

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Pagnamenta	Team: Squad #2	CCRB Case #: 201911043	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/20/2019 5:28 PM	Location of Incident: § 87(2)(b)	Precinct: 60	18 Mo. SOL 2/20/2021	EO SOL 10/7/2021	
Date/Time CV Reported Mon, 12/30/2019 2:31 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 12/30/2019 2:31 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Borrero	28310	964401	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Juan Cifuentes	23830	928074	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Borrero	Abuse: Police Officer Joseph Borrero threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.POM Joseph Borrero	Abuse: Police Officer Joseph Borrero threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
C.POM Joseph Borrero	Off. Language: Police Officer Joseph Borrero made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	§ 87(2)(b)
D.POM Joseph Borrero	Discourtesy: Police Officer Joseph Borrero spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.POM Joseph Borrero	Abuse: Police Officer Joseph Borrero entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Case Summary

On December 30th, 2019, § 87(2)(b) filed this complaint in person at the CCRB. This case was reassigned from Supervising Investigator Jean-Paul Lozada to Investigator Julia Pagnamenta on February 4th, 2020.

At approximately 5:10 p.m. on August 20th, 2019, at § 87(2)(b) in Brooklyn, after an argument between § 87(2)(b) and his sister, § 87(2)(b) in which § 87(2)(b) threatened to break § 87(2)(b)'s phone, § 87(2)(b) called 911. Police Officer Joseph Borrero and Police Officer Juan Cifuentes of the 60th Precinct responded. When the officers arrived, § 87(2)(b)'s friend, § 87(2)(b) and § 87(2)(b) and § 87(2)(b)'s mother, § 87(2)(b) were also present in the apartment. § 87(2)(b) let the two officers inside the apartment, and Police Officer Joseph Borrero spoke to § 87(2)(b) about the dispute with her brother and prepared a Domestic Incident Report (DIR) (**Board Review 01**). After preparing the DIR, Police Officer Borrero and § 87(2)(b) had a verbal exchange, in which Police Officer Borrero allegedly told § 87(2)(b) “You’re lucky that I’m not arresting you right now” and “You’re lucky you’re not going to jail right now” (**Allegation A – Abuse of Authority: Threat of Arrest – § 87(2)(g)**). Police Officer Borrero allegedly said to § 87(2)(b) “If I catch you outside, I’m a slam your bitch ass on your neck” (**Allegation B – Abuse of Authority: Threat of Force – § 87(2)(g)**) (**Allegation C – Offensive Language: Gender – § 87(2)(g)**) (**Allegation D – Discourtesy: Word – § 87(2)(g)**)

§ 87(2)(b) told Police Officer Borrero to leave the apartment, at which point Police Officer Borrero allegedly turned around, walked back towards § 87(2)(b) and said, “Suck my dick” (**within Allegation D**). Police Officer Borrero allegedly remained in the apartment for approximately five minutes after § 87(2)(b) asked him to leave. After leaving the apartment Police Officer Borrero allegedly tried to put his foot back in the door as he was speaking to § 87(2)(b) but § 87(2)(b) was able to shut the door (**Allegation E – Abuse of Authority: Entry of Premises – § 87(2)(g)**). § 87(2)(b) was not arrested or issued any summonses as a result of this incident.

Body-worn camera (BWC) footage of the incident was obtained from Police Officer Borrero’s BWC and is attached in IA #79 (**Board Review 02**) and summarized in IA #80 (**Board Review 03**). The BWC’s audio activated 30 seconds into the incident and captured Police Officer Borrero preparing the DIR but did not capture the verbal interaction between § 87(2)(b) and Police Officer Borrero. The CCRB received no BWC footage from Police Officer Cifuentes. The nature of the incident did not require the use of BWC as per Patrol Guide Procedure 212-123 (**Board Review 04**).

Findings and Recommendations

Allegation (A) Police Officer Joseph Borrero threatened to arrest § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on December 30th, 2019, (**Board Review 05**) and answered follow-up questions over the telephone on February 4th, 2020 (**Board Review 06**). § 87(2)(b) provided a telephone statement on February 4th, 2020, (**Board Review 07**) and answered follow-up questions over the telephone on February 11th, 2020 (**Board Review 08**). § 87(2)(b) provided a telephone statement on February 4th, 2020, (**Board Review 09**) and answered follow-up questions over the telephone on February 12th, 2020 (**Board Review 10**). Numerous attempts were made to reach § 87(2)(b) to obtain a statement, but contact could not be established. Police Officer Borrero was interviewed at the CCRB on November 19th, 2020 (**Board Review 11**).

Police Officer Cifuentes was interviewed at the CCRB on December 1st, 2020 (**Board Review 12**).

The following facts are undisputed: On August 20th, 2019, § 87(2)(b) and § 87(2)(b) had a domestic dispute over § 87(2)(b)'s phone and § 87(2)(b) called 911. At approximately 5:28 p.m., Police Officer Borrero and Police Officer Cifuentes responded. Police Officer Borrero spoke to § 87(2)(b) about the incident and prepared a Domestic Incident Report. After this, Police Officer Borrero and § 87(2)(b) had a verbal exchange, in which Police Officer Borrero told § 87(2)(b) he could be arrested for his dispute with § 87(2)(b).

§ 87(2)(b) stated that after Police Officer Borrero prepared the report for § 87(2)(b) he asked Police Officer Borrero how he was supposed to know whether she had an order of protection against him if he did not receive any paperwork. Police Officer Borrero replied, "You're lucky that I'm not arresting you right now," or, "You're lucky you're not going to jail right now." When § 87(2)(b) asked him what he meant, Police Officer Borrero replied, "Thanks to your sister, you're not arrested," or, "She could have got you arrested."

§ 87(2)(b) stated that when she arrived at the apartment, § 87(2)(b) and § 87(2)(b) were arguing and that after § 87(2)(b) grabbed § 87(2)(b) § 87(2)(b) called 911. § 87(2)(b) stated in her follow-up statement that after Police Officer Borrero finished speaking to § 87(2)(b) he stated that § 87(2)(b) was not "pressing charges." Police Officer Borrero stated that he could arrest § 87(2)(b) if § 87(2)(b) had wanted to press charges, but because she had not, there had been "no reason to arrest him."

§ 87(2)(b) stated that § 87(2)(b) called 911 after § 87(2)(b) "snatched" her phone.

Police Officer Borrero stated that § 87(2)(b) told him that her brother had "roughed her up" and taken her phone and damaged it. Police Officer Borrero asked § 87(2)(b) if she wanted her brother arrested. § 87(2)(b) did not want § 87(2)(b) arrested but wanted Police Officer Borrero to write an incident report. After preparing and providing § 87(2)(b) with the Domestic Incident Report, Police Officer Borrero spoke to § 87(2)(b) and told him he could arrest him for breaking his sister's phone. During his CCRB interview, Police Officer Borrero stated that because § 87(2)(b) had damaged his sister's phone, he could have been arrested for criminal mischief.

Police Officer Cifuentes did not recall any part of the conversation between Police Officer Borrero and § 87(2)(b) during this incident.

At runtime 0:30 seconds, Police Officer Borrero's BWC captures him asking § 87(2)(b) "Right now you just want this report, you don't want him arrested, right?" § 87(2)(b) replies, "Mmhuh." To which Police Officer Borrero replies, "As of right now, OK" (**Board Review 02**). The BWC footage ends shortly thereafter and does not capture the subsequent interaction between Police Officer Borrero and § 87(2)(b).

EVENT § 87(2)(g) generated in regards to this incident, states that at approximately 5:10 p.m., a female 911 caller (identified by the investigation as § 87(2)(b)) reported that her brother had hit her with his hand (**Board Review 13**).

The Domestic Incident Report #§ 87(2)(g) prepared by Police Officer Borrero notes that § 87(2)(b) stated that she and § 87(2)(b) "got into a verbal dispute over her phone," that § 87(2)(b) was "constantly bothering her over her things," and that she "want[ed] to make a report to help her get an order of protection" against § 87(2)(b). It does not note specifically that § 87(2)(b) struck § 87(2)(b) or damaged her phone (**Board Review 01**).

According to N.Y.S. Penal Law, Section 240.26, a person is guilty of harassment in the second degree, a violation, when with intent to harass, annoy or alarm another person, they strike, shove, kick or otherwise subject such other person to physical contact, or attempt or threaten to do the same (**Board Review 14**).

§ 87(2)(g)
[REDACTED]

Allegation (B) Police Officer Joseph Borrero threatened § 87(2)(b) with the use of force.

Allegation (C) Police Officer Joseph Borrero made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).

Allegation (D) Police Officer Joseph Borrero spoke discourteously to § 87(2)(b).

§ 87(2)(b) stated that after Police Officer Borrero told him that he could have arrested him, § 87(2)(b) replied, “You’re mad that you can’t arrest me right now.” Police Officer Borrero then told § 87(2)(b) that he could return to the apartment if she needed him. When § 87(2)(b) asked Police Officer Borrero what would happen if he returned, Police Officer Borrero replied, “If I catch you outside, I’m a slam your bitch ass on your neck.” § 87(2)(b) asked Police Officer Borrero what he meant, and Police Officer Borrero said, “When I catch you outside, you’re gonna see.” Later in their verbal exchange, as Police Officer Borrero was leaving the apartment, he said to § 87(2)(b) “Suck my dick.” § 87(2)(b) replied, “Your mother can suck my dick.”

§ 87(2)(b) stated that Police Officer Borrero and § 87(2)(b) were having a conversation in proximity to the entrance door and Police Officer Borrero told § 87(2)(b) “he was going to catch [him] outside one day.” § 87(2)(b) did not remember which words had been exchanged between Police Officer Borrero and § 87(2)(b) but § 87(2)(b) believed Police Officer Borrero had said “something smart” to § 87(2)(b) and her son said “something smart” in return.

§ 87(2)(b) stated that Police Officer Borrero told § 87(2)(b) “The next time I see you I am going to slam you in your head” or “If I got to come back here next time, I’m a slam you in your head.” § 87(2)(b) then told Police Officer Borrero to “suck my dick.” § 87(2)(b)

§ 87(2)(b) stated in his follow-up statement that Police Officer Borrero in response told § 87(2)(b) to “suck” his “penis.” § 87(2)(b) then replied, “Your mother and daughter.”

During his CCRB Interview, when the CCRB Investigator asked Police Officer Borrero if he had used any profanities when speaking to § 87(2)(b) Police Officer Borrero replied, “Probably.” When the CCRB Investigator asked Police Officer Borrero what he meant when he said he had “probably” used profanities when speaking to § 87(2)(b) Police Officer Borrero said he “could have” used profanities and explained that he “sometimes like[d]” to use “strong language” in situations where civilians were “acting very aggressive” and used “profanities” to “make them

comply.” Police Officer Borrero did not remember if the topic of using force against § 87(2)(b) came up, and said he did not remember if he told § 87(2)(b) “If I catch you outside, I’m going to slam your bitch ass on your neck.” When the Investigator asked if this was something Police Officer Borrero could have possibly said, Police Officer Borrero replied he “could have.” Police Officer Borrero did not remember telling § 87(2)(b) to, “Suck my dick.” When the Investigator asked Police Officer Borrero if § 87(2)(b) had made those comments towards him, Police Officer Borrero said § 87(2)(b) had made multiple such statements to him during the incident. Police Officer Borrero said he had responded to § 87(2)(b) when he made these statements, but he did not remember what specifically he had said back to him.

According to Patrol Guide Procedure 200-02, the NYPD pledges to “value human life, respect the dignity of each individual and render our services with courtesy and respect” (**Board Review 15**).

Patrol Guide Procedure 203-10 prohibits officers from using discourteous or disrespectful remarks regarding a person’s gender and gender identity/expression (**Board Review 16**).

According to Patrol Guide Procedure 221-01 in determining whether the use of force is reasonable, members of service should consider the following; the nature and severity of the circumstances; the 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; whether the subject is actively resisting arrest; whether the subject is attempting to evade arrest by flight; the number of subjects in comparison to the number of MOS; the size, age, and condition of the subject in comparison to MOS; the subject’s violent history, if known; the presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant or narcotic which would affect their pain tolerance or increase the likelihood of violence (**Board Review 17**).

According to DCT Case No. 2015-15012, officers are to behave professionally and respectfully towards members of the public and avoid the use of discourteous language; however, officers’ use of profanities during stressful street encounters do not constitute misconduct (**Board Review 18**).

§ 87(2)(g)
[REDACTED]

Allegation (E) Police Officer Joseph Borrero entered § 87(2)(b) .
[REDACTED]

§ 87(2)(b) stated that after Police Officer Borrero threatened to use force against him, he asked Police Officer Borrero to leave the apartment. Police Officer Borrero turned around, walked back towards § 87(2)(b) and continued to engage with him verbally. Police Officer Borrero remained in the apartment for approximately five minutes after § 87(2)(b) asked him to leave. After leaving the apartment Police Officer Borrero tried to put his foot in the door as he was speaking to § 87(2)(b) but § 87(2)(b) was able to shut the door.

§ 87(2)(b) stated that § 87(2)(b) went to “slam” the entrance door closed as the officers were leaving the apartment and locked the door. The officers knocked on the door, and when § 87(2)(b)

opened it again, Police Officer Borrero told § 87(2)(b) he was going to “catch him outside one day.” § 87(2)(b) stated in her follow-up statement that § 87(2)(b) told Police Officer Borrero that “this was his § 87(2)(b) and to “get out.” § 87(2)(b) told § 87(2)(b) to “shut up” and “let it go,” and locked the door. § 87(2)(b) estimated that the officers left approximately half a minute after § 87(2)(b) told them to “get out.”

§ 87(2)(b) stated that § 87(2)(b) asked the officers repeatedly to “get out” of his apartment. Police Officer Cifuentes was outside the door, but Police Officer Borrero was “taking his time walking out,” and told § 87(2)(b) “The next time I see you I am going to slam you in your head.” After § 87(2)(b) told Police Officer Borrero to “suck my dick,” Police Officer Borrero replied likewise and put his foot in the door and tried to get back into the apartment, but § 87(2)(b) pushed Police Officer Borrero’s foot out of the door and shut the door. § 87(2)(b) estimated in his follow-up statement that approximately two or three minutes had elapsed between when § 87(2)(b) asked the officers to leave and when they left.

Police Officer Borrero stated that after preparing the DIR in the apartment’s lower floor, he went back to the upper floor of the duplex and made his way towards the entrance door to leave the apartment. Police Officer Borrero estimated that after coming back upstairs he remained in the apartment for approximately two to three minutes. He did not remember if § 87(2)(b) asked him to leave the apartment at any point. Police Officer Borrero did not remember if he had put his foot into the entrance door after stepping out of the apartment. Police Officer did not remember if he had tried to block or impede § 87(2)(b) from closing the apartment door with any parts of his body.

Police Officer Cifuentes stated that neither he nor Police Officer Borrero were asked to leave the apartment. Police Officer Cifuentes said Police Officer Borrero did not try to block or impede § 87(2)(b) from closing the apartment door with any parts of his body.

§ 87(2)(g)
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Civilian and Officer CCRB Histories

- § 87(2)(b) (Board Review #19).
- Police Officer Joseph Borrero has been a member of service for three years and has been a subject in two other CCRB complaints and three other allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- According to the New York City Office of the Comptroller, no Notice of Claim had been filed regarding this incident as of December 8th, 2020 (Board Review #20).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 2

Investigator: Julia Pagnamenta Inv. Julia Pagnamenta 12/28/2020
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 12/28/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date