

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #13	CCRB Case #: 201704889	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/18/2017 9:30 PM	Location of Incident: Southbound on Bruckner Expressway near the Whitestone Bridge exit.	18 Mo. SOL 11/18/2018	Precinct: 45		
Date/Time CV Reported Wed, 06/07/2017 6:10 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/15/2017 2:35 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Rodriguez	14441	926015	045 PCT
2. POM Thomas Nicoletti	10662	925830	045 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Robert Rodriguez	Force: Police Officer Robert Rodriguez pointed his gun at § 87(2)(b) and § 87(2)(b)	A . Substantiated
B . POM Robert Rodriguez	Abuse: Police Officer Robert Rodriguez threatened § 87(2)(b) and § 87(2)(b) with the use of force.	B . Substantiated
C . POM Thomas Nicoletti	Abuse: Police Officer Thomas Nicoletti threatened § 87(2)(b) and § 87(2)(b) with the use of force.	C . Substantiated
D . POM Robert Rodriguez	Discourtesy: Police Officer Robert Rodriguez spoke discourteously to § 87(2)(b) and § 87(2)(b)	D . Substantiated
E . POM Thomas Nicoletti	Discourtesy: Police Officer Thomas Nicoletti spoke discourteously to § 87(2)(b) and § 87(2)(b)	E . Substantiated
F . POM Robert Rodriguez	Abuse: Police Officer Robert Rodriguez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	F . Substantiated
G . POM Robert Rodriguez	Abuse: Police Officer Robert Rodriguez detained § 87(2)(b) and § 87(2)(b)	G . Substantiated
H . POM Thomas Nicoletti	Abuse: Police Officer Thomas Nicoletti detained § 87(2)(b) and § 87(2)(b)	H . Substantiated
I . POM Robert Rodriguez	Abuse: Police Officer Robert Rodriguez threatened to issue summons to § 87(2)(b)	I . Substantiated
J . POM Robert Rodriguez	Abuse: Police Officer Robert Rodriguez refused to provide his name to § 87(2)(b)	J . Substantiated
K . POM Robert Rodriguez	Abuse: Police Officer Robert Rodriguez seized § 87(2)(b)'s property.	K . Substantiated

Officer(s)	Allegation	Investigator Recommendation
L . POM Robert Rodriguez	Abuse: Police Officer Robert Rodriguez threatened to damage § 87(2)(b) s property.	L . Unsubstantiated
§ 87(4-b) § 87(2)(g)		

Case Summary

On June 7, 2017, § 87(2)(b) filed this complaint on behalf of himself and § 87(2)(b) with the CCRB over the phone.

On May 18, 2017, § 87(2)(b) was driving his car on the Bruckner Expressway with § 87(2)(b) in the passenger seat. PO Robert Rodriguez and PO Thomas Nicoletti pulled over § 87(2)(b) for street racing and multiple VTL violations. PO Rodriguez pointed his gun at § 87(2)(b) and § 87(2)(b) and threatened to shoot them (**Allegation A: Force, § 87(2)(g)** (**Allegation B: Abuse of Authority, § 87(2)(g)** PO Nicoletti told PO Rodriguez to shoot them in the back of the head if they got out of control (**Allegation C: Abuse of authority, § 87(2)(g)** PO Rodriguez and PO Nicoletti spoke discourteously to § 87(2)(b) and § 87(2)(b) (**Allegations D and E: Discourtesy, § 87(2)(g)** PO Rodriguez entered the back seat of § 87(2)(b)'s vehicle (**Allegation F: Abuse of authority, substantiated**). PO Rodriguez then directed § 87(2)(b) to drive off of the highway while PO Nicoletti followed in the patrol car (**Allegations G and H: Abuse of authority, § 87(2)(g)** PO Rodriguez threatened to follow § 87(2)(b) in the future until he could give him summonses (**Allegation I: Abuse of Authority, § 87(2)(g)** § 87(2)(b) requested PO Rodriguez's name and PO Rodriguez failed to provide it (**Allegation J: Abuse of Authority, § 87(2)(g)** PO Rodriguez told § 87(2)(b) to call a tow truck as he was not permitted to have his car anymore (**Allegation K: Abuse of Authority, § 87(2)(g)** PO Rodriguez told the tow truck driver to take § 87(2)(b)'s vehicle and to do whatever he wanted with it, and suggested ways to damage it (**Allegation L: Abuse of Authority, § 87(2)(g)** § 87(2)(g), § 87(4-b)

§ 87(2)(b) The officers did not arrest § 87(2)(b) or § 87(2)(b) but issued § 87(2)(b) ten summonses.

CCRB legal counsel was conferred with in regards to this case.

§ 87(2)(g)

Video footage of this incident was received from § 87(2)(b) The video was recorded by

§ 87(2)(b)



§ 87(2)(b) Video.MOV

Findings and Recommendations

Allegation (A) Force: Police Officer Robert Rodriguez pointed his gun at § 87(2)(b) and § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Robert Rodriguez threatened § 87(2)(b) and § 87(2)(b) with the use of force.

Allegation (C) Abuse of Authority: Police Officer Thomas Nicoletti threatened § 87(2)(b) and § 87(2)(b) with the use of force.

It is undisputed that once § 87(2)(b) and § 87(2)(b) were pulled over, PO Rodriguez drew his gun as he approached § 87(2)(b) and § 87(2)(b) § 87(2)(b), § 87(2)(g)

It is

undisputed that § 87(2)(b) was calm and compliant during the stop, and that he turned off his vehicle and placed his hands out of the driver side window when commanded to do so. It is undisputed that PO Rodriguez entered the back seat of § 87(2)(b)'s car and made him drive off of the highway. It is also undisputed that both PO Rodriguez and PO Nicoletti threatened to shoot § 87(2)(b) and § 87(2)(b). The video evidence also depicts as much.

§ 87(2)(b) and § 87(2)(b)'s statements were consistent in that upon approach PO Rodriguez drew his firearm and pointed it at § 87(2)(b) and § 87(2)(b) and threatened to shoot them. Both victims also alleged that after PO Rodriguez entered § 87(2)(b)'s car and sat in the back seat, that PO Rodriguez put his gun to the back of § 87(2)(b)'s head while commanding him to drive off the highway. § 87(2)(b) also alleged that while PO Rodriguez was in the back seat of the car, that PO Rodriguez also pointed the gun at him. § 87(2)(b) did not see this as he was focused on the road and did not want to make any movements.

PO Rodriguez stated that he drew his firearm because he did not know if § 87(2)(b) was just racing, or if he was attempting to evade the police. PO Rodriguez, who was standing near the hood of § 87(2)(b)'s car, stated, "Let me see your hands, let me see your hands." § 87(2)(b)'s windows were open and PO Rodriguez could see through the front windshield. Both § 87(2)(b) and § 87(2)(b) were moving their arms across their lap which made PO Rodriguez fear for his safety. PO Rodriguez did not recall if either § 87(2)(b) or § 87(2)(b) made any furtive movements. § 87(2)(b) and § 87(2)(b) both stuck their hands out of the windows. As soon as PO Rodriguez saw their hands, he re-holstered his firearm. PO Rodriguez's gun was unholstered for approximately 3-4 seconds. PO Rodriguez did not recall if he pointed his firearm at § 87(2)(b) or § 87(2)(b). PO Rodriguez stated that he usually keeps his firearm "at the ready," in the general direction of the target, but not specifically pointed at the target, but he did not recall if this is what he did when interacting with § 87(2)(b) and § 87(2)(b). PO Rodriguez did not recall making the statement, "I'm going to shoot you in your face" but stated that it was possible that he made a statement about shooting them. Later, PO Rodriguez did not point his gun at § 87(2)(b) while he was driving, nor did he point it at § 87(2)(b). PO Rodriguez did not suspect § 87(2)(b) nor § 87(2)(b) of any crimes other than VTL infractions and reckless driving. After watching the obtained video recording, PO Rodriguez stated that he could not hear the recording clearly and still did not recall if he made that statement "I'm going to shoot you in your face."

PO Nicoletti did not see PO Rodriguez draw his firearm at any point. Furthermore, PO Nicoletti could not see into § 87(2)(b)'s car as he was following it off the highway in route to the second stop location. PO Nicoletti had not received any information regarding any crimes that he believed § 87(2)(b) was connected to, nor did he suspect § 87(2)(b) of anything other than the driving violations that he observed. PO Nicoletti did not hear PO Rodriguez make the statement, "I'm going to shoot you in your face." PO Nicoletti was shown the video recording and he identified the officer who states, "I'm going to shoot you in your face" as PO Rodriguez. PO Nicoletti stated that he may have said something like, "If he gets out of control, shoot him in the back of the fucking head." PO Nicoletti made this statement in order to put fear into his partner, in an attempt to make sure that PO Rodriguez did not do anything stupid in the back of

§ 87(2)(b) s car. PO Nicoletti did not ever attempt to tell PO Rodriguez not to get into the back of § 87(2)(b) s car.

Video footage obtained from § 87(2)(b) does not show PO Rodriguez pointing his firearm. As soon as § 87(2)(b) is pulled over, the phone drops to the floor and essentially becomes an audio recording for the duration of the video. At 02:02, PO Rodriguez is heard making the statement, "I'm going to shoot you in your face." At 02:49, PO Rodriguez is heard stating that he is going to get into the back seat of § 87(2)(b) s car. PO Nicoletti states, "He gets out of control you shoot him in the back of the fucking head." **(Board Review 1)**

An officer may take appropriate self-protective measures when he lawfully confronts an individual and reasonably believes him to be armed or otherwise dangerous to the officer or others However, if an officer were to draw his weapon against an individual suspected only of shoplifting or some other petty offense, the intensity of the confrontation, in the absence of any independent indication of danger, would be raised to a level well beyond that which could be justified. People v. Finlayson, 76 A.D.2d 670, 679 (2nd Dept. 1980) **(Board Review 2)**

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide Procedure 221-01 **(Board Review 03)**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (D) Discourtesy: Police Officer Robert Rodriguez spoke discourteously to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) § 87(2)(b)

Allegation (E) Discourtesy: Police Officer Thomas Nicoletti spoke discourteously to

§ 87(2)(b) and § 87(2)(b) § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both alleged that PO Rodriguez and PO Nicoletti cursed extensively while interacting with them.

§ 87(2)(b) alleged that PO Rodriguez made the following statements: "I don't give a fuck," "You better not do shit, just hold that fucking dog," "Shut the fuck up," "Are you fucking stupid? You just let this man drive the way he was driving with you in the fucking car? And I'm going to trust you to take his fucking car?," "Let me get your fucking ID," "You think a fucking guy that

gets paid five dollars putting on these wheels on your car, you think that's a great job," "You're lucky that I have something to do tonight, because if not you would be in shackles. Today is your fucking lucky day," "Oh no, you're not going to have your fucking car. I'm impounding your car" and, "Tell that piece of shit Los to get the fuck back over here right now. Matter of fact, give me your fucking phone."

§ 87(2)(b) alleged that PO Rodriguez made the following statements: "Keep your fucking hands up or I'll fucking shoot you," "You're fucking crazy, you're going to lose your license," "Your job is to hold that fucking dog," and, "Put your fucking phone away." § 87(2)(b) also alleged that PO Nicoletti made the statement, "If he acts up, blow his fucking head off."

The video provided by § 87(2)(b) shows PO Rodriguez making the following statements:

02:00: "What the fuck's wrong with you?"

02:21: "Registration and everything. You're out of your fucking mind, bro."

02:27: "Let me explain something to you. A broken fucking arm is bullshit. You understand that? You see the people out here? You'll fucking kill them."

02:38: "So what's the matter with everyone else out here, they don't mean a shit?"

03:21: "I really don't give a fuck dude." **(Board Review 1)(Board Review 4).**

The video provided by § 87(2)(b) shows PO Nicoletti making the following statements:

03:04: "He gets out of control you shoot him in the back of the fucking head." **(Board Review 1)(Board Review 4)**

Even after viewing the video, PO Rodriguez denied or did not recall most of the alleged profanities. PO Rodriguez stated that he may have made the following statements: "Keep your fucking hands up or I'll fucking shoot you," and, "Let me explain something to you. A broken arm is bullshit. You understand that? You see these people out here? You'll fucking kill them?"

PO Nicoletti did not hear PO Rodriguez use any profanity when dealing with § 87(2)(b) and § 87(2)(b). PO Nicoletti did make the statement, "He gets out of control you shoot him in the back of the fucking head."

Police officers must be courteous and respectful when dealing with civilians. Patrol Guide Procedure 203-09 (Board Review 5)

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Robert Rodriguez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (G) Abuse of Authority: Police Officer Robert Rodriguez detained § 87(2)(b) and § 87(2)(b).

Allegation (H) Abuse of Authority: Police Officer Thomas Nicoletti detained § 87(2)(b) and § 87(2)(b).

It is undisputed that PO Rodriguez entered the back seat of § 87(2)(b)'s car and ordered him to drive off the highway to a different location while PO Nicoletti followed in the patrol car. It is undisputed that § 87(2)(b) was stopped for the second time near the Whitestone Cinema, a business which was located underneath the overpass of the Bruckner Expressway, and which was permanently closed, and approximately a half mile from the initial stop location.

§ 87(2)(b) and § 87(2)(b) alleged that upon seeing the officers, that § 87(2)(b) pulled his car over into the shoulder of the highway.

PO Rodriguez stated that PO Nicoletti followed § 87(2)(b) on the Bruckner Expressway, which was a three-lane highway, at a close proximity for approximately a quarter or a half mile. PO Nicoletti drove past § 87(2)(b) and pulled in front of him, forcing § 87(2)(b) to stop in the rightmost lane of traffic. There was a shoulder on the highway; however, § 87(2)(b) did not pull into it. Once PO Rodriguez saw their hands, he approached the car. PO Rodriguez repeatedly told § 87(2)(b) to pull off the roadway, speaking in a loud and clear voice. PO Rodriguez told § 87(2)(b) to move the car approximately 2-3 times. § 87(2)(b) responded, "What? What?" and seemed dumbfounded. § 87(2)(b) failed to comply.

While PO Rodriguez was standing next to § 87(2)(b)'s driver's side door, a semi-truck carrying a tractor trailer with a full load passed beside PO Rodriguez, traveling at 60 mph approximately 2.5 feet away from PO Rodriguez. PO Rodriguez became very frightened. PO Nicoletti was approaching § 87(2)(b)'s car and was close to § 87(2)(b)'s door; however, PO Rodriguez told him to get back into the police car. PO Rodriguez stated to PO Nicoletti, "We're not doing this here."

PO Rodriguez got into the back seat of § 87(2)(b)'s car, directly behind § 87(2)(b). His purpose for getting into § 87(2)(b)'s car was his own safety as he did not want to get hit by a truck. PO Rodriguez did not get into his patrol car because he did not want to spend any additional time walking to his patrol car as it could have cost him his life. PO Rodriguez explained that one of his partners almost died as a result of being hit by a car during a car stop. PO Rodriguez explained that even though he was concerned for his safety to the point that his firearm needed to be drawn, he was more concerned with getting hit by a vehicle and thus got into § 87(2)(b)'s car. He explained that the threat of getting hit with a vehicle was more immediate than anything that could have been in § 87(2)(b)'s car. PO Rodriguez could not provide any additional justifications for entering § 87(2)(b)'s car. This was the first time in PO Rodriguez's career that he had gotten into a civilian's car and had them drive somewhere. PO Rodriguez told § 87(2)(b) "We're going to pull off the road, we're going to do this safe, I'm not getting killed here." PO Rodriguez told § 87(2)(b) to keep his hands on the wheel. PO Rodriguez did not recall if there was any conversation about potentially shooting § 87(2)(b) but stated that it was possible.

PO Rodriguez stated that he did not have § 87(2)(b) just pull into the shoulder after entering the back seat of § 87(2)(b)'s car to avoid traffic because he was still afraid of the trucks on the highway and wanted to get off of the highway. PO Rodriguez explained that if because of how § 87(2)(b) was driving, that if he decided to place § 87(2)(b) under arrest and § 87(2)(b) decided to fight the officers, that they would be fighting on the side of a highway. PO Rodriguez

explained that he routinely conducts traffic enforcement on the highway, and that car stops frequently do happen on the side of the roadway, but that he has in the past asked people to pull off the highway using the public address system inside of the police car. PO Rodriguez did not utilize the public address system in this situation because § 87(2)(b) was not stopping his vehicle. § 87(2)(b) pulled over by the intersection of § 87(2)(b) and § 87(2)(b) near the § 87(2)(b). This location is underneath the overpass of the Bruckner Expressway, and was approximately a half mile away from the initial stop location. The location was well lit and there were people around. This was the first safe location that PO Rodriguez found.

PO Rodriguez was shown the obtained video and was asked to point out the moment when he asked § 87(2)(b) to pull into the shoulder. PO Rodriguez stated, "I thought I did. Everything happened so quickly." PO Rodriguez was asked if there was any attempt to have § 87(2)(b) pull into the shoulder of the highway after he entered the car. PO Rodriguez stated that he thought that there was, but that the video showed otherwise.

PO Nicoletti stated that after pursuing the vehicle for approximately one to one-and-a-half miles, the officers caught up to the vehicle and engaged their turret lights and sirens. PO Nicoletti's intention was to issue § 87(2)(b) summonses. § 87(2)(b) pulled into the right hand lane of the highway but did not stop. Traffic conditions on the highway were congested. § 87(2)(b) slowed down, then sped up, then slowed down again, but did not stop. PO Nicoletti explained that he has observed this behavior in the past, and that it is a tactic used in attempt to get the police car to slow down so that the suspect could then take off again. PO Nicoletti pulled his vehicle over in front of § 87(2)(b)'s car at a 45 degree angle. The expressway was three lanes wide and had a shoulder; however, § 87(2)(b)'s car was pulled over in the rightmost lane of traffic. PO Rodriguez exited the car first and then PO Nicoletti exited the car a few seconds later. While PO Rodriguez was outside of the car, PO Nicoletti was parking the police car. PO Nicoletti parked the police car in a way that took up part of the center lane and the right most lane. This was done to give the officers safety from traffic while they conducted the traffic stop. The way in which PO Nicoletti parked his car prevented cars from driving close to § 87(2)(b)'s driver side door. No cars came close to the officers while they were conducting the traffic stop as cars had to go into the left most lane to go around, as they could not drive in the middle lane due to the police car. PO Nicoletti stated that the location was not an ideal location, but that it was where the traffic stop happened. PO Nicoletti did not recall any one truck passing by at a proximity that was alarming, but stated that there were several trucks passing by in the left most lane of the highway, which was one car-length away, or approximately 5-10 feet. PO Nicoletti did not know of any specific event that prompted PO Rodriguez to want to get off the highway immediately. PO Nicoletti believed that it was due to general traffic conditions.

PO Nicoletti had an elevated concern for his safety, more so than a normal traffic stop, due to their position on the highway, the high rate of speed, and the fast lane changes made by § 87(2)(b). PO Nicoletti had not received any information regarding any crimes that he believed § 87(2)(b) was connected to, nor did he suspect § 87(2)(b) of anything other than the VTL infractions that he observed.

As PO Nicoletti walked halfway toward § 87(2)(b)'s car, PO Rodriguez told PO Nicoletti, "Get back in the car. We're not going to do this here." PO Rodriguez was standing near the

driver's side door of § 87(2)(b)'s car. PO Nicoletti did not ever make it fully over to § 87(2)(b)'s car. PO Nicoletti did not see PO Rodriguez unholster his firearm. PO Nicoletti did not draw his firearm at any point. PO Rodriguez got into the back seat of § 87(2)(b)'s car. PO Nicoletti did not know why PO Rodriguez was entering § 87(2)(b)'s car; however, he believed that it was an attempt to get § 87(2)(b) off of the highway. PO Nicoletti stated that when he conducts traffic enforcement on the highway, that he sometimes has cars pull off of the highway during traffic stops, and usually conveys this information through the public address (PA) system in the car. PO Nicoletti did not recall using the PA system in an attempt to get § 87(2)(b) off of the highway. It was not common practice to get into a civilian's car in order to get them off the highway; however, PO Nicoletti has heard of it being done before.

PO Nicoletti stated that he may have said something like, "If he gets out of control, shoot him in the back of the fucking head." PO Nicoletti made this statement in order to put fear into his partner, in an attempt to make sure that PO Rodriguez did not do anything stupid in the back of § 87(2)(b)'s car. PO Nicoletti did not ever attempt to tell PO Rodriguez not to get into the back of § 87(2)(b)'s car. PO Nicoletti stated that he did not know if there was any reason to get into § 87(2)(b)'s car, and that he "did not know why it happened that way."

§ 87(2)(b) pulled over at the next exit in front of the § 87(2)(b). This was the first safe space to pull over that the officers came across. PO Nicoletti did not recall any indication or reason to believe that § 87(2)(b) intended on fleeing the scene, but stated that it could happen at any time. When back at the 45th Precinct stationhouse, when both officers went end of tour, PO Rodriguez explained to PO Nicoletti that he entered § 87(2)(b)'s car due to safety reasons because he just wanted to get off the highway. PO Nicoletti told PO Rodriguez that it "might not have been the best thing to do."

The obtained video footage depicts the following:

02:48: PO Nicoletti: "This is him?"

02:48: PO Rodriguez: "Yes."

02:49: PO Nicoletti: Get off the next exit, we'll follow you."

02:51: PO Rodriguez: "I've got a better idea. I'm going to ride with him."

02:59: A chime is heard. The sound of a door closing is heard.

03:00: A car is heard starting.

03:04: PO Nicoletti: "He gets out of control you shoot him back of the fucking head."

03:06: PO Rodriguez: "Yeah."

03:14: PO Rodriguez: "Next exit. Put your hazard lights on."

03:20: § 87(2)(b) "I really apologize boss, honestly."

03:21: PO Rodriguez: "I really don't give a fuck dude."

03:30: § 87(2)(b) (Talking to § 87(2)(b) "Call § 87(2)(b) for me man."

03:31: PO Rodriguez: "Don't call anybody. Hang up the phone. You're not free at this point. Do you understand that?"

03:38: § 87(2)(b) "Yes."

03:42: PO Rodriguez: (Talking to § 87(2)(b) Hold the dog, that's your responsibility right now. Anything else, I don't need you to say. He almost killed you too."

04:05: § 87(2)(b) Where do I get off, on the (inaudible).

04:07: PO Rodriguez: "All the way off to the right. Yes. Keep going right till you can't go no more."
04:15: PO Rodriguez: "Right lane."
04:20: PO Rodriguez: "Right here."
04:22: § 87(2)(b) "Right here?"
04:23: PO Rodriguez: "Yup."
04:25: PO Rodriguez: "Now keep going right, get off the roadway, other people drive. Right. On the zebras."
04:31: § 87(2)(b) "On the white lines?"
04:32: PO Rodriguez: "Yup. Pull up. Stop. Take out the keys. Hand them back over your shoulder."
04:42: § 87(2)(b) "Huh?"
04:43: PO Rodriguez: "Hand them back."
04:44: § 87(2)(b) "Oh sorry."
04:44: The video ends. **(Board Review 01)(Board Review 04).**

In People v. Young, 207 A.D.2d 456 (1994), the New York Supreme Court held that a person has no legitimate expectation of privacy in their car in locations that are observable by a passerby. Therefore, an officer's peering into a vehicle does not constitute a search. However, if an officer takes an action that exposes an area in the car which is not readily observable from the outside, then the action does constitute a search within the meaning of the Fourth Amendment. **(Board Review 06)**

In United States v. Sharpe, 470 U.S. 675 (1985) **(Board Review 07)**, the Supreme Court established that while there is no time limit for officers to conduct an investigative stop, the rule for evaluating the reasonableness of an investigative stop will be whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. In Royer v. Florida, 460 U.S. 491 (1983) **(Board Review 08)**, the Supreme Court held that "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop," and "Investigative methods employed by the police should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Further, in People v. Ryan, 876 N.Y.S.2d 672 (2009) **(Board Review 09)**, the New York State Court of Appeals held that temporary detention is unlawful if effectuated solely to make it more convenient to arrest a defendant, and that officers "cannot place a defendant under arrest in order to obtain sufficient evidence to arrest him."

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Robert Rodriguez threatened to issue summons to § 87(2)(b) § 87(2)(b)

§ 87(2)(b) § 87(2)(b) alleged that while at the second stop location, PO Rodriguez threatened to follow him in the future until he could issue him summonses.

PO Rodriguez did not admit to making the exact statement, but stated, “I told § 87(2)(b) that if I saw him again driving that I would follow him, in order to keep him in some type of compliance in the future.”

PO Nicoletti stated that he did not hear PO Rodriguez threaten to summons § 87(2)(b) § 87(2)(b)

The obtained video footage does not show this allegation as the video ends as § 87(2)(b) § 87(2)(b) stops at the second stop location.

Police officers must be able to articulate the factors which led them to take enforcement action, in particular probable cause for arresting or issuing a summons to a person. Patrol Guide Procedure Section 203-25 (Board Review 10)

§ 87(2)(b), § 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Robert Rodriguez refused to provide his name to § 87(2)(b) § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) § 87(2)(b) stated that PO Rodriguez laughed at the request and did not provide the information, and § 87(2)(b) § 87(2)(b) stated that PO Rodriguez ignored the request.

PO Rodriguez did not recall § 87(2)(b) § 87(2)(b) requesting his name and shield number, but stated that he would have provided it if asked. PO Rodriguez did not recall providing his name and shield number at any point.

PO Nicoletti did not recall § 87(2)(b) § 87(2)(b) requesting PO Rodriguez’s name and shield number. Furthermore, it is undisputed that PO Nicoletti did not exit the patrol car at the second stop location.

The obtained video footage does not show this allegation as the video ends as § 87(2)(b) stops at the second stop location.

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)

Officers must “courteously provide [their] rank, name, shield number, and command, or otherwise provide them, to anyone who requests [them] to do so. Allow the person ample time to note this information.” Patrol Guide Procedure 203-09 (Board Review 05)

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)

Allegation (K) Abuse of Authority: Police Officer Robert Rodriguez seized § 87(2)(b) s property.

Allegation (L) Abuse of Authority: Police Officer Robert Rodriguez threatened to damage § 87(2)(b) s property.

It is undisputed that § 87(2)(b) was issued ten summonses, nine of which were VTL violations and one of which was a criminal summons for street racing. It is undisputed that PO Rodriguez told § 87(2)(b) to call a tow truck. Of the tow truck drivers, § 87(2)(b) or “§ 87(2)(b) was unavailable to the investigation; § 87(2)(b) was identified, but was uncooperative with the investigation. § 87(2)(b) did not make any allegations on his own behalf.

§ 87(2)(b) alleged that at the second stop location, PO Rodriguez told him, “Oh no, you’re not going to have your fucking car. I’m impounding your car.” PO Rodriguez told § 87(2)(b) to call a tow truck. § 87(2)(b) called his friend, whose name is § 87(2)(b) but goes by “§ 87(2)(b) and works for § 87(2)(b). § 87(2)(b) directed another driver, who went by § 87(2)(b) § 87(2)(b) § 87(2)(b) did not know his real name), to come to the scene and PO Rodriguez told § 87(2)(b) to take the car and do whatever he wanted with it, including crashing it or throwing it into the river. § 87(2)(b) towed § 87(2)(b) s car away and § 87(2)(b) § 87(2)(b) rode in the tow truck. § 87(2)(b) s car was later returned to him by § 87(2)(b).

§ 87(2)(b) § 87(2)(b) alleged that PO Rodriguez told § 87(2)(b) § 87(2)(b) that he needed to call someone to tow his car, or that he would have another company come and tow the car. A tow truck arrived and loaded § 87(2)(b) § 87(2)(b) s car. § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) got a ride with the tow truck to their destination, and the car was taken to a lot.

PO Rodriguez stated that he told § 87(2)(b) § 87(2)(b) that either § 87(2)(b) § 87(2)(b) could call a tow truck, or that PO Rodriguez could call a tow truck for him. § 87(2)(b) § 87(2)(b) decided to call his own tow truck to make sure that he would be able to retain his property. This was done because PO Rodriguez felt that he could not have made sure that § 87(2)(b) § 87(2)(b) would drive responsibly if they just issued him summonses and let him drive away. PO Rodriguez later stated that the decision was both § 87(2)(b) § 87(2)(b) s and PO Rodriguez’s, and that they both came to a mutual

understanding that § 87(2)(b) would not drive the car in a responsible manner. PO Rodriguez did not observe any definitive mechanical reason that § 87(2)(b)'s car could not be driven. PO Rodriguez did not tell § 87(2)(b) to damage § 87(2)(b)'s vehicle.

PO Nicoletti stated that a tow truck arrived at the location; however, he did not know why a tow truck was at the location. PO Nicoletti did not recall if § 87(2)(b)'s car was hooked up to the tow truck. PO Nicoletti recalled backing the patrol car up at some point to make room for the tow truck. However, PO Nicoletti did not recall if the tow truck left with § 87(2)(b)'s car or not. PO Nicoletti stated that he was focused on writing the summonses for § 87(2)(b).

The obtained video footage does not show these allegations as the video ends as § 87(2)(b) stops at the second stop location.

Officers are allowed to seize vehicles pursuant to arrest, for further investigation, if the property is abandoned or the owner is not known, or if the property is up for forfeiture (e.g. controlled substance arrests and gambling arrests). Patrol Guide Procedure 218-19 (Board Review 11)

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(4-b), § 87(2)(g)
[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- PO Rodriguez has been a police officer with the NYPD for 17 years and has had 42 allegations made against him. He has one substantiated allegation of a frisk (CCRB case number 200915966). PO Rodriguez was given charges which resulted in no disciplinary

action from the NYPD due to SOL. There are a number of patterns of alleged misconduct relevant to this case:

- In CCRB case number 201510504, which was closed as unsubstantiated, it was alleged that PO Rodriguez used the word “fuck” multiple times. It was also alleged that PO Rodriguez drew his firearm out of his holster and stated, “Don’t fucking move like that.” It was also alleged that PO Rodriguez stated, “Do you know any fucking tow trucks? You better call them right now and if not I am going to arrest you.” Furthermore, it was alleged that PO Rodriguez made the statement “Let me see those fucking 16s. Fucking bullshitting me, these are fucking E-bay specials.”
- In CCRB case number 200900996, which was closed as complaint withdrawn, it was alleged that PO Rodriguez stated, “If you get out of your fucking car I’m going to shoot you.”
- In CCRB case number 201002309, which was closed as unsubstantiated, it was alleged that PO Rodriguez stated, “I could take out my piece and I could put it against the window and shoot anybody in there.” PO Rodriguez also allegedly made the statement, “Don’t worry I am going to keep on stopping you.”
- In CCRB case number 201103017, which was closed as mediated, it was alleged that PO Rodriguez called a civilian a “fucking idiot.”
- In CCRB case number 201300970, which was closed as complainant uncooperative, it was alleged that PO Rodriguez stated, “Get the fuck out of the car and walk,” and, “Shut the fuck up.”
- In CCRB case number 201709917, which is currently being investigated, it was alleged that PO Rodriguez made the statement, “get the fuck out of here, if you don’t leave you’re going to get arrested.” **(Board Review 14)**
- PO Nicoletti has been a police officer with the NYPD for 17 years and has had 21 allegations made against him. PO Nicoletti has no substantiated complaints. There is a pattern of alleged misconduct relevant to this case:
 - In CCRB case number 201103721, which was closed as complainant uncooperative, it was alleged that PO Nicoletti told the complainant that he was going to “beat his ass.” It was also alleged that he made the statement, “I don’t give a fuck.”
 - In CCRB case number 201300970, which was closed as complainant uncooperative, it was alleged that PO Nicoletti made the statement, “Shut the fuck up and take the keys out of the ignition.” **(Board Review 15)**
- This is the first complaint to which § 87(2)(b) and § 87(2)(b) have been a party. **(Board Review 16).**

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to a concurrent IAB investigation.
- According to the New York City Comptroller’s office, neither § 87(2)(b) nor § 87(2)(b) have filed a notice of claim in relation to this incident. **(Board Review 17)**

