

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Drew Murphy	Team: Squad #10	CCRB Case #: 202302015	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/28/2023 9:00 AM	Location of Incident: 125th Street Subway Station on the 4,5 and 6 line (located at East 125th Street and Lexington Avenue	18 Mo. SOL 8/28/2024	Precinct: 25		
Date/Time CV Reported Tue, 02/28/2023 10:22 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/09/2023 10:06 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Binah Previl	06037	970781	TD 4
2. PO Rafael Payano	27619	965401	TD 4
3. PO Jean Innocent	08089	948546	TB ATU
4. PO Javier Romero	16084	958019	TB ATU
5. PO Luis Salvatierra	21695	963257	PSA 8
6. PO Estrella Cespedes	17276	967807	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. An officer			
2. PO Paul Sclafani	20950	963266	025 PCT
3. PO Vincent Degenaro	22808	969641	025 PCT
4. PO Katrayen Arsen	22703	962224	025 PCT
5. PO David Yakal	16439	970330	025 PCT
6. PO Monika Marjanovic	02769	963630	025 PCT
7. PO Shamir Chowdhury	04999	972576	025 PCT
8. PO Marcos Buruca	07034	972549	025 PCT
9. PO Nicholas Ragone	16424	959910	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Binah Previl	Abuse: Police Officer Binah Previl stopped § 87(2)(b)	
B . PO Rafael Payano	Abuse: Police Officer Rafael Payano stopped § 87(2)(b)	
C . PO Binah Previl	Force: Police Officer Binah Previl used physical force against § 87(2)(b)	
D . PO Rafael Payano	Force: Police Officer Rafael Payano used physical force against § 87(2)(b)	
E . PO Binah Previl	Abuse: Police Officer Binah Previl searched § 87(2)(b)	
F . PO Rafael Payano	Discourtesy: Police Officer Rafael Payano spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G . PO Binah Previl	Abuse: Police Officer Binah Previl threatened to arrest § 87(2)(b)	[REDACTED]
H . PO Binah Previl	Force: Police Officer Binah Previl used physical force against An Individual.	[REDACTED]
I . PO Rafael Payano	Force: Police Officer Rafael Payano used physical force against An Individual.	[REDACTED]
J . PO Rafael Payano	Discourtesy: Police Officer Rafael Payano spoke discourteously to An Individual.	[REDACTED]
K . PO Rafael Payano	Abuse: Police Officer Rafael Payano threatened to arrest An Individual.	[REDACTED]
L . PO Binah Previl	Abuse: Police Officer Binah Previl threatened § 87(2)(b) with the use of force.	[REDACTED]
M . PO Rafael Payano	Abuse: Police Officer Rafael Payano threatened § 87(2)(b) with the use of force.	[REDACTED]
N . PO Binah Previl	Force: Police Officer Binah Previl used physical force against § 87(2)(b)	[REDACTED]
O . PO Rafael Payano	Force: Police Officer Rafael Payano used physical force against § 87(2)(b)	[REDACTED]
P . PO Binah Previl	Force: Police Officer Binah Previl used physical force against § 87(2)(b)	[REDACTED]
Q . PO Binah Previl	Force: Police Officer Binah Previl used physical force against § 87(2)(b)	[REDACTED]
R . PO Binah Previl	Force: Police Officer Binah Previl tightly handcuffed § 87(2)(b)	[REDACTED]
S . PO Binah Previl	Abuse: Police Officer Binah Previl threatened to arrest § 87(2)(b)	[REDACTED]
T . PO Binah Previl	Abuse: Police Officer Binah Previl did not obtain medical treatment for § 87(2)(b)	[REDACTED]
U . PO Rafael Payano	Abuse: Police Officer Rafael Payano did not obtain medical treatment for § 87(2)(b)	[REDACTED]
V . PO Binah Previl	Abuse: Police Officer Binah Previl threatened § 87(2)(b) with the use of force.	[REDACTED]
W . PO Rafael Payano	Abuse: Police Officer Rafael Payano threatened § 87(2)(b) with the use of force.	[REDACTED]
X . PO Jean Innocent	Abuse: Police Officer Jean Innocent searched § 87(2)(b)	[REDACTED]
Y . PO Rafael Payano	Off. Language: Police Officer Rafael Payano spoke offensively regarding § 87(2)(b) actual or perceived disability.	[REDACTED]
Z . PO Rafael Payano	Discourtesy: Police Officer Rafael Payano spoke discourteously to § 87(2)(b)	[REDACTED]
AA. PO Rafael Payano	Discourtesy: Police Officer Rafael Payano spoke discourteously to § 87(2)(b)	[REDACTED]
AB. PO Binah Previl	Off. Language: Police Officer Binah Previl spoke offensively regarding § 87(2)(b) actual or perceived disability.	[REDACTED]
AC. PO Binah Previl	Discourtesy: Police Officer Binah Previl spoke discourteously to § 87(2)(b)	[REDACTED]
AD. PO Binah Previl	Abuse: Police Officer Binah Previl improperly used his body-worn camera.	[REDACTED]
AE. PO Rafael Payano	Abuse: Police Officer Rafael Payano improperly used his body-worn camera.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
AF. PO Jean Innocent	Abuse: Police Officer Jean Innocent improperly used his body-worn camera.	[REDACTED]
AG. PO Javier Romero	Abuse: Police Officer Javier Romero improperly used his body-worn camera.	[REDACTED]
AH. PO Luis Salvatierra	Abuse: Police Officer Luis Salvatierra improperly used his body-worn camera.	[REDACTED]
AI. PO Estrella Cespedes	Abuse: Police Officer Estrella Cespedes improperly used her body-worn camera.	[REDACTED]

Case Summary

On February 28, 2023, § 87(2)(b) filed this complaint with IAB by phone, resulting in IAB Log# § 87(2)(b). On March 9, 2023, this complaint was referred to the CCRB.

On February 28, 2023, at approximately 9:00am, Police Officer Binah Previl and Police Officer Rafael Payano, both of Transit District 4 (PO Previl has since been transferred to Transit Bureau Response), observed § 87(2)(b) allegedly evade transit fare. PO Previl and PO Payano pursued § 87(2)(b) and commanded him to stop, but he continued past them. PO Payano grabbed him and pushed him, and PO Previl placed him in handcuffs (**Allegation A and B: Abuse of Authority—Stop**, § 87(2)(g) and (**Allegation C and D: Force—Physical Force**, § 87(2)(g) PO Previl reached into § 87(2)(b) bag to retrieve his ID (**Allegation E: Abuse of Authority— Search (of person)**, § 87(2)(g) PO Payano told § 87(2)(b) “I don’t want to hear that shit right now,” (**Allegation F: Discourtesy—Word**, § 87(2)(g) PO Previl and PO Payano ejected § 87(2)(b) from the subway station and PO Previl told him that if he returned, he would be arrested (**Allegation G: Abuse of Authority—Threat of Arrest**, § 87(2)(g)

After ejecting § 87(2)(b) PO Previl and PO Payano directed their attention to an unknown individual and § 87(2)(b) Police Officer Jean Innocent and Police Officer Javier Romero, both of the Transit Bureau Anti-Terrorism Unit, as well as Police Officer Estrella Cespedes, of PSA 4, and Police Officer Luis Salvatierra, of PSA 8, joined PO Previl and PO Payano. PO Previl and PO Payano instructed the unknown individual and § 87(2)(b) to leave the subway station. When the unknown individual did not comply, PO Previl and PO Payano forced him out of the subway station (**Allegations H and I: Force—Physical Force**, § 87(2)(g) PO Payano told the unknown individual, “You’re being fucking ejected” (**Allegations J: Discourtesy—Word**, § 87(2)(g) PO Payano told the unknown individual that if he returned to the subway station, he would be arrested (**Allegation K: Abuse of Authority—Threat of Arrest**, § 87(2)(g)

When PO Previl and PO Payano turned their attention to § 87(2)(b) they allegedly told him that they would harm him after they got off work (**Allegations L and M: Abuse of Authority—Threat of Force (verbal or physical)**, § 87(2)(g) PO Previl and PO Payano allegedly pushed § 87(2)(b) into the wall (**Allegations N and O: Force—Physical Force**, § 87(2)(g) PO Previl held § 87(2)(b) arm as he walked out of the subway station (**Allegation P: Force—Physical Force**, § 87(2)(g)

§ 87(2)(b) fell to the ground and requested an ambulance. PO Previl pulled § 87(2)(b) arms, placed him in handcuffs, attempted to stand § 87(2)(b) up (**Allegation Q: Force—Physical Force**, § 87(2)(g) and then tightened § 87(2)(b) handcuffs further (**Allegation R: Force—Handcuffs too tight**, § 87(2)(g) PO Previl allegedly told § 87(2)(b) that he was going to jail (**Allegation S: Abuse of Authority—Threat of Arrest**, § 87(2)(g) PO Previl and PO Payano allegedly refused to call an ambulance for § 87(2)(b) (**Allegations T and U: Abuse of Authority—Refusal to Obtain Medical Attention**, § 87(2)(g) PO Previl and PO Payano allegedly told § 87(2)(b) that if he filed any complaints against them, they would harm him and his family (**Allegations V and W: Abuse of Authority—Threat of Force (verbal or physical)**, § 87(2)(g) PO Innocent placed his hand in § 87(2)(b) pocket to obtain his ID (**Allegation X: Abuse of Authority—Search (of person)**, § 87(2)(g)

Throughout the duration of this incident, PO Payano used curse words and belittling language toward § 87(2)(b) and referred to § 87(2)(b) complaints of chronic seizures as his “medical seizure ass.” (**Allegation Y: Offensive Language—Disability**, § 87(2)(g) (**Allegations Z: Discourtesy—Word**, § 87(2)(g) and (**Allegations AA: Discourtesy—Word**, § 87(2)(g) As § 87(2)(b) was placed on the back of an ambulance, PO Previl said, “This guy’s a retard” (**Allegation AB: Offensive Language—Disability**, § 87(2)(g) and (**Allegation AC: Discourtesy—Word**, § 87(2)(g)

PO Previl, PO Payano, PO Innocent, PO Romero, PO Cespedes, and PO Salvatierra, all

activated their body-worn cameras late upon their arrival to this incident (**Allegations AD, AE, AF, AG, AH, and AI: Abuse of Authority—Improper use of BWC**, § 87(2)(g) [REDACTED])

As § 87(2)(b) [REDACTED] was in the ambulance, he called 911 to complain about PO Previl and PO Payano's conduct. This resulted in Police Officer Paul Sclafani, Police Officer Vincent Degennaro, Police Officer Katrayen Arsen, Police Officer David Yakal, Police Officer Monika Marjanovic, Police Officer Shamir Chowdhury, Police Officer Marcos Baruca, and Police Officer Nicholas Ragone, all of the 25th Precinct, responding to the scene.

The investigation obtained BWC from PO Previl, PO Payano, PO Innocent, PO Romero, PO Cespedes, PO Salvatierra, PO Arsen, PO Degennaro, PO Sclafani, PO Yakal, PO Marjanovic, PO Chowdhury, PO Baruca, and PO Ragone, the relevant portions of which will be discussed below (**BR 08-39**).

§ 87(2)(b) [REDACTED] received a summons for disorderly conduct (**BR 61**). There were no other summonses or arrests.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Binah Previl stopped § 87(2)(b) [REDACTED]

Allegation (B) Abuse of Authority: Police Officer Rafael Payano stopped § 87(2)(b) [REDACTED]

Allegation (C) Force: Police Officer Binah Previl used physical force against § 87(2)(b) [REDACTED]

Allegation (D) Force: Police Officer Rafael Payano used physical force against § 87(2)(b) [REDACTED]

Allegation (E) Abuse of Authority: Police Officer Binah Previl searched § 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED] stated (**BR 05**) that he was exiting the subway station when he saw PO Previl and PO Payano grab § 87(2)(b) [REDACTED] arms near the MTA worker's booth. Ultimately, PO Previl and PO Payano let § 87(2)(b) [REDACTED] leave without handcuffing him.

§ 87(2)(b) [REDACTED] did not recall this incident (**BR 70**).

PO Payano stated (**BR 06**) that he and PO Previl observed § 87(2)(b) [REDACTED] evade fare as he entered the subway station, although he could not recall how § 87(2)(b) [REDACTED] avoided paying fare. § 87(2)(b) [REDACTED] wore a knapsack on his shoulders across his chest. PO Payano and PO Previl called after § 87(2)(b) [REDACTED] to stop, but § 87(2)(b) [REDACTED] continued toward the train platform. § 87(2)(b) [REDACTED] turned to face the officer and reached toward his knapsack. PO Payano grabbed § 87(2)(b) [REDACTED] and placed him on the wall. PO Payano asked § 87(2)(b) [REDACTED] for his ID. PO Payano could not recall whether § 87(2)(b) [REDACTED] handed them his ID or whether PO Payano or PO Previl reached into § 87(2)(b) [REDACTED] pocket to retrieve his ID. PO Payano could not recall whether he or PO Previl searched § 87(2)(b) [REDACTED] bag.

PO Previl's statement (**BR 07**) was generally consistent with that of PO Payano with the following exceptions noted. As PO Previl and PO Payano pursued § 87(2)(b) [REDACTED] reached for his bag and turned his body away from PO Previl. PO Previl could not see whether § 87(2)(b) [REDACTED] reached into his bag, or whether he put anything in or pulled anything out of the bag, but he was concerned at this ambiguous gesture toward his bag because he did not know whether it contained anything dangerous. PO Payano tapped § 87(2)(b) [REDACTED] on the shoulder and § 87(2)(b) [REDACTED] stopped walking. § 87(2)(b) [REDACTED] complied as PO Previl grabbed his wrist, and placed his arms into handcuffs. While holding his arm, PO Previl guided § 87(2)(b) [REDACTED] backward so that his back was against the wall. § 87(2)(b) [REDACTED] willingly walked with PO Previl. PO Previl asked § 87(2)(b) [REDACTED] where his ID was. § 87(2)(b) [REDACTED] said his work ID was in his bag. PO Previl could see the work ID visible in the open bag. He reached in and grabbed the ID. He did not search the bag any further, and his sole intention for entering § 87(2)(b) [REDACTED] bag was to retrieve his ID.

PO Previl's first BWC was generally consistent with his statement (**BR 10-11**). At the 00:45 timestamp, § 87(2)(b) [REDACTED] walks into the paid side of the mezzanine through the far right turnstile, but it is not clear whether he paid the fare. PO Payano grabs § 87(2)(b) [REDACTED] right shoulder, turns him around and slightly pushes § 87(2)(b) [REDACTED] chest with both hands. § 87(2)(b) [REDACTED] steps backward. PO Previl grabs § 87(2)(b) [REDACTED] left bicep and asks § 87(2)(b) [REDACTED] to put his hands behind his back. § 87(2)(b) [REDACTED] is generally compliant; however, PO Previl grabs his right wrist, pulls it

behind his back, and handcuffs him. PO Previl asks § 87(2)(b) where his ID is. § 87(2)(b) tells him, "In my bag." PO Previl places both of his hands inside § 87(2)(b) open bag, rifles through it for about six seconds, and then takes out the ID. Throughout the duration of the BWC, § 87(2)(b) never explicitly states that he evaded fare when he entered the subway station.

PO Payano's first BWC activation (**BR 08-09**) was generally consistent with that of PO Previl's first BWC activation, with a couple of exceptions detailed below. At the 1:02 timestamp, PO Payano pushes § 87(2)(b) on his chest as § 87(2)(b) left hand is inside his open bag. As PO Previl handcuffs § 87(2)(b) PO Payano repeatedly says, "what's up with that bag?" § 87(2)(b) says, "Take my bag. Take it if you think there's something in there." Throughout the duration of PO Previl and PO Payano's first BWC activation, neither of the police officers

The investigation was unable to obtain MTA surveillance footage capturing this incident.

PO Previl prepared a memo book entry (**BR 40**) for a possible crime, which was finalized as a 91 (non-crime corrected). PO Previl added the comment, "91 ejection." PO Payano prepared a consistent memo book entry (**BR 41**).

According to Event Chronology § 87(2)(b) (**BR 42**), the incident was started as a "10P9 (Investigate/Possible Crime: Susp Person/ Transit) and was finalized as 91 (non-crime corrected). One event comment reads, "Ejection."

PO Payano prepared one Transit Ejection Report for an unknown individual. No transit ejection reports were prepared for § 87(2)(b) (**BR 54**).

According to People v. De Bour, 40 N.Y.2d 210 (**BR 72**), officers are permitted to forcibly stop and detain civilians when an officer "entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or a misdemeanor." Furthermore, officers can search an individual if the officer has probable cause to believe that the individual has committed a crime.

In People v. Gonzalez, 39 N.Y.2d 122 (**BR 71**), the court ruled that "Consent to search, a relinquishment of constitutional protection under both the federal and state constitutions against unjustified official intrusion, must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances. Where there is coercion there cannot be consent."

Patrol Guide procedure 221-01 (**BR 43**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Although both PO Previl and PO Payano stated that they observed § 87(2)(b) evade fare as he entered the subway station, neither of them could recall how. Comprehensive BWC does not show § 87(2)(b) entry into the subway station. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) neither officer issued § 87(2)(b) a summons. Comprehensive BWC footage shows that § 87(2)(b) only tells the officers, “Take my bag, if you think there’s something in it,” after he was abruptly stopped, pushed against a wall, and in the process of getting handcuffed. § 87(2)(g)

Allegation (F) Discourtesy: Police Officer Rafael Payano spoke discourteously to § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Binah Previl threatened to arrest § 87(2)(b)

§ 87(2)(b) could not recall what PO Previl and PO Payano said to § 87(2)(b) however, PO Payano and PO Previl cursed and said “negative things” toward § 87(2)(b) (BR 05).

§ 87(2)(b) did not have any recollection of this incident (BR 70).

PO Payano stated (BR 06) that he and PO Previl issued § 87(2)(b) a summons for fare evasion and then let him go. PO Payano never used any curse words with § 87(2)(b)

PO Previl stated (BR 07) that he and PO Payano ultimately used their discretion to eject § 87(2)(b) from the train station without issuing him a summons. PO Previl informed § 87(2)(b) that he was being ejected from the train station and that if he returned to the train station he would be arrested for trespassing. § 87(2)(b) said “OK,” and then left the subway station. PO Previl could not recall whether he used any profanity with § 87(2)(b)

Per PO Previl’s first BWC activation (BR 10-11), at the 4:49 timestamp, PO Previl tells § 87(2)(b) “You’re being ejected from the train station, if you come back, I’m going to arrest you for trespassing.” PO Previl uncuffs § 87(2)(b) shakes his hand, and then runs up the stairs out of the station. Throughout the duration of the video, PO Previl never uses any discourteous language with § 87(2)(b)

Per PO Payano’s first BWC activation (BR 08-09), at the 1:20 timestamp, § 87(2)(b) tells PO Payano he has money in his bag and PO Payano responds, “I don’t want to hear that shit.” PO Payano’s first BWC activation consistently shows that PO Previl never uses any discourteous language with § 87(2)(b)

A request for a Transit System Ejection Report yielded negative results (BR 54).

Per NYPD Patrol Guide procedure 208-01 (BR 47), officers can make an arrest without a warrant for an offense when there is reasonable cause to believe offense is committed in his presence, or for a crime (within the presence or not) and reasonable cause exists that arrested person committed the crime.

Per Penal Law § 140.05 (BR 45), “a person is guilty of trespass when that person knowingly enters [remains] unlawfully in or upon premises.”

Patrol Guide procedure 200-02 states that the NYPD’s mission is to protect the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. In doing so, they pledge to maintain a higher standard of integrity than is generally expected of others (BR 50).

Per DAO-DCT Case Number 2015-15012, discourteous language may be excusable when an officer is speaking in the context of a dynamic situation over which he is still attempting to gain control. However, discourteous statements are prohibited when they serve no legitimate purpose but to belittle the civilian (BR 51).

§ 87(2)(g) § 87(2)(b), PO Payano had already gained control of this situation and § 87(2)(b) had been successfully stopped when consistent and comprehensive BWC shows PO Payano tell § 87(2)(b) “I don’t want to hear that shit.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Force: Police Officer Binah Previl used physical force against an individual.
Allegation (I) Force: Police Officer Rafael Pavano used physical force against an individual.
Allegation (J) Discourtesy: Police Officer Rafael Pavano spoke discourteously to an individual.
Allegation (K) Abuse of Authority: Police Officer Rafael Pavano threatened to arrest an individual.

Allegations H, I, J, and K derive from BWC.

Per PO Payano's first BWC activation (**BR 08-09**), beginning at the 3:00 timestamp, § 87(2)(b) is talking to PO Payano and PO Previl, although their conversation is unclear. PO Previl asks him, "Are you done being a cheerleader?" At the 4:25 timestamp, PO Payano and PO Previl walk § 87(2)(b) through the mezzanine. PO Payano tells § 87(2)(b) "You're talking real spicy. When we come back, hop the train, and we going to do the same thing, if that's what you want." At the 5:19 timestamp, as PO Payano approaches § 87(2)(b) and the unknown individual, he deactivates his camera, which is at approximately 9:05am. PO Previl's first BWC activation was generally consistent with PO Payano's (**BR 10-11**).

PO Previl's second BWC activation (**BR 12-13**) begins with § 87(2)(b) and the unknown individual talking and gesticulating at PO Previl and PO Payano as they walk toward the stairs at approximately 9:07am. At the 00:52 timestamp, the unknown individual walks down the stairs and gets within a foot of PO Previl. PO Previl activates his BWC and pushes the unknown individual's chest. PO Previl repeatedly tells § 87(2)(b) and the unknown individual that they have to leave and that they are both being ejected. When the unknown individual does not move, PO Previl pushes him again. At the 1:18 timestamp, PO Previl turns to § 87(2)(b) grabs his left arm, and both he and § 87(2)(b) walk up the stairs. The unknown individual attempts to step around PO Payano two times and each time PO Payano pushes him with both hands on his chest. At the 1:45 timestamp, PO Previl grabs the unknown individual's arm and back and pushes him up the steps to the sidewalk. PO Payano twice tells him, "You're being ejected. If you come back in the train station. You're under arrest."

PO Payano's second BWC activation (**BR 14-15**) is generally consistent with PO Previl's second BWC activation, with the following notable exceptions. Beginning at the 1:18 timestamp, the unknown individual asks why PO Payano is pushing him. PO Payano pushes him into the wall and says, "Because you're being fucking ejected."

PO Romero, PO Innocent, PO Salvatierra, and PO Cespedes' BWC were generally consistent with PO Previl and PO Payano's second BWC activations, although, they arrive to the scene and activate their cameras at various points. None of their BWC footage captures PO Previl and PO Payano successfully removing the unknown individual to the sidewalk (**BR 16-23**).

The investigation was unable to identify the unknown individual, and was therefore unable to obtain a statement from him.

§ 87(2)(b) stated (**BR 05**) that he was alone when he interacted with PO Payano and PO Previl. § 87(2)(b) never saw PO Payano or PO Previl interact with any other people aside from § 87(2)(b) and himself.

PO Payano stated (**BR 06**) that as he interacted with § 87(2)(b) and an unknown individual yelled obscenities at him and PO Previl, causing a crowd of more than three others to join in yelling at PO Payano and PO Previl. Additionally, § 87(2)(b) and three other

individuals stood in front of the turnstiles, causing an inconvenience for other MTA customers. So, after ejecting § 87(2)(b) PO Payano and PO Previl decided to eject § 87(2)(b) and the individual. PO Previl and PO Payano pushed the unknown individual in the direction of the stairs and told him to go up the stairs, which he did not do. PO Payano repeatedly told him he was being ejected and continued to push on his chest and sternum. PO Payano cursed at the unknown individual to convey that he was serious about ejecting him. PO Previl joined PO Payano and pushed on the unknown individual's arms. At the top of the stairs, PO Payano explained that if he returned, he would be arrested for trespassing.

PO Previl's statement was generally consistent with PO Payano's; however, he did not note § 87(2)(b) and the Individual inciting a crowd of others, nor of blocking the turnstiles (BR 07). PO Previl could not recall whether he pushed the unknown individual or if he just made physical contact as he walked with him toward the exit.

PO Romero (BR 52) and PO Innocent's (BR 53) statements were consistent with BWC.

PO Payano completed a Transit System Ejection Report for the unknown individual for "breach of peace." PO Payano noted that no force was used and no summons was issued (BR 49).

Patrol Guide procedure 221-01 (BR 43) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Patrol Guide procedure 212-20 (BR 46) states that any person who violates any portion of NYCRR Part 1050 (BR 44) is subject to ejection from New York City Transit facilities. When necessary to eject a passenger, members of service should advise the passenger of ejection and reason, permit the passenger to leave without interference, and use no more force than is necessary to effect the ejection, if the passenger refuses to leave. Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to effect the ejection. If the passenger's conduct is such that it requires more force than is ordinarily needed to assist and guide the passenger out of the transit system, an arrest may be appropriate. Members of service must prepare a Transit System Ejection Report each time an ejection is affected.

Per NYCRR Part 1050.7 (BR 44), "no person on or in any facility or conveyance shall conduct themselves in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace."

Per NYPD Patrol Guide procedure 208-01 (BR 47), officers can make an arrest without a warrant for an offense when there is reasonable cause to believe offense is committed in his presence, or for a crime (within the presence or not) and reasonable cause exists that arrested person committed the crime.

Per Penal Law § 140.05 (BR 45), "a person is guilty of trespass when that person knowingly enters [remains] unlawfully in or upon premises."

Patrol Guide procedure 200-02 states that the NYPD's mission is to protect the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. In doing so, they pledge to maintain a higher standard of integrity than is generally expected of others (BR 50).

Per DAO-DCT Case Number 2015-15012, discourteous language may be excusable when an officer is speaking in the context of a dynamic situation over which he is still attempting to gain control. However, discourteous statements are prohibited when they serve no legitimate purpose but

to belittle the civilian (BR 51).

§ 87(2)(g)

Consistent BWC does not capture § 87(2)(b) and the individual blocking turnstiles, nor inciting a crowd of people; however, the BWC is not comprehensive, given the approximate two minute gap between PO Payano and PO Previl's first and second activations. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Binah Previl threatened § 87(2)(b) with the use of force.

Allegation (M) Abuse of Authority: Police Officer Rafael Payano threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated (BR 05) that PO Previl and PO Payano told him that he needed to mind his business and that when they got off work, they would do harm to him. PO Previl and PO Payano followed § 87(2)(b) reiterating that they would harm him.

PO Previl and PO Payano denied (BR 06-07) telling § 87(2)(b) that they would harm him.

PO Romero and PO Innocent (BR 52-53) saw PO Previl, PO Payano, § 87(2)(b) and the unknown individual arguing with one another at the foot of the staircase, but they could not recall the specifics of the argument.

There is no comprehensive video footage of this incident.

Per PO Payano's first BWC activation (BR 08-09), PO Payano and PO Previl eject § 87(2)(b) from the subway station and turn toward § 87(2)(b) and the unknown individual, at which time PO Payano deactivates his BWC. At no point do PO Payano or PO Previl tell § 87(2)(b) that they will harm him. PO Previl's first BWC activation is generally consistent with this (BR 10-11).

PO Previl's second BWC activation (BR 12-13) begins approximately two minutes later. PO Previl, PO Payano, PO Innocent, and PO Romero are present with § 87(2)(b) and the unknown individual. § 87(2)(b) and the unknown individual gesticulate and point at PO Previl and PO Payano. At the 0:41 timestamp, PO Payano balls his fists up in a boxing stance about two feet from § 87(2)(b) (there is no audio for this portion of the incident). Once audio is activated, neither PO Previl, nor PO Payano tell § 87(2)(b) that they will harm him when they get off work. PO Innocent and PO Romero's BWC footage is generally consistent with PO Payano (BR 14-15) and PO Previl's second BWC activations (BR 18-21) and do not capture PO Previl or PO Payano tell § 87(2)(b) that they will harm him when they get off work.

BWC from PO Salvatierra and PO Cespedes (BR 16-17; 22-23) does not capture PO Previl nor PO Payano tell § 87(2)(b) that they will harm him when they get off work.

§ 87(2)(g)

Allegation (N) Force: Police Officer Binah Previl used physical force against § 87(2)(b)

Allegation (O) Force: Police Officer Rafael Payano used physical force against § 87(2)(b)

Allegation (P) Force: Police Officer Binah Previl used physical force against § 87(2)(b)

§ 87(2)(b) stated (BR 05) that as he left the subway station, PO Previl grabbed his shoulders while PO Payano grabbed his wrists. § 87(2)(b) did not resist. PO Payano and PO Previl pushed § 87(2)(b) so that his stomach and face pressed against the wall next to the stairs for 10 to 15 minutes. PO Payano pressed his elbow and forearm against § 87(2)(b) upper back. In his initial statement to IAB, § 87(2)(b) stated that PO Previl and PO Payano “slammed him” and “assaulted” him; however, he did not provide any more specific details of the force that they allegedly used (BR 56-57).

PO Previl’s first BWC activation (BR 10-11) shows that § 87(2)(b) and the individual yell at PO Payano and PO Previl as they eject § 87(2)(b) from the subway station. PO Previl and PO Payano turn their attention toward § 87(2)(b) and the individual and then deactivate their cameras at approximately 9:05am. PO Payano’s first BWC activation is generally consistent with this (BR 08-09).

PO Previl’s second BWC activation (BR 12-13) begins at approximately 9:07am, and shows § 87(2)(b) and the individual appearing to yell and gesticulate at PO Previl and PO Payano near the staircase. At the 1:00 timestamp, PO Previl tells the unknown individual and § 87(2)(b) that they have to leave approximately nine times. § 87(2)(b) says, “No we don’t.” At the 1:18 timestamp, PO Previl grabs § 87(2)(b) left bicep and forearm. PO Previl and § 87(2)(b) walk up the staircase together. At the 1:30 timestamp, § 87(2)(b) stops walking and says, “I’m crippled. I’m crippled. I need an ambulance.” PO Previl continues to walk, but § 87(2)(b) slowly falls on the staircase. PO Payano’s second BWC activation does not capture § 87(2)(b) fall to the staircase (BR 14-15).

PO Romero’s BWC (BR 18-19) captures the fall more clearly. At the 1:08 timestamp, § 87(2)(b) stops walking with PO Previl. PO Previl continues to walk upwards, pulling § 87(2)(b) arm. § 87(2)(b) does not willingly move with PO Previl. As PO Previl continues up the stairs, § 87(2)(b) slowly tumbles forward and then turns so his back ends up on the staircase. PO Innocent and PO Salvatierra’s BWC (BR 20-23) are generally consistent with PO Romero’s BWC.

Throughout both of PO Previl and PO Payano’s BWC activations, as well as PO Innocent, PO Romero, PO Cespedes, and PO Salvatierra’s BWC footage (BR 08-23), neither PO Payano, nor PO Previl, push § 87(2)(b) into the wall next to the staircase, nor do they pin him against the wall for an extended period of time.

PO Payano stated (BR 06) that § 87(2)(b) and an unknown individual yelled obscenities at him and PO Previl, causing a crowd of more than three others to join in yelling at PO Payano and PO Previl. Additionally, § 87(2)(b) and three other individuals stood in front of the turnstiles, causing an inconvenience for other MTA customers. So, PO Payano and PO Previl decided to eject § 87(2)(b) and the individual. In the process of ejecting § 87(2)(b) PO Payano did not see how § 87(2)(b) got on the ground. PO Payano and PO Previl never pushed § 87(2)(b) against a wall and never placed his elbows and forearms against § 87(2)(b) upper back.

PO Previl stated (BR 07) that he and PO Payano decided to eject § 87(2)(b) and the individual from the subway station for yelling obscenities and threats at him and PO Payano. PO Previl, PO Innocent, and PO Romero (BR 07; 52-53) all provided statements related to § 87(2)(b) falling to the stairs that were consistent with BWC.

According to TRI Incident Report# § 87(2)(b) (BR 58), after PO Payano and PO Previl ejected the unknown individual and then turned their attention to § 87(2)(b) who was seated on the stairs. § 87(2)(b) later alleged that PO Payano and PO Previl slammed him and used excessive force.

According to AIDED Report# § 87(2)(b) (BR 59), § 87(2)(b) complained of pain and that he could not move. He needed assistance leaving the train station, and was removed to § 87(2)(b) Hospital. The report does not document any force used.

PO Previl issued § 87(2)(b) a summons in violation of NYCRR Part 1050.7 for “breach of

peace” (BR 61).

According to § 87(2)(b) medical records from the § 87(2)(b) Medical Center, he complained of arm pain and leg pain on his right side after police slammed him to the ground. § 87(2)(b) did not remember all the events and was unsure if he had a seizure. He would not elaborate further on the incident and refused to provide a medical history (BR 60).

Patrol Guide procedure 221-01 (BR 43) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject’s violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Patrol Guide procedure 212-20 (BR 46) states that any person who violates any portion of NYCRR Part 1050 (BR 44) is subject to ejection from New York City Transit facilities. When necessary to eject a passenger, members of service should advise the passenger of ejection and reason, permit the passenger to leave without interference, and use no more force than is necessary to effect the ejection, if the passenger refuses to leave. Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to effect the ejection. If the passenger’s conduct is such that it requires more force than is ordinarily needed to assist and guide the passenger out of the transit system, an arrest may be appropriate. Members of service must prepare a Transit System Ejection Report each time an ejection is affected.

Per NYCRR Part 1050.7 (BR 44), “no person on or in any facility or conveyance shall conduct themselves in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace.”

§ 87(2)(g)

comprehensive BWC shows that § 87(2)(b) was neither slammed to the wall nor was he slammed to the ground by PO Previl or PO Payano § 87(2)(g)

Although consistent BWC shows that § 87(2)(b) refused to leave the subway station after PO Previl commanded him to numerous times given the consistent BWC footage was not comprehensive § 87(2)(g)

Allegation (Q) Force: Police Officer Binah Previl used physical force against § 87(2)(b)

Allegation (R) Force: Police Officer Binah Previl tightly handcuffed § 87(2)(b)

Allegation (S) Abuse of Authority: Police Officer Binah Previl threatened to arrest § 87(2)(b)

Allegation (T) Abuse of Authority: Police Officer Binah Previl did not obtain medical treatment for § 87(2)(b)

Allegation (U) Abuse of Authority: Police Officer Rafael Payano did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated (BR 05) that PO Previl handcuffed him so tightly that he could feel his blood flow disrupted. § 87(2)(b) repeatedly complained that the handcuffs were too tight as PO Previl prepared a summons for him. As § 87(2)(b) reiterated this, PO Previl told him that he did not care and then grabbed the handcuffs and tightened them further. § 87(2)(b) told PO Previl and PO Payano that he sometimes had seizures and felt like he might be about to have one. He asked again

if they could take the handcuffs off. PO Previl told him, “No you’re going to jail.” § 87(2)(b) told PO Previl and PO Payano that he needed an ambulance because he wished to go to the hospital. PO Previl told § 87(2)(b) that he did not care. A woman passing by § 87(2)(b) overheard this and called for an ambulance on behalf of § 87(2)(b) later passed out and regained consciousness at § 87(2)(b) Medical Center.

PO Innocent’s BWC (**BR 18-19**) shows at the 1:10 timestamp, as PO Previl walks § 87(2)(b) up the stairs, § 87(2)(b) tells PO Previl he needs an ambulance. § 87(2)(b) falls on the stairs and reiterates that he needs an ambulance. PO Innocent tells § 87(2)(b) that they will get him an ambulance. At the 1:58 timestamp, PO Previl returns to the staircase, grabs § 87(2)(b) from his armpits and pulls him up as § 87(2)(b) remains limp. PO Previl pulls § 87(2)(b) right arm back to affix handcuffs to it. PO Previl continues to pull his left arm behind him and tells him to stand up. At the 2:46 timestamp, PO Innocent says, “Call him a bus, he needs a bus.” PO Previl responds, “I ain’t calling him nothing.” § 87(2)(b) re-iterates, “I need an ambulance, sir... Excuse me sir, I can’t move sir.” At the 3:10 timestamp, PO Previl places § 87(2)(b) left arm into a handcuff and then pulls his arm behind his back and handcuffs the wrists. At the 3:35 timestamp, PO Previl pulls § 87(2)(b) wrists upward while instructing him to stand up, which § 87(2)(b) does. At the 3:55 timestamp, PO Payano calls for an ambulance over the radio. Throughout the duration of this footage, PO Previl never told § 87(2)(b) that he was going to jail, nor did he ever threaten him with arrest. This footage is generally consistent with PO Payano and PO Previl’s second BWC activation, as well as PO Romero, PO Cespedes, and PO Salvatierra’s BWC (**BR 12-17; 20-23**).

PO Payano’s second BWC activation shows (**BR 14-15**), at the 3:55 timestamp, PO Payano calls for an ambulance. This BWC footage is the only one that clearly captures what PO Payano says over the radio.

PO Previl stated (**BR 07**) that as he guided § 87(2)(b) up the stairs he told him, “I’m crippled,” and asked for medical attention. PO Previl left § 87(2)(b) momentarily, as he believed he needed to prioritize assisting PO Payano in ejecting the unknown individual from the subway station. When PO Previl and PO Payano returned to the staircase, PO Previl placed § 87(2)(b) into handcuffs. § 87(2)(b) tensed his muscles slightly, so PO Previl pulled his arm behind him to affix the handcuffs. § 87(2)(b) complained that he was in pain. PO Previl could not recall the nature of the pain, but recalled it had something to do with seizures and neck surgery. After he placed § 87(2)(b) in handcuffs, he never tightened the handcuffs any further; however, after reviewing BWC, he acknowledged that he did tighten the handcuffs further. PO Previl explained that he generally checked to see if handcuffs were tight enough by sticking his finger into the cuff, and if there was enough room between the cuff and the detained person’s wrist for his finger to fit, he would determine the handcuff to be too loose and tighten it further. PO Previl could not recall if he did this with § 87(2)(b) before he tightened the handcuff.

PO Payano provided a statement that was generally consistent with PO Previl’s, with the following exceptions noted (**BR 06**). Although PO Payano had no recollection of § 87(2)(b) stating the handcuffs were too tight, PO Payano observed PO Previl check to be sure that the handcuffs were loose enough on § 87(2)(b) wrist. PO Payano called for an ambulance over the radio and communicated that § 87(2)(b) alleged that he could not move. Neither PO Previl, nor PO Payano, ever told § 87(2)(b) that he was going to jail.

Both PO Innocent and PO Romero consistently stated (**BR 52-53**) that § 87(2)(b) complained that his back was in pain after he fell on the stairs. One of the police officers on scene called for an ambulance.

According to the EVENT (**BR 69**), at 9:12am, a radio call was made for an AIDED who was unable to move in the mezzanine of the 125th Street 4/5/6 subway station. The event was finalized as 97H (patient removed to hospital).

The Prehospital Care Report Summary (**BR 63**) shows that the EMS received a call at 9:12am and arrived on scene at 9:21am. EMS made contact with § 87(2)(b) at 9:25am. The narrative stated that § 87(2)(b) was ambulatory and restrained by police at the location and that he refused to

leave the subway prior to being handcuffed. § 87(2)(b) refused use of the stair chair and was escorted to the ambulance.

Medical Records provided by the § 87(2)(b) Medical Center (BR 60) note that § 87(2)(b) arrived at the hospital § 87(2)(b)

Patrol Guide procedure 221-01 (BR 43) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

§ 87(2)(g) PO Previl acknowledged after viewing BWC that he did tighten § 87(2)(b) handcuffs, § 87(2)(g)

§ 87(2)(g)

Based on comprehensive BWC, PO Previl never told § 87(2)(b) that he would go to jail. § 87(2)(g)

BWC as well as police and medical documentation confirm that PO Payano called an ambulance for § 87(2)(b) approximately three minutes after he first requested one. § 87(2)(g)

Allegation (V) Abuse of Authority: Police Officer Binah Previl threatened § 87(2)(b) with the use of force.

Allegation (W) Abuse of Authority: Police Officer Rafael Payano threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that after he was placed in handcuffs, PO Previl and PO Payano told him that if he filed any complaints against them, they would harm § 87(2)(b) and his family (BR 05).

§ 87(2)(b) did not mention this during his initial statement to IAB (BR 56-57).

PO Payano (BR 06) and PO Previl (BR 07) denied threatening to harm § 87(2)(b) and his family.

Per PO Previl's second BWC activation (BR 12-13), at the 3:28 timestamp, PO Previl places handcuffs on § 87(2)(b). Throughout all this footage, neither he, nor PO Payano tell § 87(2)(b) that they will harm him and his family if he were to file any complaints against the police officers. PO Payano's second BWC activation (BR 14-15), as well as PO Innocent and PO Romero's BWC footage is generally consistent with PO Previl's BWC activations (BR 18-21).

Comprehensive BWC confirms that PO Previl and PO Payano never tell § 87(2)(b) that they will harm him and his family if he files a complaint against them. § 87(2)(g)

Allegation (X) Abuse of Authority: Police Officer Jean Innocent searched § 87(2)(b)

§ 87(2)(b) stated (BR 05) that as PO Payano and PO Previl pinned him against the wall, PO Payano searched his pockets for his ID. § 87(2)(b) did not mention this during his initial statement to IAB (BR 56-57).

PO Payano stated (BR 06) that he could not recall how he and PO Previl obtained § 87(2)(b) ID. PO Payano never placed his hands into § 87(2)(b) pockets.

PO Previl stated (BR 07) that after he placed § 87(2)(b) into handcuffs, he reached into § 87(2)(b) pockets to retrieve his ID. § 87(2)(b) did not tell him where his ID was. PO Previl could not recall whether he searched more than one of § 87(2)(b) pockets for his ID. The sole reason he placed his hands in § 87(2)(b) pockets was to find § 87(2)(b) ID.

Per PO Previl's second BWC activation (BR 12-13), § 87(2)(b) pockets are below the frame of the camera, so it is not clear what occurs, but PO Innocent pulls an ID upwards from below the frame and hands it to PO Previl.

Per PO Romero's BWC (BR 20-21), at the 5:14 timestamp, § 87(2)(b) stands on the staircase handcuffed, and PO Previl says, "Let me see your ID so I can start on this AIDED." § 87(2)(b) says, "I'm not giving it." He looks at PO Innocent and says, "I'll give it to you." PO Innocent says, "He needs your name and information to do the paperwork." § 87(2)(b) responds, "I'll give it to you." PO Innocent asks § 87(2)(b) "Can I go in your pockets?" § 87(2)(b) responds, "Yes sir, you can," and directs PO Innocent to his left pants pockets. At the 5:38 timestamp, PO Innocent places his hand into § 87(2)(b) left pants' pocket, pulls out an ID and hands it to PO Previl. PO Payano and PO Previl's second BWC activations and PO Innocent's BWC are generally consistent with PO Romero's BWC (BR 12-19).

In *People v. Gonzalez*, 39 N.Y.2d 122 (BR 62), the court ruled that "Consent to search, a relinquishment of constitutional protection under both the federal and state constitutions against unjustified official intrusion, must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances. Where there is coercion there cannot be consent."

§ 87(2)(g)

Allegation (Y) Discourtesy: Police Officer Rafael Payano spoke discourteously to § 87(2)(b)

Allegation (Z) Offensive Language: Police Officer Rafael Payano spoke offensively regarding § 87(2)(b) actual or perceived disability.

Allegation (AA) Discourtesy: Police Officer Rafael Payano spoke discourteously to § 87(2)(b)

Allegation (AB) Offensive Language: Police Officer Binah Previl spoke offensively regarding § 87(2)(b) actual or perceived disability.

Allegation (AC) Discourtesy: Police Officer Binah Previl spoke discourteously to § 87(2)(b)

Allegations Y, Z, AA, AB, and AC derive from BWC footage.

Per PO Payano's second BWC activation (BR 14-15), at the 6:10 timestamp, § 87(2)(b) states that he has medical seizures. PO Payano replies, "You wasn't acting like that earlier... You was talking about 'touch me like that, drop me like that.' You was talking real spicy earlier. And it's on camera too... So, when you go to your lawyer with this medical seizure bullshit, he's gonna be like, 'Why were you antagonizing cops on camera for.' Acting real bozo-y. Remember that though, with your medical seizure ass." At the 11:00 timestamp, PO Payano tells § 87(2)(b) that he wishes § 87(2)(b) would take him to court, because that would result in PO Payano having two days off work for court. He adds that he looks good in a suit and tells § 87(2)(b) "I bet you don't even got a suit." At the 14:53 timestamp, PO Payano tells § 87(2)(b) "You wanted to be a bozo." At the 20:20 timestamp, PO Payano tells the EMT, "He's § 87(2)(b) a con artist, respectfully." PO

Previl's second BWC activation, as well as PO Romero and PO Innocent's BWC are all generally consistent with PO Payano's BWC (BR 12-13; 18-21).

Per PO Previl's second BWC activation (BR 12-13), at the 28:20 timestamp, after PO Previl has taken § 87(2)(b) handcuffs off in the ambulance, PO Previl says, "This guy's retarded." PO Previl's second BWC allegation is the only BWC footage obtained by the investigation that captures PO Previl say this.

PO Payano stated (BR 06) that while he, § 87(2)(b) and PO Previl waited for an ambulance, PO Payano told § 87(2)(b) that if he had left the station when he was asked, he would not be in his current situation. PO Payano told § 87(2)(b) that his statement that he could not move and his allegation that PO Previl slammed him to the ground were "bullshit," and went on to call him a "bozo." PO Payano also said, "with your medical seizure ass," to § 87(2)(b) PO Payano used the phrases, "bullshit" and "medical seizure ass," to illustrate that § 87(2)(b) fabricated what he stated happened to him. PO Payano had no reason for calling § 87(2)(b) a "bozo." After viewing his BWC footage, PO Payano acknowledged that he told § 87(2)(b) that he doubted he owned a suit and that he called § 87(2)(b) a "con artist.." PO Payano explained that he was frustrated and attempted to voice his frustration without using curse words and that he felt that § 87(2)(b) was lying about his self-described pain and immobility. PO Payano wanted to convey his belief that § 87(2)(b) was a liar to the EMT on scene.

After reviewing his BWC footage, PO Previl acknowledged that he said (BR 07) "This guy's retarded," after § 87(2)(b) was placed in the ambulance. PO Previl was exasperated with § 87(2)(b) and the situation at that point.

Per Patrol Guide procedure 200-02 (BR 50), officers are expected to maintain a higher standard of integrity than is generally expected of others and render services with courtesy and civility.

Per Administrative Guide Procedure 304-11 (BR 64), officers must interact with members of the public in a professional manner.

Per DAO-DCT Case Number 2015-15012, discourteous language may be excusable when an officer is speaking in the context of a dynamic situation over which he is still attempting to gain control. However, discourteous statements are prohibited when they serve no legitimate purpose but to belittle the civilian (BR 51).

Per Administrative Guide 304-06 (BR 65), officers are prohibited from using discourteous or disrespectful remarks regarding another person's disability.

It is undisputed that § 87(2)(b) was already handcuffed and awaiting medical attention when PO Payano intimated to § 87(2)(b) that his "medical seizure bullshit," and "medical seizure ass," would be questioned by a prospective lawyer. § 87(2)(g)

§ 87(2)(b)

It is undisputed that while waiting for the ambulance, PO Payano also told § 87(2)(b) that he was a "bozo," doubted that § 87(2)(b) owned a suit, and called him a con artist. § 87(2)(g)

§ 87(2)(b)

It is undisputed that PO Previl said, "This guy's retarded," as he stood behind § 87(2)(b) in the back of an ambulance. § 87(2)(g)

§ 87(2)(b)

Allegation (AD) Abuse of Authority: Police Officer Binah Previl improperly used his body-

worn camera.

Allegation (AE) Abuse of Authority: Police Officer Rafael Pavano improperly used his body-worn camera.

Allegation (AF) Abuse of Authority: Police Officer Jean Innocent improperly used his body-worn camera.

Allegation (AG) Abuse of Authority: Police Officer Javier Romero improperly used his body-worn camera.

Allegation (AH) Abuse of Authority: Police Officer Luis Salvatierra improperly used his body-worn camera.

Allegation (AI) Abuse of Authority: Police Officer Estrella Cespedes improperly used her body-worn camera.

Allegations AD, AE, AF, AG, AH, and AI derive from BWC footage.

PO Payano and PO Previl's first BWC activations both end after they eject § 87(2)(b) from the subway station. (BR 08-11). PO Payano and PO Previl's second BWC activations start as PO Payano and PO Previl are already in the midst of ejecting the unknown individual from the subway station (BR 12-15).

PO Innocent and PO Romero's BWC (BR 18-21) both start with a one minute audio buffer, in which they stand in front of the unknown individual and § 87(2)(b) who are engaged in a verbal back-and-forth with PO Previl and PO Payano. Both PO Innocent and PO Romero activate their BWC after PO Previl pushes the unknown individual.

PO Cespedes' BWC (BR 16-17), begins with a one minute audio buffer. She enters the subway station. At the 00:23 timestamp, PO Payano and PO Previl push the unknown individual and § 87(2)(b) up the stairs. At the 00:40 timestamp, § 87(2)(b) falls on the stairs. At the 1:00 timestamp, PO Cespedes activates her BWC. PO Salvatierra's BWC is generally consistent with PO Cespedes' BWC (BR 22-23).

PO Payano (BR 06) and PO Previl (BR 07) consistently stated that between their first and second activations, § 87(2)(b) yelled, cursed, and acted antagonistically toward them. PO Payano told the investigation that he did not know why he did not activate his BWC the second time sooner than he did. PO Previl acknowledged that after § 87(2)(b) was ejected, he immediately turned his attention to § 87(2)(b) and the unknown individual. PO Previl de-activated and then re-activated his BWC because these incidents were two discreet incidents.

PO Romero stated (BR 52) that as he approached, it was clear that PO Previl and PO Payano were arguing with § 87(2)(b) and the unknown individual. PO Romero believed that he activated his BWC approximately 10 to 15 seconds after arriving at the staircase, but acknowledged that he was mistaken and that it was at least one minute after he arrived.

PO Innocent stated (BR 53) that he did not activate his BWC until approximately a minute after he approached PO Payano, PO Previl, § 87(2)(b) and the unknown individual despite hearing them engaged in a screaming argument. PO Innocent did not know why he did not activate his BWC earlier than this.

PO Cespedes stated (BR 66) that she arrived at the subway station and saw officers escorting civilians out of the subway station. She assessed the situation to see if anyone needed her help. She was on scene for approximately 50 seconds before she activated her BWC. She provided no reason as to why she did not activate her BWC sooner than this.

PO Salvatierra stated (BR 67) that he had no independent recollection of this incident. He did not know why he did not activate his BWC sooner than he did.

Per NYPD Patrol Guide procedure 212-123 (BR 68), it is mandatory for members of service to activate their BWC prior to engaging in, or assisting another uniformed member of the service with any "public interactions that escalate and become adversarial."

§ 87(2)(g)

§ 87(2)(g)

PO Romero, PO Innocent, PO Cespedes, and PO Salvatierra, all became involved in a publicly adversarial interaction between an unknown individual, § 87(2)(b) PO Payano, and PO Previl, and failed to activate their BWCs between 40 seconds and one minute after arriving. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 02).
- PO Romero has been a member-of-service for nine years and this is the first CCRB complaint to which he has been a subject.
- PO Cespedes has been a member-of-service for four years and this is the first CCRB complaint to which she has been a subject.
- PO Previl has been a member of service for three years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- PO Payano has been a member of service for six years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Innocent has been a member of service for 14 years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Salvatierra has been a member of service for seven years and has been a subject in two CCRB complaints and five allegations, of which one was substantiated.:
 - 202201431 involved a substantiated allegation of failure to provide RTKA card against PO Salvatierra. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of January 24, 2024, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (BR 55).

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

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

