned the entirety of the 48th Precinct. PO MacCalla could not recall precisely where he went in the course of his tour, though he did recall being in the vicinity of train station, and noted that it is an area of high drug activity.

PO MacCalla stated that he returned to the 48th Precinct stationhouse at 7 p.m., and that he did not recall any arrests or stops that took place beforehand; PO MacCalla stated that though there were numerous buy-and-bust attempts that took place during that time, he follows the undercover officer, and thus would not be present for any stops or arrests.

PO MacCalla was shown the roll call for that operation, yet was still unable to recall which officers served in what role during the operation. When shown Picture 1, PO MacCalla stated that he was not the individual in the foreground, and that he could not identify any of the officers in the picture due to poor image quality. When shown Picture 2, PO MacCalla stated that he did not recall seeing the civilian on that date, and that he could not identify the officers in the photo. PO MacCalla stated that the van pictured resembles the prisoner van used that day, yet the van in the picture is blue and the van used was back. When shown Picture 3, PO MacCalla could not identify either officer. PO MacCalla stated that he could not recall if Det. Flynn was working during this operation, and could not identify Det. Flynn as the driver of the vehicle, stating again that the image quality was too low. PO MacCalla was then presented with Det. Flynn's MOS photo, and stated that he still could not determine if the pictured officer was officer Flynn. When shown a picture of PO MacCalla stated that he did not recall stated that he did not recognize her.

After PO MacCalla returned to the 48th Precinct stationhouse, he operated a prisoner van for the rest of his tour.

Det. Marte is a -year-old, 5'8 tall black man with black hair and brown eyes. On August 26, 2016, Det. Marte was the arresting officer of a buy-and-bust operation in the 48th Precinct. Det. Marte worked in plainclothes and operated an unmarked vehicle.

Det. Marte's Memo Book

1200 PFD 1400 TAC A/O 1900 1 under 1901 1 under 1902 1 under 2203 EOT 304

Det. Marte's CCRB Statement

On August 26, 2016, Det. Marte worked as the arresting officer for a buy-and-bust operation led by Lt. Braithwaite. Det. Marte began his tour at a TAC meeting, after which he and the other officers began patrolling the 48^{th} Precinct. Det. Marte operated an unmarked vehicle, and believed he was partnered with Lt. Braithwaite, yet could not recall definitively. Det. Marte stated that he recalled working in and around the operation but that the operation encompassed the entirety of the 48^{th} Precinct. § 87(2)(e)

Det. Marte stated that nothing of note took place between the hours of 2 p.m. and 7 p.m., at which point three arrests were made; Det. Marte stated that he knew nothing of stopped individuals prior to 7 p.m., and stated that he was not present in the stated that he knew nothing of proximately 7 p.m. Further, he stated that he knew nothing of an individual stopped, handcuffed, and ultimately released during this time; Det. Marte emphasized that such an occurrence is rare, and further stated that it is not abnormal for a buy-and-bust to be fruitless after five hours.

Det. Marte was presented with the roll call for his team, yet was unable to identify which officers served whatfunctions during the operation. Det. Marte was then presented with Photo 2, and immediately identified the vehicle as the prisoner van, and identified PO Cole as the passenger in the vehicle and Det. Flynn as the operator. When shown Photo 3, Det. Marte stated that he believed the picture depicts one of the three arrests that took place around 7:00 p.m., and emphasized that he was not assigned to or involved with prisoner transportation. When shown Photo 1, Det. Marte identified himself as the officer in the foreground. Det. Marte stated that he could not discern if the individual was arrested at the time of the photograph, but stated that he was detained at the time. Det. Marte could not recall his approach of this individual, and stated that he believed, yet was unsure, that he was communicating with the undercover officer via radio. Det. Marte stated that he believed this man was detained for approximately 20 minutes prior to being transported via the prisoner van to the stationhouse (as seen in Photo 3); Det. Marte noted that the photo looks as though he was talking into a radio, and he stated that he believed he was waiting for the undercover officer to provide confirmation that they had stopped the correct man. Det. Marte believed that this man was apprehended after the undercover officer observed him selling drugs to other individuals in the area, at which point he radioed a description of the individual to the entire team.

After confirmation, Det. Marte stated that this man was arrested (as evidenced in Photo 3), and that a search was likely performed pursuant to arrest; Det. Marte recalled no details of personal interaction with this individual, yet stated that he believed crack cocaine was recovered from his person. Det. Marte stated that he did not recall interacting with this individual at the stationhouse, and that he still had no recollection of any stops or arrests taking

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place prior to 7 pm. Det. Marte stated that, had a stop been made, a 250 report should have been generated, and that he would have logged the incident in his memo book. However, Det. Marte stated that, though the arresting officer, he would not be responsible for generating a 250 report, as that is the responsibility of the officer physically making the stop.

Note: The interview went off the record at 10:07 a.m. and resumed at 10:09 a.m.

Det. Flynn is a gevear-old white man, standing 5'7 tall, weighing 200 lbs., and with black hair and blue eyes. On August 26, 2016, Det. Flynn was assigned to the prisoner van (with PO Cole as part of a buy-and-bust operation; he worked in plainclothes.

<u>Det. Flynn's Memo Book</u>

1430:		
1350	1 under	
1555	1 under	

Det. Flynn's CCRB Statement

On August 26, 2016, Det. Flynn and PO Cole were assigned to the prisoner van for two buy-and-bust teams operating within the 48th Precinct. § 87(2)(e)

Det. Flynn and PO Cole were parked outside of the vicinity of 3:30 pm, Det. Flynn received information over the radio that gave the description of a man who was believed to have been part of a narcotics sale; Det. Flynn could not recall who precisely relayed this information to him, nor what the description of the individual was. Shortly thereafter, Det. Flynn and PO Cole arrived at the location, where a young black man was already handcuffed and in custody; Det. Flynn did not know who physically apprehended the man or handcuffed him, but stated that Det. Lizardo and Det. Marte were present.

Det. Flynn took a grocery bag the man had on him for safekeeping purposes, and, after a crowd started to gather within a minute or two of Det. Flynn's arrival, he was escorted to the prisoner van to get away from the crowd. Det. Flynn recalled one woman taking pictures and repeatedly saying, "He did nothing wrong," but stated that he did not speak directly toward her, nor could he recall any other officers speaking directly to her; he did not hear anyone tell the woman anything to the effect of "get a job." Det. Flynn stated that there were no difficulties placing the man into the van, which at the time had no other prisoners. Det. Flynn did not recall an officer grabbing the man's genitals prior to being placed into the van, and stated that he, himself, did no such thing.

Det. Flynn drove westbound on **and the second secon**

Det. Flynn stated that a UF-250 report is typically prepared by the officer that physically stops civilians.

Det. Flynn identified himself as the driver and PO Cole the passenger of the vehicle. Det. Flynn identified Det. Marte in the foreground, PO Cole on the left, Det. Lizardo in the middle, and himself as the individual turned away from the camera.

Lt. Braithwaite is a year-old black man, standing 5'10 tall, weighing 200 lbs., and with black hair and brown eyes. On August 26, 2016, he led a buy-and-bust operation in the 48th Precinct, and was assigned to the unmarked leader car with Det. French. Lt. Braithwaite worked in plain clothes from 2 pm to 2:30 am on the following day.

Lt. Braithwaite's Memo Book

1400 98 w Det. French 1550 93c x 1 1810 93c x 1 1820 93c x 2

Lt. Braithwaite's CCRB Statement

On August 26, 2016, Lt. Braithwaite led a buy-and-bust operation consisting of a team in the 48th Precinct and 47th Precinct; Lt. Braithwaite was the passenger of an unmarked minivan driven by Det. French.

At approximately 3:50 p.m., Lt. Braithwaite received a description of someone believed to be involved in a narcotics transaction that was put over the radio by the undercover officer. At the time, Lt. Braithwaite and Det. French were south of the **second second**, in an area across the street near the intersection of **second second**. Shortly after the information was relayed, Lt. Braithwaite observed an individual fitting that description and, after confirmation from the undercover officer, arrested him; Lt. Braithwaite could not recall any of the descriptions given for the individuals believed to be involved.

Lt. Braithwaite stated that multiple people were stopped in the vicinity in connection with this transaction, and that there was a second group of officers across the street. Lt. Braithwaite stated that his interaction with civilians around that time was limited to this man's arrest and with his family, who arrived at the location after he was arrested. This individual was ultimately processed at the 48th Precinct stationhouse.

Lt. Braithwaite was unaware of any officers making stops, making false identifications, or of arresting someone and then releasing them; he stated that all of his interactions resulted in arrests. Further, he was stated that he was never informed of a voided arrest, and that, per procedure, he would be notified of such an occurrence.

Lt. Braithwaite identified PO Marte in the foreground, and PO Cole and Det. French as the passenger and driver, respectively, of the prisoner van. He stated that Det. Lindsey was GHOST for the day.

Lt. Braithwaite did not recognize He stated that he had no knowledge of any officers having notable engagement with a civilian in the course of an arrest, and that he had no knowledge of any officer grabbing the genitals of an apprehended man.

Det. Lizardo is a year-old Hispanic male, standing 5'9, weighing 215 lbs., and with brown hair and brown eyes. On August 26, 2016, Det. Lizardo worked in plainclothes from 1127x2000 as part of the chase car in a buy-and-bust operation.

Det. Lizardo's Memo Book

1330: TAC @ 47 1400: U/O 48 pct. Chase 1900: 84 @ 48th pct. processing

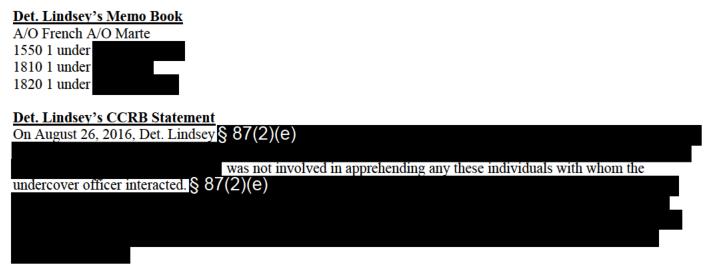
Det. Lizardo's CCRB Statement

A description of an individual believed to have purchased drugs from an uncover police officer was put over the radio at approximately 3:30 pm on August 26, 2016; the man was described as having a grocery bag, yet Det. Lizardo could not recall any other details of the description. Det. Lizardo stated that almost immediately after, he turned a corner and saw the man sitting on a bench approximately 25 feet away. Det. Lizardo could not recall what the man was doing on the bench, but stated that the man stood out to him because he had a grocery bag. However, Det. Lizardo then stated that he could not recall whether he was of the first officers on the scene, or if he saw the man being apprehended. Det. Lizardo then stated that the man was standing upon his arrival. Det. Lizardo still could not recall how the man was apprehended

Det. Lizardo identified himself, Det. Flynn, Det. Marte and PO Cole in Photograph 1. Det. Lizardo still was unable to recall who his partner was on that day from this picture, for, though PO Cole and Det. Flynn were partnered together, Det. Lizardo stated that he was not necessarily partnered with Det. Marte and that there were likely other officers outside the frame of the photograph. Further, when presented with the roll call and the fact that all other officers except he and Det. Marte were paired off, Det. Lizardo was still was unable to recall with whom he was partnered that day, yet stated that he would have had a partner. Det. Lizardo stated that protocol would require officers to move the man toward the prisoner van, and have him stand outside the van until the undercover officer could confirm his identity. It is only after this confirmatory, stated Det. Lizardo, that an individual is physically put into the prisoner van and/or removed from the location.

Det. Lizardo stated that he did not touch the man, and had no knowledge of someone being arrested, placed in the prisoner van, and then released on that day.

Det. Lindsey is a 5'4, 225 lbs. black male, with black hair and brown eyes. On August 26, 2016, Det. Lindsey worked in plainclothes from 1157x2030 as the Ghost of a buy-and-bust operation.



Det. Lindsey stated that, in some exigent circumstances, officers will relocate the suspected defendant away from the location of apprehension, and that the prisoner van is typically the last of the officers to arrive at a location. Further, Det. Lindsey stated that, as arresting officer, Det. Marte would likely be partnered with a supervisory officer. When told that Lt. Braithwaite was partnered with Det. French, Det. Lindsey stated that it was unlikely that Det. Marte would be partnered with another detective.

When shown photographs of the unknown man and the officers outside of the **sector**, Det. Lindsey identified PO Cole on the left, Det. Lizardo in the middle, Det. Flynn with his back turned toward the camera, and Det. Marte in the foreground. However, Det. Lindsey stated that he did not recognize the man and did not recall being with those officers in that location; additionally, Det. Lindsey stated that he did not recall seeing a man with a grocery bag on that day, or hearing or providing descriptions of any man with a grocery bag. Further, Det. Lindsey did not recall any of the individuals arrested and processed on that day when shown their arrest photographs, and did not recall any of the details Det. Marte made on that day.

Det. Lindsey did not recall any instances in which an individual was detained and released or stopped and released, nor did he recall any voided arrests that took place on that day. Det. Lindsey had no knowledge of any officers arguing with civilians during the course of the operation, and stated that he did not recognize when shown a picture of her. Det. Lindsey stated that pedigree information is typically obtained in the field, and is typically documented prior to arrival at the stationhouse.

PO Sean DeStefano is a -year-old white male, standing 6'3" tall, weighing 215 lbs, and with brown hair and green eyes. On August 26, 2016, PO DeStefano was assigned to go to court with Det. Simpson to secure a search warrant.

PO DeStefano's Memo Book

1530: B+B chase 48th Precinct; Lt. Braithwaite 2130 EOT

PO DeStefano's CCRB Statement

PO DeStefano was not present for this incident. On August 26, 2016, Det. Simpson and PO DeStefano went to court to obtain a search warrant. In the vicinity of 2:30 pm, Det. Simpson and PO DeStefano were eating lunch after court when a call was put over the radio for assistance in a buy-and-bust near

. The officers responded and were at the location for over an hour before returning to the stationhouse. PO DeStefano had no knowledge of any incidents taking place during that buy-and-bust operation that concerned an erroneous detainment, a gathering crowd, or of an individual dropped off on the side of the road.

Det. Simpson is a year-old white male, standing 5'8", weighing 250 lbs., and with brown hair and blue eyes. On August 26, 2016, Det. Simpson was in plainclothes with PO DeStefano

Det. Simpson's Memo Book

1577: obtained search warrant
1600: 84 48th Pct. B + B
1930: 84—48th Pct. 6 arrests between French and Marte

Det. Simpson's CCRB Statement

Det. Simpson was not present for this incident. On August 26, 2016, Det. Simpson and PO DeStefano went to court to obtain a search warrant. At approximately 4 pm, Det. Simpson and PO DeStefano were on their way back from court when a call was put over the radio to back Lt. Braithwaite in a buy-and-bust operation. The officers responded and stayed at the location for approximately a half hour before returning to the stationhouse. Det. Simpson had no knowledge of buy-and-bust occurrences in the vicinity of the returning to the stationhouse. Det. Simpson had no knowledge of a civilian that needed to be relocated away from the use of any individual being or of an individual dropped off on the side of the road by the prisoner van.

