



POLICE DEPARTMENT

Jonathan Darche
Executive Director
New York City Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

April 14, 2020

POLICE COMMISSIONER'S PENALTY DEPARTMENTURE

Re: CCRB Case No. 201803342 regarding Police Officer Anthony Baresi, Tax No. 951522 (DADS No. 2018-19915), Police Officer Artur Espenberg, Tax No. 952713 (DADS No. 2018-19916), and Police Officer Sheila Ramos, Tax No. 953299 (DADS No. 2018-19917)

Dear Mr. Darche:

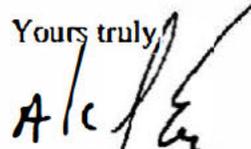
The Police Commissioner has reviewed and considered the entire record in this matter, including the video evidence, and he disapproves the findings of Assistant Deputy Commissioner Ryan. The Police Commissioner agrees with Assistant Deputy Commissioner Ryan that the officers had consent for their initial entry into the apartment. The Police Commissioner, however, disagrees with Assistant Deputy Commissioner Ryan in her finding that the initial consent to enter the premises was subsequently revoked. Although, Assistant Deputy Commissioner Ryan's opinion discusses at length the right to revoke consent to *search*, the issue here is whether consent to *enter* a premises to effectuate an arrest may be revoked after initially being voluntarily given.

New York courts do not recognize such a maxim and the New York City Police Department does not train its officers that consent to enter a premises in order to effectuate an arrest may be revoked after initially being voluntarily given. Moreover, Assistant Deputy Commissioner Ryan states in her opinion that, "the NYPD Student Guide chapter on Search and Seizure does not cite *Georgia v. Randolph*," and that, "no New York case has directly applied the holding in the context of officers entering [premises] to make an arrest."

Therefore, the Police Commissioner finds Police Officer Baresi, Police Officer
Espenberg, and Police Officer Ramos Not Guilty of the sole specification against each of them.

If you have any questions, please feel free to contact me at 646-610-5577.

Yours truly,

A handwritten signature in black ink, appearing to read 'J. Essig', written over the typed name and title.

James W. Essig
Assistant Chief
Commanding Officer
Police Commissioner's Office

JWE/pk



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

April 14, 2020

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Anthony Baresi**
Tax Registry No. 951522
Police Service Area 5
Disciplinary Case No. 2018-19915

Police Officer Artur Espenberg
Tax Registry No. 952713
Police Service Area 5
Disciplinary Case No. 2018-19916

Police Officer Sheila Ramos
Tax Registry No. 953299
Police Service Area 5
Disciplinary Case No. 2018-19917

The above named members of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on November 6, 2019, and was charged with the following:

DISCIPLINARY CASE NO. 2018-19915

1. Police Officer Anthony Baresi, on or about July 2, 2017, at approximately 2230 hours, while assigned to PSA 5 and on duty, inside of [REDACTED], abused his authority as a member of the New York City Police Department, in that he entered [REDACTED] without sufficient legal authority.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2018-19916

2. Police Officer Artur Espenberg, on or about July 2, 2017, at approximately 2230 hours, while assigned to PSA 5 and on duty, inside of [REDACTED], abused his authority as a member of the New York City Police Department, in that he entered [REDACTED], without sufficient legal authority.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

POLICE OFFICER ANTHONY BARESI
POLICE OFFICER ARTUR ESPENBERG
POLICE OFFICER SHEILA RAMOS

DISCIPLINARY CASE NO. 2018-19915
DISCIPLINARY CASE NO. 2018-19916
DISCIPLINARY CASE NO. 2018-19917

DISCIPLINARY CASE NO. 2018-19917

3. Police Officer Sheila Ramos, on or about July 2, 2017, at approximately 2230 hours, while assigned to PSA 5 and on duty inside of [REDACTED] [REDACTED] [REDACTED] abused her authority as a member of the New York City Police Department, in that she entered [REDACTED] [REDACTED] in New York County, without sufficient legal authority.

P.G. 203-1, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated January 13, 2020, Assistant Deputy Commissioner Nancy R. Ryan found Police Officer Anthony Baresi, Police Officer Artur Espenberg and Police Officer Sheila Ramos Guilty of all specifications in Disciplinary Case Nos. 2018-19915, 19916 and 2018-19917, respectively.

Having read the Memorandum and analyzed the facts of this matter, I disapprove the Guilty findings for Police Officers Baresi, Espenberg and Ramos.

I reviewed and considered the entire record in this matter, including the video evidence, and I disapprove the findings of Assistant Deputy Commissioner Ryan. I agree with Assistant Deputy Commissioner Ryan that the officers had consent for their initial entry into the apartment. However, I disagree with Assistant Deputy Commissioner Ryan in her finding that the initial consent to enter the premises was subsequently revoked. Although, Assistant Deputy Commissioner Ryan's opinion discusses at length the right to revoke consent to *search*, the issue here is whether consent to *enter* a premises to effectuate an arrest may be revoked after initially being voluntarily given.

New York courts do not recognize such a maxim and the New York City Police Department does not train its officers that consent to enter a premises in order to effectuate an arrest may be revoked after initially being voluntarily given. Moreover, Assistant Deputy Commissioner Ryan states in her opinion that, "the NYPD Student Guide chapter on Search and Seizure does not cite *Georgia v. Randolph*," and that, "no New York case has directly applied the holding in the context of officers entering [premises] to make an arrest."

Therefore, I find Police Officer Anthony Baresi, Police Officer Artur Espenberg, and Police Officer Sheila Ramos Not Guilty of the specifications against them.


Dennis P. Shea
Police Commissioner



POLICE DEPARTMENT

January 13, 2020

-----X

In the Matter of the Charges and Specifications	:	
- against -	:	
Police Officer Anthony Baresi	:	Case No.
Tax Registry No. 951522	:	2018-19915
PSA 5	:	
Police Officer Artur Espenberg	:	Case No.
Tax Registry No. 952713	:	2018 19916
PSA 5	:	
Police Officer Sheila Ramos	:	Case No.
Tax Registry No. 953299	:	2018-19917
PSA 5	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10003

To:
HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-19915

1. Police Officer Anthony Baresi, on or about July 2, 2017, at approximately 2230 hours, while assigned to PSA 5 and on duty, inside of [REDACTED] [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he entered [REDACTED] [REDACTED] in [REDACTED] County, without sufficient legal authority.

P.G. 203-10, Page 1, paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2018-19916

1. Police Officer Artur Espenberg, on or about July 2, 2017, at approximately 2230 hours, while assigned to PSA 5 and on duty, inside of [REDACTED] [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he entered [REDACTED] [REDACTED] in [REDACTED] County, without sufficient legal authority.

P.G. 203 10, page 1, paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2018-19917

1. Police Officer Sheila Ramos on or about July 2, 2017, at approximately 2230 hours, while assigned to PSA 5 and on duty, inside of [REDACTED] [REDACTED] [REDACTED] [REDACTED] abused her authority as a member of the New York City Police Department, in that she entered [REDACTED] [REDACTED] in [REDACTED] County, without sufficient legal authority.

P.G. 203-10, Page 1, paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 6, 2019. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB called Madeline Casiano as a witness. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having carefully considered the testimony, evidence and applicable

law, I find Respondents Guilty of the charged misconduct and recommend they each receive a Letter of Reprimand.

ANALYSIS

It is undisputed that on July 2, 2017, all three Respondents were on duty, assigned to PSA 5 Anti-Crime. They were in plainclothes in an unmarked vehicle when they responded to a fight in progress call outside of [REDACTED]. Upon arrival at that location, they encountered a family that included two male victims with lacerations, one of whom was lying on the ground and bleeding heavily from the head. The victims told the officers they had been “jumped” by a group of “kids” who hit them with “crowbars, or a fan or scooters.” They gave descriptions of the attackers, identifying two of them as “Person A and Person B.” Respondents knew these individuals to be members of the [REDACTED] gang. As Respondents were assisting the injured men into ambulances, one of the female relatives pointed out Person A and Person B walking towards the entrance of [REDACTED]. Respondents did not immediately begin a pursuit.

A short while later, Respondents went to [REDACTED] at the location, which they knew to be the residence of Person A also known to them as “Person A.” They entered the apartment, and arrested Persons A and B who were inside, charging them with Assault in the Second Degree. It is disputed as to whether the officers had consent to enter the apartment and the central issue in the case is whether the Respondents had the legal authority to enter the apartment without an arrest warrant.

Madeline Casiano testified that on July 2, 2017, she lived at [REDACTED], [REDACTED] with [REDACTED] one of whom was Person A, (Tr. 21) At approximately 10:30 that evening, she heard a knock on the apartment door. She looked through the hole in the door and saw three individuals dressed in plain clothes. According to Ms.

Casiano, they did not say anything to her and she started to open the door, turning the lock and twisting the doorknob, to find out what they wanted. When the door was open about an inch, she felt what she described as pressure from someone's arm pushing the door open, acquiescing that at no time did she tell them not to enter and she did not try to hold or push back the door. She described the individual who was pushing as a male wearing a Nike shirt (Respondent Espenberg). Ms. Casiano testified that she then stepped back because she did not want to get hurt and the officers moved past her. (Tr. 24, 40)

Ms. Casiano further recalled that Relative C came to the doorway and started yelling and cursing at the police telling them to get out of the house because they didn't have a warrant. Relative C tried to push the police out while Ms. Casiano, who recalled feeling "in shock," was trying to figure out what was happening. The officer in the Nike shirt said, "You opened the door. So you let us in." (Tr. 22-26, 31, 34-35) Ms. Casiano contended that the officers never asked her for permission to enter the apartment, nor did she hear them ask permission from anyone else to enter or stay in the apartment. She denied ever saying "come in," or anything similar to that to the officers. She did not hear anyone else in the apartment give any of the officers permission to enter or stay in the apartment. (Tr. 36-37)

Almost immediately after the officers entered, Person A started to record the scene while yelling and cursing at the officers to get out of the apartment. The officers told him they needed to question him. Ms. Casiano yelled at Relative C to calm down, warning that she would be arrested if she didn't. She claimed that one of the officers pinned her 14 year-old autistic brother against the wall. Respondent Ramos spoke to Ms. Casiano and told her she didn't want to arrest Relative C or Person A if it wasn't necessary, but that they wanted to take Person A in for questioning. (Tr. 27-28, 46)

The officers ultimately did arrest Person A and his friend Person B inside the apartment and departed the scene with both men. Ms. Casiano testified that the charges filed against Person A were ultimately dismissed; she did not provide any additional information about her Person A's criminal case. (Tr. 29, 47) Ms. Casiano filed a complaint about a year after the arrest took place. She testified that she waited a year due to fear and ultimately filed it because she didn't want to be in fear anymore. (Tr. 20-21) On redirect, she explained further that she was afraid to file a complaint because it is, "very easy for the cops to mess with you, just because you live in the projects." She ultimately did so because she wanted the cops to do their job correctly and "not to force people to listen to them, just because they have a badge." (Tr. 59-61)

Ms. Casiano also stated during the time the police were in the apartment she told Person A, who had returned to the apartment about ten minutes before the officers arrived, to get out and go with the police. She further explained that she thought at the time that Person A should go with the police because she believed that they were simply going to question him. She was also afraid she and Relative C were going to be arrested. (Tr. 46, 57-58)

The Respondents provided a contrasting account, asserting that they entered the apartment with Ms. Casiano's consent. Respondent Ramos testified that she has worked in PSA 5 for approximately five years and has been assigned to anti-crime for over four years. (Tr. 66-68) On July 2, 2017, she was assigned to work anti-crime with Respondents Espenberg and Baresi. They were in plain clothes in an unmarked vehicle when they responded to a radio run of a fight in progress at [REDACTED]. (Tr. 71)

Upon arriving at the location, Respondent Ramos observed a scene that she described as "chaotic." She observed a "couple of CVs" [victims] on the ground, including a male who was bleeding from his head and surrounded by several family members trying to help him. There

was also a male teenager with lacerations and an injury to his hand. She spoke to the family members in Spanish and translated what they told her to her partners. The family reported that they had been jumped by a large group of kids and had been struck with crowbars or a fan or a scooter. They also told Respondent Ramos that they knew the names of two of the people who had assaulted them—Person A and Person B, names that were known to Respondent Ramos as crew members of the [REDACTED] gang. Respondent Ramos specifically knew “Person A” to be Person A street name. (Tr. 72-76)

Respondent Ramos and her partners were trying to get the victims into an ambulance, Person A and Person B walked by and the victim’s two family members identified them as the attackers. This was approximately 28 minutes after the Respondents arrived at the scene. Respondent Ramos told her partners about the identification and the three officers started to walk behind Person A and Person B. She did not see any suspicious bulges or anything that looked like a weapon on Person A and Person B looked back at the Respondents and then started walking faster into the building. The three Respondents then started to walk faster. Respondent Ramos testified that the Respondents never broke into a run because they knew Person A and Person B were going into [REDACTED]. As Person A and Person B entered the lobby door to the building, the Respondents were a couple of seconds behind them. As soon as Respondent Ramos entered the lobby, she saw Person A and Person B enter the first apartment door on the left. She was about 10 to 20 feet behind the two men. (Tr. 77-80, 96, 100) She did not tell Person A to stop or that he was under arrest, nor did she announce herself as “Police.” (Tr. 87) She also did not make an effort to obtain any warrants. (Tr. 99)

The Respondents knocked on the apartment door. Respondent Ramos testified that as soon as they knocked on the door, it was opened widely by (Madeline Casiano).

Relative C, Person A and Person B were visible inside. Ms. Casiano did not initially say anything to the Respondents who explained they were there to get Person A and Person B. Respondent Ramos recalled that Relative C immediately started to get “belligerent” and began screaming, telling them to “get out” and yelling about a warrant. Respondent Ramos started to speak to Ms. Casiano, who asked what was going on while simultaneously “trying to calm Relative C down and prevent Relative C from hitting the officers” who were positioned near the entryway. Respondent Ramos told Ms. Casiano that they just wanted to question Person A; she heard Ms. Casiano then tell Person A to go with the officers. At some point, Respondent Ramos told Ms. Casiano that if Relative C continued to get in the way of the arrest, they would have to “take her in” as well. (Tr. 80-84,108)

Respondent Ramos further recalled that Person A ran to the bathroom and Ms. Casiano followed him. When Ms. Casiano returned to the area where Respondent Ramos was standing inside the doorway, Respondent Ramos told Ms. Casiano that she was going to go get Person A and Ms. Casiano said, “Go ahead.” (Tr. 84-85)

On cross-examination, Respondent Ramos acknowledged that in her CCRB interview on October 9, 2018, she inaccurately stated that Relative C, rather than Ms. Casiano opened the door. (Tr. 101) She also agreed that based on Relative C’s behavior, it was clear to her from the outset that neither Relative C nor Person A wanted Respondents in the apartment. Respondent Ramos further confirmed that she did not specifically ask for permission to enter the apartment. (Tr. 103-04)

Respondent Baresi corroborated much of his partner’s account as to what drew him to the vicinity of [REDACTED] on July 2, 2017, and as to what he observed when he arrived there. Like Respondent Ramos, he has been an anti-crime officer in PSA 5 for approximately

four years. (Tr. 112-16) On the day of the incident, he learned from Respondent Ramos that a victim identified "Person A and Person B" as two of their assailants. Respondent Baresi knew Person A and Person B as [REDACTED] gang members who he had arrested together in the past. He also knew that Person A lived on the first floor of [REDACTED]. (Tr. 116-18)

After one of the victims saw Person A and Person B walking nearby, Respondent Baresi, along with the other two Respondents, followed them as they headed towards [REDACTED]. Respondent Baresi testified that he did not run after the two men because he thought if they saw him running, they would start to run and the situation would escalate into a foot pursuit. (Tr. 117-18) He didn't say anything to Person A as he followed him towards the apartment.

After entering the lobby of [REDACTED], Respondent Baresi, who was seconds behind Person A and Person B, saw them enter an apartment. The officers approached the apartment and knocked on the door, which was opened by a female that he recognized at trial to be Ms. Casiano. Respondent Baresi further detailed that when Ms. Casiano opened the door, "she seemed annoyed at ... the situation." He recalled that she opened the door wide and said, "Come on in." (Tr. 119-20, 130, 147)

Upon entry, Respondent Baresi described the scene inside the apartment as chaotic, with Relative C screaming and Ms. Casiano trying to reason with her. (Tr. 121) He heard people protesting the police presence in the apartment and specifically recalled that Relative C was not happy that the officers were inside. It was also clear to him that Person A didn't want him in the apartment. Respondent Baresi testified that based on his training, it was his understanding that the fact that a tenant opened the door and invited the Respondents into the apartment gave them complete authority to be in the apartment and to effectuate a lawful arrest

of the two suspects. (Tr. 122-25) He noted that the arrests were effectuated without injury to any person or damage to apartment property. (Tr. 126-27, 143)

Respondent Espenberg, who has also been assigned to PSA 5 for approximately five years, provided a similar narrative to those of his partners with respect to the initial radio run. (Tr. 154-57) He recalled being about 20 yards away from Person A and Person B after the complainant victim identified them as the assailants. He recounted walking toward Person A and Person B and calling to them to "stop." They did not comply with his directive. Respondent Espenberg explained that he did not run after them since he is not a fast runner and knew that he would lose if a foot pursuit ensued. He also knew who Person A was and where his apartment was located. (Tr. 157-58)

After seeing Person A and Person B enter that apartment at [REDACTED] he and his partners knocked on the door. Like Respondent Baresi, he testified that Ms. Casiano opened the door wide and said, "Come in." He didn't have any conversation with Ms. Casiano and did not recall if either of the other Respondents said anything to Ms. Casiano before she said, "Come in." Respondent Espenberg confirmed that he never asked for explicit permission to enter the apartment. Other than knocking, he stated he did not push or touch the door in any way. He further recalled seeing Person B and Person A from the hallway and ordering them to come out. He testified that the officers hoped that Person B and Person A would come out voluntarily since their goal was to deescalate the situation as much as possible to avoid any injuries to anyone. Person B and Person A initially refused to exit the apartment. (Tr. 159-62, 174-175, 179)

Respondent Espenberg next detailed that after she let the Respondents into the apartment, Ms. Casiano threw up her hands, "in disgust," and Relative C started cursing and asking Ms. Casiano why she let them in. It was immediately clear to Respondent Espenberg upon entry that

Relative C didn't want the Respondents in her apartment. Respondent Ramos spoke to Ms. Casiano while Respondent Espenberg went to a corner of the room to make sure there were no threats to anyone in the apartment. He testified that he engaged in a conversation with Relative C. She put her hands on Respondent Espenberg a couple of times, but he "looked past that" and did not escalate the encounter with her. He stated that he may have told her that Person A and Person B were under arrest and he didn't want to have to arrest her as well. At trial, he explained that in saying that, he meant to convey that she could be arrested for interfering with the arrest of Person A and Person B as it was becoming an "uncontrollable situation." He noted that Ms. Casiano was in earshot when he said this to Relative C. (Tr. 162-64, 167,171, 181)

Respondent Espenberg observed Person A taking a video on his phone while the Respondents were in the apartment. At trial, he identified his voice on the video saying, "You open the door. We're allowed to come in." (Tr. 172) He testified that he didn't get a chance to specifically explain to Person A and Relative C that Ms. Casiano had opened the door. (Tr. 173)

CCRB presented two video clips of portions of the Respondents' interactions with the occupants of [REDACTED] (CCRB Ex. 1) The videos, which were taken by Person A and capture about four minutes of the encounter, do not start until after the Respondents are already in the apartment. The videos confirm that the scene inside the apartment could be described as chaotic. Person A, Ms. Casiano and Relative C can all be heard to be yelling at points throughout the two video clips. Person A and Relative C can also clearly be heard multiple times telling the police that they do not have a warrant and to get out of the apartment. Relative C attempts to push Respondent Espenberg backwards toward the door multiple times despite Ms. Casiano

implored her not to do so. At the same time, Person A yells numerous times that he did not do anything, yelling [REDACTED] that the officers wanted to “fucking lock him up” as she screams multiple times for him to “just go” with the officers.

The three Respondents in this case have been charged with entering [REDACTED] [REDACTED] without sufficient legal authority. Ms. Casiano in her testimony claimed that the Respondents knocked, but then pushed their way into the apartment without her consent. The defense has argued that the warrantless entry was permissible on the basis of Ms. Casiano’s initial consent to the Respondents’ entry. All three Respondents testified that Ms. Casiano opened the door widely to allow them to enter after they knocked and Respondents Baresi and Espenberg specifically testified that they heard Ms. Casiano say, “Come in”.

Generally police officers may not make a warrantless arrest of a suspect in their home. *See Payton v. New York*, 445 U.S. 573 (1980). The Fourth Amendment does permit a warrantless entry and search of a premises when the police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, common authority over the property and no present co-tenant objects. *See United States v. Matlock*, 415 U.S. 164 (1974). The consent may be in the form of words, gestures, or conduct. *See People v. Smith*, 239 A.D.2d 219 (1st Dep’t 1997). In *United States v. Carreno-Arias*, 2002 U.S. Dist. LEXIS 24792 (S.D.N.Y. 2002), implicit consent was found where an individual did not respond in the affirmative to an officer’s request to enter, but opened the door fully and moved aside without protest.

In Respondents’ case, I find that Ms. Casiano did consent to the Respondents’ entry into her apartment. Her claim at trial, two years after the incident, that she never consented was undercut by her words and conduct, as captured on the video. On the video, she does not appear at all concerned with the officers standing in the doorway. In a marked contrast to her relatives,

she does not direct them to leave and makes no attempt to close the door or make any other gesture for them to leave the apartment. Instead, she is entirely focused on getting Relative C to calm down and pleading with Person A to just cooperate so that the situation will not escalate. At times, she speaks calmly to Respondent Ramos before continuing to calm Relative C. All of this supports a finding that she consented to the entry by, at a minimum, implicitly acquiescing to the officers' entry by opening the door widely and stepping aside.

Respondents all testified in a straightforward manner, that Ms. Casiano opened the door widely for them and consented through her action of stepping aside to their entry. Respondents Baresi and Espenberg recalled her explicitly telling them to come in and Respondent Ramos did not recall whether or not she verbally consented. This variance in recollection seems quite credible given the passage of time and the chaotic and loud nature of the scene. On balance, and with the video seeming to strongly support Respondents' accounts, I find that Ms. Casiano did consent to the initial entry.

While I find that Ms. Casiano initially consented to the entry, I also find that both Relative C and Person A, who were co-occupants of the apartment, did not consent to the Respondents' entry. It is certainly clear from the yelling by both of them on the video clips that they wanted the Respondents out of their apartment. Respondent Espenberg confirmed that it was clear to him that Relative C wanted him out of the apartment as soon as he entered it. Respondent Baresi recalled being immediately aware that people in the apartment were protesting his presence and specifically testified that it was clear to him that Person A didn't want him in the apartment. Similarly, Respondent Ramos acknowledged that, based on the Relative C's behavior, it was clear to her that neither Relative C nor Person A wanted her in the apartment.

It is well-established that “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed” *People v. Caputo*, 155 A.D.3d 648 (2d Dep’t 2017), citing *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972). In *Payton*, *supra*, the Court wrote, “...an entry to arrest and an entry to search for and seize property implicate the same interest in preserving the privacy and sanctity of the home, and justify the same level of constitutional protection... any differences in the intrusiveness of entries to search and entries to arrest are merely ones of degree rather than kind. The two intrusions share this fundamental characteristic: the breach of the entrance to an individual’s home... In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Payton*, 445 U.S. at 587-90.

Here, there is an added layer of complexity as Respondents were dealing with a situation in which one occupant had consented to entry, while Relative C and Person A were simultaneously and emphatically expressing their non-consent. In a case decided by the Supreme Court in 2006, the Court addressed the issue of Fourth Amendment protection in cases where there is a conflict concerning consent between present co-occupants. *See Georgia v. Randolph*, 547 U.S. 103 (2006). The Court held that a physically present inhabitant’s express refusal to consent to a police search of a residence is dispositive as to him regardless of the consent of a fellow occupant. While the specific facts of *Randolph* concerned a search of a residence as opposed to an arrest inside of a residence, the reasoning and the plain language of that decision make clear that the fundamental concern of the Court is the “reasonableness of police entry in reliance on consent by one occupant subject to immediate challenge by another.” The Court declared, “[T]he co-tenant wishing to open the door to a third party has no recognized authority in law or

social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent...Disputed permission...is no match for this central value of the Fourth Amendment.”

In the thirteen years since the *Randolph* holding, no New York case has directly applied the holding in the context of officers entering to make an arrest. It has been cited in cases where a defendant seeks to suppress evidence recovered as the result of a contraband search¹. See e.g. *People v. Grillo*, 128 A.D.3d 1103 (3d Dep’t 2015); *People v. Watson*, 101 A.D.3d 913 (2d Dep’t 2012). Other jurisdictions, however, have applied *Randolph* in the contexts of arrests. See *United States v. Williams*, 574 F. Supp. 2d 530 (W.D. Pa. 2008) (“As the Supreme Court has settled the issue of consent to enter and search given by one co-tenant over the objection of a present co-tenant, this Court similarly finds that the objection of one co-tenant can override the consent of another co-tenant with regard to permission granted to a police officer to enter a residence and arrest the co-tenant.”); *United States v. Dixon*, 2010 U.S. Dist. LEXIS 127827 (W.D. Mo. 2010) (Citing *Randolph*, federal district court found that male co-tenant’s express refusal of consent invalidated the female cotenant’s consent); *Ohlsen v. County of San Joaquin*, 2008 U.S. Dist. LEXIS 20110 (E.D. Cal. 2008) (Although male occupant explicitly refused consent to officers’ entry on a domestic call, they argued that they had obtained consent to enter

¹ I also note that the NYPD Student Guide chapter on Search and Seizure does not cite *Georgia v. Randolph* on this point, but echoes its holding in directing officers that “In mutually possessed areas, if both persons are present and one objects to the search and the other consents, the objection given by the one person would invalidate the other’s consent.” The chapter on arrests provides no similar caveat, thereby creating potential confusion when it comes to warrantless entries to arrest where there is a consent dispute.

While additional retraining on Fourth Amendment issues may be beneficial to Respondents, as it would likely be for any officers assigned to a Police Service Area, it is beyond the scope of what this Tribunal may recommend.

and arrest from his girlfriend and cotenant. The Court cited *Randolph* and noted that under current law, the officers did not have consent to enter).

Although the cases from other jurisdictions are not binding on this tribunal, they are persuasive that, on these facts and in light of *Georgia v. Randolph*, the Respondents' entry to arrest over the immediate, contemporaneous and vehement objections of co-occupants of the apartment constituted a technical violation of the Fourth Amendment. There was no argument made that exigent circumstances justified the entry and the officers were candid about their decision not to immediately engage in a foot pursuit upon encountering the suspects in the street because they knew where the suspects were headed. Their counsel noted explicitly in summation that they "chose not to make it a hot pursuit." (Tr. 12, 79, 118, 158, 199) The Respondents each acknowledged being aware of the co-occupants' objections and Respondent Espenberg confirmed that this conflict as to consent was apparent upon their entry. Respondents should certainly be credited for acting in a professional and restrained manner in a very tense and chaotic situation, but this case requires a careful consideration of the legal protections provided by the Fourth Amendment. On those grounds, I find that the Respondents lacked sufficient legal authority to enter [REDACTED] [REDACTED] and are therefore Guilty of the charged misconduct

PENALTY

In order to determine an appropriate penalty, Respondents' service record was examined. *See Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 (1974). Respondent Baresi was appointed to the Department on January 9, 2012, and Respondents Ramos and Espenberg were appointed on July 11, 2012. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

CCRB has requested a penalty of the loss of five vacation days for each Respondent. Based on the Respondents' overall admirable and professional behavior in this difficult setting, as well as on their exemplary service records, I find that this is not an appropriate penalty. The Respondents entered into a very chaotic situation. They showed remarkable restraint in light of people yelling, a woman pushing one of them, dogs barking and the presence of two people who had been identified by injured victims as having recently committed a violent assault. In such a setting, it is somewhat understandable that trying to make legal determinations on the specific and nuanced issue of conflicting consents would have proved quite challenging.

A review of Respondents' respective service records shows that none of these officers have any prior disciplinary adjudications. Each officer has worked in PSA 5 for at least four years and all received 4.5 performance ratings on their most recent evaluations. Each Respondent has been awarded several medals, including notably a Medal for Merit/Valor awarded to Respondent Baresi. In at least two other cases where officers with similarly strong service records committed technical, but relatively minor violations of the Fourth Amendment with no aggravating factors, those respondents received a Letter of Reprimand, rather than a forfeiture of penalty days. *See Disciplinary Case Nos. 2014-12228 & 12229* (Feb. 22, 2016) (two four-year police officers with no disciplinary records reprimanded for crossing the threshold of an apartment to attempt an arrest without having necessary probable cause that the man committed a crime. In making a penalty recommendation, the Trial Commissioner emphasized their unblemished disciplinary records); *Disciplinary Case No. 2014-11415* (Jan. 8, 2016) (twenty-three year detective with no disciplinary record reprimanded for wrongfully entering an apartment without sufficient legal authority. Respondent's assumption, based on an alleged single physical movement by the occupant, that he had been granted permission to enter

constituted an insufficient basis for him to reasonably conclude that he had obtained truly voluntary consent to enter. The Trial Commissioner emphasized respondent's lack of disciplinary history and strong performance evaluations in making the penalty recommendation).

In light of the totality of the circumstances surrounding the Respondents' entry into the apartment, as well as my review of their unblemished and commendable records, I recommend a Letter of Reprimand as a penalty for each of them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Nancy R. Ryan", with a long horizontal flourish extending to the right.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ARTUR ESPENBERG
TAX REGISTRY NO. 952713
DISCIPLINARY CASE NO. 2018-19916

Respondent was appointed to the Department on July 11, 2012. On his last three annual performance evaluations, he received a 4.5 overall rating of “Highly Competent/Extremely Competent” for 2016, and 4.0 ratings of “Highly Competent” for 2014 and 2015. He has been awarded nine medals for Excellent Police Duty and nine medals for Meritorious Police Duty. [REDACTED]

Respondent has no disciplinary record. In connection with the instant matter, he was placed on Level 1 Force Monitoring on February 28, 2019. That monitoring remains ongoing.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SHEILA RAMOS
TAX REGISTRY NO. 953299
DISCIPLINARY CASE NO. 2018-19917

Respondent was appointed to the Department on July 11, 2012. On her last three annual performance evaluations, she received 4.5 overall ratings of "Highly Competent/Extremely Competent" for 2014 and 2016, and a 4.0 rating of "Highly Competent" for 2015. She has been awarded 16 medals for Excellent Police Duty, nine medals for Meritorious Police Duty and one medal for Meritorious Police Duty- Integrity.

Respondent has no disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANTHONY BARESÌ
TAX REGISTRY NO. 951522
DISCIPLINARY CASE NO. 2018 19915

Respondent was appointed to the Department on January 9, 2012. On his last three annual performance evaluations, he received a 4.5 overall rating of “Highly Competent/Extremely Competent” for 2016, and 3.5 ratings of “Highly Competent/Competent” for 2014 and 2015. He has been awarded a Medal for Merit/Valor, an Honorable Mention, 13 medals for Excellent Police Duty and six medals for Meritorious Police Duty.

Respondent has no disciplinary record. From May 29, 2015 to November 4, 2016, he was placed on Level I Force Monitoring for having received three or more CCRB complaints in one year.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials