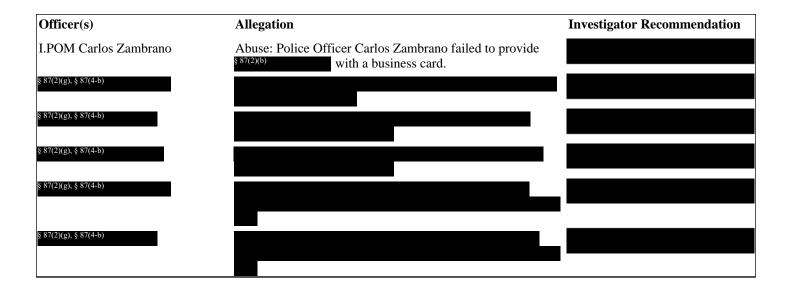
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	Ø	Force	□ I	Discourt.	☐ U.S.
Thomas Juliano		Squad #6	201903851	Ø	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:		F	Precinct:	18 M	lo. SOL	EO SOL
Tuesday, 04/23/2019 11:30 PM	§ 87(2)(b)			90	10/2	23/2020	6/9/2021	
Date/Time CV Reported		CV Reported At:	How CV Reported	:	Date/Time	Receiv	ed at CC	RB
Wed, 04/24/2019 1:31 AM		IAB	Phone		Mon, 05/0	6/2019	11:09 Al	М
Complainant/Victim	Type	Home Addr	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Kevin Phillip	23203	955326	HBK RT					
2. POM Carlos Zambrano	26943	939814	090 DET					
3. POM Jonathan Arias	00329	941359	INT CIS					
4. SGT Frederick Manney	04797	949938	079 PCT					
Witness Officer(s)	Shield N	Tax No	Cmd Name					
1. POF Shirley Rivas	01900	961169	HBK RT					
2. POM Paul Asnen	21237	959461	HBK RT					
3. POM Nicholas Albergo	17802	954471	HBK RT					
4. POM Francisco Martireyes	15296	951972	090 PCT					
5. LT Jonathan Lusky	00000	938894	090 PCT					
Officer(s)	Allegati	on			Inve	estigato	or Recor	nmendation
A.POM Kevin Phillip	Force: Pagainst	olice Officer Kevin Phil	lip used physical for	rce				
B.POM Kevin Phillip	Force: P	olice Officer Kevin Phil s breathing.	lip restricted § 87(2)(b)					
C.POM Jonathan Arias	Abuse: I	Police Officer Jonathan	Arias searched in Brooklyn	ı .				
D.SGT Frederick Manney	Abuse: \$ 87(2)(b)	Sergeant Frederick Mani	ney searched in Brooklyn	١.				
E.POM Carlos Zambrano	Abuse: I	Police Officer Carlos Za	mbrano searched in Brooklyn	l .				
F.SGT Frederick Manney	Abuse: S § 87(2)(b)	Sergeant Frederick Mani	ney searched in Brooklyn	ı .				
G.POM Jonathan Arias	Abuse: I	Police Officer Jonathan with a business		de				
H.SGT Frederick Manney	Abuse: \$ 87(2)(b)	Sergeant Frederick Mani with a busine		;				



Case Summary

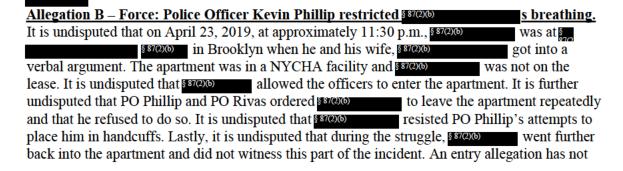
On April 24, 2019, Sgt. Andrew Dorsett of the Housing Bureau Brooklyn Response Team called IAB to report this incident under IAB log On May 6, 2019, the case was received at the CCRB.

On April 23, 2019, \$87(2)(b) got into an argument with his wife, \$87(2)(b) in \$97(2)
s apartment located at \$57(2)(0) in Brooklyn. \$57(2)(0) left the building
and found PO Kevin Phillip and PO Shirley Rivas of Housing Bureau Brooklyn Response Team
and invited them into her apartment. PO Phillip and PO Rivas ordered \$87(2)(6) to leave the
apartment. PO Phillip pushed (\$200) onto the couch and restricted his breathing
(Allegation A and B – Force: \$87(2)(2)). PO Phillip requested assistance and officers
from the 90 th Precinct, including PO Jonathan Arias, Sgt. Frederick Manney, PO Carlos
Zambrano, and PO Francisco Martireyes responded to the location. PO Arias and Sgt. Manney
asked \$87(2)(b) to search her apartment (Allegations C and D – Abuse of Authority:
). Sgt. Manney and PO Zambrano searched \$87(2)(6) s locked box
(Allegation E and F – Abuse of Authority: \$87(2)(2)). Following the searches, PO Arias,
Sgt. Manney and PO Zambrano did not provide \$87(2)(6) with business cards (Allegations G,
H, and I – Abuse of Authority:
§ 87(2)(g)). § 87(2)(g), § 87(4-b)
was arrested and charged with trespassing, violating an order of protection,
resisting arrest, obstruction of governmental administration, and harassment (BR 27).

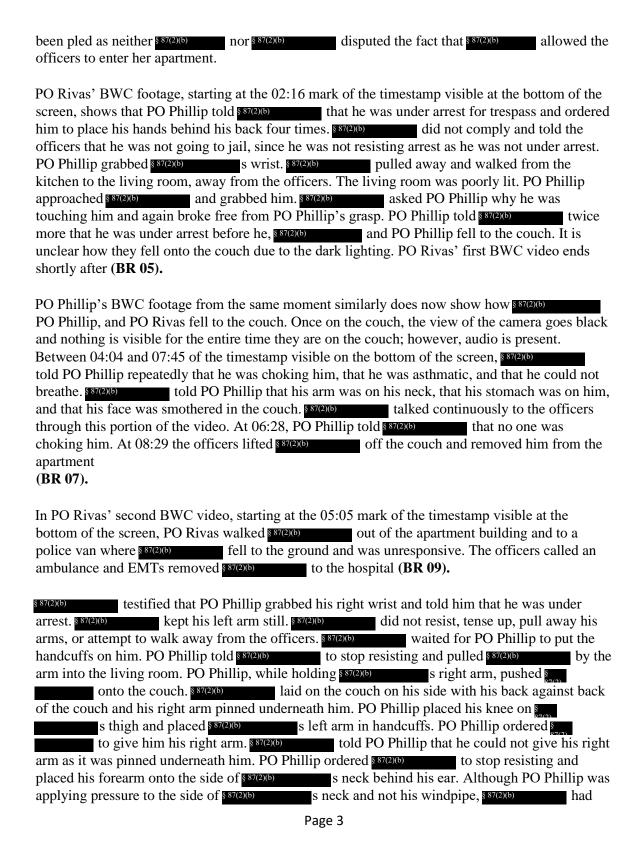
BWC videos from officers, including PO Phillip, PO Rivas, and PO Zambrano were received and can be found in IAs #81-106. Summaries of the footage can be found in IA 107 (BR 03).

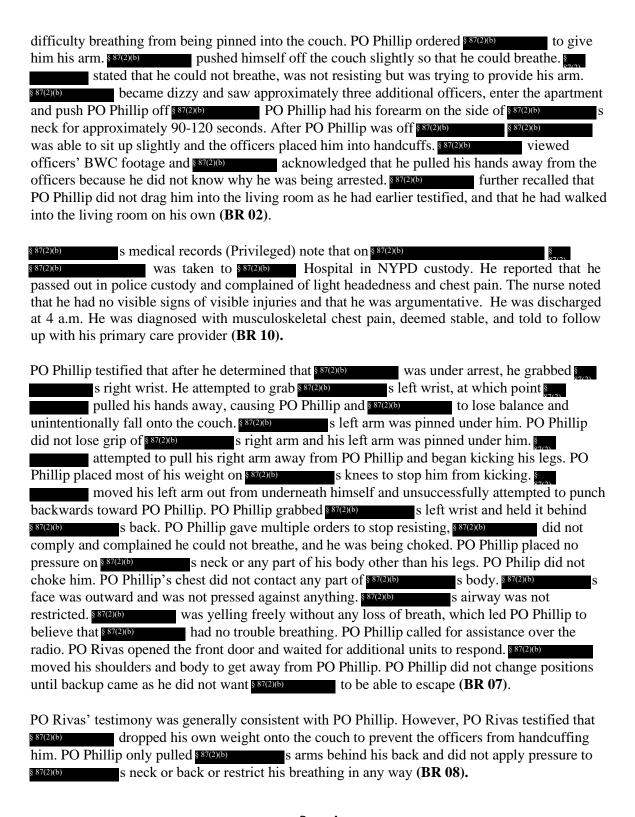
Findings and Recommendations

Allegation A – Force: Police Officer Kevin Phillip used physical force against store



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allege the use of an impact weapon. In the injury section PO Phillip wrote, "Allegation of choking. BWC indicates that no chokehold was used" (BR 09). BWC footage shows that \$87(2)(6) lost consciousness which [870] attributed to an asthma attack, his medical records show that he was only diagnosed with musculoskeletal chest pain [87(2)(6) Allegation C – Abuse of Authority: Police Officer Jonathan Arias searched [887@) in Brooklyn. Allegation D – Abuse of Authority: Sergeant Frederick Manney searched in Brooklyn. testified that after officers removed \$87(2)(6) from the apartment, additional officers, including PO Arias, PO Zambrano, PO Martireyes, and Sgt. Manney entered the residence. PO Arias asked \$87(2)(6) if the officers could search the apartment and \$87(2)(6) granted the officers permission to search. PO Arias did not tell \$87(2)(b) that she had the right to refuse the search. PO Arias did not ask \$370,000 to sign a Consent to Search Report (BR 06). PO Martireyes' BWC footage, starting at the 00:30 mark of the timestamp of the video player visible at the bottom of the screen, shows that PO Arias asked section to search her apartment and that (\$87(2)(6) consented to the search. The BWC does not show PO Arias informing \$ \$7(2)(b) that she had the right to refuse the search nor does it show \$ \$7(2)(b) signing a Consent to Search Report (BR 26). PO Arias testified that he looked up \$3000 s arrest history on his department cellphone He asked to search the apartment for firearms and she consented, however, he did not recall if he explained to \$370.00 that she had the right to refuse the search or if he prepared a consent to search form. After watching PO Martireyes's BWC footage, PO Arias recalled that he did not explain to \$37000 that she had the right to refuse the search and could not provide a reason why he did not. PO Arias also recalled that he did not prepare a consent to search form. PO Arias was in the stationhouse when he heard PO Phillip's request for assistance, and he ran out to assist the officers. He did not take a Consent to Search Report with him as he did not anticipate searching the location and, the Consent to Search Report is not available digitally on department

The TRI prepared by PO Phillip notes that he used force on 1970,000 While the TRI notes

the use of an impact weapon – PO Phillip testified that it was an error and \$87(2)(6)

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cellphones. PO Arias believed that the request to search being captured on BWC could substitute for a Consent to Search Report (BR 12).

Sgt. Manney testified that he was the anti-crime supervisor on scene and that no officer informed that she had the right to refuse the search (**BR 17**).

NYC Administrative Code, Section 14-173 outlines various provisions officers must adhere to when obtaining consent to conduct a search (**BR 29**).

- NYC Administrative Code 14-173(a)(1) articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to the search, and explain that the search will not be conducted if the person refuses to consent to the search;
- NYC Administrative Code 14-173(a)(2) must obtain consent without threats or promises of any kind being made to the individual;
- NYC Administrative Code 14-173(a)(3) must affirm that the individual understands the information communicated as per Subsection (a)(1);
- NYC Administrative Code 14-173(a)(4) must refrain from conducting such search where consent has not been obtained; and
- NYC Administrative Code 14-173(b)(2) Document the time, location, and date of such search, and the apparent race/ethnicity, gender, and age of the person who was the subject of such search, and such officer's name, precinct, and shield number.

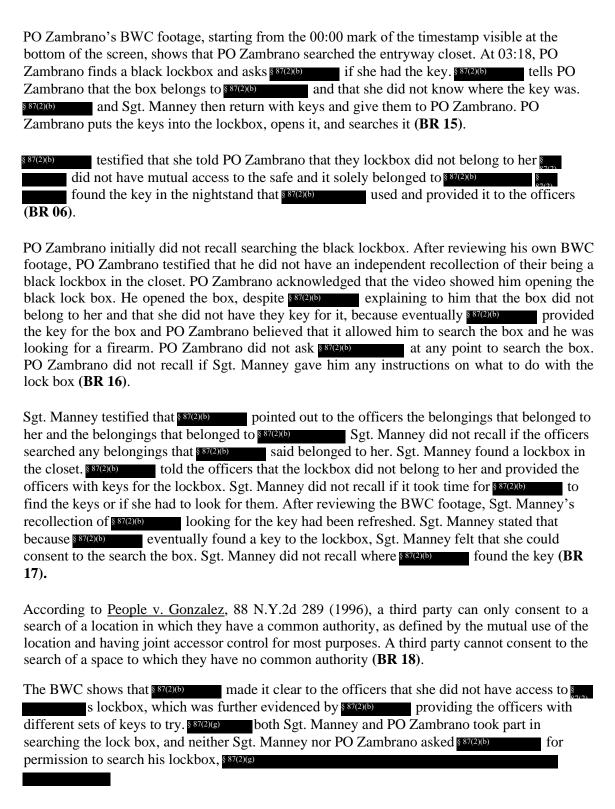
NYPD Patrol Guide, section 212-11 states that for all consent searches requested during a level 2 encounter, officers are to prepare a Consent to Search Report, which is available in the FORMS app on all department mobile devices (**BR 14**).

Although it is undisputed that \$\frac{857(2)(6)}{2}\$ consented to the search of her apartment, the search is being analyzed under the Right to Know Act. PO Arias did not explain to \$\frac{87(2)(6)}{2}\$ that she had the right to refuse the search, as required by NYC Administrative Code 14-173(a)(1). Additionally, Sgt. Manney was the supervisor on scene and he did not ensure that \$\frac{87(2)(6)}{2}\$ was informed that she had the right to refuse the search. Furthermore, PO Arias did not prepare a Consent to Search Form, as required by NYC Administrative Code 14-173(b)(2). PO Arias' statement of not having a form on him, and that the form is not available digitally on department cellphones is disproven by NYPD Patrol Guide Procedure 212-12. Furthermore, even if the BWC footage were to substitute for the Consent to Search Form, PO Arias still did not document the information required by NYC Administrative Code 14-173(b)(2) on the BWC footage.

Allegation E – Abuse of Authority: Police Officer Carlos Zambrano searched in Brooklyn.

Allegation F – Abuse of Authority: Sergeant Frederick Manney searched in Brooklyn.

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Allegation G – Abuse of Authority: Police Officer Jonathan Arias failed to provide
with a business card.
Allegation H – Abuse of Authority: Sergeant Frederick Manney failed to provide \$87(2)(5)
with a business card.
Allegation I – Abuse of Authority: Police Officer Carlos Zambrano failed to provide
with a business card.
testified that the officers that searched her apartment did not provide her with
business cards and that she did not ask the officers for business cards (BR 06).
PO Arias did not recall if he provided a business card to \$870,00 upon the completion of the
search. Sgt. Manney testified that he did not provide a business card to sarch.
that he forgot to. Sgt. Manney did not recall any officer providing a business card to
PO Zambrano did not provide with a business card because he did not understand the
applicable Patrol Guide procedure at the time of the incident but has since come to understand
that this was a situation in which he should have provided one. PO Zambrano did not recall if any
other officer provided \$570,00 with a business card (BR 12, 16, 17).
NYC Administrative Code. Section 14-174 states that officers are required to provide members of
the public with business cards after law enforcement encounters, including searches of property,
in which no summons is issued, or arrest is made (BR 13).
Despite the fact that \$870,00 did not request business cards from the officers, given the fact that the officers searched \$870,00 searched \$87
them to some under NYC Administrative Code, Section 14-174. Sgt. Manney and PO Zambrano both acknowledged that they did not provide some with a business card and acknowledged that the were required to in this situation.
provided a business card to serious given that serious testified that no officer provided
her with one, and that Sgt. Manney did not recall any officer providing \$87(2)(6) with a
business card, \$87(2)@
the officers took part in the search of \$87(2)(0) s residence and did not provide her
with a business card, \$200
§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)
Civilian and Officer CCRB Histories
This is the first CCRB complaint to which \$87(2)(0) and and \$87(2)(0) have been a party (BR 23).
PO Rivas has been a member-of-service for four years this is the first CCRB complaint to which
she has been a party.
PO Phillip has been a member-of-service for seven years this is the first CCRB complaint to which he has been a party.
PO Zambrano has been a member-of-service for 14 years and has been a subject in seven
additional CCRB complaints and 12 allegations, none of which were substantiated.
PO Arias has been a member-of-service for 14 years and has been a subject in three additional
CCRB complaints and nine allegations, none of which were substantiated.
Sgt. Manney has been a member-of-service for nine years and has been a subject in seven additional CCRB complaints and 17 allegations, none of which were substantiated.

Mediation, Civil and Criminal Histories This complaint was not suitable for mediation.

On December 4, 2020, a locate a Notice of Claim	n inquiry was filed for \$87(2)(0)	with the New Y and § 87(2)(6)	•	ller's Office to ending and will be
added to the case file up	on receipt (BR 24).			
Squad No.: 06				
Investigator: Inv. Tl	nomas Juliano	Inv. Thon	nas Juliano	12/9/2020
	Signature		Title & Name	<u>12/5/2020</u> Date
Squad Leader: Jessic	ea Deña - IM Iess	sica Peña	4/28/2021	
Squad LeaderJessie	a rena iivi jes:	Sica Pena	4/28/2021	
:	Signature	Print T	Title & Name	Date

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