

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlo Vescovi	Team: Squad #14	CCRB Case #: 202102983	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/08/2021 7:42 PM, NA, / /	Location of Incident: § 87(2)(b) [REDACTED]		Precinct: 24	18 Mo. SOL 11/8/2022	EO SOL 11/8/2022
Date/Time CV Reported Sat, 05/08/2021 9:25 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/17/2021 10:42 AM		
Complainant/Victim		Type	Home Address		
[REDACTED]		[REDACTED]	[REDACTED]		
[REDACTED]		[REDACTED]	[REDACTED]		
[REDACTED]		[REDACTED]	[REDACTED]		
Subject Officer(s)	Shield	TaxID	Command		
1. POM Rafael Aquino	28432	952417	PSA 6		
2. POM Erick Clarck	13492	952593	PSA 6		
3. An officer					
4. POM Kingsley Joachim	18313	950637	PSA 6		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Shahzeb Ahmed	26865	964865	PSA 6		
2. POM Shane Bula	31601	964948	PSA 6		
3. POM Percy Quispe	09875	964715	PSA 6		
4. POM Brian Somar	24598	964296	PSA 6		
Officer(s)	Allegation			Investigator Recommendation	
A. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer stopped § 87(2)(b) [REDACTED]			[REDACTED]	
B. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer questioned § 87(2)(b) [REDACTED]			[REDACTED]	
C. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer frisked § 87(2)(b) [REDACTED]			[REDACTED]	
D. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer searched § 87(2)(b) [REDACTED]			[REDACTED]	
E. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.			[REDACTED]	
F. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer stopped § 87(2)(b) [REDACTED]			[REDACTED]	
G. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer failed to provide § 87(2)(b) [REDACTED] with a business card.			[REDACTED]	
H. An officer	Abuse: On an unknown date prior to May 8th, 2021, an officer failed to provide § 87(2)(b) [REDACTED] with a business card.			[REDACTED]	

Officer(s)	Allegation	Investigator Recommendation
I.POM Erick Clarck	Abuse: On May 8th, 2021, Police Officer Erick Clarck stopped the vehicle in which § 87(2)(b) was an occupant.	
J.POM Rafael Aquino	Abuse: On May 8th, 2021, Police Officer Rafael Aquino stopped the vehicle in which § 87(2)(b) was an occupant.	
K.POM Kingsley Joachim	Abuse: On May 8th, 2021, Police Officer Kingsley Joachim stopped the vehicle in which § 87(2)(b) was an occupant.	
L.POM Rafael Aquino	Force: On May 8th, 2021, Police Officer Rafael Aquino pointed his gun at § 87(2)(b)	
M.POM Erick Clarck	Abuse: On May 8th, 2021, Police Officer Erick Clarck drew his gun.	
N.POM Kingsley Joachim	Force: On May 8th, 2021, Police Officer Kingsley Joachim pointed his gun at § 87(2)(b)	
O.POM Erick Clarck	Abuse: On May 8th, 2021, Police Officer Erick Clarck interfered with § 87(2)(b)'s use of a recording device.	
P.POM Erick Clarck	Abuse: On May 8th, 2021, Police Officer Erick Clarck searched § 87(2)(b)	
Q.POM Erick Clarck	Abuse: On May 8th, 2021, Police Officer Erick Clarck threatened to arrest § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On May 8th, 2021, § 87(2)(b) filed the following complaint with IAB via email on behalf of himself, his cousin, known only as § 87(2)(b) and his brother § 87(2)(b). The CCRB received this complaint on May 17th, 2021.

On an unknown date at an unknown time prior to May 8<sup>th</sup>, 2021, § 87(2)(b) was the driver and sole occupant of his vehicle parked at the front entrance of the § 87(2)(b) at § 87(2)(b) in Manhattan. § 87(2)(b)'s vehicle was turned off. An unidentified officer stopped § 87(2)(b) while § 87(2)(b) sat in his parked vehicle, and asked him, "What you got on you?" (**Allegation A, Allegation B: Abuse of Authority**, § 87(2)(g)). An officer requested § 87(2)(b) step out of the car and subsequently frisked § 87(2)(b) near his waistband and searched his front hoodie pocket (**Allegation C, Allegation D: Abuse of Authority**, § 87(2)(g)). An officer searched § 87(2)(b)'s car, including the center console and glove compartment (**Allegation E: Abuse of Authority**, § 87(2)(g)). § 87(2)(b)'s cousin, known only as § 87(2)(b) appeared on scene and an officer requested his ID, which § 87(2)(b) provided (**Allegation F: Abuse of Authority**, § 87(2)(g)). No officers provided either § 87(2)(b) or § 87(2)(b) with a business card (**Allegation G, Allegation H: Abuse of Authority**, § 87(2)(g)). No summonses or arrests resulted from this incident.

On May 8<sup>th</sup>, 2021, at approximately 7:42 p.m., § 87(2)(b) was the sole occupant of his white E300 Mercedes Benz sedan in the parking lot of the § 87(2)(b) located at § 87(2)(b) in Manhattan. § 87(2)(b) waited for his brother, § 87(2)(b) to come downstairs and drove around the parking lot. PO Erick Clark, PO Kingsley Joachim, and PO Raphael Aquino, all of PSA 6, conducted a vehicle stop of § 87(2)(b) (**Allegation I-K, Abuse of Authority**, § 87(2)(g)). PO Shahzeb Ahmed, PO Shane Bula, PO Percy Quispe, and PO Brian Somar, also of PSA 6, arrived on scene and provided back up.

While approaching § 87(2)(b)'s vehicle, PO Aquino and PO Joachim allegedly pointed their guns at § 87(2)(b) (**Allegation L: Force**, § 87(2)(g)), (**Allegation N: Force**, § 87(2)(g)) and PO Clark drew his gun (**Allegation M: Abuse of Authority**, § 87(2)(g)). PO Clark instructed § 87(2)(b) to exit the vehicle and he complied, while holding his cell phone and recording a video. PO Clark removed the cell phone from § 87(2)(b)'s hand (**Allegation O: Abuse of Authority**, § 87(2)(g)). PO Clark allegedly went into § 87(2)(b)'s pockets to retrieve his ID (**Allegation P: Abuse of Authority**, § 87(2)(g)). Around this time, § 87(2)(b) came downstairs to meet § 87(2)(b). PO Clark told § 87(2)(b) "You're interfering with my investigation, so if you don't want to be in handcuffs, do me a favor and be quiet" (**Allegation Q: Abuse of Authority**, § 87(2)(g)). PO Aquino ultimately released § 87(2)(b) from the scene without a summons or arrest.

§ 87(2)(b) provided IAB with a cell phone video for the incident on May 8<sup>th</sup>, 2021, which was forwarded to the CCRB and the relevant aspects are addressed in further detail below. The investigation received BWC footage from PO Clark, PO Aquino, PO Joachim, PO Ahmed, PO Bula, PO Quispe, PO Somar, the relevant aspects of which are addressed in further detail below.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer stopped § 87(2)(b)**

**Allegation (B) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer questioned § 87(2)(b)**

**Allegation (C) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer frisked § 87(2)(b)**

**Allegation (D) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer searched § 87(2)(b)**

**Allegation (E) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer**

searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (F) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer stopped § 87(2)(b).

Allegation (G) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer failed to provide § 87(2)(b) with a business card.

Allegation (H) Abuse of Authority: On an unknown date prior to May 8<sup>th</sup>, 2021, an officer failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified (BR 01) that on an unknown date prior to May 8<sup>th</sup>, 2021, he parked in front of the § 87(2)(b) near the front entrance at § 87(2)(b) with his car off. § 87(2)(b) was not drinking or smoking any drugs in the car. An officer, who § 87(2)(b) described as a light skin male in plainclothes with a medium build, came to the driver's side of § 87(2)(b)'s car and stated, "I caught you. I'm not going to keep playing cat and mouse with you." The officer asked § 87(2)(b) "What you got on you? You got anything in the car?" § 87(2)(b) stated, "I ain't got shit." The officer asked § 87(2)(b) to step out of the car. The officer frisked § 87(2)(b) around his groin area, his pants pockets, and his thighs down to his knee and ankles. The officer searched § 87(2)(b)'s front hoodie pocket. The officer sent § 87(2)(b) to the back of § 87(2)(b)'s car, where § 87(2)(b) stood with a second officer, who § 87(2)(b) described as a 5'7" female with a medium build in plainclothes. § 87(2)(b)'s cousin, known only as § 87(2)(b) appeared on scene. An officer asked § 87(2)(b) for his ID, and § 87(2)(b) provided it. Both officers left the incident location without issuing any summonses or conducting arrests. § 87(2)(b) did not describe that he or § 87(2)(b) received a business card. § 87(2)(b) could not provide § 87(2)(b)'s last name or any contact information for him.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (I) Abuse of Authority: On May 8<sup>th</sup>, 2021, Police Officer Erick Clarck stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (J) Abuse of Authority: On May 8<sup>th</sup>, 2021, Police Officer Rafael Aquino stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (K) Abuse of Authority: On May 8<sup>th</sup>, 2021, Police Officer Kingsley Joachim stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified (BR 01) that on May 8<sup>th</sup>, 2021, he drove his white E300 Mercedes Benz sedan, which had factory issued tints, alone in the parking lot of the § 87(2)(b) at § 87(2)(b) in Manhattan. § 87(2)(b) idled while waiting for § 87(2)(b) to meet him. § 87(2)(b) noticed a marked police vehicle slowly moving around the parking lot towards his vehicle and then drove to a different parking spot, passing the police vehicle. At no point did § 87(2)(b) almost hit the police vehicle. § 87(2)(b) stopped his vehicle in a different parking spot, at which point he took out his phone and began video recording. § 87(2)(b) watched and recorded as the police vehicle circled around the parking lot again, seemingly following him. § 87(2)(b) stopped his vehicle again and put his car in reverse to back up when PO Clarck, PO Aquino, and PO Joachim conducted a vehicle stop of § 87(2)(b). At the incident's conclusion, § 87(2)(b) was released without being summonsed or arrested.

PO Clarck testified (BR 02) that he first observed § 87(2)(b)'s vehicle unlawfully parked in a handicapped spot. § 87(2)(b)'s vehicle had tinted windows beyond the legal limit. PO Clarck came to this determination based on tint trainings he took at the academy and visual observations of § 87(2)(b)'s windows. PO Clarck did not use a light transmittance device to measure § 87(2)(b)'s tints during the incident. PO Clarck, PO Joachim, and PO Aquino drove the police vehicle towards § 87(2)(b)'s vehicle in order to conduct an investigation regarding

the tinted windows and the handicapped spot when § 87(2)(b) suddenly pulled out of the spot and drove away, coming extremely close to PO Clarck's police vehicle. At this point, PO Clarck circled back around the lot when he observed § 87(2)(b)'s vehicle parked in a different spot. PO Clarck approached § 87(2)(b)'s vehicle again and conducted a vehicle stop because § 87(2)(b) had been unlawfully parked in a handicapped spot, his vehicle had tinted windows beyond the legal limit, and because § 87(2)(b) had nearly collided with the police vehicle when he pulled out, which constituted reckless driving. Ultimately, PO Clarck did not issue § 87(2)(b) any summonses on the basis of officer discretion.

PO Joachim and PO Aquino testified (BR 03, BR 04) that they and PO Clarck conducted a vehicle stop of § 87(2)(b) because § 87(2)(b) was observed unlawfully parked in a handicapped spot; his vehicle had tinted windows; and because § 87(2)(b) had pulled out of handicapped suddenly upon approach, nearly colliding with the police vehicle.

PO Clarck, PO Aquino, and PO Joachim's BWC footage (BR 05-07) all start after § 87(2)(b) allegedly pulled out of the handicapped spot. At 0:17 on the player timestamp of PO Clarck's BWC, § 87(2)(b)'s windows are clearly captured and are tinted such that it is nearly impossible to see inside the vehicle. PO Aquino, PO Clarck, and PO Joachim's BWC footage does not capture § 87(2)(b) parked in a handicapped spot or pull out of that spot in such a manner that he nearly collided with their police vehicle.

§ 87(2)(b) provided IAB with a cell phone video he recorded of the incident (BR 08). The video is separated into two parts by a black screen for ten seconds. From 0:00 to 0:57 on the player timestamp, § 87(2)(b) is driving around the parking lot of the § 87(2)(b) pointing the camera at the police vehicle containing PO Clarck, PO Aquino, and PO Joachim and stating, "They're following me." The vehicle's lights and sirens are not activated. This portion of the video ends at 0:57 and does not capture § 87(2)(b) pulling out of a handicapped parking spot or nearly colliding with the police vehicle.

New York State Vehicle Traffic Law Article 9 Section 375 12b (BR 09) states that no person shall operate any motor vehicle upon any public highway, road, or street if the front windshield of the motor vehicle which is composed of, covered by or treated with any material which has a light transmittance of less than seventy percent unless such materials are limited to the uppermost six inches of the windshield.

§ 87(2)(g)

PO Clarck, PO Joachim, and PO Aquino's testimonies are consistent with PO Clarck's BWC footage that § 87(2)(b)'s vehicle had tinted windows. Despite the fact that § 87(2)(b) testified his tints were factory issued, the transmittance level still needs to be in accordance with NYS VTL law. Although PO Clarck did not conduct a light transmittance test on § 87(2)(b)'s vehicle, his BWC footage captures tints on the windshield and front side windows which are dark enough that it is not possible to see inside the vehicle. § 87(2)(g)

As it is undisputed that § 87(2)(b) was operating his vehicle on a public highway, road, or street, § 87(2)(g)

#### **Allegation (L) Force: On May 8th, 2021, Police Officer Rafael Aquino pointed his gun at § 87(2)(b)**

§ 87(2)(b) testified that PO Aquino approached § 87(2)(b)'s vehicle on the passenger's side and PO Aquino pointed his gun at § 87(2)(b) but § 87(2)(b) was not able to provide more details or elaborate on where PO Aquino pointed the gun.

PO Aquino testified that he did not draw or point his firearm during this incident. PO Clarck could not recall if PO Aquino drew or pointed his firearm during this incident. PO Joachim

testified that PO Aquino did not draw his firearm during this incident.

PO Aquino's BWC captures his approach towards § 87(2)(b)'s vehicle from 0:00-0:04 on the player timestamp, the point of the incident during which PO Aquino allegedly pointed the gun at § 87(2)(b). However, neither of PO Aquino's hands are captured as they both remain below camera level. At 0:17 on the player timestamp of PO Joachim's BWC, PO Aquino is captured approaching § 87(2)(b)'s vehicle. PO Aquino's hands are by his side, and he is not capture pointing a weapon during this time frame. However, because PO Joachim walks around the rear of the police vehicle and PO Aquino walks around the front, PO Aquino and his actions are not captured by PO Joachim's BWC from 0:00-0:17 on the player timestamp. Similarly, because PO Clarck exits the driver's seat and approaches § 87(2)(b)'s vehicle before PO Aquino, PO Aquino's hands are not captured from 0:00-0:19 on the player timestamp.

At 1:31 on the player timestamp of § 87(2)(b)'s cell phone video, PO Clarck is captured approaching § 87(2)(b)'s vehicle. However, given that the camera is pointed towards PO Clarck, the video does not capture if PO Aquino drew or pointed his gun as PO Aquino remains out of frame.

While PO Clarck could not recall if PO Aquino pointed his gun, PO Aquino and PO Joachim's testimonies are consistent in that PO Aquino did not point his gun during this incident. This is inconsistent with § 87(2)(b) who testified that PO Aquino pointed his firearm at him during the approach towards § 87(2)(b)'s vehicle. PO Joachim and PO Aquino's BWC do not capture PO Aquino pointing his firearm. However, due to PO Clarck and PO Joachim's positioning and the order in which they approached the vehicle, both PO Clarck and PO Joachim's BWC activations have significant enough lapses that they allow for the possibility that PO Aquino pointed his firearm. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (M) Abuse of Authority: On May 8th, 2021, Police Officer Erick Clarck drew his gun.**

**Allegation (N) Force: On May 8th, 2021, Police Officer Kingsley Joachim pointed his gun at § 87(2)(b)**

The investigation determined that PO Clarck exited the police vehicle and approached § 87(2)(b) in the driver's seat of his vehicle with his gun drawn and PO Joachim approached with his gun pointed. It is undisputed that § 87(2)(b)'s vehicle had tinted windows.

PO Clarck testified that he knew § 87(2)(b) from two prior arrests, but that he did not know that § 87(2)(b) was the driver at the time of this allegation. After attempting to approach § 87(2)(b)'s vehicle with tinted windows in the handicapped spot, § 87(2)(b) pulled out suddenly, nearly colliding with the police vehicle. After circling around the parking lot, PO Clarck observed § 87(2)(b)'s vehicle again and pulled up to conduct a vehicle stop. PO Clarck stopped the police vehicle perpendicular to § 87(2)(b)'s car, preventing § 87(2)(b) from driving anywhere. As PO Clarck exited, he drew his firearm. Upon reaching § 87(2)(b)'s vehicle, he instructed § 87(2)(b) to roll his window down. PO Clarck drew his weapon because he felt § 87(2)(b)'s reckless driving and tinted windows presented a potential threat to officer safety. PO Clarck could not recall if PO Joachim drew or pointed his firearm.

PO Joachim testified that as he, PO Clarck, and PO Aquino approached § 87(2)(b)'s vehicle for a second time, § 87(2)(b) revved the engine of his vehicle. PO Joachim drew and pointed his gun towards the driver's seat of § 87(2)(b)'s vehicle as he approached. PO Joachim did this because he felt the combination of § 87(2)(b)'s reckless driving at the site of the first approach, § 87(2)(b) revving his engine upon the second approach, and the vehicle's tinted windows presented a threat to officer safety.

PO Aquino testified that when PO Clarck approached § 87(2)(b)'s for the second time, PO Clarck stopped the police vehicle perpendicular to § 87(2)(b)'s vehicle, preventing § 87(2)(b)

§ 87(2)(b) from moving his car.

PO Clarck's BWC captures his approach towards § 87(2)(b)'s vehicle. At 0:13 on the player timestamp, PO Clarck exits the police vehicle and at 0:19, his right arm is captured holding a silver handgun at chest level, with the barrel pointed down towards the ground. After reaching § 87(2)(b)'s vehicle at 0:22, PO Clarck taps the window and § 87(2)(b) rolls it down. At 0:05 on PO Aquino's BWC, PO Clarck is captured tapping on § 87(2)(b)'s driver's side window. As soon as § 87(2)(b) rolls the window down, PO Clarck holsters his gun.

At 0:13 on PO Joachim's BWC, he is captured pointing his gun at § 87(2)(b)'s windshield from approximately one car length away. PO Clarck is standing at § 87(2)(b)'s driver's side window, directly in PO Joachim's line of fire. PO Joachim continues to point his gun until 0:16 on the player timestamp, when he lowers his arms. At 0:16, the police vehicle is captured stopped perpendicular to § 87(2)(b)'s vehicle, approximately five feet away.

In People v. Robinson, 74 N.Y.2d 773 (BR 18), the court found that a driver's Fourth Amendment rights are not violated when a driver is directed to step out briefly from a lawfully stopped vehicle because of the inherent and inordinate danger to investigating police officers in completing their authorized official responsibilities in such circumstances.

NYPD Patrol Guide Procedure 221-01 (BR 10) states that the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of the service will holster the firearm as soon as practicable.

PO Clarck, PO Aquino, and PO Joachim's testimonies are consistent with PO Clarck's BWC footage that § 87(2)(b) had tinted windows that did not allow for visibility into the car. PO Clarck, PO Joachim, and PO Aquino's testimonies are also consistent that § 87(2)(b) drove recklessly as they approached him in the handicapped spot, nearly colliding with the police vehicle, though § 87(2)(b) denied ever driving close to or nearly colliding with the police vehicle. Both PO Clarck and PO Joachim provided the same justification for utilizing their guns during this incident: § 87(2)(b) had driven recklessly moments before, and the tints on his vehicle were so dark that neither officer could not see inside. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Consistent with PO Joachim's BWC, PO Clarck and PO Aquino both testified that PO Clarck stopped the police vehicle perpendicular to § 87(2)(b)'s vehicle, preventing § 87(2)(b) from driving anywhere. As such, § 87(2)(b)'s alleged reckless driving no longer presented a threat to officer safety. The remaining vehicle infractions, tinted windows and parking in a handicapped spot, do not amount to an articulable belief that believed there was potential for serious physical injury. While the courts have acknowledged the inherent danger associated with a vehicle stop, members of service are still bound by the force guidelines in the Patrol Guide. § 87(2)(g)

**Allegation (O) Abuse of Authority: On May 8th, 2021, Police Officer Erick Clarck interfered with § 87(2)(b)'s use of a recording device.**

§ 87(2)(b) testified that after he noticed the police vehicle driving around the parking lot of the § 87(2)(b) he began filming on his cell phone. After PO Clarck initiated the vehicle stop, § 87(2)(b) exited the driver's seat of his vehicle while still holding the cellphone in his hand to film. § 87(2)(b) stated, "Don't touch my phone, don't touch my phone, don't touch my phone." PO Clarck then grabbed § 87(2)(b)'s phone out of his hands and told him to place his hands behind his back. § 87(2)(b) complied, and PO Clarck handcuffed him.

PO Clarck testified that when § 87(2)(b) exited the vehicle, he was still holding his cell phone. PO Clarck did not know if § 87(2)(b) was filming on the cell phone. PO Clarck placed § 87(2)(b) in handcuffs for officer safety as he was considered detained at that point in time. Either PO Clarck or PO Joachim took § 87(2)(b)'s phone from his hand and placed it on the hood of § 87(2)(b)'s car prior to placing § 87(2)(b) in handcuffs.

At 1:50 on the player timestamp of § 87(2)(b)'s cell phone video, he exits the driver's seat and stands outside his car with his back to PO Clarck. § 87(2)(b) films backwards towards PO Clarck, stating, "Don't touch my phone." At 2:10, PO Clarck is captured stating, "Put your hands behind your back." The footage becomes shaky and subsequently ends at 2:17. How the recording is stopped is not captured on § 87(2)(b)'s cell phone video.

At 0:40 on PO Joachim's BWC, § 87(2)(b) is captured exiting his car with a phone in his right hand. PO Clarck guides § 87(2)(b) such that his chest is pressed against the rear passenger door of § 87(2)(b)'s vehicle and begins to place § 87(2)(b)'s hands behind his back. § 87(2)(b) continues to hold his phone outward, across the top of his own vehicle filming backwards towards PO Clarck. PO Joachim then approaches and grabs § 87(2)(b)'s left hand. At 1:15, PO Clarck is captured stating, "You're under arrest for reckless driving." At 1:20 on the player timestamp, officers successfully handcuff § 87(2)(b). At 1:22, PO Joachim is captured removing § 87(2)(b)'s phone from his now handcuffed hand and giving it to PO Clarck.

NYPD Patrol Guide Procedure 203-29 (BR 11) states that individuals have a right to lawfully record police activity including but not limited to detentions, searches, arrests, or uses of force. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individuals who are videotaping.

PO Clarck's and § 87(2)(b)'s testimony are consistent with PO Joachim's BWC in that § 87(2)(b) was holding his phone as he exited the vehicle, and that upon PO Clarck handcuffing him, the phone was removed from § 87(2)(b)'s hand. Given the existence of § 87(2)(b)'s cell phone video which captures this portion of the incident, PO Clarck's actions effectively prevented § 87(2)(b) from filming police activity. § 87(2)(g)

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

#### **Allegation (P) Abuse of Authority: On May 8th, 2021, Police Officer Erick Clarck searched § 87(2)(b)'s pockets.**

§ 87(2)(b) testified that after PO Clarck handcuffed him, PO Clarck went inside § 87(2)(b)'s pocket to retrieve his ID.

PO Clarck testified he could not recall if he or any other officers ever went inside § 87(2)(b)'s pockets. PO Clarck testified that after speaking with § 87(2)(b) he used officer discretion to not issue § 87(2)(b) any summonses or place him under arrest.

PO Aquino testified that § 87(2)(b) reached into his own pocket while handcuffed and procured his ID, which he then handed to an officer. PO Aquino did not observe any officers go into § 87(2)(b)'s pockets or otherwise search § 87(2)(b).

PO Joachim testified that after approaching § 87(2)(b) he heard PO Clarck tell § 87(2)(b)

§ 87(2)(b) he was under arrest and aided PO Clarck in handcuffing § 87(2)(b) PO Joachim was unable to recall if § 87(2)(b) was searched.

At 5:29 on PO Joachim's BWC, PO Joachim asks for § 87(2)(b)'s ID. § 87(2)(b) gestures towards his pants pockets and tells PO Aquino, "I don't want you going into my pockets." At 5:44, § 87(2)(b) manages to reach into his own front pocket despite being rear cuffed and produces his ID, which he then hands to PO Aquino. The BWC does not capture PO Clarck going into § 87(2)(b)'s pockets or searching him.

§ 87(2)(b) alleged that he was searched while handcuffed. While PO Clarck and PO Joachim could not recall if any officers searched § 87(2)(b) PO Aquino's testimony is consistent with PO Joachim's BWC that § 87(2)(b) managed to reach into his own pocket and produce his ID, which he then handed to an officer. § 87(2)(g)

**Allegation (Q) Abuse of Authority: On May 8th, 2021, Police Officer Erick Clarck threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified that while he was standing outside his vehicle prior with PO Clarck, § 87(2)(b) for whom § 87(2)(b) was waiting, came downstairs to the parking lot and observed the vehicle stop. § 87(2)(b) attempted to speak to PO Clarck. PO Clarck stated, "I'm not talking to you so unless you want to be in handcuffs with § 87(2)(b) stop talking to me." § 87(2)(b) was unable to provide any contact information for § 87(2)(b).

PO Clarck testified that at one point while § 87(2)(b) and PO Clarck were standing by § 87(2)(b)'s car, a bystander told PO Clarck that he was § 87(2)(b)'s brother, § 87(2)(b). § 87(2)(b) was cursing at PO Clarck and distracting him from his investigation into § 87(2)(b) which could have constituted a charge of OGA. As such, PO Clarck told § 87(2)(b) "You're interfering with my investigation so if you don't want to be in cuffs, just do me a favor and be quiet." Apart from cursing and distracting PO Clarck, there were no other reasons for which PO Clarck made the statement about putting § 87(2)(b) in cuffs. There were no other ways in which § 87(2)(b) was interfering with PO Clarck's investigation.

At 7:56 on the player timestamp of PO Aquino's BWC, § 87(2)(b) appears on scene. § 87(2)(b) approaches PO Aquino and § 87(2)(b) who are standing at the rear bumper of § 87(2)(b)'s car. § 87(2)(b) asks, "What's the problem?" PO Aquino responds, "Move back, it's a car stop. He's pulled over... In the meantime, let me deal with § 87(2)(b). You can be here, just a little bit away from us." § 87(2)(b) takes at least four steps back so that he's approximately six feet away from § 87(2)(b) and PO Aquino, on the passenger's side of § 87(2)(b)'s car. PO Joachim walks over to § 87(2)(b) and speaks with him, explaining the reason for the car stop. At 9:07, PO Aquino and § 87(2)(b) walk back to the driver's side of the car, approximately ten feet away from § 87(2)(b) with § 87(2)(b)'s vehicle in between them. § 87(2)(b) is standing by the rear, passenger's side door of § 87(2)(b)'s vehicle, and § 87(2)(b) is on near the driver's door. From 9:07 to 16:00 on the player timestamp, § 87(2)(b) remains on the opposite side of § 87(2)(b)'s vehicle, approximately ten feet from § 87(2)(b), PO Clarck, and PO Aquino. At 16:00, § 87(2)(b) and PO Clarck are discussing the degree to which § 87(2)(b)'s windows are tinted. At 16:07, § 87(2)(b) states, "Both our cars are like that," and § 87(2)(b) states, "We got them from the same spot." PO Clarck turns to § 87(2)(b) and states, "Sir, I'm talking to him, and you're interfering. I would appreciate if you don't do that." § 87(2)(b) replies, "You ain't gotta say anything back to me, just continue talking." At 16:16 PO Clarck states, "You're interfering with my investigation, so if you don't want to be in handcuffs, do me a favor and be quiet." § 87(2)(b) is still at least six feet away from all officers, and approximately eight feet away from § 87(2)(b). PO Joachim's BWC does not capture § 87(2)(b) cursing at PO Clarck.

NYPD Patrol Guide Procedure 203-29 (BR 11) states that individuals have a right to lawfully observe police activity including but not limited to detentions, searches, arrests, or uses of

force. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individuals who are observing.

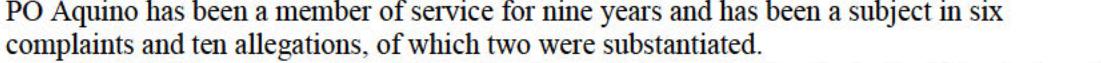
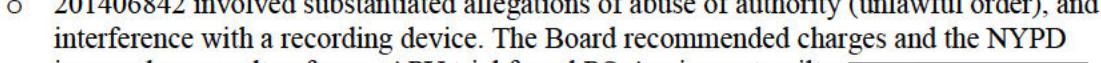
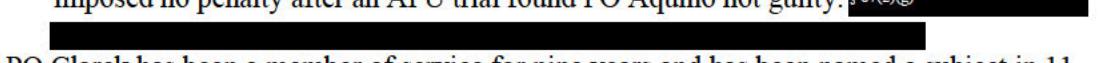
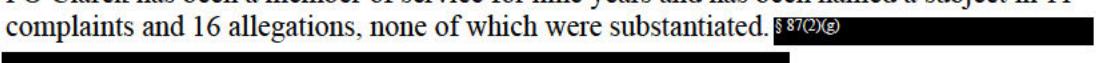
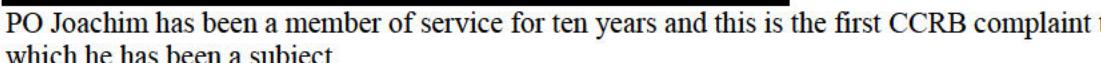
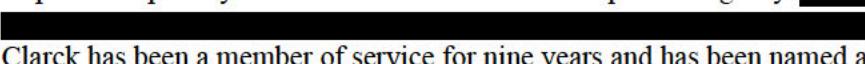
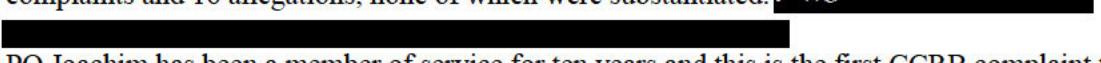
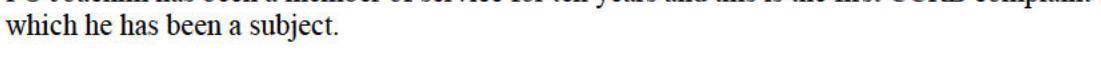
NYS Penal Law Article 195A (BR 12) states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

§ 87(2)(b) and PO Clarck's testimony are consistent with PO Joachim's BWC that PO Clarck threatened to place § 87(2)(b) in handcuffs. PO Clarck's testimony that § 87(2)(b) was cursing at him is not consistent with PO Joachim's BWC. At no point on PO Joachim's BWC is § 87(2)(b) captured cursing at PO Clarck. § 87(2)(b) speaks to PO Clarck only twice during the seven minutes PO Clarck is conversing with § 87(2)(b). § 87(2)(b) is never closer than six feet from any officer while they are speaking to § 87(2)(b). PO Joachim's BWC does not capture § 87(2)(b) intentionally obstructing, impairing or perverting the administration of law or other governmental function or preventing or attempting to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful acts. § 87(2)(g)

§ 87(2)(g), § 87(4-b)



### Civilian and Officer CCRB Histories

- § 87(2)(b)  
  
  
  
  
  
  
  
  
  
  

- PO Aquino has been a member of service for nine years and has been a subject in six complaints and ten allegations, of which two were substantiated.
  - 201406842 involved substantiated allegations of abuse of authority (unlawful order), and interference with a recording device. The Board recommended charges and the NYPD imposed no penalty after an APU trial found PO Aquino not guilty. § 87(2)(g)  

- PO Clarck has been a member of service for nine years and has been named a subject in 11 complaints and 16 allegations, none of which were substantiated. § 87(2)(g)  
  

- PO Joachim has been a member of service for ten 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 September 21<sup>st</sup>, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 14).
- § 87(2)(b)  
  
  
  
  

- § 87(2)(b)  


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Squad: 14

Investigator: C.V. Inv. Carlo Vescovi 08/08/2022

CCRB Case # 202102983

Signature

Print Title & Name

Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel 08/08/2022  
Signature Print Title & Name Date

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