



POLICE DEPARTMENT CITY OF NEW YORK

April 13, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer William Schumacher  
Tax Registry No. 949640  
75 Precinct  
Disciplinary Case No. 2013-10429

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**Charges and Specifications:**

1. Said Police Officer William Schumacher, on or about April 2, 2012, at approximately 1700 hours, while assigned to the 75<sup>th</sup> Precinct and on duty in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he unlawfully entered Christopher Ocampo's residence.  
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
2. Said Police Officer William Schumacher, on or about April 2, 2012, at approximately 1700 hours, while assigned to the 75<sup>th</sup> Precinct and on duty in the vicinity of [REDACTED] wrongfully used force in that he punched Christopher Ocampo in the face.  
P.G. 203-11 – USE OF FORCE

**Appearances:**

For CCRB-APU: Simone Manigo, Esq.  
For Respondent: Craig Hayes, Esq.

**Hearing Date:**

January 22, 2016

**Decision:**

Specification 1: Not Guilty; Specification 2, Guilty

**Trial Commissioner:**

ADCT Paul M. Gamble

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 22, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Christopher Ocampo as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of Specification 1 and Guilty of Specification 2.

## FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute.

On April 2, 2012, Respondent was assigned to a foot post in the 75<sup>th</sup> Precinct at Euclid and Pitkin Avenues. Sometime shortly before 1700 hours, he heard a call over his radio of a robbery. One or more sector cars responded to the call but were unable to locate the complainant. Shortly thereafter, two complainants approached Respondent on his foot post. The complainants informed Respondent that they had been exchanging gifts inside a school park near Crystal Street and Wells Street when they were the victims of a "strong-arm" robbery. The complainants further stated that the robbers told them if there were any police involvement that they would shoot them. The complainants described their assailants as two Hispanic men, one heavy-set and the other skinnier.

Respondent relayed the information he had been provided to the dispatcher, advised that he was with the complainants and was eventually met by a sector car. Respondent and the



complainants entered the sector car and commenced a canvass of the area. The complainants recalled seeing the suspects some weeks earlier on the corner of Liberty and Lincoln Avenues, so the sector car proceeded to that location. Upon arriving in the aforementioned location, the complainants observed two individuals who they identified as the perpetrators of the robbery, saying "those are the guys that robbed me." The sector car drove toward the two individuals until it was approximately 70 feet away, at which point the suspects fled into 4 [REDACTED]

[REDACTED] Respondent observed that one of the suspects was a skinny Hispanic male wearing a white t-shirt.

At approximately 1700 hours that day, Christopher Ocampo, who resided in Apartment [REDACTED] at [REDACTED] heard a loud banging on his door. At the time he heard the banging, Ocampo's two minor children were present in the apartment with him. Respondent identified himself from the hallway as the police. Ocampo placed at least one telephone call as Respondent continued to seek entry into his apartment. Ocampo's voice was audible through the closed apartment door. There came a time when the door was opened and Respondent observed Ocampo, as well as a child, inside the apartment. Respondent drew his weapon and pointed it at Ocampo. Ocampo eventually stepped out of the apartment into the hallway, where he was handcuffed. As he was being handcuffed, Ocampo gestured to the police with his free left arm and was subdued by Respondent. Once both hands were cuffed, Ocampo was led downstairs to the front of his building, where he was subjected to a show-up identification procedure. Ocampo was not identified as one of the robbery suspects and was released.

The issues in this case are: (1) whether Respondent entered Ocampo's apartment unlawfully; and (2) whether Respondent wrongfully used force against Ocampo, in that he punched him. Ocampo testified that Respondent forced open his apartment door and entered his



apartment while pointing a weapon at him. Ocampo further testified that Respondent walked through his apartment, without his consent, before ordering him into the hallway. Ocampo further testified that Respondent and another police officer were in the process of handcuffing him when he gestured with a free arm toward his apartment to alert them that his children were unattended. According to Ocampo, Respondent then punched him in the face.

Respondent testified that after knocking on Ocampo's apartment door for several minutes without receiving a response, he observed the door open from inside and saw Ocampo standing in the apartment with a minor child in front of him. Respondent further testified that he ordered Ocampo out of the apartment at gunpoint, then watched as his partner began handcuffing Ocampo. Respondent further testified that as Ocampo began struggling in an attempt to avoid being handcuffed, he placed his hand on Ocampo's shoulder and pushed him to the floor. Respondent denied punching Ocampo and asserted he entered Ocampo's apartment after he had been handcuffed out of concern for the children inside and to conduct a sweep for the other robbery suspect.

Having considered the testimony, evidence and arguments put forth by the parties, I find that: (1) Respondent did not enter Ocampo's apartment without lawful authority; and (2) Respondent unlawfully punched Ocampo. What follows is a summary of the evidence presented by the parties which is relevant to the disputed facts.

Ocampo testified at the hearing that on April 2, 2012, he was the occupant of Apartment [REDACTED] Brooklyn, New York (T. 15, 16, 21). Ocampo lived there with his girlfriend, Person A and their two young children, [REDACTED] age 6-7, and [REDACTED] age 2-3<sup>1</sup> (T. 14-15). The residence is a private home subdivided into six units located on three floors

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<sup>1</sup> The children's ages at the time of this incident are approximations.



(T. 15). According to Ocampo, at about 1700 hours, his son was awake watching television and his daughter was sleeping (T. 22). Person A was out shopping with her mother (Id.).

At about that time, Ocampo heard a loud banging on his apartment door, accompanied by a voice announcing the presence of the police (Id.). The police requested that he open his door (Id.). Ocampo testified that he was frightened and placed a call to his mother to ask her what to do (T. 22-23). According to Ocampo, his mother advised him to call his landlord, which he did (T. 23). Once Ocampo discussed the situation with his landlord, he was advised to "open the door and see what they want" (Id.). While Ocampo was still on the phone with his landlord, the door to the apartment burst open (Id.). Ocampo stated that he did not know how the door was forced open but that no one opened the door from inside the apartment (Id.). Ocampo observed police officers in the hallway through the open door, including Respondent (T. 23-24).

Respondent entered the apartment while another police officer, described by Ocampo as "Indian," with glasses, held the apartment door open with his weapon (T. 24). Respondent walked through the apartment, temporarily training his weapon on Respondent's son as he ran through the living room (Id.). Respondent walked to the bedroom and eventually the bathroom before pushing Ocampo out the front door (Id.).

Ocampo testified that once he entered the hallway, the "Indian" officer started putting him into a position to be handcuffed (T. 26). Ocampo expressed concern that his children were in the apartment unattended, then demanded an explanation for the police officers' conduct (Id.). As the officer placed Ocampo's right hand behind his back, Ocampo gestured with his left hand toward the door of his apartment, saying "My kids are in there by themselves" (Id.). At that point, the officer utilized a "police maneuver" and "slammed [Ocampo] on the floor" (Id.). The officer then placed his knee on Ocampo's back and attempted to place handcuffs on him (Id.).



Ocampo attempted to turn around to continue expressing his concern that his children were inside the apartment unattended when Respondent punched him in the mouth (T. 26-27). Ocampo testified that he then placed his left arm behind his back and allowed himself to be handcuffed (T. 29). At that point, he observed his neighbor Person B whose last name he did not know, in the hallway and asked her to go to his apartment to watch his children (Id.). Ocampo was lifted off the floor and escorted downstairs to the street (Id.). On his way down to street level, Ocampo observed a number of police officers entering his building, as well as his girlfriend Person A (Id.).

Ocampo testified that when he exited his building and reached the street, he was led past a police car containing two occupants (T. 30-31). As he walked past the police car, Ocampo observed the occupants shaking their heads (T. 31). Respondent then escorted Ocampo to a police van, where he was placed next to another male (Id.). Respondent asked Ocampo and the other man, "Do you guys know each other?" (Id.). Both men indicated that they did not (Id.). Respondent told Ocampo that they were "going to get this all figured out" (Id.). Respondent told Ocampo that he would wait for his Sergeant to arrive with a handcuff key to release him (Id.). Eventually, Respondent un-cuffed Ocampo, saying, "I just want you to know I was just doing my job" (Id.).

Ocampo then walked back toward his building where he encountered Person A (T. 32). Ocampo testified that he pointed to Respondent and instructed her to "get his information because that's the one who punched me in the face" (Id.). Ocampo testified that he was punched as he was laying on his stomach and with the "Indian" officer's knee in his back (T. 34). Ocampo denied trying to get up and said only his head was lifted up as he attempted to alert the police to the presence of his unsupervised children in his apartment (Id.). Ocampo further



testified that it would have been impossible for his two-year old son to have opened the front door to the apartment, as he was too short to have reached the lock on the door, let alone the chain at the top of the door (T. 35). Ocampo testified that because of the forcible opening of his apartment door, the "slam lock" was damaged and had to be repaired (T. 36). Ocampo testified that the force of the door being opened also damaged the chain lock, causing it to "pop off" (T. 38). CCRB Exhibits 1C and 1D were admitted into evidence as photographic evidence of the alleged damage to Ocampo's door.

Ocampo made a CCRB complaint in connection with this case the same day as the incident. He later filed a lawsuit against the City of New York which was recently settled for an unspecified sum (T. 47-48, 60). Ocampo testified that Respondent's punch caused an abrasion to his lip the size of a grain of rice, which he treated with antibiotics (T. 50). As he was punched, Ocampo could hear Respondent telling the "Indian" officer, "cuff him, cuff him" (T. 55).

CCRB offered the hearsay statement of person B<sup>2</sup> in evidence. In her statement, Person B stated that on April 2, 2012, she was at home in her [REDACTED] floor apartment, located at [REDACTED], Brooklyn, New York (CCRB Transcript ["CCRB"] 3, 5). Person B stated that she is Hispanic and was born in 1985 (CCRB 4). Sometime that afternoon after her children had returned home from school, Person B heard a scream, which she believed had come from the first floor of the residence. After hearing a knock on her door, Person B opened it and was met by a police officer (CCRB 5). The police officer asked her if anyone had come into her apartment and provided a physical description of the suspect he was looking for (Id.). Person B replied that only she and her children were in the apartment (Id.). The police officer then moved to the other apartment on that floor and began banging on that door (Id.). Person B remained in the hallway, telling the police officer that the occupants of that apartment kept to themselves but then was told

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<sup>2</sup> I find that Person B is the neighbor referred to in Ocampo's testimony.



to go back inside her apartment (Id.). Once inside her apartment, Person B watched the police officers intermittently through her peephole and did not see them kick, or otherwise force in, Ocampo's door (CCRB 11).

Person B stated that she could hear the voice of the occupant of the other apartment and it appeared to her that he was on the telephone, telling someone that "[he didn't] know what they want" (CCRB 6). The police continued banging on the door until it opened (Id.). When the door to the apartment opened, Person B saw Ocampo, who told the police that it was only he and his two children inside (Id.). Person B stated that the police then pulled Ocampo out of his apartment and threw him to the floor (Id.). Ocampo's saw that Ocampo's son was watching the scene, so she took him into her apartment (Id.). Person B could hear Ocampo telling the police officers that he didn't do anything as they attempted to handcuff him (CCRB 7).

Person B stated that when she opened her apartment door again, she observed Ocampo sitting down on the floor of the hallway while the police officers attempted to handcuff him (T. 13). Ocampo was telling the police officers that "it wasn't [me], so why are you doing this?" (Id.). Person B stated that she saw a police officer, who she described as Caucasian, strike Ocampo in the face (CCRB 14-15). Person B was unable to specify whether the strike was made with an open or closed fist (CCRB 14). After Ocampo had been handcuffed, Person B obtained permission from the police to enter his apartment and found his daughter sleeping inside (CCRB 20). Person B described her relationship with Ocampo as limited to greeting each other on the street but that he and his girlfriend generally kept to themselves (CCRB 24). Person B stated that sometime after the incident, she became aware that Ocampo and his girlfriend had moved from the building (CCRB 22, 24).



Respondent testified at the trial that as he entered [REDACTED] e could hear footsteps on the staircase suggestive of someone who was running (T. 71). He ascended the staircase, remaining approximately one floor below the footfalls (Id.). Respondent eventually heard the footfalls stop, then heard a door close in the area of the third floor of the building (T. 72). Respondent saw two apartment doors on the [REDACTED] floor and proceeded to knock on one of them (T. 73). A Hispanic female, approximately 30-40 years old, answered the door<sup>3</sup> (Id.). Respondent informed her that he was pursuing robbery suspects into the building and asked her if she had let anyone into her apartment (Id.). Respondent testified that the woman denied that she had, then acceded to his request to enter and search her apartment for the suspects (Id.). At the conclusion of his search, Respondent left the woman's apartment and she closed the door (T. 74). Respondent then knocked on the door of the other apartment across the hall and announced that it was the police (T. 75). Respondent did not receive a response to his knock but heard what sounded like a panicked, nervous voice inside the apartment speaking to someone on a telephone (Id.). According to Respondent, the voice said, "It's the police; I don't know what to do. What should I do?" (Id.). Respondent continued to knock on the door, announcing that it was the police conducting an investigation and requesting that the occupant open the door. Respondent still received no response (T. 76).

Respondent then testified that, based upon the sound of footsteps, he believed a child had come to the door, unlocked it and opened it about a foot (Id.). When the door opened, Respondent saw Ocampo, a thin Hispanic male wearing a white t-shirt, holding a telephone in one hand (Id.). The inside of the apartment was dimly lit and Respondent could not see Ocampo's other hand (Id.). Believing that Ocampo fit the description of one of the suspects he was pursuing, Respondent drew his weapon and ordered Ocampo to show his hands (T. 77).

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<sup>3</sup> The tribunal finds that this Hispanic female is the Person B referred to in Ocampo's testimony.

Ocampo eventually showed Respondent his hands and stated, "I didn't do anything; what do you want?" (Id.). Respondent ordered him out of the apartment and instructed him to get on the ground (T. 79). According to Respondent, Ocampo stepped out of the apartment but refused to get on the ground, continuing to assert his innocence and asking what Respondent wanted (Id.).

Respondent testified that after Ocampo's persistent refusal to get on the ground, he reached out with his left hand, grabbed Ocampo's shoulder and placed him on the ground in the hallway (T. 79-80). Respondent, with the assistance of another police officer, handcuffed Ocampo, then returned to the open apartment door, where he observed a female child standing nearby (Id.). Respondent entered the apartment to search for other suspects, as well as any other children (Id.). Respondent testified that while he tried to handcuff Ocampo, he attempted to rise from the floor and Respondent pushed him back down with his left hand (T. 81). Respondent denied striking Ocampo at any time (Id.).

After Respondent inspected Ocampo's apartment, he brought him down to street level and walked him past the sector car, which still held the two complainants (T. 81). When the complainants were unable to identify Ocampo as a perpetrator of the robbery, his handcuffs were removed and he was released (Id.). Respondent testified that he sat down with Ocampo in a sector car and explained to him what had happened and why he had done what he did (Id.). Respondent described the encounter as cordial (Id.). Ocampo did not ask Respondent for his name or shield number and stated that he simply wanted to return to his apartment (Id.).

The testimony regarding Respondent's entry into Ocampo's apartment is in conflict: Ocampo testified that he was brought out of his apartment at gunpoint after Respondent forced open the door, entered without his permission and checked the rooms inside. Respondent testified that he believed Ocampo's minor child opened the door, that Ocampo stepped out of the



apartment at gunpoint and that he only entered the apartment after he had placed Ocampo in handcuffs to ascertain whether the minor children he believed to be inside were safe. Person B stated that she observed Respondent pulling Ocampo from the apartment but made no statement with respect to observing Respondent enter the apartment or hearing sounds which may have allowed her to infer the manner of Respondent's entry.

Similarly, the testimony regarding Respondent's alleged punch to Ocampo's face is also in conflict. Ocampo testified that Respondent punched him in the face while he lay on his stomach with one hand cuffed, while gesturing to him about his children inside the apartment. Respondent denied striking Ocampo but admitted that he used his left hand to push Ocampo to the floor while he was struggling on the floor, resisting being handcuffed. Person B stated that she observed Respondent punch Ocampo in his face.

Thus, the factual findings in this case will turn on an assessment of the credibility of each witness. Ocampo and Respondent are each interested witnesses but for different reasons. Ocampo has a financial interest in the case, having recently concluded a settlement in his lawsuit in lieu of proceeding to trial. While not disclosing the amount of the settlement due to uncertainty about whether the terms of the agreement are subject to a non-disclosure agreement, Ocampo nevertheless has not yet received the expected payment. Accordingly, his incentive to testify in a manner supporting a view of events which supports a claim of personal injury did not dissipate as of the date of the settlement. Respondent, on the other hand, is interested in the outcome of this proceeding because he stands to suffer loss of professional standing, as well as vacation days. Person B is a disinterested witness but one of diminished probative value based upon her intermittent observation of the relevant events of this case, as well as the physical barrier to her visual and auditory functions presented by a closed apartment door.

*Specification 1: Unlawful Entry*

Based upon the state of the record, I find that there is insufficient evidence to support a finding that Respondent's entry into Ocampo's apartment was unlawful.

A suspect may not be arrested in his home without a warrant, even if probable cause exists for an arrest, unless exigent circumstances exist (*Payton v. New York*, 445 US 573, 587-588 [1979]). In determining whether exigent circumstances exist, the police officer seeking entry should consider: (1) the gravity or violent nature of the offense for which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) whether there is a clear showing of probable cause to believe that the suspect committed the crime; (4) whether there is strong reason to believe that the suspect is in the premises to be entered; and (5) the likelihood that the suspect will escape if not quickly apprehended (*People v. McBride*, 14 NY3d 440, 446 [2010]). These factors are illustrative and not exhaustive; the ultimate issue remains whether there was an "urgent need" for the warrantless intrusion (*Id.*).

Based upon the information available to Respondent when he knocked on the door, he possessed probable cause to believe that the persons identified on the street had committed a robbery (*People v. Nieves*, 26 AD3d 519 [2d Dept. 2006])[complainant approached police officers minutes after he was robbed at gunpoint, providing descriptions of the two men who had robbed him. Officers then canvassed the neighborhood with complainant, who pointed out the defendant on the street and identified him as one of the robbers]; *People v. Rosario*, 24 AD3d 199 [1<sup>st</sup> Dept. 2005][defendant arrested because victim pointed him out to police who pursued and arrested him]; *People v. Rogers*, 245 AD3d 395 [2<sup>nd</sup> Dept. 1997][complainant provided police with a description of the individual who had robbed her, and was on her way to the police station when she spotted the defendant and a companion on the street, pointed in their direction,



and began shouting “that’s the guy”)). The existence of probable cause is also significant in this case because prior to the police pursuing an individual who flees, there must be reasonable suspicion to believe that a crime has been, is being or will be committed (*People v. Holmes*, 81 NY2d 1056, 1057-1058 [1993]).

While Respondent did not know with any certainty who was on the other side of the door and whether or not they had committed a crime, once the door was opened and he observed Ocampo, Respondent concluded that he was the suspect that the complainants had identified on the street and that he had been chasing up the stairs.

The tribunal need not examine the other *McBride* factors in this case since, based upon the facts, I find that CCRB has failed to meet their burden of proof that Respondent forcibly entered Ocampo’s apartment.

I credit Respondent’s version of events as being more plausible and logical than Ocampo’s, with some limitations. Ocampo’s testimony supports a finding that he was apprehensive about opening his door to the police, regardless of the reason for his apprehension.

Assessing the probative value of PersonB’s statement requires a balancing of several factors. First, her statement was provided to a CCRB investigator over the telephone. This type of statement is ordinarily not viewed as possessing the same probative value as one provided in open court, under oath and subject to cross-examination. That is not to say it has no probative value, as the Rules of Practice of this tribunal permit the admission of hearsay evidence. Hearsay is especially admissible in administrative proceedings if there is corroboration by other evidence, testimonial or otherwise (Cf. Case No. 74762/99, p. 23 [Mar. 23, 2002], confirmed sub nom. *Matter of Pulci v. Kelly*, 2 A.D.3d 124 [1st Dept. 2003])[substantial evidence that officer



struck his wife and daughter consisted of testimony of two responding police officers and transcript of wife's interview]).

Person B's statement that she heard Ocampo speaking loudly on the telephone, saying he was unsure of what to do, was corroborated by Ocampo and Respondent. Similarly, her statement that she observed Ocampo being led out of his apartment forcibly is also corroborated by Ocampo and Respondent. Finally, her statement that Ocampo expressed his concern about his children being left in his apartment unsupervised while he was being detained in the hallway is corroborated by Ocampo's testimony.

While Ocampo's testimony that he asked Person B to look in on his children in the midst of a stressful encounter with the police might suggest bias on her part, a review of her statement supports a finding that they were not particularly close. In her statement, she expressed surprise at learning that Ocampo had moved, permitting the tribunal to draw the inference that whatever their relationship was, Ocampo did not bring her into his confidence about his plans to relocate.

Person B's statement was recorded on July 18, 2013, subsequent to the filing of the CCRB complaint by Ocampo and outside the 90 days he had to file a Notice of Claim against the City of New York. The timing of her statement, under other circumstances, might suggest that she had an incentive to shape her testimony in favor of her former neighbor; since the record suggests that they severed whatever relationship they had prior to her giving a statement to CCRB, this diminishes the possibility of bias on her part in favor of Ocampo.

Based upon the foregoing, Person B's statement has some value because as a neutral witness, she would have corroborated Ocampo's allegation that Respondent forced open the apartment door had she observed it. Logically, if she was able to hear Ocampo on the telephone through her closed apartment door, she would have also heard the sound of force being applied



to Ocampo's door, had that actually happened. The most important aspect of Person B's statement is that she makes no mention at all of Respondent asking her permission to conduct a search of her apartment for suspects. While she was not specifically asked whether the police had entered her apartment, she was asked about the contents of the conversation she had with the police when they knocked on her door. Common sense suggests that if Respondent had asked for permission to search her apartment for suspects, she had given consent to do so, and Respondent had entered her apartment for that purpose, as Respondent testified he did, Person B would have no reason to omit that portion of her interaction with Respondent in her statement. As discussed in greater detail below, this discrepancy casts doubt upon Respondent's veracity.

Based upon the foregoing, I find Ocampo's assertion that Respondent forced open his apartment door to be unsupported by independent evidence. Neither Person B's statement nor the state of the physical evidence support a finding that Respondent forced the door open. CCRB Exhibits 1C and 1D in evidence are photographs of the door to Ocampo's apartment. These photographs are probative on the issue of the manner of Respondent's entry, in that neither depicts any discernable damage to the door from which the tribunal may infer that force was used to open it. Despite Ocampo's testimony that a chain lock inside the apartment was broken by the force Respondent used to break in the apartment, no photograph of the broken chain was offered in evidence. While the tribunal has reason to question some aspects of Respondent's version of events, it is CCRB who has the burden of proof, by a preponderance of the evidence, to establish a forcible entry.

Even if CCRB had met their burden of proof establishing that Respondent had forced Ocampo's door open, the circumstances of this case establish that Respondent was in continuous hot pursuit of Ocampo and any such entry into his apartment in the absence of an arrest warrant



would not have violated the *Payton* rule (*People v. Watson*, 115 AD3d 687, 688 [2d Dept. 2014]). In addition to Respondent's concerns about losing sight of a fleeing suspect before he could be apprehended, he also had to be aware of the possibility that Ocampo was armed and dangerous.

I find that at the time Respondent drew his weapon and ordered Ocampo out of his apartment, he had reasonable suspicion, if not probable cause, to believe that: (1) Ocampo was one of the robbery suspects based upon the identification made by the complainants; (2) Ocampo was the person he had been pursuing into [REDACTED] and (3) Ocampo was armed, based upon complainants' assertion that one of the robbers threatened to shoot them if they went to the police (see *People v. Toribio*, 88 AD3d 534 [1st Dept. 2011])[Officers' display of their weapons, use of force to bring defendant to the ground, and application of handcuffs were precautionary measures that were justified by the circumstances and did not elevate the detention to an arrest]).

I further find that Respondent had a reasonable fear that he was in danger of physical injury and that Ocampo posed a threat to his physical safety. Respondent testified credibly that when he saw Ocampo inside his apartment, he was holding a phone in one hand. Respondent testified further that was unable to see Ocampo's other hand. Respondent then drew his weapon and directed Ocampo to show his hands. Once Ocampo showed Respondent both of his hands, Respondent directed him to step into the hallway, where he was eventually handcuffed. Based upon Ocampo being suspected of the commission of a violent felony; the robbers' threat to shoot the complainants if they reported the crime; Ocampo's apparent flight from the street, up three flights of stairs and into the apartment; Ocampo's audible agitation at the presence of the police outside his apartment; and the lack of information about whether Ocampo may have had access



to a firearm inside the apartment, Ocampo posed a threat to Respondent's physical safety until he could be assured that Ocampo did not actually possess a weapon, did not have easy access to one or had a confederate in close proximity who was similarly dangerous.

Respondent's decision to enter the apartment once Ocampo had been restrained was reasonable given that he had observed at least one minor child inside the apartment and had an obligation take appropriate steps to provide for the welfare of any children of a suspect now in police custody (see P.G. 215-01; see *Mincey v. Arizona*, 437 US 385, 393 [1978]; *People v Doll*, 21 NY3d 665 [2013]; *People v Molnar*, 98 NY2d 328 [2002]). That Respondent's entry into the apartment would also provide an opportunity to conduct a search for additional suspects is incidental; Respondent could certainly make observations geared toward locating the additional suspect so long as he was lawfully present on the premises. Based upon the state of the record, I do not find proof by a preponderance of the credible evidence that Respondent entered Ocampo's apartment without lawful authority; accordingly, I find him Not Guilty of this specification.

*Specification 2: Wrongful Use of Force*

Based upon the credible evidence in the record, and drawing all reasonable inferences therefrom, I find that Respondent punched Ocampo in his face. According to the Patrol Guide, "only that amount of force necessary to overcome resistance will be used to effect an arrest . . ." (P.G. 203-11).

Ocampo testified that once he had been brought to the floor forcefully, he gestured with his left hand, pointing towards his apartment, stating, "My kids are inside." Ocampo further testified that Respondent punched him as he was on his stomach, while another police officer had his knee in his back and was placing handcuffs on his right hand. Respondent testified that when he observed Ocampo gesturing with his left arm and appearing to attempt to get off the ground,

he shoved him back down. I credit Ocampo's version of events as reasonable and supported by independent evidence. Ocampo's complaint of being struck by Respondent is corroborated by the statement Person B provided to CCRB. Moreover, the medical evidence that Ocampo was observed by Emergency Room personnel at [REDACTED] Hospital with a laceration to his lip one day after Respondent allegedly punched him is further corroboration of his trial testimony and Person B's statement.

I do not credit Respondent's denial that he struck Ocampo, his status as an interested witness being the primary factor weighing against his veracity. I find that his admission to shoving Ocampo, as opposed to punching him, was motivated by a desire to minimize his culpability for actionable misconduct. In addition, his testimony regarding his extended interaction with Person B, during which he seeks and receives permission to search her apartment, appears to have been embellished and calculated to portray him in a flattering light, in view of other less commendable aspects of his actions that day.

I find that Ocampo's gesture with his left hand was accompanied by a plea for the welfare of his children; as such, Respondent exaggerated the significance of the gesture and reacted with a greater measure of force than what was necessary under the circumstances. Ocampo clearly did not submit unequivocally to arrest; his gesture, however, could not reasonably be interpreted either as active resistance to an arrest or an attempt to escape custody. While the Patrol Guide permits police officers to use the minimum necessary force to effect an arrest, Respondent's punch to the face cannot be justified under this standard. Ocampo was already somewhat under the control of one police officer and partially handcuffed. If the extent of Ocampo's resistance was, as Respondent testified, "trying to get back up," then a shove would have been appropriate and proportional to the circumstances. A punch may have been justified under the Patrol Guide



as a means to compel Ocampo to cease determined and persistent resistance but those circumstances are not presented here. Accordingly, I find that Respondent's use of force was unlawful and find him Guilty of this specification.

#### PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 6, 2010. CCRB has requested a penalty of forfeiture of ten vacation days. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Based upon the evidence in the record, I find CCRB's requested penalty of ten days appropriate (*See Disciplinary Case No. 10481/13* [November 12, 2014][Five-year police officer negotiated a penalty of ten vacation days for punching a handcuffed individual after said individual spit in Respondent's face]; *Disciplinary Case No. 10851/13* [February 27, 2015][Eight-year police officer forfeited ten vacation days for striking an individual in the head with an asp without police necessity. Respondent's partner tackled the individual and as his hand was pinned underneath him by the weight of the partner's body, Respondent struck the individual]; and *Disciplinary Case No. 85166/09* [July 8, 2010][Seven-year detective negotiated a penalty of ten vacation days for causelessly kicking an individual in the head during the course of apprehending him])).

In this case, the credible evidence shows that Respondent struck a partially handcuffed prisoner who posed no serious threat, either to himself or the police officer he was working with. Aside from the specific injury to Ocampo, Respondent's actions reflect negatively on the Department as a whole and may further erode public confidence in its ability to fulfill its mission

in an even-handed manner. I find that Respondent's lack of candor with the tribunal is another aggravating factor warranting a significant sanction.

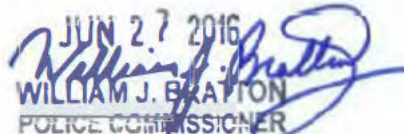
Accordingly, I recommend that Respondent forfeit ten vacation days.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Paul M. Gamble", written over the text "Respectfully submitted,".

Paul M. Gamble  
Assistant Deputy Commissioner Trials

**APPROVED**

JUN 27 2016  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



**From:** Assistant Deputy Commissioner Trials  
**To:** Police Commissioner  
**Subject:** CONFIDENTIAL MEMORANDUM  
POLICE OFFICER WILLIAM SCHUMACHER  
TAX REGISTRY NO. 949640  
DISCIPLINARY CASE NO. 2013-10429

On his last three annual performance evaluations, Respondent twice received an overall rating of 4.5 "Extremely Competent/Highly Competent" and once received an overall rating of 4.0 "Highly Competent." [REDACTED]

[REDACTED] He has been awarded two medals for Excellent Police Duty.

On May 20, 2013, Respondent was placed on Level 1 Force Monitoring for having three or more civilian complaints in one year, which remains ongoing.

He has no prior formal disciplinary history.

A handwritten signature in black ink, appearing to read "Paul M. Gamble", with a horizontal line extending to the right.

Paul M. Gamble  
Assistant Deputy Commissioner Trials