

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Evan Tims	Team: Squad #05	CCRB Case #: 202003029	☐ Force	☐ Discourt.	☐ U.S.
			☒ Abuse	☐ O.L.	☐ Injury
Incident Date(s) Friday, 04/24/2020 8:00 PM	Location of Incident: West 182nd Street between St. Nicholas Avenue and Wadsworth Avenue	18 Mo. SOL 5/4/2022	Precinct: 34		
Date/Time CV Reported Sat, 04/25/2020 12:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/04/2020 11:09 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Falconer	2149	954790	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Douglas Perez	3323	943667	034 PCT
2. POM Daniel Martinucci	20408	955140	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Kevin Falconer	Abuse: Police Officer Kevin Falconer searched the vehicle in which § 87(2)(b) was an occupant.	A . Unfounded
B . POM Kevin Falconer	Abuse: Police Officer Kevin Falconer refused to provide his name to § 87(2)(b)	B . Unfounded
C . POM Kevin Falconer	Abuse: Police Officer Kevin Falconer refused to provide his shield number to § 87(2)(b)	C . Unfounded

Case Summary

On April 25, 2020, § 87(2)(b) filed this complaint by phone with IAB, generating original log number 20-11044. The CCRB received the complaint on May 4, 2020.

On April 24, 2020, at approximately 8 p.m., Police Officer Kevin Falconer of the 34th Precinct approached § 87(2)(b) as he was sitting in the front seat of his vehicle parked on West 182nd Street between St. Nicholas Avenue and Wadsworth Avenue in Manhattan. PO Falconer allegedly stuck his head and shoulders inside the vehicle and looked at the interior (**Allegation A: Abuse of Authority, unfounded**). PO Falconer issued § 87(2)(b) a summons for idling (**BR01**). At some point during the incident, PO Falconer allegedly refused to provide his name and shield number to § 87(2)(b) (**Allegations B-C: Abuse of Authority, unfounded**).

The investigation obtained cellphone footage from § 87(2)(b) (**BR02, summarized at BR03**), and BWC footage from PO Falconer and two additional officers (**BR04-BR06, summarized at BR07**). All references to video evidence below refer to the time stamp in the video player, not the on-screen clock embedded in the footage itself.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kevin Falconer searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g) § 87(2)(b) testified that when PO Falconer asked him to provide his license, § 87(2)(b) turned away and reached for it. When § 87(2)(b) turned, PO Falconer stretched either his head, or his head and part of his shoulder, into the passenger cabin through the open driver's window. While he was inside of the vehicle, PO Falconer looked at several areas of the interior before pulling his head out of the window and shining his flashlight throughout the vehicle. In addition, during the time PO Falconer's head was inside the vehicle, he said to § 87(2)(b) "What, what happened?"

§ 87(2)(b) confirmed that the cellphone footage he provided to the investigation captured the time period when PO Falconer allegedly leant inside the vehicle. The footage does not depict PO Falconer ever entering the vehicle. At 00:21 in the footage, PO Falconer begins to lean his upper body toward the open driver's side window, but no part of his body actually enters the vehicle through the open window. At 00:23, PO Falconer stands back up and says, "What?" He also shines his vehicle around the interior cabin but does not stick any part of his body into the vehicle while doing so.

PO Falconer's BWC footage also does not depict him sticking his head or shoulders inside the vehicle.

§ 87(2)(g)

§ 87(2)(b). Therefore, it is recommended that **Allegation A** be closed as **unfounded**.

Allegation (B) Abuse of Authority: Police Officer Kevin Falconer refused to provide his name to § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Kevin Falconer refused to provide his shield number to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) In his initial phone statement, § 87(2)(b) recounted that he asked PO Falconer for his name and shield number at the conclusion of the incident, after PO Falconer handed him the summons. PO Falconer replied, “There it is,” while gesturing to his nameplate. PO Falconer did not state his name or shield number aloud, and § 87(2)(b) was not able to read them from the nameplate. In his sworn phone interview, however, § 87(2)(b) did not recount asking PO Falconer for his name and shield number at the conclusion of the incident. Instead, § 87(2)(b) recounted that he asked PO Falconer for his name and shield number during PO Falconer’s initial conversation with him at the driver’s window, after § 87(2)(b) told PO Falconer that he was going to file a CCRB complaint. PO Falconer replied, “It’s right here. It’s on my chest.” § 87(2)(b) told PO Falconer that he could not see his nameplate, and PO Falconer merely replied, “It’s right here.”

At 00:30 in the cellphone footage, § 87(2)(b) states that he will file a complaint with the CCRB. PO Falconer replies, “Go ahead, get my name.” § 87(2)(b) does not ask for PO Falconer’s name or shield number at that time. At 07:46, PO Falconer hands § 87(2)(b) a summons and walks away from the vehicle and out of the video frame. § 87(2)(b) asks through his open window how to go about fighting the summons. At 07:53, a distant male voice from outside the vehicle tells § 87(2)(b) to look on the ticket. This officer is not visible in the footage. § 87(2)(b) asks again how to fight the summons, and there is no response. At 08:03, § 87(2)(b) leans toward his open window and says, “I want your badge number.” PO Falconer is not visible at this point.

PO Falconer’s BWC footage shows him handing the summons to § 87(2)(b) and walking back to his RMP. As PO Falconer walks to the RMP, he hears § 87(2)(b) ask how to fight the ticket and replies that the instructions are on the ticket. Within roughly six seconds of leaving § 87(2)(b)’s window, PO Falconer is already sitting in the driver’s seat of his RMP, at which point he switches off his BWC. His partner, Sergeant Douglas Perez of the 34th Precinct, has also already sat in the front passenger seat and closed his door. § 87(2)(b) cannot be heard asking for PO Falconer’s shield number in the BWC footage, though it is possible that he asked after the officers switched off their cameras.

§ 87(2)(g)

Therefore, it is recommended that **Allegation A** be closed as **unfounded**. § 87(2)(g)

§ 87(2)(g)

Therefore, it is recommended that **Allegation C** be closed as **unfounded**.

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to four complaints with the CCRB (**BR10**).
 - § 87(2)(b)
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- PO Falconer has been a member-of-service for 7 years and has been a subject in one previous case and two allegations, neither of which was substantiated.
 - § 87(2)(b)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of July 31, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**BR12**).

Squad No.: 5

Investigator: Evan Tims Inv. Evan Tims September 18, 2020
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante September 18, 2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date