

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Kim	Team: Squad #6	CCRB Case #: 202003902	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> Discourt. <input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/03/2020 9:00 PM	Location of Incident: Vanderbilt Avenue and East 46th Street		Precinct: 18	18 Mo. SOL 12/3/2021	EO SOL 5/4/2022
Date/Time CV Reported Thu, 06/04/2020 9:59 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/04/2020 9:59 AM		

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

Subject Officer(s)	Shield	TaxID	Command
1. DT2 James Delumen	03621	922213	DB CEIS
2. DT1 Christophe Bastos	04812	923540	DB CEIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT1 Derick Samuels	05531	898465	DB CEIS

Officer(s)	Allegation	Investigator Recommendation
A.DT2 James Delumen	Force: Detective § 87(2)(b) Delumen used a chokehold against § 87(2)(b)	[REDACTED]
B.DT2 James Delumen	Discourtesy: Detective § 87(2)(b) Delumen spoke discourteously to § 87(2)(b)	[REDACTED]
C.DT2 James Delumen	Off. Language: Detective § 87(2)(b) Delumen made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	[REDACTED]
D.DT1 Christophe Bastos	Discourtesy: Detective Christopher Bastos spoke discourteously to § 87(2)(b)	[REDACTED]
E.DT1 Christophe Bastos	Off. Language: Detective Christopher Bastos made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	[REDACTED]

Case Summary

On June 4, 2020, § 87(2)(b) filed this complaint on behalf of his sixteen-year-old son, § 87(2)(b) via the CCRB Online Complaint Form. § 87(2)(b) was not present during the incident.

On June 3, 2020 at approximately 10:00 p.m., § 87(2)(b) participated in a protest that led to the intersection of Park Avenue and East 46th Street in Manhattan. A group of police vehicles approached the protest and the protesters dispersed. Detective § 87(2)(b) Delumen of DB CEIS exited an unmarked dark grey SUV and ran toward § 87(2)(b) who ran toward Vanderbilt Avenue.

§ 87(2)(b) stopped when he ran out of breath, and kneeled. Det. Delumen placed § 87(2)(b) in handcuffs and lowered him to the ground. Det. Delumen placed his knee on the right side of § 87(2)(b)'s neck without applying pressure (**Allegation A—Force**, § 87(2)(g)). § 87(2)(b) expressed discomfort, and Det. Delumen responded, "Shut the fuck up, cunt"

(**Allegation B—Discourtesy, and Allegation C—Offensive Language**, § 87(2)(g)). Detective Christopher Bastos and Detective Derick Samuels of DB CEIS arrived shortly thereafter. As § 87(2)(b) responded to Det. Delumens's question, Det. Bastos said, "Shut the fuck up, you cunt" (**Allegation D—Discourtesy, and Allegation E—Offensive Language**, § 87(2)(g)). Det. Delumen and Det. Samuels lifted § 87(2)(b) from the ground and transported to the 13th Precinct stationhouse.

Two summonses were issued to § 87(2)(b) for disorderly conduct and violation of mayoral emergency order.

No video footage has been obtained of this incident. Body worn camera footage was not obtained as none of the officers in this command were ever assigned a BWC.

Findings and Recommendations

Allegation A—Force: Detective § 87(2)(b) Delumen used a chokehold against § 87(2)(b)

§ 87(2)(b) testified that (**BR 01**) on June 3, 2020 at approximately 10:00 p.m., he participated in a protest that led to the intersection of Park Avenue and East 46th Street in Manhattan. § 87(2)(b) who rode a bicycle, was initially with a group of four unidentified individuals, but officers instructed the group to disperse. Det. Delumen exited an unmarked dark grey SUV and ran toward § 87(2)(b). Det. Delumen said, "Stop. Police." § 87(2)(b) dropped his bicycle and ran west on East 46th Street to evade the police. The other individuals in his group ran in different directions. § 87(2)(b) ran into the street approximately ten feet from the southeast corner of Vanderbilt Avenue and East 46th Street. Det. Bastos and Det. Samuels trailed behind Det. Delumen. § 87(2)(b) ran out of breath, went down on both knees and placed his hands behind his back. Det. Delumen kneeled behind § 87(2)(b) and placed him into metal handcuffs. Det. Delumen lowered him chest-first onto the pavement. Det. Delumen placed his knee onto the right side of § 87(2)(b)'s neck without applying any pressure, and held it there for thirty to forty-five seconds. Det. Delumen's knee did not impact his ability to breathe. Det. Delumen appeared to have his knee in that position to prevent § 87(2)(b) from moving.

Det. Delumen testified (**BR 02**) that on June 3, 2020, shortly before 9:00 p.m., a call came in on the radio regarding a large group protesting near Central Park. Det. Delumen did not recall the specifics of the call that came in. They proceeded toward the location, and Det. Delumen's vehicle was toward the end of a police caravan of approximately six to ten vehicles. They observed the group

near the intersection of Lexington Avenue and East 46th Street in Manhattan. At that time, it was an hour past the curfew. The caravan and the group were both headed in the southbound direction. When the caravan stopped, everyone began to run. Det. Delumen noticed § 87(2)(b) specifically, because he dropped his bicycle and fled the scene on foot. § 87(2)(b) was in violation of the curfew and engaged in disorderly conduct for failure to disperse. Det. Delumen chased him on foot for about a block and a half in the westbound direction down East 46th Street. While they ran, Det. Delumen identified himself as police and ordered § 87(2)(b) to stop. Near Lexington Avenue, § 87(2)(b) gave up and laid on the ground face down with his arms by his side. As Det. Delumen approached § 87(2)(b) Det. Delumen instructed him to place his hands behind his back, and he did. Det. Delumen handcuffed him. Det. Delumen did not place any body parts, such as a knee or his hand, on top of § 87(2)(b) to keep him in position.

Det. Bastos provided similar testimony (**BR 03**) to Det. Delumen with the following exceptions. At approximately 9:00 p.m., they received a call over the radio about an individual on a bicycle out past curfew, biking in and out of a group of protestors. Det. Bastos described the group as large enough to fill an intersection, possibly a hundred individuals. Det. Bastos saw Det. Delumen exit the vehicle within minutes of the radio call being received, and Det. Bastos followed him. Det. Bastos saw Det. Delumen in pursuit of § 87(2)(b) and Det. Bastos joined the pursuit. Det. Bastos did not see § 87(2)(b) prior to Det. Delumen chasing him. Other than breaking curfew, Det. Bastos did not see § 87(2)(b) commit any violations. Det. Bastos had a safety concern as the radio call noted that § 87(2)(b) had been biking in and out of the protest group. After running for a block and a half, Det. Bastos saw § 87(2)(b) turn back around, and ran toward Det. Bastos. Det. Bastos yelled, "Police, don't move." § 87(2)(b) voluntarily laid face down on the ground. Det. Delumen handcuffed § 87(2)(b) Figureoa immediately. There was no struggle, and § 87(2)(b) did not try to get away from the detectives. Det. Bastos did not see exactly how Det. Delumen assisted to handcuff § 87(2)(b) did not make any comments about how he was handcuffed or make any requests. Det. Delumen did not make any other physical contact with § 87(2)(b) besides handcuffing him.

Det. Samuels testified that (**BR 04**) he was the operator of the vehicle and worked with Det. Bastos and Det. Delumen. Det. Bastos and Det. Delumen exited the vehicle to pursue § 87(2)(b) on foot. By the time Det. Samuels got to the spot where Det. Delumen and Det. Bastos stopped § 87(2)(b) was already standing and handcuffed.

§ 87(2)(b) Det. Delumen, and Det. Bastos all stated that there were no witnesses at the time when § 87(2)(b) was handcuffed, and no video evidence has been obtained of the incident.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B—Discourtesy: Detective § 87(2)(b) Delumen spoke discourteously to § 87(2)(b).

Allegation C—Offensive Language: Detective § 87(2)(b) Delumen made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).

Allegation D—Discourtesy: Detective Christopher Bastos spoke discourteously to § 87(2)(b).

Allegation E—Offensive Language: Detective Christopher Bastos made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).

§ 87(2)(b) testified that while Det. Delumen's knee was on his neck, Det. Delumen told him to stop resisting. § 87(2)(b) was not resisting, and he told Det. Delumen that he was not resisting, that he was uncomfortable, and asked Det. Delumen to move his knee. Det. Delumen replied, "Shut the fuck up, cunt." Det. Bastos and Det. Samuels caught up to them. Det. Samuels held § 87(2)(b) down by his left shoulder and had his knee on his lower back but did not apply any pressure. Det. Delumen held § 87(2)(b) down by his right shoulder. Det. Delumen sarcastically asked § 87(2)(b) what he was doing. § 87(2)(b) began to reply. Det. Bastos interrupted him and said, "Shut the fuck up, you cunt." § 87(2)(b) did not say anything else. No one else was nearby when § 87(2)(b) was arrested.

Det. Delumen testified that § 87(2)(b) was on the ground for approximately 10 seconds. § 87(2)(b) did not make any requests to change position or state that he was uncomfortable in any way. While § 87(2)(b) was on the ground, Det. Delumen did not say anything else. Det. Delumen did not state, "Shut the fuck up, cunt," to § 87(2)(b). Shortly thereafter, Det. Bastos arrived at their location. Det. Delumen did not recall if Det. Bastos arrived before or after § 87(2)(b). § 87(2)(b) had been helped up from the ground. Det. Delumen did not hear Det. Bastos use any profanity with § 87(2)(b). Det. Delumen did not hear any other officers state, "Shut the fuck up, cunt." Det. Bastos and Det. Delumen waited with § 87(2)(b) for Det. Samuels to arrive with the vehicle.

Det. Bastos did not see exactly how Det. Delumen assisted to handcuff § 87(2)(b). § 87(2)(b) did not make any comments about how he was handcuffed or make any requests. Det. Delumen did not make any other physical contact with § 87(2)(b) besides handcuffing him. § 87(2)(b) did not state that he was uncomfortable in any way. No officers stated to § 87(2)(b) "Shut the fuck up, cunt." Det. Bastos helped § 87(2)(b) stand up after he was handcuffed. § 87(2)(b) was on the ground for seconds.

Det. Samuels testified that by the time he got to the spot where Det. Delumen and Det. Bastos stopped § 87(2)(b) was already standing and handcuffed. Det. Samuels did not hear Det. Delumen, Det. Bastos, or any other officer say, "Shut the fuck up, you cunt," to § 87(2)(b) or use any other discourteous or offensive remarks.

§ 87(2)(b) Det. Delumen, and Det. Bastos all stated that there were no witnesses at the time when § 87(2)(b) was on the ground, and no video evidence has been obtained of the incident.

§ 87(2)(b), § 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 05**).
- Det. Delumen has been a member-of-service for 22 years and has been a subject in 16 CCRB complaints and 35 allegations, of which two were substantiated:

- Case #200003690 involved a substantiated allegation of premises entered and/or searched. The Board recommended charges. There is no NYPD disposition or penalty.
- Case #20150456 involved substantiated allegation of a vehicle stop. The Board recommended formalized training, and the NYPD imposed formalized training.
- Det. Delumen's CCRB history does not reflect any patterns pertinent to this investigation.
- Det. Bastos has been a member-of-service for 21 years and has been a subject in four CCRB complaints and 16 allegations, of which eight were substantiated:
 - Case #200401075 involved substantiated allegations of gun pointed, frisk and/or search, question and/or stop, threat of arrest, and courtesy. The Board recommended charges. The NYPD found Det. Bastos not guilty (DCT) of the gun pointed, frisk/search, and question/stop, and did not take disciplinary action (DUP) for the threat of arrest or courtesy.
 - Case #200401808 involved substantiated allegation of frisk, other abuse of authority, and refusal to provide name/shield number. The Board recommended charges, and the NYPD did not take any disciplinary action (SOL).
 - PO Bastos's CCRB history does not reflect any patterns pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This case was marked unsuitable for mediation due to the arrest which occurred during the protest.
- According to the Office of Court Administration (OCA), § 87(2)(b) ██████████ has no history of convictions in NYC (**BR 06**).
- A Notice of Claim Inquiry was submitted to the NYC Comptroller's Office on September 22, 2020 and will be included in the case filed upon receipt (**BR 07**).

Squad No.: 6

Investigator: Lily Kim Investigator Lily Kim 9/28/2020
Signature Print Title & Name Date

Squad Leader: Jessica Peña IM Jessica Peña 9/29/2020
Signature Print Title & Name Date

Reviewer: _____ Signature _____ Print Title & Name _____ Date _____