

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #08	CCRB Case #: 202206072	<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) Saturday, 06/27/2020 10:28 AM, Saturday, 06/27/2020 8:00 PM, Saturday, 06/27/2020 9:58 PM	Location of Incident: § 87(2)(b) in Brooklyn; 75th Precinct stationhouse	18 Mo. SOL 5/4/2022	Precinct: 75
Date/Time CV Reported Mon, 09/12/2022 2:03 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/12/2022 2:03 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			
3. PO Tanisha Simeon	10810	964994	075 PCT
4. LT Joshua Bienvenue	00000	945511	075 PCT
5. PO Frank Ingrao	31014	946495	MED DIV
6. PO Quacy Batson	09346	968266	075 PCT
7. PO Georin Duran	26108	950361	075 PCT
8. PO Andrew Burke	08272	954583	075 PCT
9. DI Adeel Rana	00000	935565	084 PCT
10. PO Keyana Cumberbatch-Walters		964468	

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Kevin Tresham	02252	935868	075 PCT
2. PO Vincenzo Creta	19901	962332	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
3. PO Paul Caleb	08275	954589	075 PCT
4. PO Gurwinder Singh	17991	968135	FTU 15
5. PO Miryam Ladolce	06207	946765	075 PCT
6. PO Kemi Rose	20192	968107	TB SSTF
7. PO Rodney Greenidge	28511	932743	075 PCT
8. PO Casey Hyatt	14820	947091	075 PCT
9. PO Dani Torosian	16888	968161	OPER&ANALYSIS
10. DT3 Derick Russ	03551	949590	INT CIS
11. DT3 Christopher Walsh	03687	951413	INT FIO PRG
12. DT3 Mordecai Austrie	02397	954508	INT FIO PRG
13. DT3 Nicholas Smith	03913	953421	INT FIO PRG
14. PO Skylar Braun	16505	966478	075 PCT
15. PO Matthew Bessen	14934	967774	075 PCT
16. PO Chingling Tan	18634	968832	MED DIV
17. PO Muhammad Arshad	16081	966446	075 PCT
18. SGT Adnan Radoncic		930995	

Officer(s)	Allegation	Investigator Recommendation
A . An officer	Force: At § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b)	A . Unfounded
B . An officer	Force: At § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b)	B . Unfounded
C . LT Joshua Bienvenue	Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used physical force against § 87(2)(b)	C . Exonerated
D . LT Joshua Bienvenue	Abuse: Lieutenant Joshua Bienvenue entered § 87(2)(b) in Brooklyn.	D . Exonerated
E . PO Frank Ingrao	Abuse: Police Officer Frank Ingrao entered § 87(2)(b) in Brooklyn.	E . Exonerated
F . PO Georin Duran	Force: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran used a non-lethal restraining device on § 87(2)(b)	F . Exonerated
G . PO Keyana Cumberbatch-Walters	Force: At § 87(2)(b) in Manhattan, Police Officer Keyana Cumberbatch-Walters used a non-lethal restraining device on § 87(2)(b)	G . Miscellaneous - Subject Retired
H . LT Joshua Bienvenue	Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used a non-lethal restraining device on § 87(2)(b)	H . Exonerated
I . An officer	Force: At § 87(2)(b) in Brooklyn, an officer used a chokehold against § 87(2)(b)	I . Unfounded
J . An officer	Force: At § 87(2)(b) in Brooklyn, an officer restricted § 87(2)(b)'s breathing.	J . Unfounded
K . PO Georin Duran	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran threatened § 87(2)(b) with the use of force.	K . Substantiated
L . LT Joshua Bienvenue	Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used a non-lethal restraining device on § 87(2)(b)	L . Exonerated
M . LT Joshua Bienvenue	Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used physical force against § 87(2)(b)	M . Exonerated

Officer(s)	Allegation	Investigator Recommendation
N . PO Frank Ingrao	Force: At § 87(2)(b) in Brooklyn, Police Officer Frank Ingrao used physical force against § 87(2)(b)	N . Exonerated
O . Officers	Abuse: Officers entered § 87(2)(b) in Brooklyn.	O . Exonerated
P . PO Andrew Burke	Force: At § 87(2)(b) in Brooklyn, Police Officer Andrew Burke used physical force against § 87(2)(b)	P . Exonerated
Q . PO Andrew Burke	Force: At § 87(2)(b) in Brooklyn, Police Officer Andrew Burke used a chokehold against § 87(2)(b)	Q . Unfounded
R . PO Andrew Burke	Force: At § 87(2)(b) in Brooklyn, Police Officer Andrew Burke restricted § 87(2)(b)'s breathing.	R . Unfounded
S . PO Georin Duran	Abuse: Police Officer Georin Duran searched § 87(2)(b) in Brooklyn.	S . Exonerated
T . PO Georin Duran	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran damaged § 87(2)(b)'s property.	T . Exonerated
U . PO Georin Duran	Force: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran hit § 87(2)(b) against an object.	U . Exonerated
V . PO Tanisha Simeon	Abuse: Police Officer Tanisha Simeon searched § 87(2)(b) in Brooklyn.	V . Exonerated
W . PO Quacy Batson	Abuse: Police Officer Quacy Batson searched § 87(2)(b) in Brooklyn.	W . Exonerated
X . Officers	Abuse: Officers searched § 87(2)(b) in Brooklyn.	X . Unfounded
Y . PO Tanisha Simeon	Abuse: At the 75th Precinct stationhouse, Police Officer Tanisha Simeon threatened to notify Administration for Children's Services.	Y . Exonerated
Z . DI Adeel Rana	Abuse: Deputy Inspector Adeel Rana searched § 87(2)(b) in Brooklyn.	Z . Exonerated
AA. Officers	Abuse: At § 87(2)(b) in Brooklyn, officers damaged § 87(2)(b)'s property.	AA. Unfounded

Case Summary

On September 12, 2022, § 87(2)(b) filed this complaint with the CCRB via telephone, on her own behalf and on behalf of § 87(2)(b) (her husband), and their children, § 87(2)(b) (§ 87(2)(b) old at the time of the incident), § 87(2)(b) (§ 87(2)(b) old), § 87(2)(b) (§ 87(2)(b) years old), and § 87(2)(b) (seven years old). This incident was reported after the CCRB's 18-month statute of limitations had expired. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

On the morning of June 27, 2020, numerous officers, all assigned to the 75th Precinct, responded to § 87(2)(b) and § 87(2)(b)'s home, an apartment building located at § 87(2)(b) in Brooklyn. § 87(2)(b) and § 87(2)(b) resided in apartment § 87(2)(b) on the § 87(2)(b) floor. Three individuals told the responding officers that § 87(2)(b) had pointed a firearm at them from his apartment window. At approximately 10:28 AM, in the hallway outside of the apartment, officers arrested § 87(2)(b) and § 87(2)(b) became involved in the struggle. § 87(2)(b) and § 87(2)(b) inside of the apartment, also became involved in the struggle. § 87(2)(b) and § 87(2)(b) were arrested.

In the hallway outside of the apartment, officers allegedly punched both § 87(2)(b) and § 87(2)(b) (**Allegations A and B: Force, Unfounded**). Lt. Joshua Bienvenue pulled on § 87(2)(b)'s hair (**Allegation C: Force, Within NYPD Guidelines**). PO Georin Duran and PO Keyana Cumberbatch-Walters both deployed Tasers against § 87(2)(b) (**Allegation F: Force, Within NYPD Guidelines; Allegation G: Force, Subject Retired**). An officer allegedly placed a knee on § 87(2)(b)'s neck, allegedly restricting her breathing (**Allegations I and J: Force, Unfounded**). PO Duran threatened to use a Taser against § 87(2)(b) (**Allegation K: Abuse of Authority, Substantiated**).

Meanwhile, Lt. Bienvenue entered the apartment to arrest § 87(2)(b) and PO Frank Ingrao followed (**Allegations D and E: Abuse of Authority, Within NYPD Guidelines**). Lt. Bienvenue deployed a Taser against § 87(2)(b) (**Allegation H: Force, Within NYPD Guidelines**). Lt. Bienvenue attempted to Taser § 87(2)(b) a second time (**Allegation L: Force, Within NYPD Guidelines**). Lt. Bienvenue and PO Ingrao then took § 87(2)(b) to the ground (**Allegations M and N: Force, Within NYPD Guidelines**).

During this struggle, additional officers entered the apartment, including PO Andrew Burke, PO Cumberbatch-Walters, PO Tanisha Simeon, PO Miryam Ladolce, PO Vincenzo Creta, PO Duran, PO Quacy Batson, PO Paul Caleb, and PO Gurwinder Singh (**Allegation O: Abuse of Authority, Within NYPD Guidelines**). Inside of the apartment, PO Burke took § 87(2)(b) to the ground (**Allegation P: Force, Within NYPD Guidelines**). PO Burke allegedly used a chokehold against § 87(2)(b) allegedly restricting his breathing (**Allegations Q and R: Force, Unfounded**). PO Duran forced open a bedroom door (**Allegation S: Abuse of Authority, Within NYPD Guidelines**), damaging the door frame (**Allegation T: Abuse of Authority, Within NYPD Guidelines**), and allegedly striking § 87(2)(b) with the door in the process (**Allegation U: Force, Within NYPD Guidelines**). PO Simeon and PO Batson then also conducted a limited search of other areas of the apartment (**Allegations V and W: Abuse of Authority, Within NYPD Guidelines**). Officers allegedly fully searched the apartment at this time (**Allegation X: Abuse of Authority, Unfounded**).

That evening, at approximately 8:00 PM, at the 75th Precinct stationhouse, PO Simeon allegedly threatened to notify the Administration for Children's Services (**Allegation Y: Abuse of**

Authority, Within NYPD Guidelines).

At approximately 9:58 PM, officers under the supervision of Deputy Inspector Adeel Rana of the 75th Precinct executed a search warrant at § 87(2)(b) in Brooklyn (**Allegation Z: Abuse of Authority, Within NYPD Guidelines**) and recovered a firearm. During the search, officers allegedly damaged a bed frame, two closet doors, and two dressers (**Allegation AA: Abuse of Authority, Unfounded**).

§ 87(2)(b) and § 87(2)(b) were all arrested (Board Review 02 and Board Review 03 for arrest reports). § 87(2)(b) and § 87(2)(b)'s charges were later dismissed. § 87(2)(b) reported that her charges were dismissed. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

The investigation obtained 36 body-worn camera (BWC) videos pertaining to this incident (Board Review 04 for folder of all videos; Board Review 05 for summaries). The investigation also obtained cell phone videos recording by § 87(2)(b) and § 87(2)(b) (Board Review 06, 07, and 08, respectively). There is no other video evidence associated with this complaint.

Findings and Recommendations

Allegation (A) Force: At § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b)

Allegation (B) Force: At § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b)

Allegation (I) Force: At § 87(2)(b) in Brooklyn, an officer used a chokehold against § 87(2)(b)

Allegation (J) Force: At § 87(2)(b) in Brooklyn, an officer restricted § 87(2)(b)'s breathing.

§ 87(2)(b) provided a statement via telephone on November 2, 2022 (Board Review 09). He stated that when Lt. Bienvenue initiated his arrest, other officers assisted. Among them was a white male in uniform, who punched § 87(2)(b) on the back of his head approximately six times. § 87(2)(b) turned to his right and saw this officer punching him. § 87(2)(b) then also saw the same officer punching § 87(2)(b) on the back of her head.

§ 87(2)(b) provided a statement via telephone on November 1, 2022 (Board Review 10). She did not describe any officer punching her or § 87(2)(b). However, she stated that when she fell to the floor in the hallway outside of the apartment, she landed chest-down and felt an officer place a knee on her neck. This knee remained on her neck for about 10 seconds before the handcuffs were applied and about 10 seconds after the handcuffs were applied. Another knee was on her mid-back. § 87(2)(b) told the officers, "Get off of me. I can't breathe."

Lt. Bienvenue provided a statement via video teleconference on January 19, 2023 (Board Review 11), and PO Duran provided a statement at the CCRB's office on January 18, 2023 (Board Review 12). Both officers denied ever punching § 87(2)(b) or § 87(2)(b) or seeing any other officer do so. They also denied ever applying pressure to § 87(2)(b)'s neck or seeing any other officer do so.

The BWC videos which most clearly captured the officers' struggle with § 87(2)(b) and § 87(2)(b) in the hallway outside of the apartment are PO Simeon's first BWC video, between 18 minutes 1 second and 19 minutes 24 seconds (Board Review 13); PO Cumberbatch-Walters' first

BWC video, between 18 minutes 2 seconds and 19 minutes 22 seconds (Board Review 14); PO Batson's second BWC video, between 2 minutes 20 seconds and 2 minutes 59 seconds (Board Review 15); and PO Caleb's BWC video, between 18 minutes 14 seconds and 18 minutes 58 seconds (Board Review 16). None of these videos shows any officer ever punching § 87(2)(b) or § 87(2)(b). Further, taken together, these videos reveal that § 87(2)(b) did not fall chest-down; that no officer ever placed a knee on § 87(2)(b)'s neck or back; that no officer took any other action apparently likely to restrict § 87(2)(b)'s breathing; and that § 87(2)(b) never complained audibly of any difficulty breathing.

Officers prepared 20 TRI reports pertaining to this incident, none of which notes the use of hand strikes against § 87(2)(b) or § 87(2)(b) (Board Review 17).

§ 87(2)(g)

Allegation (C) Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used physical force against § 87(2)(b)

§ 87(2)(b) stated that as soon as officers moved to arrest § 87(2)(b) she felt an officer pulling her hair, and her head was pulled back. § 87(2)(b) believed that the officer who pulled her hair was the same officer who later pointed a Taser at her (PO Duran, as addressed below).

Lt. Bienvenue's own BWC fell to the ground at the beginning of the struggle, and his video is of little investigative value (Board Review 18). However, other BWC videos reveal that it was Lt. Bienvenue who pulled § 87(2)(b)'s hair. In PO Cumberbatch-Walters' first BWC video, the arrests begin at 18 minutes 6 seconds (Board Review 14). Lt. Bienvenue approaches § 87(2)(b) who leans forward, tenses up, and attempts to push officers away. At the same time, § 87(2)(b) positions herself between Lt. Bienvenue and § 87(2)(b) bracing herself against the door frame. Lt. Bienvenue tries to reach in front of § 87(2)(b) to get to § 87(2)(b) but is unsuccessful (visible when viewing frame-by-frame at 18 minutes 16-17 seconds; press the "E" key in VLC). At 18 minutes 17 seconds, Lt. Bienvenue takes hold of and pulls on § 87(2)(b)'s ponytail.

The same events are captured from another angle in PO Ingrao's WC video beginning at 18 minutes 12 seconds (Board Review 19). At 18 minutes 25 seconds, Lt. Bienvenue reaches behind § 87(2)(b)'s head. At 18 minutes 34 seconds, Lt. Bienvenue's hand is visible on § 87(2)(b)'s left shoulder, revealing that he pulled on her hair for approximately nine seconds, or less.

Lt. Bienvenue stated that he did not remember pulling § 87(2)(b)'s hair. However, he described the context of the arrests and explained why he and other officers used force under these circumstances. Lt. Bienvenue stated that he and PO Duran, his operator, received a report that a man had a gun. When Lt. Bienvenue arrived on scene, he spoke first with three complainants/victims, construction workers who all said that a man had menaced them with firearm over a dispute about installing a fence. These workers pointed out the window where the alleged perpetrator had appeared with a gun. While Lt. Bienvenue was interviewing them, § 87(2)(b) appeared in the window and the workers pointed to him, identifying him as the perpetrator. § 87(2)(b) did not visibly have a gun, but Lt. Bienvenue entered the apartment building intending to arrest § 87(2)(b) on the basis of the workers' testimony. When asked, § 87(2)(b) denied owning a gun or having threatened anyone with a gun, and at no time during the subsequent struggles did Lt. Bienvenue know where the alleged gun was located. When Lt. Bienvenue reached out to grab § 87(2)(b) § 87(2)(b) resisted arrest by flailing his arms, tensing up, and grabbing Lt. Bienvenue's police radio microphone cord. Additionally, § 87(2)(b) positioned herself between Lt. Bienvenue and § 87(2)(b) preventing Lt.

Bienvenue from arresting § 87(2)(b) – she “blocked” Lt. Bienvenue from reaching § 87(2)(b). This appeared intentional. Lt. Bienvenue had to go around her to reach § 87(2)(b).

Although Lt. Bienvenue denied pulling § 87(2)(b)'s hair, despite BWC video showing that he did so, note that Lt. Bienvenue was interviewed approximately 30 months after the incident.

Due to the late reporting of this incident, NYPD Event records and radio communications pertaining to this incident were expired. However, a Resource Recap Log and numerous memo books confirm that this job was relayed as a 10-52F (dispute with a firearm) (Board Review 17). Additionally, BWC videos confirm that three construction workers stated that § 87(2)(b) had pointed a gun at them from his window and identified § 87(2)(b) when he appeared in the window. See, for example, PO Simeon's first BWC video, between 1 minute 10 seconds and 3 minutes 9 seconds (Board Review 13). Lastly, Lt. Bienvenue's BWC video confirms at 12 minutes 39 seconds that § 87(2)(b) did not acknowledge having threatened anyone with a gun; at 13 minutes 19 seconds that when Lt. Bienvenue asked for consent to search their home, § 87(2)(b) and § 87(2)(b) refused; and that at 13 minutes 26 seconds, § 87(2)(b) denied ownership of a gun (Board Review 18).

Per NYPD Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Further, any application or use of force must be reasonable under the circumstances (Board Review 20).

Here, Lt. Bienvenue and his fellow officers initiated § 87(2)(b)'s arrest with the understanding that § 87(2)(b) was in possession of a gun and had used it to menace others. The officers did not know where the alleged gun might be located. § 87(2)(b) immediately resisted arrest, and § 87(2)(b) blocked Lt. Bienvenue's path to § 87(2)(b) § 87(2)(g).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (D) Abuse of Authority: Lieutenant Joshua Bienvenue entered § 87(2)(b) in Brooklyn.

Allegation (E) Abuse of Authority: Police Officer Frank Ingrao entered § 87(2)(b) in Brooklyn.

It is undisputed that Lt. Bienvenue entered § 87(2)(b) in Brooklyn, followed by PO Ingrao.

§ 87(2)(b) stated that Lt. Bienvenue was in the lead and entered the apartment first, and that his officers followed him (Board Review 10). § 87(2)(b) for his part, did not see how officers first entered the apartment. He stated that after he was Tasered (addressed below), he saw that an officer was inside of the apartment and had handcuffed § 87(2)(b) (Board Review 09).

§ 87(2)(b) stated that he first heard § 87(2)(b) shouting and heard officers saying, “Calm down,” and, “Stop resisting” (Board Review 21). § 87(2)(b) picked up his phone and went to the apartment door. Officers were struggling with § 87(2)(b) and § 87(2)(b) in the hallway outside, and the officers were trying to enter the apartment. § 87(2)(b) and § 87(2)(b) were physically trying to prevent the officers from entering the apartment, and § 87(2)(b) told § 87(2)(b) to close the apartment door. § 87(2)(b) tried to push the door closed while also

continuing to record a video with his cell phone in his hand. § 87(2)(b) also helped push the door closed. Lt. Bienvenue was pushing against the apartment door, and officers said to § 87(2)(b) “Stop resisting,” and multiple times, “Let go of the door.” Finally, after § 87(2)(b) was Tasered (addressed below), officers opened the apartment door and entered.

§ 87(2)(b) stated that as he and § 87(2)(b) tried together to close the apartment door, officers said, “Let us in” (Board Review 22). An officer whom § 87(2)(b) could not describe then then “slipped in” through the apartment door.

As detailed above, Lt. Bienvenue stated that he initially intended to arrest only § 87(2)(b) (Board Review 11). Three construction workers had alleged that § 87(2)(b) had menaced them with a gun and identified § 87(2)(b) when he appeared in the window. Subsequently, inside of the building, § 87(2)(b) denied ownership of a gun, and Lt. Bienvenue and his officers did not know where the alleged gun might be located. Lt. Bienvenue stated that as he spoke with § 87(2)(b) § 87(2)(b) crossed the threshold of the door to his apartment, moving into the hallway. Lt. Bienvenue then initiated § 87(2)(b) s arrest. However, § 87(2)(b) resisted by flailing his arms and tensing up, and § 87(2)(b) moved to blocked Lt. Bienvenue from reaching § 87(2)(b) During this struggle, Lt. Bienvenue found himself behind § 87(2)(b) in the doorway to the apartment. Lt. Bienvenue was on the threshold, so that part of his body was in the apartment and part was in the hallway. (According to Lt. Bienvenue, this was not intentional. If § 87(2)(b) had not resisted, Lt. Bienvenue would not have entered the apartment at this time.) § 87(2)(b) then called for § 87(2)(b) and § 87(2)(b) to close the apartment door. § 87(2)(b) and § 87(2)(b) appeared from inside the apartment, and § 87(2)(b) tried to close the door, striking Lt. Bienvenue’s back with it. As such, Lt. Bienvenue believed that § 87(2)(b) would be arrested for, at minimum, Harassment, but also possibly Obstructing Governmental Administration and attempted second degree Assault.

PO Ingrao’s BWC video confirms the key aspects of Lt. Bienvenue’s testimony and reveals that PO Ingrao followed Lt. Bienvenue into the apartment to assist in arresting § 87(2)(b) (Board Review 19). This video also captures Lt. Bienvenue’s physical position more clearly than does Lt. Bienvenue’s own BWC video. In PO Ingrao’s video, the struggle begins at 18 minutes 12 seconds. At 18 minutes 22 seconds, § 87(2)(b) moves between Lt. Bienvenue and § 87(2)(b) Lt. Bienvenue is positioned on the threshold as he struggles to reach § 87(2)(b) § 87(2)(b) then appears within the apartment, and at 18 minutes 30 seconds, § 87(2)(b) instructs § 87(2)(b) multiple times, “Close the door” and “Lock the door.” At 18 minutes 32 seconds, § 87(2)(b) pushes the door closed, and the door comes into contact with Lt. Bienvenue, who stands within the doorway. Lt. Bienvenue then pushes the door open, drawing his Taser. At 18 minutes 35 seconds, PO Ingrao also moves into the doorway, partially entering the apartment as Lt. Bienvenue instructs § 87(2)(b) “Get back.” At 18 minutes 44 seconds, PO Ingrao moves fully into the apartment with Lt. Bienvenue and takes hold of § 87(2)(b)

§ 87(2)(a) FCT § 380.1

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Per the ruling in *People v. Levan*, 62 N.Y.2d 139 (1984), a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place (Board Review 23). Therefore, officers who have initiated an arrest may pursue a suspect into their home,

in “hot pursuit,” in order to effect the arrest.

Per the ruling in *People v. Doll*, 21 N.Y.3d 665 (2013), which articulates the “emergency doctrine,” officers may make warrantless entry where 1) the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, 2) the search is not primarily motivated by intent to arrest and seize evidence, and 3) there exists some reasonable basis to associate the emergency with the area or place to be entered and/or searched (Board Review 24).

Lt. Bienvenue initiated § 87(2)(b)'s arrest when § 87(2)(b) stood just outside of his apartment, in the public, shared hallway § 87(2)(b). § 87(2)(b) then resisted arrest, and § 87(2)(b) interfered in the arrest, directly on the threshold of their apartment door. During the struggle with § 87(2)(b) Lt. Bienvenue moved onto the threshold and partially into the apartment. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

As Lt. Bienvenue struggled with § 87(2)(b) on the threshold, § 87(2)(b) struck Lt. Bienvenue with the apartment door. Lt. Bienvenue was caught between § 87(2)(b) and § 87(2)(b) the apartment door, and § 87(2)(b) who was positioned within the apartment. The officers had information that there was a gun in the apartment or in the possession of one of the civilians in question; § 87(2)(b) emerged from an unseen area of the apartment § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (F) Force: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran used a non-lethal restraining device on § 87(2)(b)

Allegation (G) Force: At § 87(2)(b) in Manhattan, Police Officer Keyana Cumberbatch-Walters used a non-lethal restraining device on § 87(2)(b)

It is undisputed that PO Duran and PO Cumberbatch-Walters used Tasers against § 87(2)(b)

§ 87(2)(b) stated that officers initially took hold of him by the arms and around his waist. § 87(2)(b) escaped the officers' grasp and took hold of Lt. Bienvenue, who had grabbed § 87(2)(b). He took hold of Lt. Bienvenue's torso, from behind, and pulled him away from § 87(2)(b). As § 87(2)(b) did so, an officer discharged a Taser at § 87(2)(b)'s back. The prongs struck his upper and lower back. § 87(2)(b) heard this officer say, “Stop resisting.” § 87(2)(b) replied that he was not resisting and fell to one knee. § 87(2)(b) tried to stand up again, but felt a Taser shock him again. § 87(2)(b) fell to the ground, placed his hands behind his back, and was handcuffed (Board Review 09).

§ 87(2)(b) stated that as the struggle began, she used her hands to push officers away from the

apartment door, while § 87(2)(b) did the same. The apartment door swung open due to the struggle, at which time § 87(2)(b) came to the apartment door and tried to push it closed from inside of the apartment. Two officers then drew their Tasers and discharged the Tasers at § 87(2)(b) who was trying to pull an officer away from § 87(2)(b). § 87(2)(b) could not see exactly how this transpired because § 87(2)(b) and all the officers were behind her (Board Review 10).

BWC videos captured these events. In PO Cumberbatch-Walters' first BWC video (Board Review 14), the arrest begins at 18 minutes. § 87(2)(b) leans forward, tenses up, and attempts to push officers away. § 87(2)(b) positions herself between § 87(2)(b) and Lt. Bienvenue, and § 87(2)(b) attempts to close the apartment door, with Lt. Bienvenue in the door's path. PO Duran is visible holding a Taser in his right hand, and a Taser is visible in PO Cumberbatch-Walters' hand, at 18 minutes 33 seconds. At 18 minutes 35 seconds, both PO Cumberbatch-Walters and PO Duran discharge their Tasers at § 87(2)(b).

NYPD records indicate that PO Cumberbatch-Walters retired from NYPD service on October 18, 2022 (Board Review 25).

PO Duran stated that he acted on the belief that § 87(2)(b) might be in possession of a gun. Additionally, § 87(2)(b) was a large, strong man, and it took numerous officers to overcome his resistance. PO Duran told § 87(2)(b) to give up his arms and to stop resisting, but § 87(2)(b) did not do so. For these reasons, PO Duran drew his Taser, yelled out, "Taser," and discharged his Taser at § 87(2)(b). PO Cumberbatch-Walters also Tasered § 87(2)(b) at the same time. When PO Duran used his Taser, he was not aware that another officer was simultaneously preparing to Taser § 87(2)(b). PO Duran did not intentionally deploy what he knew to be a second Taser at the same time. He did not see PO Cumberbatch-Walters pointing her Taser before he deployed his own (Board Review 12).

Note that although § 87(2)(b) did not provide his weight to the CCRB, his arrest report listed him as standing 5'9" tall and weighing 190 pounds (Board Review 02).

Taser Data Sheets for the Tasers assigned to PO Cumberbatch-Walters (serial number X13005E8X) and PO Duran (X13007AE4) reveal that they each triggered their Taser once, for duration of five seconds (Board Review 26). Additionally, both Taser discharges were documented in TRI reports (Board Review 17; § 87(2)(b) and § 87(2)(b)).

Per NYPD Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Further, any application or use of force must be reasonable under the circumstances (Board Review 20).

Per NYPD Patrol Guide Procedure 221-08, an officer should only use a CEW against a person who is actively resisting or exhibiting active aggression, or to prevent an individual from physically injuring himself or another person present (Board Review 27).

§ 87(2)(b) and § 87(2)(b) both acknowledged that § 87(2)(b) resisted arrest, and BWC videos captured him doing so. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used a non-lethal restraining device on § 87(2)(b)

Allegation (L) Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used a non-lethal restraining device on § 87(2)(b)

Allegation (M) Force: At § 87(2)(b) in Brooklyn, Lieutenant Joshua Bienvenue used physical force against § 87(2)(b)

Allegation (N) Force: At § 87(2)(b) in Brooklyn, Police Officer Frank Ingrao used physical force against § 87(2)(b)

§ 87(2)(b) stated that, as he and § 87(2)(b) pushed against the door to keep officers out, Lt. Bienvenue was pushing against the apartment door from the outside. Officers were saying to § 87(2)(b) and § 87(2)(b) “Stop resisting,” and multiple times, “Let go of the door.” § 87(2)(b) was also holding his cell phone in his hand. Lt. Bienvenue then aimed a Taser through an opening between the door and the door frame and discharged the Taser. Both prongs struck § 87(2)(b) on the left side of his chest, on the ribs. § 87(2)(b) felt the electric shock of the Taser. He was in pain, lost control of his legs, and was no longer able to hold the door. The Taser prongs did not feel like they stuck in § 87(2)(b)'s skin, but they left holes in his shirt. Officers then opened the door and entered the apartment. Two other officers approached § 87(2)(b) who was falling to his knees because of being Tasered. Each officer took hold of one arm and pulled them behind § 87(2)(b)'s back. § 87(2)(b) tried to shake the officers off by shaking his arms, pulling his arms away, and pushing the officers away, but was unable to overcome them. The officers said, “Stop resisting,” and, “You’re making it worse for yourself.” They pushed him against wall, and his left knee struck the wall. These two officers then handcuffed § 87(2)(b). § 87(2)(b) did not describe being Tasered a second time (Board Review 21).

Note that § 87(2)(b) was § 87(2)(b) old at the time of this incident. He stated that he stood 5’11” tall as of the date of the incident.

Lt. Bienvenue (Board Review 11) stated that as he struggled with § 87(2)(b) in the doorway, § 87(2)(b) called for his sons, who were in the apartment, to come and close the apartment door. Lt. Bienvenue feared that one of § 87(2)(b)'s sons might have the gun. § 87(2)(b) and § 87(2)(b) appeared from inside the apartment. Lt. Bienvenue did not see § 87(2)(b) before this. He had no prior familiarity with § 87(2)(b). § 87(2)(b) tried to slam the door on Lt. Bienvenue’s back. The door struck Lt. Bienvenue’s back but did not injure him.

§ 87(2)(b) was a teenager, about 6’0” tall (“A head taller than me,” per Lt. Bienvenue, who is 5’6”). § 87(2)(b)'s age did not factor into the following interactions. § 87(2)(b)'s size, offense, and manner of resistance were the factors which informed Lt. Bienvenue’s decisions. Additionally, § 87(2)(b) was holding a black object in one hand. Lt. Bienvenue could not tell what it was and thought it might have been a gun. Later, upon review of BWC videos, Lt. Bienvenue saw that it was a phone.

Lt. Bienvenue disengaged with § 87(2)(b) and engaged with § 87(2)(b). Lt. Bienvenue entered the apartment to arrest § 87(2)(b) at this time because § 87(2)(b) had slammed the door on Lt. Bienvenue’s back. This constituted harassment, but also possibly OGA and attempted Assault 2. Lt. Bienvenue tried to control § 87(2)(b)'s arms with his hands but was unable to do so, as § 87(2)(b) flailed them. Lt. Bienvenue was trying to handcuff § 87(2)(b) but § 87(2)(b) resisted. As noted, Lt. Bienvenue did not know if § 87(2)(b) had a gun. Lt. Bienvenue drew his

Taser at some point but did not remember when he did so. Lt. Bienvenue then Tasered § 87(2)(b). He did not remember where on § 87(2)(b)'s body the Taser prongs made contact. He did not know if the Taser prongs made full contact. He did not remember specifically how § 87(2)(b) responded to being Tasered, but § 87(2)(b) did not stop resisting when Tasered.

At the same time, § 87(2)(b) began to interfere with other officers arresting § 87(2)(b) and § 87(2)(b). Lt. Bienvenue briefly tried to assist in overcoming § 87(2)(b)'s resistance, but then noticed § 87(2)(b) was still struggling with PO Ingrao. PO Ingrao was holding § 87(2)(b)'s arms back but was still struggling to handcuff § 87(2)(b) as § 87(2)(b) continued to resist in the same manner. Lt. Bienvenue triggered his Taser again to Taser § 87(2)(b) again, in order to handcuff him more easily. However, § 87(2)(b) did not freeze up or fall over. The Taser did not seem effective, and § 87(2)(b) continued to resist. Lt. Bienvenue did not use a second Taser cartridge. He did not remember if the Taser prongs from his first Taser deployment were still attached to § 87(2)(b)'s body. Lt. Bienvenue and PO Ingrao were finally able to bring § 87(2)(b) to the ground and get him under control, handcuff him, and arrest him.

As noted, Lt. Bienvenue's BWC fell to the ground and did not capture his struggle with § 87(2)(b) (Board Review 18). The video which most clearly captured his interactions with § 87(2)(b) is PO Ingrao's (Board Review 19).

In PO Ingrao's BWC video, at 18 minutes 29 seconds, as Lt. Bienvenue and other officers struggle with § 87(2)(b) and § 87(2)(b) in the doorway, § 87(2)(b) wearing a pink t-shirt, appears in the apartment. § 87(2)(b) instructs him to close the door, and § 87(2)(b) attempts to close the door, striking Lt. Bienvenue on the back. Lt. Bienvenue points his Taser into the apartment, behind him. At 18 minutes 43 seconds, officers Taser § 87(2)(b) outside of the apartment. Lt. Bienvenue and PO Ingrao then fully enter the apartment at 18 minutes 45 seconds. PO Ingrao is positioned immediately behind § 87(2)(b). At 18 minutes 49 seconds, the video captures the sound of Lt. Bienvenue discharging his Taser at § 87(2)(b).

PO Cumberbatch-Walters' first BWC video captures § 87(2)(b) being Tasered from another angle, between 18 minutes 40 seconds and 18 minutes 50 seconds (Board Review 14).

Returning to PO Ingrao's BWC video: At 18 minutes 54 seconds, PO Ingrao pulls § 87(2)(b) away from the doorway and says, "Stop." PO Burke then approaches § 87(2)(b) taking hold of him from behind. At 19 minutes 14 seconds, Lt. Bienvenue says twice to § 87(2)(b) "Stop resisting." At 19 minutes 28 seconds, Lt. Bienvenue shouts, "Stop resisting," and moves toward § 87(2)(b) as that struggle escalates in intensity. PO Ingrao also appears to pull § 87(2)(b) back. At 19 minutes 33 seconds, the sound of a Taser clicking is faintly audible. At 19 minutes 38 seconds, Lt. Bienvenue and PO Ingrao say to § 87(2)(b) "Put your hands behind your back." They try together to pull § 87(2)(b)'s arms back, but § 87(2)(b) remains tensed. At 19 minutes 50 seconds, Lt. Bienvenue and PO Ingrao, together, pull § 87(2)(b) down chest-first to the floor. § 87(2)(b) yells, "Ow, my knee." Lt. Bienvenue is then able to handcuff § 87(2)(b).

Although PO Ingrao's BWC video shows that PO Burke entered the apartment as PO Ingrao was struggling with § 87(2)(b), PO Burke's second BWC video reveals that his BWC fell off before he entered the apartment (Board Review 28).

No other video more clearly captured the struggle involving § 87(2)(b), Lt. Bienvenue, and PO Ingrao.

Lt. Bienvenue prepared a memo book entry pertaining to this incident, which includes the following: § 87(2)(b) and § 87(2)(b) called for their son to close the door on me. § 87(2)(b) slammed door on me and proceeded to try to interfere with arrest. I deployed my taser and Officer Ingrao was able to pull him back” (Board Review 17). A TRI report was also prepared, according to which, “During the struggle both § 87(2)(b) and § 87(2)(b) called for their children. § 87(2)(b) and § 87(2)(b) came and slammed the door on officer's back but were unable to close the door. Officers then attempted to arrest § 87(2)(b) and he flailed and stiffened arms and attempted to interfere with arrest of parents. Lieutenant Bienvenue 945511 also then deployed a CEW when § 87(2)(b) came charging at officers with object in hand and was able to successfully handcuff § 87(2)(b) (Board Review 17; § 87(2)(b)). A second TRI report also confirms that Lt. Bienvenue used his Taser against § 87(2)(b) reportedly to overcome Resistance or aggression, in self-defense, and in defense of other officers (Board Review 17; § 87(2)(b)). Lastly, a Taser Data Sheet for the Taser assigned to Lt. Bienvenue (serial number X13008H84) confirms that he triggered his Taser twice, each for a duration of five seconds (Board Review 26).

§ 87(2)(a) FCT § 380.1

As above, per NYPD Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Further, any application or use of force must be reasonable under the circumstances (Board Review 20).

Additionally, NYPD Patrol Guide Procedure 221-08 dictates that an officer should only use a CEW against a person who is actively resisting or exhibiting active aggression, or to prevent an individual from physically injuring themselves or another person present (Board Review 27).

§ 87(2)(g)

Allegation (K) Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that § 87(2)(b) she reviewed a BWC video which showed an officer pointing a Taser at her face. She did not describe any real-time recollection of this taking place.

BWC videos reveal that it was PO Duran who pointed a Taser at § 87(2)(b)'s upper body. PO Duran's own BWC video reveals that his BWC fell off at the beginning of the struggle and did not capture these events (Board Review 29). However, PO Simeon's video captured what took place.

In PO Simeon's first BWC video (Board Review 13), at 18 minutes 34 seconds, PO Duran and PO Cumberbatch-Walters Taser § 87(2)(b) (addressed above). § 87(2)(b) falls to the ground, into a seated position, at 18 minutes 37 seconds. At 19 minutes, § 87(2)(b) rolls over onto his chest and places his hands behind his back, allowing officers to handcuff him. At the same time, § 87(2)(b) remains in a seated position, her back against the wall. She does not continue to struggle against any officer at this time. PO Duran holds onto her right wrist with his left hand. In his right hand, he holds his Taser. At 19 minutes 4 seconds, PO Duran loads a new cartridge into his Taser. He then points the Taser at § 87(2)(b) and says, "You're going to get Tased." The Taser's laser dot is visible on § 87(2)(b)'s chest. She sits still, § 87(2)(b) says, "That's it. I got weed in my house." PO Duran, still pointing the Taser at § 87(2)(b) says, "I don't care about weed. Nobody cares about weed anymore." Still pointing the Taser at § 87(2)(b)'s upper body, PO Duran says, "Put your hands behind your back or you're going to get Tased." § 87(2)(b) continues to sit still. PO Simeon then moves past § 87(2)(b) and PO Duran, who go out of frame.

PO Duran stated that when § 87(2)(b) fell, § 87(2)(b) also fell into a seated position. At the same time, PO Duran fell and landed on his knees, and was then positioned immediately next to § 87(2)(b). § 87(2)(b) § 87(2)(b) had committed OGA by blocking the officers from approaching the doorway. § 87(2)(b) was not initially cooperative in being handcuffed. PO Duran told her that she was under arrest, but she did not give up her hands. PO Duran believed § 87(2)(b) had her hands at her chest, tight to her body. PO Duran pointed his Taser at her chest and issued verbal commands simultaneously. He pointed the Taser at her because he was already holding it and because he believed the warning would be effective. If § 87(2)(b) continued to resist arrest, he would have deployed the Taser. When § 87(2)(b) saw the Taser, she stopped resisting and gave up her arms. PO Duran believed that he then handcuffed § 87(2)(b).

PO Duran reviewed the above-detailed portion of PO Simeon's first BWC video during his CCRB interview. PO Duran maintained that he never pointed the Taser at § 87(2)(b)'s face or head. He also stated that a Taser is meant to be deployed at "big muscle areas," and that he was trained to deploy a Taser at an individual's back. He could not access § 87(2)(b)'s back and § 87(2)(b)'s chest was "the biggest part that's exposed."

Per NYPD Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Further, any application or use of force must be reasonable under the circumstances (Board Review 20).

Per NYPD Patrol Guide Procedure 221-08, an officer should only use a CEW against a person who is actively resisting or exhibiting active aggression, or to prevent an individual from physically injuring themselves or another person present. This procedure also states that it is strictly prohibited to

use the CEW on persons who passively resist (e.g., going limp and/or offering no active physical resistance) (Board Review 27).

PO Simeon's BWC video shows that § 87(2)(b) offered no physical resistance after she fell to the ground. She sat still and did not struggle against PO Duran. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (O) Abuse of Authority: Officers entered § 87(2)(b) in Brooklyn.

Allegation (S) Abuse of Authority: Police Officer Georin Duran searched § 87(2)(b) in Brooklyn.

Allegation (T) Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran damaged § 87(2)(b)'s property.

Allegation (U) Force: At § 87(2)(b) in Brooklyn, Police Officer Georin Duran hit § 87(2)(b) against an object.

Allegation (V) Abuse of Authority: Police Officer Tanisha Simeon searched § 87(2)(b) in Brooklyn.

Allegation (W) Abuse of Authority: Police Officer Quacy Batson searched § 87(2)(b) in Brooklyn.

It is undisputed that after Lt. Bienvenue and PO Ingrao entered the apartment to arrest § 87(2)(b) (addressed above), numerous other officers entered the apartment. These officers included PO Burke, PO Cumberbatch-Walters, PO Simeon, PO Ladolce, PO Creta, PO Duran, PO Batson, PO Caleb, and PO Singh.

§ 87(2)(b) (Board Review 10) stated that after she and § 87(2)(b) were handcuffed, Lt. Bienvenue and all the officers other than those who had handcuffed § 87(2)(b) and § 87(2)(b) entered the apartment. § 87(2)(b) remained on the second-floor landing for two or three minutes. From her position outside of the apartment, she could not see what happened inside. Officers then brought her out to the street. Later, § 87(2)(b) learned that her daughter § 87(2)(b) had recorded a cell phone video from inside of a bedroom. § 87(2)(b) learned from § 87(2)(b) that as her daughters attempted to hold the bedroom door closed, an officer pushed the door open, and the door struck § 87(2)(b) on the leg. § 87(2)(b) did not witness this herself.

§ 87(2)(b) also described officers entering the apartment. He testified that this took place only after he was Tasered (Board Review 21).

§ 87(2)(b) stated that Lt. Bienvenue entered the apartment first, followed by an officer identified by the investigation as PO Burke, with whom § 87(2)(b) struggled (addressed below) (Board Review 22). Additional officers then entered the apartment, assisting PO Burke in handcuffing § 87(2)(b). Additionally, § 87(2)(b) alleged that at some point, officers damaged the wooden frame of his sisters' bedroom door.

§ 87(2)(b) initially provided an unclear, pixelated version of the video which § 87(2)(b) recorded from inside of a bedroom § 87(2)(b). § 87(2)(b) later provided a clearer version of the video, which she recorded on another phone's screen using her own cell phone (Board Review 08). In the second, clearer version of the video, § 87(2)(b) and

§ 87(2)(b) stand behind a closed bedroom door. At 1 minutes 22 seconds, § 87(2)(b) opens the bedroom door. At 1 minute 31 seconds, PO Duran appears to see § 87(2)(b) and begins to approach. § 87(2)(b) closes the door. At 1 minute 34 seconds, PO Duran says, “Open the door. Open the door, or it will be kicked down.” The door is then forced open, as § 87(2)(b) stands just behind it. The video does not clearly show if the door strikes § 87(2)(b) but she cries out. PO Duran stands in the doorway and asks how old the two girls are. The video ends.

Numerous BWC videos clarified which officers entered the apartment, when they entered, and the actions they took upon entering the apartment.

PO Ingrao’s BWC video (Board Review 19) shows that PO Burke (whose own BWC had fallen off) was the first officer to enter after Lt. Bienvenue and PO Ingrao. At 18 minutes 55 seconds, PO Burke enters and approaches § 87(2)(b) as officers are arresting § 87(2)(b) and § 87(2)(b) in the hallway outside (10:29:05 AM).

In PO Simeon’s first BWC video (Board Review 13), PO Burke enters the apartment at 18 minutes 47 seconds (again, 10:29:05 AM). He approaches § 87(2)(b) from behind and holds onto § 87(2)(b)’s arms. Both stand still. PO Simeon and PO Cumberbatch-Walters handcuff § 87(2)(b) and then, at 19 minutes 22 seconds, as PO Burke and § 87(2)(b) begin to struggle in the apartment’s kitchen, PO Cumberbatch-Walters and PO Simeon enter the apartment (10:29:39 AM). Another officer – PO Ladolce – follows them into the kitchen. PO Simeon, PO Cumberbatch-Walters, and PO Ladolce assist PO Burke in handcuffing § 87(2)(b). At 19 minutes 38 seconds, PO Creta enters the apartment as officers begin to handcuff § 87(2)(b) (10:29:56 AM). PO Duran then enters the apartment, at 20 minutes 17 seconds (10:30:35 AM). At 20 minutes 51 seconds (10:31:09 AM), PO Duran sees § 87(2)(b) open and then close a bedroom door. At 21 minutes, PO Duran forces the bedroom door open with his shoulder and then leads § 87(2)(b) and § 87(2)(b) out of the bedroom. At 21 minutes 23 seconds (10:31:42 AM), an officer asks, “Who else is in this apartment? Anybody else? Because she was just hiding in there.” In response, at 21 minutes 31 seconds (10:31:49 AM), PO Simeon proceeds down a hallway toward the rear of the apartment. She opens a closets door and checks inside. She opens a bedroom door, enters the bedroom, and then checks the inside of an on-suite bathroom. PO Simeon then exits the apartment.

PO Batson’s second BWC video (Board Review 15) reveals, at 3 minutes 54 seconds, that he entered the apartment when PO Duran knocked at the front bedroom door, and an officer announced, “There’s somebody else in the apartment,” or, “...in another room” (10:31:17 AM). Then, at 4 minutes 34 seconds, PO Batson follows PO Simeon, who checks within a rear-bedroom. At 4 minutes 44 seconds (10:32:03 AM), PO Batson checks within another rear bedroom and announces that it is clear. PO Batson also then checks within a bathroom and says that it is clear. PO Batson then also exits the apartment.

Lastly, PO Caleb and PO Singh’s BWC videos reveal that they followed Lt. Bienvenue into the apartment, and that PO Caleb said to PO Singh, “Don’t let anybody in here” (PO Caleb’s BWC video at 22 minutes 14 seconds and PO Singh’s BWC video at 21 minutes 31 seconds; both at 10:33:32 AM). PO Caleb and PO Singh also briefly inspect the interiors of the rear bedrooms. They then return to the front of the apartment, where PO Duran waits with § 87(2)(b) and § 87(2)(b).

As noted above, Lt. Bienvenue (Board Review 11) stated that he did not intentionally enter the apartment, and that if § 87(2)(b) had surrendered at the doorway, Lt. Bienvenue would not have entered. However, after the arrests were effected, Lt. Bienvenue and his officers still did not know where the gun was located. Officers conducted a “safety sweep” of the apartment to make sure

there were no other children present and that no one was hiding with a gun. Additionally, officers had to “freeze” the location – secure it until they could obtain and execute a search warrant for the alleged firearm. Even if § 87(2)(b) had surrendered at the door, officers would have had to secure the location until they could obtain and execute a search warrant. (Recall that Lt. Bienvenue asked for consent to search the apartment, and that § 87(2)(b) and § 87(2)(b) declined.) Lt. Bienvenue also confirmed that officers remained on scene after the arrests, but Lt. Bienvenue did not remember which officers did so.

PO Duran (Board Review 12), for his part, stated that after § 87(2)(b) and § 87(2)(b) were handcuffed, he entered the apartment to make sure the situation was safe. There were officers inside and a gun was still unaccounted for. PO Duran did not know if there were other individuals within the apartment who might have access to that weapon. He had to “clear” the apartment – to locate all persons inside and make sure the scene was safe. Upon entry, PO Duran saw open doors to his left. To his right, he saw a closed door. He approached and found the door locked. PO Duran knocked and told the individual(s) inside to open the door. He heard movement inside, but no one inside opened the door. PO Duran did not know who was inside and did not know where they were positioned inside. He believed it was possible someone was inside with a gun. For this reason, PO Duran hit his shoulder against the door and forced the door open. PO Duran did not know if this damaged the door or its frame in any way. Inside, PO Duran saw two juvenile females. He did not intend to hit either female with the door. He did not feel if the door hit either of them, and neither ever complained that the door hit them. PO Duran had them exit and sit on the sofa.

Note that PO Caleb’s memo book indicates that he remained to secure the apartment until 4:00 PM, when he was relieved by PO Bessen (Board Review 17).

Per the ruling in *People v. Doll*, 21 N.Y.3d 665 (2013), which articulates the “emergency doctrine,” officers may make warrantless entry where 1) the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, 2) the search is not primarily motivated by intent to arrest and seize evidence, and 3) there exists some reasonable basis to associate the emergency with the area or place to be entered and/or searched (Board Review 24).

Additionally, the ruling in *People v. Green*, 480 N.Y.S.2d 220 (1984) addressed the circumstances under which officers may conduct a “protective sweep” or “security check” – a quick and limited pass through the premises to check for third persons who may destroy evidence or pose a threat to the officers. In *Green*, officers received a report of a threat with a gun and arrested the perpetrator in his apartment based on the victim’s visual identification. (The court ruled this entry lawful due to exigent circumstances.) Neither the perpetrator nor a second individual found to be with him in the apartment was in possession of the gun. An officer then entered a bedroom, where they found the gun in question. The court noted that the officer had probable cause to believe the weapon was in the apartment, and while he did not know who else was in the apartment, he knew he had encountered at least two people in the apartment who he was unaware would be there when he entered. Under these circumstances, the officer had a right to conduct a security check of the premises to search for other persons who could pose a threat to the safety of the officers present. Under such circumstances, the court ruled, immediately following an arrest, officers may conduct a cursory search that is intended to uncover only persons, not items, and that once the security check has been completed and the premises secured, no further search is permitted until a warrant is obtained (Board Review 31).

As addressed above, the officers here had information that there was a gun in the apartment or in the possession of one of the civilians in question, and as officers were arresting § 87(2)(b)

§ 87(2)(b) emerged from an unseen area of the apartment, interfered with the arrest, and then struggled with Lt. Bienvenue and PO Ingrao inside of the apartment. PO Burke entered at this point, and PO Simeon, PO Cumberbatch-Walters, and PO Ladolce entered to assist as PO Burke began to struggle with § 87(2)(b) followed by PO Duran and PO Creta. § 87(2)(g)

The BWC video record shows that after arrests were effected, PO Duran saw someone within the front bedroom – someone who then closed and locked the door and refused to open it when PO Duran gave verbal orders to that effect. § 87(2)(g)

§ 87(2)(g)

Lastly, PO Caleb and PO Singh followed Lt. Bienvenue back into the apartment where PO Duran was waiting with § 87(2)(b) and § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

Allegation (P) Force: At § 87(2)(b) in Brooklyn, Police Officer Andrew Burke used physical force against § 87(2)(b)

Allegation (Q) Force: At § 87(2)(b) in Brooklyn, Police Officer Andrew Burke used a chokehold against § 87(2)(b)

Allegation (R) Force: At § 87(2)(b) in Brooklyn, Police Officer Andrew Burke restricted § 87(2)(b)'s breathing.

§ 87(2)(b) (Board Review 22) stated that both he and § 87(2)(b) tried to close the apartment door before Lt. Bienvenue entered. Subsequently, when PO Burke entered the apartment, he grabbed § 87(2)(b) by the arm and gripped tightly. § 87(2)(b) asked PO Burke to let go of his arm. § 87(2)(b) then stepped away from PO Burke to remove PO Burke's hand from his arm. PO Burke grabbed § 87(2)(b) around the waist and pulled § 87(2)(b) down to the ground. § 87(2)(b) landed chest-down. PO Burke placed a knee on § 87(2)(b)'s right shoulder, which made it difficult for § 87(2)(b) to breath, because § 87(2)(b) suffers from asthma. PO Burke's knee remained on § 87(2)(b)'s shoulder for approximately one minute. PO Burke then pulled § 87(2)(b)'s hands behind his back and handcuffed him.

§ 87(2)(b) (Board Review 21) also stated that § 87(2)(b) helped him try to hold the apartment door closed as Lt. Bienvenue pushed against the door. Subsequently, after officers entered the apartment, § 87(2)(b) saw § 87(2)(b) in the kitchen “trying to keep away from” four officers who had rushed at him. § 87(2)(b) appeared ready to fight, in “defense mode.” The officers took hold of § 87(2)(b). One grabbed his legs, one grabbed his waist, and one grabbed an arm. PO Burke, behind § 87(2)(b) placed an arm around § 87(2)(b)'s neck, using a “chokehold.” The inside of PO Burke’s elbow was against the front of § 87(2)(b)'s neck. § 87(2)(b) was “gurgling” and could not speak. § 87(2)(b) estimated that the chokehold lasted two to three minutes.

Note that according to § 87(2)(b) no officer wrapped an arm around his neck or otherwise made any contact with his neck.

As noted above, PO Burke’s BWC fell to the ground as officers began to struggle with § 87(2)(b) and § 87(2)(b) (Board Review 28).

The video which most clearly captured the beginning of PO Burke’s interaction with § 87(2)(b) is PO Ladolce’s second BWC video, at 1 minutes 43 seconds (Board Review 32). PO Burke enters the apartment and approaches § 87(2)(b) who holds onto § 87(2)(b) and tries to pull § 87(2)(b) away from PO Ingrao. PO Burke takes hold of § 87(2)(b)'s left arm and attempts to pull § 87(2)(b) away from § 87(2)(b). They then go out of sight at 1 minute 56 seconds.

The same interaction is captured less clearly in PO Ingrao’s BWC video, at 18 minutes 56 seconds (Board review 19). PO Burke approaches § 87(2)(b) who stands immediately to PO Ingrao’s left as PO Ingrao holds onto § 87(2)(b) from behind. PO Burke takes hold of § 87(2)(b) and appears to pull him away from § 87(2)(b) and PO Ingrao. PO Burke and § 87(2)(b) then go out of frame. At 19 minutes 29 seconds, Lt. Bienvenue yells, “Stop resisting,” and moves toward PO Burke and § 87(2)(b) out of frame. This video does not otherwise capture the struggle between PO Burke and § 87(2)(b).

PO Cumberbatch-Walters’ first BWC video partially captured subsequent portions of the struggle between PO Burke and § 87(2)(b) (Board Review 14). At 19 minutes 21 seconds, as PO Cumberbatch-Walters enters the apartment, Lt. Bienvenue yells, “Stop resisting.” PO Burke and § 87(2)(b) then come into view, facing and grappling with one another. At 19 minutes 25 seconds, PO Burke pulls § 87(2)(b) down to the ground. When viewed frame-by-frame (press the “E” key in VLC) at 19 minutes 26 seconds, the video shows that PO Burke’s right arm is on the right side of § 87(2)(b)'s head. PO Burke does not appear to tighten his arm against § 87(2)(b)'s neck, and § 87(2)(b) does not appear to have difficulty breathing in the manner § 87(2)(b) alleged.

PO Simeon’s first BWC video mostly clearly captured the struggle once § 87(2)(b) was brought to the ground (Board Review 13). At 19 minutes 24 seconds, PO Simeon follows PO Cumberbatch-Walters into the apartment, where PO Burke pulls § 87(2)(b) to the ground. At 19 minutes 30 seconds, the video shows that together, PO Burke, PO Simeon, and PO Ladolce (immediately to PO Simeon’s right) pushed § 87(2)(b)'s chest to the floor and pulled his arms behind his back. At 19 minutes 34 seconds, PO Ladolce places her right knee on the back of § 87(2)(b)'s right shoulder for less than one second, before removing the knee and replacing it with her right hand. She also places her left hand on the back of § 87(2)(b)'s left shoulder. At 19 minutes 42 seconds, § 87(2)(b) complains, “My shoulder, my shoulder, my shoulder.” PO Ladolce immediately removes her hands from § 87(2)(b)'s shoulder and places them in the center of his

back for less than one second. The officers then lift § 87(2)(b) to his feet, at 19 minutes 52 seconds.

A TRI report was prepared regarding PO Burke's interaction with § 87(2)(b) which notes that PO Burke used a forcible takedown to overcome § 87(2)(b)'s active resistance and in defense of other officers (Board Review 17; T § 87(2)(b)).

§ 87(2)(a) FCT § 380.1

Per NYPD Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Further, any application or use of force must be reasonable under the circumstances (Board Review 20).

§ 87(2)(b) and § 87(2)(b) both stated that § 87(2)(b) assisted § 87(2)(b) in attempting to close the apartment door while officers were arresting § 87(2)(b). BWC videos show that § 87(2)(b) then tried to pull § 87(2)(b) away from PO Ingrao and then grappled with PO Burke. § 87(2)(g)

§ 87(2)(b) did not corroborate § 87(2)(b)'s allegation that PO Burke used a chokehold against him. He did not describe PO Burke pressing an arm against or wrapping an arm around his neck. Further, the video shows that although PO Burke's arms were alongside § 87(2)(b)'s head as he pulled § 87(2)(b) to the ground, he did not appear to apply pressure to § 87(2)(b)'s neck as he did so. § 87(2)(g)

Lastly, the BWC videos reveal that PO Burke did not apply his bodyweight to § 87(2)(b)'s back with a knee as alleged. PO Ladolce briefly placed her knee on § 87(2)(b)'s shoulder and then quickly replaced it with a hand. § 87(2)(g)

Allegation (X) Abuse of Authority: Officers searched § 87(2)(b) in Brooklyn.

Allegation (Z) Abuse of Authority: Deputy Inspector Adeel Rana searched § 87(2)(b) in Brooklyn.

Allegation (AA) Abuse of Authority: At § 87(2)(b) in Brooklyn, officers damaged § 87(2)(b)'s property.

It is undisputed that officers conducted a full, detailed search of § 87(2)(b) in Brooklyn.

§ 87(2)(b) stated that while she was in NYPD custody on the date of the incident, her children were released into the custody of her sister, § 87(2)(b). When § 87(2)(b) was subsequently released, she learned from § 87(2)(b) that when § 87(2)(b) visited the apartment on the afternoon of the arrests – not knowing that § 87(2)(b) and § 87(2)(b) had been arrested – she found the apartment door open and encountered officers in the kitchen. The officers would not allow § 87(2)(b) into the apartment. § 87(2)(b) described the living room and kitchen as being “tore up” already, as if officers had already conducted a full search. Additionally, when watching BWC videos during criminal proceedings, § 87(2)(b) reviewed a BWC video showing officers finding a gun on her bedroom floor. However, § 87(2)(b) admitted to § 87(2)(b) that he had hidden the gun near his shoes, in their bedroom closet. In the video in question, § 87(2)(b)'s bedroom closet was already empty. This information, coupled with that which § 87(2)(b) provided to § 87(2)(b) indicated to § 87(2)(b) that officers searched the apartment before the search warrant execution captured in the BWC video she reviewed, and that officers found the gun earlier than they reported having done so.

Additionally, § 87(2)(b) alleged that her bedroom closet door and her daughters' closet door were broken; that her bed frame was broken; that a dresser appeared to have been flipped over; and that the rear of the dresser and its drawers were broken. § 87(2)(b) also stated that the dresser in his sisters' bedroom was broken. The drawers, which were not removable, had been pulled out, damaging the dresser.

As noted above, Lt. Bienvenue testified that officers secured the apartment until the NYPD obtained and executed a search warrant later on the date of the arrests. PO Caleb's memo book indicates that he secured the apartment until 4:00 PM and was then relieved by PO Bessen, whose BWC video (Board Review 33) reveals that he was present for the search warrant execution addressed below.

PO Simeon's memo book indicates that as of 4:00 PM, she was awaiting a search warrant; that at 8:26 PM, she was present at Kings County Criminal Court, where the search warrant was approved; and that at 9:58 PM, officers made entry into the apartment to execute the search warrant (Board Review 17).

The investigation obtained a copy of the Kings County search warrant in question, § 87(2)(b) (Board Review 34: “Pre and SW,” pages 2-3). The warrant authorized officers to search § 87(2)(b) in Brooklyn, for a firearm. The warrant included a no-knock provision and could be executed at any time of day or night. The warrant was signed by the Honorable Judge § 87(2)(b) and by PO Simeon on § 87(2)(b). The associated Post-Warrant Data Entry Form (also Board Review 34; “Post Warrant”) lists the executing supervisor as Captain Rana (who is, as of the writing of this report, a deputy inspector).

11 BWC videos recorded on the evening in question reveal that officers executed the search warrant beginning at 9:59 PM (Board Review 04; beginning with PO Simeon's third BWC video and ending with PO Simeon's fourth and final BWC video). In PO Simeon's third BWC video (Board Review 35), PO Simeon enters the apartment at 55 seconds – 9:59 PM. At 1 minute 19 seconds, Deputy Inspector Rana is visible standing in the living room, wearing a uniform with a white shirt. PO Simeon then inspects the interior of each room, beginning with the front bedroom § 87(2)(b) and § 87(2)(b)s), the shared bathroom, and the rear right-side bedroom § 87(2)(b) and § 87(2)(b)s), before entering the rear left-side bedroom § 87(2)(b) and § 87(2)(b)s). The interior of the apartment is in the same apparent conditions officers left it after making arrests earlier that day. There is no visual indication that officers conducted a full search earlier in the day.

BWC videos also capture officers searching the areas where damage was alleged.

In PO Simeon's third BWC video, at 3 minutes 37 seconds, officers lift the mattress and box spring from the bed in § 87(2)(b)'s bedroom. They search among the items stored under the bed and then slowly lower the box spring and mattress onto the bed frame. There does not appear to be any damage.

In Det. Derrick Russ' BWC video (Board Review 36), between 5 minutes 44 seconds and 11 minutes 27 seconds, Det. Russ searches in, under, on, and around § 87(2)(b)'s bedroom dresser. He does not flip it over or appear to damage it in any way.

In Det. Mordechai Austrie's BWC video (Board Review 37), at 6 minutes 18 seconds, Det. Austrie begins to search within the front bedroom drawers. He searches there until 7 minutes 46 seconds. At 10 minutes 10 seconds, Det. Austrie and Det. Christopher Walsh conclude their search of the front bedroom. The video does not capture any apparent damage to the dresser or the closet door.

Det. Walsh's BWC video shows him searching the front bedroom between 3 minutes and 10 minutes 10 seconds (Board Review 38). He does not appear to damage the closet door.

Additionally, Det. Nicolas Smith's BWC video (Board Review 39) captures him searching § 87(2)(b)'s bedroom closet between 7 minutes 35 seconds and 16 minutes 38 seconds. The closet is full of clothing and shoe boxes before the search, and Det. Smith removes these items from the closet as he searches. Det. Smith locates the firearm after 14 minutes 16 seconds, within a camouflage backpack. This closet was not emptied prior to the officers' search, as § 87(2)(b) alleged, and the firearm was not recovered from the floor. Rather, it was recovered from the closet where § 87(2)(b) told § 87(2)(b) he had stored it. The video also does not capture Det. Smith ever damaging any closet door.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PO Simeon applied for and obtained a search warrant for § 87(2)(b)'s apartment. The warrant included a clause stating that it could be executed at any time of day or night, and the warrant was executed the same day it was issued. § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

BWC videos captured the entire search and reveal that no officer damaged any dresser, closet door, or § 87(2)(b)'s bed frame as alleged. § 87(2)(g)
[REDACTED]

Allegation (Y) Abuse of Authority: At the 75th Precinct stationhouse, Police Officer Tanisha Simeon threatened to notify Administration for Children's Services.

§ 87(2)(b) (Board Review 07) stated that while she waited in a cell at the 75th Precinct

stationhouse, after her arrest, PO Simeon approached § 87(2)(b) and said that if the officers searched her home with a warrant and found a gun, they would take § 87(2)(b)'s children away. PO Simeon seemed to mean that the NYPD would call the Administration for Children's Services and take § 87(2)(b)'s children from her, although PO Simeon never specifically mentioned "ACS." § 87(2)(b) believed that this conversation took place before officers executed the search warrant, as PO Simeon later visited the cell area and informed § 87(2)(b) that officers had executed a search warrant at her home and had found a gun there.

No BWC video captured interactions between PO Simeon and § 87(2)(b) in the 75th Precinct stationhouse cell area.

NYPD Patrol Guide Procedure 215-03 (Emergency Removals or Investigation and Reporting of Abused, Neglected, or Maltreated Children) stated that a child may be considered abused if a parent or person legally responsible for their care creates a substantial risk of physical injury to such child other than by accidental means which would be likely to cause death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health, and that a child may be considered neglected if a parent or legal guardian fails to exercise a minimum of care by providing the child with proper supervision or guardianship, by unreasonably or allowing harm to be inflicted, or a substantial risk thereof, by any acts of a serious nature requiring the aid of the court. Further, when the NYPD identifies such conditions, an officer is to notify the Administration for Children's Services (Board Review 40).

§ 87(2)(b) believed that this conversation took place before officers acknowledged having found a gun in the apartment. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) has been a party.
- Deputy Inspector Rana has been a member of the NYPD for 18 years and has been a subject in three other CCRB complaints with six allegations, none of which were substantiated. § 87(2)(g)
- Lt. Bienvenue has been a member of the NYPD for 15 years and has been a subject in five other CCRB complaints with nine allegations, of which three were substantiated.
 - Case #201013994 involved substantiated frisk, search, and retaliatory summons allegations. The Board's disciplinary recommendation is not visible in CTS. The NYPD imposed Instructions.
- PO Ingrao has been a member of the NYPD for 15 years and has been a subject in 10 other CCRB complaints with 22 allegations, none of which were substantiated. § 87(2)(g)
- PO Duran has been a member of the NYPD for 11 years and has been a subject in seven other CCRB complaints with 13 allegations, none of which were substantiated. § 87(2)(g)
- PO Burke has been a member of the NYPD for nine years and has been a subject in two other CCRB complaints with five allegations, none of which were substantiated. § 87(2)(g)

§ 87(2)(g)

- other CCBRB complaints with two allegations, neither of which were substantiated.
- (g)

Mediation, Civil, and Criminal Histories

- [illegible]

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

Squad: 8

Investigator:	<u>Samuel Ross</u>	<u>SI Samuel Ross</u>	<u>02/08/2023</u>
	Signature	Print Title & Name	Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 02/09/2023
Signature Print Title & Name Date

Reviewer: _____

Signature	Print Title & Name	Date
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