CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☑ Force ☑ Discourt. ☐ U.S.
Drew Murphy	Squad #10	202302144	☑ Abuse ☑ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	18 Mo. SOL	Precinct:
Wednesday, 03/08/2023 5:19 PM, Wednesday, 03/08/2023 5:29 PM	Intersection of E 146th Street and Brook Avenue; 40th Precinct Stationhouse	9/8/2024	40

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Mon, 03/13/2023 10:09 AM	CCRB	Phone	Mon, 03/13/2023 10:09 AM

Complainant/Victim	Type	Home Address
[redacted]	[redacted]	[redacted]

Subject Officer(s)	Shield	TaxID	Command
1. PO Bismal Tineo	03560	962135	040 PCT
2. PO Ernst Celestin	28671	966991	040 PCT
3. PO Salvador Cornejocastillo	09217	966002	040 PCT
4. PO Stephen Oswald	01696	961985	040 PCT
5. PO Peter Delohery	29163	967037	040 PCT
6. An Officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Sinaka Javorovac	31751	968515	040 PCT
2. PO Malachi Mckenith	02680	945983	040 PCT
3. PO Matthew Barlow	26881	964910	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Bismal Tineo	Abuse: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo stopped § 87(2)(b)	A . Unable to Determine
B . PO Stephen Oswald	Abuse: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Stephen Oswald stopped § 87(2)(b)	B . Unable to Determine
C . PO Bismal Tineo	Abuse: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo stopped Individuals.	C . Unable to Determine
D . PO Stephen Oswald	Abuse: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Stephen Oswald stopped Individuals.	D . Unable to Determine
E . PO Bismal Tineo	Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo used physical force against § 87(2)(b)	E . Within NYPD Guidelines
F . PO Ernst Celestin	Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Ernst Celestin used physical force against § 87(2)(b)	F . Within NYPD Guidelines
G . PO Peter Delohery	Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Peter Delohery used physical force against § 87(2)(b)	G . Within NYPD Guidelines
H . PO Salvador Cornejocastillo	Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Salvador Cornejocastillo used physical force against § 87(2)(b)	H . Within NYPD Guidelines

Officer(s)	Allegation	Investigator Recommendation
I . PO Stephen Oswald	Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Stephen Oswald used physical force against § 87(2)(b)	I . Within NYPD Guidelines
J . PO Bismal Tineo	Abuse: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo improperly used his body-worn camera.	J . Substantiated
K . An Officer	Discourtesy: In the vicinity of the 40th Precinct stationhouse, an Officer spoke discourteously to § 87(2)(b)	K . Officer(s) Unidentified
L . An Officer	Off. Language: In the vicinity of the 40th Precinct stationhouse, an Officer spoke offensively regarding § 87(2)(b) s actual or perceived disability.	L . Officer(s) Unidentified
M . PO Bismal Tineo	Abuse: In the vicinity of the 40th Precinct stationhouse, Police Officer Bismal Tineo issued an unlawful summons to § 87(2)(b)	M . Substantiated
§ 87(2)(g), § 87(4-b)		

Case Summary

On March 13, 2023, § 87(2)(b) filed this complaint on behalf of her son, § 87(2) with the CCRB by phone. On March 13, 2024, this case was reassigned from Inv. Justin Huang to Inv. Drew Murphy.

On March 8, 2023, at approximately 5:19pm, in the vicinity of East 146th Street and Brook Avenue in the Bronx, § 87(2)(b) along with his friends, "§ 87(2)(b) and "§ 87(2)(b) were approached by Police Officers Bismal Tineo, Stephen Oswald, Ernst Celestin, Peter Delohery, Salvador Cornejocastillo, Matthew Barlow, and Sinaka Javorovac, all of the 40th Precinct (PO Cornejocastillo had since been re-assigned to the Bronx Court section; PO Tineo had since been re-assigned to the 40th Precinct Detective Squad). PO Tineo and PO Oswald stopped § 87(2)(b) § 87(2)(b) and § 87(2)(b) **(Allegations A, B, C, and D: Abuse of Authority—Stop, *Unable to Determine*)**. PO Tineo, PO Oswald, PO Celestin, PO Delohery, and PO Cornejocastillo grabbed § 87(2)(b) arms, pulled them behind his back, and placed him into handcuffs **(Allegations E, F, G, H, and I: Force—Physical Force, *Within NYPD Guidelines*)**. PO Tineo activated his BWC midway through helping to handcuff § 87(2)(b) **(Allegation J: Abuse of Authority—Improper Use of Body-Worn Camera, *Substantiated*)**.

That same day, at approximately 5:29pm, § 87(2)(b) was taken back to the 40th Precinct stationhouse and was lodged in the juvenile room, which was under the supervision of Police Officer Malachi McKenith, of the 40th Precinct (he has since been reassigned to the Manhattan Court Section). While § 87(2)(b) was in the juvenile room, an officer allegedly called him "stupid and dumb" **(Allegation K: Discourtesy—Word, *Officer(s) Unidentified*)** and **(Allegation L: Offensive Language—Disability, *Officer(s) Unidentified*)**. PO Tineo ultimately released § 87(2) from the 40th Precinct with a summons for disorderly conduct **(Allegation M: Abuse of Authority—Unlawful Summons, *Substantiated*)**.

§ 87(2)(g), § 87(4-b)

The investigation received body-worn camera footage captured by PO Barlow, PO Celestin, PO Cornejocastillo, PO Delohery, PO Javorovac, PO Oswald, and PO Tineo **(BR 04-21)**, and cell phone footage from § 87(2)(b) (**BR 31-32**), § 87(2)(g) .

§ 87(2)(b) received a summons for disorderly conduct, in violation of NYS Penal Code 240.20(5) **(BR 30)**.

Findings and Recommendations

Allegation (A) Abuse of Authority: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo stopped § 87(2)(b)

Allegation (B) Abuse of Authority: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Stephen Oswald stopped § 87(2)(b)

Allegation (C) Abuse of Authority: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo stopped Individuals.

Allegation (D) Abuse of Authority: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Stephen Oswald stopped Individuals.

Allegation (E) Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo used physical force against § 87(2)(b)

Allegation (F) Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Ernst Celestin used physical force against § 87(2)(b)

Allegation (G) Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Peter Delohery used physical force against § 87(2)(b)

Allegation (H) Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Salvador Cornejocastillo used physical force against § 87(2)(b)

Allegation (I) Force: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Stephen Oswald used physical force against § 87(2)(b)

Allegation (M) Abuse of Authority: In the vicinity of the 40th Precinct stationhouse, Police Officer Bismal Tineo issued an unlawful summons to § 87(2)(b)

§ 87(2)(b) stated **(BR 24)** that as he and his friends, § 87(2)(b) and § 87(2)(b) walked home, they were about to cross the street when PO Tineo, PO Celestin, PO Javorovac, PO Cornejocastillo, and PO Oswald pulled up in two unmarked police vehicles, approached § 87(2) and put his arms behind his back. § 87(2)(b) asked what he was being arrested for, and one of the officers responded that he was being arrested for jaywalking and not having a backpack. § 87(2)(b) was transported to the 40th Precinct and then was released to his mother's custody.

PO Tineo stated **(BR 22)** that he observed § 87(2)(b) § 87(2)(b) and § 87(2)(b) walk east bound across the street while the traffic light for southbound traffic on Brook Avenue was green. § 87(2)(b) § 87(2)(b) and § 87(2)(b) obstructed the busy southbound traffic, causing cars to slow down. PO Tineo and PO Oswald exited their car and approached § 87(2)(b) § 87(2)(b) and § 87(2)(b) and told them to stop. § 87(2)(b) and § 87(2)(b) stopped, but § 87(2)(b) continued walking southbound. § 87(2)(b) changed direction and walked northbound. PO Tineo and other officers told § 87(2)(b) to stop at least once or twice, and § 87(2)(b) continued to walk. PO Tineo and other officers placed their hands on § 87(2)(b) to stop him. § 87(2)(b) flailed his arms and tensed his muscles. PO Tineo and other officers placed § 87(2)(b) into handcuffs for officer safety. PO Tineo and the other officers transported § 87(2)(b) back to the 40th Precinct for acting disorderly and disobeying directions. PO Tineo and the other officers ultimately released § 87(2) with a summons for disorderly conduct. § 87(2)(b) and § 87(2)(b) were not given summonses because PO Tineo and the other officers wanted to remove § 87(2)(b) quickly back to the stationhouse before a crowd could form.

§ 87(2)(g)

PO Cornejocastillo observed § 87(2)(b) cross the street against the traffic light with one other individual, rather than two. § 87(2)(b) disrupted vehicular traffic, but PO Cornejocastillo could not recall whether the other individual blocked traffic. § 87(2)(b) tensed his muscles as PO Cornejocastillo assisted in handcuffing him; however, he did not note observing § 87(2)(b) flail his arms.

PO Celestin and PO Javorovac § 87(2)(g) stated **(BR 27-28)** that their unit was backing up another unit during this incident, and that they did not see what the other unit observed preceding the handcuffing of § 87(2)(b) By the time PO Celestin and PO Javorovac exited his car and approached § 87(2)(b) officers from the other unit had placed § 87(2)(b) against a wall. PO Celestin stated that he grabbed § 87(2)(b) arm to help stabilize him as other officers placed him into handcuffs. § 87(2)(b) moved his arms around to avoid being placed in handcuffs. After a few seconds, officers placed § 87(2)(b) into handcuffs and removed him to the 40th Precinct. PO Celestin was not part of the unit that removed § 87(2)(b) to the 40th Precinct and could not recall whether he had any additional interaction with § 87(2)(b) PO Javorovac stated that he did not assist in the handcuffing but stood behind the other officers and conducted crowd control.

§ 87(2)(g)

Per PO Tineo's BWC **(BR 14-15)**, at 0:25, PO Tineo exits his car and, alongside PO Oswald, approaches § 87(2)(b) § 87(2)(b) and § 87(2)(b) as they walk on the sidewalk. It is not clear what, if anything PO Oswald or PO Tineo say because the audio has not yet turned on, however, § 87(2)(b) and § 87(2)(b) stop. § 87(2)(b) walks a couple of steps further, with his back against a brick wall, facing PO Oswald, then shuffles a few steps toward § 87(2)(b) and § 87(2)(b) along the wall. At 0:33, PO Oswald grabs both of § 87(2)(b) forearms, with § 87(2)(b) back against the wall. At the same time, § 87(2)(b) raises his arms chest-level, crosses his arms, and rotates slightly so that he faces PO Tineo. § 87(2)(b) takes a couple of steps backwards as PO Oswald holds § 87(2)(b) left arm with both hands. PO Cornejocastillo's BWC better captures

the rest of the handcuffing.

Per PO Cornejocastillo's BWC **(BR 08-09)**, at 0:59, § 87(2)(b) asks why he was stopped, and PO Oswald says, "Because one, you're jaywalking. PO Oswald grabs § 87(2)(b) left bicep and PO Tineo grabs § 87(2)(b) midsection. PO Cornejocastillo grabs § 87(2)(b) left wrist and PO Tineo holds his right forearm. One of the officers off-screen says § 87(2)(b) is reaching down for something. PO Cornejocastillo raises § 87(2)(b) arms by the wrists, and § 87(2)(b) appears to tense as he does this. PO Oswald and PO Cornejocastillo push § 87(2)(b) right side to rotate him, so his body faces the wall. PO Celestin and PO Tineo hold his right arm as PO Cornejocastillo place him into handcuffs.

Per PO Barlow's BWC **(BR 04-05),** at 1:18, PO Delohery grabs § 87(2)(b) left bicep as PO Cornejocastillo affixes the handcuffs to § 87(2)(b) PO Oswald, PO Cornejocastillo, and PO Barlow's BWC footage is generally consistent with PO Celestin's BWC **(BR 06-07)**, PO Delohery's first activation **(BR 10-11)**, and PO Javorovac's first activation **(BR 12-13)**. None of this footage captures § 87(2)(b) § 87(2)(b) and § 87(2)(b) jaywalking prior to the arrest. Throughout the duration of all this consistent BWC, there does not appear to be a crowd gathering nearby. There also is no visible sign that traffic is backed up; however, the footage does not comprehensively capture the road.

Video provided by § 87(2)(b) **(BR 31-32)** § 87(2)(g) begins focused on PO Oswald's approach, and does not show § 87(2)(b) until, at 00:03, PO Oswald holds § 87(2)(b) s against the wall by his forearms.

Per the Event Chronology for Event# § 87(2)(b) **(BR 36)** this job began as 10P2 (Investigate/ Possible Crime: Suspicious person). The job was finalized as 92C (arrest).

§ 87(2)(b) was issued summons# § 87(2)(b) for disorderly conduct for obstructing vehicular or pedestrian traffic **(BR 30)**. The narrative states that PO Tineo observed § 87(2)(b) cross the street against the signal traffic device, causing vehicular traffic.

PO Cornejocastillo's memo book **(BR 33)** notes that this incident began as 10-10P2 (possible crime) and had an interim disposition of 10-82 (verification/ arrest) and a final disposition of 10-96 (summons served).

PO Tineo's memo book **(BR 34)** notes that PO Tineo issued a summons to § 87(2)(b) for disorderly conduct for obstructing vehicular traffic.

No stop report was prepared in response to this incident.

No TRI was prepared in response to this incident **(BR 35)**.

According to People v. De Bour, N.Y.2d 210 (**BR 43**), police officers are authorized to conduct a forcible stop and detention of a person when they entertain a reasonable suspicion that that particular person has committed, is committing, or is about to commit a felony or misdemeanor.

Patrol Guide procedure 221-01 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 **(BR 37)**.

NY CLS Penal § 240.20(5) **(BR 38)** states that a person is guilty of disorderly conduct when, with intent to cause a public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof… he obstructs vehicular or pedestrian traffic.

Per People v. Baker, 20 N.Y. 3d 354 (2013), when determining whether a person is guilty of disorderly conduct, police officers are to consider the public harm element of the conduct by assessing the nature and character of the conduct, the time and place where the conduct occurred, the number of people in the vicinity, whether people in the vicinity were drawn to the disturbance, how many were drawn to the disturbance, and how those people reacted to the disturbance. **(BR 39)**.

New York Traffic Rules Section §4-04(c)(3) **(BR 41)** maintains that pedestrians are subject to restrictions on crossings.

§ 87(2)(g) As such, it is recommended that **Allegations A**, **B**, **C**, and **D** be closed as **Unable to Determine**.

§ 87(2)(g) As such, it is recommended that **Allegations E**, **F**, **G**, **H**, and **I** be closed as **Within NYPD Guidelines**.

§ 87(2)(g) thus, it is recommended that **Allegation M** be **Substantiated**.

Allegation (J) Abuse of Authority: In the vicinity of E. 146th Street and Brook Avenue, Police Officer Bismal Tineo improperly used his body-worn camera.

PO Tineo's BWC shows **(BR 16-17)**, at the 00:24 timestamp, PO Tineo steps out of his car and approaches § 87(2)(b) behind PO Oswald. PO Tieno assists PO Oswald, PO Delohery, PO Celestin, and PO Cornejocastillo in turning § 87(2)(b) body, positioning the front side of his body against the wall so that PO Cornejocastillo can place him into handcuffs. At the 0:55 timestamp, PO Celestin looks over at PO Tineo, and activates PO Tineo's BWC.

PO Tineo stated **(BR 22)** that in the middle of this interaction with § 87(2)(b) PO Celestin noticed that PO Tineo's BWC was not turned on and assisted him by activating it. PO Tineo could not recall whether he simply forgot to activate the BWC prior to approaching § 87(2) or whether he attempted to activate his BWC, but did not notice that he did not properly activate the camera.

Per Patrol Guide procedure 212-123 **(BR 23)**, it is mandatory for members of the service to activate their BWC prior to engaging in any police action.

§ 87(2)(g) as such, it is recommended that **Allegation J** be closed as **Substantiated**.

Allegation (K) Abuse of Authority: In the vicinity of the 40th Precinct Stationhouse, an officer spoke discourteously to § 87(2)(b)

Allegation (L) Offensive Language: In the vicinity of the 40th Precinct Stationhouse, an officer

spoke offensively regarding § 87(2)(b) s actual or perceived disability.

§ 87(2)(b) stated **(BR 24)** that after he was brought back to the 40th Precinct, he was held in the juvenile room. Two officers who assisted in his arrest asked him when he was going to learn from his lesson, and asked him, "How many times are you going to get arrested for this?" § 87(2) disputed whether he should have been arrested at all and, in response, one of the officers called him "stupid and dumb."

PO Celestin stated **(BR 33)** that he did not have any further interaction with § 87(2)(b) after he assisted in handcuffing him in the vicinity of 146th Street and Brook Avenue. PO Celestin never called § 87(2)(b) "stupid and dumb," nor did he use any profanity with § 87(2)(b)

PO Tineo stated **(BR 22)** that he could not recall whether he ever went into the juvenile room when § 87(2)(b) was lodged there. PO Tineo never heard any officer call § 87(2)(b) "stupid and dumb."

PO McKenith **(BR 31)** monitored the cells, including the juvenile room, to ensure the safety of the prisoners, during this incident; however, PO McKenith had no independent recollection of this incident. The investigation informed PO McKenith that § 87(2)(b) alleged that an officer called him "stupid and dumb," in the juvenile room, and PO McKenith stated that he had no recollection of calling § 87(2)(b) "stupid and dumb," nor of hearing any other officer do so.

Per PO Delohery's second BWC activation **(BR 18-19)**, at the 5:50 timestamp, PO Delohery, PO Cornejocastillo, PO Barlow, PO Oswald walk § 87(2)(b) into the juvenile room. PO McKenith eats food at a desk as the officers take § 87(2)(b) coat, shoes, and hoodie, and handcuff him to the bench. The officers leave the room, leaving § 87(2)(b) alone with PO McKenith. Throughout the entirety of this BWC footage, none of the officers present call § 87(2) "stupid" and/or "dumb." This footage is generally consistent with PO Cornejocastillo's BWC **(BR 08-09)**, PO Oswald's BWC **(BR 14-15)**, and PO Javorovac's second BWC activation **(BR 20-21)**.

The investigation was unable to obtain stationhouse footage.

Per the 40th Precinct's Roll Call, PO McKenith worked as a cell attendant during the third tour **(BR 40)**.

§ 87(2)(g) As such, it is recommended that **Allegations K** and **L** be closed as **Officer(s) Unidentified**.

§ 87(2)(g), § 87(4-b)

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Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two CCRB complaints and has been named as a victim in 15 allegations **(BR 02)**:
  - § 87(2)(b) [redacted].
- PO Javorovac has been a member of service for four years and has been a subject in 11 CCRB complaints and 38 allegations, none of which were substantiated. § 87(2)(g) [redacted]
- PO Cornejocastillo has been a member of service for five years and has been a subject in four CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g) [redacted].
- PO Tineo has been a member of service for seven years and has been a subject in seven CCRB complaints and 20 allegations, of which two were substantiated.:
  - **202100012** involved a substantiated allegation of offensive language- other against PO Tineo. The Board recommended command discipline B and the NYPD imposed no disciplinary action. § 87(2)(g) [redacted].
  - **202200051** involved a substantiated allegation of vehicle search against PO Tineo. The Board recommended command discipline A and the NYPD imposed command discipline A (one vacation day). § 87(2)(g) [redacted]
- PO Oswald has been a member of service for seven years and has been a subject in 11 CCRB complaints and 26 allegations, of which one was substantiated.:
  - **202200051** involved a substantiated allegation of failure to provide RTKA card against PO Oswald. The Board recommended command discipline A and the NYPD imposed command discipline A (one vacation day). § 87(2)(g) [redacted].
- PO Celestin has been a member of service for five years and has been a subject in eight CCRB complaints and 29 allegations, of which one was substantiated.:
  - **202203603** involved a substantiated allegation of entry of premises against PO Celestin. The Board recommended command discipline B and the NYPD has not yet imposed any discipline. § 87(2)(g) [redacted]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 3, 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 03)**.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [redacted]

§ 87(2)(g) [redacted]

Squad No.: 10

Investigator:	Drew Murphy	Inv. Drew Murphy	April 17, 2024
	Signature	Print Title & Name	Date
Squad Leader:	Maura R. Roche	IM Maura R. Roche	04/18/2024
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date