CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☐ Force ☐ Discourt. ☐ U.S.
Megan McCurdy	Squad #17	202307796	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	18 Mo. SOL	Precinct:
Thursday, 08/17/2023 7:10 PM, Thursday, 08/17/2023 8:18 PM	Southwest Corner of East 154th Street and Melrose Avenue; 40th Precinct stationhouse	2/17/2025	40

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Fri, 08/18/2023 12:22 PM	CCRB	Phone	Fri, 08/18/2023 12:22 PM

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

Subject Officer(s)	Shield	TaxID	Command
1. PO Peter Delohery	29163	967037	040 PCT
2. SGT Anthony Perlmutter	01775	962683	040 PCT
3. PO Damion Cunningham	03411	969034	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Jonathan Torres	20300	971706	040 PCT
2. PO Stephen Oswald	01696	961985	040 DET
3. PO Jorge Ortiz	25392	967236	040 PCT
4. PO Jermaine Webb	23514	935958	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Peter Delohery	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery stopped § 87(2)(b) [redacted]	A . Substantiated
B . SGT Anthony Perlmutter	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter stopped § 87(2)(b) [redacted]	B . Substantiated
C . PO Peter Delohery	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery frisked § 87(2)(b) [redacted]	C . Substantiated
D . PO Peter Delohery	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery failed to explain to § 87(2)(b) [redacted] the reason for a law enforcement activity.	D . Unable to Determine
E . SGT Anthony Perlmutter	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter failed to explain to § 87(2)(b) [redacted] the reason for a law enforcement activity.	E . Unable to Determine
F . PO Peter Delohery	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery failed to provide § 87(2)(b) [redacted] with a business card.	F . Unable to Determine
G . SGT Anthony Perlmutter	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter failed to provide § 87(2)(b) [redacted] with a business card.	G . Unable to Determine

Officer(s)	Allegation	Investigator Recommendation
H . PO Peter Delohery	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery failed to activate his body-worn camera.	H . Substantiated
I . SGT Anthony Perlmutter	Abuse: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter failed to activate his body-worn camera.	I . Substantiated
J . PO Damion Cunningham	Abuse: At the 40th Precinct stationhouse in the Bronx, Police Officer Damion Cunningham did not process § 87(2)(b) s complaint regarding officers.	J . Substantiated

Case Summary

On August 18, 2023, § 87(2)(b) filed this complaint over the phone with the CCRB on behalf of herself and her § 87(2)(b) -old son, § 87(2)(b)

On August 17, 2023, at approximately 7:10 P.M., at the intersection of East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery and Sergeant Anthony Perlmutter of the 40th Precinct stopped § 87(2)(b) **(Allegations A and B: Abuse of Authority – Stop, substantiated)**. PO Delohery frisked § 87(2)(b) s right pants pocket **(Allegation C: Abuse of Authority – Frisk, substantiated)**. PO Delohery and Sgt. Perlmutter failed to explain the purpose of the stop or offer business cards to § 87(2)(b) **(Allegations D, E, F, G: Abuse of Authority – Failure to Explain, Failure to Provide RTKA Card; unable to determine)**, and failed to activate their body-worn cameras (BWC) during this incident **(Allegations H and I: Abuse of Authority –Improper Use of BWC; substantiated)**.

That same day, at approximately 8:18 P.M., § 87(2)(b) and § 87(2)(b) went to the 40th Precinct stationhouse, where § 87(2)(b) told Police Officer Damion Cunningham of the 40th Precinct that she wanted to make a complaint against officers. PO Cunningham gave her the CCRB's phone number without offering to take her complaint at the stationhouse **(Allegation J: Abuse of Authority – Refusal to Process Civilian Complaint, substantiated)**.

No arrest or summons resulted from this incident.

The investigation received surveillance footage from the 40th Precinct stationhouse **(BR 01)**, including footage capturing the front of the stationhouse **(BR 02)** and the interior main entrance **(BR 03)**. The investigation received negative BWC results **(BR 04, 05)**.

Findings and Recommendations

Allegation (A) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery stopped § 87(2)(b)
Allegation (B) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter stopped § 87(2)(b)
Allegation (C) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery frisked § 87(2)(b)
Allegation (D) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery failed to explain to § 87(2)(b) the reason for a law enforcement activity.
Allegation (E) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter failed to explain to § 87(2)(b) the reason for a law enforcement activity.
Allegation (F) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery failed to provide § 87(2)(b) with a business card.
Allegation (G) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter failed to provide § 87(2)(b) with a business card.
Allegation (H) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Police Officer Peter Delohery failed to activate his body-worn camera.
Allegation (I) Abuse of Authority: At East 154th Street and Melrose Avenue in the Bronx, Sergeant Anthony Perlmutter failed to activate his body-worn camera.

See **BR 06** for a Google Maps map of the vicinity of East 154th Street and Melrose Avenue in the Bronx.

§ 87(2)(b) **(BR 07)** stated that on August 17, 2023, at approximately 7:10 P.M., he and two unidentified friends were walking northbound on Melrose Avenue on the western sidewalk toward his friend's house. § 87(2)(b) was wearing black Nike sweatpants, black Nike shirt, and a blue Nike Elite bookbag. He noticed two unmarked police vehicles (a black minivan and a tan sedan) with officers inside of them, parked on the east side of Melrose Avenue at its intersection with East 152nd Street. § 87(2)(b) and his friends continued to walk north when § 87(2)(b) noticed the tan sedan was driving slowly behind them. He saw all four officers inside the tan sedan looking at him. These four officers were all Hispanic males approximately in their 30s who stood 5'7" to 5'10" and were dressed in dark blue uniforms; § 87(2)(b) was unable to distinguish the officers from each other in any way. When § 87(2)(b) was between East 153rd Street and East 154th Street, an officer in the tan sedan asked, "Can I help you?" § 87(2)(b) did not answer him and kept walking. When § 87(2)(b) reached the southwest corner of East 154th Street and Melrose Avenue, the black minivan came "out of nowhere," and cut off § 87(2)(b) by stopping in his path. Two officers (a white male approximately in his 30s who stood 6'0" tall with a heavy build, short hair, an orange beard, no glasses, and in a dark blue uniform; and a Hispanic male approximately in his 30s who stood 5'7" to 5'10" in a dark blue uniform) exited the van, and the four Hispanic male officers exited the sedan. The two officers from the van grabbed § 87(2)(b) from behind and each grabbed one of § 87(2)(b) s shoulders and his bookbag. Two of the officers from the sedan approached § 87(2)(b) from the front, and one of them asked, "You got anything?" § 87(2)(b) did not respond, and these two officers started patting him down. § 87(2)(b) then said, "No." He asked the officers why they stopped him, and no officers responded. One of the two frisking officers patted his front left pants pocket and groin area, and the other patted down his front right pants pocket. There was nothing in either of the pockets. The two officers patted him down for approximately 30 seconds. All six officers then started to walk toward their respective vehicles. § 87(2)(b) followed the two officers that frisked him to the tan sedan and asked why they stopped him. One officer asked, "Why you acting tough? You're not going to do nothing." § 87(2)(b) did not respond and no officer explained why he was stopped and frisked. All the officers re-entered their respective vehicles and drove away. The stop lasted approximately a minute and 30 seconds. § 87(2)(b) did not receive any documentation or business cards from any officer. The officers did not ask for § 87(2)(b) s consent to frisk him. He did not have any weapons on his person at the time of the stop.

PO Delohery **(BR 08)** stated that he, PO Ortiz, and Sgt. Perlmutter, all assigned to one unit and a silver sedan of the Public Safety Team, were conducting a vehicle stop at the northeast corner of East 152nd Street and Melrose Avenue when he saw three youths walking northbound on Melrose Avenue at a quick pace on the western sidewalk, who were paying extremely close attention to the officers. The youths continued walking and looking back at the officers. PO Delohery noticed that one of the individuals in the group § 87(2)(b) was wearing a very heavy pair of sweatpants, which was unusual in August. PO Delohery saw a very heavy object, which created a bulge, swinging freely in and weighing down § 87(2)(b) s right sweatpants pocket, which required further investigation. PO Delohery did not recall the size or shape of the bulge, only that he "truly felt like there was a very good chance that [the object] was a firearm." PO Delohery did not speak to any of the individuals in the group before returning to his car, as the individuals had walked approximately a half block ahead. The vicinity of the incident location is a very violent part of the precinct, as there are a lot of shootings, gang activity, and robbery patterns in the area. PO Delohery, PO Ortiz, and Sgt. Perlmutter entered their car and followed the group for approximately two minutes. PO Delohery did not recall where he sat in the car, but he was not driving. PO Delohery did not recall if the sirens or lights were activated at any point, but the vehicle's windows were down. The officers pulled up alongside parked cars next to the group. PO Delohery started

calling out to the group. He did not recall what he said when calling out to the group or if he verbally identified himself as a police officer. PO Delohery exited the car and called out to the group. § 87(2)(b) s two friends stopped immediately and stared at PO Delohery while § 87(2)(b) kept walking and put his head down to obstruct his face. § 87(2)(b) then started moving toward the building side of the sidewalk, "hugging the wall," to try and create more distance between himself and the officers. When PO Delohery exited his car and got closer to § 87(2)(b) he noticed the swinging object in § 87(2)(b) s right sweatpants pocket looked more and more like the slide of a gun as it was "very blocky looking." Other than the shape, PO Delohery believed to be the slide of a gun and that the object was very heavy, swinging, and weighing down § 87(2)(b) pocket, PO Delohery did not see anything else about the bulge that indicated to him that it was a firearm. PO Delohery called to § 87(2)(b) ignored him, quickened his pace, and a second Public Safety Team unit pulled up to the corner ahead of § 87(2)(b) in a separate vehicle. Another officer exited the vehicle and began walking toward § 87(2)(b) turned toward PO Delohery and moved his right arm down toward his waistband and the object PO Delohery believed to be a firearm. PO Delohery did not recall if he or the other officer made contact with § 87(2)(b) first, or if any officers in the other unit said anything to § 87(2)(b) PO Delohery did not recall if any officer told § 87(2)(b) to stop. PO Delohery grabbed § 87(2)(b) s right hand to keep him from going towards the suspected gun. PO Delohery frisked the outermost layer of § 87(2)(b) s right sweatpants pocket and felt a very heavy cellphone. PO Delohery did not recall the size or shape of the cellphone. § 87(2)(b) did not say anything while PO Delohery frisked him, and PO Delohery did not say anything to § 87(2)(b) while conducting the frisk, which lasted under five seconds. PO Delohery did not recall frisking any other area of § 87(2)(b) s body. PO Delohery did not know if any other officer touched or frisked § 87(2)(b) PO Delohery did not ask for § 87(2)(b) s consent to conduct a frisk because it was impractical to do so when PO Delohery was approaching an individual whom he believed had a firearm. After PO Delohery frisked § 87(2)(b) became extremely aggressive and irate (clenched his fist, took a fighting stance, and started shouting and threatening the officers), which caused a crowd to start gathering. The crowd consisted of people who had exited a nearby store to see what was going on. PO Delohery did not recall what threats § 87(2)(b) made. § 87(2)(b) s two friends had to hold § 87(2)(b) back. It was no longer safe for the officers to remain on scene because it appeared § 87(2)(b) wanted to escalate the situation, so the officers drove away in order not to further escalate the situation. The incident lasted approximately five minutes. PO Delohery did not offer § 87(2)(b) a business card or explain the reason for the stop because it was not practical due to § 87(2)(b) behavior and the gathering crowd. PO Delohery did not recall if any other officer offered a business card or explained the reason for the stop to § 87(2)(b) PO Delohery did not activate his BWC during this incident, as it was impractical, because he believed he was approaching an individual with a gun, so he needed his right hand free in case he needed to draw his weapon and his left hand free in case he needed to use his radio to call for help. PO Delohery was shown Stop Report § 87(2)(b) PO Delohery confirmed that he prepared the report. He was not sure why the section on the stop report that reads, "Did officer explain reason for stop?" was marked as "Yes." He stated it could have been a clerical error, as the question is a checkbox on the form.

Sgt. Perlmutter **(BR 09)** provided a statement § 87(2)(g) Sgt. Perlmutter's vehicle was travelling northbound on Melrose Avenue at approximately a speed of 15 to 20 miles per hour when he observed § 87(2)(b) from a distance of approximately two car-lengths on his left with an object in his pocket that appeared to be a firearm (a large, distinct "rectangular type of shape," that resembled the slide of a handgun facing downwards towards the ground) in his right front pants pocket along with two other individuals. Sgt.

Perlmutter noted that he had carried a gun for seven and a half years at the time of this incident, and that through his gun ownership and placing it in his own pocket on occasion, he found the shape of a pocketed slide of a handgun to be distinctive. Sgt. Perlmutter noted that, based on his training and experience (e.g., 50 firearms arrests), he was familiar with the shape of the slide of a handgun hidden in a pocket. The officers shared no conversation in the vehicle amongst themselves prior to initiating the stop; Sgt. Perlmutter and PO Delohery exited their vehicle to stop § 87(2)(b) As § 87(2)(b) initially quickened his pace and moved away from officers, he scanned with his eyes for the positioning of the officers, widened his eyes, and appeared nervous. In Sgt. Perlmutter's experience, armed individuals tend to hug up against a wall when they are aware that officers are present. Sgt. Perlmutter did not recall if § 87(2)(b) turned his body towards the wall as he hugged up against it. Ultimately, § 87(2)(b) voluntarily stopped for officers at the southwest corner of East 154th Street and Melrose Avenue. PO Delohery frisked the right front pants pocket where the gun was suspected to be hidden and made no other physical contact with § 87(2)(b) No other officer made physical contact with him. Sgt. Perlmutter did not recall if any officer asked § 87(2)(b) s consent prior to PO Delohery's frisk. After PO Delohery completed his frisk, § 87(2)(b) became "extremely combative" (i.e., moving quickly towards the officers and their vehicle, taking a fighting stance, and raising balled-up fists as if to fight the officers). § 87(2)(b) was saying something to the officers, but Sgt. Perlmutter did not recall any specific utterances. The two individuals who had been walking with § 87(2)(b) held him back to prevent him from initiating physical contact with the officers. Given § 87(2)(b) s response and a gathering crowd, Sgt. Perlmutter and the other officers did not have an opportunity to explain the reason for the stop and frisk to § 87(2)(b) as they returned to their vehicles to prevent any escalation. Sgt. Perlmutter acknowledged that he wrote in his memo book **(BR 34)** that a business card was offered to § 87(2)(b) Sgt. Perlmutter did not know when or which officer offered § 87(2)(b) a business card but knew that he never received a business card given his physical reaction after PO Delohery completed the frisk. Sgt. Perlmutter noted that he had no independent recollection of any officers offering § 87(2)(b) a business card, but rather only believed that an officer made such an offer due to what he wrote in his memo book. Sgt. Perlmutter did not recall a second unit arriving on scene. Sgt. Perlmutter forgot to activate his BWC when he believed he saw an individual with a gun on the street and adrenaline kicked in, noting he was in the "heat of the moment."

PO Ortiz **(BR 10)** provided a statement § 87(2)(g) PO Ortiz operated his unit's vehicle and drove slowly northbound on Melrose Avenue when either PO Delohery or Sgt. Perlmutter observed § 87(2)(b) walking on the sidewalk with an object that resembled a firearm. PO Ortiz followed § 87(2)(b) for approximately more than 10 seconds. PO Ortiz did not recall if there was any indication that § 87(2)(b) noticed the officers following him or if he was bothered by it. Without pulling over, PO Ortiz stopped the vehicle and PO Delohery and Sgt. Perlmutter exited the vehicle and stopped § 87(2)(b) PO Ortiz stayed in the vehicle to make sure the vehicle was in a safe place due to oncoming traffic. PO Ortiz did not recall who made the decision to stop § 87(2)(b) and did not hear any officer tell him to stop. PO Ortiz did not recall how the officers approached § 87(2)(b) and was unable to hear any conversation between the officers and § 87(2)(b) or observe any physical interactions. After the other two officers stopped § 87(2)(b), § 87(2)(b) became visibly upset and agitated, took a fighting stance (e.g., feet forward and hands balled), and started approaching PO Delohery and Sgt. Perlmutter. The officers then got back in their police vehicle, and PO Ortiz drove away to resume patrol. From PO Ortiz's vantage point, he could not see whether either officer gave § 87(2)(b) a business card. PO Ortiz did not recall if there were other civilians or a crowd in the vicinity whose attention was drawn to the interaction. PO Ortiz did not exit the vehicle, interact with § 87(2)(b) or make any observations about § 87(2)(b) s person

during this incident. He did not recall if a second unit arrived on scene.

PO Oswald **(BR 11)** stated that he was in an unmarked black van driven by PO Torres, the second Public Safety Team unit, when they saw PO Delohery's, Sgt. Perlmutter's, and PO Ortiz's vehicle stopped at the intersection of East 154th Street and Melrose Avenue. PO Oswald did not recall if there was any communication between the two vehicles. PO Torres told PO Oswald that he observed a bulge on § 87(2)(b) s person, who walked across the street on the driver's side of the police vehicle, that he believed to be a weapon. PO Oswald did not personally observe a bulge on § 87(2)(b) s person. PO Oswald was farther away from § 87(2)(b) than PO Torres. To assist the other officers, PO Torres made a U-turn at the intersection of East 154th Street and Melrose Avenue. However, due to traffic, the other officers had already disengaged from § 87(2)(b) and returning to their own vehicle by the time PO Torres stopped. PO Oswald did not see any officers touch § 87(2)(b) walked toward the other officers in an aggressive manner (i.e., screaming and clenching his fists) and was upset. The other officers re-entered their vehicle, and both units drove away. PO Oswald and PO Torres did not exit their vehicle during this incident or have any interaction with § 87(2)(b) on this day.

PO Torres **(BR 12)** provided a statement § 87(2)(g) While he and PO Oswald were getting lunch on Third Avenue between Westchester Avenue and East 151st Street, they contacted the other Public Safety Team unit via radio to ask where they were located, as they had earlier gotten separated. The other unit stated that they were heading northbound on Melrose Avenue and provided no additional information. When PO Torres was driving northbound on Melrose Avenue between East 153rd Street and East 154th Street, he observed PO Delohery and Sgt. Perlmutter exit their double-parked vehicle in the middle of the same block in the southbound lane. PO Delohery and Sgt. Perlmutter approached § 87(2)(b) on the sidewalk in the middle of the block. At this point, PO Torres was approximately two to three car lengths from PO Delohery and Sgt. Perlmutter. § 87(2)(b) was looking over his shoulder at the two officers and started to walk ahead of two the people he was with at an increased speed. This action indicated to PO Torres that § 87(2)(b) noticed the officers and was attempting to flee. As § 87(2)(b) was walking "extremely fast," PO Torres was approximately one car length away from § 87(2)(b) and observed a bulge bouncing in § 87(2)(b) s right pants pocket, which indicated a heavily weighted object was inside the pocket. PO Torres got stuck in traffic as he tried to make a left turn onto East 154th Street, and he lost sight of the interaction between § 87(2)(b) and the officers and could not make out the size or shape of the object creating the bulge. PO Torres stated that the bulge may have resembled a knife but could not provide any specific reasons why he believed so. Other than the heavily weighted object, there was no other indication that § 87(2)(b) was in possession of a weapon. PO Torres observed § 87(2)(b) for approximately 15 to 20 seconds before losing sight of him. PO Torres did not hear or see any interaction between § 87(2)(b) and PO Delohery and Sgt. Perlmutter. Once PO Torres turned left and stopped his vehicle in the intersection of E 154th Street and Melrose Avenue, the interaction had already ended and PO Delohery and Sgt. Perlmutter approached their own vehicle. § 87(2)(b) then walked southbound in between the parked cars in the direction of PO Delohery's and Sgt. Perlmutter's vehicle, went into the middle of the street, clenched his fists in an aggressive manner toward PO Delohery and Sgt. Perlmutter, was screaming about officers grabbing him, and was being held back by the two people he was with as if to guide him back onto the sidewalk. § 87(2)(b) initially resisted his friends, but then started walking back to the sidewalk and PO Torres drove away. PO Torres did not recall seeing any additional civilians, other than § 87(2)(b) and his two friends in the vicinity of the incident.

Stop Report § 87(2)(b) was prepared by PO Delohery and approved by Sgt. Perlmutter § 87(2)(g) However, the stop report noted that the reason for the stop was explained, and a business card was offered.

Under *People v. De Bour*, 40 N.Y.2d 210 [1976] **(BR 18)**, an officer may stop an individual if he or she has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. To frisk an individual, an officer must have reasonable suspicion to believe that the individual is armed. Additionally, a "pocket bulge" can be caused by "any number of innocuous objects," while a waistband bulge is "telltale of a weapon."

Under *People v. Gerard*, 94 A.D.3d 592 [2012] **(BR 19)**, an individual in a high-crime area early in the morning who has a weighted-down bulge in his pocket, changes course, quickens his pace, and hugs the building line after noticing officers, blades his body as an officer approaches him, and attempts to block the officer's hand from touching the bulge, only provides the officers with founded suspicion and, in totality, does not create the reasonable suspicion necessary to stop and frisk the individual.

Under *People v. Stevenson*, 7 A.D.3d 820 [2004] **(BR 20)**, an officer's observation of a bulge on an individual's person that is "readily susceptible of an innocent as well as a guilty explanation," permits the officer to ask the individual if he has a weapon, but such an observation is insufficient to permit the officer to stop the individual.

Both PO Delohery and Sgt. Perlmutter stated that they observed a heavily weighted bulge that resembled the rectangular slide of a gun in § 87(2)(b) s right pants pocket but were unable to explain how the shape and/or size was distinctive of a gun as opposed to another, more innocuous object. § 87(2)(g) it is recommended that **Allegations A, B, and C** be **substantiated**.

Per NYPD Patrol Guide Procedure 212-11 **(BR 21)**, during a stop, officers are required to offer a business card and explain the reason for the stop unless the individual is arrested or summonsed, the officers are engaged in undercover activity, exigent circumstances requiring immediate attention are present, the officers reasonably expect that they or someone else is in danger of physical injury or that there is an imminent risk of property damage or potential destruction of evidence, to prevent the imminent escape of the individual, or in specific circumstances related to public facilities or restricted areas. Officers are also not required to explain the reason for the stop if it would impair a criminal investigation.

Sgt. Perlmutter and PO Delohery stated that they did not explain the reason for the stop or offer a business card because § 87(2)(b) became aggressive and threatening and caused a crowd to gather, although no officer recalled any specific verbal threats made by § 87(2)(b) § 87(2)(g) It is therefore recommended that **Allegations D, E, F, and G** be closed as **unable to**

determine.

Per NYPD Patrol Guide Procedure 212-123 **(BR 22)**, officers are required to activate their BWCs prior to engaging in any police action, which includes any self-initiated investigative or enforcement actions, such as investigative encounters. Officers should activate their BWCs "as soon as it is feasible and safe to do so after taking necessary action to preserve human health and safety, when an unanticipated or exigent occurrence takes place."

§ 87(2)(g) it is recommended that **Allegations H and I** be **substantiated**.

Allegation (J) Abuse of Authority: At the 40th Precinct stationhouse in the Bronx, Police Officer Damion Cunningham did not process § 87(2)(b) s complaint regarding officers. § 87(2)(b) **(BR 23)** stated that § 87(2)(b) came home and told her about officers stopping him. At approximately 8:15 P.M., § 87(2)(b), § 87(2)(b) and § 87(2)(b) s two friends went to the 40th Precinct stationhouse. When they arrived at the stationhouse, they approached a male officer by the stairs to the entrance and another male officer on the sidewalk; neither of whom she could describe in further detail. § 87(2)(b) said, "I would just like to make a complaint against some of your officers from your precinct." One of the officers said, "From my precinct?" § 87(2)(b) said yes and told the officers that she wanted to file a complaint about officers who stopped § 87(2)(b) failed to explain why they stopped and frisked him, and did not give him their shield numbers. One of the officers asked § 87(2)(b) if she had the officers' shield numbers, and she said no. One of the officers said there was nothing they could do and asked § 87(2)(b) what kind of car the officers were driving, and § 87(2)(b) described a black minivan and a tan sedan. One of the officers said they could provide § 87(2)(b) with a phone number to file a complaint against the officers, and one of the officers went into the stationhouse to retrieve the CCRB's phone number, which he provided to § 87(2)(b)

§ 87(2)(g) § 87(2)(b) stated that the officers told § 87(2)(b) that she could not come inside the stationhouse and had to call a phone number to file the complaint. The officers verbally provided the phone number.

Per surveillance footage capturing the front of the 40th Precinct stationhouse **(BR 02)**, at runtime 15:58, § 87(2)(b), § 87(2)(b), and two other male youths approach an unidentified white male officer and PO Cunningham, who are standing in front of the stationhouse. Between 16:09 and 17:08, the group appears to speak with both officers. At 17:08, PO Cunningham walks into the stationhouse, and the white officer continues to speak with the group.

Per surveillance footage from the interior main entrance of the 40th Precinct stationhouse **(BR 03)**, at runtime 17:13, PO Cunningham walks into the stationhouse and speaks with Police Officer Jermaine Webb. At 18:00, PO Cunningham appears to take a photograph of PO Webb's cell phone and exits the stationhouse. PO Webb follows.

Per surveillance footage capturing the front of the 40th Precinct stationhouse **(BR 02)**, at runtime 18:22, PO Cunningham exits the stationhouse, approaches the group, and appears to speak with them. At 19:22, the group walks away.

PO Cunningham **(BR 25)** stated a group of individuals came to the stationhouse to file a report against officers. PO Cunningham did not recall the information the civilians provided him with about the previous incident and did not go too much into detail about what had happened. PO Cunningham spoke with a "senior officer," whose name he did not recall and asked this person what the procedure was to file a CCRB complaint. This officer informed him that they did not have the documentation to file the complaint for the civilians at the stationhouse. The senior officer gave PO Cunningham a "picture" that described different methods to contact the CCRB and file a complaint and told him to give it to the person who wanted to file a complaint. PO Cunningham showed the investigation a photograph on his department phone that was taken at approximately the time of the incident **(BR 26)**. The photograph was of the screen of another cellphone, which displayed an image of a flyer with detailed instructions for interviewing a complainant as well as instructions on how to file a complaint via mail, phone, or in person at the stationhouse. Given PO Cunningham did not have access to the correct documentation to file the complaint at the stationhouse, he returned to the group and told them he did not have the paperwork to do so, and generally explained the procedures they could take to file a report; he did not recall what he exactly said. One of the individuals took a photograph of the photograph he took of the senior officer's phone. PO Cunningham never told the individuals they could not file the complaint at the stationhouse. PO Cunningham did not recall whether they ever specified that they wanted to file the complaint in person. PO Cunningham did not file a complaint for the civilians at the stationhouse and the interaction ended with them taking the pictures and walking away. PO Cunningham reasoned that the civilians were satisfied with the information he gave them on how to file a complaint because they were able to file the complaint and filed it against him. PO Cunningham described himself as the only officer addressing the civilians' request to file a complaint.

PO Webb **(BR 27)** did not recall this incident. PO Webb was shown a photograph of PO Cunningham's cell phone, which captures a complaint flyer on the screen **(BR 26)**. PO Webb recognized it from the 40th Precinct stationhouse. PO Webb was not sure where the civilian complaint reports are stored in the 40th Precinct stationhouse, or if the stationhouse had run out of civilian complaint reports on the date of the incident. PO Webb assumed that officers are able to print out additional civilian complaint reports if necessary.

Per NYPD Patrol Guide Procedure 207-28 **(BR 28)**, complaints against uniformed members of the service may be made at any patrol precinct, police service area, transit district, traffic unit, the Internal Affairs Bureau, or any other office of the Department, including the Office of the Police Commissioner or office of a deputy commissioner. An officer must give the complainant a Civilian Complaint Report to be prepared in the civilian's own handwriting and furnish assistance as needed.

§ 87(2)(g) it is recommended that **Allegation J** be **substantiated**.

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint and has been named as a victim in no other allegations **(BR 29)**.
- § 87(2)(b) has been a party to one other CCRB complaint and has been named a victim in 16 other allegations **(BR 30)**:
  - § 87(2)(b)

§ 87(2)(b)

- PO Delohery has been a member of service for five years and has been a subject in eight other CCRB complaints and 14 other allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Perlmutter has been a member of service for eight years and has been a subject in 13 other CCRB complaints and 44 other allegations, of which eight were substantiated. § 87(2)(g)
  - Case 201808753 involved one substantiated Discourteous Word allegation. The Board recommended Instructions, and the NYPD imposed Instructions.
  - Case 202000753 involved two substantiated Failure to Provide RTKA Card allegations. The Board recommended Command Discipline B, and the NYPD imposed no penalty.
  - Case 202002304 involved one substantiated Threat of Force allegation, two substantiated Discourteous Word allegations, one substantiated Offensive Language – Gender allegation, and one substantiated Offensive Language – Sexual Orientation allegation. The Board recommended Charges, which have not been served, so the NYPD has yet to impose a penalty.
- PO Cunningham has been a member of service for four years and as been a subject in two other CCRB complaints and 13 other allegations, of which eight were substantiated. § 87(2)(g)
  - Case 202303075 involved one substantiated Entry of Premises allegation, one substantiated Improper Use of BWC allegation, and six substantiated Threat of Arrest allegations. The Board recommended Charges, and the NYPD imposed a forfeiture of three vacation days.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of March 11, 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 31)**.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(g)

Squad No.:	17		
Investigator:	Megan McCurdy	Inv. Megan McCurdy	11/08/2024
	Signature	Print Title & Name	Date
Squad Leader:	Benjamin Shelton	IM Benjamin Shelton	11/14/24
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date