November 21, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Andrew Duguid**
Tax Registry No. 925220
Narcotics Borough Brooklyn North
Disciplinary Case No. 2010-1965

Detective Christopher Ward
Tax Registry No. 934299
Narcotics Borough Brooklyn North
Disciplinary Case No. 2010-1967

Detective Frank Sarrica
Tax Registry No. 924463
Narcotics Borough Brooklyn North
Disciplinary Case No. 2010-1968

The above named members of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on March 14, 2012 and were charged with the following:

DETECTIVE ANDREW DUGUID **DISCIPLINARY CASE NO. 2010-1965**

1. Said Detective Andrew Duguid, assigned to Narcotics Borough Brooklyn North, while on duty on April 8, 2009, at approximately 2035 hours, while in the vicinity of [redacted], Kings County, did abuse his authority as a member of the New York City Police Department, in that he entered a dwelling without sufficient legal authority. *(As amended)*

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

2. Said Detective Andrew Duguid, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, having taken police action, did fail and neglect to memorialize this activity in his Activity Log. *(As amended)*

P.G. 212-08, Page 1, Paragraph 1 **ACTIVITY LOGS**

DETECTIVE ANDREW DUGUID **DISCIPLINARY CASE NO. 2010-1965**

3. Said Detective Andrew Duguid, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, did abuse his authority as a member of the New York City Police Department, in that he searched the dwelling located at [redacted] without sufficient legal authority. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 **PUBLIC CONTACT**

DETECTIVE CHRISTOPHER WARD DISCIPLINARY CASE NO. 2010-1967

1. Said Detective Christopher Ward, assigned to Narcotics Borough Brooklyn North, while on duty on April 8, 2009, at approximately 2035 hours, while in the vicinity of [redacted], did abuse his authority as a member of the New York City Police Department, in that he entered a dwelling without sufficient legal authority. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 **PUBLIC CONTACT**

2. Said Detective Christopher Ward, assigned as indicated in Specification #1, while on duty, at time, date, and location set forth in Specification #1, having taken police action, did fail and neglect to memorialize this activity in his Activity Log. *(As amended)*
P.G. 212-08, Page 1, Paragraph 1 **ACTIVITY LOGS**

3. Said Detective Christopher Ward, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, did abuse his authority as a member of the New York City Police Department, in that he searched the dwelling located at [redacted] without sufficient legal authority. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 **PUBLIC CONTACT**

DETECTIVE FRANK SARRICA **DISCIPLINARY CASE NO. 2010-1968**

1. Said Detective Frank Sarrica, assigned to Narcotics Borough Brooklyn North, while on duty on April 8, 2009, at approximately 2035 hours while in the vicinity of [redacted], did abuse his authority as a member of the New York City Police Department, in that he entered a dwelling without sufficient legal authority. *(As amended)*

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

2. Said Detective Frank Sarrica, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, did abuse his authority as a member of the New York City Police Department, in that he arrested Mr. Oren Johnson-Griffith for Obstructing Governmental Administration without sufficient legal authority. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **PUBLIC CONTACT**
P.G. 208-01, Page 1, Paragraph 3 **LAW OF ARREST**

In a Memorandum dated August 22, 2012, Assistant Deputy Commissioner Claudia Daniels-DePeyster found Respondent Duguid Guilty in Specification No. 2 and Not Guilty in Specification Nos. 1 and 3 in Disciplinary Case No. 2010-1965, Respondent Ward was found Guilty in Specification No. 2 and Not Guilty in Specification Nos. 1 and 3 in Disciplinary Case No. 2010-1967, and Respondent Sarrica was found Guilty in Specification No. 2 and Not Guilty in Specification No. 1 in Disciplinary Case No. 2010-1968. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The Respondents' actions in this matter were inappropriate and warrant a commensurate disciplinary penalty. Therefore, the disciplinary penalties for each Respondent shall be as follows: Respondent Duguid shall forfeit five (5) vacation days, Respondent Ward shall forfeit five (5) vacation days, and Respondent Sarrica shall forfeit ten (10) vacation days.

Raymond W. Kelly
Police Commissioner

The City of New York

POLICE DEPARTMENT

August 22, 2012

MEMORANDUM FOR: Police Commissioner

Re: Detective Andrew Duguid
Tax Registry No. 925220
Narcotics Borough Brooklyn North
Disciplinary Case No. 2010-1965

Detective Frank Sarrica
Tax Registry No. 924463
Narcotics Borough Brooklyn North
Disciplinary Case No. 2010-1968

Detective Christopher Ward
Tax Registry No. 934299
Narcotics Borough Brooklyn North
Disciplinary Case No. 2010-1967

The above-named members of the Department appeared before me on March 14 and March 15, 2012, charged with the following:

Disciplinary Case No. 2010-1965

1. Said Detective Andrew Duguid, assigned to Narcotics Borough Brooklyn North, while on duty on April 8, 2009, at approximately 2035 hours, while in the vicinity of [redacted], [redacted], did abuse his authority as a member of the New York City Police Department, in that he entered a dwelling without sufficient legal authority. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT

2. Said Detective Andrew Duguid, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, having taken police action, did fail and neglect to memorialize this activity in his Activity Log. *(As amended)*

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

3. Said Detective Andrew Duguid, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, did abuse his authority as a member

of the New York City Police Department, in that he searched the dwelling located at [redacted] without sufficient legal authority. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT

Disciplinary Case No. 2010-1968

1. Said Detective Frank Sarrica, assigned to Narcotics Borough Brooklyn North, while on duty on April 8, 2009, at approximately 2035 hours while in the vicinity of [redacted] did abuse his authority as a member of the New York City Police Department, in that he entered a dwelling without sufficient legal authority. *(As amended)*

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

2. Said Detective Frank Sarrica, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, did abuse his authority as a member of the New York City Police Department, in that he arrested Mr. Oren Johnson-Griffith for Obstructing Governmental Administration without sufficient legal authority. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT
P.G. 208-01, Page 1, Paragraph 3 LAW OF ARREST

Disciplinary Case No. 2010 1967

1. Said Detective Christopher Ward, assigned to Narcotics Borough Brooklyn North, while on duty on April 8, 2009, at approximately 2035 hours, while in the vicinity of [redacted], did abuse his authority as a member of the New York City Police Department, in that he entered a dwelling without sufficient legal authority. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT

2. Said Detective Christopher Ward, assigned as indicated in Specification #1, while on duty, at time, date, and location set forth in Specification #1, having taken police action, did fail and neglect to memorialize this activity in his Activity Log. *(As amended)*

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

3. Said Detective Christopher Ward, assigned as indicated in Specification #1, while on duty, at time, date and location set forth in Specification #1, did abuse his authority as a member of the New York City Police Department, in that he searched the dwelling located at [redacted] without sufficient legal authority. *(As amended)*

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

The Department was represented by David Bernstein, Esq., Department Advocate's Office and Lauren Allerti, Civilian Complaint Review Board, and Respondents were represented by James Moschella, Esq.

In Disciplinary Case No. 2010-1965, Respondent Duguid, through his counsel, entered a plea of Not Guilty to Specification Nos. 1 and 3; and a plea of Guilty to Specification No. 2. In Disciplinary Case No. 2010-1968, Respondent Sarrica, through his counsel, entered a plea of Not Guilty to Specification Nos. 1 and 2. In Disciplinary Case No. 2010-1967, Respondent Ward, through his counsel, entered a plea of Not Guilty to Specification Nos. 1 and 3; and a plea of Guilty to Specification No. 2. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-1965

Respondent Duguid is found Not Guilty of Specification Nos. 1 and 3. Respondent Duguid, having pleaded Guilty to Specification No. 2, is found Guilty of Specification No. 2.

Disciplinary Case No. 2010-1968

Respondent Sarrica is found Not Guilty of Specification No. 1. Respondent Sarrica is found Guilty of Specification No. 2.

Disciplinary Case No. 2010-1967

Respondent Ward is found Not Guilty of Specification Nos. 1 and 3. Respondent Ward, having pleaded Guilty to Specification No. 2, is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Orin Johnson-Griffith and Detective Susie Peralta as witnesses.

Orin Johnson-Griffith

Griffith is a supervisor with the New York City Department of Sanitation and has been employed there for 14 years. Griffith lives in [redacted] in an attached three-family house with three floors that he has owned since 2006.

Griffith said that he lives on the first floor, has a tenant on the second floor and at the time of the incident, his daughter and grandchildren lived on the third floor.

Griffith stated that he does not have much traffic coming in and out of his house and people enter his residence by opening a black gate that is usually closed. He testified that the front of his house has a door with a buzzer then a little hallway to another door which leads to stairs to the second and third floors. Griffith expressed that these two doors are always locked. [Department's Exhibit (DX) 3A-C, photographs of the front of the house and the back of the front door.]

Griffith testified that on April 8, 2009 at around 8:30 p.m., he was at home in his apartment watching television when someone rang his door bell. He went through the two doors that lead to the street and observed a man who said, "Police." Griffith stated that he opened the door, stepped back and the officer walked in. The officer then said to him, "You know they're selling drugs in front of your house?" Griffith responded by saying, "Nobody is selling drugs in front of my house." At this time, Griffith said the officer turned around and started touching over the door sill and looking at baseboards by the mailboxes.

Griffith stated a second officer came in and walked past him and started to look up the stairs. Griffith turned to the second officer and said, "What do you want? Do you have a warrant?" Griffith said the second officer stated, "We don't need a warrant" and "I'm with Narcotics. We don't need a warrant. I see you got three mailboxes. It's a common area. I don't need a warrant for a common area." Griffith explained at that time he got a little heated and told the officer, "Get the fuck out of my common area." Griffith asked the officer, "Who is your Sergeant?" The officer turned around and said, "That's my Sergeant."

Griffith said there was a third officer at the door who came in and grabbed him by the neck and threw him against the wall. Griffith testified that the sergeant told him to apologize to his officers which he refused to do. Griffith said it was at that point that he had his hands placed behind his back, was thrown against the mailboxes and arrested.

Griffith stated that the front door which leads to the outside was locked when he went to the door. He opened the door in a partial way and stepped back to allow it to swing open partially. Griffith said the door did not stay open partially because the officers stepped in and started looking over the sill of the door like they were looking for something.

While inside the hallway, Griffith informed the second officer that he owned the house after he was told the area they were in was a common area. He explained while in the common area, he never got in the way of the officers and he never physically resisted when he was placed under arrest. After being arrested, he was barefoot and one of the officers went inside of his apartment to get his shoes with his permission.

Once his shoes were on, Griffith said he was taken outside of his house to the corner where there were two police cars and a van. He observed a young black man in handcuffs. Griffith was asked by one of the officers if he knew who the other guy in handcuffs was. Griffith

stated, "No. I've seen him in the neighborhood but I don't know him." Griffith was transported to the 73 Precinct.

Griffith testified that at no time did he exit his house between the time the officer rang his bell to when he was placed in handcuffs. He did not think anybody would sell drugs in front of his house because, "I go to work everyday. I have a badge on my chest. I'm in full uniform. Most of the people on the block know I work for the Department of Sanitation. I don't think they would sell drugs in front of my house."

After being transported to the station house, Griffith said he was eventually released three hours later with a desk appearance ticket (DAT) (DX 2). The day after his arrest, he went to the New York City Department of Sanitation's Advocate's office, which is the office that handles disciplinary matters for its employees, to report the arrest. A case was opened up by the office due to his arrest.

Griffith testified that he went to criminal court regarding the arrest and the judge dismissed his case provided that he went six months without getting into trouble. Griffith stated that he went six months without getting in trouble [Respondent's Exhibit (RX) A, Griffith's Certificate of Disposition].

Griffith testified that none of the three officers asked to enter his house and he did not give any of the three officers permission to enter his house. He said he has not filed a lawsuit in regard to his arrest. When asked about his relationship with the police, Griffith said the following:

> I feel it's fairly decent. Since the incident they have been to my house twice to check my video cameras for things that happened in the neighborhood. 73rd maybe once a week, something job-related. If they need me on the phone regarding picking up they garbage or extra garbage or they have bulk that they have. I've

> known the Captain there since he's been there, Captain Wright. Community affairs officer, I've know him since he's been there.

Griffith testified that since the incident he has had a video camera installed at his home. When officers have came to his house to view his video on two different dates, Griffith explained that he let them in and one time they made copies and a case was actually solved. On the night of his arrest, Griffith said if the officers in question politely asked to enter his vestibule to look around he would have granted them permission. Griffith said seconds passed from when he opened the front door and when the first officer walked into his home.

During cross-examination, Griffith agreed that he owns the house at [redacted] which is a three-story building with multiple dwellings inside. Griffith admitted that he lives in the apartment on the first floor and his daughter and grandchildren live on the third floor. Griffith acknowledged that he rents his second floor apartment to a tenant.

Griffith admitted that upon entering the front gate to his house there are a couple of feet between the gate and the steps going up to the front door. Residents gain access to the front door with a key. Griffith agreed that beyond the front door is a vestibule area that has three mailboxes and a second locked door which leads to stairs that go upstairs. His apartment is on the right of the stairs. With three mailboxes in the vestibule area, Griffith agreed that it would appear that three families are living at the location.

Griffith admitted that before the incident he was in his apartment since he got off from work at two o'clock and was watching television. Griffith denied that an hour prior to encountering the first police officer he was on his front steps throwing out garbage.

Griffith acknowledged that he had no idea if somebody was on the sidewalk or on the stoop in the front of his house prior to coming out. He agreed that he was aware that drug

activity does go on around [redacted]. Griffith disputed the notion that he let the first officer into the vestibule area of his building. A couple of days after the incident, Griffith filed a complaint with the Civilian Complaint Review Board (CCRB) and told the CCRB investigator the following on April 12, 2009:

> I got a ring at my bell at the door. Went to answer the bell. There was someone on the other side. He said he was a Police Officer. He showed the badge through the door. I let him in. He immediately walked in and started searching over the door of my building.

Griffith agreed that he told the CCRB investigator the above statement but he meant that he opened the door for the officer and he came in. Griffith said he never asked the officer to come in, and the officer never asked to come in. Griffith agreed that he never told the officer that he could not come in either.

Griffith admitted that when he opened the door he stepped back away from the door and the first officer came into the vestibule area and began looking over the doorjamb. Griffith acknowledged the first officer stepped through the first door but did not go any further into his building. Griffith stated that the officer passed the front door, kept looking at the baseboard and ran his hand along the doorjamb area as if he was looking for something.

Once inside the vestibule, Griffith admitted, the officer told him someone was selling drugs outside of his house. Griffith agreed that he was inside his house and he did not know whether someone was selling drugs in the front of his house. Griffith acknowledged that his first response to the officer that was searching over the door was that nobody was selling drugs in front of his house. Griffith admitted that the first officer never accused him of selling drugs.

Griffith agreed that the second officer then entered the lobby area of his house, walked past him and started looking in the first floor landing. Griffith admitted that things got a little

heated and he raised his voice and told the officer to "get the fuck out of his common area" after the officer said he could be in there without a warrant.

As a youth, Griffith acknowledged that he had several negative encounters with police. Griffith explained why he was so resistant to the police checking to see if there were any drugs in the apartment, "Why? 'Cause he told me, the first officer, they're selling drugs on your sidewalk. The sidewalk has nothing to do with my house. Why you searching my house if they're selling drugs on the sidewalk?"

Griffith agreed that the officer did not go into his apartment and only people that live there have access to the lobby. Griffith admitted, he informed the officers with a raised voice, that he did not think they had the right to search his building without a warrant.

Griffith acknowledged that he was placed in handcuffs after encountering the third officer who turned out to be the sergeant. Griffith agreed that the sergeant was the person who grabbed him by the throat, threw him against the door and told him to apologize to the officers.

After being handcuffed, Griffith admitted that he did not have shoes on his feet and one of the officers asked him if he could get his shoes out of his apartment. Griffith said the officer brought his shoes to him from his apartment and the amount of time the officer was in his apartment was consistent with him getting the shoes and bringing them out.

During redirect examination, Griffith explained that prior to this incident, the last time he was arrested was around 30 years ago when he was 18 years old. Prior to being hired by the New York City Department of Sanitation, Griffith passed a background check. He stated that when he opened the front door of the building for the officer that rang his bell, he stepped back far enough for the door to swing because the door opens into the house; he did not step back any further.

During re-cross examination, Griffith initially did not recall being arrested in 2005, then admitted that he was arrested on March 10, 2005 in a battery case with involving an ex-girlfriend. He did not recall being arrested on August 23, 1995, for Assault in the Second Degree and Criminal Possession of a Weapon. According to Griffith, prior to 2005, the last time he was arrested was in 1982 or 1983.

During redirect examination, Griffith said he did not remember if he was convicted of any charges regarding the arrest that occurred on March 10, 2005.

During questioning by the Court, Griffith agreed that prior to this incident his front door was locked. Griffith explained that he has a lock box containing a key for the front door on the outside of his house under the bell. The post office has a key for the lock box and they would open the lock box and use the key therein to open the front door and deliver the mail into the various mailboxes.

At the time of the incident, Griffith stated, he left his house at five in the morning and returned home around two in the afternoon. He went to bed around eight or nine o'clock at night and was not aware of any drug activity or drug arrests on [redacted]. Prior to the incident date, he never gave consent for police officers to come into his house. Griffith agreed you can see outside his door by looking through the glass without having to open up the door.

Looking back on the incident, Griffith stated he was willing to let the officer who showed him the badge to come in and look around when he opened the door. He testified that when the officer told him that someone was selling drugs in the front of his house he figured he meant the sidewalk. Griffith disputed the idea that selling drugs in front of his house could have meant the front steps or stoop. Griffith explained that when he was told that someone was selling drugs in

the front of his house, he assumed he meant outside the black gate on the curb even though the officer did not say the curb.

During redirect examination, Griffith stated that he opened the door partially for the first officer. He asked the officers to leave after the second officer arrived and he had words with him. Griffith explained that the officers did not leave after he asked them to, and he was arrested within the next five minutes. Griffith said that he never told the officers they were not welcome to come in.

During questioning by the Court, Griffith agreed when he opened the door partially and stepped back, he cleared the door.

During redirect examination, Griffith explained that he stepped back to allow the door to partially swing open and his door swings inward toward the vestibule not outward toward the street.

Detective Susie Peralta

Peralta has been employed with the Department for 13 years and is presently assigned to Brooklyn North Narcotics where she has been since October of 2005.

On April 8, 2009, Peralta was in the chase auto for a narcotics team out looking for street-level narcotics transactions. In the vicinity of [redacted], she saw a drug transaction between two individuals who she watched for five to ten minutes before observing a hand-to-hand[1] on the front stoop/stairs of [redacted]. Peralta stated that she did not observe either of the two individuals enter or exit the front door of [redacted].

[1] "Hand-to-hand" is a term of art for the exchange of drugs between drug purchaser and drug dealer.

After the drug transaction, Peralta said, the buyer walked away and the dealer stayed on the stoop for a couple of minutes then walked off toward Rockaway Avenue. Peralta explained she was working in the chase auto with Respondent Duguid and they decided to go after the buyer at this time. She communicated with Respondent Sarrica on the cell phone that she observed a hand-to-hand outside of [redacted]. Peralta expressed that at no time did she see a steerer or any other person involved in this drug transaction.

Peralta said that she placed the dealer under arrest and a few minutes later, Respondent Sarrica called her on the cell phone and said the buyer was under arrest. At a certain point, a third person [Griffith] was in handcuffs and was placed in the police van. Peralta stated that the first time she saw Griffith was when he was being put into the police van. She never observed Griffith in front of [redacted]. Peralta explained the narcotics from the transaction was recovered off of a person and was not found in a stash or on the ground.

During cross-examination, Peralta acknowledged that Respondent Sarrica followed the buyer and she followed the seller. At some point, Peralta admitted that she stopped the seller, placed him under arrest and Respondent Sarrica called her via the cell phone to inform her they had the buyer. Peralta agreed that she recovered money off of the seller and Respondent Sarrica informed her that the buyer had narcotics on him. This indicated to Peralta that, "The buyer did hand the dealer money so - - we had money on him so it's definitely the same guy that I was watching, everything."

Peralta admitted that she never lost sight of the seller and she did not recall if narcotics was recovered from him when he was arrested. Peralta agreed that it is common for sellers not to have narcotics on them. Peralta acknowledged that she has heard of the term, "stash" which means "additional drugs" [not possessed on the person]. Peralta explained the purpose of a

"stash" instead of having it on their person is, "Well, if you don't get caught with it, you know, we can't really charge you with it if you don't get caught with it."

Peralta agreed in her experience as a narcotics investigator, sellers could have a stash of narcotics in their immediate area. The immediate area could include behind a garbage can or inside banisters and mailboxes in multiple-family dwellings. Peralta admitted that it is a narcotics investigator's responsibility to make an attempt to locate any additional "stash" that may be located at a drug buy.

Peralta agreed that she did not observe any of the actions that lead up to Griffith's arrest but, she did remember him screaming and cursing when brought over to the van.

During redirect examination, Peralta said she did not recall if the seller had narcotics on him. Peralta expressed that there were no other factors involved in the drug sale which caused her to believe there may have been a weapon involved.

During questioning by the Court, Peralta testified the location of the drug sale was a three-story brownstone. Peralta said she would look for a stash in a three-story house by looking in the garbage cans, mailboxes, hallways, window sills and areas under the stairs. In the hallway, Peralta stated she would look for a stash in the lobby and vestibule.

During redirect examination, Peralta stated she did not recall if she recovered keys from the seller.

During questioning by the Court, Peralta said she did not know how many members were part of her team on the date of the arrest.

Respondents' Case

Respondents called Sergeant Nikki Prasad as a witness and testified in their own behalf.

Sergeant Nikki Prasad

Prasad is currently assigned to Police Service Area 9. She was a supervisor for four years in Narcotics Borough Brooklyn North (NBBN) where she supervised buy and bust operations, used undercover officers and obtained search warrants with confidential informants. As a narcotics supervisor, Prasad supervised approximately 800 arrests a year. She worked in the module which covered the 73 and 75 Precincts in Brownsville and supervised the three Respondents.

On the day of the incident, Prasad was in charge of a team conducting an observation, which involved going to a location where a member of the community had made a narcotics complaint and her team was investigating it. The investigation included computer checks of kite locations[2] and field observations to see if anybody was going in and out of the locations.

Prasad responded to [redacted] because one of her detectives was watching a drug transaction. Upon her arrival, Prasad stated, things were slightly chaotic in that the team already arrested the dealer and were trying to apprehend the buyer. Prasad stated [redacted] was a location she has been to before because, "There's been numerous kites on that block, and where it's situated, it's a high narcotics and violence-prone location."

Eventually, Prasad said, the buyer was apprehended. After the buyer and dealer were in custody, Prasad heard a commotion and found out there was another person [Griffith] arrested. In describing the situation as slightly chaotic, Prasad said, "In an arrest situation with narcotics,

[2] Prasad defined "kites" as a narcotics investigation.

you know, the vehicles are placed - - you know, they stop wherever the prisoners are so it becomes a traffic jam. As soon as the police get involved, a crowd starts forming immediately because everybody wants to see what's going on so you know, it's slightly chaotic."

Prasad stated the commotion she heard after the buyer and dealer were apprehended were commands like, "stop resisting" and "put your hands behind your back." She knew another arrest was taking place. Prior to hearing the commotion, Prasad was several houses down from [redacted] securing a prisoner in the van. The commotion was loud enough, where Prasad stated she was able to hear the officers trying to gain compliance in an arrest situation several houses away.

Prasad testified that she never observed the events leading up to Griffith's arrest. After hearing the commotion, she walked over to see what was going on. Prasad encountered members of her field team which included Respondent Duguid and Respondent Sarrica but she did not know if Respondent Ward was present.

Prasad said that once she got to the scene she saw Griffith handcuffed in what was going to be an Obstructing Governmental Administration (OGA) arrest. The officers articulated the facts to Prasad on what occurred. Being that cars were out front blocking traffic and they had several prisoners in the van, Prasad wanted to put Griffith in the van and get out of the location. Prasad testified that she wanted to get out of this location because as time goes by, people stop and do not leave until the police leave. This scenario posed a concern for Prasad because as a supervisor she wanted to get everybody off the scene and moving.

Prasad said that she verified all arrests but did not remember which officer told her what happened with Griffith. Based on the information the officers told Prasad, she concurred with placing him under arrest for OGA.

Prasad stated that she was familiar with the term "stash" and explained it as:

> Typically, the dealer will hide their drugs instead of on them so they don't get stopped and frisked and it's all over the news. In case they get stopped and frisked, they'll hide their local - - they'll hide their drugs close to them and then as someone comes up to approach them, they'll get the stash, get what they need, one or two, and then give it to the buyer and leave their stash, so if they do get locked up, they still have their remainder left.

Based on experience, Prasad said she has encountered individuals who have sold narcotics on the steps of buildings with stashes found in mailboxes and garbage cans.

Prasad testified that she had, before this incident, training and discussions with members of her team about narcotics arrests involving stashes. Prasad explained in arrest situations involving stashes she would expect her team to recover evidence, especially anything that would be dangerous to kids or anybody else. Evidence could include weapons or drugs.

Prasad expected her officers to take reasonable steps to obtain evidence related to an arrest or anything that posed a public safety issue. The reasonable steps differed in each situation. For this particular arrest, the area in the front of the house had a low fence, and Prasad said that she would expect the stash to be in "mailboxes, hallway, the stairs inside by the banister, outside. A lot of these brownstones have something that goes down to the lower apartment, that's definitely - - you know, they'll hide them anywhere."

On making OGA arrests with her team, Prasad said if she felt one of the officers made an arrest that should not have been made; she would have released the person. Prasad testified, "As far as OGA, I believe as a police officer, when I was making arrests, I had very few. I didn't really believe in it, and as far as a Sergeant, I would probably say that I have one of the lowest in the Department." Prasad stated that she did not care for OGA arrests and could count on one hand how many times as a supervisor she said "okay" for such an arrest.

During cross-examination, Prasad admitted that she did not see the drug transaction that occurred on the day in question. She was told about the transaction after it was completed by a member of the team who observed some sort of "hand to hand." Prasad was unsure if the transaction occurred inside or outside of the location. Heading toward the location of the transaction, Prasad admitted that she helped place the buyer under arrest.

Prasad acknowledged that after the arrest of the buyer, she heard some sort of commotion coming from the vicinity of [redacted]. The commotion was her officers trying to gain compliance from Griffith. She then walked over to [redacted] and observed Griffith in handcuffs.

Prasad admitted that she did not see the interaction between Griffith and the detectives prior to the arrest. Prasad acknowledged that one of the members in the team explained to her why Griffith was in handcuffs, but she did not recall what was said.

With regard to verifying the arrest, Prasad agreed to observing someone in handcuffs as she walked over. Prasad explained, "I just remember, as I always do, I asked the Officers or Detectives, what's going on? And at that point they articulated to me probable cause for, you know, for the arrest charges." Prasad acknowledged that she did not remember what the officers said to her specifically about the probable cause in regard to the OGA arrest.

Prasad agreed that she expected her officers to take reasonable measures to obtain evidence if a drug transaction occurred on the stoop of a house. The reasonable measures included looking in the front yard of the house and looking inside of mailboxes. Prasad explained that she expected her officers to knock on doors and ask neighbors if they knew the person they were arresting. Prasad continued:

> I would expect them to knock on the door of home of people who own or live in the house and find out if this person lives here. Is he trespassing? If this person that we just arrested, if he's selling drugs front of the house, it could be a family member of someone who lives there.

Prasad disputed the notion that if the front door of a house was locked she would then expect the officers to forcibly enter the house. Prasad noted she would expect them to knock. Prasad denied she would expect her officers to enter a house if the person at the door told them they can not come in.

Prasad acknowledged the location in question was a multi-family dwelling and not a house. Prasad agreed that if a person was arrested in the front of the dwelling, she would expect members of her team to knock on doors inside the dwelling to try to speak to everybody available. This would be done to get information on the person arrested to see if he lives there or what apartment he lives in.

Prasad agreed that in the past, she received Charges and Specifications for improperly authorizing the entry and search of an apartment and wrongfully authorizing the handcuffing of a civilian. Prasad admitted to pleading guilty to those Charges and Specifications.

Prasad acknowledged that the Respondents never sought her advice or guidance before entering [redacted].

Prasad testified that part of her job was to respond to complaints regarding drug activity. Prior to the date of the incident, she was not aware of any specific complaints in relation to [redacted] and she acknowledged she had never observed a narcotics transaction or made an arrest at that location before.

After the buyer and seller were arrested, she conducted an investigation along with her team to see if anybody else was involved with the narcotics transaction that had not been apprehended.

Prasad admitted that the buyer and seller were not armed with any weapons at the time of their arrests. Even though the people arrested did not have any weapons, Prasad acknowledged that "guns and drugs go hand in hand" and she approached every situation, especially those involving drugs, as if there were weapons involved. Prasad explained, "This particular area had a rash of shootings right at that location. This is an extremely, extremely violent location. We've had - - my team itself has recovered guns from that immediate vicinity." Prasad agreed that besides the geographical area of the arrest, there was no specific indication that a gun might be involved in the arrest at [redacted].

Prasad acknowledged that at the scene of the arrest, there were people on the corner a few houses down from [redacted], but she did not recall if there were people outside of [redacted]

During redirect examination, Prasad testified that she personally entered [redacted] Because Griffith was just arrested and left his apartment door unlocked, it was her responsibility to make sure that his property was secured, so she went into Griffith's apartment, she made sure all the windows were locked, the stove was shut off and there were no unattended children left behind. While in the apartment, she said she was in there for approximately a minute securing the apartment and the only search conducted was for unattended kids. Then, she left promptly. She explained the apartment was on the first floor in the building on the right with stairs to the left.

Prasad testified that she did not have contact with Griffith until she got back to the precinct. Once there, Griffith had calmed down and he was no longer a threat. Prasad explained she did not care for OGA arrests and being that Griffith had calmed down, Prasad decided to issue him a DAT and released him from the precinct.

During re-cross examination, Prasad agreed that she never observed Griffith being a threat but was informed by the officers on scene that he was. Prasad admitted that she was never informed by the officers on scene prior to her arrival that they had entered [redacted].

Prasad acknowledged that she verified and approved the arrest report (DX 1). Prasad agreed that the location on the arrest report is listed as the front of [redacted]. When asked if she approved the arrest report because she believed that the officers in her team never entered [redacted], Prasad said, "After three years, I don't recall what I believe...If I had caught the mistake, no. I would tell them to switch it [the location on the report]."

Prasad did not recall if Griffith was wearing shoes when she first saw him handcuffed. She agreed if he was not wearing shoes, she would have obtained the shoes for him while inside his apartment.

During questioning by the Court, Prasad said in most instances when she verifies arrests, when she arrives at the scene of an arrest, officers already have the person in handcuffs and they explain to her what happened. In regard to the OGA arrest in this instance, Prasad stated she did not know if the arrest occurred inside or outside the residence.

Prasad testified before the Court that she pled guilty to Charges and Specifications for improperly entering a dwelling and wrongfully handcuffing a civilian. Prasad explained that she would have fought the charges, but she had a lot going on in her personal life and she felt she could not fight every battle. She stated that she pled guilty to the charges but that did not mean

she was guilty. She further explained that at the time she did not have the strength inside of her to face everything.

Respondent Duguid

Respondent Duguid has been assigned to NBBN for seven-and-a-half years and has been a member of the Department for 12 years. His responsibilities as a narcotics investigator is to investigate kites along with conducting search warrants, observation sales, and buy and bust operations plus handling confidential informants. He has never been the subject of any Charges and Specifications in his career.

On April 8, 2009, Respondent Duguid was part of a narcotics team assigned to the 73 Precinct module and he, Peralta and Respondent Sarrica were assigned to the chase auto. Respondent Duguid recalled responding to [redacted] because Peralta observed a hand-to-hand narcotics transaction. He stated that [redacted] was never targeted for their operation but they were in the vicinity looking for narcotics activity.

Respondent Duguid testified that he was the operator of the vehicle that night. After Peralta observed a hand-to-hand, Respondent Duguid said, he exited the vehicle with Peralta to grab the dealer, and Respondent Sarrica went toward the buyer. Respondent Duguid explained the arrest, "I apprehend the seller. We know it's a positive because of phone communication between Detective Peralta and Detective Sarrica that the person abroad was positive for drugs. I searched the individual - - the seller really quick and could not find no product on him." Respondent Duguid stated the search he conducted on the seller was that he went through his pockets and did not recover any narcotics.

After apprehending the seller, Respondent Duguid testified that they decided to go back to the steps of [redacted] where the transaction was observed to take a quick look in the yard and knock on the door of the location. Upon entering the front area of [redacted], Respondent Duguid said the lighting condition at the time was dark and he needed a flashlight to look around the garbage can area, where he did not see any narcotics. Respondent Duguid explained the decision to knock on the door at [redacted]:

> We observed the individual who was the seller on the steps of the location. Two things: A, the seller could live there. We could notify the homeowner or parents or whoever this person is in custody. The second reason is, you know, just to let him know, God forbid someone looks out the window and sees somebody looking through garbage cans or looking around their property, what's going on. We wanted to inform the individual of what was going on.

Respondent Duguid testified that he wanted to look to see if there was a "stash" in the area. He said other areas a "stash" could be found are on the stairs, inside the vestibule, along the door frame or some place the seller could hide it quickly. Respondent Duguid testified that after banging on the door:

> The door opens up. I have a brief conversation. Like I said, the door was open all the way. I step inside of the vestibule. I don't want to air out people's dirty laundry. I start explaining to him [Griffith] - - I identify myself. My shield was out. I said: Listen, my name is Detective Duguid from Brooklyn Narcotics. I just want to let you know that somebody was selling drugs on the front step. I don't know if you know him. At that point he just goes ballistic.

Respondent Duguid said that the door to the vestibule was open and it was his understanding that he was going to go in and talk to Griffith about the situation going on in front of his house. Respondent Duguid stated that Griffith was not a suspect or a target in their investigation at that time. Respondent Duguid expressed that while in the vestibule, it was his

understanding that he could continue his investigation by looking for narcotics, weapons or a stash.

Respondent Duguid testified that the location appeared to be a multiple-family residence and that he had a right to be in the vestibule because it was a common area. Respondent Duguid explained that he thought Griffith had given him consent to walk into the vestibule. At some point, Respondent Duguid said Griffith went "ballistic" while inside the vestibule. Respondent Duguid described the interaction:

> Oh. You know, I tried to explain to him, listen, there's drug activity going on, and before - - as my words are coming out, he's just like "F" this. You know, what the "F" you doing on my property? Nobody's selling drugs here. I'm not selling drugs. I'm not selling drugs. And I'm like, sir, I'm not accusing you. He was just going crazy. You know, yelling, screaming and cursing.

Respondent Duguid stated that while in the vestibule, he looked on the floor, by the mailboxes and behind a radiator, but did not recover anything. Respondent Duguid testified that Respondent Ward arrived at the location and observed the altercation going on between him and Griffith. Respondent Duguid expressed after looking in the immediate areas of the vestibule for a minute or two, Griffith told him to "Get the fuck out." Respondent Duguid said he felt he had a right to conduct an investigation in the vestibule because there could have been narcotics or a weapon in the area that a child could have come across.

Respondent Duguid said Griffith was placed in handcuffs because he was preventing him from doing an investigation to look for drugs. Respondent Duguid stated that he did not see anybody grab Griffith by the throat.

Respondent Duguid testified that after Griffith was placed in handcuffs, the sergeant showed up to verify the arrest. After Griffith was taken to the prisoner van, there was a bit of a

commotion going on. Respondent Duguid explained that people from the block formed a crowd in the front of the house and were yelling and screaming. Upon leaving the location, Respondent Duguid said, a further search of the seller was conducted by another team member and additional narcotics were recovered from the seller.

During cross-examination, Respondent Duguid admitted that the night in question he was assigned to the catch auto. He agreed that he saw two men in the vicinity of [redacted] and that Peralta and Respondent Sarrica kept an eye on them because he was the operator of the vehicle. Respondent Duguid acknowledged that he never saw the two men enter or exit [redacted] or stash drugs. Respondent Duguid disputed the assertion that the men entered the front yard area of the house to the right of [redacted]. He agreed that the buyer and the seller were the only two people involved in the drug transaction. After being informed by his partners of a drug transaction in front of [redacted], Respondent Duguid and his team apprehended the men. After the apprehension of the two men, Respondent Duguid admitted, he went back to [redacted].

Respondent Duguid acknowledged that he believed he had the right to enter the vestibule of [redacted] because he thought there might have been drugs or weapons inside. He did not remember if he tried to open the door at [redacted], but he did remember knocking on the door. Griffith came and opened the door, which swung inward, and he [Griffith] stepped aside. Respondent Duguid said that he had a conversation with Griffith inside the vestibule for about a minute or two and explained to him what was going on. At that time, Griffith became upset and told him, "Get the fuck out of my house. Get the fuck off my property." Respondent Duguid explained the conversation with Griffith was about the narcotics sale that just took place on his property. Respondent Duguid agreed things became heated and crazy when he asked

Griffith if he knew the person his team members apprehended down the block. Respondent Duguid said Griffith was upset with him because he thought he was getting accused of selling narcotics. Respondent Duguid explained to Griffith that he was not accusing him of selling drugs; he just wanted to let him know what was going on in front of his house.

Respondent Duguid admitted that when the door opened to the house, it was his understanding that he could enter the vestibule area because it was a multiple-dwelling residence with a common area. Respondent Duguid could not recall if he asked to enter the vestibule or was told that he could come in. Respondent Duguid explained Griffith's actions inside the vestibule, "He wasn't getting the fact that I was trying to explain to him we're not accusing you of selling drugs. I was trying to explain to him but he was just yelling and screaming." Respondent Duguid said he told Griffith he wanted to make sure that there was not a stash inside of there.

Respondent Duguid acknowledged that Respondent Ward entered the vestibule and eventually Respondent Sarrica did also. The vestibule was a small area, so Respondent Duguid stepped out of the doorway and onto the steps. Respondent Duguid admitted that Respondent Sarrica placed Griffith in handcuffs and he did not see any force used on Griffith. Respondent Duguid agreed with the arrest of Griffith because he thought he was impeding his investigation and was causing an annoyance. A large crowd of people started to gather in front of the house because of Griffith's behavior.

Upon searching the seller with Peralta, Respondent Duguid admitted that he could not recall if he recovered keys from him, but if keys were recovered he would have vouchered them. Respondent Duguid acknowledged that he did not see anything specific in the front of [redacted] that would have led him to believe that children live there.

Respondent Ward

Respondent Ward is assigned to NBBN where he has been for five years and has eight years of service with the Department. Respondent Ward is currently on the promotional list for sergeant and has served in the United States Coast Guard for nine years. He has never been the subject of Charges and Specifications.

On April 8, 2009, Respondent Ward was working as a narcotics investigator in the chase auto with Prasad and Detective Joe Polichrom. Respondent Ward said the other team members working that night were Respondent Duguid, Respondent Sarrica and Peralta. During his tour, Respondent Ward received a radio transmission or a phone call from Respondent Sarrica telling him to get in the area of [redacted]. Respondent Sarrica informed him that they were following an individual and they had a positive buy for a quantity of a controlled substance.

Respondent Ward testified that he, Prasad and Polichrom arrived at the corner of Rockaway Avenue and Somers Street, which is a couple of houses in from [redacted], within a matter of minutes. At the location, there was a large crowd that had gathered who were yelling and screaming. He heard a loud commotion coming from [redacted] and then walked down the block and saw Respondent Duguid in the vestibule area with Griffith, who was yelling, screaming and very confrontational. Respondent Ward then walked into the vestibule, past Respondent Duguid and walked behind Griffith. Respondent Ward explained, "I remember taking a visual look inside the lobby due to his actions making sure nobody was going come out from behind us and you know, come out from there you know, for safety reasons I did a visual observation." Respondent Ward said he entered the lobby area to do a visual observation, looked up the stairs as well as to the right and left to make sure nobody was around. Respondent Ward stated he was inside [redacted] for "a matter of minutes."

Respondent Ward explained he did not recall saying anything to Griffith inside the vestibule, but he did remember Respondent Sarrica entering the area and placing him in handcuffs.

Viewing a photograph of the vestibule of [redacted], (RX B), Respondent Ward pointed out that he walked past the second door to do a visual inspection of the hallway because he had been in situations in the past where people came from out of nowhere to fight and interfere with an arrest. Respondent Ward stated that he wanted to make sure that no one was there to shoot them or harm them. He was present when Griffith was placed under arrest by Respondent Sarrica and he did not see any member of the service grab Griffith by the throat and push him against the wall.

Respondent Ward said he did a visual inspection of the lobby and he did not search any other area of [redacted]. He expressed that he believed he had a right to be in the lobby area at that point because it was a common area and drugs were sold right in front of the location. Respondent Ward stated in the past he had recovered drugs stashed in mailboxes, radiators, lights and smoke detectors within a vestibule area.

During cross-examination, Respondent Ward agreed that he did not personally observe the hand-to-hand drug sale and it was communicated to him by another member of his field team. Responding to the vicinity of the drug sale, Respondent Ward admitted that when he first observed them, Respondent Duguid and Griffith were on the stoop of [redacted] and then they went inside the location. Respondent Ward acknowledged this occurred within a matter of seconds.

Respondent Ward agreed when he approached the front of [redacted], Griffith was argumentative as well as loud and boisterous. Respondent Ward acknowledged that in his

October 8, 2009, CCRB interview he had said he had no idea how he first came into contact with Griffith. At trial, Respondent Ward stated he heard a commotion, went over to the location and encountered Griffith. Once encountering Griffith, Respondent Ward entered the foyer, went behind the second door and made a visual inspection of the hallway to look to see if anybody else was there.

Respondent Ward admitted he entered the foyer because he thought it was a dangerous situation and wanted to see if there was anybody there that could harm him or his partners. In his CCRB interview, Respondent Ward stated he entered the foyer because "It was just a common area I don't know why, what lead to us to being there but the situation lead us being in there." Respondent Ward agreed that his memory is better today than it was for his CCRB interview because he was able to view pictures and get a better visual inspection of the foyer since the trial started.

Respondent Ward acknowledged that in his CCRB interview when he was asked, "Specifically, what was done in the foyer?" he had said, "Defendant was placed in handcuffs." Respondent Ward agreed Griffith's arrest was warranted because he was loud as well as causing a public annoyance and alarm. Respondent Ward confirmed Griffith was handcuffed inside the common area of his building. Respondent Ward admitted his visual inspection of the foyer was to look for other people as well as for contraband that might have been left behind.

During redirect examination, Respondent Ward said his CCRB interview was conducted five to six months after Griffith's arrest. He stated he participated in hundreds of arrests from the date Griffith was arrested to when he was interviewed by CCRB. He expressed that he was not the arresting officer of Griffith and he did not create any paperwork relative to that arrest. He

explained his memory is better today than when he was interviewed by CCRB because he was shown a picture of the foyer area and it brought back a lot of memories.

During questioning by the Court, Respondent Ward said he was shown pictures of the outside of [redacted] during his CCRB interview. He was not sure if he was shown a photograph of Griffith at his CCRB interview.

During redirect examination, Respondent Ward stated that that the radiator depicted in RX B is the same radiator in DX 3C as well.

Respondent Sarrica

Respondent Sarrica is assigned to NBBN where he has been since 2006. Respondent Sarrica is a detective investigator and his responsibilities include conducting buy and bust operations, kite investigations and observations.

On April 8, 2009, Respondent Sarrica was assigned to the chase auto with Peralta and Respondent Duguid. They were doing an observation when he saw a potential subject in the vicinity of [redacted]. Respondent Sarrica explained:

> [redacted] has had over hundreds of arrests in narcotics relation, we've conducted a search warrant not too long before in that building. The possible subject walked across the compound to the other development building, which has also had numerous narcotics arrests, he then walked across the street into a third building so I decided to get out of the auto and follow him on foot.

Respondent Sarrica stated that he observed the subject walk down [redacted]. The subject stopped at [redacted] where another male was sitting on the steps inside the gate. Respondent Sarrica explained the person he was following went through the gate and approached

the person sitting on the steps. At that time, Respondent Sarrica said he thought a transaction was about to take place.

Respondent Sarrica did not observe the transaction but, the subject walked off in his direction. Respondent Sarrica then called Peralta on the phone and the buy was confirmed. Respondent Sarrica noted that he recovered crack cocaine from the buyer which was in a Ziploc bag that he spit on the ground. Respondent Sarrica explained that he apprehended the buyer quite a bit away from [redacted] where his team was.

After placing the buyer in handcuffs and recovering the narcotics, Respondent Sarrica said he walked him to the prisoner van which was located between the corner of Rockaway Avenue and Somers Street. Respondent Sarrica explained while walking toward the prisoner van, his attention was drawn toward [redacted]. Respondent Sarrica testified that he heard yelling and profanity coming from the location and immediately handed his prisoner over to the custody of the officers who were in the prisoner van. He saw Respondent Duguid on the top step on the threshold of the foyer. Respondent Sarrica explained that the foyer was the size of the witness box and that there was no way three men could fit into the foyer, so there was a lot of shuffling around.

Respondent Sarrica said when he approached the location, he saw Respondent Duguid on the top step of the threshold of the vestibule and Griffith was inside. Respondent Ward was not observed at that time because he was further into the building. Respondent Sarrica explained, "There was a bunch of parked cars at the curb and there were a couple of people standing there and to the immediate left at the gate entrance there was an entire building had emptied out of [redacted] believe [redacted]."

Respondent Sarrica said while approaching the front door, Griffith continued to yell and curse while Respondent Duguid, with his flashlight out, was there still making an attempt to search the area. At this time, Respondent Sarrica stated he placed Griffith in handcuffs for impeding the search. Respondent Sarrica explained that his intention was to gain control of the situation because there was a lot of yelling and Respondent Duguid was trying to talk to Griffith like a gentleman to calm him down. Respondent Sarrica testified that Prasad showed up to verify the OGA arrest and concurred with the charges. Respondent Sarrica said even though he placed Griffith in handcuffs, he was not assigned as the arresting officer and did not complete any paperwork relative to the arrest.

Prior to April 8, 2009, Respondent Sarrica stated he might have made one arrest for OGA in his career. He noted that he felt he had probable cause to arrest Griffith because he felt he was impeding a fellow detective's search of the location. He said there were more than a dozen people who gathered outside of [redacted]. Griffith was quickly removed from the location, Respondent Sarrica explained, "Because it was crowding, there was a safety issue with people surrounding us in the van, the door had prisoners inside you know, there were a bunch of people looking out of their windows yelling profanities also, we don't want any air mail what we call it, hitting the officer." Respondent Sarrica described that "air mail" could be a brick, bottles or anything dangerous that could be thrown at you. He stated that they were not able to complete their investigation at [redacted] because of the situation that occurred.

During cross-examination, Respondent Sarrica admitted that during the operation he exited the auto and set out on foot. Respondent Sarrica agreed that he saw two men in the vicinity of [redacted] and suspected one of them may be a buyer and one may be a seller. Beforehand, Respondent Sarrica had observed the buyer enter three buildings of the [redacted]

[redacted] before settling on the stoop of [redacted] with the other man. Respondent Sarrica admitted that after the buyer arrived on the stoop, he immediately left the location and headed in his direction. Meanwhile, Respondent Sarrica noted that the seller was still sitting on the stoop and he did not see him leave the location.

Respondent Sarrica agreed that he said in his CCRB interview, "I definitely saw my buyer you know, you see two guys sitting on the stoop they come off the stoop they go back on the stoop, it's just weird behavior but whatever." Respondent Sarrica acknowledged that at no point did he observe the buyer or seller enter or exit [redacted]. Also, he did not see the actual hand-to-hand drug transaction, but he did see the buyer and seller touch hands. From the time they arrived at [redacted], Respondent Sarrica noted he observed the buyer and seller for about a minute. From where he was standing, he did not see the buyer obtain drugs from a stash at the location.

Respondent Sarrica disputed the notion that he did not believe weapons were involved in this drug deal. Being a narcotics investigator, Respondent Sarrica believed every drug deal has the potential for weapons to be involved. Respondent Sarrica acknowledged that he took the buyer back to the prisoner van after handcuffing him when he heard a commotion coming from [redacted]. Once the prisoner was in the van, Respondent Sarrica looked over toward [redacted] and saw Griffith standing in the vestibule and Respondent Duguid on the top step threshold of the foyer. He agreed that he saw Respondent Duguid enter the vestibule. He acknowledged that he walked up to the vestibule and placed Griffith in handcuffs without discussing it with Respondent Duguid or Respondent Ward. Respondent Sarrica admitted that when he placed Griffith in handcuffs, Griffith was inside the vestibule, upset, using profanity and arguing with Respondent Duguid and Respondent Ward. When making the arrest, Respondent

Sarrica agreed that he bumped into Respondent Duguid, who was inside the foyer, to get to the vestibule to arrest Griffith.

Respondent Sarrica stated Griffith was arrested because he was causing a scene by yelling and cursing. Respondent Sarrica acknowledged that he never saw Griffith push or hit any officer. Respondent Sarrica admitted that it was an assumption that Respondent Duguid was trying to conduct a search even though he did not speak with him. Respondent Sarrica agreed Respondent Duguid had a flashlight on him, but as he approached the location he was not sure where he was looking because his focus was where the noise and cursing was coming from.

During questioning by the Court, Respondent Sarrica stated that the commotion he heard from [redacted] was definitely not from one of his partners. The voice he heard was from somebody he could not identify. Respondent Sarrica agreed that he did not hear an argument going on because he heard only one unknown voice at the time. Respondent Sarrica acknowledged that he did not hear his partners cursing and Respondent Duguid's demeanor was very calm when he was trying to explain to Griffith what happened in front of his house. Respondent Sarrica described Griffith's demeanor as irate and he did not hear Respondent Ward say anything. Prior to April 8, 2009, Respondent Sarrica did not know that Prasad did not like OGA arrests. At the time of the arrest, Respondent Sarrica said he articulated to Prasad the reason for the arrest.

During recross-examination, Respondent Sarrica agreed he made an Activity Log entry on arresting Griffith for OGA, but he did not write down what Griffith was doing or the actions he took to constitute the arrest.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2010-1965
Disciplinary Case No. 2010-1968
Disciplinary Case No. 2010-1967

Specification No. 1

Respondents Duguid, Sarrica and Ward are each similarly charged with abuse of authority in that "he entered a dwelling without sufficient legal authority." Evidence adduced at trial established that on April 8, 2009, Respondents were working as part of a narcotics team assigned to the 73 Precinct module. They were looking for narcotics activity when a member of their field team, Peralta, communicated that she observed a hand-to hand narcotics transaction. Respondent Duguid testified that he was the operator of the chase auto and upon learning of this transaction, he exited the vehicle so that he and Peralta could grab the dealer. He said that Respondent Sarrica went toward the buyer.

Respondent Duguid testified that he did a search of the dealer, which included going through his pockets, but he did not recover any narcotics. The team decided to go back to the steps of [redacted] where the transaction was observed to look around the yard for drugs and also knock on the door of the location. Respondent Duguid explained that it was dark and he used a flashlight to look around the garbage can area, but did not recover any drugs. Respondent Duguid further explained that he was looking for a "stash" of drugs. He testified that in his experience, drugs can be stored in stairs, inside the vestibule, along the door frame of a building, or any place where it can be quickly moved by a drug seller.

Respondent Duguid said that he either banged on the door or rang the bell and when Griffith came to the door, he identified himself as the police. The door opened all the way, he

stepped into the vestibule of the house and began to speak to Griffith in the vestibule. He said his shield was out, he explained that he was a detective and that somebody was selling drugs on the front step. Respondent Duguid said Griffith became "ballistic," denying that drugs could be sold on his property. The vestibule was the furthest Respondent Duguid went into the dwelling.

Respondent Sarrica testified that he followed a subject who stopped at [redacted]. The subject entered the gate where another male was seated on the steps to the building. Respondent Sarrica said he could not observe it, but he thought that a transaction took place. The subject then left the stoop and proceeded in his direction where he was stopped by Respondent Sarrica. After making contact with the subject, Respondent Sarrica testified that he called Peralta on the phone to confirm a positive buy. Respondent Sarrica explained that he recovered crack cocaine from the buyer which was in a Ziploc bag that he spit on the ground. Respondent Sarrica placed his prisoner under arrest and escorted him to the prisoner van. At the same time he heard yelling, profanity and scuffling coming from the foyer of [redacted]. He immediately handed over his prisoner to the team members in the prisoner van and went to [redacted], in the vicinity of where the arrest had transpired.

Respondent Sarrica stated that the foyer at [redacted] was not much bigger than the witness box he testified from. At the location, he observed Respondent Duguid on the top step at the threshold of the vestibule and Griffith was inside. He did not see Respondent Ward at that time who was further into the building. As he approached the door, Griffith continued to yell and curse while Respondent Duguid attempted to search the area. Respondent Sarrica placed Griffith in handcuffs for impeding the search. He said that later his supervisor Prasad showed up and verified the arrest for Obstructing Governmental Administration (OGA). Respondent Sarrica said that although he placed Griffith in handcuffs, he was not the arresting

officer and did not prepare any arrest paperwork relative to Griffith. This was the extent of Respondent Sarrica's entry into the dwelling.

Respondent Ward testified that on the incident date, he was in the chase auto with Prasad and Detective Polichrom. They received either a radio transmission or a call from Respondent Sarrica that they had a positive buy for a controlled substance and that they needed to come to [redacted] Respondent Ward said they arrived within minutes. He observed a large crowd outside of the location yelling and screaming. He then went to the location and observed Griffith yelling, screaming and being very confrontational. He then walked into the vestibule, past Respondent Duguid and positioned himself behind Griffith. He explained that he positioned himself in the lobby so that he could do a visual observation of the location, i.e., look up the stairs, to the right and to the left to make sure that no one else was around, for safety reasons. Respondent Ward said he was in that area for a matter of minutes and then observed Respondent Sarrica enter the area and place Griffith in handcuffs.

Griffith testified that [redacted] is a three-family house that he purchased in 2006. He said he lives on the first floor, a tenant lives on the second floor and his daughter and his grandchildren live on the third floor. Griffith, a supervisor at the New York City Department of Sanitation, testified that on April 8, 2009, he was home watching television and getting ready for bed when his door bell rang. He went through the two doors of his building and he heard a man say, "Police." Griffith testified that he opened the door, stepped back and the man walked in (later identified as Respondent Duguid).

Respondents are each charged with entering a dwelling without sufficient legal authority. Griffith testified that he stepped back and Respondent Duguid entered. He did not ask him to leave or demand that he stay at the door. In fact, when Griffith was interviewed by CCRB

regarding this incident, he stated, "I got a ring at my bell at the door. I went to answer the bell. There was someone on the other side. He said he was a police officer. He showed the badge through the door, ***I let him in.***" (Emphasis added).

It is clear from Griffith's testimony and statement to CCRB that he intended to let the police in. Although Griffith tried to retract from this statement at trial by stating that he opened the door, the officer came in, but he never invited him in, his actions clearly sent that message of consent and his initial view of the situation, particularly his statement to CCRB investigating the case was, "I let him in." There is no requirement that Griffith had to verbally say he consented to the police entering if his actions of opening the door, stepping back so that Respondent Duguid could enter and then never asking him to leave until after a search began and some time had passed occurred.

The fact that Respondent Duguid came into the vestibule and immediately began searching the area over the door as Griffith testified, was probably what Griffith had a problem with, but that is a separate issue from consenting to the police coming in. Once he opened the door to the police, he was subject to Respondent Duguid conducting a police investigation and searching the common area of the residence which was the vestibule. There was no testimony that Respondent Duguid went beyond that area to conduct his search. Respondent Sarrica placed Griffith in handcuffs in the vestibule area for impeding Respondent Duguid's search and Respondent Ward entered into the lobby area for the sole purpose of doing a visual observation of the staircase and surrounding area to look for other people for safety reasons once Griffith was placed in handcuffs. None of Respondents went beyond the common areas of the three-family dwelling.

Accordingly, Respondent Duguid, Respondent Sarrica, and Respondent Ward are found Not Guilty of Specification No. 1.

Disciplinary Case No. 2010 1965
Disciplinary Case No. 2010-1967

Specification No. 2

Respondent Duguid and Respondent Ward are each similarly charged in that having taken police action, he did fail and neglect to memorialize this activity in his Activity Log. Both Respondent Duguid and Respondent Ward pleaded Guilty to this Specification by admitting that they each failed to make an entry in their Activity Log regarding this incident.

Accordingly, because Respondent Duguid and Respondent Ward pleaded Guilty to this Specification, they are found Guilty of Specification No. 2.

Disciplinary Case No. 2010-1965
Disciplinary Case No. 2010-1967

Specification No. 3

Respondents Duguid and Ward each stand similarly charged in that he searched the dwelling located at [redacted] without sufficient legal authority. Evidence adduced at trial established that once Respondent Duguid entered the vestibule at [redacted], Respondent Duguid searched the vestibule. He testified that he looked on the floor, by the mailboxes, and behind the radiator. Griffith testified that Respondent Duguid also touched over the door. Respondent Duguid explained that he never went further than the vestibule and he believed that he had a right to continue his investigation and search in that area because the residence was a multiple-family dwelling and the vestibule was a common area.

Once inside the vestibule, Respondent Duguid told Griffith that drugs were being sold at the front of his house and Griffith became confrontational. Griffith admitted that he became upset and told the officer that drugs were not sold outside his home. He also felt that he was being accused of selling drugs and when he saw Respondent Duguid begin to search for drugs in the vestibule of his home, he became irate. Respondent Duguid told him that he could search the vestibule because it was a common area. Griffith spewed profanity and told Respondents to get out of his common area. The discussion became so heated that both Respondents Ward and Sarrica responded to the vestibule area for safety reasons.

The fact that Griffith gave consent for Respondent Duguid to enter the vestibule allowed Respondent Duguid to conduct his investigation which included a search of the common area and he no longer needed permission from Griffith to do so. Courts in New York have held that the mere fact that a residential building is normally kept locked (as Griffith testified to) does not automatically suggest that its tenants have a reasonable expectation of privacy for Fourth Amendment purposes to all common areas within the building. (See People v. Corley, 2001 NY Slip Op 40196U (2001) citing People v. Johnson, 452 N.Y.S.2d 484 (1982). In the Corley case, the Supreme Court Bronx County found that a search incident to an arrest outside of the building where said search occurred in the lobby of a building where drugs were found in the smoke detector was a permissible search.) [This is also distinguished from Court of Appeals decisions which protected privacy interests in common areas of rooming houses, See People v. Garriga, 189 A.D.2d 506 (Fourth Department, 1993).]

It must be noted that what Respondent Duguid did was confined to the vestibule area. While he could look in the vestibule, he also looked in places that were not in plain view such as reaching above the door and behind the radiator. However, the Court notes that even these areas

searched were peripheral in nature. Respondent Duguid never opened drawers, searched rooms or went into any of the private areas of the home.

Thus based on the Corley decision, Respondent Duguid had the authority to search the vestibule of [redacted] incident to the arrest outside of the premises where drugs were recovered; and such search was with sufficient legal authority.

With respect to Respondent Ward, Griffith testified that there was an officer who came into the vestibule, walked past him and went to the lobby to look around. Words were exchanged between him and that officer who told him that he had three mailboxes and that the lobby was a common area and he (the officer) had a right to be there. Respondent Ward testified that once he observed the heated discussion between Respondent Duguid and Griffith, he responded to the vestibule. Respondent Ward said he then proceeded into the lobby area and looked around to ensure that no one else was in the area for safety reasons. There was no testimony that Respondent Ward conducted any search other than to look around the staircase area. He never went into any apartments. He never went up the stairs. He did not search behind radiators or go into any mailboxes. Griffith did note that once he was placed under arrest, he was barefoot and one of the officers (never identified) sought permission to go into his residence and get his shoes, which he allowed. Griffith testified that the time the officer took in the apartment was consistent with getting his shoes and coming back out.

Accordingly, based on the above, Respondent Duguid and Respondent Ward are found Not Guilty of Specification No. 3.

Disciplinary Case No. 2010-1968

Specification No. 2

Respondent Sarrica stands charged herein with arresting Griffith for Obstructing Governmental Administration (OGA) without sufficient legal authority. Respondent Sarrica testified that following Respondent Duguid's entry into the vestibule at [redacted], Respondent Sarrica heard Griffith yelling and cursing as Respondent Duguid stood at the threshold of the vestibule and was attempting to complete his search of the area for drugs. Respondent Sarrica placed Griffith in handcuffs for impeding the search. Prasad, the team supervisor, testified before this tribunal that she spoke to her team who advised her of the facts surrounding the OGA arrest. Although she could not recall which officer or officers she spoke to and what was said, she did recall that she was provided with sufficient information which allowed her to verify the arrest and concur with placing Griffith under arrest for OGA.

However, the fact that Respondent Sarrica placed Griffith in handcuffs and the arrest was later verified by a supervisor, Prasad, does not obviate Respondent Sarrica of the requirements under the Penal Law regarding the elements of establishing OGA. New York Courts have held that to establish the crime of OGA, there is a requirement of physical force or physical interference such that the inappropriate and disruptive conduct interferes with the performance an official function. See Matter of Samuel VV, 217 A.D.2d 863, 864 (Third Department), 1995. The fact that Griffith used profanity and told Respondents to get out of his common area absent any physicality is insufficient to establish the crime of OGA.

Accordingly, Respondent Sarrica is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent

Duguid was appointed to the Department on March 1, 2000. Respondent Sarrica was appointed to the Department on July 7, 1999. Respondent Ward was appointed to the Department on January 30, 2004. Information from their personnel folders that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

The Assistant Department Advocate (Advocate) asked for a penalty of the forfeiture of seven days for both Respondent Duguid and Respondent Ward for improper entry, improper search and lack of an Activity Log entry. The Advocate also asked for a penalty of the forfeiture of 10 vacation days for Respondent Sarrica for the arrest of Griffith without sufficient legal authority. The Court disagrees. For one, Respondent Duguid and Respondent Ward were only found Guilty of the Charge and Specification that they pleaded Guilty to which was an administrative failure. They pleaded Guilty to failing to memorialize the events that occurred on April 8, 2009 in their Activity Logs. This narcotics operation ended in a search of Griffith's common area and Griffith's subsequent arrest, yet neither Respondent made an entry in his Activity Log regarding what had transpired. In Disciplinary Case Nos. 79845/04 and 79846/04, signed by the Police Commissioner on March 1, 2005, two seven-year members of the service received a warn and admonish (Reprimand) for failing to maintain their Activity Logs as required.

Accordingly, it is recommended that Respondent Duguid and Respondent Ward each be Reprimanded with respect to this misconduct in Specification No. 2.

Respondent Sarrica has been found Guilty of arresting Griffith for OGA without sufficient legal authority. The seminal question here is whether Respondent Sarrica acted in good faith in the performance of his official duties. The answer to that question is yes. Respondent Sarrica overheard the verbal exchange between Respondent Duguid and Griffith.

He felt that Griffith's behavior prevented Respondent Duguid from performing his official duties which was to search the common area for drugs. He thought it wise and prudent to handcuff Griffith so that Respondent Duguid could complete his work, in addition to quickly leaving the area as a crowd began to form outside of the residence. His team supervisor, Prasad, also verified the arrest. As the Court already noted, and the Advocate aptly stated, verbal remarks standing alone do not support the arrest for OGA under these circumstances. However, when officers are on the job, they do not have the liberty of having all of the New York case law available for their perusal in the streets and have to make split-second decisions.

Based on this, and the fact that Griffith was quickly released from police custody and issued a Desk Appearance Ticket, which resulted in an Adjournment in Contemplation of Dismissal at his subsequent arraignment, it is recommended that Respondent Sarrica be Reprimanded with respect to his actions as charged in this instance in Specification No. 2.

Respectfully submitted,

Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

DISAPPROVED
NOV 21 2012
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ANDREW DUGUID
TAX REGISTRY NO. 925220
DISCIPLINARY CASE NO. 2010-1965

In 2009, 2010 and 2011, Respondent received an overall rating of 4.5 "Above Highly Competent" on his annual performance evaluations. Respondent has received six Excellent Police Duty Medals and one Meritorious Police Duty Medal in his career to date.

In over 12 years of service, Respondent has over 800 arrests in his career and [redacted]

Respondent has no prior formal disciplinary record.

For your consideration.

Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE FRANK SARRICA
TAX REGISTRY NO. 924463
DISCIPLINARY CASE NO. 2010-1968

In 2008, 2009 and 2010, Respondent received an overall rating of 4.5 "Above Highly Competent" on his annual performance evaluations. Respondent has received three Excellent Police Duty Medals, two Meritorious Police Duty Medals, one Honorable Mention Medal, and one Medal For Valor in his career to date.

In over 13 years of service, Respondent has made over 510 arrests in his career [redacted]

Respondent has no prior formal disciplinary record.

For your consideration.

Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE CHRISTOPHER WARD
TAX REGISTRY NO. 934299
DISCIPLINARY CASE NO. 2010-1967

In 2008, 2009 and 2010, Respondent received an overall rating of 4.5 "Above Highly Competent" on his annual performance evaluations. Respondent has received five Excellent Police Duty Medals and two Meritorious Police Duty Medals in his career to date.

In over eight years of service, Respondent has over 585 arrests in his career and [redacted]

Respondent has no prior formal disciplinary record.

For your consideration.

Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials