CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☐ Force ☑ Discourt. ☐ U.S.
Daniel Giansante	Squad #02	201502188	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	18 Mo. SOL	Precinct:
Sunday, 03/15/2015 6:50 PM	In front of 113-16 Sutphin Boulevard	9/15/2016	113

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Wed, 03/25/2015 9:15 AM	CCRB	Phone	Wed, 03/25/2015 9:15 AM

Complainant/Victim	Type	Home Address
[redacted]	[redacted]	[redacted]

Witness(es)	Home Address
[redacted]	[redacted]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Mccaffrey	10888	954111	PBQ/S
2. POM Richard Ernyey	06720	953841	PBQ/S
3. POM Jason Figari	11521	953859	PBQ/S

Officer(s)	Allegation	Investigator Recommendation
A . POM Michael Mccaffrey	Abuse: PO Michael Mccaffrey stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	A . Exonerated
B . POM Richard Ernyey	Abuse: PO Richard Ernyey stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	B . Exonerated
C . POM Jason Figari	Abuse: PO Jason Figari stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	C . Exonerated
D . POM Michael Mccaffrey	Abuse: PO Michael Mccaffrey threatened to damage § 87(2)(b) s property.	D . Exonerated
E . POM Richard Ernyey	Abuse: PO Richard Ernyey threatened to damage § 87(2)(b) s property.	E . Exonerated
F . POM Jason Figari	Abuse: PO Jason Figari threatened to damage § 87(2)(b) s property.	F . Exonerated
G . POM Michael Mccaffrey	Abuse: PO Michael Mccaffrey threatened to arrest § 87(2)(b)	G . Exonerated
H . POM Richard Ernyey	Discourtesy: PO Richard Ernyey spoke rudely to § 87(2)(b)	H . Unsubstantiated
I . POM Richard Ernyey	Abuse: PO Richard Ernyey threatened to arrest § 87(2)(b)	I . Exonerated
J . POM Richard Ernyey	Abuse: PO Richard Ernyey refused to provide his name and shield number to § 87(2)(b)	J . Unsubstantiated

Case Summary

On March 15, 2015, at approximately 6:50 p.m., PO Michael Mccaffrey, PO Richard Ernyey, and PO Jason Figari stopped a vehicle in front of 113-16 Sutphin Boulevard in Queens after observing that the vehicle had illegally tinted windows **(Allegations A, B, and C)**. § 87(2)(b) was driving the vehicle and § 87(2)(b) sat in the front passenger seat. § 87(2)(b) did not immediately lower the vehicle's windows at officers' requests, and PO Mccaffrey, PO Ernyey, and PO Figari all allegedly threatened to break a window or the windshield **(Allegations D, E, and F)**. § 87(2)(b) initially refused to put the vehicle in park and PO Mccaffrey allegedly threatened to arrest him **(Allegation G)**. After PO Mccaffrey left the scene to write a summons for § 87(2)(b) § 87(2)(b) spoke to PO Ernyey and the two allegedly argued about the situation. During this conversation, PO Ernyey allegedly said, "Let them fucking wait" and "Where the fuck did you read that at?" **(Allegation H)**. PO Ernyey requested § 87(2)(b) s identification and she refused to give it to him. PO Ernyey threatened to arrest her if she did not provide her identification **(Allegation I)**. § 87(2)(b) provided her identification to PO Figari, who gave it to PO Ernyey. PO Mccaffrey and PO Ernyey eventually returned to the vehicle and issued § 87(2)(b) summonses to § 87(2)(b) and § 87(2)(b) (BR01; BR02). § 87(2)(b) requested PO Ernyey's name and he allegedly said something inaudible, so she requested it again. PO Ernyey allegedly replied that he would not repeat himself and used profanity when doing so **(Allegations J and H)**.

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined the option of mediation.
- On June 8, 2015, the NYC Comptroller's office confirmed that § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim regarding the incident (BR03).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR08). § 87(2)(b) has one previous CCRB complaint § 87(2)(b)
- PO Mccaffrey has been a member of the NYPD for two years and has had ten previous CCRB allegations involving four cases with no substantiated allegations. Six of these allegations, involving three cases, are still open (see officer history).
- PO Ernyey has been a member of the NYPD for two years and has had 35 previous CCRB allegations involving nine cases with no substantiated allegations. 18 of these allegations, involving five cases, are still open (see officer history).
- PO Figari has been a member of the NYPD for two years and has had two previous CCRB allegations involving three cases with no substantiated allegations. One of these allegations is still open (see officer history).

Potential Issues

- The investigation attempted to obtain video footage from a nearby TARU pole-mounted camera. However, the camera had not yet been connected to the NYPD's network, so the footage was erased five to seven days after the incident. The investigation also attempted to obtain video footage from a nearby Chinese restaurant and a bodega. The restaurant did not have exterior surveillance cameras, and the bodega's footage was deleted seven days after the incident.
- The investigation identified § 87(2)(b) a man to whom PO Mccaffrey issued a summons during the incident, as a possible witness (BR10). The investigation made multiple unsuccessful attempts to contact § 87(2)(b)

Findings and Recommendations

Explanation of Subject Officer Identification

- PO Mccaffrey identified himself as the "contact" officer who eventually walked around the vehicle to speak to § 87(2)(b) at the driver's door. He admitted to telling § 87(2) § 87(2)(b) that he could have arrested him and that he could have broken his window, though he denied threatening to do so as alleged. § 87(2)(g) .
- PO Ernyey admitted to being the officer whom § 87(2)(b) later engaged in conversation, and he admitted to threatening to arrest her. § 87(2)(g) .
- PO Figari admitted to observing the tinted windows on § 87(2)(b) s vehicle and to approaching the vehicle with his partners. § 87(2)(g) .

Recommendations

- **Allegation A—Abuse of Authority: PO Michael Mccaffrey stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
  Allegation B—Abuse of Authority: PO Richard Ernyey stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.
  Allegation C—Abuse of Authority: PO Jason Figari stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Mccaffrey, PO Ernyey, and PO Figari admitted to observing that the windows on § 87(2) § 87(2)(b) s vehicle were excessively tinted and to stopping the vehicle for that reason (BR11; BR12; BR13). All three officers stated that they were able to determine from mere observation that the windows were tinted beyond the legal limit. PO Mccaffrey also performed an "ID test" by holding § 87(2)(b) s license against the outside of a window and confirming that it would not be read through the glass. However, the officers did not use a tint meter to accurately measure the tints because PO Mccaffrey ultimately chose only to issue § 87(2)(b) a § 87(2)(b) summons. PO Mccaffrey knew the tint summons carried a large monetary penalty and decided to "give § 87(2)(b) a break." § 87(2)(b) acknowledged that the vehicle's windows were tinted but said the vehicle belonged to his son (BR14).

§ 87(2)(g)

§ 87(2)(g)

Therefore it is recommended that **Allegations A, B, and C** be closed as **exonerated**.

- **Allegation D—Abuse of Authority: PO Michael Mccaffrey threatened to damage § 87(2)(b) s property.**
  Allegation E—Abuse of Authority: PO Richard Ernyey threatened to damage § 87(2)(b) s property.
  Allegation F—Abuse of Authority: PO Jason Figari threatened to damage § 87(2)(b) s property.

§ 87(2)(b) alleged that PO Ernyey leaned across the hood of the vehicle when the officers approached and yelled, "Open up the car door before I break the windshield" (BR15). She denied that § 87(2)(b) ever refused to lower the vehicle's windows and insisted he was cooperative and did not stall the officers. However, she admitted that § 87(2)(b) did not lower the windows for approximately a minute after the officers approached. § 87(2)(b) claimed that she and § 87(2)(b) were startled and confused by the officers and that § 87(2)(b) attempted to lower the windows but found they were locked. She insisted that no other officer ever threatened to break a window.

§ 87(2)(b) alleged that all three officers threatened to break windows on his vehicle and that either PO Ernyey or PO Figari specifically said, "I'm gonna break the windshield if you don't open up the window." § 87(2)(b) denied that he stalled or refused to open a window. He recounted that he tried to lower the window but realized the windows were locked, and that he was shocked and that he fumbled with the button that unlocks the windows. It took him less than a minute before he lowered a window. However, § 87(2)(b) admitted that he was angered by the officers' aggression and that he later refused to comply with PO Mccaffrey's order that he shift into park. He explained to the investigator, "I ain't gotta do shit. If you come at me a certain way, I don't care who you are. I'm a grown man."

PO Mccaffrey recounted approaching the passenger window and knocking on the window more than three times while issuing verbal instructions to lower the window. He could not see into the passenger cabin at all and could not tell if someone was sitting in the front passenger seat. He received no response and knocked on the window two or three times with his asp. He denied that he threatened to break the window but was not sure if PO Ernyey or PO Figari ever made such a threat. However, PO Mccaffrey admitted that he later told § 87(2)(b) that the officers could have broken his window. PO Mccaffrey claimed that he would have been justified in breaking § 87(2)(b) s window if § 87(2)(b) had continued to refuse to lower it because he could not see through the window and there could have been an individual inside with a gun pointed at him.

PO Ernyey confirmed that PO Mccaffrey knocked repeatedly on the passenger window and asked the occupants to lower the window at least three times. He also stated that he could not see into the vehicle and that he was concerned that an occupant could have a gun. He recalled that PO Mccaffrey walked around to the driver's window and knocked on that window with his asp, and that PO Mccaffrey knocked multiple times before telling § 87(2)(b) that he would break the window if § 87(2)(b) did not lower it. PO Ernyey estimated that at least five minutes elapsed between the time the officers approached the vehicle and the time that § 87(2)(b) lowered his window. PO Ernyey denied that either he or PO Figari ever threatened to break a window.

PO Figari could not recall if PO Mccaffrey or PO Ernyey ever threatened to break a window but denied doing so himself. He confirmed that PO Mccaffrey knocked at the passenger window

for about one minute and received no response.

§ 87(2)(g)

.

Officers must give due respect to property but may damage property if doing so is reasonably necessary to carry out their duties. Onderdonk v. New York, 170 Misc.2d 155 (1996, Court of Claims) (BR16).

§ 87(2)(g)

Therefore it is recommended that **Allegations D, E, and F** be closed as **exonerated**.

- **Allegation G—Abuse of Authority: PO Michael Mccaffrey threatened to arrest § 87(2)(b)**

As previously discussed, § 87(2)(b) admitted that PO Mccaffrey instructed him to shift into park and that he refused to do so and yelled at PO Mccaffrey. PO Mccaffrey ordered him to put the vehicle in park three times before saying, "If you don't put in park, I'm gonna arrest you." § 87(2)(b) denied that he refused to comply with PO Mccaffrey's request for his license. § 87(2) did not allege that any officer threatened to arrest § 87(2)(b) She denied that he refused either to put the vehicle in park or to produce his license.

PO Mccaffrey denied that he threatened to arrest § 87(2)(b) However, he recounted that after he obtained § 87(2)(b) s license, he told him that the officers could have arrested him for obstructing governmental administration. He said that he had to instruct § 87(2)(b) to place his vehicle in park multiple times, and that he requested § 87(2)(b) s license three or four times before § 87(2)(b) produced it. PO Mccaffrey said § 87(2)(b) committed OGA when he refused to produce his license, as PO Mccaffrey observed § 87(2)(b) committing a violation and needed his license to proceed with the vehicle stop.

PO Ernyey and PO Figari could not recall if they ever heard PO Mccaffrey threaten to arrest

§ 87(2)(g)

Therefore it is recommended that **Allegation G** be closed as **exonerated**.

- **Allegation H—Discourtesy: PO Richard Ernyey spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged that PO Ernyey said of her and § 87(2)(b) to PO Figari, "Let them fucking wait." She further alleged that she later called PO Ernyey to her window to ask why the officers had stopped her and § 87(2)(b) and that she told PO Ernyey that he was required to tell her the reason for the stop. PO Ernyey allegedly replied, "Where the fuck did you read that at?" § 87(2)(b) admitted that she became angry, raised her voice, and used profanity with PO Ernyey. She further alleged that she later asked PO Ernyey to repeat his name and he replied either "I already repeated my name once. I'm not gonna repeat that shit again" or "I'm not giving you shit. If you didn't hear it the first time, that's your problem."

§ 87(2)(b) recounted that PO Ernyey answered § 87(2)(b) s question regarding why the officers had stopped them with, "I ain't gotta tell you shit." He recalled PO Ernyey's response to § 87(2)(b) s assertion that he was required to tell her the reason or the stop as either "Where did you learn that from?" or "Where you get that from?" § 87(2)(b) alleged that an officer also told § 87(2)(b) "It's none of your fucking business. Just sit there and wait," and "Let them fucking wait." He could not recall which officer or officers made those statements or when they did so. He did not corroborate § 87(2)(b) s allegations regarding an officer using profanity in response to her request for his name and shield number.

PO Ernyey denied making any of the statements attributed to him by § 87(2)(b) and said he stated his name and shield number to her when she requested them. PO Mccaffrey denied hearing any officer use profanity with § 87(2)(b) or make any of the alleged statements. PO Figari denied hearing any officer say, "Let them fucking wait," "Where the fuck did you read that at?" "It's none of your fucking business. Just sit there and wait," or "I'm not giving you shit. If you didn't hear it the first time, that's your problem." He could not recall if he heard any officer say, "I ain't gotta tell you shit" or "I already repeated my name once. I'm not gonna repeat that shit again."

§ 87(2)(g) Therefore it is recommended that **Allegation H** be closed as **unsubstantiated**.

- **Allegation I—Abuse of Authority: PO Richard Ernyey threatened to arrest § 87(2)(b) § 87(2)(b)**

It is undisputed that PO Ernyey threatened to arrest § 87(2)(b) if she did not provide her identification to him.

§ 87(2)(b) recounted that PO Ernyey requested her identification after she said, "I'm gonna deal with your ass" to him. She refused to give her identification to him but offered to give it to PO Figari because he had been nicer to her. PO Figari took her identification and handed it to PO Ernyey. She did not initially allege that PO Ernyey threatened to arrest her at this time, but later recalled after being asked if any officer threatened to arrest her that PO Ernyey said, "I want your license or else I'm going to arrest you."

PO Ernyey recounted that § 87(2)(b) yelled at him, "Know what? I'll deal with your fucking ass, bitch!" He perceived § 87(2)(b) s statement as a physical threat. § 87(2)(b) continued to scream and use profanity, which drew more people to the scene. PO Ernyey decided to issue § a summons for § 87(2)(b) and requested her identification. He requested it at least five times and § 87(2)(b) refused to comply. He eventually told her that he would arrest her if she did not produce her identification and she complied.

§ 87(2)(g) Therefore it is recommended that **Allegation I** be closed as **exonerated**.

- **Allegation J—Abuse of Authority: PO Richard Ernyey refused to provide his name and shield number to** [redacted]

[redacted] alleged that she asked PO Ernyey for his name after he handed her a summons for [redacted]. PO Ernyey seemed to say his name as he was walking away and talking into his radio. She asked him to repeat his name and responded either "I already repeated my name once. I'm not gonna repeat that shit again" or "I'm not giving you shit. If you didn't hear it the first time, that's your problem." [redacted] recounted that [redacted] said to all three officers, "I need all your guys' names and your badges." [redacted] could only recall that [redacted] made the request during the beginning of the incident but could not recall with any greater specificity when she did so. One officer told her his name and either pointed to his badge or said his shield number. He was the only officer to respond. [redacted] could not recall which officer stated his name.

PO Ernyey recounted that [redacted] asked for his name and shield number at some point during their conversation and that he stated both to her. PO Mccaffrey first recalled that [redacted] requested his name and shield number at the conclusion of the incident and that he said both to her. He later said he was unsure if [redacted] or [redacted] had requested his name. He did not hear [redacted] request either of his partners' names. PO Figari recounted that [redacted] requested his name and shield number and that he stated both to her. He could not recall if she ever requested either of his partners' names.

[redacted] Therefore it is recommended that **Allegation J** be closed as **unsubstantiated**.

Pod: 2

Investigator: _____ _Daniel Giansante_____ _____
Signature Print Date

Pod Leader: _____ _____ _____
Title/Signature Print Date

Attorney: _____ _____ _____
Title/Signature Print Date