CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☐ Force ☑ Discourt. ☐ U.S.
Casey McCann	Squad #14	202006254	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	18 Mo. SOL	Precinct:
Sunday, 08/16/2020 2:36 PM, Tuesday, 08/18/2020 6:50 PM, Tuesday, 08/18/2020 8:00 PM, Wednesday, 08/19/2020 10:00 AM	§ 87(2)(b) over the phone	5/4/2022	40

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Sun, 08/23/2020 11:23 AM	IAB	Phone	Mon, 09/14/2020 10:43 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Andrew Johnson	00000	941966	040 PCT
2. SGT Darren Earl	4118	949536	040 PCT
3. PO Julia Goldberg	01532	956684	040 PCT
4. PO Alex Okane	01409	966247	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Billy Estevez	08172	964505	040 PCT
2. PO Christophe Morales	26723	939799	040 PCT
3. PO Frankelina Hichezpimentel	29214	963070	040 PCT
4. PO Jessica Sancho	06938	961237	040 PCT

Officer(s)	Allegation	Inv. Div. Recommendation
A . SGT Darren Earl	Abuse: On August 16, 2020, Sergeant Darren Earl entered § 87(2)(b) in the Bronx.	A . Unsubstantiated
B . PO Alex Okane	Abuse: On August 18, 2020, Police Officer Alex O'Kane threatened to arrest § 87(2)(b) over the phone.	B . Exonerated
C . PO Alex Okane	Abuse: On August 18, 2020, at § 87(2)(b) in the Bronx, Police Officer Alex O'Kane threatened to arrest § 87(2)(b)	C . Unfounded
D . PO Julia Goldberg	Abuse: On August 18, 2020, at § 87(2)(b) in the Bronx, Police Officer Julia Goldberg threatened to arrest § 87(2)(b)	D . Unfounded
E . LT Andrew Johnson	Abuse: On August 18, 2020, Lieutenant Andrew Johnson threatened to arrest § 87(2)(b) over the phone.	E . Exonerated
F . LT Andrew Johnson	Abuse: On August 18, 2020, Lieutenant Andrew Johnson threatened to arrest § 87(2)(b) over the phone.	F . Unsubstantiated
G . LT Andrew Johnson	Abuse: On August 19, 2020, Lieutenant Anderon Johnson entered § 87(2)(b) in the Bronx.	G . Exonerated
H . LT Andrew Johnson	Abuse: On August 19, 2020, Lieutenant Andrew Johnson searched § 87(2)(b) in the Bronx.	H . Exonerated

Officer(s)	Allegation	Inv. Div. Recommendation
I . LT Andrew Johnson	Discourtesy: On August 19, 2020, at § 87(2)(b) in the Bronx, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b)	I . Substantiated
J . LT Andrew Johnson	Abuse: On August 19, 2020, at § 87(2)(b) in the Bronx, Lieutenant Andrew Johnson failed to provide § 87(2)(b) with a business card.	J . Substantiated
K . LT Andrew Johnson	Abuse: On August 19, 2020, at § 87(2)(b) in the Bronx, Lieutenant Andrew Johnson failed to provide § 87(2)(b) with a business card.	K . Substantiated

Case Summary

On August 23, 2020, § 87(2)(b) filed this complaint with IAB via telephone. The case was received at the CCRB on September 14, 2020.

On August 16, 2020, at approximately 2:36 p.m., Sergeant Darren Earl, Police Officer Christopher Morales, Police Officer Billy Estevez, and Police Officer Jessica Sancho, all of the 40th Precinct, responded to a request from PSA 7 officers regarding a dispute occurring in the vicinity of PSA 7's stationhouse in the Bronx. The officers arrested § 87(2)(b) § 87(2)(b) brother, for allegedly choking his girlfriend, § 87(2)(b) After § 87(2)(b) was arrested, Sgt. Earl entered § 87(2)(b) in the Bronx, where § 87(2)(b) lived, with § 87(2)(b) to obtain her belongings (**Allegation A: Abuse of Authority, unsubstantiated**).

On August 18, 2020, at approximately 6:50 p.m., Police Officer Alex O'Kane and Police Officer Julia Goldberg, both of the 40th Precinct, went to § 87(2)(b) in the Bronx with § 87(2)(b) to obtain her belongings. PO O'Kane called § 87(2)(b) and threatened to arrest him for grand larceny (**Allegation B: Abuse of Authority, exonerated**). PO O'Kane and PO Goldberg allegedly threatened to arrest § 87(2)(b) through the apartment door (**Allegations C and D: Abuse of Authority, unfounded**). Lieutenant Andrew Johnson, also of the 40th Precinct, called § 87(2)(b) and threatened to arrest him (**Allegation E: Abuse of Authority, exonerated**) and also allegedly threatened to arrest § 87(2)(b) over the phone (**Allegation F: Abuse of Authority, unsubstantiated**).

On August 19, 2020, at approximately 10 a.m., Lieutenant Johnson went to § 87(2)(b) in the Bronx, with § 87(2)(b) after arranging a time with the § 87(2)(b) for § 87(2)(b) to retrieve her belongings. Lieutenant Johnson entered and searched § 87(2)(b) in the Bronx (**Allegation G and H: Abuse of Authority, exonerated**). While searching § 87(2)(b) bedroom, Lieutenant Johnson told § 87(2)(b) "Maybe both passports are together in here. Who the fuck knows? It's such a pain in the ass" (**Allegation I: Discourtesy, substantiated**). Lieutenant Johnson failed to provide § 87(2)(b) and § 87(2)(b) with business cards (**Allegation J and K: Abuse of Authority, substantiated**).

On August 16, 2020, § 87(2)(b) was arrested for criminal obstruction of breathing and assault with intent which causes physical injury. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] No other arrests or summonses resulted from this incident.

Body-worn camera footage was received and will be discussed in relevant detail below.

Findings and Recommendations

Allegation (A) Abuse of Authority: On August 16, 2020, Sergeant Darren Earl entered § 87(2) in the Bronx.

The investigation established the following facts:

On August 16, 2020, at approximately 2:30 p.m., § 87(2)(b) and his girlfriend at the time, § 87(2)(b) had a dispute at § 87(2)(b) in the Bronx, which is across the street from PSA 7's stationhouse. After the dispute, both § 87(2)(b) and § 87(2)(b) went to PSA 7's stationhouse and spoke with officers there, who requested the response of 40th Precinct officers. When Sgt. Earl, PO Morales, PO Estevez, and PO Sancho arrived, Sgt. Earl decided that § 87(2)(b) would be arrested, as § 87(2)(b) alleged that § 87(2)(b) choked her. PO Estevez arrested § 87(2)(b) and Sgt. Earl and PO Morales took § 87(2)(b) back to § 87(2)(b) in the Bronx to retrieve her belongings. Sgt. Earl and PO Morales entered the residence with § 87(2)(b) As § 87(2)(b) did not take all of her belongings with her, officers, including PO O'Kane, PO Goldberg, and Lieutenant Johnson, went back to § 87(2) on August 18, 2020 and August 19, 2020, respectively, to assist § 87(2)(b) in retrieving her belongings.

§ 87(2)(b) (BR 03) testified that he lives at § 87(2)(b) with his wife, § 87(2)(b) brother, § 87(2)(b) and an unidentified cousin. § 87(2)(b)

though dating § 87(2)(b) did not live at the apartment nor did she have her own set of keys to the apartment. On August 16, 2020, § 87(2)(b) and § 87(2)(b) engaged in a verbal dispute, which never became physical, but § 87(2)(b) was arrested anyway. Approximately two to three hours later, while § 87(2)(b) and his wife, § 87(2)(b) were in Brooklyn, § 87(2)(b) received a call from Lieutenant Johnson, who said that § 87(2)(b) wanted to retrieve her belongings from the apartment. Lieutenant Johnson asked § 87(2)(b) to return to his apartment with his keys, but § 87(2)(b) refused to do so because § 87(2)(b) was still in jail. When § 87(2)(b) and § 87(2)(b) returned to their home later than evening, § 87(2)(b) bedroom door was open, which he had closed before he left the apartment with § 87(2) after their dispute. All § 87(2)(b) papers and clothing were on the floor of his bedroom, drawers and a suitcase were open, and lights were on. Based on the changed condition of § 87(2)(b) room, § 87(2)(b) believed officers entered the apartment with § 87(2)(b) keys to obtain § 87(2)(b) belongings.

§ 87(2)(b) (BR 04) testified that he had begun dating § 87(2)(b) approximately two to three weeks prior to August 16, 2020. § 87(2)(b) did not live with the § 87(2)(b) at § 87(2)(b) and instead resided in Long Island. § 87(2)(b) however, did express interest in living with § 87(2)(b) but § 87(2)(b) did not want her to. While at PSA 7's stationhouse, § 87(2)(b) told officers about the verbal dispute he had with § 87(2)(b) and also informed officers that § 87(2)(b) took his passport. Officers asked § 87(2)(b) if they could go inside of his apartment so that § 87(2)(b) could retrieve her belongings, but § 87(2)(b) said he would not let anyone in his apartment unless § 87(2)(b) returned his passport. When § 87(2)(b) was released after his arrest and returned home, his room was "turned upside down." Drawers were open, papers were scattered, and clothes were thrown on the floor. Similarly to § 87(2)(b) believed officers used his keys to enter his apartment.

§ 87(2)(b) declined to participate in the investigation and § 87(2)(b) was unavailable to the investigation (see IAs for contact attempts). As such, statements were not obtained from them.

Sgt. Earl's body-worn camera video (BR 05-06) begins with Sgt. Earl, PO Estevez, and PO Morales standing inside PSA 7's stationhouse speaking with someone off-screen. The audio component is not activated at this time. After § 87(2)(b) is handcuffed and lodged in a vehicle, Sgt. Earl asks PO Estevez, "You want us to go up there with her? You have his keys and stuff, right?" PO Estevez responds, "We have them, yes." Sgt. Earl continues, "So we'll just go up there and get her…" PO Sancho then gives Sgt. Earl a pair of keys (<<04:52 – 05:12>>). Sgt. Earl tells POs Estevez and Sancho, "We'll have her go up there, grab her stuff, we'll bring her back to the command" (<<05:32 – 05:35>>). Sgt. Earl, PO Morales, and § 87(2)(b) then walk to the residence. Sgt. Earl gives § 87(2)(b) the keys that PO Sancho gave to him. § 87(2)(b) uses the keys to unlock the main door and vestibule door (<<09:04 – 09:30>>). § 87(2)(b) uses the keys to open § 87(2)(b) door and enters the residence. Sgt. Earl and PO Morales enter behind § 87(2) and follow her into a back bedroom. Once inside the bedroom, Sgt. Earl instructs § 87(2) to take her most important belongings (<<11:13 – 12:41>>). Sgt. Earl asks § 87(2)(b) "So where's your keys and everything?" § 87(2)(b) opens a small, zippered bag, which appears to contain art supplies. § 87(2)(b) says, "He probably took it." § 87(2)(b) says, "You want to see a mailing with my name, right?" Sgt. Earl says, "You do or don't?" § 87(2)(b) says, "I do," but states she needs to use the bathroom first (<<12:48 – 13:23>>). Sgt. Earl asks § 87(2)(b) "Just for the record because this is being recorded, how long have you lived here?" § 87(2)(b) replies, "I've been here since July 15th" (<<14:00 – 14:12>>). For the remainder of the footage, § 87(2)(b) gathers her belongings from the bedroom and looks for her missing passport. § 87(2)(b) reiterates to Sgt. Earl that she needs to find her passport before she leaves. Sgt. Earl says, "Okay, then we're going to put this stuff back in here then and we'll take you back and we'll have somebody get you back here. No problem. That's the way we'll do it then if you want to come back here." Sgt. Earl then moves § 87(2)(b) black bag to the foot of the bed. Sgt. Earl, PO Morales, and § 87(2)(b) then leave the residence (<<26:35 – 27:36>>).

Sgt. Earl testified (BR 07) that when he arrived at PSA 7's stationhouse, he spoke with § 87(2) who said she got into a verbal dispute with her boyfriend, § 87(2)(b) over a passport, which eventually became physical. § 87(2)(b) told Sgt. Earl that she had been living with § 87(2)(b) at § 87(2)(b) for over 30 days. Sgt. Earl asked § 87(2)(b) if she had her own keys to the apartment, but he did not recall her response. After § 87(2)(b) was arrested, Sgt. Earl and PO Morales escorted § 87(2)(b) to § 87(2)(b) to allow § 87(2)(b) to gather her belongings from the residence, as it is procedural for this to occur during domestic violence incidents if a party needs to vacate the apartment. Upon arrival at the apartment, Sgt. Earl gave § 87(2)(b) the keys previously retrieved from § 87(2)(b) person. Sgt. Earl and PO Morales entered the residence with § 87(2)(b) for the sole purpose of § 87(2) obtaining her belongings; the officers did not enter for any other reason. Once inside the residence, § 87(2)(b) informed Sgt. Earl of the date in which she moved into the apartment, which was more than 30 days prior to August 16, 2020, though Sgt. Earl did not recall the exact date she provided. Sgt. Earl also asked § 87(2)(b) to produce a piece of mail with her name on it, but she became "disheveled" and never produced it. § 87(2)(b) further informed Sgt. Earl that she paid rent, but Sgt. Earl did not see a copy of a lease indicating that § 87(2)(b) was a tenant and paying rent. Sgt. Earl instructed § 87(2)(b) to gather necessary items and that a police escort would take her back to the apartment at a later time to retrieve all of her belongings. After being in the apartment for approximately 10 minutes, the officers and § 87(2)(b) left the apartment. § 87(2) had only a backpack with her.

PO Morales (BR 08) testified that after § 87(2)(b) was arrested, PO Morales, Sgt. Earl, and § 87(2)(b) went to § 87(2)(b) in the Bronx with § 87(2)(b) as § 87(2)(b) had expressed fear of entering the apartment alone to retrieve her belongings. PO Morales did not recall having any further conversation with § 87(2)(b) about the details of her living situation, other than that she lived with § 87(2)(b) including how long she had lived at the apartment, whether she received mail at the location, or viewing any kind of documentation. PO Morales did not remember Sgt. Earl speaking with § 87(2)(b) regarding her status as a resident at the apartment. PO Morales, Sgt. Earl, and § 87(2)(b) all entered the apartment together because § 87(2)(b) was fearful for her safety and needed to obtain her belongings. After a couple of minutes, the officers and § 87(2)(b) left the apartment, though § 87(2)(b) did not take all of her belongings with her.

New York City Administrative Code § 26-521 establishes tenancy for a person who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling (BR 29).

§ 87(2)(g) It is therefore recommended that **Allegation A** be closed as **unsubstantiated**.

Allegation (B) Abuse of Authority: On August 18, 2020, Police Officer Alex O'Kane threatened to arrest § 87(2)(b) over the phone.

In PO O'Kane's body-worn camera footage (BR 09-10), PO O'Kane, PO Goldberg, and § 87(2)(b) arrive at § 87(2)(b) in the Bronx. On the § 87(2)(b) floor, directly outside of § 87(2)(b) § 87(2)(b) tells PO O'Kane that she has been at the apartment for over 30 days, but that § 87(2)(b) took her keys (<<03:12 – 03:17>>). PO O'Kane begins knocking on the door, but there is no answer (<<04:14 – 05:40>>). After being outside § 87(2)(b) for approximately 28 minutes, § 87(2)(b) provides PO O'Kane with § 87(2)(b) telephone number and PO O'Kane calls § 87(2)(b) PO O'Kane asks § 87(2)(b) where he is and asks § 87(2)(b) if he can come to the apartment and open the door. PO O'Kane tells § 87(2)(b)

§ 87(2)(b) that § 87(2)(b) has been to the apartment three times to try and obtain her belongings. PO O'Kane asks § 87(2)(b) when he is going to be home. (<<28:23 – 30:20>>). PO O'Kane says to § 87(2)(b) "Are you listening? If she is unable to get her property back, you're going to be re-arrested" (<<30:32 – 30:37>>). PO O'Kane continues, "You give me a time that you're gonna be here. If you're not here at that time, then we're gonna do a report for the grand larceny of her property that's in the apartment (<<32:35 – 32:42>>). After being on the phone with § 87(2)(b) for approximately seven minutes, § 87(2)(b) agrees to be home at 10 a.m. the following day for § 87(2)(b) to retrieve her belongings. PO O'Kane says, "If you're not here tomorrow at 10 o'clock in the morning when we're here, there's gonna be another report out for grand larceny for you, okay?" (<<35:02 – 35:26>>).

§ 87(2)(b) did not allege that PO O'Kane threatened to arrest him over the phone.

PO O'Kane testified (BR 11) that upon arriving on scene with PO Goldberg, § 87(2)(b) informed the officers that she was having issues with someone she lived with and she was now unable to enter the apartment. § 87(2)(b) also explained that she was unable to obtain her property, specifically a suitcase, which was inside the apartment. PO O'Kane did not recall if § 87(2) informed him how long she had been living at the apartment and § 87(2)(b) did not present any mail or lease documentation indicating that she lived at the apartment for over 30 days. PO O'Kane did not remember § 87(2)(b) making any allegations that the suitcase was stolen. As no one answered the apartment door, PO O'Kane called § 87(2)(b) and told him that he could be arrested if § 87(2)(b) did not gain access to her property inside the apartment. § 87(2)(b) could have been arrested for larceny and possession of stolen property, as he was refusing to allow § 87(2)(b) access to her property inside the apartment.

Officers can make an arrest without a warrant for a crime (within presence or not) and reasonable cause exists that arrested person committed the crime. NYPD Patrol Guide Procedure 208-01 (BR 12).

A person is guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof. NYS Penal Law 165.40 (BR 13).

A person is guilty of grand larceny in the fourth degree when he steals property and when the property, regardless of its nature and value, is taken from the person of another. NYS Penal Law 155.30 (BR 14).

As § 87(2)(b) did not take all of her property from § 87(2)(b) on August 16, 2020 (as discussed in Allegation A), § 87(2)(g) [redacted] It is therefore recommended that **Allegation B** be closed as **exonerated**.

Allegation (C) Abuse of Authority: On August 18, 2020, at § 87(2)(b) in the Bronx, Police Officer Alex O'Kane threatened to arrest § 87(2)(b)

Allegation (D) Abuse of Authority: On August 18, 2020, at § 87(2)(b) in the Bronx, Police Officer Julia Goldberg threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that on August 18, 2020, he was at his apartment with § 87(2) when he heard loud banging on his door. § 87(2)(b) looked through the peephole and saw PO O'Kane and PO Goldberg outside his door. The officers asked § 87(2)(b) to open the door, but he refused to do so. PO O'Kane and PO Goldberg continued to knock on § 87(2)(b) door for approximately 20 minutes and told him that if he did not answer the door, he would be arrested.

In PO Goldberg's body-worn camera video (BR 15, 10), PO Goldberg, PO O'Kane, and § 87(2)(b) are standing outside of § 87(2)(b) PO Goldberg asks § 87(2)(b) if wind comes

through the apartment because she keeps hearing something inside the apartment. A voice is then audible and § 87(2)(b) says, "Someone is inside right now" (<<36:40 – 36:55>>). PO Goldberg knocks on the door and instructs "§ 87(2)(b) known to the investigation as § 87(2)(b) to open the door. PO O'Kane also briefly speaks to § 87(2)(b) about § 87(2)(b) belongings and asks him to open the door (<<36:55 – 38:20>>). PO Goldberg tells § 87(2)(b) through the door that § 87(2)(b) has rights to the apartment because she has been living there for more than 30 days, but § 87(2)(b) disputes this (<<52:40 – 53:24>>). PO Goldberg continues to explain that § 87(2)(b) has squatter's rights and anyone who has ownership or authorization of the apartment and prevents § 87(2)(b) from entering the apartment is performing an illegal eviction (<<57:35 – 58:12>>). After § 87(2)(b) tells PO Goldberg he is going to bed, PO Goldberg says, "Illegal eviction for you and grand larceny for your brother" (<<59:20 – 59:25>>). The officers and § 87(2)(b) then walk downstairs.

PO O'Kane's body-worn camera footage is consistent with that of PO Goldberg. PO O'Kane does not make any statements regarding illegal eviction or threaten to arrest § 87(2)(b) at any point during the incident.

§ 87(2)(g) Per body-worn camera footage, PO Goldberg did not state that she would arrest § 87(2)(b) for illegal eviction or any other offense, § 87(2)(g) It is therefore recommended that **Allegations C and D** be closed as **unfounded**.

Allegation (E) Abuse of Authority: On August 18, 2020, Lieutenant Andrew Johnson threatened to arrest § 87(2)(b) over the phone.
Allegation (F) Abuse of Authority: On August 18, 2020, Lieutenant Andrew Johnson threatened to arrest § 87(2)(b) over the phone.

§ 87(2)(b) testified that after PO O'Kane and PO Goldberg threatened to arrest him if he did not open the door, he received a call from Lieutenant Johnson, who told him if he did not open the door, he would be arrested. § 87(2)(b) assumed PO O'Kane and PO Goldberg called Lieutenant Johnson and informed him that § 87(2)(b) was refusing to open the door. Lieutenant Johnson told § 87(2)(b) that the officers had a right to enter his apartment, which § 87(2)(b) disputed. After approximately three minutes, § 87(2)(b) told Lieutenant Johnson he was not going to open the door and disengaged the call.

§ 87(2)(b) testified that while at work, he received a call from Lieutenant Johnson, who instructed him to return home so that § 87(2)(b) could obtain her belongings. § 87(2)(b) refused to come home unless Lieutenant Johnson would pay for lost wages. Lieutenant Johnson told § 87(2)(b) that if he did not come home, officers would arrest him again for "not complying." § 87(2)(b) continued to refuse to come home until he finished work at 12:30 a.m. Lieutenant Johnson informed § 87(2)(b) that he would give him until the following morning, but if he did not come home, he would be arrested. After the phone call, Lieutenant Johnson texted § 87(2)(b) and threatened to arrest him.

§ 87(2)(b) provided two screenshots of his text message thread with Lieutenant Johnson on August 18, 2020. None of the text messages Lieutenant Johnson sent included a threat of arrest (BR 16-17).

Lieutenant Johnson (BR 18) testified that on either August 17, 2020 or August 18, 2020, § 87(2)(b) entered the 40th Precinct stationhouse and complained that her suitcase, which she left on the bed in her apartment, was no longer there. § 87(2)(b) showed Lieutenant Johnson a photograph of a lease agreement which showed that she had been living at the apartment for over 30 days. Lieutenant Johnson then reviewed body-worn camera footage from the incident on August 16, 2020, belonging to Sgt. Earl and PO Estevez. Lieutenant Johnson saw in Sgt. Earl's body-worn camera footage that § 87(2)(b) left her suitcase on the bed, but in PO Estevez's body-worn camera footage, which was taken later than Sgt. Earl's, saw that § 87(2)(b) suitcase was no longer on

the bed. Lieutenant Earl deduced that someone likely moved § 87(2)(b) suitcase and believed it was possible § 87(2)(b) was the person who moved the suitcase, as § 87(2)(b) was still in jail at this time.

On August 18, 2020, Lieutenant called § 87(2)(b) whose number he obtained from § 87(2)(b) regarding the suitcase. § 87(2)(b) denied knowing anything about the suitcase and tried to change the subject. Lieutenant Johnson explained to § 87(2)(b) that it was suspicious that the suitcase was moved when § 87(2)(b) was the only person home and that if a complaint report was prepared and assigned to a detective squad, § 87(2)(b) could be arrested for grand larceny. Later on the same date, Lieutenant Johnson received a call from POs O'Kane and Goldberg saying that § 87(2)(b) was refusing to open the apartment door. Lieutenant Johnson called § 87(2)(b) again and reiterated that he already explained the situation regarding § 87(2)(b) suitcase and asked why § 87(2)(b) was "playing games." Lieutenant Johnson then texted § 87(2)(b) and said that he was going to have to file a report about the missing suitcase. Lieutenant Johnson did not remember if he told § 87(2)(b) via text that he could be arrested and did not remember what else he said in his text messages to § 87(2)(b)

Lieutenant Johnson also called § 87(2)(b) who informed Lieutenant Johnson that he was not home. Lieutenant Johnson denied telling § 87(2)(b) that if he did not come home, he would be arrested again, as there was nothing for which § 87(2)(b) could have been arrested for.

Officers can make an arrest without a warrant for a crime (within presence or not) and reasonable cause exists that arrested person committed the crime. NYPD Patrol Guide Procedure 208-01.

A person is guilty of grand larceny in the fourth degree when he steals property and when the property, regardless of its nature and value, is taken from the person of another. NYS Penal Law 155.30.

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

§ 87(2)(g) It is therefore recommended that **Allegation F** be closed as **unsubstantiated**.

Allegation (G) Abuse of Authority: On August 19, 2020, Lieutenant Andrew Johnson entered § 87(2)(b) in the Bronx.

Allegation (H) Abuse of Authority: On August 19, 2020, Lieutenant Andrew Johnson searched § 87(2)(b) in the Bronx.

The investigation established the following facts regarding the incident on August 19, 2020:

§ 87(2)(b) and § 87(2)(b) coordinated with Lieutenant Johnson and scheduled the return of § 87(2)(b) property for August 19, 2020, at approximately 10 a.m. Both § 87(2)(b) and § 87(2)(b) consented to Lieutenant Johnson and his operator, Police Officer Frankelina Hichez-Pimentel on the 40th Precinct, entering and searching their residence. § 87(2) was also present at this time.

§ 87(2)(b) testified that when the officers arrived, they asked if they could come in to obtain § 87(2)(b) belongings. § 87(2)(b) then woke up § 87(2)(b) Both § 87(2)(b) and § 87(2)(b) verbally consented to the entry, saying, "Okay. You can come inside and search." § 87(2)(b) also separately gave consent for the officers to search his bedroom

for § 87(2)(b) missing camera.

§ 87(2)(b) testified that when he came to the door, he told the officers to come inside. Once inside, § 87(2)(b) told the officers to "do whatever [they] want."

Lieutenant Johnson's body-worn camera footage (BR 19, 06) begins once he is already inside the apartment speaking with § 87(2)(b) and § 87(2)(b) There is no audio component at this time (<<00:00 – 00:52>>). Lieutenant Johnson then follows § 87(2)(b) to his bedroom. When the audio component activates, § 87(2)(b) says, "Check everywhere you want, anywhere." § 87(2)(b) and Lieutenant Johnson discuss § 87(2)(b) and § 87(2)(b) missing passports and where they could be located. Lieutenant Johnson then goes through paperwork on § 87(2)(b) desk and searches the drawer of a nightstand (<<00:52 – 02:19>>).

Lieutenant Johnson testified that when he arrived at the apartment, § 87(2)(b) and § 87(2)(b) were home, and they gave § 87(2)(b) her suitcase back. § 87(2) then claimed that her passport and camera were missing from the suitcase. § 87(2)(b) and § 87(2)(b) told Lieutenant Johnson and PO Hichez-Pimentel that they could come inside and look the belongings which were allegedly missing from § 87(2)(b) suitcase. Lieutenant Johnson did not remember exactly what the residents said when they consented, but believed it was something like, "Come in, look around." § 87(2)(b) told Lieutenant Johnson that § 87(2)(b) belongings were not in his room and said, "You can come in here and look." Lieutenant Johnson then activated his body-worn camera and looked around for approximately one and a half minutes, but did not locate § 87(2)(b) passport or camera.

Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual, or implicit, overt of subtle. People v. Gonzalez 39 N.Y.2d 122 (1976) (BR 20).

§ 87(2)(g) It is therefore recommended that **Allegations G and H** be closed as **exonerated**.

Allegation (I) Discourtesy: On August 19, 2020, at § 87(2)(b) in the Bronx, Lieutenant Andrew Johnson spoke discourteously to § 87(2)(b)

In Lieutenant Johnson's body-worn camera footage, once Lieutenant Johnson began searching § 87(2)(b) room for the missing passports, Lieutenant Johnson tells § 87(2)(b) "I know you don't need this headache. It's a pain in the ass … I mean, she's all frazzled and shit … Maybe both passports are together somewhere in here. Who the fuck knows? But it's such a pain in the ass" (<<01:25 – 01:50>>).

§ 87(2)(b) did not allege that Lieutenant Johnson used profanity when speaking with him inside his apartment.

Lieutenant Johnson testified that he used the word "fuck" when speaking with § 87(2)(b) about the situation but did not use the word "fuck" in an insulting way. After reviewing his body-worn camera footage, Lieutenant Johnson testified that the conversation about both passports arose because the § 87(2)(b) and § 87(2)(b) made claims against each other that they had taken each other's passports. Lieutenant Johnson used profanity to "be cool" with § 87(2)(b) and establish a rapport with him as opposed to using profanity to make a disparaging comment.

Officers are expected to maintain a higher standard of integrity than is generally expected of others and to value human life by respecting the dignity of each individual. NYPD Patrol Guide Procedure 200-02 (BR 21).

While police officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful enforcement situations. Disciplinary Case 2013-10143 (BR 22).

§ 87(2)(g)

profanity to insult or disparage § 87(2)(b) However, the situation was neither stressful nor dangerous and therefore Lieutenant Johnson's use of profanity was impermissible. It is therefore recommended that **Allegation I** be closed as **substantiated**.

Allegation (J) Abuse of Authority: On August 19, 2020, at § 87(2)(b) in the Bronx, Lieutenant Andrew Johnson failed to provide § 87(2)(b) with a business card.
Allegation (K) Abuse of Authority: On August 19, 2020, at § 87(2)(b) in the Bronx, Lieutenant Andrew Johnson failed to provide § 87(2)(b) with a business card.

Both § 87(2)(b) and § 87(2)(b) testified that Lieutenant Johnson left their apartment without providing them with a business card.

Lieutenant Johnson testified that he did not provide § 87(2)(b) or § 87(2)(b) with a business card, as neither asked for one and the situation did not require he proactively provide one. Lieutenant Johnson did give both § 87(2)(b) and § 87(2)(b) his cellphone number.

Officers must offer a business card at the conclusion of home searches that does not result in an arrest or summons. New York City Administrative Code 14-174 (BR 23).

As discussed in Allegation H, it is undisputed that Lieutenant Johnson searched at least one room of the § 87(2)(b) apartment. § 87(2)(g) it is recommended that **Allegations J and K** be closed as **substantiated**.

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been party (BR 24).
- § 87(2)(b)
- Sgt. Earl has been a member of service for 11 years and this is the first CCRB case to which he has been named a subject.
- Lieutenant Johnson has been a member of service for 15 years and has been named a subject in eight CCRB cases and 23 allegations, none of which was substantiated. § 87(2)(g)
- PO O'Kane has been a member of service for three years and has been named a subject in three cases and five allegations, none of which was substantiated. § 87(2)(g)
- PO Goldberg has been a member of service for seven years and has been named a subject in four cases and seven allegations, one of which was substantiated:
  - 201801230 involved a substantiated allegation of force – nonlethal restraining device. The Board recommended Charges and the NYPD found PO Goldberg not guilty.
  - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of November 5, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to these incidents (BR 26).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 14

Investigator:	Casey McCann	SI Casey McCann	01/03/2022
	Signature	Print Title & Name	Date
Squad Leader:	Cassandra Fenkel	IM Cassandra Fenkel	01/03/2022
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date