



POLICE DEPARTMENT

January 6, 2010

MEMORANDUM FOR: Police Commissioner

RE: Lieutenant Edwin Hernandez
Tax Registry No. 902804
Narcotics Borough Brooklyn North
Disciplinary Case No. 84811/08 & 85224/09

Detective John Gamble
Tax Registry No. 915764
Narcotics Borough Brooklyn North
Disciplinary Case No. 85655/09

Detective Darnay Harris
Tax Registry No. 922482
Narcotics Borough Brooklyn North
Disciplinary Case No. 85654/09

Detective Ebony Huntley
Tax Registry No. 930380
Narcotics Borough Bronx
Disciplinary Case No. 85486/09

Detective Warren Rohan
Tax Registry No. 926018
Narcotics Borough Brooklyn
Disciplinary Case No. 85485/09

The above-named members of the Department appeared before me on November 12 and November 13, 2009, charged with the following:

Disciplinary Case No. 84811/08

1. Said Lieutenant Edwin Hernandez, assigned to Narcotics Borough Brooklyn North, while on duty, on July 6, 2007, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Officer having been the supervising member of the service during a warrant execution for a location known to the

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Department, did wrongfully and without authority enter and supervised the entry of other members of the service into a private dwelling, location known to the Department, and said dwelling was not the subject of the warrant being executed.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

Disciplinary Case No. 85224/09

1. Said Lieutenant Edwin Hernandez, assigned to Narcotics Borough Brooklyn North, while on duty, on November 15, 2007, at approximately 0905 hours, at the Civilian Complaint Review Board, 40 Rector Street, New York County, while being interviewed pursuant to PG 211-14, did intentionally make false and misleading statements, in that during this interview, said Lieutenant Hernandez created a false description of events, to wit: Said Lieutenant Hernandez stated that on July 6, 2007, between the hours of 1900 and 2100 hours neither he nor Ms. Loren Hall were present at [REDACTED], Kings County.

P.G. 203-08, Page 1, Paragraph 1 – MAKING FALSE STATEMENTS

2. Said Lieutenant Edwin Hernandez, assigned as aforesaid, while on duty, at time, date and location set forth in Specification #1, did wrongfully and without just cause impede an official Civilian Complaint Review Board investigation, in that during an interview conducted pursuant to PG 211-14 said Lieutenant Hernandez stated that on July 6, 2007 between the hours of 1900 and 2100 hours neither he nor Ms. Loren Hall were present at [REDACTED], Kings County.

P.G. 203-10, Page 1, Paragraph 5 – IMPEDING AN INVESTIGATION

3. Said Lieutenant Edwin Hernandez, assigned as aforesaid, while on duty, on April 15, 2009, at approximately 1300 hours at the 107 Precinct, while being interviewed by the Internal Affairs Bureau pursuant to PG 206-13, did intentionally make false and misleading statements, in that during this interview, said Lieutenant Hernandez created a false description of events, to wit: said Lieutenant Hernandez stated that on July 6, 2007 between the hours of 1900 and 2100 hours neither he nor Ms. Loren Hall were present at [REDACTED], Kings County.

P.G. 203-08, Page 1, Paragraph 1– MAKING FALSE STATEMENTS

4. Said Lieutenant Edwin Hernandez, assigned as aforesaid, at time date and location set forth in Specification #5, did wrongfully and without just cause impede an official Internal Affairs Bureau Investigation, in that during an interview conducted pursuant to PG 206-13, said Lieutenant Hernandez stated that on July 6, 2007 between the hours of 1900 and 2100 hours neither he nor Ms. Loren Hall were present at [REDACTED], Kings County.

P.G. 203-10, Page 1, Paragraph 5 IMPEDING AN INVESTIGATION

Disciplinary Case No. 85655/09

1. Said Detective John Gamble, assigned to Brooklyn North Narcotics, while on duty, on July 30, 2009, while being interviewed pursuant to P.G. 206-13, did intentionally make false and misleading statement, in that during this interview, said Detective Gamble created a false description of events, to wit: Said Detective Gamble stated that on July 6, 2007 during the execution of a search warrant at [REDACTED] Kings County, he removed Ms. Loren Hall from [REDACTED] to a prisoner van which he used to transport Ms. Hall to the 77th Precinct. Detective Gamble also denied knowledge that a secondary search was conducted at [REDACTED], [REDACTED]), Kings County.

P.G. 203-08, Page 1, Paragraph 1 MAKING FALSE STATEMENTS
PROHIBITED CONDUCT

2. Said Detective John Gamble, assigned to Brooklyn North Narcotics, while on duty, on July 30, 2009 did wrongfully and without just cause impede an official Internal Affairs Bureau Investigation, in that during an interview conducted pursuant to P.G. 206-13, said Detective Gamble stated that on July 6, 2007 during the execution of a search warrant at [REDACTED], Kings County, he removed Ms. Loren Hall from [REDACTED] to a prisoner van which he used to transport Ms. Hall to the 77th Precinct. Detective Gamble also denied knowledge that a secondary search was conducted at [REDACTED], [REDACTED] Kings County.

P.G. 203-10, Page 1, Paragraph 5 – IMPEDING AN INVESTIGATION

Disciplinary Case No. 85654/09

1. Said Detective Darnay Harris, assigned to Brooklyn North Narcotics, while on duty, on July 16, 2009, while being interviewed pursuant to P.G. 206-13, did intentionally make false and misleading statements, in that during this interview, said Detective Harris created a false description of events, to wit: Said Detective Harris stated that on July 6, 2007 during the execution of a search warrant at [REDACTED] Kings County, he removed Ms. Loren Hall from [REDACTED] to a prisoner van

which he used to transport Ms. Hall to the 77th Precinct. Detective Harris also denied knowledge that a secondary search was conducted at [REDACTED], [REDACTED] Kings County.

P.G. 203-08, Page 1, Paragraph 1 – MAKING FALSE STATEMENTS
PROHIBITED CONDUCT

2. Said Detective Darnay Harris, assigned to Brooklyn North Narcotics, while on duty, on July 16, 2009 did wrongfully and without just cause impede an official Internal Affairs Bureau Investigation, in that during an interview conducted pursuant to P.G. 206-13, said Detective Harris stated that on July 6, 2007 during the execution of a search warrant at [REDACTED] Kings County, he removed Ms. Loren Hall from [REDACTED], to a prisoner van which he used to transport Ms. Hall to the 77th Precinct. Detective Harris also denied knowledge that a secondary search was conducted at [REDACTED] County.

P.G. 203-10, Page 1, Paragraph 5 IMPEDING AN INVESTIGATION

Disciplinary Case No. 85486/09

1. Said Detective Ebony Huntley, assigned to Narcotics Borough Brooklyn North, while on duty, on or about and between September 4, 2007 and April 9, 2008, did wrongfully and without just cause impede an official Civilian Complaint Review Board investigation of an incident that took place on July 6, 2007, in that said Detective continuously failed to provide copies of her memobook entries regarding said incident to said CCRB.

P.G. 203-10, Page 1, Paragraph 5 IMPEDING AN INVESTIGATION

2. Said Detective Ebony Huntley, assigned as aforesaid, while on duty, on April 10, 2008, did wrongfully and without just cause impede an official Civilian Complaint Review Board investigation, in that said Detective provided said Civilian Complaint Review Board with re-created and inaccurate memobook entries regarding the aforementioned incident.

P.G. 203-10, Page 1, Paragraph 5 – IMPEDING AN INVESTIGATION

3. Said Detective Ebony Huntley, assigned as aforesaid, while on duty, on January 21, 2009, at 3282 E. 131 Street, New York County, while being interviewed pursuant to P.G. 206-13, did intentionally make false and misleading statements, in that during this interview, said Detective Huntley created a false description of events, to wit: Said Detective Huntley stated that on July 6, 2007 during the execution of a search warrant at [REDACTED], Kings County, she removed Ms. Loren Hall from [REDACTED] to a prisoner van which transported Ms. Hall to the 77th Precinct. Det.

Huntley also denied accompanying Ms. Loren Hall to [REDACTED], Kings County and denied entering [REDACTED] inside of [REDACTED].

P.G. 203-08, Page 1, Paragraph 1 – MAKING FALSE STATEMENTS
PROHIBITED CONDUCT

4. Said Detective Ebony Huntley, assigned as aforesaid, while on duty, on January 21, 2009 at 3282 E. 131st Street, New York County, did wrongfully and without just cause impede an official Internal Affairs Bureau Investigation, in that during an interview conducted pursuant to PG 206-13, said Detective Huntley stated that on July 6, 2007 during the execution of a search warrant at [REDACTED] she removed Ms. Loren Hall from [REDACTED], Kings County, to a prisoner van which transported Ms. Hall to the 77th Precinct. Det. Huntley also denied accompanying Ms. Hall to [REDACTED] Kings County and denied entering [REDACTED] inside of [REDACTED], Kings County.

P.G. 203-10, Page 1, Paragraph 5 – IMPEDING AN INVESTIGATION

Disciplinary Case No. 85485/09

1. Said Detective Warren Rohan, assigned to Narcotics Borough Brooklyn North, while on duty, on January 21, 2009, at 221 E. 123rd Street, New York County, did wrongfully and without just cause impede an official Internal Affairs Investigation, in that during an interview conducted pursuant to PG 206-13, said Detective denied entering a private dwelling at [REDACTED] in Kings County and denied that other members of the service entered said location. Detective Rohan also denied that a prisoner known as Loren Hall was transported to [REDACTED] in Kings County.

P.G. 203-10, Page 1, Paragraph 5 – IMPEDING AN INVESTIGATION

2. Said Detective Warren Rohan, assigned as aforesaid, while on duty, at date and location set forth in Specification One, while being interviewed pursuant to PG 206-13, did intentionally make false and misleading statements, in that during this interview, said Detective created a false description of events, to wit: said Detective denied entering a private dwelling at [REDACTED] and denied that other members of the service entered said location. Detective Rohan also denied that a prisoner known as Loren Hall was transported to [REDACTED] in Kings County. *(As amended)*

P.G. 203-08, Page 1, Paragraph 1 – MAKING FALSE STATEMENTS

The Department was represented by Paul Gallagher, Esq., Department Advocate's Office, and the Respondents were represented by James Moschella, Esq. and John Arlia, Esq.

The Respondents, through their counsels, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondents are found Not Guilty of all charges.

INTRODUCTION

It is undisputed that on July 6, 2007, the Respondents were part of a team that executed a search warrant at [REDACTED] in Brooklyn. Present at the time of the raid was the owner of that apartment, Loren Hall, and her then [REDACTED] [REDACTED] along with a number of pit bull dogs. Because of those dogs, the first entry into the apartment was made by the Emergency Service Unit, who tranquilized the dogs. Then Respondent Hernandez and his team entered the apartment to conduct the search.

The named subject of the warrant, "J. D. (John Doe) [REDACTED] with Eyeglasses," also known as [REDACTED] but whose real name is [REDACTED], was not present. [REDACTED] is Hall's boyfriend and the Department alleges that after a promise that the Administration for Children's Services (ACS) would not be notified, Hall cooperated by telling the officers that [REDACTED] might be found at the apartment of his mother, Tanya

LIEUTENANT EDWIN HERNANDEZ
DETECTIVE JOHN GAMBLE
DETECTIVE DARNAY HARRIS
DETECTIVE EBONY HUNTLEY
DETECTIVE WARREN ROHAN

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Kinsler. The Department further alleges that Respondents Hernandez, Huntley and Rohan went with Hall to Kinsler's house at [REDACTED] and rushed into her apartment looking for her son, [REDACTED] without a warrant or permission to do so. The location of [REDACTED] is directly across the street from the 77 Precinct stationhouse.

Respondents Hernandez, Huntley and Rohan deny that any of them went to [REDACTED]. Respondents Gamble and Harris say they transported Hall directly from the [REDACTED] location to the 77 Precinct stationhouse for booking.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Loren Hall, Tanya Kinsler, Samuel Butfer and Sergeant Alroy Scott as witnesses.

Loren Hall

Hall testified that she was born [REDACTED]. She currently resides at [REDACTED] in Brooklyn. She is a teacher and has worked for the Board of Education for 17 years. Hall is single and has a son.

On July 6, 2007, Hall lived at [REDACTED] with her son, and her boyfriend, [REDACTED]. She further explained that [REDACTED] only stayed at her

house three or four days out of the week and the rest of the time he resided with his mother, Tanya Kinsler, at [REDACTED]

While living at [REDACTED], Hall had two female pit bulls and a set of puppies. She stated that on July 6, 2007, [REDACTED] was in her apartment. She remembered [REDACTED] being there around 3 or 4 o'clock in the afternoon but he did not stay the whole day. She did not recall the time [REDACTED] left the apartment.

On July 6, 2007, at approximately 6:30 p.m., Hall and her son were the only people in the apartment. Hall was in the bathroom getting ready to take a shower. While in the shower, Hall heard banging on the front door. She noticed the slam lock was off, then the door knob turned and Emergency Service Unit (ESU) officers entered her apartment. She stated they were wearing helmets, vests, guns, and lights and that there were four of them. One of the officers told her to get down on the ground, and handcuffed her. She was still in the bathroom at this time. Hall was left on the bathroom floor until a female officer arrived. She described the female officer as black, about 5'7" or 5'8", with glasses, and dressed in plainclothes. Hall was asked if the female officer that was in plainclothes on that day was in the court room and she answered, "Yes," and pointed to Respondent Huntley.

Hall stated that she had a conversation with Respondent Huntley. In their conversation, Respondent Huntley stated that the reason the police were in the apartment was because they had a warrant. Hall then proceeded to ask Respondent Huntley why they were saying that drugs were being sold out of her apartment and that she was not a drug dealer. Respondent Huntley then told her that it was probably her boyfriend who

was selling drugs there. At that time Respondent Huntley had not asked Hall if her boyfriend was there. All Respondent Huntley said was that they knew he was in the apartment and that drugs were being sold out of the apartment.

After Hall was given clothes, she was taken out of the bathroom and into her son's room. Hall stated that there were approximately two commanding officers and three ESU officers, without their equipment, at that time. Then she was asked to point out either commanding officer she saw on that day and she pointed to Respondent Hernandez. Hall explained that Respondent Hernandez went to her bedroom and took a picture from one of her dressers. Respondent Hernandez then asked her if that was her boyfriend and she told him that it was one of her male friends.

Hall was taken out of her apartment in handcuffs and taken to a van. She stated that the van was supposed to be where they put the dogs and because she did not want to be put in that van, she gave them more information. Hall stated that while being escorted out, Respondent Hernandez was telling her that he could make it so she would never work in New York City as a teacher again and never get her child back. Therefore, she agreed to take them to where Kinsler lived. In exchange, Hall thought they were going to leave her son out of the situation.

Hall stated that at the time of the incident she was aware of where [REDACTED] might have been, but not the exact address. She testified that now she knew the address and that it was [REDACTED]. She explained that she took the officers to [REDACTED]. Hall was taken there in a black Jeep with Respondents Hernandez,

Huntley and Rohan. Hall pointed out Respondent Rohan in the court room, and added that she remembered him as having dreadlocks.

While in the Jeep, Hall gave the officers instruction on how to get to [REDACTED]. She stated that they arrived at that address after 7 p.m.. Once they were there, Respondent Hernandez got out of the Jeep first and went across the street and put his badge inside his shirt. He was followed by Respondent Rohan, and then Respondent Huntley, with Hall. The only person Hall saw was Kinsler looking out of the second floor window. From the window Kinsler asked Hall if she was going up and Hall nodded her head in acknowledgment.

Hall explained that Kinsler went downstairs and opened the door. Respondent Hernandez went into the building and up the stairs into the apartment. Then Respondent Rohan went right after him, followed by Respondent Huntley and her. She stated she was cuffed again with her hands behind her back and at that point they were all inside Kinsler's apartment. Hall testified that the door to the apartment was ajar and that Respondent Huntley went out of the apartment to bring her in again and sat her in the bathroom of the apartment, while they questioned Kinsler about [REDACTED]. Kinsler was asked to show a picture of [REDACTED] and she complied. While the questioning was going on, Hall claims she was in the bathroom with Respondent Huntley. She claims she was in the bathroom for about five to eight minutes and the door to the bathroom was open. Hall was not shown anything by the officers. She believes she was in the apartment for about ten minutes.

When they left the apartment, Hall was escorted downstairs in handcuffs and walked across the street to the 77 Precinct. At the precinct she was placed in a cell by Respondent Huntley. She stated it was probably 7:30 p.m. While detained, Hall was fingerprinted and photographed by Respondent Rohan. The next day she was taken to central booking in Brooklyn. Hall stated that she did not know what her charges were up until she was in front of the judge. At that point, she was made aware that she was charged with drug possession for marijuana and endangering the welfare of a child. Hall stated she was released from police custody after she saw the judge. Hall testified that after that day in court, she returned to court with regards to the drug possession charges. She was in and out of court for two years and in 2009 her charges were finally dropped.

On cross-examination Hall stated that on July 6, 2007, she was not working. She further explained that she was a teacher and was off for the summer. Hall stated that she had just finished cleaning her apartment and was preparing to take a shower, to go out. Hall affirmed she was home for the majority of the day on that date. Hall confirmed that [REDACTED] was in her apartment around 3 or 4 o'clock, when he got home from work. [REDACTED] worked in construction but she did not know for what company.

Hall claimed that [REDACTED] was in her apartment for a very short period of time. When asked how long, she answered, "Maybe half hour 45 minutes." She was then asked, "So that would mean that he would have left there some time between 3 o'clock, 3:30, 3:45 something like?" Hall answered, "Yes, you could say that." When she was asked how long it was after [REDACTED] left, that the officers showed up, she answered, "I am not sure." Then she was asked if it was within one hour or two and she answered, "No."

Hall was reminded of the interview she had at the Civilian Complaint Review Board (CCRB), and excerpts of the transcript from that interview were read, where she stated that [REDACTED] got off from work at 3 o'clock, and that [REDACTED] must have arrived at her apartment around 4 o'clock because she took a shower and ate around that time. She also stated in the interview, that the police got to the apartment no more than 15 to 20 minutes after [REDACTED] had left.

Hall was asked by the Court if she remembered giving that statement, and she answered, "I don't remember saying that I took a shower and had something to eat I remember saying that he left the house and shortly after that they came into the apartment, yes." Hall agreed that the police arrived 15 to 20 minutes after [REDACTED] had left the apartment. At that time she was asked, "Your testimony today is that he left the apartment about 3:30, 3:45; is that correct?" She answered, "That's the same thing."

Hall was reminded by counsel that she had testified that the police arrived at 7 o'clock in the evening and she answered, "I didn't say 7 o'clock to my apartment." When asked what time the police arrived, she answered, "It could have been 3:30 it would have been on the record it also says 6:30 they questioned me and said it was 6:30." Hall testified that she left Kinsler's apartment around 7:30 p.m. She also explained that she did not have a watch on that evening; therefore, the times she was giving were all estimates. Since she arrived at Kinsler's apartment at 7:30 p.m., she believes that the police went to her apartment about an hour or more before that time, therefore it was around 6:30 p.m., that the police arrived at her apartment. She was then asked, "So it

couldn't have been 3:30, 3:45 could it?" She answered, "No, it couldn't but I didn't have on a watch so."

Hall testified that on July 6, 2007 [REDACTED] could have used marijuana but that she was not sure because he had never done it in her presence. She explained that she is out of the house most of the day. Hall admitted that it was possible that the marijuana the officers found in her apartment was present on July 6, 2007, but she did not know about it beforehand.

Hall claimed that she was in the bathroom when the police arrived. She said she also had contact with other officers besides the ESU officers. The first officer Hall remembered having contact with was Respondent Huntley. Respondent Huntley went into the bathroom and explained to Hall that they had a warrant to search the apartment and another one for [REDACTED]'s arrest. At that point she was also told that her boyfriend sold drugs. She told the police [REDACTED]'s street name, which was [REDACTED]" She stated that she was not aware that [REDACTED] was selling drugs out of her apartment.

Hall stated that at the time of the incident [REDACTED] was 23-years-old, her son was 12, and she was 42. She admitted that [REDACTED] was mostly living with her during the time of the incident. She also admitted that on July 6, 2007, her son and six dogs were at her apartment. Hall claimed that her house was clean and that she had even finished cleaning it right before the incident. She stated that any assertion by the police that there were dog feces and a stench of urine in the apartment, was a lie.

Hall testified that before going to the precinct there was a stop made at [REDACTED]
[REDACTED] She admitted that Respondent Hernandez was one of the officers there. During

her interview with CCRB, Hall did not know Respondent Hernandez's name. She had stated at her interview that there were two commanding officers. One of the commanding officers was described as Hispanic and the other as white or possibly Hispanic. She had mentioned in her interview that it was the white commanding officer who went with her to [REDACTED]. Then she was asked, "Are the two commanding officers you're tell us that this officer sitting here today is the white commanding officer as opposed to the other individual?" She answered, "As opposed to the other individual yes he is the white one."

When asked how she knew Respondent Hernandez's name, she stated that she got it from the lawyer's report or at the interview with CCRB. Then Hall was reminded that in the interview with CCRB, she had testified that she got Respondent Hernandez's name by reading it on his shield. When she was asked if, on the day of the incident, she in fact read Respondent Hernandez's name on his shield, she claimed she possibly did. Then when asked if she was sure, she could not recall but said that had to be it. She admitted telling the Internal Affairs Bureau (IAB) investigator that she had read Respondent Hernandez's name off his shield. She further admitted not being aware that a lieutenant's shield had neither a name nor a number. Hall explained that Respondent Hernandez was not wearing a police uniform. He was wearing a white shirt and she did not know if he had his name displayed anywhere. She was once again asked if she saw his name and she agreed she did.

Hall stated she physically observed when the officers went inside [REDACTED] [REDACTED] e. She explained that she was standing outside the door as the officers walked in

and then she was escorted inside and placed in the bathroom. Kinsler went inside the apartment shortly after. Hall described the apartment as having one room towards the back of the apartment, which was Kinsler's room. She further described the room as having a window looking onto [REDACTED]. Then she was asked if it was [REDACTED]'s room and she agreed. Hall testified that she noticed Kinsler looking out the window of [REDACTED]'s room when she got out of the car. She stated that she did not know if [REDACTED] was there or not. She took them there because that was his other place of residence. To her knowledge no one contacted Kinsler to inform her that they were going to the apartment.

Hall described [REDACTED] as being right across the street from the 77 Precinct. She estimated that around 7:30 p.m., she was taken across the street to the 77 Precinct. Hall admitted being arrested on charges of drug possession and endangering the welfare of a child but she was not charged with the intent to sell nor a felony charge. She was also aware that if she was to be found guilty, she would lose her job as a teacher.

Hall went to CCRB a week after the incident took place. At that point in time she was already arraigned on the charges that were against her for the drug possession. In addition to the arrest, Hall had a complaint made against her with the Administration for Children Services (ACS) and an [REDACTED] was served. Hall was aware that the night she was arrested, her mother went to pick up her son but she was not granted custody of the child. She was also aware that at the time she filed the complaint with CCRB, the case she had with ACS was still pending.

Hall admitted to being aware that Kinsler spoke to CCRB and said that she (Hall) had advised her to do so. She also admitted telling Kinsler that her lawyer thought it

would be a good idea to make the complaint to CCRB. During the investigation Hall was contacted by IAB but was advised by her lawyers not to speak to them. At some point after Hall filed the civilian complaint, her criminal case was dismissed on speedy trial grounds. Eventually, the ACS charges against her were dropped as well. Hall states that she is still working as a teacher and [REDACTED] was never arrested on charges of intent to sell drugs out of her apartment.

Hall stated that the officers threatened her with loss of her job and loss of custody of her child. As a result, she helped the officers enter Kinsler's apartment and she was aware that it was incorrect to do so. She claims she did it to help her son; she did not want to put him in a bad situation. She stated that if she did not have a child, she would have done the same thing. Hall affirmed she felt like she did not have a choice in the matter. She explained that she did not lie and all she did was take them upstairs. She admitted that Kinsler was under false pretense when she opened the door. Hall further explained that she did not warn Kinsler that the police were going upstairs because she was under the impression that she was not allowed to do so, when she was under arrest.

Hall admitted to being aware that there was a lawful search warrant to search her apartment. Then she was asked, if she had discussed with her attorney under what basis the warrant was acquired, she denied having that discussion. When told that on July 6, 2007, at around 3:32 p.m., someone bought drugs from her apartment, she denied it. When she was asked if this occurred in her presence, she denied that too. She admitted that it was a possibility that her boyfriend sold drugs but denied being present. She established, that to her knowledge, there was no marijuana in her apartment.

Referring to her claim to CCRB that there was property missing in her apartment, Hall denied ever stating that it was the officers who took the property. She was not aware of who took her property but was aware that her apartment was left unlocked for an entire night. She stated that it was not the negligence of the police, if the landlord was supposed to lock up her apartment. She admitted it was her idea to file the report.

Hall was aware that the precinct was across the street from [REDACTED]. She stated that while in the precinct she did not have any contact with anyone. She stated that Kinsler was not present during her consultation or on the phone with her attorney.

When the officers entered the apartment, Hall stated she was shocked. She would not describe her behavior towards the officers as “belligerent,” and she said the behavior of Respondent Rohan was proper.

Hall stated that while she was in the bathroom at [REDACTED], Respondent Huntley guarded her the whole time there, and she did not have an opportunity to walk around. Further she agreed that Respondent Huntley went with her to the precinct and indeed that Respondent Huntley was by her side the entire time.

Tanya Kinsler

Kinsler testified that she was born [REDACTED]. She currently resides at [REDACTED] in Brooklyn. She is married and has three children, including [REDACTED]. She lives with her mother, husband, and her son [REDACTED]. She is an office manager with the New York City Department of Health.

On July 6, 2007, Kinsler was married and living with her mother and husband. [REDACTED] stayed at the apartment occasionally but did not have a bedroom. She explained that her apartment is on the second floor, and it has three bedrooms, a bathroom and a dining room. To go inside the building, a buzzer located outside of the building has to be rung. There is no intercom. To see who is ringing the door buzzer, Kinsler looks out the window located in what use to be [REDACTED]'s room, which overlooks the front of the building.

On July 6, 2007, Kinsler claimed she was home with her mother. She stated that she was sitting in [REDACTED]'s old bedroom, when she looked out the window and saw Hall. Hall was inside a dark SUV (sport utility vehicle). She was not expecting Hall's visit. She noticed Hall was not alone and that she was accompanied by two men and a woman. She described the first man as tall, African-American, with dreadlocks. The second man was short and appeared to be Hispanic. The woman had a ponytail. They were all in plainclothes and she did not know their identities. In the courtroom, Kinsler was asked to point out the first man she described, and she said that if he was there without the dreadlocks, she could not recognize him. Then she was asked to point out the woman she saw and she identified Respondent Huntley.

When she opened the door, she saw Hall and the three officers. At that point she did not know they were police officers. She again described one of the male police officers as short, white/Hispanic and dressed in plainclothes. When asked to point him out in the courtroom she identified Respondent Hernandez. Once inside the building, the officers went past Kinsler, up the stairs and into the apartment. The door to the apartment

was closed but not locked. While this was happening, Kinsler was asking what was going on. When she entered the apartment, the officers asked her about [REDACTED], and they told her he was selling marijuana. At that time, she claims Hall was in the bathroom with the door closed and Respondents Rohan and Hernandez were by the door. Kinsler was taken to her bedroom by Respondent Huntley to look for a picture of [REDACTED]. She stated that Respondent Huntley stayed in the room talking with her for 10 to 15 minutes. Kinsler claims that she was unable to find the picture and she did not recall if she showed the picture to the officers. While in the room, Kinsler heard some movements outside, but could not see what Respondents Rohan and Hernandez were doing. As soon as Respondent Huntley was done questioning Kinsler, they both left the bedroom, Hall was taken out of the bathroom, and they all left the apartment. She was not aware of their destination.

Kinsler admitted reaching out to CCRB but did not recall when she contacted them or how she got their number. She claimed she never discussed any matters concerning the case with Hall. She stated that when she reached out to CCRB, Hall was not present. She also stated that she was further interviewed by the Department but had no recollection of when this happened, or whom she spoke to.

On cross-examination Kinsler stated that it was her husband's idea to contact CCRB but she never suggested Hall do the same. Kinsler explained that she had no knowledge that Hall had made a complaint. She denied having any recollection of any conversations of the case with Hall prior to the interview with CCRB.

Kinsler acknowledged having a recollection of her interviews with CCRB and IAB. Then she was read an excerpt from the transcript of her IAB interview and she was reminded that when she was asked, if she had made any inquiries to CCRB, that she had said that CCRB had contacted her, stating, "I was given number that Miss Hall had given me and she said that the people told me to call her to make -- to put the complaint in." At that point she was asked if she recalled those questions and answers and she agreed. She was further reminded that in the transcript she stated that Hall contacted her first and told her to call and make the report. She acknowledged that she had given those answers to those questions. She admitted to getting the number to CCRB from Hall but stated that she already had the number. She said she did not have any intentions of making a report but she did, because Hall insisted.

Kinsler testified that it was not until she spoke to Hall about the situation that she decided to make the complaint. Hall had explained to her that the lawyer suggested it was a good idea. Kinsler was aware that Hall had been arrested and that she had a lawyer. She knew that she was a school teacher. She also knew that there was a possibility that Hall could lose her job because of the arrest. Kinsler stated that Hall did not tell her the whole story. Kinsler was only told about the police going into Hall's apartment, when they were not supposed to and about the details regarding the incident with Hall's son.

Kinsler stated that the room she was in when the police arrived was [REDACTED]'s room. She described the room as being almost empty and that [REDACTED] had removed all his clothes because he was living with Hall. She explained that [REDACTED] did not have keys to

the apartment, because her nephew had lost his keys and was given [REDACTED]'s keys. She stated [REDACTED] visited only when she was home, not because she did not want him there, but because of the key situation. She stated the police had been to her house on two previous occasions in regards to her son [REDACTED]. She admitted that there was a time that the police came for [REDACTED] and he climbed out the window.

She further testified that on July 6, 2007, she was sitting next to the window watching television as she did "everyday." She stated that she did not receive a call from Hall regarding the visit. She made it clear that she and Hall did not routinely speak because Hall was [REDACTED]'s girlfriend and not her friend.

Kinsler affirmed that she lives across the street from the 77 Precinct. She further stated that she was sitting next to the window. At that point, counsel read from a transcript of her IAB interview and reminded Kinsler that she had, on two separate occasions, said that someone ringing the buzzer alerted her to go downstairs. She disagreed and stated that if she "told them that, then that's not what happened...Yes, that is incorrect...It should state in there it should be a correction in there that states I was sitting in the window."

Kinsler confirmed that Hall was taken into the bathroom in handcuffs and that the door was closed. She said Respondent Huntley did not stay with Hall and that Respondent Huntley was actually with her (Kinsler) in the other bedroom for about 10 to 15 minutes. There were no officers with Hall inside the bathroom. She further stated that she did not physically see any of the officers walking or opening doors in the apartment.

Kinsler admitted to having spoken to Hall's attorney before the IAB interview. She made the attorney aware that she was going to an IAB interview and the attorney advised Kinsler on the process. Kinsler denied discussing with the lawyer what she was to say or ask, during the interview.

Kinsler stated that at some point on July 6, 2007, she was aware that [REDACTED] was alleged to have been involved in dealing marijuana. She believed [REDACTED] was innocent and the marijuana found in Hall's apartment was never linked to [REDACTED]. The witness once again affirmed that Respondent Huntley was, at all times, with her and not with Hall. She stated that the officers entered her home under false pretense because she thought Hall and one of the officers were related because they both had dreadlocks. She said none of the officers were "pushy and forward" in coming in. Kinsler stated that when Hall was taken into custody, she did not inquire about the situation nor did she contact [REDACTED]. She claims that after a couple of days, [REDACTED] told her what happened. She also affirmed that the buzzer was never rung. She stated that the only reason she used Hall's attorney was because she thought it was required, but then, she realized she could not afford the lawyer.

On re-direct examination, Kinsler explained that CCRB reached out to her, but she had previously contacted them and left her information. She stated that the first time she made the complaint was when she was contacted by CCRB. On further re-cross examination, Kinsler testified that the first time she saw Hall, she was getting out of the SUV. When Hall got closer to the building Kinsler noticed that Hall's hands were behind

her back. When asked if she saw Hall in handcuffs when she opened the door, Kinsler stated, "When I got downstairs I pretty much figured it was the cops."

Samuel Bufter

Bufter is a supervisor at the New York City Civilian Complaint Review Board. He has been working for CCRB, for over six years. His duties consist of supervising a team of ten investigators, giving advice when a complaint is made, sitting in on interviews, and reviewing closing reports.

During July 2007, Bufter supervised Investigator [REDACTED], who no longer works for CCRB. During Brattin's employment with CCRB, she was assigned to: contact people who filed the complaints, interview any civilians, witnesses, or police officers involved, request records from the Department regarding the incident and put any evidence into a closing report.

On July 17, 2007, [REDACTED] received an investigation involving CCRB case number 200709915. Bufter admitted to being familiar with the case because he did periodic reviews of the case. He stated that the complainants were Hall and Kinsler. He said Kinsler was classified as a "victim," meaning that she had been subjected to alleged misconduct by officers. He testified that Hall alleged that a team of officers responded to her apartment at [REDACTED], where a search warrant was executed, the officers questioned her, and an officer used profanity against her. She also mentioned that Respondent Hernandez offered her a deal not to contact ACS, if she identified [REDACTED]'s whereabouts.

Butfer affirmed that [REDACTED] did conduct record checks on the case. He specified that on July 20, 2007, she ran a record check through the Management Analysis Section, for search warrants for [REDACTED] and [REDACTED] for July 6, 2007. The results of the record search indicated that there was a search warrant for [REDACTED] [REDACTED] but none for [REDACTED]. There were also record requests and interviews done by [REDACTED], which identified the officers involved in the case.

Then counsel drew Butfer's attention to September 4, 2007, when Respondent Huntley was interviewed. He was given a transcript of Respondent Huntley's CCRB interview (Department Exhibit [DX] 6) and he agreed that the transcript was correct and accurate. He said that [REDACTED] attempted to obtain Respondent Huntley's memo book¹, which she did not bring to the CCRB interview. He claimed that CCRB made numerous attempts to obtain the memo book and finally received it on April 10, 2008.

Butfer said DX 9 (a copy of Respondent Huntley's memo book front cover and a copy of a page that contains entries from July 6, 2007) was significant to the case because the memo book entries demonstrated that at 1900 hours, Respondent Huntley responded to the search warrant location at [REDACTED]. Her next entry was at 2015 hours, regarding a different unrelated arrest at another location. It was during this time interval that the misconduct is alleged to have occurred. Butfer acknowledged that the transcript of Respondent Hernandez's interview by [REDACTED] on November 16, 2007 (DX 2), had importance regarding the case because the interview establishes Respondent Hernandez's accounts of his location during the time of the alleged misconduct. He said

¹ Officially referred to as an Activity Log.

that Respondent Hernandez admitted to being the supervisor that was present for the execution of the search warrant and that he denied going into [REDACTED].

On cross examination Bufter admitted to being aware of a photograph selection presented to Kinsler. He testified that Kinsler had a negative identification on photographs of Respondents Huntley and Rohan. Bufter further explained that the photo arrays were single photos of each individual officer, and were not presented with “fillers.”

Sergeant Alroy Scott

Scott testified that he joined the Department on January 30, 1995. He worked in PSA 7, and as a narcotics undercover from 1997 to 2006. After he was promoted to sergeant, he worked in Transit District 11, and then in IAB, where he is currently assigned to the Special Investigations Unit. His duties consist of investigating allegations made against members of the service assigned to IAB, or those made against members in the rank of captain and above. Prior to this, he was assigned to Group 41 from February 2008, until August 2009. While in Group 41, his duties were to investigate complaints and allegations made against MOS assigned to the Organized Crime Control Bureau.

Scott stated that on December 19, 2008, he was given an assignment by his supervisor. The assignment consisted of investigating the statement Respondent Hernandez had given to CCRB, which was inconsistent with the complainant’s statement. Scott stated that he reviewed many documents regarding the case, including the CCRB

case folder, which contained information regarding the complaint, the subjects of the allegation, and paperwork on the roll call and memo book entries.

Scott testified that the complainants were Hall and Kinsler. He explained that Hall had a couple of complaints but the one that pertains to this case, was the allegation that she was taken from her residence by several officers to a second location to look for Swain. The officers identified by the CCRB investigation were Respondents Hernandez, Huntley, and Rohan. Additionally, during the course of his investigation, two additional officers, Respondents Gamble and Harris, were also named as subject officers for allegedly making false statements.

Then Scott identified DX 10 as a search warrant issued for the apartment at [REDACTED] [REDACTED] that named "J.D. [REDACTED]," who he said was [REDACTED]. He said that Respondent Warren swore the affidavit. He said DX 11 was a copy of a 77 Precinct Command Log page that contained information regarding Hall's arrest, namely that on Friday, July 6, 2007, Respondent Rohan arrived at the precinct at 2000 hours with an arrest, and the arrestee was Hall.

Scott stated that during the investigation he had also obtained a list of the vehicles assigned to Brooklyn North Narcotics. After reviewing the list he came to the conclusion that the 77 Precinct Module had possession of, or access to, a black SUV. Scott believed it was a black Jeep Cherokee.

On cross-examination, Scott agreed that Hall was in the Department's custody on July 6, 2007. Scott stated not knowing exactly who Hall interacted with but that the allegation was that there were numerous officers from the 77 Precinct Module inside her

LIEUTENANT EDWIN HERNANDEZ
DETECTIVE JOHN GAMBLE
DETECTIVE DARNAY HARRIS
DETECTIVE EBONY HUNTLEY
DETECTIVE WARREN ROHAN

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apartment. He denied knowing that all the vehicles from the 77 Precinct Module were parked in front of the location when they executed the search warrant and based on his experience, he did not think all their vehicles were parked in front of [REDACTED] [REDACTED] at that time.

Scott admitted knowing Captain Palumbo, who supervised the entry of the search warrant team on July 6, 2007. He stated that Palumbo resembled Respondent Hernandez, and said that the two had "similar" features and that, "They look similar." He said Respondent Hernandez has a "shaded complexion." Scott admitted that it depended on the season because in the summer both Palumbo and Respondent Hernandez are both tanned.

Scott stated that the black Jeep Cherokee was assigned to Palumbo at the time of the search warrant. The vehicle fit the description of the one Hall claimed to have been transported in to [REDACTED]. Scott agreed that he had identified inconsistencies in Hall's testimony to IAB and her CCRB interview. One of Hall's inconsistencies involved her claim that \$600 in two lock boxes were missing from her apartment. However, a year earlier, when she was interviewed by CCRB, Hall did not mention anything about missing currency. Another inconsistency Scott noticed was the time of the incident. In his interview, Hall claimed the incident transpired around 3:30 p.m., while she stated to CCRB it was around 6:30 or 7:00 p.m. Another inconsistency was the identification of the officers, and how Hall learned about their identities. During Hall's interview with CCRB she did not know the name of the officer who took her to [REDACTED] [REDACTED] but during her interview with IAB she identified the officer as Respondent

Hernandez. Furthermore, Scott stated that during his interview with Hall she explained that she knew Respondent Hernandez's name because she had read it on his shield. Scott agreed that he found Hall's statement "odd" because there is no name on a lieutenant's shield. He also agreed that Hall had told CCRB that it was a white commanding officer that allegedly took her to [REDACTED].

Scott states that during his investigation he interviewed Kinsler regarding the case. When Scott went to Kinsler's apartment to interview her, she was not home, but he encountered [REDACTED] leaving the building. Scott explained that [REDACTED] was not cooperative. Scott also said that Kinsler informed him that [REDACTED] did not live with her, that he was living with Hall on July 6, 2007, and that [REDACTED] was "not cooperating with the police about anything." When he interviewed Kinsler, he stated he wanted proof, other than her word, that the officers were in her apartment because all he had were two different versions of the incident. One version was Hall's and Kinsler's assertion that the officers went to [REDACTED] the night of the incident, and the other version was the Respondents' denial that it ever took place.

Scott stated that he interviewed two neighbors and both of them stated that they did not see any officers in the building on that day. He also tried to interview a third person named [REDACTED], who Kinsler said was a witness, but was not able to contact that person. At one point Scott thought that [REDACTED] was a fictitious person because when he tried numerous times to get help from Kinsler in contacting [REDACTED], she would not be available to do so. Scott also tried to get information from Hall in regard to her son's transport to the precinct on the day of the incident, but Hall told him that her lawyer

advised her not to talk to him. He also reached out to Hall's lawyer, who confirmed that Hall was instructed not to talk to him about the case until Hall's court date was over. The lawyer told Scott that she anticipated the charges being dismissed on the next court date and that after that, Hall would cooperate. When the charges were dismissed, Hall did not cooperate.

When asked if he had any reason to believe the warrant (Respondent's Exhibit [RX] A) was not valid, Scott answered, "No." He also stated that besides the initial complaint of a secondary search and the missing money, Hall alleged that miscellaneous property was missing from her apartment. Scott admitted getting the impression that Hall was accusing the officers of having done something improper.

Scott denied that Hall's lawyer was an obstacle in his investigation. He stated that he did not have full access to speak to Hall but that the lawyer was willing to sit with him and Hall to go over the case. He said that Kinsler had stated to him that she had conferred with Hall's lawyer, and that the lawyer advised it was a good idea for her to make the CCRB complaint. He said he had no reason not to believe that there was an exchange of information between Kinsler, Hall, and Hall's lawyer. Scott stated that once the case was over, neither Hall nor her lawyer was forthcoming with information.

On re-direct examination, Scott once again stated that there were discrepancies in Hall's statements. Scott stated that the interview conducted at Hall's lawyer's office was not mechanically recorded, so the discrepancies that he noted were "more or less" from his memory. Prior to the interview conducted at Hall's lawyer's office, Hall was given the chance to review her prior statement that was mechanically recorded by CCRB. On

re-cross examination, Scott confirmed that Hall's lawyer told him that the interview was not to be recorded. He also admitted that he would have recorded the interview were it not for the lawyer's refusal.

The Respondents' Case

The Respondents, Lieutenant Edwin Hernandez, and Detectives Darnay Harris, Warren Rohan, Ebony Huntley and John Gamble all testified in their own behalf.

Respondent Lieutenant Edwin Hernandez

Respondent Hernandez stated that he has been a member of the Department for 20 years and a lieutenant for five of those years. Respondent Hernandez is currently assigned to Brooklyn North Narcotics, where he supervises the 77, 84 and 88 Precinct Module Narcotics Team. He oversees the day-to-day operations, buy-and-bust investigations, confidential investigations and search warrants. He stated that before becoming a lieutenant, he was a narcotics undercover for about four years. Respondent Hernandez has worked in Narcotics for about 15 years, has been part of about 8,000 arrests, and has supervised over 500 search warrants. He denied ever having charges brought against him other than the ones he is presently on trial for. Before joining the Department, he was a member of the United States Marine Corp and had also worked as a correction officer. Respondent Hernandez explained that his functions as a supervisor are to make thorough background investigations of the subject locations, make

confirmatory buys in the locations, and present all the facts to a judge to acquire the search warrant.

Respondent Hernandez acknowledged that the other four co-respondents are part of his field team. He stated that he has been assigned to his module for four years. When asked to give an opinion of his team, he answered, "Since I have been assigned module lieutenant they have been working under my leadership. They are outstanding detectives. Two out of the four are up for promotion at this time. I think of them very highly." The two detectives up for promotion are Respondents Gamble and Huntley. He testified that with his module, he has executed close to 200 search warrants.

Respondent Hernandez stated that on July 6, 2007 he executed a search warrant at [REDACTED]. The investigation started with an anonymous, written communication to the Narcotics Division. The communication stated that narcotics were being sold out of that apartment. It also gave the hours of operation which were from 1000 hours to 0300 hours and a description of a female, black, [REDACTED], with long dreadlocks, by the name of Loren Hall.

Respondent Hernandez stated that Hall's name was the only name on the complaint. Once the complaint was received, an investigation of the tenant of record, in this case Hall, was made. They also made three drug buys out of Hall's apartment. A confidential informant (CI) was used during each buy. The CI was searched before going into [REDACTED], given money and directions to buy narcotics and return to the officers. After the first buy, the CI handed Respondent Hernandez and his investigator marijuana and intelligence on the person selling from the apartment. The CI told them

that the person who sold him the marijuana went by the name of "J.D. [REDACTED]" or "J.D. [REDACTED]s," and that he was male, black, and in his twenties. The outcome of the second buy was also positive, with marijuana once again bought. After two buys had occurred out of Hall's apartment, a request for a search warrant was made.

Respondent Hernandez stated that confidential information from the building was received. The information was regarding nonstop traffic out of Apartment [REDACTED]. Some people in the building were upset because of a lot of loitering in the building and the dogs barking. The information also mentioned that there were a lot of pit bulls inside the apartment. Hernandez stated that narcotics and pit bulls go hand-in-hand.

Once all the information was gathered, there was a meeting with the overall captain, who was informed of the situation inside [REDACTED]. At that point a warrant was obtained and was sworn out by Respondent Rohan. The warrant was executed on July 6, 2007. Before the warrant was executed, Respondent Hernandez stated that he and a couple members of his team met with the CI to make another buy. The buy was done at 1632 hours and it was positive. After the buy, Respondent Hernandez stated that he and the team returned to the precinct at 1700 hours. At the precinct he spoke to the captain about the positive buy that was made out of the location. At around 1800 Hernandez stated that he held a tactical meeting with his team and ESU.

The tactical meeting was conducted at Brooklyn North Narcotics' office. The officers present when the warrant was executed were; Palumbo, DePeno, Brian, and Rahman, and Respondents Harris, Gamble, Huntley, and Rohan. Respondent Hernandez

stated that usually, when a warrant is executed, there are three supervisors present, a sergeant, a lieutenant, and a captain. On that particular day, there was no sergeant working. Therefore, the only two supervisors on that day were Hernandez and Palumbo. ESU was present because of the dogs that were in the apartment.

Respondent Hernandez stated they left their command at 1830 and traveled to the vicinity of [REDACTED]. ESU entered the apartment around 1900 hours. Since Respondent Rohan was the case officer, he pointed to the door to verify that ESU entered the right apartment. Respondent Hernandez further explained that it took ESU 15 to 20 minutes to secure the apartment. Once ESU had the apartment secured, they went out and informed Respondent Hernandez that they had a female secured, that there was a child in the apartment and that the dogs were secured in the back. Respondent Hernandez remembered that as soon as he had entered the apartment there was dog feces and a smell of urine. At that time, Respondent Hernandez's field team entered the apartment as well. Two people from the team stayed outside guarding the van. Palumbo entered the apartment but was only there briefly. Palumbo's assignment was to supervise the entry and make sure it was conducted safely. Once the apartment was secured, Palumbo left at about 1945 hours.

Respondent Hernandez testified that once inside the apartment he looked around, assessing the apartment. In one of the bedrooms he saw Hall, in handcuffs, and her son. At that point, one of the detectives advised Respondent Hernandez that one of the dogs was awaking, and that ESU needed to be contacted to sedate it. ESU arrived 15 minutes later, during which time the search was put on hold until Hernandez was sure the

apartment was secure. Hernandez admitted to having a conversation with Hall. He explained to Hall that she was under arrest, that she would be escorted to the precinct and that once she was there, she would be explained the reasons for the arrest. Hall was presented with the search warrant and a SAP warrant by Respondent Rohan. The SAP warrant was an outstanding warrant Hall had for an open container summons that she had failed to answer in court.

Hernandez proceeded to ask Hall who else was in the house and who was her boyfriend. He said that Hall replied sarcastically "I don't know what you are talking about." At about 1945 or 1950 hours, Respondents Gamble and Harris were directed by Respondent Hernandez to take Hall in the van to the 77 Precinct and to get more kennels for the remaining dogs. Respondents Gamble and Harris did so and returned a short time later. Hall's son was outside in a car with another member of the team.

Once the apartment was secured, Respondent Rohan conducted a search while Respondent Hernandez supervised. During the search, they found one "zip lock" (of marijuana), a pipe with residue, and capsules believed to be a controlled substance. All the items were vouchered as evidence. Respondent Hernandez confirmed that Hall was arrested for child endangerment, criminal possession of marijuana, and criminal possession of a controlled substance. The criminal possession of a controlled substance was the original charge, and was for a liquid medication that was believed to have been given to the dogs. Respondent Hernandez agreed that at first he did not know what the liquid was. The bottle did not have a label either. Respondent Hernandez made notifications to ACS, regarding the child, and to the Animal Care and Control (ACC)

regarding the dogs. Respondents Gamble and Harris were directed by Respondent Hernandez to transport the dogs to ACC.

Respondent Hernandez denied that he ever left the apartment at any point, that he ever went to [REDACTED], or that he had ever interacted with Kinsler. Respondent Hernandez stated that he left [REDACTED] at 2100 hours and returned to the 77 Precinct. At the precinct, he directed Respondent Huntley and Brian to make sure the notifications were made and then he went back out to do more enforcement. Eight additional arrests were made that night as a result of buy-and-bust operations. By 2245 hours, he was back at the 77 Precinct.

Looking at the 77 Precinct Command Log entries (DX 11) relative to Friday, July 6, 2007, Respondent Hernandez agreed that it indicated that Hall was brought into the precinct at 2000 hours and that he was not present at the precinct at the time. When asked if he made any entries that night, he stated he did. Respondent Hernandez denied stamping the log at 2000 hours, and stated that it was the desk sergeant who did it. He said that when he arrived at the precinct at 2245 hours the stamp was already in the book, with Hall's pedigree information already written in. He admitted that upon arriving at the precinct, he stamped the other eight arrests brought in that night. Then Respondent Hernandez was questioned about an entry made in the Command Log at 2000 and he denied having anything to do with that entry. He reiterated that the entry was already there when he arrived at 2245 hours.

Respondent Hernandez further stated that on July 6, 2007, he had a warrant to go into [REDACTED] and arrest anyone inside the location, anyone

going in or out of the location and the subject, J.D. [REDACTED]s. He admitted not being authorized to enter any location other than [REDACTED] to arrest J.D. [REDACTED] or J.D. [REDACTED] and acknowledged that if J.D. [REDACTED] or J.D. [REDACTED] would have been arrested at another apartment, say [REDACTED], it would be dismissed.

Respondent Hernandez testified that he was notified to appear at CCRB in November 2007. The notification contained the arrest and incident date but no information about the complainant. His team had made nine arrests that day, and he did not know which arrest his CCRB interview pertained to before he got there.

Once at CCRB, Hernandez was informed that he was being charged with discourtesy and abuse of authority. Prior to the interview, he was not aware that the allegation pertained to the address, [REDACTED]. Hernandez stated that he found out about the secondary location four months after the search warrant, during the CCRB interview. He learned about the allegations of going into [REDACTED] when, "midway through the middle of the interview they said were you at some apartment on [REDACTED]." He answered, "No." Respondent Hernandez stated that he was informed that the allegations that he made false statements and impeded an investigation were not substantiated, however, the allegation that he went to a secondary location was substantiated. During the CCRB investigation, Respondent Hernandez was offered an opportunity to accept a Command Discipline, but he refused it because that would have meant that he admitted guilt and he stated he was never in the second location.

Respondent Hernandez further stated that Respondent Rohan was the case officer, the arresting officer, and the officer assigned to point out the apartment. When he was

asked if Respondent Rohan remained with him “throughout the whole execution of the search warrant,” he agreed. He denied seeing Respondent Rohan go to [REDACTED]. He also stated that, to his knowledge, Respondents Huntley, Harris, and Gamble did not acquire any knowledge that would lead them to enter [REDACTED].

On cross-examination, Respondent Hernandez stated that there was a complaint involving Hall’s name but she was not included on the application for the search warrant. Respondent Hernandez explained that she was not in the warrant because the CI bought marijuana from “J.D. [REDACTED] with glasses.” Respondent Hernandez admitted that the three times the CI bought drugs from the apartment it was approximately about the same time, approximately 1400 to 1432 hours. Respondent Hernandez further agreed that the warrant was not for Hall but for J.D. [REDACTED] and the apartment. He stated that when his team was preparing for the execution of the warrant, they discussed the description of J.D. [REDACTED], but not the description of Hall.

Respondent Hernandez said it was approximately 1900 hours when ESU first knocked down the door at [REDACTED]. Then he was asked if it could have been 1830 hours and Respondent Hernandez denied it and stated that his team went in 20 minutes after ESU first entered the apartment. He explained that his memo book entry indicated that occurred on July 6, 2007, at 1900 hours. He said his memo book did not state 1920 or 1930 hours because ESU went into the apartment at 1900 hours and eventually an arrest was made and contraband found, though not at exactly 1900 hours.

Respondent Hernandez explained his memo book entries by saying, “Well, I called it a positive search warrant at 1900 as soon as I make the entry (into the apartment)

I am not making memo book entries I've got a lot of things going on." Respondent Hernandez admitted making memo book entries later on that night during the same tour, but not contemporaneous with the execution of the search warrant.

Respondent Hernandez admitted not knowing J.D. [REDACTED]'s real name and admitted asking Hall about him. He said he asked her, "Where is your boyfriend?" although he knew that he could not arrest him at another location. Regarding the 77 Precinct Command Log entry (DX 11), Respondent Hernandez agreed the notation of 2000 hours indicated the time Hall was physically present at the precinct, and that that was the practice of the precinct. Respondent Hernandez stated that the desk sergeant would stamp the log and write in information such as the subject's name, location of arrest, and the time the arrest was brought into the precinct. Respondent Hernandez testified that the 2000 entry was written by the desk sergeant and not himself. He agreed that he did not see the sergeant make the entries.

Respondent Hernandez stated that all the officers that were in the court room were part of his team but that there were a few detectives who participated in the execution of the warrant who were not present in the court room. Respondent Hernandez stated that on the incident date, a van and three or four other cars were used but that there was no SUV used. When asked if a black SUV was assigned to his module, he did not recall. He did not recall what type of vehicle Palumbo had that day. When asked if he was familiar with the address [REDACTED], he denied knowing that the address existed. He explained that the block in front of the 77 Precinct is a residential and commercial

area. However, he denied knowing the exact address across the street from the 77 Precinct or the address of the 77 Precinct itself.

On re-direct examination, Respondent Hernandez confirmed that Hall had an active SAP warrant for beer drinking, and admitted mentioning this and Hall's name during the tactical meeting prior to entering the location. Respondent Hernandez also stated that he made entries in his memo book of the events of that day "late at night, maybe one in the morning." He confirmed that at the time he made the entries in his memo book, he was already aware of the outcome of the search warrant.

Respondent Detective Darnay Harris

Respondent Harris has been a member of the Department for 11 years and a detective for about five years. He is currently assigned to Brooklyn North Narcotics, and has been there for five years. He worked in various assignments at the 90 Precinct, the 73 Precinct, and the 77 Precinct before being assigned to Narcotics. In his career, he has made 500 to 600 arrests and taken part in approximately 200 narcotics-related search warrants. Respondent Harris stated that he had a prior substantiated complaint regarding force. Before joining the Department, Respondent Harris was a member of the United States Marine Corp.

On July 6, 2007, Respondent Harris worked a 1427 to 2300 tour with Respondents Gamble, Hernandez, Huntley, Rohan and other members of his team. Respondent Harris had executed approximately 75 to 80 search warrants prior to that day with the members of his team. He considered his team to be very active. Respondent

Harris stated that one bag of marijuana is not considered to be a large seizure. On the day in question, Harris was assigned to prisoner transport, and was part of two search warrants that were to be executed that day.

Respondent Harris affirmed that the search warrant on [REDACTED] [REDACTED] took place at 1900 hours. Harris remembered ESU entering the premises and securing it. Then he received a call to go inside the apartment and retrieve the prisoner. He did not recall who called him. Once inside the apartment, he, along with Respondent Gamble, was instructed by Respondent Hernandez to transport the female prisoner to the 77 Precinct and bring back kennels for the dogs. He remembered that the apartment smelled like dog feces and urine. Harris remembered that the transport had to be done quickly because one of the members of the team advised that one of the dogs was not contained.

Once Hall was in his custody, Respondent Harris escorted her to the van, and then drove Hall to the 77 Precinct, where Respondent Harris reported to the desk sergeant. He explained the situation to the sergeant, told the sergeant that his supervisor was still at the scene and if it was possible to lodge Hall in the precinct. The desk officer had the responsibility to make the Command Log entry since Respondent Hernandez was not present. He acknowledged that it was the desk officer, and not Respondent Hernandez, who made the Command Log entries.

Respondent Harris denied that Hall was taken to [REDACTED], and affirmed that Hall was taken straight to the precinct and that no stops were made. He further explained that once Hall was lodged in the precinct, he and Respondent Gamble

proceeded to get the dog cages and then left. He agreed that Hall and Kinsler's testimony about them being at [REDACTED] was not accurate. Respondent Harris testified that, to his knowledge, Hall was not taken out of the cell at the precinct. Once again Respondent Harris affirmed that Hall was taken straight to the 77 Precinct. He also stated that prior to this, he did not know the address [REDACTED].

Respondent Harris admitted testifying to IAB concerning this case but denied being interviewed by CCRB. He acknowledge having two formal hearings, and in both giving the same information about the whereabouts of Hall both times. He did not have anything new to add to the two previous testimonies. Respondent Harris confirmed that once he and Respondent Gamble returned to the scene, they were instructed to take the dogs to the pound.

Respondent Harris said that the team did not ever execute the second search warrant, but admitted they had intentions to do so. He denied ever meeting Kinsler, or meeting Hall prior to that day, or being familiar with [REDACTED] prior to the search warrant. He denied having any knowledge of any members of his team taking Hall to Kinsler's apartment. Respondent Harris testified that he has been truthful throughout the whole proceeding.

On cross-examination, Respondent Harris further testified to being part of the team that executed the search warrant and not part of the team that made the initial entry. He affirmed that his assignment for the day in question was the prisoner van. Harris further explained that at the time of the execution of the search warrant, he was standing outside the prisoner van in the vicinity of the target location. He acknowledged receiving

a call to proceed into the building to transport the prisoner, but did not recall the time. He denied knowing the time when he first entered the apartment.

Respondent Harris said his partner, Respondent Gamble, was already inside the building when he entered the location. He admitted peeking inside the apartment but denied going in, and affirmed that Hall was already standing in the building's hallway. He remembered Hall was in handcuffs and a few members of the team being around, but could not recall exactly who. He agreed that he was instructed by Respondent Hernandez to lodge Hall at the 77 Precinct and to take the dogs to ASPCA. He admitted not having a watch on the day in question and claimed that he was only able to go by the time of arrest, which was 1900 hours.

Respondent Harris reaffirmed that he and Respondent Gamble took Hall to the 77 Precinct. He also stated that he did not recall the time nor knew the distance between Hall's apartment and the 77 Precinct. However, he stated that it could take between five and ten minutes if there was no traffic. He stated that there usually is traffic around that area at 1700 hours, especially on a Friday night. When asked if the time written on the Command Log of Hall's arrival corresponded with his recollections of the events, he answered, "If that is what the desk officer put in there." He affirmed that he had no recollection of the time or the desk officer's name but he was sure that the desk officer made the entry.

Respondent Detective Warren Rohan

Respondent Rohan has been a member of the Department for nine years and has been a detective for two years. Respondent Rohan started his career at Police Service Area 6, and was transferred to Narcotics in 2006. He is currently assigned to Brooklyn North Narcotics. He has approximately 800 narcotics-related arrests and has executed about 75 search warrants. He affirmed that prior to this case, he had not received any disciplinary charges.

Respondent Rohan testified that on July 6, 2007, he worked a 1200 to 2027 tour. He was assigned to be the arresting officer for the execution of the search warrant and agreed with Respondent Harris that they had more than one search warrant to execute that day. Respondent Rohan admitted to having a tactical meeting and being present along with the other respondents, and to discussing Hall's SAP warrant in the meeting. Then the counsel entered into evidence RX A to establish that there was a discussion of Hall's SAP warrant at the tactical meeting.

Respondent Rohan stated that he was the arresting officer and was in charge of conducting the search of the apartment. He affirmed that the search took place at 1900 hours. Once inside the apartment, Respondent Rohan advised Hall that she was under arrest and showed her the search warrant for the apartment and the SAP warrant. Hall's demeanor was "a little hostile," and she said, "Somebody is going to pay for this," and she could not believe there was a warrant to search her place.

Respondent Rohan agreed that he was the handler of the CI in this case. He explained that in the discussion he had with the CI, the CI described Hall, explained that

there was a child in the apartment and that there were numerous dogs, too. The CI also revealed to him that Hall was involved in the buys; she knew what was going on in the apartment. Respondent Rohan agreed he was the one who recovered the narcotics from the apartment. He explained that during the search of the apartment, drugs were recovered from the bedroom, glassines were recovered in a separate room and a marijuana pipe with residue was recovered as well.

Respondent Rohan described the apartment as filthy, with dog feces all over the floor and a smell of urine. When asked about the child, he stated the child was escorted out of the apartment and secured with officers in one of the vehicles. Respondent Rohan denied knowing Kinsler or ever going to [REDACTED]. He said that Hall and Kinsler's testimony regarding the events of the day in question were not true, and affirmed that the testimony he gave to CCRB and at a Department hearing were accurate and truthful. Respondent Rohan claimed that throughout the execution of the search warrant, he was with Respondent Hernandez, and that they were never apart for more than 30 seconds.

On cross-examination, Respondent Rohan further stated that on July 6, 2007, his hair style was different than it is presently, as he had dreadlocks then. He reaffirmed that he was the arresting officer that night, and explained that he was the one who applied for the warrant. The warrant was for [REDACTED] and a subject named J.D. [REDACTED]. He had used the name J.D. [REDACTED]s because he did not know the actual name of the male suspect. Respondent Rohan established that J.D. [REDACTED]

was selling drugs from the apartment, and that a CI purchased drugs from J.D.

██████████ three times at that apartment.

When asked about Hall's involvement in regards to the search warrant, Respondent Rohan agreed she was not the subject of the warrant. Although the CI never reported purchasing marijuana from Hall, it was established that she knew what was going on. Respondent Rohan confirmed that ESU made the initial entry at around 1900 hours. Then, about 20 minutes later, his team entered the apartment. He noticed Hall was in the hallway handcuffed because there were still dogs inside. At that point, Respondent Rohan claims, he showed Hall the search warrant for the apartment and the SAP warrant but did not inquire about J.D. ██████████. He said it was not important for the team to locate this individual because only a bag of marijuana was recovered, so "he wasn't imperative."

Respondent Rohan stated that he was not familiar with the address ██████████ ██████████ and denied knowing that it was in front of the 77 Precinct. He agreed that the 77 Precinct was used as the location to process the arrest because the activities occurred in the confines of that particular precinct. Therefore, Hall and the other arrests were taken there that night. Respondent Rohan confirmed that he was not present when Hall was taken to the 77 Precinct because he was still at ██████████. He was in the apartment from 1920 until 2130 hours and arrived at the 77 Precinct at 2140, then went out for more enforcement. When asked about the vehicle used that night, he answered, "I remember what vehicle I used to get to the search warrant but I don't know the vehicle like we change cars." He agreed that a black SUV was assigned to the team that night.

Respondent Detective Ebony Huntley

Respondent Huntley has been a member of the Department since July 2002, and a detective for three years. Respondent Huntley has worked in the 19 Precinct, Manhattan North Task Force, the 26 Precinct, Brooklyn North Narcotics and is currently assigned to Bronx Narcotics. Respondent Huntley has acquired 300 narcotics-related arrests in her career and could not remember how many search warrants she participated in. Prior to this case Huntley has never had any formal disciplinary charges. Respondent Huntley confirmed that she was up for promotion to become a sergeant.

On July 6, 2007 Respondent Huntley stated that she was working a 0700 by 1533 tour. Respondent Huntley was working as an investigator; she was the arresting officer the previous night. On July 6, 2007, she was asked by Respondent Hernandez to be a member of the field team for that search warrant. She attended the tactical meeting at about 1830 hours. After the meeting, she was at Brooklyn North Narcotics doing arrest paperwork.

Respondent Huntley's role during the execution of the search warrant was front security. Once at the location Respondent Huntley was instructed by Respondent Hernandez to get Hall dressed. She stated that the conditions of the apartment were "pretty bad"; there were feces all over the floor and a stench of urine. She was instructed to take care of the child, since Hall was under arrest. She confirmed that she escorted the child, Hall's son, out of the apartment to a vehicle. She took him to the precinct, where she called ACS in regards to the child. Respondent Huntley describe Hall as being erratic and angry upon their entry.

Respondent Huntley affirmed that she has never had any contact with Kinsler nor [REDACTED]. She denied that she or any members of the team went to [REDACTED]. Respondent Huntley agreed that she was interviewed by CCRB and at a Department hearing, and stated that, in both interviews, she was truthful and accurate in her testimony. When asked about her failure to submit her memo book to CCRB, she explained that the memo book entries were requested once by CCRB and another time at her Department hearing. She believed the copies of the memo book were forward by IAB from the hearing, and not forwarded by her.

Huntley further explained that at the time the memo book was requested she had misplaced it. All she had was a calendar where she had written the events of that day, like she normally does. Therefore, she submitted a sheet with the events until she was able to recover the memo book. Once she recovered the memo book, she copied her transcriptions and submitted it. She denied that she knew that sending an unofficial document was inappropriate with respect to Department guidelines. When questioned about Hall's attitude with respect to her child, Respondent Huntley said that Hall displayed "dissatisfaction," and asked what was going to happen with her son. Respondent Huntley explained to her that ACS was going to be notified. When asked if she was truthful and accurate throughout the process with the Department and CCRB, she agreed she was.

On cross-examination, Respondent Huntley testified that she had an interview with CCRB on September 4, 2007 and that prior to the interview she was notified to appear on that date. She admitted knowing that her memo book was necessary at that

interview and admitted not having it. Respondent Huntley further explained that at that time she had misplaced her memo book; therefore, she went to the CCRB interview without it. When asked if any efforts were made from September 4, 2007 until April 10, 2008 to find her memo book, she answered, "I had that one request to go down and prior to the interview at CCRB I had been in a car accident so I couldn't remember where I was in an accident I was out for a couple months so I didn't remember where I place it."

Respondent Huntley acknowledged that during that time period she was aware that CCRB wanted her memo book. When told that CCRB received it on April 10, 2008, she did not recall if that was the exact date, or the method that it was sent to CCRB. When asked if the memo book CCRB received was the original, she stated, "I know there were two I don't know which one they received." Huntley further explained that she only had one memo book but had copied the events on her calendar at the time her memo book was misplaced, and she did not know whether CCRB had received copies of her calendar transcriptions or her memo book.

When asked if the memo book sent to CCRB was a "re-creation" of her memo book, she answered, "I don't know which one they received but that's possible." Respondent Huntley further explained that she made a copy of the events based on her calendar. She did not recall if the memo book sent to CCRB was the re-created copy of the memo book, because she was unclear if it were she or IAB who sent the copy. When Respondent Huntley was shown a photocopy of her Activity Log (DX 9), and she acknowledged it was the actual memo book, not the re-created one. She additionally explained that the book was misplaced due to her own error.

Respondent Detective John Gamble

Respondent Gamble has been a member of the Department for 15 years. He has been a detective for five years and has worked in the Narcotics Division for the same amount of time. Prior to working in Narcotics, he worked in various capacities in the 32 Precinct. In his career, Respondent Gamble has made a few thousand narcotics-related arrests and executed over 200 search warrants. Prior to this matter, Respondent Gamble has never been subjected to any disciplinary action.

On July 6, 2007 Respondent Gamble worked a 1137 by 2000 tour. On that particular day he was assigned as the recorder for the prisoner van and his partner was Respondent Harris. Respondent Gamble stated that he arrived at [REDACTED] at around 1900 hours and sat in the vehicle in front of that location. After the warrant was executed, Respondent Gamble went inside the apartment and observed "dog feces all over," a female under arrest, a child and about ten pit bulls. He said he and Respondent Harris were instructed by Respondent Hernandez to take Hall to the 77 Precinct, lodge her, pick up dog cages, and return. He denied that he made any stops or went to [REDACTED]

Respondent Gamble denied that he had met Kinsler prior to the present day, that her testimony was truthful, or that he had any knowledge of any members of the service bringing Hall to [REDACTED]. When asked if he was truthful and accurate in both hearings with IAB, he agreed he was. When questioned if Respondent Harris' testimony on how the events took place was truthful, he agreed. Respondent Gamble affirmed that he was in charged of the pit bulls, and explained that there were three or four adult pit

bulls, about five puppies and they were all less than full grown. He said that IAB interviewed him twice.

FINDINGS AND ANALYSIS

In this case, two different versions of events have been presented. There is no extrinsic evidence such as a video recording of the Respondent's entering the [REDACTED] building. Either the complainants, Hall and Kinsler, are to be believed or the Respondents are to be believed. In assessing credibility one important rule to consider is that it is not the number of witnesses that testify for one side or the other that is critical but the quality and believability of the evidence that controls. Thus the fact that the Respondents have, collectively, five witnesses and the Department has two does not, in and of itself, matter. What is required is an assessment of the testimony and related evidence.

At first blush the testimony of Hall and Kinsler, the complainants herein, appears to be compelling. Hall, a school teacher, explains that she was arrested in connection with the execution of a search warrant at her home. She was pressed by the police to provide the name and whereabouts of her boyfriend, whose street name, she testified, is [REDACTED] and who was the subject of the search warrant. In exchange she was promised that the Administration for Children's Services would not be notified and she would not lose custody of her twelve-year-old son who was present in the apartment.

Out of fear about her son, she said she agreed to cooperate. Hall took the police to the [REDACTED] location where her boyfriend's mother, Kinsler, lived. Both Kinsler

and Hall testified that Kinsler was at the window when Hall arrived in the custody of Respondents Hernandez, Huntley and Rohan, who were in plainclothes. Kinsler asked Hall if she wanted to come up and then Kinsler went downstairs, apparently to open the door. When Kinsler met them at the front door the officers went past her, ran up the stairs and entered her apartment, the door of which she had left ajar.

The problem with this presentation is that on cross-examination a number of inconsistencies appeared.

The most significant inconsistency has to do with what allegedly happened in the [REDACTED] location. Hall said that she was held in the bathroom and that Respondent Huntley, the only female officer, was with her the entire time inside the bathroom. Kinsler agreed that Hall was in the bathroom but from there the facts diverge. Kinsler testified:

I was [taken to another part of the apartment] because the female officer asked me if I had a picture of my son I went to my bedroom to see if I could find a picture she followed me to my bedroom and we stood in there and talked about for 10 minutes 15 minutes while the other two officers stayed close by the bathroom where Miss Hall was at.

Thus while Hall said that Respondent Huntley was in the bathroom with her the whole time in the [REDACTED] apartment, Kinsler said that Respondent Huntley was with her for that same period of time, in the bedroom. Additionally Kinsler placed the other officers, Respondents Rohan and Hernandez, outside the bathroom while Hall was in the bathroom alone.

The Respondents claim that the story about some of them going to the [REDACTED] apartment is a complete fabrication and an inconsistency of this magnitude certainly gives some reason to doubt the claims of Hall and Kinsler.

There are other, perhaps less important, inconsistencies. For instance Kinsler testified at this trial that as to the CCRB complaint, she had “no idea what Ms. Hall did” and that she initiated a CCRB complaint on her own. Kinsler was then confronted with her testimony at the CCRB interview where she acknowledged that Hall had told her to call CCRB. Hall, moreover, had testified that she had told Kinsler to file the CCRB complaint.

Another inconsistency has to do with how the officers gained entry into the [REDACTED] building. At trial both Hall and Kinsler testified that Kinsler was sitting at the window and saw Hall get out of a car with the plainclothes officers. She invited Hall up and went down to open the door. Yet during the cross-examination of Hall, the Department acknowledged that in her interview with IAB, Kinsler had said that the officers rang the bell and that she came down, opened the door and saw Hall. Indeed it appears that during that interview there was additional discussion about her first learning of the incident when the buzzer or bell was rung.

To be sure, Kinsler testified at this trial that her statement to IAB was equivocal and she acknowledged that it was in error. However, the discrepancy between that statement made soon after the incident and her firm testimony at trial several years later raises questions, not only about the accuracy of her trial testimony but whether it was the result of an effort to conform her version with Hall's.

In considering the effects of inconsistencies on credibility it is important to note that there were no inconsistencies in the testimony of the Respondents. This is particularly significant in that there are five Respondents, some of whom were interviewed multiple times. Moreover, Respondent Hernandez claims to have been blindsided in his initial interviews at CCRB as to what the subject of the interview was. This is borne out by a review of the transcript of Hernandez's CCRB interview (DX 2). At the outset of the interview Hernandez was told that he was being interviewed, "on the complaint of Loren Hall who alleges that at approximately 6:30 p.m. on July 6, 2007 *in the vicinity of* [REDACTED], (emphasis added), the following misconduct occurred; abuse of authority and discourtesy." Hernandez was first questioned about where Hall was taken after she was removed from her apartment more than halfway into the interview and the allegation about going to [REDACTED] was not disclosed to him until after he testified that Hall had been taken directly to the 77 Precinct. Whether the misleading introduction and mode of questioning was appropriate or not is not before this Court. Proceeding in that fashion, however, deprived Respondent Hernandez of the time to create a cover story if he were lying. It is therefore worth noting that his answers at that interview matched with his testimony at this trial and the testimony of every one of the Respondents at CCRB and IAB. Additionally, it should be noted, Hall testified that she complained to CCRB about lost property, which is specifically what Respondent Hernandez said he thought the CCRB interview was about.

Also significant is the fact that the complainants' version creates a scenario that does not make sense. To begin with, if the complainants are telling the truth,

Respondents Hernandez, Rohan and Huntley left Respondents Gamble and Harris alone in the [REDACTED] apartment with multiple pit bull dogs that were rousing. The three officers then would have gone off on a side trip to see if they could catch [REDACTED]. Because no one could have known how long it would take to catch [REDACTED], that would have left Respondents Gamble and Harris in a potentially dangerous situation.

Further, in Kinsler's version of the events at her apartment on [REDACTED], Hall was held in the bathroom with the two male officers guarding her outside the door. It would have been very reckless conduct for the officers to leave a prisoner without direct supervision, particularly having taken that prisoner to a location where they had no business being. Such conduct, therefore, is highly unlikely.

Additionally there is no clear motive for the team to have arrested [REDACTED]. He could not have been charged with possession of the marijuana recovered in the [REDACTED] [REDACTED] apartment as he was not present at the time of the recovery of the marijuana. Nor could he be arrested for sale of marijuana to the confidential informant as that would have resulted in disclosure of the informant. Thus there was no point in locating [REDACTED] at that time.

While there are practical problems with the complainants' version, the Respondents' version makes sense. Respondents Gamble and Harris were assigned to the prisoner van and testified that Hall was turned over to their custody and they took her to, and lodged her at, the precinct. That would have been their job. Then, they said, they returned to the [REDACTED] location with cages for the dogs, which also makes sense given the situation with the rousing pit bulls.

Respondent Rohan testified that he stayed at the apartment and conducted an organized search. That would have been his job. Respondent Hernandez remained to supervise and Respondent Huntley remained to assist, again that is consistent with their responsibilities.

In attempting to assess credibility, another factor to consider is interest. The Respondents have an obvious interest in the outcome of this case and therefore are considered interested witnesses at the trial. However interest is a complex issue and all its implications need to be considered.

Respondents Gamble and Harris were not originally considered subjects. They were not interviewed by CCRB and in their first interviews with IAB they were considered witnesses and not subjects. As such, at their first interview, they were not interested witnesses. Indeed their interest was best served by telling the truth. If Respondents Hernandez, Huntley and Rohan had gone off with Hall and left them behind in the [REDACTED] apartment, Respondents Gamble and Harris had nothing to lose by telling that to IAB. They were well aware, and indeed specifically told, that if they lied they would be subject to charges that could result in the loss of their jobs. So the interest of Gamble and Harris had in supporting the complainants' story was quite high – if that were the truth. The fact that they did not is strong evidence that the Respondents' version is the truth.

Respondent Hernandez testified that, before his formal interview at IAB, he was offered a Command Discipline and the loss of ten vacation days. He said he declined that because he was not guilty. He was then subject to an Official Department Interview by

IAB and was warned that if he lied he might face termination. Nevertheless he denied knowledge of the [REDACTED] apartment.

Respondent Hernandez had a strong interest in admitting to taking Hall to the [REDACTED] apartment if that was the truth. Similarly, Respondents Huntley and Rohan were told that they could face termination if they told a lie at their Official Department Interview. Nevertheless they denied going to the [REDACTED] apartment.

It is more difficult to measure what interest, if any, Hall or Kinsler might have had. Certainly Kinsler seems to have no interest but she could have been motivated to help Hall, who appears to be a friend (she testified that when she saw Hall in the street she invited Hall up to the apartment). Additionally Hall is still dating her son. She might also have been motivated to cause harm to the officers who apparently wanted to arrest her son. Similarly Hall might be motivated to harm the officers who stormed into her apartment, arrested her, reported her to ACS and attempted to arrest her boyfriend. But questions of interest, such as this, are speculative and fail to explain the specific and elaborate allegations in this case.

There is another problem with Hall's version of events. While the officers all claim that the apartment was a mess with dog droppings on the floor and foul smell in the air, Hall claims she had just cleaned the apartment before the raid. If the apartment was clean and only a small amount of marijuana found, there was no reason for her to be concerned about a notification to ACS. If Hall were telling the truth about the condition of the apartment, why would she have been so worried that she cooperated with the police and subjected her boyfriend to arrest? Hall claimed to have cooperated reluctantly

but if she were telling the truth, there was really no reason to cooperate. It would appear that there is an inherent inconsistency in her story.

The strongest argument made by the Department for the credibility of the complainants was the identification of the officers by Kinsler. If the Respondents' version of events is true, Kinsler would never have met any of these officers, yet she was able to identify, in Court, two of the three officers she and Hall claim entered her apartment. With regard to the identification of Respondent Hernandez, he was the only male Hispanic seated among the Respondents and he would have been fairly easy to identify as the male Hispanic police officer. Similarly, Respondent Huntley was the only female officer seated among the Respondents and would have been fairly easy to pick out on that basis. But the remaining three Respondents are African-American males. Kinsler said that the black officer who came into her apartment had dreadlocks. Since none of the officers in Court had dreadlocks she said she could not identify that officer and did not even try to do so.

It is clear that Respondent Rohan had dreadlocks at the time of the incident but did not at the trial. Hall, who by any version of events had an opportunity to see Respondent Rohan on the day of the incident, easily and correctly identified Respondent Rohan despite the fact that he no longer had those dreadlocks. These circumstances raise questions about the value of Kinsler's identification testimony in supporting the veracity of the Hall/Kinsler version of events.

As to the identifications Kinsler made at CCRB, Bufter, the CCRB supervisor who testified at this proceeding, indicated that photo identifications were made in a

proceeding that did not involve the use of fillers. Even under those circumstances, Bufter agreed Kinsler could not identify Respondents Huntley and Rohan.

More significant is the fact that Kinsler lives directly across from the 77 Precinct and by her own testimony frequently sits at the window overlooking the street. The complaint to CCRB in this case was first made a week after the incident and there was ample opportunity for Hall to have identified the officers to Kinsler before the complaint was filed.

To be clear, the Court is not making a finding that this occurred, merely that it is a possibility. Obviously one side or the other in this case has gone to some trouble to make up a story. The possibility that an identification could have been fabricated further undermines the argument that the correct in-court identification by Kinsler of Respondents Hernandez and Huntley is proof of the complainants' veracity.

There were other arguments raised by counsel for the Respondents that need to be addressed. Claims that the filing of the CCRB complaint was intended to interfere with the criminal case against Hall, and that Hall's attorney was somehow involved in that strategy are unsupported by any evidence. Additionally, the fact that [REDACTED] is much younger than Hall is wholly irrelevant.

Considering the relevant and probative evidence, it is apparent that neither side has provided decisive proof of the truth of its version of events. In the end, this case remains a matter of credibility. In making a credibility assessment it must be noted that there are a number of significant questions that arise in the version of events put forward by Hall and Kinsler. The Department bears the burden of proof and it has thus failed to

establish its version of events by a preponderance of the evidence. Consequently the Respondent Hernandez is found Not Guilty of the single specification in Disciplinary Case No. 84811/08 which charges, in essence, that he supervised an unauthorized entry into Kinsler's apartment on [REDACTED].

In Disciplinary Case No. 85224/09 Respondent Hernandez is charged under Specification Nos. 1 & 3 with "Making False Statements" and under Specification Nos. 2 & 4 with "Impeding an Investigation." Specification Nos. 1 & 2 deal with a statement he made to the CCRB on November 15, 2007 and Specification Nos. 3 & 4 deal with a statement he made at an Official Department Interview on April 15, 2009. The substantive conduct in all four specifications is identical, each specification alleges that the misconduct was his statement that on July 6, 2007 between 1900 and 2100 hours "neither he nor Ms. Loren Hall were present at [REDACTED] Kings County."

Disciplinary Case No. 85655/09 involves Respondent Gamble and Disciplinary Case No. 85654/09 involves Respondent Harris. The charges are essentially the same. Each is charged under Specification No. 1 with "Making False Statements" and under Specification No. 2 with "Impeding an Investigation." Both specifications deal with a statement they made at an Official Department Interview. Harris's interview was on July 6, 2009 while Gamble's interview was on July 30, 2009. The substantive conduct in all of the specifications is identical and each specification alleges that the misconduct was the Respondent's statement that on "July 6, 2007 during the execution of a search warrant at [REDACTED] Kings County he removed Ms. Loren Hall from [REDACTED] [REDACTED], to a prisoner van which he used to transport Ms. Hall to the 77th Precinct. [The

Respondent] also denied knowledge that a secondary search was conducted at [REDACTED] Apartment Six ([REDACTED] Kings County.”

In Disciplinary Case No. 85486 Respondent Huntley is charged with “Making False Statements” under Specification No. 3 and “Impeding an Investigation” under Specification No. 4. These specifications deal with a statement she made at an Official Department Interview on January 21, 2009. The substantive conduct in both specifications is identical and each specification alleges that the misconduct was the Respondent’s statement that on “July 6, 2007 during the execution of a search warrant at [REDACTED], Kings County, she removed Ms. Loren Hall from [REDACTED] to a prisoner van which transported Ms. Hall to the 77th Precinct. Det. Huntley also denied accompanying Ms. Loren Hall to [REDACTED], Kings County and denied entering Apt. [REDACTED] inside of [REDACTED].”

In Disciplinary Case No. 85485/09 Respondent Rohan is charged with “Impeding an Investigation” under Specification No. 1 and” Making False Statements” under Specification No. 2. These specifications deal with a statement he made at an Official Department Interview on January 21, 2009.. The substantive conduct in both specifications is identical and each specification alleges that the misconduct was the Respondent’s statement that he “denied entering a private dwelling at [REDACTED] in Kings County and denied that other members of the service entered said location...[and] denied that a prisoner known as Loren Hall was transported to [REDACTED] in Kings County.”

Counsel for all Respondents have moved to dismiss all of these charges as they claim that they are “mere denials” and as such the Respondents are not properly subject to charges under the Patrol Guide.

Procedure No: 203-08 of the Patrol Guide is entitled: Making False Statements. Contained within that section is the following provision which is apparently being relied on by the Respondents:

The Department will not bring false official statement charges in situations where, as opposed to creating a false description of events, the member of the Department merely pleads not guilty in a criminal matter, or merely denies a civil claim or an administrative charge of misconduct.

It is plain that the Respondents did not merely deny the allegations against them but presented an alternative version of events. In bringing its charges, the Department relied on the version of events put forward by the complainants, consequently the Department deemed the Respondents’ version to be false. That the Respondents’ version may well be true and that the Respondents may have had no alternative but to present their version of events in fulfilling their obligation to be truthful, does not mean that they are entitled to a dismissal of the charges under the “mere denial” theory. To do so would allow anyone who came in with an alternate version of events to claim “mere denial” and thus render the prohibition against false statement a nullity.

While the motion to dismiss is denied, the Court does find the Respondents Not Guilty of all of the abovementioned specifications because the Department has not established the truth of the Hall/Kinsler version of events by preponderance of the evidence.

In Disciplinary Case No. 85486/09, Respondent Huntley is charged under Specification No. 1 with “Impeding an Investigation” by continuously failing to provide copies of her memo book entries regarding the incident to CCRB. She is also charged under Specification No. 2 with having provided CCRB with re-created and inaccurate memo book entries regarding the incident.

Testimony on this issue came from Bufter and Respondent Huntley. Bufter states that it took a long time for Respondent Huntley to produce her memo book. Respondent Huntley agrees and testified that she had been in a car accident and was out of work for some time and could not find her memo book. She did however find it and produce it to the investigators and it is in evidence in this trial (DX 9).

While these facts are clear and undisputed, how they related to the charges against Respondent Huntley is another matter. As will be seen, these two specifications presuppose that Respondent Huntley and the other Respondents lied while Hall and Kinsler told the truth.

For instance, under Specification No. 2, Respondent Huntley is charged with providing “inaccurate memo book entries regarding the incident.” All of the entries in Respondent Huntley’s memo book correspond to what she and the other Respondents claimed about the incident. This Court has already ruled that the Department has not established the truth of the Hall/Kinsler version of events and therefore there is insufficient evidence to establish that the memo book was inaccurate. The Respondent Huntley is found Not Guilty of Specification No. 2.

LIEUTENANT EDWIN HERNANDEZ
DETECTIVE JOHN GAMBLE
DETECTIVE DARNAY HARRIS
DETECTIVE EBONY HUNTLEY
DETECTIVE WARREN ROHAN

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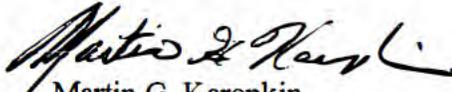
The charge in Specification No. 1 is "Impeding an Investigation." The word "impede" is defined as: "to interfere with or slow the progress of," (see Merriam-Webster's Online Dictionary). As to interfering, there is no indication that additional investigative steps had to be taken as a result of her conduct. Nor is there sufficient evidence to prove that she interfered with the investigation by providing false or misleading information, something that was assumed to be the case in the charges.

As to slowing down the investigation, while Bufter did testify that some months passed before Respondent Huntley produced any memo book, there is no testimony that her action delayed or slowed the investigation. Indeed the investigation seems to have gone forward without her memo book. The best evidence of this is that when the memo book was produced it was simply discounted as false, resulting in the charge contained in Specification No. 2, discussed previously. As a result of the lack of testimony or other evidence to sustain it, the Respondent is found Not Guilty of Specification No. 1.

Consequently, the Respondents should be found Not Guilty of the charges against them in all of the specifications before this Court.

Respectfully Submitted,

APPROVED
MAR 19 2010
RAYMOND W. KELLY
POLICE COMMISSIONER


Martin G. Karopkin
Deputy Commissioner-Trials