

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #03	CCRB Case #: 202101825	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/10/2021 12:49 AM, Wednesday, 03/10/2021 2:00 AM, Sunday, 11/14/2021 12:00 AM	Location of Incident: In front of 87-9 92nd Street 106 Precinct stationhouse	18 Mo. SOL 9/10/2022	Precinct: 102		
Date/Time CV Reported Wed, 03/10/2021 4:37 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/22/2021 11:02 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vincent Monteleone	24546	963659	106 PCT
2. SGT Sean Doheny	03274	948899	106 PCT
3. POM Anthony Gozzi	21721	959670	106 PCT
4. POM Michael Agunzo	18509	962913	106 PCT
5. PO Michael Fortunato	27771	954820	106 PCT
6. An officer			106 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Vincent Monteleone	Force: In front of 87-9 92nd Street in Queens, Police Officer Vincent Monteleone pointed his gun at § 87(2)(b)	
B.PO Michael Fortunato	Force: In front of 87-9 92nd Street in Queen, Police Officer Michael Fortunato pointed his gun at § 87(2)(b)	
C.SGT Sean Doheny	Force: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny pointed his gun at § 87(2)(b)	
D.POM Michael Agunzo	Force: In front of 87-9 92nd Street in Queens, Police Officer Michael Agunzo pointed his gun at § 87(2)(b)	
E.POM Anthony Gozzi	Force: In front of 87-9 92nd Street in Queens, Police Officer Anthony Gozzi pointed his gun at § 87(2)(b)	
F.PO Michael Fortunato	Abuse: In front of 87-9 92nd Street in Queens, Police Officer Michael Fortunato damaged § 87(2)(b) property.	
G.POM Vincent Monteleone	Force: In front of 87-9 92nd Street in Queens, Police Officer Vincent Monteleone used physical force against § 87(2)(b)	
H.PO Michael Fortunato	Force: In front of 87-9 92nd Street in Queens, Police Officer Michael Fortunato used physical force against § 87(2)(b)	
I.SGT Sean Doheny	Force: Sergeant Sean Doheny used physical force against § 87(2)(b)	
J.SGT Sean Doheny	Force: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POM Anthony Gozzi	Force: In front of 87-9 92nd Street in Queens, Police Officer Anthony Gozzi used physical force against § 87(2)(b)	
L.POM Anthony Gozzi	Force: Police Officer Anthony Gozzi used physical force against § 87(2)(b)	
M. An officer	Force: In front of 87-9 92nd Street in Queens, an officer struck § 87(2)(b) with a blunt instrument.	
N.SGT Sean Doheny	Discourtesy: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny spoke discourteously to § 87(2)(b)	
O.SGT Sean Doheny	Abuse: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny searched the vehicle in which § 87(2)(b) was an occupant.	
P.POM Michael Agunzo	Abuse: In front of 87-9 92nd Street in Queens, Police Officer Michael Agunzo searched the vehicle in which § 87(2)(b) was an occupant.	
Q.POM Vincent Monteleone	Abuse: In front of 87-9 92nd Street in Queens, Police Officer Vincent Monteleone searched the vehicle in which § 87(2)(b) was an occupant.	
R.POM Vincent Monteleone	Off. Language: Inside of the 106th Precinct stationhouse, Police Officer Vincent Monteleone made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
S.POM Vincent Monteleone	Discourtesy: Inside of the 106th Precinct stationhouse, Police Officer Vincent Monteleone spoke discourteously to § 87(2)(b)	
T.POM Vincent Monteleone	Discourtesy: Police Officer Vincent Monteleone spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
W.SGT Sean Doheny	Untruthful Stmt.: Sergeant Sean Doheny provided a false official statement to the CCRB.	

## Case Summary

On March 10, 2021, Lieutenant Paul Palazzo, assigned to the 106<sup>th</sup> Precinct, reported this complaint to IAB via telephone on behalf of § 87(2)(b). The CCRB received the complaint on March 22, 2021.

On March 10, 2021, at approximately 12:49 a.m., Police Officer Vincent Monteleone, Sergeant Sean Doheny, Police Officer Anthony Gozzi, Police Officer Michael Agunzo, Police Officer Michael Fortunato, and Sergeant Thomas Sorrentino, all assigned to the 106<sup>th</sup> Precinct, stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants in front of 87-9 92<sup>nd</sup> Street in Queens. § 87(2)(b) exited the vehicle and fled the scene. PO Monteleone and PO Fortunato pointed their guns at § 87(2)(b) (**Allegations A and B: Force,** § 87(2)(g) Sgt. Doheny, PO Agunzo, and PO Gozzi pointed their guns at § 87(2)(b) (**Allegations C-E: Force,** § 87(2)(g) PO Fortunato broke the back passenger window of § 87(2)(b) vehicle (**Allegation F: Abuse of Authority,** § 87(2)(g)

PO Monteleone, PO Fortunato, and Sgt. Doheny used physical force against § 87(2)(b) (**Allegations G-I: Force,** § 87(2)(g) Sgt. Doheny kicked § 87(2)(b) (**Allegation J: Force,** § 87(2)(g) PO Gozzi used physical force against § 87(2)(b) and kicked § 87(2)(b) (**Allegations K and L: Force,** § 87(2)(g) An officer hit § 87(2)(b) in the head a blunt object (**Allegation M: Force,** § 87(2)(g) Sgt. Doheny spoke discourteously to § 87(2)(b) (**Allegation N: Discourtesy,** § 87(2)(g) Sgt. Doheny, PO Agunzo, and PO Monteleone searched § 87(2)(b) vehicle (**Allegations O-Q: Abuse of Authority,** § 87(2)(g) § 87(2)(b) was arrested for reckless endangerment in the first degree, resisting arrest, reckless endangerment in the second degree, criminal possession of marijuana in the fourth degree, reckless driving, aggravated unlicensed operation of a motor vehicle in the third degree, and disorderly conduct (Board Review 01). § 87(2)(b) was arrested for obstructing governmental administration in the second degree, criminal possession of marijuana in the fourth degree, unlawful possession of marijuana in the first degree, and disorderly conduct, but was released with a desk appearance ticket.

§ 87(2)(b) was taken to the 106<sup>th</sup> Precinct stationhouse for arrest processing. On the same date, at approximately 2:00 a.m., inside of the 106 Precinct stationhouse, an officer allegedly said to § 87(2)(b) “Fucking little bitch motherfucker you’re going to go to jail for a long time” (**Allegation R: Offensive Language,** § 87(2)(g) (**Allegation S: Discourtesy,** § 87(2)(g) (**Allegation T: Discourtesy,** § 87(2)(g)

§ 87(2)(g), § 87(4-b)

On November 18, 2021, Sgt. Doheny provided a false official statement to the CCRB (**Allegation W: Untruthful Statement,** § 87(2)(g)

The investigation obtained PO Monteleone, Sgt. Doheny, PO Gozzi, and PO Agunzo’s BWC footage, which captured portions of the incidents (Board Review 02-06).

The investigation did not obtain stationhouse footage of this incident.

## Findings and Recommendations

**Allegation (A) Force: In front of 87-9 92nd Street in Queens, Police Officer Vincent Monteleone pointed his gun at § 87(2)(b)**

**Allegation (B) Force: In front of 87-9 92nd Street in Queens, Police Officer MICHAEL FORTUNATO pointed his gun at § 87(2)(b)**

**Allegation (C) Force: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny pointed his gun at § 87(2)(b)**

**Allegation (D) Force: In front of 87-9 92nd Street in Queens, Police Officer Michael Agunzo pointed his gun at § 87(2)(b)**

**Allegation (E) Force: In front of 87-9 92nd Street in Queens, Police Officer Anthony Gozzi pointed his gun at § 87(2)(b)**

§ 87(2)(b) (Board Review 07, 08) testified that on the date of incident, he was driving in his vehicle with his friend, § 87(2)(b) § 87(2)(b) stated that his vehicle did not have tinted windows and there were no broken lights. § 87(2)(b) stated that he had a “couple eighths of weed” in his vehicle, possibly in the glove compartment. Approximately three minutes into the drive, § 87(2)(b) observed an unmarked vehicle behind him with its lights deployed. § 87(2)(b) stated that he initially did not know that the officers were trying to stop him, so he proceeded to drive for three additional minutes. § 87(2)(b) finally stopped at the southwest corner of Jamaica Avenue and 92nd Street because he realized the officers “were chasing” him. § 87(2)(b) did not know if he had committed any traffic violations prior to being stopped. § 87(2)(b) stopped the vehicle, opened the driver side door, and put his hands on the ground. Simultaneously, § 87(2)(b) exited the front passenger door and began to run. Approximately six officers in plainclothes, whom § 87(2)(b) could not provide physical descriptions of, ran towards him with their guns pointed at § 87(2)(b) yelling “Freeze! Freeze!” Towards the end of the incident, § 87(2)(b) observed officers break one of his windows by hitting it with an object.

§ 87(2)(b) alleged that the officers who initially approached his vehicle had their guns pointed at him. Based on the BWC footage, the investigation was able to determine that PO Monteleone, PO Fortunato, Sgt. Doheny, PO Agunzo, and PO Gozzi were the officers that initially approached the vehicle and thus, the pointed gun allegations were pleaded against them, respectively.

None of the officers’ BWC footage captured any aspect of § 87(2)(b) driving. Sgt. Doheny’s BWC recording, from the beginning to 00:14, shows that § 87(2)(b) vehicle was blocked in by another car that was stopped at a light in front of him (Board Review 03). The condition of § 87(2)(b) vehicle is not captured in any of the BWC footage.

PO Monteleone’s BWC recording, which is 16:47 minutes in length, clearly captures this portion of the incident (Board Review 02). The footage begins from the perspective of PO Monteleone operating a police vehicle until 00:43. At 00:43, PO Monteleone abruptly stops, exits the driver side door, and runs towards § 87(2)(b) car. At 00:46, PO Monteleone reaches the driver’s side door and attempts to open it but is unsuccessful. At 00:48, PO Monteleone points his gun at § 87(2)(b) At 00:50, PO Monteleone continues to hold his gun in his right hand while he attempts to open the driver’s door a second time. The windows of § 87(2)(b) car are depicted as darkly tinted. Later in PO Monteleone’s BWC, § 87(2)(b) vehicle is shown parked with a stationary vehicle blocking his path.

PO Agunzo’s first BWC recording, which is 01:06 minutes in length, captures Sgt. Doheny’s initial approach of the vehicle (Board Review 06). At 00:14, PO Agunzo exits the vehicle with PO Gozzi

and Sgt. Doheny. PO Agunzo runs behind Sgt. Doheny towards § 87(2)(b) vehicle. Sgt. Doheny does not point his gun at any point.

PO Gozzi's BWC footage, which is 14:42 minutes in length, captures PO Agunzo's initial approach of § 87(2)(b) vehicle (Board Review 04). From the beginning to 00:16, PO Gozzi exits the police vehicle and runs towards § 87(2)(b) vehicle. PO Gozzi and PO Agunzo do not point their guns at § 87(2)(b) at any point.

On December 2, 2021, PO Monteleone was interviewed at the CCRB (Board Review 09). PO Monteleone testified that he was driving with Sgt. Sorrentino and PO Fortunato when he observed § 87(2)(b) operating his vehicle with a broken headlight and only one New York plate on the rear of his vehicle. One of the officers conducted an audit on the license plate number, which revealed that the plate did not belong to § 87(2)(b) vehicle. PO Monteleone activated the turret lights and the sirens to stop § 87(2)(b) for the broken lights and the mismatching plates. As soon as PO Monteleone deployed his vehicle's lights, § 87(2)(b) pulled over to the side of the road for a moment, and then drove away. § 87(2)(b) drove on the wrong side of various roads, down one-way streets, through red lights and stop signs, and across a barrier in between a two-way street. During this time, § 87(2)(b) blew out his tires. PO Monteleone followed § 87(2)(b) vehicle for approximately 10 minutes. PO Agunzo, PO Gozzi, and Sgt. Doheny, all of whom were in another police vehicle, followed behind PO Monteleone. The way § 87(2)(b) was driving made PO Monteleone fearful that § 87(2)(b) actions would cause harm or death to himself, § 87(2)(b) or to others. PO Monteleone followed § 87(2)(b) down 92<sup>nd</sup> Street where § 87(2)(b) eventually stopped because his tires were blown out and there was a vehicle in front of him, blocking his path. As soon as § 87(2)(b) stopped, § 87(2)(b) opened the front passenger door and fled. PO Monteleone stopped his vehicle behind § 87(2)(b) exited, and approached with his gun drawn. Once PO Monteleone reached the driver's side door, he pointed his gun at § 87(2)(b) PO Monteleone pointed his gun at § 87(2)(b) because he did not know if § 87(2)(b) had a weapon on his person and he was concerned that § 87(2)(b) would injure himself, the officers, or anybody else present since he had not been frisked or searched yet. PO Monteleone stated that at the time he pointed his gun at § 87(2)(b) he already knew § 87(2)(b) was going to be under arrest for reckless driving. PO Monteleone wanted to create a zone of safety on the scene because it was clear to him, based on his observations of § 87(2)(b) driving, that § 87(2)(b) had no regard for human life. § 87(2)(b) held his hands out in front of him while he remained seated. PO Monteleone could not recall if he issued any specific commands to § 87(2)(b) at that time nor could recall if he ordered § 87(2)(b) to get out of the vehicle.

On February 15, 2022, PO Fortunato (Board Review 10) was interviewed at the CCRB. PO Fortunato's testimony was generally consistent regarding with PO Monteleone's regarding their initial observations of § 87(2)(b) in his vehicle, their pursuit of him, and when he eventually stopped. PO Fortunato pointed his gun at § 87(2)(b) because § 87(2)(b) had refused to stop his vehicle, was refusing to exit the vehicle, and was moving inside of the vehicle. PO Fortunato could not recall if he observed any other officer point their gun at § 87(2)(b) PO Fortunato had his gun pointed for less than a minute at which point he holstered it.

Sgt. Doheny was interviewed by the CCRB on November 11, 2021, PO Agunzo was interviewed on November 19, 2021, and PO Gozzi was interviewed on December 2, 2021. Sgt. Doheny, PO Agunzo, and PO Gozzi (Board Reviews 11-13) provided similar testimony about § 87(2)(b) driving and refusal to stop voluntarily. Sgt. Doheny and PO Gozzi stated that they did not point their guns at any point, and did not observe any other officer do so. PO Agunzo stated that he did not point his gun at any point during this incident and could not recall if other officer did so.

PO Monteleone completed an arrest report for the arrest of § 87(2)(b). The narrative portion of the arrest report states: “At [time and place of occurrence,] defendant was observed operating a 2015 Hyundai Sonata, with one NY plate # § 87(2)(b) and with a headlight nonfunctioning. Upon lawful traffic stop, vehicle did flee down numerous residential streets. Defendant did drive down a wrong way street on a one way, defendant did disobey numerous stop signs and red lights causing a risk of SPI [serious physical injury] or death” § 87(2)(b) was arrested for reckless endangerment in the first degree, resisting arrest, reckless endangerment in the second degree, criminal possession of marijuana in the fourth degree, reckless driving, aggravated unlicensed operation of a motor vehicle in the third degree, and disorderly conduct. (Board Review 01).

NYPD Patrol Guide Section 221-01 states that an officer’s decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present (Board Review 14).

PO Monteleone’s BWC shows him attempting to open the driver side door, which is unsuccessful, and then pointing his gun at § 87(2)(b) who is seated in the driver’s seat. PO Fortunato affirmed in his CCRB statement that he pointed his gun at § 87(2)(b).

There is no BWC footage depicting the alleged driving or the length of time § 87(2)(b) was pursued, but § 87(2)(b) conceded that the officers “chased” him. Additionally, the officers’ statements about § 87(2)(b) failure to stop his vehicle until he was unable to continue fleeing is supported by the BWC. Further, the officers provided consistent accounts about the reckless nature of § 87(2)(b) evasion across their written and verbal testimony. PO Monteleone stated that pointed his gun at § 87(2)(b) because he did not know if § 87(2)(b) had a weapon on his person, and that he wanted to create a zone of safety because it was clear to him, based on his observations of § 87(2)(b) driving, that § 87(2)(b) had no regard for human life. PO Fortunato acknowledged that he pointed his gun because § 87(2)(b) had refused to stop his vehicle, was moving around inside of the vehicle, and was refusing to step out of the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Video evidence, which captured the entire interaction, shows that Sgt. Doheny, PO Agunzo, and PO Gozzi did not point their guns at § 87(2)(b) as § 87(2)(b) alleged. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (F) Abuse of Authority: In front of 87-9 92nd Street in Queens, Police Officer MICHAEL FORTUNATO damaged § 87(2)(b) property.**

§ 87(2)(b) (Board Review 07) testified that he observed an officer throw an item at the rear passenger window of his vehicle, causing it to break.

PO Monteleone’s BWC depicts this portion of the incident. At 00:51, officers are depicted surrounding § 87(2)(b) vehicle and PO Monteleone has his gun pointed at § 87(2)(b) § 87(2)(b) who is seated in the driver’s seat shows PO Monteleone both of his hands through the closed driver’s side window. Simultaneously, PO Fortunato uses his baton to shatter the window of the back left passenger seat behind the driver’s seat. PO Monteleone eventually opens the driver’s side door. At 00:53, the video shows the window is partially shattered and that there are no

occupants in the back seat area. This property damage occurs less than ten seconds after PO Monteleone stops the police vehicle.

PO Fortunato testified that he broke the window because he observed PO Monteleone attempt to open the driver side door, which was locked, so he broke the window to unlock the car.

Onderdonk v. State, 170 Misc. 2d 155 found that police officers can damage property only if doing so is reasonably necessary to carry out their duties (Board Review 39).

The BWC footage shows that § 87(2)(b) was still inside of the vehicle at the time PO Fortunato broke the back passenger window with his baton. The investigation confirms, as per the discussion of Allegations A-E, that § 87(2)(b) had evaded officers' attempts to stop his vehicle, that he committed multiple moving violations as he evaded the officers, and that § 87(2)(b) had fled the vehicle upon its stop. § 87(2)(g)

§ 87(2)(b) was still inside the vehicle at the time PO Fortunato broke the window and that PO Monteleone was unable to unlock the car to remove him. § 87(2)(g)

**Allegation (G) Force: In front of 87-9 92nd Street in Queens, Police Officer Vincent Monteleone used physical force against § 87(2)(b)**

**Allegation (H) Force: In front of 87-9 92nd Street in Queens, Police Officer MICHAEL FORTUNATO used physical force against § 87(2)(b)**

**Allegation (I) Force: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny used physical force against § 87(2)(b)**

**Allegation (J) Force: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny used physical force against § 87(2)(b)**

**Allegation (K) Force: In front of 87-9 92nd Street in Queens, Police Officer Anthony Gozzi used physical force against § 87(2)(b)**

**Allegation (L) Force: In front of 87-9 92nd Street in Queens, Police Officer Anthony Gozzi used physical force against § 87(2)(b)**

**Allegation (M) Force: In front of 87-9 92nd Street in Queens, an officer struck § 87(2)(b) with a blunt instrument.**

§ 87(2)(b) (Board Reviews 07, 08) testified that he exited his vehicle and put his hands on the ground. The officers began to punch and kick him all over his body, especially on both of his sides. § 87(2)(b) could not breathe and felt like he was going to pass out. § 87(2)(b) could not attribute the specific actions of each officer, nor could he approximate how many of them were present. At one point while § 87(2)(b) was on the ground he was hit in the head with a "rubber sole" or a "hard metal object." § 87(2)(b) stated that while he was on the ground, he curled up into a ball to protect himself, which also made it difficult to see which officers were using force against him. § 87(2)(b) did not make any physical movements while on the ground and he did not resist the officers' attempts to put him into handcuffs. § 87(2)(b) denied resisting arrest as the officers alleged on his arrest report. This portion of the incident lasted approximately three minutes until § 87(2)(b) was placed into handcuffs. § 87(2)(b) was on the ground for approximately 20 minutes until the officers stood him up and put him into a police vehicle.



Because BWC footage depicts PO Monteleone, PO Fortunato, and Sgt Doheny using physical force against § 87(2)(b) and because PO Monteleone, Sgt. Doheny and PO Gozzi affirmed their use of physical force in the Threat, Resistance, Injury (TRI) reports, they have been listed as subjects.

PO Monteleone's BWC footage (Board Review 02), beginning at 00:53, captures this portion of the incident. At 00:53 the driver side door opens, though it is unclear who opens it. At 00:59 in the recording, § 87(2)(b) lays down with his stomach on the ground and extends his hands in front of him. At approximately 01:01, an officer holds the rear of § 87(2)(b) outerwear. § 87(2)(b) outstretched hands make contact with PO Monteleone's leg. At 01:02, PO Monteleone puts his hand on the back of § 87(2)(b) head. § 87(2)(b) moves his left hand to the area where the officer's hand is on his outerwear. § 87(2)(b) then moves his right hand from the ground to an unknown location nearer to his body; his left hand is on the ground in front of him. At approximately 01:03, § 87(2)(b) moves or is moved onto his left side. PO Monteleone says, "Get on the ground! Get over here. Crawl." At 01:05, PO Fortunato and Sgt. Doheny stand over § 87(2)(b) who is still on the ground, and reach towards him. § 87(2)(b) says, "I'm sorry, sorry, sorry." Sgt. Doheny kicks § 87(2)(b) with his right foot near § 87(2)(b) shoulder area and then puts his knee on § 87(2)(b) side. § 87(2)(b) says, "I'm sorry" repeatedly. Sgt. Doheny says, "Stop resisting. Stop resisting. Put your hands behind your back." At 01:11, PO Monteleone's BWC falls to the ground; the BWC records sounds but not physical interactions. Sgt. Doheny yells, "Put your hands behind your back. Put your hands behind your back." At 01:22, § 87(2)(b) says, "Okay, okay I am sorry... Please leave me alone... Please, please I am hurt. My mouth, my mouth, my mouth." At 02:09, PO Monteleone picks up and replaces his BWC such that it now records his interactions. § 87(2)(b) is depicted on the ground. PO Monteleone holds one of § 87(2)(b) arms behind his back while he lays on his side. No additional force is depicted.

Sgt. Doheny's BWC (Board Review 03), depicts the apprehension of § 87(2)(b). At 00:22, Sgt. Doheny runs to the driver's side of the vehicle where § 87(2)(b) is laying on the ground. Sgt. Doheny initially stands behind PO Monteleone and PO Fortunato. At 00:22, PO Fortunato's right hand is visible at § 87(2)(b) waistband. The position of PO Monteleone's hands are not visible. From 00:24 to 00:37, the view from Sgt. Doheny's camera is alternately blurred or obscured, but multiple hands are captured making physical contact with § 87(2)(b) torso. It is unclear what specific actions PO Monteleone, Sgt. Doheny, and PO Fortunato take against § 87(2)(b). The positions of § 87(2)(b) hands are not depicted.

PO Agunzo and PO Gozzi's BWC recordings are consistent and capture them arriving near § 87(2)(b). PO Monteleone, PO Fortunato, and Sgt. Doheny while the officers attempt to secure him into handcuffs (Board Reviews 04, 05). PO Agunzo's BWC shows that he arrived at the site of § 87(2)(b) arrest at 00:44 in the recording. § 87(2)(b) is not visible, nor are the actions of the officers that are in physical contact with § 87(2)(b). At 00:55, Sgt. Doheny stands from a bent position and replaces his handcuffs on his belt. PO Gozzi's BWC shows that he arrives at 00:31 in the recording and stands behind PO Agunzo. While the officers are hunched over, § 87(2)(b) is not visible until 00:38. At approximately 00:43, Sgt. Doheny stands from a bent position. At 00:49, § 87(2)(b) right hand is visible behind his back.

PO Monteleone (Board Review 09) testified that he pulled § 87(2)(b) out of the driver's seat by his shoulder because he wanted to make sure § 87(2)(b) did not have any weapons on his person, to ensure the safety of everyone present, and to place him under arrest. PO Monteleone could not recall if anyone assisted him in removing § 87(2)(b) from the vehicle. § 87(2)(b) landed on "all fours" in a fetal position with his hands on the ground in front of him. § 87(2)(b) stiffened his arms and tucked them under his body. At that point, PO Monteleone still did not have access to § 87(2)(b) arms, and he was concerned that § 87(2)(b) could still reach for a weapon on his



waistband. PO Monteleone pulled § 87(2)(b) shoulder towards him because it was difficult to handcuff § 87(2)(b) from the front. § 87(2)(b) arms remained tensed and tucked beneath him. PO Monteleone punched § 87(2)(b) body with a closed fist because § 87(2)(b) would not volunteer his hands or arms. At that point additional officers assisted PO Monteleone in handcuffing § 87(2)(b) although PO Monteleone could not specifically recall who was involved. PO Monteleone did not kick § 87(2)(b) at any point, nor did he observe any other officer do so. PO Monteleone did not hit § 87(2)(b) in the back of the head with a blunt instrument/metal object nor did he observe any other officer do so. Eventually PO Monteleone and the other officers were able to gain control of § 87(2)(b) arms and put him into handcuffs. § 87(2)(b) complained about an injury to his lip. PO Monteleone could not recall if he complained about any other injuries. PO Monteleone could not recall if he observed any injuries on § 87(2)(b)

PO Fortunato (Board Review 10) testified that PO Monteleone pulled § 87(2)(b) out of the vehicle by his arms to the ground face first. Once he was on the ground, § 87(2)(b) put his hands beneath him and stiffened his body. PO Fortunato could not recall if § 87(2)(b) hands were out in front of him at any point. PO Fortunato pulled § 87(2)(b) hands from beneath him to place them into handcuffs. PO Fortunato did not use any additional force against § 87(2)(b) Sgt. Doheny also assisted in handcuffing § 87(2)(b) although PO Fortunato could not specify what actions Sgt. Doheny took because he was focused on § 87(2)(b) PO Fortunato did not punch or kick § 87(2)(b) while he was on the ground, nor did he observe any other officer do so. PO Fortunato did not hit § 87(2)(b) in the back of the head with a blunt instrument/metal object, nor did he observe any other officer do so.

Sgt. Doheny (Board Review 11) testified that by the time he arrived at the rear of the vehicle, § 87(2)(b) was on the ground. Officers were attempting to handcuff § 87(2)(b) by taking his hands and placing them behind his back. § 87(2)(b) physically resisted by refusing to provide his hands. Sgt. Doheny attempted to assist in handcuffing § 87(2)(b) by getting down on the ground but immediately stood up and backed away when he realized that he could not reach § 87(2)(b) Sgt. Doheny stood behind PO Fortunato while he and PO Monteleone secured § 87(2)(b) in handcuffs. Sgt. Doheny may have placed a hand on § 87(2)(b) although he was not certain. Sgt. Doheny did not hit § 87(2)(b) in the head with a blunt instrument/metal object, nor did he observe any other officer do so. Sgt. Doheny did not hit or punch § 87(2)(b) at any point, nor did he observe any other officer do so. During his interview, Sgt. Doheny was shown PO Monteleone's BWC recording, which captured Sgt. Doheny kicking § 87(2)(b) while he was on the ground with his hands extended in front of him (Board Reviews 03, 11). After reviewing the footage, Sgt. Doheny stated that the footage did not depict him kicking § 87(2)(b) but instead depicted him putting his knee on him to restrain him. Sgt. Doheny did not recall observing § 87(2)(b) hands extended in front of him and stated that PO Monteleone and PO Fortunato seemed to be having a difficult time handcuffing § 87(2)(b) Sgt. Doheny was also shown the TRI he prepared. After reviewing the document, Sgt. Doheny stated that he noted using a foot strike because it was in reference to putting his knee on § 87(2)(b) to restrain him and he had "figured that [it] was the same thing." Sgt. Doheny noted a hand strike and forcible takedown in the report because officers had forcibly taken § 87(2)(b) to the ground and Sgt. Doheny had placed his hands on § 87(2)(b) during the process (Board Reviews 03, 15).

PO Agunzo (Board Review 12) stated that he initially pursued § 87(2)(b) when he fled the vehicle, but that he later returned to the site of § 87(2)(b) apprehension. PO Agunzo heard Sgt. Doheny, PO Fortunato, and PO Monteleone yelling, "Give me your hands" and "Stop resisting" from the driver's side of § 87(2)(b) vehicle, which was approximately 10 feet behind him. § 87(2)(b) said, "I am not resisting" in response. By the time PO Agunzo reached the driver's side to assist the other officers, § 87(2)(b) was rolling on the ground and being "dead weight." PO

Monteleone, PO Fortunato, and Sgt. Doheny were on the sides of § 87(2)(b) trying to get his hands being his back. PO Agunzo did not participate in handcuffing § 87(2)(b) and denied using any physical force against him.

In PO Gozzi's CCRB testimony (Board Review 13), he stated that after initially chasing § 87(2)(b) he and PO Agunzo turned around and went back to § 87(2)(b) vehicle to help PO Fortunato, Sgt. Doheny, and PO Monteleone with the handcuffing of § 87(2)(b). When PO Gozzi and PO Agunzo reached the driver's side of § 87(2)(b) vehicle, § 87(2)(b) was on the ground and in handcuffs. PO Gozzi did not participate in handcuffing § 87(2)(b) and denied using any physical force against him. During the interview, PO Gozzi was shown the TRI he prepared (Board Reviews 13, 16). Reviewing the document did not refresh PO Gozzi's memory of any actions he took on scene. PO Gozzi did not recall when he used a hand strike and stated that the "wrestling and grappling" referred to when he used his baton to hold § 87(2)(b) feet down. PO Gozzi did not recall when he used a forcible take down and stated that it may have been selected by accident. PO Gozzi did not recall using a foot strike against § 87(2)(b).

The investigation was unable to obtain § 87(2)(b) medical records from § 87(2)(b) Hospital due to § 87(2)(b) refusal to sign the necessary portions of the release form.

The Medical Treatment of Prisoner Report (MTPR) prepared in regard to § 87(2)(b) noted the following in the remarks section: "Defendant suffers from asthma. Treated at hospital for body aches and contusion to forehead" (Board Review 31).

Sgt. Doheny prepared TRI report # § 87(2)(b) (Board Review 15). In the TRI, Sgt. Doheny listed that he "used and was the victim of force." In a section titled Force Against Reporting MOS, Sgt. Doheny noted "active resistance." In a section titled Actions Taken by Reporting MOS, Sgt. Doheny noted a hand strike, wrestling/grappling, a forcible take down, and a foot strike. The reason for the force was listed as: Overcome resistance or aggression, defense of self, fleeing suspect, defense of other MOS.

PO Gozzi prepared TRI report # § 87(2)(b) (Board Review 16). In the TRI report, PO Gozzi listed that he "used and was the victim of force." In a section titled Force Against Reporting MOS, PO Gozzi noted "active resistance." In a section titled Actions Taken by Reporting MOS, PO Gozzi noted a hand strike, wrestling/grappling, a forcible take down and a foot strike. The reason for the force was listed as: Defense of self, defense of other MOS, fleeing suspect, overcome active resistance or aggression.

Lieutenant Paul Palazzo of the 106<sup>th</sup> Precinct prepared TRI report # § 87(2)(b) on behalf of PO Monteleone, PO Gozzi, and Sgt. Doheny (Board Review 17). The narrative section reiterates the officers' account of the vehicle stop and officers removed § 87(2)(b) from the vehicle to the ground. It also notes: "The subject immediately refused to give his hands by laying on top of his hands and refusing to comply. The MOS were able to eventually rear cuff the subject and placed him on his side...during a follow-up at the hospital, the subject stated that excessive force was used and that he was pistol whipped." The TRI also contained photographs of § 87(2)(b) injuries (Board Review 18). § 87(2)(b) sustained a red abrasion on his forehead and bloodied abrasions to the side of his torso.

The investigation submitted a request for all Threat, Resistance, Injury reports completed in connection with § 87(2)(b) arrest (Board Review 34). The NYPD did not provide any TRI reports completed by PO Fortunato or PO Monteleone.

Patrol Guide Procedure 221-01 (Board Review 14) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. The following factors, among others, must be considered when determining whether the use of force is proper:

- a) the nature and severity of the crime / circumstances;
- b) actions taken by the subject;
- c) duration of the action;
- d) the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders;
- e) whether the subject is actively resisting;
- f) whether the subject is attempting to evade arrest by flight;
- g) the number of subjects in comparison to the number of officers;
- h) the size, age, and condition of the subject in comparison to the officers;
- i) the subject's violent history (if known);
- j) and the presence of a hostile crowd or agitators;
- k) subject apparently under the influence of a stimulant / narcotic which would affect pain tolerance or increase the likelihood of violence

Patrol Guide Procedure 221-02 (Board Review 38) defines "active resistance" as physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

§ 87(2)(b) alleged being pushed, punched, and kicked by officers as well as being hit in the back of the head with blunt object by an officer. The BWC showed PO Monteleone, PO Fortunato, and Sgt. Doheny engaged in a physical struggle with § 87(2)(b) although the specific actions taken by the officers remain unclear. PO Monteleone acknowledged punching § 87(2)(b) on the side of his torso (Allegation G) and PO Fortunato acknowledged pulling § 87(2)(b) hands from beneath him (Allegation H). Sgt. Doheny affirmed in his TRI report that used a hand strike, wrestling/grappling, forcible take down (Allegation I). Sgt. Doheny also acknowledged using a foot strike against § 87(2)(b) (Allegation J). PO Gozzi affirmed in his TRI report that he used a hand strike, wrestling/grappling, and a forcible take down (Allegation K). The TRI report completed by PO Gozzi also noted a foot strike (Allegation L).

Civilian and officer statements are in conflict about the extent of § 87(2)(b) resistance to being handcuffed. While § 87(2)(b) denied resisting being put into handcuffs, he conceded that he curled into a ball to protect himself – though he stated that he only did this after the officers used force against him. Conversely, PO Monteleone and PO Fortunato alleged that § 87(2)(b) resisted by stiffening his arms and tucking his arms under his body. Sgt. Doheny stated that § 87(2)(b) was "resisting" as officers attempted to handcuff him but was only able to say that officers seemed to be having a difficult time in handcuffing § 87(2)(b). PO Gozzi stated that while he did not see officers handcuff § 87(2)(b) he did see § 87(2)(b) kicking his legs in a manner that made him concerned that § 87(2)(b) might kick an officer. The BWC footage showed § 87(2)(b) extend his hands in front of him as he initially got on the ground and depicted § 87(2)(b) rolling onto one side of his body, though it was not clear if he moved independently or was moved by officers.

§ 87(2)(g)

PO Monteleone acknowledged punching § 87(2)(b) in the side of his torso and stated that he did so because he was trying to handcuff him, and § 87(2)(b) refused to give PO Monteleone his

hands. PO Fortunato denied using physical force against § 87(2)(b) other than pulling § 87(2)(b) hands to be handcuffed. Sgt. Doheny testified that he may have put his hand on § 87(2)(b) when he was forcibly taken to the ground, which is why he selected “forcible take down” and “hand strike,” in the TRI. According to the Patrol Guide, force can be permissibly used to place a person in custody if the person is actively resisting. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The BWC footage shows Sgt. Doheny kicking § 87(2)(b) while he was on the ground face-first. Sgt. Doheny denied kicking § 87(2)(b) and stated that the BWC showed him putting his knee on § 87(2)(b) to restrain him. Based on the video evidence and Sgt. Doheny’s TRI, which documented his use of foot strike, the investigation determined that Sgt. Doheny kicked § 87(2)(b). Sgt. Doheny kicked § 87(2)(b) near his shoulder area while PO Monteleone and PO Fortunato were on the ground attempting to handcuff him. The Patrol Guide outlines several factors that should be considered when assessing the reasonableness of force, including the person’s active resistance, the nature and severity of the circumstances or crime for which the person was being apprehended, the number of subjects in relation to the number of officers, and. § 87(2)(b) acknowledged that he curled into a ball. Similarly, according to the officers’ accounts, § 87(2)(b) resistance was limited to stiffening his arms, tucking his arms under his body, and according only to PO Gozzi, kicking his legs. § 87(2)(b) was ultimately charged with several moving violations, including reckless driving, and possession of marijuana. While reckless driving has the potential to cause injury, none of these crimes are violent in nature. Furthermore, at the time Sgt. Doheny kicked § 87(2)(b) § 87(2)(b) – who was by himself – was positioned face-down on the ground and was outnumbered by the five officers surrounding him, several of whom were on the ground in the process of apprehending him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The BWC footage does not capture PO Gozzi using physical force against § 87(2)(b). However, PO Gozzi prepared a TRI report in which he noted using a hand strike, wrestling/grappling, a forcible take down and a foot strike against § 87(2)(b). PO Gozzi did not recall striking § 87(2)(b) or using a forcible take down against § 87(2)(b) and clarified that “wrestling and grappling” referred to when he used his baton to hold § 87(2)(b) feet down, which is not captured on BWC. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The BWC footage is inconclusive as to whether an officer hit § 87(2)(b) in the back of the head with a blunt object. The BWC footage does not depict an officer striking § 87(2)(b) with a blunt object, swinging an object, or holding an object, however; as mentioned above, the footage pertaining to this portion of the incident is inconclusive all of it was generally blurry and obscured. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (N) Discourtesy: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny spoke discourteously to § 87(2)(b)**

Sgt. Doheny's BWC recording (Board Review 01) captured him using discourteous language towards § 87(2)(b). From 05:17 to 05:35, § 87(2)(b) asks why he is being arrested. PO Agunzo responds, "Reckless endangerment. Are you kidding me?" Sgt. Doheny, who is standing on the other side of PO Gozzi near the driver's side of the vehicle says, "Are you kidding me? What about when you fucking drove for 10 miles for 20 minutes with broken tires running from us and not stopping. What about that?"

Sgt. Doheny (Board Review 11) did not initially recall using discourteous language towards § 87(2)(b). However, after reviewing the BWC footage, Sgt. Doheny acknowledged making the above statement. Sgt. Doheny stated that he made that statement to § 87(2)(b) because he did not want § 87(2)(b) to draw attention to the incident and that he was informing § 87(2)(b) about what he had done to be arrested.

Patrol Guide 203-09 requires officers to be courteous and respectful (Board Review 19).

DAO DCT Case Number 2015-15012 states that while an officer is permitted to use profanity in a dynamic situation over which the officer is attempting to gain control, they are not permitted to use profanity to belittle a person's request for information (Board Review 20).

Sgt. Doheny acknowledged using profanity and said that he did so because he was informing § 87(2)(b) about what he had done to be arrested did not want § 87(2)(b) to draw further attention to the incident. At the time Sgt. Doheny used profanity, § 87(2)(b) was already in custody and there was no need to gain control of § 87(2)(b). Sgt. Doheny's comment was instead in response to § 87(2)(b) request for information about his arrest. § 87(2)(g)

**Allegation (O) Abuse of Authority: In front of 87-9 92nd Street in Queens, Sergeant Sean Doheny searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (P) Abuse of Authority: In front of 87-9 92nd Street in Queens, Police Officer Michael Agunzo searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (Q) Abuse of Authority: In front of 87-9 92nd Street in Queens, Police Officer Vincent Monteleone searched the vehicle in which § 87(2)(b) was an occupant.**

BWC footage depicts Sgt. Doheny, PO Agunzo, and PO Monteleone searching § 87(2)(b) vehicle while § 87(2)(b) is seated on the ground and in handcuffs. As noted in the discussion of Allegations A-E, § 87(2)(b) conceded that he was in possession of marijuana at the time of incident.

Sgt. Doheny's BWC footage captures his search of § 87(2)(b) vehicle (Board Review 03). At 02:52, Sgt. Doheny opens the front passenger door and opens the glove compartment. Nothing is recovered. At 03:14, PO Agunzo opens the back passenger door and leans into the back passenger area. Nothing is recovered. At 07:10, Sgt. Doheny opens the back passenger door on the passenger side of the vehicle and searches a black backpack and another black bag both of which are on the seat. During the search of the second bag, Sgt. Doheny removes a medium sized plastic bag with



what appears to be a small amount of vegetative marijuana. Sgt. Doheny leaves the marijuana on the seat of the vehicle and proceeds to the rear of the car where PO Agunzo is standing. At 14:08, Sgt. Doheny says to PO Monteleone, "How are we going to get this car back?" At 14:45, PO Monteleone says, "Let's pop the trunk." At 15:08, PO Monteleone enters § 87(2)(b) vehicle from the passenger side and reaches to the driver's side area to unlock the trunk. At 15:22, Sgt. Doheny searches the trunk of § 87(2)(b) vehicle, which contains a grey laundry bag. Sgt. Doheny searches the grey laundry bag, which contains clothing. Sgt. Doheny then pulls the floor of the trunk up and looks beneath it. A spare tire is the only item in this space. Sgt. Doheny does not mention observing or detecting the odor of marijuana at any time.

PO Agunzo's second BWC recording captures his search of § 87(2)(b) vehicle (Board Review 06). At 01:32, PO Agunzo opens the back passenger door on the passenger side, picks up a bag from the floor area, and searches it. At 01:47, PO Agunzo removes a plastic bag from the bag. At 01:52, PO Agunzo closes the back passenger door as well as the front passenger door and proceeds to the rear of the vehicle. PO Agunzo does not mention observing or detecting the odor of marijuana at any time

PO Monteleone's BWC footage captures his search of § 87(2)(b) vehicle (Board Review 02). At 05:04, PO Monteleone opens the front passenger side door of § 87(2)(b) vehicle and searches a plastic bag that is in the front passenger seat. At 05:25, PO Monteleone searches a second plastic bag that may have been in the first plastic bag. PO Monteleone also searches the glove compartment. At 05:42, PO Monteleone opens the door of the back-passenger seat behind the front passenger seat. At 05:49, PO Monteleone searches a black backpack on the seat. At 06:02, PO Monteleone reaches for a second backpack on the floor beneath the back passenger seat, puts it on the back passenger seat, and searches it. Nothing is recovered from the searches. PO Monteleone does not mention observing or detecting the odor of marijuana at any time

Sgt. Doheny (Board Review 11) testified that he conducted a preliminary search of the vehicle to ensure there were no weapons in § 87(2)(b) vehicle after § 87(2)(b) was already handcuffed, although he could not recall where in the vehicle he specifically searched. Sgt. Doheny cited § 87(2)(b) fleeing from the officers when they initially tried to stop him as what contributed to his belief that § 87(2)(b) may have been concealing a weapon. He did not search the vehicle for any other reason aside from suspecting that there could be weapons. Sgt. Doheny stated that the vehicle was searched at the scene instead of at the stationhouse to ensure that there were no weapons or anything dangerous within it for whomever was to bring the vehicle back to the precinct. He was unsure of whether the vehicle was vouchered. Sgt. Doheny was shown his BWC footage from 15:16 to 15:44, which captured him searching the trunk (Board Reviews 03, 11). After reviewing the footage, Sgt. Doheny stated that he searched the trunk for concealed weapons.

PO Agunzo (Board Review 12) testified that he conducted a brief search of § 87(2)(b) vehicle for possible firearms because he wanted to check the vehicle for weapons before it was towed. PO Agunzo believed § 87(2)(b) may have had weapons because he had initially fled from the police. PO Agunzo could not recall where he specifically searched in the vehicle. PO Agunzo stated that he could also smell unburnt marijuana coming from the vehicle; he did not recall if he informed anyone else of this smell. PO Agunzo was shown his BWC footage beginning at 01:30, which captured PO Agunzo searching a bag on the rear passenger seat (Board Reviews 06, 12). After reviewing the footage, PO Agunzo stated that he searched the bag because, based on his experience, narcotics and weapons are often concealed inside of bags within a vehicle. During his search of the bag, PO Agunzo recovered a small amount of marijuana.

PO Monteleone (Board Review 02) testified that he initially searched the front passenger area of

§ 87(2)(b) vehicle to look for paperwork in the glove compartment because he wanted to know if § 87(2)(b) car was stolen or had been involved in a shooting. PO Monteleone could not recall if he searched any other part of § 87(2)(b) vehicle, nor could he recall if he observed any other officer do so. PO Monteleone was shown his BWC footage beginning at 04:36 to 06:23, which captured PO Monteleone search the front passenger side of the vehicle as well as two plastic bags that were on the front passenger seat, the back passenger seat area behind the front passenger seat, and backpack (Board Reviews 02, 09). After reviewing the footage, PO Monteleone stated that he searched this front portion of the vehicle and the two plastic bags because he was trying to find the vehicle's documents and he wanted to make sure the vehicle was safe because it was going to be taken back to the precinct. PO Monteleone stated that he searched the back seat passenger area and the backpack to make sure there were no weapons. PO Monteleone searched the vehicle on scene because he wanted to see if § 87(2)(b) had any items that needed to be safeguarded.

The investigation did not obtain any invoice or property vouchers.

In People v. Hernandez, 238 A.D.2d 131 (1997), the court held that there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search (Board Review 21).

In People v. Philbert, 270 A.D.2d 210 (2000) (Board Review 36), the court upheld a limited search of a vehicle's glove compartment for the sole purpose of locating documents to verify vehicle ownership.

In People v. Jackson, 241 A.D.2d 557 (Board Review 33), the court upheld a limited search of a vehicle prior to its removal to a stationhouse for impoundment, but noted that only searches of items in plain view would be permissible.

In People v. Chestnut, 43 A.D.2d 260, the Supreme Court of New York held that the smell of marijuana, with nothing more, can be sufficient to provide officers with probable cause to search an automobile and its occupants (Board Review 32).

Under Hernandez, officers can only search a vehicle if they have probable cause to believe that the vehicle contains contraband, weapons, or evidence of a crime. § 87(2)(g)

While the officers cited a desire to search the vehicle before removing it to the stationhouse for inventory, § 87(2)(g)

§ 87(2)(g) Officers made no contemporaneous statements about the presence of an odor of marijuana.

§ 87(2)(g)



§ 87(2)(g)

**Allegation (R) Offensive Language: Inside of the 106th Precinct stationhouse, Police Officer Vincent Monteleone made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (S) Discourtesy: Inside of the 106th Precinct stationhouse, Police Officer Vincent Monteleone spoke discourteously to § 87(2)(b)**

**Allegation (T) Discourtesy: Inside of the 106th Precinct stationhouse, Police Officer Vincent Monteleone spoke discourteously to § 87(2)(b)**

§ 87(2)(b) (Board Review 07, 08) initially testified that he arrived at the stationhouse at approximately 2:00 a.m. While at the front desk at the 106<sup>th</sup> Precinct stationhouse, the same officer that had pushed him to the ground at the incident location, identified by the investigation as PO Monteleone, allegedly said, “Fucking little bitch mother fucker you’re going to go to jail for a long time.” During a follow up phone call with the undersigned, § 87(2)(b) adjusted his initial testimony and stated that the officer who made this statement had actually escorted him out of the precinct stationhouse to the vehicle to go to Central Booking at approximately 3:00 a.m.

There were no allegations pertaining to the stationhouse when § 87(2)(b) initially filed this complaint. During § 87(2)(b) interview on May 24, 2021, the allegations inside of the stationhouse came to light. By the time the investigation obtained this information, stationhouse footage was unavailable.

The March 10, 2021, Tour 1 Command Log from the 106<sup>th</sup> Precinct noted PO Monteleone was the arresting officer for § 87(2)(b) who was transported to Queens Central Booking, although it did not list the time he was transported or by whom (Board Reviews 23, 24).

The March 10, 2021, Prisoner Holding Pen Roster for the 106<sup>th</sup> Precinct noted that § 87(2)(b) was transported to Queens Centra Booking by Police Officer Brendan Healey, Police Officer Michael Dominguez, and Police Officer Carlo Farrugia (all assigned to the 106<sup>th</sup> Precinct), however, it does not list at what time he was transported. The roster also shows that § 87(2)(b) was transported to Queens Central booking at 11:35 a.m. by Police Officer Robert Waisburd, however, there is an arrow in the roster indicating that PO Waisburd may have taken § 87(2)(b) to the § 87(2)(b) Hospital and not Queens Central Booking (Board Review 25).

PO Monteleone’s memo book does not note when he was in and out the stationhouse (Board Review 30).

PO Monteleone (Board Review 09) testified that § 87(2)(b) was eventually taken to the 106<sup>th</sup> Precinct stationhouse, however, he could not recall who transported him there. PO Monteleone eventually returned to the 106<sup>th</sup> Precinct stationhouse after the arrest as well. While at the stationhouse, PO Monteleone may have spoken with § 87(2)(b) in the holding cells to explain the charges being filed against him, although he was not certain. PO Monteleone did not say, “Fucking little bitch mother fucker you’re going to jail for a long time,” nor did he observe any other officers do so. PO Monteleone denied transporting § 87(2)(b) to Queens Central Booking.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

**Allegation (W) Untruthful Statement: Sergeant Sean Doheny provided a false official statement to the CCRB.**

The BWC footage of PO Monteleone (Board Review 02), at 1:05 in the recording depicts Sgt. Doheny kick § 87(2)(b) with his right foot near § 87(2)(b) shoulder area. Sgt. Doheny then puts his knee on § 87(2)(b) side. Sgt. Doheny documented using a foot strike against § 87(2)(b) in his TRI report (Board Review 15). In his November 18, 2021, statement to the CCRB, Sgt. Doheny denied that he kicked § 87(2)(b) (Board Review 11). Sgt. Doheny continued his denial despite being presented with BWC footage that documented the kick and the TRI report that noted his use of a foot strike. Sgt. Doheny stated that he selected “foot strike” in the “actions taken by report MOS section” in reference to when he put his knee on § 87(2)(b) to restrain him and “figured it was the same thing.”

NYPD Administrative Guide 304-10 defines a false official statement as “an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made.” The Administrative Guide defines a material fact as “a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail.” The Administrative Guide states that intentionally making a false official statement is considered prohibited conduct (Board Review 37).

As discussed under Allegation J, Sgt. Doheny denied kicking § 87(2)(b) while he was on the ground. However, the investigation was nonetheless able to determine that Sgt. Doheny kicked § 87(2)(b) because of the video footage and because of TRI documentation that Sgt. Doheny completed which affirmed that he had used a foot strike. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Sgt. Doheny had previously admitted to kicking § 87(2)(b) on the TRI report he completed on March 10, 2021 and was therefore well aware that he had performed this action. During the CCRB interview, Sgt. Doheny was shown the video footage depicting the kick and the TRI he completed, providing him with an opportunity to amend his testimony.

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 26).
- PO Monteleone has been a member-of-service for five and this is the first CCRB complaint to which he has been a subject.
- PO Fortunato has been a member-of-service for 8 years and has been a subject in two CCRB complaints and 12 allegations, of which two were substantiated.
  - 202003435 involved substantiated allegations of failure to provide RTKA card. The Board recommended Command Discipline B and the NYPD had not yet imposed discipline. § 87(2)(b)
- Sgt. Doheny has been a member-of-service for 11 years and has been a subject in six allegations, none of which were substantiated. § 87(2)(g)
- PO Agunzo has been a member-of-service for five years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Gozzi has been a member-of-service for six years and this is the first CCRB complaint to which he has been a subject.

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of April 6, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (Board Review 27).

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

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

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Squad: 3

Investigator	<u>Charis Jones</u>	<u>Inv. Charis Jones</u>	<u>June 30, 2022</u>
	Signature	Print Title & Name	Date

Squad Leader: Carlmais Johnson      IM Carlmais Johnson      July 1, 2022  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_