



POLICE DEPARTMENT

December 14, 2023

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In the Matter of the Charges and Specifications :  
- against - :  
:  
Police Officer Atisha Samuel : Case No.  
Tax Registry No. 962772 : 2022-24578  
Midtown North :  
:  
Police Officer Jason Brown : Case No.  
Tax Registry No. 950110 : 2022-24576  
Midtown North :  
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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-APU: Nishat Tabassum Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
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For Respondents: Craig Hayes, Esq.  
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To:

HONORABLE EDWARD A. CABAN  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

## CHARGES AND SPECIFICATIONS

### Disciplinary Case No. 2022-24578

1. Police Officer Atisha Samuel, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 30 Rockefeller Plaza, New York County, wrongfully used force, in that she used physical force against the Vendor<sup>1</sup> and brought her to the ground, without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Police Officer Atisha Samuel, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 30 Rockefeller Plaza, New York County, abused her authority as a member of the New York City Police Department, in that she failed to obtain language interpretation services for the Vendor, without police necessity.

P.G. 203-10, Page 1, Paragraph 5  
(now encompassed by A.G. 304-06)

PUBLIC CONTACT --  
PROHIBITED CONDUCT

P.G. 212-90

GUIDELINES FOR  
INTERACTION WITH  
LIMITED ENGLISH  
PROFICIENT PERSONS

### Disciplinary Case No. 2022-24576

1. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, wrongfully used force, in that he pushed § 87(2)(b) without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, was discourteous to § 87(2)(b) by saying in sum and substance, "You want to come at me again asshole?," "Come at me again you fucking asshole," without police necessity.

P.G. 203-09, Page 1, Paragraph 2  
(now encompassed by A.G. 304-06)

PUBLIC CONTACT --  
PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION AND VALUES  
OF THE NYPD

<sup>1</sup> The Vendor is a minor whose identity is known to the Tribunal.

3. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, abused his authority as a member of the New York City Police Department in that he threatened § 87(2)(b) with the use of force without police necessity.

P.G. 203-10, Page 1, Paragraph 5  
(now encompassed by A.G. 304-06)

PUBLIC CONTACT --  
PROHIBITED CONDUCT

## REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 10, 2023. Respondents Samuel and Brown, through their counsel, each entered a plea of Not Guilty to the charged misconduct. CCRB-APU called § 87(2)(b) and § 87(2)(b) as witnesses and introduced into evidence video footage of the events; the Vendor, a twelve year-old undocumented immigrant, and her father did not appear before the Tribunal. 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 evaluated all of the evidence in this matter, I find both Respondents Not Guilty of all charges and specifications.

## ANALYSIS

The following is a summary of the evidence presented at trial. On January 2, 2020, both Respondents were police officers in the 18 Precinct, commonly referred to as Midtown North. Respondent Samuel was working at the Rockefeller Christmas Tree Detail and Respondent Brown was assigned to the House of Worship Auto ("HOWA"). (Tr. 45, 75) Officers assigned to the Rockefeller Christmas Tree Detail are instructed that unlicensed vending<sup>2</sup> in the vicinity of the tree "can[not] [be] allow[ed]." (Tr. 45)

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<sup>2</sup> NYC Administrative Code § 20-453 states, "It shall be unlawful for any individual to act as a general vendor without having first obtained a license."

At around 2100 hours, Respondent Samuel observed the Vendor selling light-up balloons, without a general vendor's license, near the Christmas tree. She approached the Vendor on two occasions, each time explaining that she couldn't sell balloons in the area without a license and directing her to leave. Each time the Vendor left briefly, and then returned. The third time Respondent Samuel saw the Vendor return, she decided to issue a summons on the scene. She asked the Vendor for identification, which she said she did not have. Respondent Samuel informed the Vendor that she was being placed into custody, and grabbed her arm. At some point while taking the Vendor into custody, Respondent Samuel swept her foot under the Vendor's foot, bringing her to the ground. She immediately stood back up and began pulling away from Respondent Samuel and Respondent Samuel brought her to the ground a second time. (Tr. 45-50)

Respondent Samuel got the Vendor to her feet and walked her over to her supervisor, Sergeant Kalogeropoulos. She informed him that the Vendor spoke primarily Spanish, and he called another officer, Police Officer Ricardo, to the scene to provide translation services. Officer Ricardo and his partner, Respondent Brown, arrived a little more than ten minutes later, five minutes after the Vendor's father arrived. (Tr. 54-55, CCRB Ex. 2 at 11:51, 16:38) The Vendor's father was informed in Spanish that his daughter was going to be transported to the precinct. The Vendor grabbed onto her father; he did not move or cooperate with the officers and did not tell his daughter to go with them. The father was eventually arrested for Obstructing Governmental Administration.<sup>3</sup> (Tr. 56)

§ 87(2)(b) was recording with his cell phone as Officer Ricardo and Respondent Brown were placing the Vendor into an RMP. Initially, § 87(2)(b) was recording from about

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<sup>3</sup> The arrest of the Vendor's father is not an issue in this case.

fifteen feet away, but at some point, he came up behind Respondent Brown, who pushed him back into a barricade. (Tr. 28, 78-79) § 87(2)(b) got immediately to his feet and Respondent Brown retorted, “You wanna come at me, asshole?” (CCRB Ex. 3A at 00:09; CCRB Ex. 4A at 00:07-18)

*Respondent Samuel – Case No. 2022-24578*

Respondent Samuel is accused of wrongfully using force against the Vendor by bringing her to the ground, without police necessity, and failing to obtain interpretation services. Neither the Vendor nor her father appeared to testify, and no CCRB interviews with them were presented to the Tribunal<sup>4</sup>. With regard to Specification 1, the sole evidence introduced by CCRB-APU was surveillance footage from the night of the incident, which appears to be low-resolution and possibly internally compressed, which is not unusual since security footage tends to be high in volume and must be stored for set periods of time. The recording was also taken from quite a distance, which is not ideal and makes it extremely difficult to discern exactly what is transpiring. The images are blurry, the color is muted, and it is hard to make out individuals. However, because of the blinking lights of the balloons held by the Vendor, she is identifiable and it is possible to pinpoint the Vendor and Respondent. In the video, Respondent Samuel can be seen holding the Vendor her by the arm, before Respondent Samuel brought the Vendor to the ground the first time. The Vendor immediately stood back up and began pulling away from

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<sup>4</sup> CCRB-APU offered into evidence a series of e-mails with attachments depicting screen-shots of handwritten notes as well as text and “WhatsApp” messages from the night of the occurrence. These were introduced through the testimony of § 87(2)(b) who was working at New Sanctuary Coalition, an organization that provided support and services to immigrant families at the time of the occurrence. § 87(2)(b) was the author of the notes and a participant in the messages. Neither the Vendor nor her father were parties to the text and “WhatsApp” messages. The messages were between § 87(2)(b) and a colleague from New Sanctuary Coalition, and § 87(2)(b) and her own father, discussing that she had been reached out to by the Vendor’s parents about an incident that occurred at the tree resulting in their daughter being taken into custody. These double hearsay messages were of very limited probative value other than to show that the Vendor’s parents reached out to this organization close in time to the incident. (CCRB Ex.5)

Respondent Samuel, again in a circular motion, and Respondent Samuel brought her to the ground a second time. A group of people can be seen, comprised of both visitors to the tree and some people who seemed to be watching the events with the Vendor. (CCRB Exs. 1,1A)

Also introduced into evidence was a twenty-nine-minute cellphone video, recorded by an observer on the scene. It begins shortly after the Vendor is taken into custody. The video shows the Vendor sitting on a bench, intermittently crying and wiping her face with her hands, while Respondent Samuel and her sergeant are standing a couple of feet in front of her. The individual recording the video is heard repeatedly asking the Vendor, in English, whether she needs medical help. At first, the Vendor can be seen shaking her head in the negative, then she nods yes, when the individual states in sum and substance: “Do you complain of your leg, yes? Yes?” (CCRB Ex. 2 at 00:29-00:32) and continues with the individual calling 911 for an ambulance. (CCRB Ex. 2 at 00:30-01:12) The video shows a conversation between the individual recording and a woman who claims she saw Respondent Samuel throw the Vendor to the ground. (CCRB Ex. 2 at 04:30-06:02) Additionally, the Vendor also states, in English “That’s not my mom...,” when two women approach the scene and Respondent inquires about their identity. (CCRB Ex. 2 at 14:52-14:55)

Respondent Samuel recounted the events of that night in a calm and deliberate fashion, and I credit her testimony. She testified that she has worked the Rockefeller Center Christmas Tree detail “many” times, and that one of the major concerns in the “chaotic” atmosphere is illegal vending. She recalled officers assigned to the Rockefeller Christmas Tree Detail are instructed that unlicensed vending in the vicinity of the tree “can[not] [be] allow[ed].” (Tr. 45) She explained that vendors who have a license are easily identifiable by a badge they wear around their necks. When confronted with an unlicensed vendor, Respondent Samuel’s normal

practice is to give the person a warning, and if they continue selling after that, to issue them a summons. (Tr. 45-47)

With respect to the incident in question, Respondent described giving two warnings to a female who she testified she believed was in her twenties. She did confirm that the Vendor was physically smaller than her; Respondent Samuel described herself, at the time of the incident, as 5 feet, 3 inches tall and weighing approximately 135 pounds. Respondent Samuel detailed that when she asked the Vendor for ID after seeing her selling balloons a third time, the Vendor responded, in accented English, “Why are you bothering me? Why are you here?” After deciding to detain the Vendor when she did not present ID, Respondent Samuel recalled that she began “pulling away in a circular motion” while still holding onto the balloons. According to Respondent Samuel, the Vendor continued to pull away despite being told to “stop resisting” and a crowd formed, “agitating the situation.” Concerned about the crowd and about the possibility of the Vendor fleeing and “to stop everything from going any further,” she “took [her] foot and swept it under [the Vendor’s] foot to gain control of her,” a tactical move she learned in the Police Academy. This maneuver brought the Vendor to the ground; Respondent Samuel opted not to handcuff her at that point because she just wanted to get away from the crowd that “was still yelling and coming closer.” Instead, she brought the Vendor immediately to Sergeant Kalogeropoulos. (Tr. 50-52)

Respondent Samuel recalled that she told Sergeant Kalogeropoulos that the Vendor “speaks Spanish” and that although she understood English well enough to leave the area when directed to and to speak some words in English, “I didn’t think she was fully fluent.” That is when the sergeant called Officer Ricardo to come to the scene to act as an interpreter. While waiting for the Spanish-speaking officer to arrive, neither Respondent Samuel nor Sergeant

Kalogeropoulos asked the Vendor any questions. When Officer Ricardo arrived he was able to communicate with the Vendor, and contact her father to come to the location. Officer Ricardo then explained to both the Vendor and her father that she was to be transported to the Precinct. Respondent Samuel went on to describe the Vendor's behavior when it was time for the officers to escort her to the RMP: "As we were taking -- we were going to take the daughter into the RMP, the daughter latches onto the father, not trying to let go and comply us with us..." She stated that the Vendor's father was instructed in Spanish that "the daughter has to come with us, and [that he needed] to release her and let her go. Trying to calm the situation down... We had to separate them from each other . . ." (Tr. 53-56)

*Specification One: Excessive Force*

Respondent Samuel stands charged with wrongfully using force against the Vendor without police necessity. Patrol Guide 221-02 sets forth that officers should "apply no more than the reasonable force necessary to gain control." In addition Patrol Guide 221-01, sets forth several factors to be considered when determining whether a use of force is reasonable, including actions taken by the subject, duration of the action, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, as well as size, age, and condition of the subject in comparison to the MOS.

Respondent Samuel admitted that she brought the Vendor to the ground twice while trying to take her into custody. Her testimony about the interaction was not contradicted by anything depicted in CCRB's Exhibit 1 and its sub-clip, 1A. In those videos, Respondent Samuel, who was by herself, can be seen holding onto the Vendor and both of them fall to the ground. The Vendor immediately gets back to her feet and can then be seen pulling away from

Respondent Samuel; they then turn in a circle. In order to stop the motion, Respondent Samuel used a technique she learned in the Police Academy to bring the Vendor to the ground by sweeping her feet out from under her.

The evidentiary record in this case is particularly scant and devoid of independent evidence supporting CCRB's force charge. The Vendor did not testify in the proceedings and the sole evidence offered by CCRB-APU in support of Specification 1 consisted of poor quality, grainy surveillance video (CCRB Exs. 1 and 1A), which did not contradict, and in some respects supported Respondent Samuel's account of what happened. Additionally, CCRB Exhibits 3 and 4 show the Vendor's lack of cooperation when being escorted to the RMP, which lends credence to Respondent Samuel's description of her as uncooperative. Ultimately, the burden lies with CCRB to establish the misconduct charged by a preponderance of the credible evidence. While it is undisputed that force was used against the Vendor, there is insufficient evidence to make a determination about whether that force was unreasonable.

Accordingly, I find that the CCRB-APU did not establish that Respondent Samuel wrongfully used force against the vendor, and therefore find her Not Guilty of Specification 1.

*Specification 2: Failure to Obtain Interpretive Services*

Respondent Samuel has also been charged with failing to obtain language interpretation services for the Vendor. Patrol Guide 212-90 requires members of the Department who encounter a person who has limited proficiency in English to "determine if a bilingual member of the service is readily available (on scene, on duty within command, etc.) to interpret and whether their use is appropriate."

Respondent Samuel testified that although the Vendor spoke in accented English, she appeared to understand enough to know that she was being told she could not sell balloons in

that area, as evidenced by the Vendor leaving briefly and returning twice. Respondent Samuel recounted that the Vendor asked and answered questions in English when confronted about her activities, including asking, in sum and substance, “why are you bothering me?” Indeed, at the beginning of CCRB’s Exhibit 2, the Vendor can be seen responding to questions posed to her in English by nodding or shaking her head. (CCRB Ex. 2 at 00:00-00:30) Additionally, Complainant also is heard at one point in that video stating, in English “That’s not my mom...” (CCRB Ex. 2 at 14:52-14:55)

In spite of this, Respondent Samuel relayed to Sergeant Kalogeropoulos that the Vendor was not “fully fluent” in English. (Tr. 53) He promptly ordered a Spanish-speaking officer, who was on duty within the confines of Manhattan North, to come to the scene to assist with a more precise translation. The additional data section of Patrol Guide 212-90 advises: A person who is considered [Limited English Proficient] may require interpretation or translation services in one situation, but may not require those services in a different situation... If doubt exists regarding whether a person requires language assistance services...the person should be considered [Limited English Proficient] and this procedure complied with.

The Vendor did not testify before the Tribunal, nor was a CCRB interview presented. Indeed, no evidence was offered to show that the Vendor’s understanding of English was so limited that she did not understand the instructions given by Respondent Samuel when they first encountered each other, which would have required Respondent Samuel to obtain interpretation services earlier.

Based upon the foregoing, I find that the CCRB-APU has failed to prove by a preponderance of the evidence that Respondent Samuel failed to obtain language interpretation services and therefore I find her Not Guilty of Specification 2.

*Respondent Brown – Case No. 2022-24576*

Respondent Brown is charged with wrongfully using force without police necessity, courtesy and threatening to use force without police necessity. These charges all relate to Respondent Brown's interaction with § 87(2)(b) which occurred approximately a half an hour after Respondent Samuel's detention of the Vendor.

§ 87(2)(b) testified that he is a licensed vendor who takes photographs of tourists by the Rockefeller Christmas tree. He observed the Vendor after she had been detained, when she was being taken to the RMP and explained, "...the way the cops was on the girl, it wasn't like -- like, the way the force was, it wasn't right. And I started recording." § 87(2)(b) went on to describe his interaction with Respondent Brown: "I started recording, and the cop picked me up and threw me. And after I got up, he said come at me again." He denied trying to "go for" or "trying to harm" Respondent Brown. (Tr. 22-24) On cross-examination, § 87(2)(b) described being about 15 feet away from where Respondent Brown and Officer Ricardo were attempting to place the Vendor into the RMP and recording the interaction with his cellphone. He observed the Vendor "fighting" with the officers who were "grabbing her by the throat". (Tr. 23-26) § 87(2)(b) acknowledged running at the officers, and getting within one foot of Respondent Brown, but claimed that he did so because he was acting as a "good citizen" by recording the incident, "[b]ecause I felt like they were just doing too much." (Tr. 28-29)

Although he testified that he went to the hospital that night for injuries to his ankle and his back, no medical records were entered in evidence. (Tr. 23) § 87(2)(b) stated that he turned over the cellphone video of the incident he recorded to CCRB, although it apparently was not produced in discovery, nor was it presented as evidence in the hearing. (Tr. 25-27)

CCRB entered into evidence the full body-worn camera recordings, as well as clips, of both Respondent Brown and Police Officer Ricardo. (CCRB Exs. 3, 3A, 4 and 4A). In the footage from Respondent Brown's body-worn camera, he and Officer Ricardo can be seen having some difficulty walking the Vendor to the RMP, their progress apparently hindered because of her lack of cooperation. (CCRB Ex. 3 at 02:15-03:07) While they are standing near the vehicle, § 87(2)(b) can be heard saying, "14 years-old." Respondent Brown turns and § 87(2) § 87(2) is standing behind him, closer than arms-length from him. Respondent Brown yells, "get out of the street." He then steps towards and pushes § 87(2)(b) on the chest, causing him to fall into a barricade. § 87(2)(b) immediately gets back to his feet and starts moving towards Respondent Brown. Respondent Brown yells, "You wanna come at me, asshole? Get out of the street." He then walks away towards the RMP. Unidentified members of the crowd are heard saying, "What are you doing?" and "You can't push him like that!" Respondent Brown, who has turned back to the RMP, can be heard saying "Don't tell me the fucking law, asshole." (CCRB Ex. 3A, 4A)

At trial, Respondent Brown recounted the events of the night in question, starting with his arrival at the location with Officer Ricardo, who provided interpretation services. (Tr. 76) Respondent Brown recalled bringing the Vendor to the RMP, and that as he was trying to get her inside "something from behind came around my right side and made contact with me." (Tr.78) He went on to describe in further detail the interaction with § 87(2)(b) "No, it was bang, bang. I felt like an arm come flying around me from my right side, where my gun is...I turned around and he was against me... I pushed him back to create distance and he went back...I didn't know what his intention was or what he was trying to do, whether he was trying to interfere with the girl." (Tr.78-79) Respondent Brown acknowledged having previously been in situations where

members of the public were recording an arrest, but could not recall another in which an individual came up behind him and “interfered.” The push was the sole physical contact he made with § 87(2)(b) (Tr. 80)

Respondent Brown then recounted that in response to seeing § 87(2)(b) jump up and start coming towards him, he yelled “come at me again, asshole.” (Tr. 81) When asked why he chose to phrase it that way he explained, “In my mind, it was the best method at that time to de-escalate it. We still had to get -- the kid was still not in the back of the car. The doors were open. The crowd from when it originally started had got significantly bigger. So as far as to avoid contact again and to have them disperse, that was the best method.” (Tr. 82) He denied on cross-examination that he was trying to instigate a fight with § 87(2)(b) in making this comment. Respondent Brown stated that there was no further force used against § 87(2)(b) who was not arrested and left the location shortly thereafter. (Tr. 82, 89)

*Specification 1: Excessive Force (Push)*

Respondent Brown stands charged with wrongfully pushing § 87(2)(b) without police necessity. While Patrol Guide 221-02 directs officers that any application of force must be reasonable under the circumstances, it also requires members of the NYPD to take necessary action to protect life and personal safety of all persons present, which in this case included the Vendor and Officer Ricardo. It is undisputed that Respondent Brown used force against § 87(2)(b) by pushing him on the chest, and that as a result of that push he fell towards the ground, landing on a barricade. The question for this Tribunal is whether there was a police necessity that required the use of force.

Respondent Brown testified credibly about a hectic situation. He and Officer Ricardo were attempting to place an uncooperative minor into an RMP, there were citizens observing the

situation, who were yelling at the officers, and some of them, like § 87(2)(b) were recording. Rather than staying at a safe distance, § 87(2)(b) rushed towards Respondent Brown, coming up behind him and getting within an arm's length. Respondent Brown responded quickly by turning and pushing § 87(2)(b) once, in order to "create distance." While § 87(2)(b) had every right to record the arrest of the Vendor, and indeed, to verbally object to it, he did not have the right to physically interfere<sup>5</sup>. I do not believe that § 87(2)(b) was simply trying to get a closer view for his recording. His actions as described by himself and Respondent Brown could reasonably be perceived as posing a danger to the safety of the officers and the Vendor, as illustrated by the body-worn camera recordings of both officers.

The Tribunal finds that Respondent Brown had a rational response to actions which he reasonably perceived as threatening, in large part because of the very close proximity of § 87(2)(b) to Respondent Brown in close vicinity to his firearm. His response was limited to a single push backwards that immediately neutralized that threat by creating distance between Respondent Brown, the minor Vendor, and § 87(2)(b). The limited extent of the force supports a finding that it was not a punitive response to an individual recording a police encounter. For the foregoing reasons, I find Respondent Brown Not Guilty of Specification 1.

*Specifications 2 and 3: Courtesy and Threat of Force*

Respondent Brown is charged with being discourteous to § 87(2)(b) as well as wrongfully threatening him with force. It is undisputed that, as charged, Respondent Brown did say to § 87(2)(b) "You wanna come at me, asshole?" Respondent Brown has admitted to making this statement to § 87(2)(b) and the body-worn camera recordings capture the comment.

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<sup>5</sup> The Tribunal did not have the opportunity to review what it considers an important piece of evidence, the cellphone video of the incident recorded by § 87(2)(b) which may have shed light on his intent when approaching Respondent Brown.

The Tribunal notes that CCRB-APU also charged Respondent Brown with making a second, specific statement to § 87(2)(b) “Come at me again, you fucking asshole;” and as proof, during summation, directed the Tribunal to CCRB Exhibit 3 at 03:33. (Tr. 115) After careful review of the entire recording, paying particular attention to that specific clip, it is clear that Respondent Brown did not make the statement as charged. He did state, “Don’t tell me the fucking law, asshole.” This statement, while unprofessional and discourteous, is materially different from, and not interchangeable with the language that was charged. Additionally, there is no evidence regarding who the statement was directed to, as there were multiple bystanders on the scene, many of whom were expressing disagreement with the actions of the officers. Respondent Brown was not asked about the second comment, and therefore had no opportunity to provide context or explanation about his behavior.

While the Tribunal in an administrative proceeding may *sua sponte* amend the pleadings, they may only do so when the amendment would not prejudice the respondent; “[N]o person may lose substantial rights because of wrongdoing shown by the evidence, but not charged.”

*Dept. of Correction v. Jenkins*, OATH Index No. 3070/09 (Dec. 16, 2009), quoting *Murray v. Murphy*, 24 N.Y.2d 150, 157 (1969); *see Dept. of Finance v. Smyth*, OATH Index No. 1285/11 at 3 (Mar. 9, 2011). Thus, the Tribunal is limited to consideration of the statement made to

§ 87(2)(b) “You wanna come at me, asshole?” and must decide—(i) whether that statement rises to the level of courtesy, in violation of Departmental Guidelines, and (ii) whether that statement constitutes a wrongful threat of force.

Calling a member of the public an “asshole” is rude and discourteous on its face, and, in general, is not the kind of language the Department tolerates from officers in the course of regular conversations with members of the public. However, the circumstances surrounding

Respondent Brown's encounter with § 87(2)(b) were far from regular. As previously noted, Respondent Brown was dealing with an uncooperative arrestee, who by that point he knew to be a juvenile. A crowd was at a major tourist attraction the day after New Year's, and expressing discontent with the officers' actions. § 87(2)(b) rushed up behind Respondent Brown getting within an arm's length, an act which was reasonably perceived as threatening, warranting a single push to keep him back, as described above. After being pushed away by Respondent Brown, § 87(2)(b) jumped back up and began to come towards him again. Respondent Brown reacted to this behavior by yelling, "You wanna come at me, asshole?"

The Tribunal has previously found that, under certain circumstances, the use of a discourteous word, such as "asshole," does not always rise to the level of sanctionable misconduct. *See Disciplinary Case No. 2022-27455* (Oct. 10, 2023) (Officer found Not Guilty of discourteously stating, "Don't do that shit in my face" to a motorist who rolled up his window during a car stop and proceeds to open the driver's side door. The objective of the words spoken by Respondent was to communicate a directive to an individual who was being issued a summons. While the language was unbecoming, and should not be part of a police officer's normal vernacular, the circumstances presented at that moment absolved Respondent from discipline for using it.) In the instant case Respondent Brown's language was a warning to § 87(2)(b), who had started coming towards him a second time, not to get physical again. While not the ideal solution, the use of profanity is preferable to physical engagement, and had the desired effect. Based on this recent precedent and having carefully considered the circumstances under which Respondent Brown made this comment, I find he is Not Guilty of the misconduct charged in Specification 2.

The final question for the Tribunal is whether the comment in question constitutes a wrongful threat of force against § 87(2)(b) in violation of Department guidelines. I credit Respondent Brown's testimony that far from being a threat, he intended the words to serve as more of a warning, in the hopes that they would cause § 87(2)(b) to pause before rushing towards Respondent Brown again. I found Respondent Brown's explanation that he wanted to ensure the minor Vendor was safely placed into the RMP and then to leave the busy location, thereby avoiding further contact or any type of physical altercation with § 87(2)(b) to be sincere. Indeed, almost immediately after Respondent made the comment, the officers were able to get the Vendor into the RMP and transport her to the precinct without further incident.

I find the comment in this case was a warning, of a sort, not to engage the officers further and hold up the transport of the Vendor. To be sure, Respondent Brown could have conveyed that in a more professional, even-handed manner. However, based on the foregoing, I find that CCRB-APU has failed to prove by a preponderance of the credible evidence that his statements constituted a wrongful threat of force against § 87(2)(b) in violation of P.G. 203-10, as in effect at the time. I therefore find Respondent Brown Not Guilty of Specification 3.

Respectfully submitted,



Anne E. Stone  
Assistant Deputy Commissioner Trials

**DISAPPROVED**



EDWARD A. CABAN  
POLICE COMMISSIONER



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ERIC L. ADAMS  
MAYOR

ARVA RICE  
INTERIM CHAIR

Honorable Edward A. Caban  
Police Commissioner  
New York City Police  
Department One Police Plaza  
New York, NY 10038

December 13, 2023

Re: Police Officer Atisha Samuel  
Disciplinary Case No.: 2022-24578

Police Officer Jason Brown  
Disciplinary Case No. 2022-24576

Commissioner Caban:

The above-referenced case was tried on October 23, 2023, by Nishat Tabassum, Esq., for the New York City Civilian Complaint Review Board (from now on, “CCRB”) and pursuant to the Memorandum of Understanding between CCRB and the New York City Police Department.

**Respondent, Police Officer Atisha Samuel, was charged with the following:**

1. Police Atisha Samuel, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North Precinct in the vicinity of 30 Rockefeller Plaza, New York County, wrongfully used force, in that she used physical force against § 87(2)(b) and brought her to the ground, without police necessity.

PG 221-02, Page 2, Prohibition 11 USE OF FORCE

2. Police Officer Atisha Samuel, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown Precinct, in the vicinity of 30 Rockefeller Plaza, New York County, abused her authority as a member of the New York City Police Department, in that she failed to obtain language interpretation services for § 87(2)(b) without police necessity.

PG 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT [now encompassed by Administrative Guide 304, Page 1, Paragraph 1 PROHIBITED CONDUCT]; PG 212-90 GUIDELINES FOR INTERACTION WITH LIMITED ENGLISH PROFICIENT (LEP) PERSONS

**Respondent, Police Officer Jason Brown was charged with the following:**

1. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North Precinct, and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, wrongfully used force, in that he pushed § 87(2)(b) without police necessity.

PG 221-02, Page 2, Prohibition 11 USE OF FORCE

2. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North Precinct, and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, was discourteous to § 87(2)(b) by saying in sum and substance, “You want to come at me again asshole?,” “Come at me again you fucking asshole,” without police necessity.

PG 203-09, Page 1, paragraph 2 PUBLIC CONTACT – GENERAL [now encompassed by Administrative Guide 304-06, Page 1, Paragraph 2 PROHIBITED CONDUCT]; PG 200-02 MISSION, VISION, AND VALUES OF THE NEW YORK CITY POLICE DEPARTMENT

3. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North Precinct, and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, in that he threatened § 87(2)(b) with the use of force, without police necessity.

PG 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT [now encompassed by Administrative Guide 304-06, Page 1, Paragraph 1 PROHIBITED CONDUCT]

CCRB has reviewed the November 21, 2023, draft decision of Assistant Deputy Commissioner - Trials (hereinafter, “ADCT”) Anne E. Stone. We respectfully submit the following comments regarding the draft decision pursuant to *Fogel v. Board of Education*, 48 A.D.2d 925 (2d Dept. 1975).

The Court found Respondent Samuel and Respondent Brown Not Guilty of all Charges and Specifications. The CCRB respectfully requested that you reject ADCT Stone’s findings regarding all Charges and Specifications and find the Respondents guilty. And to accept CCRB’s recommended penalties that Respondent Samuel forfeit thirteen (13) vacation days and Respondent Brown forfeit twenty (20) vacation days for the following reasons:

**SUMMARY OF FACTS**

On January 2, 2020, at approximately 9:30 pm, § 87(2)(b) who was 12 years old at the time of the incident, was selling balloons. Respondent Samuel of the 18th Precinct approached § 87(2)(b) and told her she could not sell balloons there. § 87(2)(b)

§ 87(2)(b) spoke primarily Spanish, and Respondent Samuel needed to provide her with language interpretation. Respondent Samuel arrested § 87(2)(b) grabbed, and swung her in a counterclockwise motion, and brought her to the ground. Later, Sergeant Kalogeropoulos called Police Officer Ysmael Ricardo, and Respondent Brown from the 18th Precinct responded to the location for PO Ricardo to be the Spanish interpreter for § 87(2)(b)

As PO Ricardo and Respondent Brown were handcuffing § 87(2)(b) near the police vehicle, § 87(2)(b) approached the officers while recording on his phone. PO Brown § 87(2)(b) grabbed and pushed § 87(2)(b) several feet backward, then shoved § 87(2)(b) into a metal barricade and then onto the ground. Respondent Brown said to § 87(2)(b) “You want to come at me again asshole? Come at me again you fucking asshole”

#### **SUMMARY OF THE RELEVANT EVIDENCE AT TRIAL**

CCRB Exhibit 1 - 202000071\_2020034\_1414DMI:

The Rockefeller Center security footage captured Respondent Samuel's initial interactions with § 87(2)(b) and Respondent Samuel's use of force against § 87(2)(b) § 87(2)(b) in its entirety. In exhibit 1, the aerial recorded footage showed that between 00:00 and 03:39, people were walking around the plaza, including people holding bundles of light-up balloons. At 03:39, a group of people gather around one individual with a bundle of balloons in the center-left of Rockefeller Plaza. They continue to stand with each other until 06:00. At 06:00, two individuals, § 87(2)(b) and Respondent Samuel, move to the center of the plaza and physically struggle with each other. At 06:18, § 87(2)(b) falls to the ground. Respondent Samuel is seen holding onto § 87(2)(b) and Respondent Samuel swings around and falls to the ground with her. At 06:26, Respondent Samuel gets up, picks up § 87(2)(b) and turns her around counterclockwise. At 06:30, § 87(2)(b) was thrown to the ground, and the balloons scattered on the ground no longer lit up. Respondent Samuel then was on top of § 87(2)(b). A crowd § 87(2)(b) appeared to move backward and form a circle around Respondent Samuel and § 87(2)(b) but no one approached them.

CCRB Exhibit 1a – 202000071\_20200310\_1003\_DMI:

This exhibit is a sub-clip of Exhibit 1- The Rockefeller Center Cameras. This evidence shows the force that PO Samuel used against § 87(2)(b)

CCRB Exhibit 2 – 202000071\_20200130\_0920\_DMI:

Exhibit 2 in evidence- video recording from civilian § 87(2)(b) which is twenty-nine minutes and fifty-nine seconds long. Respondent Samuel and Sgt. Kalogeropoulos were standing over § 87(2)(b) while she was sitting on a concrete planter in front of Rockefeller Plaza. She was crying and constantly rubbing her left knee. § 87(2)(b) continuously offered medical aid to § 87(2)(b) and requested that the officers get her medical attention. Also, he informed the Officers that he was a doctor and would render medical assistance to her if the Officers permitted him. Several times, the Officers refused all requests for medical attention for § 87(2)(b)

Nevertheless, § 87(2)(b) called 911 for EMS several times, seeking medical assistance on behalf of § 87(2)(b). He described her as a child of about twelve years old. Respondent Samuel continued to look around while she stood over § 87(2)(b) Sgt.

Kalogeropoulos told § 87(2)(b) that § 87(2)(b) did not need medical attention. § 87(2)(b) could not have ascertained that from her because § 87(2)(b) does not speak English. (See – footage from 0:03:2-0:03:48). § 87(2)(b) was a good Samaritan who did not witness the force that Respondent Samuel used against § 87(2)(b) however, he recorded § 87(2)(b) statements. § 87(2)(b) stated that she observed Respondent Samuels's actions against § 87(2)(b) § 87(2)(b) recording showed that it was taken during the incident as all the officers, the victim, her father – § 87(2)(b) and the witness were at the front of Rockefeller Plaza. § 87(2)(b) explained that Respondent Samuel acted like she was a man by picking up § 87(2)(b) off the ground and threw her to the ground. She further stated that based on the force that Respondent Samuel used against § 87(2)(b) her knee must be hurting her, and it will hurt her for a long time to come. She stated that § 87(2)(b) is a child of twelve years old, and Respondent Samuel's actions against § 87(2)(b) were child abuse. (See – footage from 0:04:18-0:07:34)

CCRB Exhibit 3 -

Respondent Brown's body-worn camera (after this "BWC") footage wasn't the best. Still, it did capture Respondent Brown's use of excessive force against § 87(2)(b) his threat to use force against § 87(2)(b) and his acts of courtesy. The BWC footage is fourteen minutes. The footage showed that Respondent Brown's camera was not correctly set to capture Respondent Brown's interactions with the public directly from a frontal view. The recording captured a sideways view instead of an upright-frontal view. Also, the audio of his video did not play continuously after the first minute buffer time; the audio was intermittent through the fourteen minutes of the recording, some of which may be attributed to redaction because of the minor.

At 03:11, § 87(2)(b) approached the officers as he was recording; as he got closer to Respondent Brown, he turned around and grabbed § 87(2)(b) while holding and pushing him backward. Respondent Brown then shoved § 87(2)(b) causing § 87(2)(b) body to fly the remaining way across the street into the metal barrier, and then he fell to the ground. Respondent Brown, committing the above-described acts and said, "Get out of the street." The force Respondent Brown used against § 87(2)(b) caused his entire body to move backward several feet; he was pushed from one side of the street to the opposite. § 87(2)(b) back struck the metal barricades behind him on the opposite side of the street, causing him to strike his body on the ground. Respondent Ricardo says, "He's under" multiple times. § 87(2)(b) got up and started moving towards Respondent Brown quickly. At 03:16, Sgt. Kalogeropoulos pushed § 87(2)(b) wearing an orange hat in the video, back a few feet. Respondent Brown said, "You want to come at me again asshole?" At 03:33, Respondent Brown says, "Come at me again, you fucking asshole." The recording did not show § 87(2)(b) with any weapons or instrument besides his phone recording the incident. Even though civilians were at the location, there was no evidence of anyone physically attacking any of the Officers or anyone. Even though the civilians were speaking out that the Officers' actions were child abuse and police abuse, Respondent Brown forcefully shoved § 87(2)(b) across the street into the barrier and onto the ground.

CCRB Exhibit 3a -

This exhibit is a sub-clip of Exhibit 3 – showing Respondent Brown's actions against § 87(2)(b) as described above but explicitly focusing on the acts establishing the charges.

CCRB Exhibit 4 –

PO Ricardo's body-worn camera footage is thirty-two minutes and twenty-one seconds. The recording of the incident showed Respondent Brown using excessive physical force against § 87(2)(b) he threatened to use physical force against § 87(2)(b) and he was discourteous to § 87(2)(b) Respondent Samuel stated in the video that § 87(2)(b) would be released to her parent(s) when the person established their relationship with the minor, which her father did, supported by PO Ricardo's BWC recording. After PO Ricardo verified the information with the child and her father § 87(2)(b) then asked the Respondents if § 87(2)(b) was good to go? Thereafter, Respondent Samuel and Sgt Kalogeropoulos briefly stepped away upon their return, they informed the other officers that the child had to be taken to the Precinct because it came over as an assault. Also, some portions of PO Ricardo's BWC recording are inaudible. Respondent Brown, PO Ricardo, Respondent Samuel, and Sgt. Kalogeropoulos arrested § 87(2)(b) and § 87(2)(b) § 87(2)(b) walked them to their police vehicle. As they were placing § 87(2)(b) into the car, more civilians stopped and were recording the incident, but there was no evidence of violence from anyone at the incident. At PO Ricardo's BWC from 30.40 to 31.29, § 87(2)(b) wearing an orange cap, stepped off the sidewalk, walked across the street, and approached the officers while recording on his phone for a few seconds before Respondent Brown turned and grabbed him. Respondent Brown held him then pushed and moved him backwards several feet away from the police vehicle. As he got closer to the barriers on the other side of the street, he threw § 87(2)(b) directly into a barrier; thereafter § 87(2)(b) fell to the ground between two metal barriers. He quickly got up from the ground and moved a barrier as he walked towards Respondent Brown. Respondent Brown stated that "You want to come at me again asshole?" and "Come at me again, you fucking asshole."

CCRB Exhibit 4a:

This exhibit is a sub-clip of Exhibit 4 – showing Respondent Brown's actions against § 87(2)(b) as described above but explicitly focusing on the acts establishing the charges.

CCRB Exhibit 5 – Showed WhatsApp messages between New Sanctuary Coalition workers and § 87(2)(b) showing that he immediately called seeking help when he arrived at Rockefeller Center and learned that the police threw his twelve-year-old daughter to the ground and arrested her.

§ 87(2)(b) § 87(2)(b) testified that he was concerned about § 87(2)(b) when he walked over to record the officers' activities at the police vehicle. CCRB exhibits three and four of Respondent Brown's and PO Ricardo's body-worn camera recordings, captured Respondent Brown use of force against § 87(2)(b) Respondent Brown pushed § 87(2)(b) by grabbing him, pushing him backward, then picking him up approximately five feet off the ground and throwing him against a metal barricade, and he landed on the ground. That same night, § 87(2)(b) went to § 87(2)(b) Hospital in Manhattan after this incident. He suffered injuries to his head, back, and leg.

***RESPONDENT SAMUEL – DISCIPLINARY CASE No.: 2022-24578***

**RESPONDENT SAMUEL IS GUILTY OF WRONGFULLY USING PHYSICAL FORCE**

**AGAINST** § 87(2)(b)

CCRB disagrees with the tribunal's findings and argues that the evidence submitted did establish the charge that Respondent Samuel wrongfully used physical force against § 87(2)(b) and that CCRB met its burden by the preponderance of the evidence.

The applicable portion of Patrol Guide 221-02, Page 2, Prohibition 11 states that "apply no more than reasonable force necessary to gain control.

It is undisputed that on the date and time of the incident, the victim, § 87(2)(b) was a twelve-year-old child instead of an adult, as Respondent Samuel stated in her testimony at the hearing that in her initial encounter with the victim, she believed § 87(2)(b) to be a woman in her twenties. (see Transcript, hereafter "TR," on Page 51, Lines 1 to 3). In contrast, all the other evidence at the hearing, including viewing § 87(2)(b) as seen in the recorded evidence from § 87(2)(b) Respondent Brown, and PO Richardo, is not a woman in her twenties. The victim's age is relevant because the totality of the circumstance relating to the force used against her must be assessed from her ability to understand and appreciate the instructions and the officer's action against this minor.

Respondent Samuel testified that § 87(2)(b) was vending light-up balloons without a vendor's license in Rockefeller Center Plaza, a known precinct condition, which was her duty assignment. As such, she gave § 87(2)(b) two verbal warnings to leave the area and then took police action the third time. After the first warnings, § 87(2)(b) left the area for maybe fifteen to thirty seconds, which is contradicted by the video evidence. (TR -Page 47, Lines – 9 to 25 and Pg 48, Lines 1 to 5 and CCRB Exhibit 1 – 03:39 to 6:26)

It is also undisputed that § 87(2)(b) spoke little English, and her primary language is Spanish; even Respondent Samuel admitted the preceding. (TR – Page 53, Lines 8-11) CCRB 2, 3, 3a, 4, and 4a in evidence showed that § 87(2)(b) barely spoke or understood English. As such, how could Respondent Samuel inform her of committing any offense of the law? In addition, all the evidence besides Respondent Samuel's testimony supports the conclusion that § 87(2)(b) did not understand Respondent Samuel's instructions. Also, CCRB 1 did not show her leaving the area, as the movement of the light-up balloons tracked her movements.

Under New York State Law, a chargeable age for crimes is a person eighteen years old and older, except for homicide. Even though the law specifically addresses the Penal law and Vehicle and Traffic Law, it applies to unclassified crimes, such as charges cited in a C-Summons alleging a violation of NYC Administrative Code Section 20-453. A minor is only charged with serious designated crimes; an Unlicensed General Vendor does not fall within that category. Resisting arrest is also not an offense chargeable as a crime. (See NYS Raise the Age Law, revised effective October 1, 2019, described chargeable offenses for person under 18 years old). An unlicensed general vendor may be a juvenile delinquent but is not a juvenile offender. A juvenile offender is a child that reaches the age of 13, 14, or 15. Also, a misdemeanor is not a serious or violent offense. Based on the law, a general vendor adult may be charged with an unclassified misdemeanor, but not a twelve-year-old child. § 87(2)(b) may only be issued a civil summons then § 87(2)(b) § 87(2)(b) released once her parents appeared and established their relationship and her father, § 87(2)(b) did. Nevertheless, they were arrested.

The evidence shows that Respondent Samuel's use of force against § 87(2)(b) was excessive and unreasonable. The nature and severity of the alleged offense is an unlicensed general vendor, which is not a crime for a minor and is a civil offense only returnable to NYC OATH's Hearing Division. If found in violation, a monetary penalty is imposed. § 87(2)(b)

§ 87(2)(b) was only twelve years old, a child. She was no threat to the officer; she tried to pull away. However, she was smaller than the officer in height and weight, visible in all submitted recorded evidence. There were numerous Officers at the location, so Respondent Samuel had multiple officers immediately available to assist her if requested. Also, Respondent Samuel never attempted to de-escalate the situation by calling for an interpreter to ensure that § 87(2)(b) understood that she could not vend without a license and she must leave the area or she would be arrested Respondent Samuels instead moved straight to the use of force by sweeping the child's feet and throwing her to the ground. Respondent Samuel gets up, picks up § 87(2)(b) swings her around counterclockwise, and throws her again. (See CCRB 1 – 03:39 to 06-26). Also, there is no evidence that the people observing the incident at the Plaza were violent. They did what civilians have done, most recently, in establishing police unlawful use of force by recording the incident, calling IAB, and just calling out police brutality.

According to Patrol Guide Procedure 221-01 - when appropriate and consistent with personal safety, members of service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of service should consider the following: A. The nature and severity of the crime or circumstances, B. Actions taken by the subject, C. The duration of the action, D. The immediacy of the perceived threat or harm to the subject, members of service, and the bystanders, E. Whether the subject is actively resisting custody, F. Whether the subject is attempting to evade arrest by flight, G. Number of subjects in comparison to the number of members of service, H. Size, age, and condition of the subject in contrast to the member of service, I. Presence of a hostile crowd or agitators.

In the totality of the circumstances, Respondent Samuel did have the authority to issue § 87(2)(b) a civil summons, which is not an arrestable offense for a twelve-year-old child. However, the security footage showed that § 87(2)(b) a 12-year-old, tried to walk away when Respondent Samuel grabbed her to arrest her for illegal vending, a non-violent, civil offense. In response to this resistance, Respondent Samuel swiftly swung § 87(2)(b) to the ground, injuring her knee. This force was excessive and unreasonable. § 87(2)(b)

§ 87(2)(b) was non-violent; she did not try to strike or hurt Respondent Samuel. The nature of the offense was civil offense, the number of other officers that were available to render assistance, her failure to obtain a Spanish interpreter to ensure that § 87(2)(b) understood her wrongdoing, § 87(2)(b) age and size compared to the Respondent establish that Respondent Samuel's actions were unreasonable under the circumstances of this case. Respondent Samuel escalated the situation by using extreme and excessive physical force against § 87(2)(b) a child of twelve years old.

**RESPONDENT SAMUEL IS GUILTY OF ABUSING HER AUTHORITY BY FAILING TO OBTAIN LANGUAGE INTERPRETATION SERVICES FOR § 87(2)(b)**

CCRB disagrees with the tribunal's findings and argues that the evidence submitted did establish the charge of wrongfully using physical force against § 87(2)(b) and that CCRB met its burden by the preponderance of the evidence.

§ 87(2)(b) from the beginning of her interaction with Respondent Samuel, presented herself as a limited English proficient speaker. She spoke in Spanish and responded in Spanish. The evidence shows that she only really speaks Spanish. Based on the language barrier between the Respondent and § 87(2)(b) Respondent Samuel could not have given understandable instructions to the victim. Respondent Samuel did not obtain language interpretation for § 87(2)(b) and no interpretation services were provided until requested by Sergeant Kalogeropoulos; at that time, Respondent Samuel had already used physical force against § 87(2)(b). Respondent Samuel frankly did not care. She wanted to show § 87(2)(b) what discipline looked like; she could care less about the effect it may have on her later in life. Throughout the trial, she stated she heard § 87(2)(b) speak English, yet at no point in all the videos presented was that true. She only said two curses to the Respondent in English. Respondent Samuel was not credible; for instance, she stated she believed the victim was a woman in her twenties. (see Transcript, hereafter "TR," on Page 51, Lines 1 to 3) In CCRB 3 and 4. She said § 87(2)(b) wouldn't be released to anyone but a person who proves that they were her parents because she is a child. Respondent's testimony contradicts the recorded evidence, including Respondent's Brown (CCRB 3) and PO Ricardo (CCRB4) BWCs recordings.

For the preceding reasons, it is respectfully requested that you reject ADCT Stone's findings regarding Specification one (1) and (2) and find Respondent Samuel Guilty of Specification 1 (one) and Specification 2 (two) and impose the penalty of forfeiture of 13 vacation days.

***RESPONDENT BROWN – DISCIPLINARY CASE No.: 2022-24576***

**RESPONDENT BROWN IS GUILTY OF WRONGFULLY USING PHYSICAL FORCE AGAINST § 87(2)(b)**

CCRB disagrees with the tribunal's findings and argues that the evidence submitted did establish the charge of wrongfully using physical force against § 87(2)(b) and that CCRB met its burden by the preponderance of the evidence.

The applicable portion of Patrol Guide 221-02, Page 2, Prohibition 11 states that "apply no more than reasonable force necessary to gain control.

§ 87(2)(b) testified that he was concerned about § 87(2)(b) when he walked over to record. CCRB 3, Respondent Brown's body-worn camera footage, captures this use of force. Respondent Brown pushed § 87(2)(b) by picking him up approximately five feet off the ground and throwing him against a metal barricade. That same night, § 87(2)(b) went to § 87(2)(b) Hospital in Manhattan after this incident. He suffered injuries to his head, back, and leg.

Upon a review of all the evidence and focusing on video evidence, Respondent Brown's BWC recording at 03.09 to 03.41(CCRB 3,3a) and PO Ricardo's BWC at 30.40 to 31.29 (CCRB

4, 4a), the CCRB submits that the evidence showed that Respondent Brown acted with excessive force against § 87(2)(b). As they were placing § 87(2)(b) into the car, more civilians were recording the incident, but there was no evidence of violence from the civilians. At PO Ricardo's BWC from 30.40 to 31.29, § 87(2)(b) wearing an orange cap, stepped off the sidewalk, walked across the street, and approached the officers while recording on his phone for a few seconds before Respondent Brown turned and grabbed him. Respondent Brown then grabbed, held, and pushed § 87(2)(b) backward several feet. As he got closer to the barriers on the other side of the street, he threw § 87(2)(b) directly into a barrier; § 87(2)(b) fell to the ground between two metal barriers. He quickly got up from the ground and moved a barrier as he walked towards Respondent Brown but was stopped by Sgt. Kalogeropoulos. § 87(2)(b) was not arrested or issued a summons, which is evidence he did not commit any crimes. He was only recording the police treatment of the twelve-year-old child, § 87(2)(b).

According to Patrol Guide Procedure 221-01, when appropriate and consistent with personal safety, members of service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of service should consider the following: Actions taken by the subject, the duration of the action, the immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders, number of subjects in comparison to the number of MOS, size, age, and condition of the subject in comparison to the MOS, and the presence of a hostile crowd or agitators. According to Patrol Guide Procedure 200-02, officers must value human life, respect the dignity of each individual, and render their services with courtesy and civility. Officers must maintain a higher standard of integrity than is expected of others because so much is expected of them.

§ 87(2)(b) had closely approached the officers while recording on his phone for a few seconds before Respondent Brown pushed him back. While it may have been reasonable to push § 87(2)(b) away initially, thereafter Respondent Brown's use of force against § 87(2)(b) was excessive, disproportional, and unreasonable. No further force was warranted once he grabbed § 87(2)(b) and left the vehicle. He also could have restrained him along with the help of the other officers present, if needed. However, Respondent Brown, without warning, continuously and forcefully pushed § 87(2)(b) backward across the street from where he initially grabbed him, then picked him up and threw him into a barricade, causing him to land on his back on the ground. Respondent Brown could have restrained § 87(2)(b) because he was more significant than him in height and weight, and multiple officers were available; he instead picked up § 87(2)(b) and threw him back into a metal barricade, potentially causing severe injury.

Furthermore, § 87(2)(b) was not arrested or issued a summons for his actions. Therefore, based on the totality of the circumstances, the force that Respondent Brown used after initially restraining § 87(2)(b) in that Respondent pushed and threw § 87(2)(b) backward into the barricade and on the ground, was an excessive and unreasonable.

#### **RESPONDENT BROWN IS GUILTY OF BEING DISCOURTEOUS TO**

CCRB disagrees with the tribunal's findings and argues that the evidence submitted did establish the charge of Discourtesy. At 03:11, § 87(2)(b) approaches the officers, and

Respondent Brown turns around and pushes him back while saying, "Get out of the street." § 87(2)(b) falls several feet backward and hits metal barricades behind him. PO Ricardo says, "He's under" multiple times. § 87(2)(b) gets up and starts moving towards PO Brown quickly. At 03:16, Sergeant Kalogeropoulos pushes § 87(2)(b) wearing an orange hat in the video, back a few feet. PO Brown says, "You want to come at me again asshole?" At 03:33, Respondent Brown says, "Come at me again, you fucking asshole."

Respondent Brown was already a considerable distance away from § 87(2)(b) Sergeant. Kalogeropoulos was in between both § 87(2)(b) and Respondent Brown. Because Respondent Brown had already succeeded in pushing § 87(2)(b) away from the police activity that was taking place, there was no reason for Respondent Brown to use profanity while speaking with § 87(2)(b) at that time when § 87(2)(b) was not interacting with the officers or other civilians in any capacity. Additionally, profanity was not used in the context of giving orders but only to escalate the situation, as Respondent Brown's statement encouraged § 87(2)(b) to approach him again as a request to fight him.

Respondent Brown's language was only used to escalate the situation. Sergeant Kalogeropoulos had already stopped § 87(2)(b). Respondent Brown did not have to use profanity. He spoke as someone in a street fight and not as an officer is required to do by the Patrol and Administrative Guides. (see PG 203-09, Page 1, paragraph 2 PUBLIC CONTACT – GENERAL [now encompassed by Administrative Guide 304-06, Page 1, Paragraph 2 PROHIBITED CONDUCT]; PG 200-02 MISSION, VISION, AND VALUES OF THE NEW YORK CITY POLICE DEPARTMENT)

#### **RESPONDENT BROWN IS GUILTY OF ABUSING HIS AUTHORITY BY THREATENING THE USE OF FORCE AGAINST § 87(2)(b)**

CCRB disagrees with the tribunal's findings and argues that the evidence submitted did establish the charge of wrongfully threatening the use of physical force against § 87(2)(b) and that CCRB met its burden by the preponderance of the evidence. We offer that "Come at me again" from Specification 2 was an invitation for § 87(2)(b) to fight him and thus a threat of force for Specification 3. Respondent Brown's approach and actions towards § 87(2)(b) were unwarranted. It indicated he was abusing his power as a law enforcement official and threatening a civilian who had done nothing wrong except video recording that was seen as abuse of authority and use of excessive force as against a twelve-year-old child. It was within § 87(2)(b) right to record the incident.

Furthermore, § 87(2)(b) testified that he did not threaten or have any intention of hurting Police Officer Brown. That alone would make Respondent Brown's argument that he was concerned about § 87(2)(b) reaching for Respondent Brown's gun moot. That is an excuse for what he knows about his conduct against § 87(2)(b) it was inappropriate.

Again, Respondent Brown was already far from § 87(2)(b). Sgt. Kalogeropoulos was in between both § 87(2)(b) and Respondent; Respondent Brown had already succeeded in pushing § 87(2)(b) away from the police activity that was taking place; there was no reason for Respondent Brown to say, "You want to come at me again asshole?" "Come at me again you fucking asshole," while speaking with § 87(2)(b) at this time when § 87(2)(b) was not

interacting with the officers or other civilians in any capacity. Additionally, it was used in the context of giving orders and served to escalate the situation. Respondent Brown's statement was only to encourage § 87(2)(b) to approach Respondent to use further force.

For the foregoing reasons, CCRB respectfully requested that you reject ADCT Stone's findings regarding Specifications one (1), two (2,) and three (3); and find Respondent Brown Guilty of all three Charges and Specifications and impose the penalty of forfeiture of twenty (20) vacation days in accordance with the matrix.

In conclusion, ADCT Stone throughout her recommended decision rejected and discredited CCRB's evidence and found the evidence particularly scant, CCRB submits that ADCT Stone findings are inconsistent with all the evidence submitted at Trial. (for instance, ADCT Stone's recommended decision – Page 3, Paragraph 2). Also, Respondent Samuel and Respondent Brown admitted their actions against the victims, which corroborated CCRB's evidence that established the charges and specifications, evidence such as the recordings including Respondent Brown's and PO Ricardo's BWCs recordings. CCRB further submits that the child-vendor and her father not testifying at the hearing were not mandatory and CCRB's evidence established every element of each charge and specification. CCRB submits that all its evidence along with Respondents' evidence when viewed and evaluated as explained above, supports the findings that Respondent Samuel and Respondent Brown, are Guilty of all charges and Specification.

Respectfully submitted,

*Pamella M Fairclough*  
\_\_\_\_\_  
Pamella Monica Fairclough, Esq.  
APU Prosecutor  
NYC Civilian Complaint Review Board

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OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

February 12, 2024

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Atisha Samuel**  
Tax Registry No. 962772  
Midtown North  
Disciplinary Case No. 2022-24578

**Police Officer Jason Brown**  
Tax Registry No. 950110  
Midtown North  
Disciplinary Case No. 2022-24576

The above named members of the service appeared before Assistant Deputy Commissioner Anne E. Stone on October 10, 2023, charged with the following:

**DISCIPLINARY CASE NO. 2022-24578**

1. Police Officer Atisha Samuel, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 30 Rockefeller Plaza, New York County, wrongfully used force, in that she used physical force against § 87(2)(b) and brought her to the ground, without police necessity.

P.G. 221-02, Page 2, Prohibition 11

**USE OF FORCE**

2. Police Officer Atisha Samuel, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 30 Rockefeller Plaza, New York County, abused her authority as a member of the New York City Police Department, in that she failed to obtain language interpretation services for § 87(2)(b) without police necessity.

P.G. 203-10, Page 1, Paragraph 5  
(now encompassed by A.G. 304-06)

**PUBLIC CONTACT –  
PROHIBITED CONDUCT**

P.G. 212-90

**GUIDELINES FOR  
INTERACTION WITH  
LIMITED ENGLISH  
PROFICIENT PERSONS**

**DISCIPLINARY CASE NO. 2022-24576**

1. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, wrongfully used force, in that he pushed § 87(2)(b) without police necessity.

**P.G. 221-02, Page 2, Prohibition 11**

**USE OF FORCE**

2. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, was discourteous to § 87(2)(b) by saying in sum and substance, "You want to come at me again asshole?", "Come at me again you fucking asshole," without police necessity.

**P.G. 203-09, Page 1, Paragraph 2**  
(now encompassed by A.G. 304-06)

**PUBLIC CONTACT –  
PROHIBITED CONDUCT**

**P.G. 200-02**

**MISSION, VISION AND  
VALUES OF THE NYPD**

3. Police Officer Jason Brown, on or about January 2, 2020, at approximately 2100 hours, while assigned to Midtown North and on duty, in the vicinity of 75 Rockefeller Plaza, New York County, abused his authority as a member of the New York City Police Department, in that he threatened § 87(2)(b) with the use of force without police necessity.

**P.G. 203-10, Page 1, Paragraph 5**  
(now encompassed by A.G. 304-06)

**PUBLIC CONTACT –  
PROHIBITED CONDUCT**

In a Memorandum dated December 14, 2023, Assistant Deputy Commissioner Stone found Police Officer Atisha Samuel not guilty of all Specifications in Disciplinary Case No. 2022-24578, and Police Officer Jason Brown, not guilty of all Specifications in Disciplinary Case No. 2022-24576.

I have reviewed and considered the entire record in this matter, and approve of Assistant Deputy Commissioner Stone's findings and recommended penalty for Police Officer Samuel. However, concerning Police Officer Brown, I disapprove of the not guilty finding of Specification No. 2 only, and determined that the misconduct merits discipline.

POLICE OFFICER ATISHA SAMUEL  
POLICE OFFICER JASON BROWN

DISCIPLINARY CASE NO. 2022-24578  
DISCIPLINARY CASE NO. 2022-24576

After careful consideration of the video evidence presented at trial, the circumstances surrounding Police Officer Brown's use of force, and the Department's Disciplinary System Penalty Guidelines, I have determined that a penalty is warranted. Therefore, I direct that Police Officer Brown be found guilty of Specification No. 2 in Disciplinary Case No. 2022-24576 and be penalized five (5) vacation days, as a disciplinary penalty.



Edward A. Caban  
Police Commissioner