

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 202106151	<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 checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 10/07/2021 11:26 AM	Location of Incident: East 13th Street, between Avenue B and Avenue C	Precinct: 09	18 Mo. SOL 4/7/2023	EO SOL 4/7/2023	
Date/Time CV Reported Tue, 10/12/2021 2:24 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 10/12/2021 2:24 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Zachery Zinaman	16519	960081	009 PCT
2. DTS Sean Donohue	01723	932565	009 PCT
3. PO Joshua Moye	27006	968653	009 PCT
4. PO Lisandro Rodriguez	09145	968433	009 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Adel Eskandar	07264	961520	009 PCT
2. SGT James Keating	04284	932845	009 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Zachery Zinaman	Force: Police Officer Zachery Zinaman pointed his gun at § 87(2)(b)	
B. DTS Sean Donohue	Force: Detective Sean Donohue struck § 87(2)(b) with a vehicle.	
C. DTS Sean Donohue	Abuse: Detective Sean Donohue damaged § 87(2)(b) property.	
D. PO Lisandro Rodriguez	Abuse: Police Officer Lisandro Rodriguez threatened an individual with the use of force.	
E. PO Joshua Moye	Abuse: Police Officer Joshua Moye threatened an individual with the use of force.	
F. PO Lisandro Rodriguez	Abuse: Police Officer Lisandro Rodriguez refused to provide his name to § 87(2)(b)	
G. PO Lisandro Rodriguez	Abuse: Police Officer Lisandro Rodriguez refused to provide his shield number to § 87(2)(b)	
H. PO Joshua Moye	Abuse: Police Officer Joshua Moye refused to provide his name to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.P.O Joshua Moye	Abuse: Police Officer Joshua Moye refused to provide his shield number to § 87(2)(b)	

Case Summary

On October 12, 2021, § 87(2)(b) filed this complaint on behalf of her 15-year-old son, § 87(2)(b) with the CCRB via the call processing system (Board Review 01).

On October 7, 2021, at approximately 11:26 a.m., § 87(2)(b) allegedly menaced § 87(2)(b) with a gun at East 11th Street and Avenue C in Manhattan. While canvassing with Police Officer Zachery Zinaman and Police Officer Adel Eskander of the 9th Precinct, § 87(2)(b) spotted § 87(2)(b) on East 13th Street between Avenues B and C in the § 87(2)(b). § 87(2)(b) got on his motor scooter and rode toward Avenue C. Police Officer Zinaman exited his police vehicle and aimed a gun at § 87(2)(b) (**Allegation A – Force: Gun Pointed**, § 87(2)(g)). § 87(2)(b) made a U-turn and drove onto the sidewalk of East 13th Street. Detective Sean Donohue of the 9th Precinct was driving in the opposite direction, and he turned his police vehicle to the right and onto the sidewalk, resulting in a collision that damaged § 87(2)(b) motor scooter (**Allegation B – Force: Vehicle, Allegation C – Abuse of Authority: Property Damaged**; § 87(2)(g)). § 87(2)(b) was placed under arrest (Board Review 02), and Police Officers Lisandro Rodriguez and Joshua Moye of the 9th Precinct drew their Tasers when an unidentified individual approached the scene (**Allegation D & E – Abuse of Authority: Threat of Force**, § 87(2)(g)). En route to the 9th Precinct stationhouse, § 87(2)(b) asked Police Officer Rodriguez and Police Officer Moye numerous times for their names and shield numbers, but neither of them responded (**Allegations F, G, H, and I – Abuse of Authority: Refusal to Provide Name/Shield Number**, § 87(2)(g)). § 87(2)(b) was charged with Menacing with a Weapon in the 2nd degree, Criminal Possession of a Weapon in the 4th degree, Operating a Motor Vehicle Without a License, Driving a Motor Vehicle on a Sidewalk, and Operating an Unregistered Vehicle (Board Review 02).

Body-worn camera (BWC) footage was obtained from the BWCs of each of the aforementioned officers, as well as numerous officers who responded to the scene after the collision. The videos are saved in IA #23 (Board Review 03), and the videos discussed in this report are summarized in IA #s 66, 128, and 129 (Board Review 04, 05, 06).

Findings and Recommendations

Allegation (A) Force: Police Officer Zachery Zinaman pointed his gun at § 87(2)(b)

§ 87(2)(b) was interviewed on October 19, 2021 (Board Review 07). Witness § 87(2)(b) provided a telephone statement on December 14, 2021 (Board Review 08). Witness § 87(2)(b) provided a telephone statement on December 27, 2021 (Board Review 09). Detective Donohue was interviewed on April 29, 2022 (Board Review 10). Police Officer Rodriguez was interviewed on May 12, 2022 (Board Review 11). Police Officer Moye was interviewed on June 1, 2022 (Board Review 12).

It is undisputed that § 87(2)(b) engaged in a verbal dispute with § 87(2)(b) at East 11th Street and Avenue C and that § 87(2)(b) reported to police that § 87(2)(b) menaced him with a gun.

§ 87(2)(b) stated that after the altercation with § 87(2)(b) while he was “hanging out” in § 87(2)(b) he saw Police Officer Rodriguez staring at him from his police vehicle. The police vehicle drove into the pedestrian plaza, and § 87(2)(b) got on his motor scooter and rode east toward Avenue C. Another police vehicle entered § 87(2)(b) from Avenue C, and Police Officer Zinaman exited the vehicle and aimed his gun at § 87(2)(b) who then made

a U-turn and rode in the opposite direction.

In Police Officer Zinaman's BWC footage (Board Review 13), at runtime 09:51, Police Officer Adel Eskander, who is driving a police vehicle with Police Officer Zinaman and § 87(2)(b) inside, turns onto East 13th Street. Police Officer Zinaman asks, "Is that him there?" § 87(2)(b) who is in the back seat to canvass for § 87(2)(b) says, "Yes." At runtime 09:57, Police Officer Zinaman exits his police vehicle and runs toward § 87(2)(b). Police Officer Zinaman aims his gun at § 87(2)(b) and yells "Stop!" as § 87(2)(b) begins turning around and riding away on his motor scooter.

Patrol Guide Procedure 221-01 (Board Review 15) states that the decision by an officer to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present.

§ 87(2)(b) alleged that § 87(2)(b) menaced him with a gun, and he identified § 87(2)(b) as the suspect while canvassing in Police Officer Zinaman's police vehicle. When Police Officer Zinaman ran toward § 87(2)(b) he turned around and attempted to flee on his motor scooter.

§ 87(2)(g)

Allegation (B) Force: Detective Sean Donohue struck § 87(2)(b) with a vehicle.
Allegation (C) Abuse of Authority: Detective Sean Donohue damaged § 87(2)(b) property.

It is undisputed that while § 87(2)(b) was riding his motor scooter westbound on the sidewalk on the south side of East 13th Street Detective Donohue spotted him and turned his police vehicle from the street onto the sidewalk, and that the motor scooter and the police vehicle collided on the sidewalk.

§ 87(2)(b) stated that he was riding his motor scooter at approximately 25 miles per hour on the sidewalk when he saw Detective Donohue drive toward him on East 13th Street. Approximately three seconds later, Detective Donohue made a sharp right turn from the street onto the sidewalk and struck § 87(2)(b) motor scooter with the passenger side of its front bumper, knocking § 87(2)(b) off the motor scooter and onto the ground. § 87(2)(b) landed on his back, side, and neck, and he sustained pain and a scrape to his elbow. The front of § 87(2)(b) motor scooter was wedged into a nearby fence, and § 87(2)(b) believed his motor scooter was totaled (The motor scooter was still in police custody at the time of § 87(2)(b) interview). § 87(2)(b) was transported to § 87(2)(b) in police custody, but no injuries were found. § 87(2)(b) did not sign and return a HIPAA for the CCRB to obtain § 87(2)(b) medical records).

§ 87(2)(b) Medical Treatment of Prisoner Report (Board Review 24) indicates that he and § 87(2)(b) requested medical treatment for pain to his back, neck, and arm.

§ 87(2)(b) and § 87(2)(b) statements were generally consistent with § 87(2)(b)

Sergeant James Keating of the 9th Precinct was seated in the passenger seat of Detective Donohue's police vehicle during the incident. At runtime 00:24 of Sergeant Keating's BWC footage (Board Review 17), Detective Donohue turns right onto East 13th Street and accelerates east. At runtime 00:34 Police Officer Donohue turns the police vehicle to the right, onto the sidewalk on the south

side of East 13th Street, where § 87(2)(b) is riding westbound into the frame. § 87(2)(b) motor scooter and the front of Detective Donohue's police vehicle appear to collide. At runtime 00:39, Sergeant Keating exits the police vehicle, and § 87(2)(b) is seen standing with his arms raised and his palms open.

The property voucher for § 87(2)(b) motor scooter (Board Review 18) indicates that it was damaged and had multiple dents, cracks, and scratches throughout.

Detective Donohue stated that he drove to East 13th Street after receiving a radio run that § 87(2)(b) had been spotted there, and he saw § 87(2)(b) "flying" on the sidewalk in the opposite direction. In order "to cut off" § 87(2)(b) motor scooter and make him stop, he turned right toward a curb cut leading to a fenced-in dumpster area next to 628 East 13th Street. When Detective Donohue drove onto the sidewalk, § 87(2)(b) was approximately 15 feet away from the police vehicle and appeared to be accelerating. Detective Donohue believed § 87(2)(b) would either stop his motor scooter or ride around the back of the police vehicle and into the street. Instead, § 87(2)(b) attempted to "fly" around the front of the police vehicle. § 87(2)(b) path was obstructed by the fence and some discarded appliances on the sidewalk, so he had to "cut in" and turn right to avoid the obstacles, and the rear of his motor scooter clipped the passenger side of the police vehicle's front bumper. Detective Donohue believed that had § 87(2)(b) not crashed into the police vehicle, he would have crashed into the fence. Detective Donohue did not know whether the motor scooter was damaged.

Before he was shown Sergeant Keating's BWC footage, Detective Donohue stated that his police vehicle had been fully stopped for "a split second" at the moment of the collision, which occurred less than five seconds after he first spotted § 87(2)(b). After reviewing his BWC footage, which shows the police vehicle still in motion at the moment of the collision, Detective Donohue was asked again whether the police vehicle was stopped at the point of the collision, and he responded, "I was full brake... I was jamming on the brakes."

Patrol Guide Procedure 211-15 (Board Review 19) identifies ramming a pursued vehicle and placing a moving police vehicle in a position to be struck by a pursued vehicle as tactics that are generally prohibited and should not be used in an attempt to stop a vehicle. It cites a vehicle ramming attack as an example of an exigent or exceptional circumstance where such tactics may be justified, and it indicates that officers may use deadly physical force to terminate a mass casualty event.

Detective Donohue stated that he saw § 87(2)(b) "flying" and accelerating on his motor scooter in the opposite direction from approximately 15 feet away, and that he turned onto the sidewalk "to cut off" § 87(2)(b) and make him stop. Given § 87(2)(b) rapid speed and acceleration, proximity to the police vehicle, and direction of travel, the investigation has determined that by driving onto the sidewalk, Detective Donohue placed his police vehicle in a position to be struck by § 87(2)(b) as § 87(2)(b) was not likely able to turn or stop his motor scooter in time to avoid a collision. While such a tactic may be justified within the context of an exigent or exceptional circumstance such as a vehicle ramming attack or a mass casualty event, § 87(2)(b) was only suspected of having previously threatened someone with a gun, and he was not accused of discharging the gun or otherwise acting in a manner that posed an imminent threat to anyone's life at the time that Detective Donohue drove onto the sidewalk to attempt to use his vehicle to stop § 87(2)(b) motor scooter. Given the risk of serious injury and death that the vehicular collision an officer precipitates when they take this action presents, the Patrol Guide prohibits this maneuver and specifically cites mass casualty events and vehicle ramming attacks as the type of serious exigencies that would warrant breaking this prohibition. § 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Lisandro Rodriguez threatened

§ 87(2)(b) **with the use of force.**

Allegation (E) Abuse of Authority: Police Officer Joshua Moya threatened

§ 87(2)(b) **with the use of force.**

It is undisputed that a crowd of bystanders gathered at the scene after the collision, and that Police Officer Rodriguez and Police Officer Moya aimed their Tasers at one of these bystanders.

§ 87(2)(b) stated that after the collision, a crowd of people converged on the scene, got within approximately three to five feet of § 87(2)(b) and said, “What the fuck are you doing?!” Though he did not see any officer draw a gun, he believed an officer did do so and aimed it at the crowd in order to get the crowd to back up. He made no mention of any officer drawing a Taser.

§ 87(2)(b) stated that, after the collision, a few dozen people gathered at the scene, and everyone was “going crazy.” Neither § 87(2)(b) nor § 87(2)(b) mentioned any officer drawing a gun or a Taser after the collision.

In Police Officer Moya’s BWC footage (Board Review 14), at runtime 01:03, one unidentified male is seen tossing his jacket to the ground, running toward § 87(2)(b) and the officers, and screaming incomprehensibly after the collision. Police Officer Moya and Police Officer Rodriguez draw their Tasers and aim them at the male, and Police Officer Rodriguez says, “Back up! Back up! Back up!” The male raises his hands, turns around, and walks away.

Both Police Officer Rodriguez and Police Officer Moya acknowledged aiming their Tasers at the individual who approached the scene in order to have him voluntarily back away. Their statements are generally consistent with the BWC footage, but they believed more bystanders were present at this moment.

Patrol Guide Procedure 221-08 (Board Review 16) states that an officer should only use a Taser against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others actually present. When feasible, the officer should issue a verbal warning prior to discharging the Taser, and that such a warning may be used in conjunction with a laser or arc warning to gain voluntary compliance and prevent the need to use force.

In tossing his jacket to the ground and running toward the officers while shouting, the unidentified male exhibited active aggression, § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Lisandro Rodriguez refused to provide his name to

§ 87(2)(b) **Allegation (G) Abuse of Authority: Police Officer Lisandro Rodriguez refused to provide his shield number to**

§ 87(2)(b) **Allegation (H) Abuse of Authority: Police Officer Joshua Moya refused to provide his name to**

§ 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Joshua Moya refused to provide his shield number to § 87(2)(b)

It is undisputed that, as they drove § 87(2)(b) from the scene of his arrest to the 9th Precinct stationhouse, § 87(2)(b) asked Police Officer Rodriguez and Police Officer Moya for their names and shield numbers numerous times, and that neither of them provided this information to § 87(2)(b).

§ 87(2)(b) requests and the officers' failure to respond are captured in Police Officer Moya's BWC footage (Board Review 14, beginning at runtime 04:11).

Police Officer Rodriguez stated that he believed he did not have to provide the requested information to § 87(2)(b) because he was not his arresting officer.

Police Officer Moya stated that he believed he did not have to provide the requested information to § 87(2)(b) because his nameplate and shield number were displayed on his uniform.

Administrative Guide Procedure 304-11 (Board Review 20) states that an officer must courteously and clearly state their name, rank, shield number, or otherwise provide them, to anyone who requests they do so.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the only CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (Board Review 21).
- Police Officer Zachery Zinaman has been a member of service for six years and has been a subject in three other CCRB complaints and 11 other allegations, of which seven were substantiated in one case.
 - 201608016 involved substantiated allegations of Nightstick as Club, Physical Force, and Threat of Force. The Board recommended Command Discipline A, which the NYPD imposed.
 - § 87(2)(g)
- Detective Sean Donohue has been a member of service for 18 years and has been a subject in two other CCRB complaints and two other allegations, neither of which was substantiated.
§ 87(2)(g)
- Police Officer Lisandro Rodriguez has been a member of service for two years and has been a subject in one other CCRB complaint and three other allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Joshua Moya has been a member of service for two years and has been a subject in one other CCRB complaint and one allegation, which has not been substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming serious physical injuries, deprivation of liberty, severe emotional distress, mental trauma, anguish, shame, humiliation, and indignity, and he is seeking \$2 million as redress (Board Review 22). A copy of the 50-H hearing transcript has been requested and will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 02

Investigator:	<u>JP Lozada</u>	<u>SI Jean-Paul Lozada</u>	<u>06/07/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Opoku-Agyemang</u>	<u>6/7/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date