



POLICE DEPARTMENT

October 1, 2024

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In the Matter of the Charges and Specifications

- against -

Detective John O'Hagan
Tax Registry No. 957913
Emergency Service Squad 3

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:
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Case No.
2022-27346

Detective Brian Fechtmann
Tax Registry No. 954800
Emergency Service Squad 3

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Case No.
2022-27347
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Fredy Kaplan, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondents:

Marissa B. Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
White Plains, NY 10279

To:
HONORABLE THOMAS G. DONLON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-27346

1. Police Officer John O'Hagan¹, on or about July 18, 2021, at approximately 1200 hours, while assigned to ESS 03 and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he damaged [REDACTED]'s property, by drilling a hole into his bedroom door, without sufficient legal authority.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

2. Police Officer John O'Hagan, on or about July 18, 2021, at approximately 1200 hours, while assigned to ESS 03 and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he entered [REDACTED]'s bedroom without sufficient legal authority.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

3. Police Officer John O'Hagan, on or about July 18, 2021, at approximately 1200 hours, while assigned to ESS 03 and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he searched [REDACTED]'s bedroom without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE
ENCOUNTERS

Disciplinary Case No. 2022-27347

1. Police Officer Brian Fechtman², on or about July 18, 2021, at approximately 1200 hours, while assigned to ESS 03 and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he damaged [REDACTED]'s property by drilling a hole into his bedroom door, without sufficient legal authority.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

2. Police Officer Brian Fechtmann, on or about July 18, 2021, at approximately 1200 hours, while assigned to ESS 03 and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he searched [REDACTED]'s bedroom without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE
ENCOUNTERS

¹ Respondent O'Hagan was promoted to Detective in February 2024.

² Respondent Fechtmann was promoted to Detective in April 2022.

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on August 5, 2024. Respondents, through their counsel, entered pleas of Not Guilty to the charged misconduct. The Civilian Complainant Review Board (hereinafter "CCRB") called [REDACTED] to testify and entered 911 audio and video recordings of the incident into evidence. Respondents each testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent O'Hagan and Respondent Fechtmann Not Guilty of all charges and specifications.

ANALYSIS

This case arises from a request made by a 45 Precinct sergeant for the Emergency Services Unit ("ESU") to assist because [REDACTED] had barricaded himself in his bedroom. Respondents, both working on ESU Truck 3, responded to the location, [REDACTED]
[REDACTED]

The following is a summary of facts that are not in dispute. On July 18, 2021, [REDACTED] was renting a bedroom and sharing the common areas of an apartment inside of a private house. One of [REDACTED]'s co-tenants called 911 and alleged that she had been sexually and physically assaulted by [REDACTED]. (Tr. 15, 22, 45) At approximately 1300 hours, Respondents arrived at the dwelling and communicated with other officers on the scene, who informed them that they had spoken to [REDACTED]'s co-tenant and she was alleging that he struck her on the right side of her face. (CCRB Ex. 4 at 01:05) Respondents went to [REDACTED]'s bedroom, which was located down a short, narrow corridor of the apartment. The bedroom door had neither an external doorknob nor a peephole. (Tr. 60, 97, 112-13) Respondent O'Hagan was immediately in front of

the door holding a ballistic shield, with Respondent Fechtmann standing behind him, and another police officer in back of Respondent Fechtmann. (Tr. 72; CCRB Ex. 5, Respondent Fechtmann body-worn camera footage, at 00:00-00:18)

Respondent O' Hagan knocked on the door, identified himself and his co-workers as police officers, and attempted to convince [REDACTED] to come out of his room voluntarily. [REDACTED]. [REDACTED] did not immediately open the door and instead called 911, telling the operator that there were people at his door claiming to be police officers. He repeatedly asked for an NYPD supervisor to come to his home to verify whether the individuals knocking on his door were, in fact, police. (Tr. 22-23) Approximately 30-45 minutes after Respondents arrived, Respondent Fechtmann cut a hole in the door. (Tr. 41, 64, 71, 115; CCRB Ex. 1, cell phone footage of door) Shortly thereafter, [REDACTED] covered the hole with paper. (Tr. 41) Eventually, [REDACTED] opened the door and Respondent O'Hagan, followed by Respondent Fechtmann entered the room, pushing [REDACTED] onto the bed and then handcuffing him. After getting [REDACTED] shoes and a shirt, he was escorted out of the room by a third officer. (Tr. 42, 65-66, 74, 120; see CCRB Exs. 4, 5)

CCRB Exhibit 5, Respondent Fechtmann's body-worn camera footage

The following is a summary of a portion of the body-worn camera footage captured by Respondent Fechtmann:

- 01:54-01:57: Respondent Fechtmann partially closes the breached bedroom door to inspect the area behind that door.
- 01:58-02:37: Other police officers remove [REDACTED] from his bedroom.
- 02:38-03:02: Respondent Fechtmann lifts [REDACTED]'s mattress and Respondent O'Hagan inspects the space between the mattress and the bed frame. Respondents then lift the mattress and bedframe in tandem and inspect the space underneath the bed frame.

- 03:07-03:56: Respondents inspect the sole closet in the bedroom, manipulating the coats hanging in the closet to look behind them, and using a flashlight to illuminate the floor.
- 04:02-04:08: Respondent O'Hagan inspects the area furthest from the bedroom door that is obstructed by [REDACTED]'s bed when observed from the room's entrance.
- 04:19-04:33: Respondents remove approximately half of the clothes and bags from the largest pile of clothes in the room.

[REDACTED] took the stand and recalled that, on the date in question, he spent the morning in his room by himself, attending a religious service via Zoom. After the virtual gathering concluded, [REDACTED] recalled resting until, "1:15, 1:20 there was extremely loud banging on the door as if someone was going to break into the door." (Tr. 21) He detailed going to the door, which remained closed, and asking who was knocking on the door and why were they there. [REDACTED] stated that the people at the door told him they were police officers. He contended that they did not explain their purpose, nor did they provide their names or shield numbers. [REDACTED] called 911 to determine if the men at his door were, in fact, police officers. (Tr. 21-22) He contacted 911 a total of four times during the approximately 45 minutes Respondents were at his door. He described Respondents' demeanor as getting "angrier" as he continued to refuse to open the door. [REDACTED] acknowledged that the operator he spoke to during the fourth call confirmed that Respondents were police officers. [REDACTED] asserted that he asked her to remain on the line to act as a witness as he opened the door. (Tr. 24-28)

[REDACTED] recalled announcing, "I am opening the door, and I have the 911 operator on the line. She knows I'm opening the door, she told me to open the door... I'm not armed, I'm Jehovah's Witness, I'm not exactly dressed." (Tr. 42) He explained that the door opened inwards, rather than out into the hall, and that when he opened it, he remained completely inside

of the room. [REDACTED] recalled, "I opened the door, nice and slowly . . . [then] Boom. [Respondents] came in." [REDACTED] described being "bum-rushed" by "three big guys," who put him facedown while "twisting" his arms behind his back. He acknowledged that he was eventually pulled to his feet and walked out of the room. [REDACTED] denied giving Respondents consent to enter his room. During cross examination, [REDACTED] conceded that after being removed from his room he was arrested for Assault and Forcible Touching, amongst other charges. According to [REDACTED], he ultimately pled guilty to a lesser violation. (Tr. 20-21, 28-31, 44-45)

Respondent O'Hagan took the stand and testified that he and Respondent Fechtmann, along with a third police officer were called to [REDACTED]'s apartment by a sergeant from the 45 Precinct who was attempting to arrest him for allegedly assaulting and groping his female co-tenant. The sergeant called for ESU because [REDACTED] had barricaded himself in his room. (Tr. 59)

Respondent O'Hagan recounted that [REDACTED]'s bedroom was located in a narrow hallway, and that the door had no knob on it. Respondent O'Hagan explained that ESU procedure when dealing with an individual barricaded in a locked room is to, "tie off on the door knob... [s]o we can control the door and slow it down to [take] the necessary steps to gain voluntary compliance." (Tr. 56) Since they could not control the door that way, Respondent O'Hagan described Respondent Fechtmann attempting to secure it with a tool called a "Rabbit." When that failed, Respondent Fechtmann used a sawzall to cut a small "inspection" hole in the door in order to "gain visual on the individual inside to make sure that they don't have any weapons.... [and] make sure that there's no additional perpetrator, EDPs or even victims inside." (Tr. 57) Respondent O'Hagan contended that once the hole was cut, he attempted to speak with

██████████ and again identified his team as police officers; his goal was to convince ██████████ to exit the room voluntarily. Respondent O'Hagan recalled that initially he could see ██████████ through the hole, but could not see the whole room. Respondent O'Hagan admitted that he did not see any weapons. Shortly after the inspection hole was created, ██████████ covered it with paper. (Tr. 63-65, 82-83)

Respondent O'Hagan estimated that approximately thirty five to forty minutes after his team arrived, ██████████ suddenly opened the door. He recalled his thought process after ██████████ unexpectedly materialized: "At that point, I couldn't risk the safety of myself, my teammates and even the safety of himself. I made the decision to go in to just put him in handcuffs because I don't know. I didn't know what he could've had behind that door... We were sitting ducks... So the decision was made when that door was opening unexpectedly, surprisingly, to go in and place him in custody." (Tr. 66)

Respondent O'Hagan denied hearing ██████████ tell the 911 operator that he is a Jehovah's Witness, and that his faith prohibits him from using weapons. Respondent O'Hagan opined that even if he had heard that information, he would not have been able to rely on it, explaining, "[w]hen individuals don't want to open the door and if they already exhibited violence, we can't take their word for that." (Tr. 58) In addition, Respondent O'Hagan further denied that ██████████ announced his intention to open the door. (Tr. 65-66) During cross-examination, Respondent O'Hagan conceded that he did not possess a warrant to enter ██████████'s room, nor did he obtain consent to do so. (Tr. 91)

Respondent O'Hagan explained that after ██████████ had been removed from the room, he and Respondent Fechtman conducted "safety sweeps" in areas such as, "closets, large areas, under the bed, big piles of clothes" where a person could be hiding. (Tr. 67) He asserted that the

sweep is not a search for contraband or weapons, noting "[It is ESU protocol to] [m]ake sure that location is totally safe in the event that patrol or detective personnel need to go in to conduct further investigation." (Tr. 94-95, 99)

Respondent Fechtmann took the stand and testified that Respondent O'Hagan was the first officer at [REDACTED]'s door, and he was the second. He explained that in addition to a sub-machine gun, he was responsible for several tools, including the "Rabbit", a hydraulic spreader, and the sawzall, a sharp edged tool. Respondent Fechtmann recounted attempting to use the "Rabbit" to push the door up in order to "wedge" it in the doorframe, to prevent it from opening. However, when he tried to do this, the door began to buckle. Respondent Fechtmann recalled that Respondent O'Hagan was contemporaneously attempting to communicate with [REDACTED] through the closed door. Respondent Fechtmann stated that after approximately 30 minutes, they decided to cut a hole in the door in an attempt to see [REDACTED]. He explained that the flimsiness of the door combined with their the inability to secure it was cause for concern, offering, "We didn't know what might come from the other side of that door that was possibly there that could possibly hurt us." (Tr. 113-16)

According to Respondent Fechtmann, not long after the hole had been made, [REDACTED] covered it with paper. This made him anxious because, "[m]aybe there's a reason he's trying to conceal himself or conceal something inside the room." Respondent Fechtmann recalled that as Respondents were waiting for their supervisor to arrive, [REDACTED] unexpectedly opened the door. Respondent O'Hagan entered the room, followed by Respondent Fechtmann, who explained, "At that point it was an officer safety issue. Because it was a split second of now this man is in front of us, we have very little protection." (Tr. 117-18, 120-21)

Respondent Fechtmann testified that after [REDACTED] had been subdued and placed into handcuffs, he activated his body-worn camera. Respondent Fechtmann stated that his team got [REDACTED] shoes and a shirt, and the patrol officers assumed custody of him. Respondent Fechtmann and Respondent O'Hagan then conducted a "safety sweep" which consisted of "checking places where a person [could] reasonably hide" before leaving the apartment. (Tr. 121-22)

Disciplinary Case 2022-27346: Respondent O'Hagan- Specification One
Disciplinary Case 2022-27347: Respondent Fechtmann- - Specification One

Property Damage

Respondent O'Hagan and Respondent Fechtmann each stand charged with damaging a door belonging to [REDACTED] without sufficient legal authority by cutting a hole in it. Respondents do not deny that they made a decision to make a hole in the door, and that Respondent Fechtmann used a tool to do so. The question for the tribunal is whether Respondents' actions were reasonable given the surrounding circumstances. I find that they were.

Respondents are highly trained members of a specialized unit whose mission includes dealing with barricaded individuals and door breaches. They were summoned to [REDACTED]'s home by other officers who had probable cause to arrest him for assaulting and groping his female co-tenant. It is undisputed that the door to [REDACTED]'s room had no doorknob or peephole and that he refused to open the door when Respondents knocked on it.

CCRB contends that Respondents erred in puncturing [REDACTED]'s door. They argue that the property damage was unnecessary because [REDACTED] did not pose a threat to himself or Respondents and emphasize that [REDACTED] had informed them that he was weaponless and a member of a nonviolent religion. In addition, CCRB asserts that Respondents did not have the

authority to make the decision to puncture the door and they should have waited for a supervisor before doing so. (Tr. 42,147)

In contrast, both Respondents testified credibly about the extensive training they received in order to work in ESU. They each carefully explained the protocols regarding a barricaded perpetrator, in particular the reasons those procedures exist. At trial, Respondents further explained that their actions were in keeping with NYPD procedure and ESU protocol, for barricaded individuals, which permits them to make a small "inspection" hole in a door in order to determine how many people are behind the door and if they have weapons.

In the instant case, Respondents were unable to gain control of [REDACTED]'s door using the ESU procedure of tying off the door knob. Additionally, they could not prevent the door from opening by wedging it because of its poor structural integrity. (Tr. 57, 61, 113-14) [REDACTED], who was accused of committing several acts of violence against his female co-tenant, was refusing to communicate with, or open the door for, Respondents. In response, Respondents cut a small hole in the door in order to make a visual inspection of [REDACTED] and his surroundings. CCRB Exhibit 1 is a cell-phone video recorded by [REDACTED] of the opening made in his door. The tribunal was therefore able to view the damage, which was not excessive. The size and location of the hole were consistent with Respondent O'Hagan's testimony that its purpose was to gain a visual of the individual to observe if they were armed. (Tr. 57)

Accordingly, I find that in light of the surrounding circumstances Respondents' actions were reasonable, measured, and intended to ensure the safety of all parties. Based upon the foregoing, I find Respondents O'Hagan and Fechtmann Not Guilty of Specification 1.

Disciplinary Case 2022-27346: Respondent O'Hagan- Specification Two

Unlawful Entry

Respondent O'Hagan stands charged with entering [REDACTED]'s bedroom, without sufficient legal authority to do so. In the instant matter, the parties agree that [REDACTED] did not give consent to enter his room. It is also undisputed that probable cause existed to arrest [REDACTED] for Assault and Forcible Touching. Therefore, the question before the tribunal is whether circumstances existed which permitted Respondent O'Hagan to enter [REDACTED]'s residence. I find that the particular circumstances of this incident justified the warrantless entry.

The Supreme Court in *U.S. v. Allen* held that, "at a minimum, law enforcement officers violate *Payton* when, in the absence of exigent circumstances or consent, they physically enter protected premises to effect a warrantless search or arrest." 813 F.3d 76 (2016), citing *U.S. v. Stokes*, 733 F.3d 438, 444 (2d. Cir. 2013). "In determining whether exigent circumstances exist, the core question is whether the facts, as they appeared at the moment of entry, would lead a reasonable, experienced officer, to believe that there was an urgent need to render aid or take action. This test is an objective one that turns on the totality of the circumstances confronting law enforcement agents in the particular case." *U.S. v. Simmons*, 661 F.3d 151, 157 (2011).

Courts have set forth a number of factors to consider when determining whether exigent circumstances exist: whether police have probable cause to believe the suspect committed the crime; the gravity or violent nature of the offense with which the suspect is to be charged; whether the suspect is reasonably believed to be armed; whether police have reason to fear that the suspect is about to commit another violent crime; whether there is a reasonable inference that the suspect poses a danger to others at the location; whether police have reason to believe that the suspect is in the premises being entered; the likelihood that the suspect will escape if not

swiftly apprehended; and the peaceful circumstances of the entry, including the time of day that police enter the premises.³ See *People v. Paulino*, 131 A.D.3d 65 (2015), citing *People v. McBride*, 14 N.Y.3d 440, 446 (2010); *People v. Lexune*, 59 Misc. 3d 1224(A) (Sup. Ct., Bronx County, 2018), citing *People v. Mason*, 248 A.D.2d 751 (3d Dept. 1998)

In the instant matter, Respondent O'Hagan was aware that [REDACTED] was present in his room. It is undisputed that Respondent O'Hagan possessed probable cause to arrest [REDACTED] for Assault and Forcible Touching, both of which are offenses that are violent in nature. Indeed, the victim of the assault was his co-tenant and when the initial responding officers first saw her, she appeared to have been injured. Furthermore, the victim did not stay inside the residence with [REDACTED], but was outside sitting on the steps when police arrived. These factors would lead a reasonable police officer to conclude that waiting to obtain a warrant before arresting [REDACTED] would likely "pose a danger" to the victim. (CCRB Ex.4, body-worn camera footage at 02:34-02:46)

In addition, Respondents cited numerous additional safety concerns that support the entry as reasonable. When asked during cross-examination whether he had information that [REDACTED] had weapons in his room, Respondent O'Hagan was forthcoming when he acknowledged that he did not. (Tr. 79, 83) However, considering the combination of the nature of the crimes [REDACTED] was accused of and his covering of the "inspection" hole, it was reasonable for Respondent O'Hagan to believe that he could be armed. In addition, Respondent O'Hagan described being unable to see [REDACTED]'s hands when he opened the door. He explained, "So the door is opened unexpectedly in front of me without any warning. At that point, I couldn't risk

³ It should be noted that the aforementioned factors are "illustrative," not exhaustive, and the presence or absence of any one factor is not dispositive. See *Paulino*, 131 A.D.3d at 69; *People v. Williams*, 181 A.D.2d 474 (1st Dept. 1992)

the safety of myself, my teammates and even the safety of himself. I made the decision to go in to just put him in handcuffs because I don't know. I didn't know what he could've had behind that door. With that shield that we have, it is a very small window that we can see through." (Tr. 66)

When viewed altogether, the allegation that [REDACTED] had committed violent acts against his female co-tenant, his behavior throughout this encounter, and most compellingly, that in order to ensure the safety of [REDACTED]'s co-tenant, he needed to be removed from the location expeditiously, it was reasonable for Respondent O'Hagan to believe that he urgently needed to enter [REDACTED]'s residence to arrest him. Leaving the apartment without making this arrest would potentially leave the victim in harm's way and susceptible to further injury. The entry and arrest are therefore consistent with guidance given to officers in Legal Bureau Bulletin Vol. 44, No. 2 (Jan. 2014), which emphasizes that officers should consider whether "any delay in obtaining a warrant would pose a danger to the arresting officers or the community." *See People v. Bero*, 139 A.D.2d 581 (2d Dept. 1988) For the forgoing reasons, I find Respondent O'Hagan Not Guilty of Specification 2.

Disciplinary Case 2022-27346: Respondent O'Hagan- Specification Three
Disciplinary Case 2022-27347: Respondent Fechtmann- Specification Two

Unlawful Search

Respondents stand charged with unlawfully searching [REDACTED]'s room after he was arrested and removed from it. It is undisputed that Respondents pulled up [REDACTED]'s mattress, moved some clothing in his closet and lifted some large piles of clothing before exiting the bedroom. [REDACTED] did not consent and Respondents did not possess a search warrant. CCRB argues that these actions constituted an improper search in violation of the 4th Amendment.

Respondents contend that these actions comprised a “safety sweep” to ensure that there no other people in the room. As discussed below, I agree with Respondents’ characterization, and find that the totality of the circumstances justified their actions.

In *Maryland v. Buie*, the Supreme Court defined a “protective sweep” as, “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.” 494 U.S. 325, 327 (1990) The sweep is allowed when a police officer possesses, “articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.” (*Id.*)

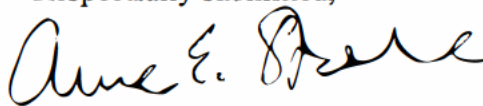
Respondent O’Hagan and Respondent Fechtmann each testified that after [REDACTED] had been arrested and handed over to the patrol officers who were on the scene, they conducted a “safety sweep” of the room before they left. Respondent O’Hagan testified that the purpose of the sweep was to look for another person, not to search for contraband. Respondent Fechtmann echoed those statements, adding that it is ESU protocol “to check closets, floor, wall to wall, piles of clothing under bed, under mattresses, behind -- furniture” before leaving a premises (Tr. 92-95, 121-22) I credit Respondents’ descriptions, which were corroborated by Respondent Fechtmann’s body-worn camera footage. (CCRB Ex. 5 at 02:38-04:33)

CCRB asserted that neither Respondent articulated nor possessed “a reasonable belief based on specific and articulable facts which taken together with the rational inferences of those facts, reasonably warrant the officers in believing that the area swept harbored an individual posing a danger and officers or others.” (Tr. 158) In addition, counsel for CCRB argued that the length of time that Respondents were looking, almost two minutes, rendered Respondents’

actions a "prolonged" search as opposed to a quick sweep. I disagree; the evidence shows that Respondents followed the legal guidelines set forth for a protective sweep. Prior to entering the room, Respondents had limited visual contact with [REDACTED], in no small part due to his actions in covering the "inspection hole" they created. They possessed probable cause to arrest [REDACTED] for an assault which took place shortly before they arrived.

Under the circumstances, it was not unreasonable for Respondents to conduct a limited visual inspection of the areas in the room where a person could hide, in order to make sure that no one was concealed therein who could pose a danger to themselves or other officers who might enter the room after them. Both Respondents acted professionally throughout the encounter, in the even-handed manner the Department expects from highly trained officers assigned to ESU, who are called to handle exactly these types of potentially volatile situations. For the foregoing reasons I find Respondent O'Hagan Not Guilty of Specification 3 and Respondent Fechtmann Not Guilty of Specification 2.

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials

APPROVED

THOMAS G. DONLON
POLICE COMMISSIONER