



POLICE DEPARTMENT

MEMORANDUM FOR: Police Commissioner

September 8, 2014

Re: Sergeant Eric Perez  
Tax Registry No. 929448  
Patrol Borough Manhattan South  
Disciplinary Case No. 2013-9828  
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The above-named member of the Department appeared before me on March 27, 2014, charged with the following:

1. Said Sergeant Eric Perez, assigned to Patrol Borough Manhattan South, while on duty on or about July 14, 2012, at approximately 2000 hours, [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said location without sufficient legal authority.

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

The Civilian Complaint Review Board (CCRB) was represented by Paul Scotti, Esq., and Respondent was represented by John D'Alessandro, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not disputed that on July 14, 2012, Jose Andujar was the tenant of an apartment [REDACTED] (the building) and that he was involved in a relationship with Person A who was not a tenant in the building.

The Civilian Complaint Review Board's Case

The CCRB Administrative Prosecutor called Jose Andujar as his sole witness.

Jose Andujar

Andujar testified that as of July 14, 2012, he was aware that Person A was "restricted as far as the building was concerned" because on July 12, 2014 he had received a letter from the building's manager notifying him that Person A was barred from entering the building until further notice because of a visitor policy violation. Andujar could not recall the reason why Person A had been subjected to this restriction although Andujar agreed that he and Person A had previously engaged in a dispute inside his apartment which resulted in a police response. Andujar recalled that he and Person A had been arguing and that one of his neighbors had called the police. Neither he nor Person A was arrested.

Andujar recalled that on July 14, 2012 when he and Person A entered the building, he was told by the person at the security desk that Person A was not allowed inside the building. Andujar acknowledged that he uttered a profanity, that he told the person at the security desk that he did not care, and that he then escorted Person A into his apartment. While they



were inside his apartment, he and Person A engaged in a verbal argument which lasted for about 15 minutes. After the security desk complained about the noise they were making, they ended their argument and Andujar left the apartment and went down the street to a store. When Andujar returned, he saw Person A standing outside the building. Person A told him that building security, accompanied by police officers, had come to the apartment and had asked her to leave and that security had unlocked and opened the door to the apartment with their key. Andujar stated that he was upset to hear that security had done this.

Andujar testified that he then escorted Person A back into the building and that as they walked passed the building security desk, a security agent told him that he was going to call the police again. Andujar and Person A returned to his apartment and Andujar watched television while Person A used the bathroom. Even though they were not engaged in any verbal dispute, about 10 minutes later, Andujar heard a knock on his door. A voice stated "police" and told him to open the door because there was a female in his apartment that did not belong there. Andujar refused to open the door and told the police that this was a landlord tenant dispute that he would resolve in court. Andujar testified that the police then told him that if he did not open the door they would break it down.

Andujar testified that a building security agent then tried to unlock his door with a key but that he prevented that by holding the inside door knob. During his conversation with the police, Person A remained in the bathroom. Andujar testified that he understood that building security had called the police to remove Person A from his apartment.

Andujar stated that his apartment was a small studio. He estimated that his conversation with the police lasted for about 20 or 30 minutes and that Person A remained in

the bathroom. He asserted that the police never asked to speak with Person A. Andujar testified that when he heard the door being kicked, he called either 311 or 911 for assistance. Andujar said the door struck him when it was pushed open and that three or four police officers entered his apartment and pushed him face down onto the floor. A foot was placed on his back and he was handcuffed. Either the police or building security opened the door to the bathroom. Someone called Person A a "bitch." Person A was arrested for trespass.

Andujar confirmed that in 2007 he pleaded guilty to possession of burglars' tools and served 20 days in jail; in 2008 he pleaded guilty to petit larceny and served 65 days in jail; and in 2009 he pleaded guilty to petit larceny and received a conditional discharge. He agreed that he has also been convicted of other crimes.

On cross-examination, Andujar agreed that Person A was not allowed in the building because of their past arguments and because Person A had smoked cigarettes in the hallway. Andujar confirmed that before he went to the store and before the police arrived at his apartment, he and Person A had engaged in a verbal argument.

#### Respondent's Case

Respondent called Police Officer James Ouellette as a witness and he testified in his own behalf.

#### Police Officer James Ouellette

Ouellette, a two-year member of the Department, testified that on July 14, 2012, he responded to the building on a trespass complaint. When Ouellette arrived at the

building security personnel told him that a woman who had previously been “kicked out” of the building because “she had a trespass notice and she had a domestic violence history” with a male resident, was inside his apartment. Ouellette went up to Andujar’s apartment and asked him to come out into the hallway but Andujar yelled and swore at him. Ouellette then notified Respondent about the incident. Ouellette heard Andujar yell at a female inside the apartment to “get away from the door” and he heard a female voice whisper something. Ouellette testified that he thought that a violent incident was taking place inside of Andujar’s apartment because Andujar was yelling and the female was “not responding in a calm voice, just a whisper.” When Respondent arrived outside the apartment, he knocked on the door and because Andujar began yelling again “it seemed violent inside from him yelling at us.”

On cross-examination, Ouellette confirmed that he had been performing patrol duties for only seven months when he responded to this incident and that he was only told by the radio dispatcher that there was female trespasser inside the building. He was one of the first officers to arrive at the building. Security personnel told him that Person A was not allowed in the building. Ouellette learned that other officers had previously responded and escorted Person A out of the building. Ouellette recalled that he asked Andujar to open the door about five times. Ouellette tried to use a security officer’s key to open the door to Andujar’s apartment but he was not successful. He did not hear any fighting or sounds of a struggle emanating from inside the apartment. Andujar told him “Get the fuck out of here.” When Respondent arrived, Ouellette informed him about the situation and Respondent also spoke to building security personnel. Ouellette believed that the female was trying to open the door. Ouellette did not hear the female yelling.



Ouellette testified that after he and Respondent heard Andujar tell Person A to get away from the door, he started to kick the door. It took a couple of minutes to get the door to open. Ouellette entered the apartment and went into the bathroom where he placed Person A in handcuffs. Person A did not yell or resist arrest and she did not appear to be injured.

On redirect examination, Ouellette agreed that he was told by security desk that the police had been previously called to the building because Andujar and Person A had engaged in an argument.

On re-cross-examination, Ouellette agreed that he was not told that there had been a domestic dispute between Person A and Andujar on July 14, 2012.

#### Respondent

Respondent, a 12-year member of the Department, testified that on July 14, 2012, he responded to the building at Ouellette's request. Respondent was told by the security personnel that there was a trespasser in the apartment who had been removed from the building earlier that day and that she had been banned from the building because of prior domestic disputes with a resident of the building. Ouellette told him that he had heard Andujar repeatedly tell someone inside the apartment to get away from the door. Respondent stated that Andujar was very belligerent and that when he requested that Andujar open the door so that he could be sure that everyone inside of the apartment was okay, Andujar told him, "Get the expletive out of here."

Respondent testified that he took into consideration several factors before he decided to kick the door down. One factor was the domestic history between Person A and

Andujar; another was that Ouellette had told him that he had heard Andujar tell a female inside the apartment to get away from the door. This caused Respondent to believe that the female wanted to get out of the apartment but Andujar was preventing her from leaving. The last factor was that he was unable to get any voice confirmation from Person A. As a result, he did not know if she was okay. Respondent asserted that he did not kick the door open because Person A was trespassing but rather because of the prior domestic history he had been informed of; what Ouellette had heard; and his concern for the well-being of Person A. Respondent asserted that under these circumstances he could not in good conscience have left.

On cross-examination, Respondent agreed that his first impression of the situation was that it was only a trespass call. He agreed that he spoke with the building security personnel to learn more information about the incident. From the security personnel, Respondent only learned that a few days prior to this incident, police were called but no arrests were made and based only on that incident, Person A was prohibited from coming into the building. Security personnel also told him that the previous incident occurred in the lobby. Respondent did not know if that previous domestic incident was violent or not. Respondent explained that at some point prior to opening Andujar's door, he was told that there had been a verbal argument between Person A and Andujar. The security personnel described this verbal argument as "domestic violence" but they did not mention any physicality. Respondent understood that Person A had returned to Andujar's apartment, after she had been escorted out by security, of her own freewill. Respondent agreed that he was not told that Andujar had forced Person A to re-enter the building.



Respondent confirmed that before he reached the apartment door, he obtained information about the situation from Ouellette and building security personnel. About three or four officers were present and Ouellette was going back and forth between him and Andujar's apartment door. Respondent did not hear Andujar tell anyone inside the apartment to get away from the door. He only heard Andujar yell, "Get the fuck out of here. Get out. Get out of my building." He did not hear a female voice inside the apartment.

Respondent agreed that he had probable cause to believe that Person A was a trespasser. Respondent agreed that he did not know Allen's name at the time but he knew that she was Andujar's girlfriend. He said he would have arrested Person A if she had come out of the apartment. Respondent further agreed that he did not hear any fighting or glass breaking from inside of the apartment. Respondent also agreed that before he spoke to the security personnel, he did not know about Andujar and Person A's relationship or domestic history.

Respondent recalled that he was on the scene for about 15 or 20 minutes before he decided to kick the door down. Once he was inside the apartment, he secured Andujar while the other officers secured Person A who was by the bathroom. Respondent agreed that when he first entered the apartment he did not see Person A. Respondent agreed that he had handcuffed Andujar for safety purposes and that in his Activity Log entry he wrote that the authority to take down the door was given by the management company.

On redirect examination, Respondent agreed that he has been trained to take domestic violence very seriously and that he must err on the side of safety.



FINDINGS AND ANALYSIS

It is charged that on July 14, 2012, Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by entering Andujar's apartment without sufficient legal authority.

I find that Andujar is entirely to blame for the escalation of this incident to the point that Respondent was justified in forcibly entering his apartment. Even though Andujar had received a letter from the building manager on July 12, 2014 notifying him that Person A had been banned from entering the building until further notice, Andujar admitted that just two days later he brought Person A into the building with him and when he was told by a security guard that Person A was not permitted to be inside the building, he cursed at the guard, told him that he did not care, and took Person A into his apartment. Andujar also admitted that while they were inside his apartment, he and Person A engaged in a verbal argument which resulted in a security agent complaining to him about the noise they were making.

Andujar further admitted that when he exited the building and went to a store, he left Person A alone inside his apartment and that when he returned and saw that Person A had been ejected from the building, he brought Person A back into the building and back into his apartment even though as they walked past the security desk a security agent told him that he was going to call the police.

Although Andujar characterized his improper action of bringing Person A into his apartment as a landlord-tenant dispute, he admitted that when a building security agent employed by his landlord tried to unlock his door with the security key to the apartment,

he prevented the unlocking of the door by grasping the inside door knob even though he knew that police officers were standing outside his door next to the agent.

Finally, Andujar admitted that during the 20 to 30 minutes that police officers were standing in the hallway outside his door while he repeatedly refused to open the door, Person A remained in the bathroom for that entire time.

As a result of Andujar's improper action of bringing Person A back into his apartment, Person A was already inside Andujar's apartment when first Ouellette and then Respondent arrived at his door and, as a result of Andujar's profanity-laced refusal to open the door and the fact that Person A remained in the bathroom for the entire time, neither Ouellette nor Respondent was able to see Person A or speak to her.

The administrative prosecutor argued that since the radio transmission that Respondent received indicated that the call involved only a female trespasser, Respondent did not possess any information that exigent circumstances existed at the scene which would justify a forcible entry into an apartment to arrest the trespasser.

However, I credit Ouellette's testimony that when Respondent arrived he informed Respondent about the situation and expressed to Respondent his concern about the female inside the apartment. Respondent had the right to assume that the information and concern conveyed to him by Ouellette, a fellow officer, was reliable until proven otherwise.<sup>1</sup> Based on this information, and as a result of Andujar's belligerent and adamant refusal to open his apartment door and the undisputed fact that Respondent could not hear a female voice inside the apartment (because unbeknownst to him Person A

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<sup>1</sup> People v. Dodt, 61 NY2d 408, 369 NYS2d 67 (1984).

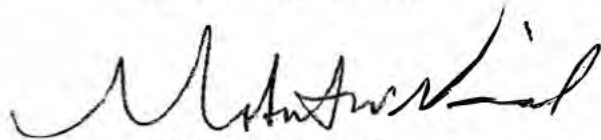


was hiding in the bathroom), Respondent was unable to ascertain whether the female inside the apartment was hurt or in danger.

As the administrative prosecutor candidly acknowledged during his closing argument, "DV (domestic violence) cases are tough, they are everybody's nightmare" because "you never know, these situations can turn bad and they can turn bad quickly." I find that Respondent was faced with just such a dilemma and that his action of forcing the door open and entering Andujar's apartment was performed in good faith in order to ascertain the status and condition of the female who he knew was inside the apartment but whose voice he could not hear. Since Respondent's action of entering Andujar's apartment was not unreasonable under the circumstances Respondent was presented with here, his entry does not constitute misconduct.

Respondent is found Not Guilty.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner - Trials

**APPROVED**

OCT 10 2018  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER