

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgio	Team: Squad #02	CCRB Case #: 202005899	☐ Force	☐ Discourt.	☐ U.S.
			☒ Abuse	☐ O.L.	☐ Injury
Incident Date(s) Monday, 08/24/2020 6:00 PM	Location of Incident: 1250 Metropolitan Avenue	18 Mo. SOL 5/4/2022	Precinct: 90		
Date/Time CV Reported Fri, 08/28/2020 10:50 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 08/28/2020 10:50 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Charlie Mardakhayeva	20085	962575	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Charlie Mardakhayeva	Abuse: Police Officer Charlie Mardakhayeva stopped the vehicle on which § 87(2)(b) was an occupant.	A . Substantiated
B . POM Charlie Mardakhayeva	Abuse: Police Officer Charlie Mardakhayeva threatened to arrest § 87(2)(b)	B . Exonerated

Case Summary

On August 28, 2020, § 87(2)(b) filed this complaint online via the CCRB website.

On August 24, 2020, at approximately 6:00 p.m., § 87(2)(b) was riding his bicycle in the bicycle lane of Metropolitan Avenue in Brooklyn. He passed Police Officer Charlie Mardakhayeva of the 90th Precinct, who was in the process of pulling over another civilian. § 87(2)(b) then rode onto the sidewalk to avoid traffic and blockages of the bicycle lane. § 87(2)(b) heard sirens behind him but continued riding as he was not sure whether Police Officer Mardakhayeva was trying to stop him. Police Officer Mardakhayeva pulled the police vehicle alongside § 87(2)(b)'s bicycle and then allegedly took a sudden, sharp right turn onto the sidewalk in front of § 87(2)(b)'s moving bicycle, which forced § 87(2)(b) to stop so as not to hit the police vehicle (**Allegation A: Abuse of Authority – Vehicle Stop – Substantiated**). Police Officer Mardakhayeva told § 87(2)(b) to give him his ID, or he would be arrested (**Allegation B: Abuse of Authority – Threat of Arrest – Exonerated**). § 87(2)(b) provided his ID to Police Officer Mardakhayeva, who issued him two summonses, one for § 87(2)(b) and another for § 87(2)(b) (Board Review 20).

Body-worn camera (BWC) footage from the BWC of Police Officer Mardakhayeva is linked to IA #53 and summarized in IA #54 (Board Review 01, 02). § 87(2)(b) submitted videos and photographs he took during the incident; these have been linked to IAs #14-19, and the videos are summarized in IA #20 (Board Review 03-09).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Charlie Mardakhayeva stopped the vehicle on which § 87(2)(b) was an occupant.

§ 87(2)(b) provided a telephone statement on September 9, 2020 (Board Review 10). He was interviewed by telephone on September 11, 2020 (Board Review 11) and answered follow-up questions by telephone on December 8, 2020 (Board Review 12). Police Officer Mardakhayeva was interviewed at the CCRB on April 15, 2021 (Board Review 13).

It is undisputed that § 87(2)(b) rode his bicycle on the sidewalk on Metropolitan Avenue. It is further undisputed that Police Officer Mardakhayeva stopped § 87(2)(b)'s bicycle, pulling his vehicle onto the sidewalk to do so, and then issued summonses to § 87(2)(b).

§ 87(2)(b) testified that, when he first saw the police vehicle, he yelled something like, “Fuck the police” or “Fuck 12” as he passed Police Officer Mardakhayeva’s vehicle. After passing the police vehicle, but before he heard the sirens, he rode onto the sidewalk to avoid traffic and blockages of the bicycle lane. There were no pedestrians on the sidewalk at the time. He slowed down when he heard police sirens but continued riding. After pulling his police car alongside to ten feet in front of § 87(2)(b) Police Officer Mardakhayeva took a sudden, “extremely” sharp right turn onto the sidewalk, which forced § 87(2)(b) to stop within approximately two seconds or hit the police car.

Police Officer Mardakhayeva testified that he activated his lights and sirens to pull over § 87(2)(b). He also used his loudspeaker to say, “Bicyclist, stop the bicycle. Pull over to the right.” He initially tried to pull § 87(2)(b) over for running a red light. § 87(2)(b) rode onto the sidewalk to evade Police Officer Mardakhayeva. Police Officer Mardakhayeva believed he “had to” follow § 87(2)(b) and had to stop § 87(2)(b) because otherwise he would “continue...

running away.” Approximately 10-20 seconds after activating his lights and sirens, Police Officer Mardakhayeva “deliberately” moved his police car onto the sidewalk in front of § 87(2)(b)’s moving bicycle to stop § 87(2)(b) from continuing to flee. His car was 15-20 feet from § 87(2)(b) when he pulled onto the sidewalk. Police Officer Mardakhayeva did not recall how fast he had been going prior to pulling onto the sidewalk and could not estimate § 87(2)(b)’s speed, as officers are not trained to estimate bicyclists’ speeds.

The beginning of the BWC footage captured by Police Officer Mardakhayeva shows that Police Officer Mardakhayeva pursues § 87(2)(b) for approximately 20 seconds before pulling his SUV onto the sidewalk. He appears to activate his lights and sirens but does not appear to use a radio or bullhorn (though there is no audio at the beginning of the video, he does not pick up the bullhorn mouthpiece). It is unclear how fast Police Officer Mardakhayeva is driving before pulling onto the sidewalk. The BWC footage does not show how close Police Officer Mardakhayeva’s vehicle is from § 87(2)(b)’s bicycle when it pulls onto the sidewalk in front of § 87(2)(b)’s bicycle, as the camera was inside the car at the time. However, at approximately timestamp 0:20, Police Officer Mardakhayeva pulls his vehicle onto the sidewalk, where the vehicle is still located at approximately 0:28 when Police Officer Mardakhayeva exits his vehicle. When Police Officer Mardakhayeva turns towards § 87(2)(b) at 0:31, § 87(2)(b) is standing, straddling his bicycle, approximately one car length from the police vehicle. He then asks Police Officer Mardakhayeva, “Why are you cutting me off?” No pedestrians appear on the sidewalk in the vicinity in the BWC footage during the time period in which the stop is initiated. One person walks past several minutes later in the incident, while Police Officer Mardakhayeva is handing § 87(2)(b) the two summonses.

New York State Vehicle and Traffic Law §1231 states that traffic laws apply to people riding bicycles (Board Review 17).

§ 87(2)(e)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

. It is therefore recommended that **Allegation A** be substantiated.

Allegation (B) Abuse of Authority: Police Officer Charlie Mardakhayeva threatened to arrest

§ 87(2)(b)

It is undisputed that, after effecting a vehicle stop, Police Officer Mardakhayeva told § 87(2)(b) that he could be arrested. He then issued him two summonses.

§ 87(2)(b) testified that after Police Officer Mardakhayeva exited his vehicle after pulling onto the sidewalk, he asked why Police Officer Mardakhayeva had cut him off. Police Officer Mardakhayeva replied that § 87(2)(b) was riding his bicycle on the sidewalk, then yelled at § 87(2)(b) to give him his ID or he would be arrested. Police Officer Mardakhayeva asked § 87(2)(b) for his ID twice before telling him that he would be arrested. After § 87(2)(b) gave his ID to Police Officer Mardakhayeva, Police Officer Mardakhayeva told § 87(2)(b) to stay with his bicycle or he would be arrested.

Police Officer Mardakhayeva testified that he observed § 87(2)(b) running a red light on his bicycle and later riding on the sidewalk. He exited his vehicle after effecting the stop and told § 87(2)(b) his name and the reason for the stop. As soon as he exited his vehicle, he told § 87(2)(b) that he needed his ID, and § 87(2)(b) “started exchanging words” and became “confrontational” in the statements he made, though Police Officer Mardakhayeva did not recall what these statements were. Police Officer Mardakhayeva did not recall whether § 87(2)(b) specifically responded to the request for ID. Police Officer Mardakhayeva told § 87(2)(b) that if he did not provide his ID, he could be arrested. After this second request for ID, § 87(2)(b) provided his ID. Police Officer Mardakhayeva believed that § 87(2)(b) could have been arrested for obstructing governmental administration for not providing his ID.

Police Officer Mardakhayeva’s BWC shows that once Police Officer Mardakhayeva exits his vehicle, he points at § 87(2)(b) and says, “ID, you’re riding on the sidewalk.” § 87(2)(b) asks if Police Officer Mardakhayeva is serious, and Police Officer Mardakhayeva replies that he is. § 87(2)(b) takes his backpack off of his shoulders and asks why Police Officer Mardakhayeva cut him off, and Police Officer Mardakhayeva replies, “ID, or you’re going to jail.” While getting his ID out, § 87(2)(b) asks why he would be going to jail. Police Officer Mardakhayeva replies, “For riding on the sidewalk and not giving your ID.” Police Officer Mardakhayeva does not mention the possibility of arrest again once § 87(2)(b) provides his ID.

NYPD Patrol Guide Procedure 208-01 (Board Review 21) states that an officer may make an arrest without a warrant for a petty offense committed in his presence, including violations and traffic infractions. The courts have stated, however, that arresting civilians for traffic violations, where an arrest is not necessary and issuing a summons is an available alternative, is not the preferred procedure (see People v. Howell 49 N.Y.2d 778 (1980) – Board Review 22). Nevertheless, in Santiago v. City of New York N.Y. Misc. LEXIS 188 (2002) (Board Review 23), the court held that a civilian’s inability to produce identification after an officer observed him commit a traffic infraction—thus making it impossible for the officer to issue a summons—was an aggravating circumstance, which would justify an immediate custodial arrest of the civilian.

§ 87(2)(g)

§ 87(2)(g) . It is therefore recommended that **Allegation B** be **exonerated**.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 15).
- Police Officer Mardakhayeva has been a member of service for 4 years and has been a subject in two additional CCRB complaints and four additional allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 15, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 14).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 2

Investigator: Rachel Murgo Inv. Rachel Murgo 07/14/2021
Signature Print Title & Name Date

Squad Leader: AOA IM Alexander Opoku-Agyemang 7/14/2021
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____