CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☐ Force ☑ Discourt. ☐ U.S.
Tatyana Gonzalez	Squad #11	202311806	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	18 Mo. SOL	Precinct:
Wednesday, 12/13/2023 9:20 PM	54 Port Richmond Avenue	6/13/2025	121

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Fri, 12/15/2023 11:41 PM	CCRB	On-line website	Fri, 12/15/2023 11:41 PM

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

Subject Officer(s)	Shield	TaxID	Command
1. PO Ismael Diaz	10620	964486	121 PCT
2. PO Anthony Gitto	24552	967523	121 PCT
3. DTS John Murphy	03815	944718	121 PCT
4. SGT Olsen Hoxha	05542	949119	121 PCT
5. DTS Brian Babiak	03502	931533	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Nijaz Hasanbegovic	05238	964546	121 PCT
2. PO Shaun Nola	20671	968041	121 PCT
3. PO Christina Costagliola	07610	970467	121 PCT
4. PO Antonio Lajara	05365	972733	121 PCT
5. SGT Eric Cavallo	04685	957439	121 PCT

Officer(s)	Allegation	Inv. Div. Recommendation
A . PO Ismael Diaz	Abuse: Police Officer Ismael Diaz stopped § 87(2)(b)	A . Substantiated
B . PO Ismael Diaz	Abuse: Police Officer Ismael Diaz stopped § 87(2)(b)	B . Substantiated
C . PO Ismael Diaz	Abuse: Police Officer Ismael Diaz stopped § 87(2)(b)	C . Substantiated
D . PO Ismael Diaz	Abuse: Police Officer Ismael Diaz stopped § 87(2)(b)	D . Substantiated
E . PO Ismael Diaz	Abuse: Police Officer Ismael Diaz stopped § 87(2)(b)	E . Substantiated
F . PO Anthony Gitto	Abuse: Police Officer Anthony Gitto stopped § 87(2)(b) [redacted]	F . Substantiated
G . PO Anthony Gitto	Abuse: Police Officer Anthony Gitto stopped § 87(2)(b) [redacted]	G . Substantiated
H . PO Anthony Gitto	Abuse: Police Officer Anthony Gitto stopped § 87(2)(b) [redacted]	H . Substantiated
I . PO Anthony Gitto	Abuse: Police Officer Anthony Gitto stopped § 87(2)(b) [redacted]	I . Substantiated

Officer(s)	Allegation	Inv. Div. Recommendation
J . PO Anthony Gitto	Abuse: Police Officer Anthony Gitto stopped § 87(2)(b)	J . Substantiated
K . DTS John Murphy	Abuse: Detective John Murphy stopped § 87(2)(b)	K . Substantiated
L . DTS John Murphy	Abuse: Detective John Murphy stopped § 87(2)(b)	L . Substantiated
M . DTS John Murphy	Abuse: Detective John Murphy stopped § 87(2)(b)	M . Substantiated
N . DTS John Murphy	Abuse: Detective John Murphy stopped § 87(2)(b)	N . Substantiated
O . DTS John Murphy	Abuse: Detective John Murphy stopped § 87(2)(b)	O . Substantiated
P . SGT Olsen Hoxha	Abuse: Sergeant Olsen Hoxha detained § 87(2)(b)	P . Substantiated
Q . SGT Olsen Hoxha	Abuse: Sergeant Olsen Hoxha detained § 87(2)(b)	Q . Substantiated
R . PO Anthony Gitto	Discourtesy: Police Officer Anthony Gitto spoke discourteously to § 87(2)(b)	R . Substantiated
S . DTS Brian Babiak	Abuse: Detective Brian Babiak questioned § 87(2)(b)	S . Substantiated
T . DTS Brian Babiak	Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)	T . Substantiated
U . DTS Brian Babiak	Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)	U . Substantiated
V . DTS Brian Babiak	Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)	V . Substantiated
W . DTS Brian Babiak	Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)	W . Substantiated
X . DTS Brian Babiak	Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)	X . Substantiated
Y . DTS Brian Babiak	Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)	Y . Substantiated

Case Summary

On December 15, 2023, § 87(2)(b) filed this complaint with the CCRB through the agency's website.

On December 13, 2023, at approximately 9:20 p.m., § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were stopped by PO Ismael Diaz, PO Anthony Gitto, and Detective John Murphy of the 121st Precinct in front of the Reformed Protestant Dutch Church located at 54 Port Richmond Avenue in Staten Island **(Allegations A-O: Abuse of Authority, *Substantiated*)**. § 87(2)(b) and § 87(2)(b) refused to provide identification to the officers and were removed to the 121st Precinct stationhouse to verify their identities before they could be released with criminal court summonses **(Allegations P and Q: Abuse of Authority, *Substantiated*)**. PO Gitto asked § 87(2)(b) "Why are you trying to be a hardass for?" **(Allegation R: Discourtesy, *Substantiated*)**. Detective Brian Babiak of the 121st Precinct asked § 87(2)(b) if he was affiliated with a gang and used profanity while conversing with him **(Allegation S: Abuse of Authority, *Substantiated* and Allegation T: Discourtesy, *Substantiated*)**. Det. Babiak proceeded to use profanity as he spoke with § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) **(Allegations U-Y: Discourtesy, *Substantiated*)**.

§ 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2) and § 87(2)(b) were issued summonses for loitering **(Board Review 01, Board Review 02)**.

The investigation obtained body worn camera footage from PO Diaz, PO Gitto, Det. Babiak, Det. Murphy, PO Nijaz Hasanbegovic, Sergeant Olsen Hoxha, PO Shaun Nola, PO Christina Costagliola, PO Antonio Lajara, and Sergeant Eric Cavallo **(Board Review 03)**.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Ismael Diaz stopped § 87(2)(b)
Allegation (B) Abuse of Authority: Police Officer Ismael Diaz stopped § 87(2)(b)
Allegation (C) Abuse of Authority: Police Officer Ismael Diaz stopped § 87(2)(b)
Allegation (D) Abuse of Authority: Police Officer Ismael Diaz stopped § 87(2)(b)
Allegation (E) Abuse of Authority: Police Officer Ismael Diaz stopped § 87(2)(b)
Allegation (F) Abuse of Authority: Police Officer Anthony Gitto stopped § 87(2)(b)
Allegation (G) Abuse of Authority: Police Officer Anthony Gitto stopped § 87(2)(b)
Allegation (H) Abuse of Authority: Police Officer Anthony Gitto stopped § 87(2)(b)
Allegation (I) Abuse of Authority: Police Officer Anthony Gitto stopped § 87(2)(b)
Allegation (J) Abuse of Authority: Police Officer Anthony Gitto stopped § 87(2)(b)
Allegation (K) Abuse of Authority: Detective John Murphy stopped § 87(2)(b)
Allegation (L) Abuse of Authority: Detective John Murphy stopped § 87(2)(b)
Allegation (M) Abuse of Authority: Detective John Murphy stopped § 87(2)(b)
Allegation (N) Abuse of Authority: Detective John Murphy stopped § 87(2)(b)
Allegation (O) Abuse of Authority: Detective John Murphy stopped § 87(2)(b)
Allegation (P) Abuse of Authority: Sergeant Olsen Hoxha detained § 87(2)(b)
Allegation (Q) Abuse of Authority: Sergeant Olsen Hoxha detained § 87(2)(b)

At 1:00 minute of Det. Murphy's body worn camera footage **(Board Review 04)**, Det. Murphy, PO Diaz, and PO Gitto exit an unmarked vehicle. PO Diaz and PO Gitto approach a group of seven males standing on the side of a church. § 87(2)(b) is wearing a blue jacket with a hood over his head. § 87(2)(b) is wearing a black coat and a black hat. The five other males are wearing black jackets with black facial masks covering their nose and mouth. One of the males has a blue surgical face mask covering his nose and mouth. PO Diaz and PO Gitto ask the men to

provide identification. § 87(2)(b) tells PO Diaz he does not have to provide identification. PO Diaz and § 87(2)(b) have a conversation disputing the need for the men to provide their identification to the officers as they were loitering and were going to be issued summons for this offense.

At 1:00 minutes of Sgt. Hoxha's body worn camera footage **(Board Review 05)**, Sgt. Hoxha and PO Hasanbegovic approach the scene. PO Diaz and PO Gitto are already asking the group for their identifications. Det. Murphy is standing by the unmarked vehicle at a distance. Two of the men in the group are seen standing on the steps of the church. Two other males have a blue bandana hanging out of the back of their pants pocket. At 1:23 minutes, PO Diaz tells § 87(2)(b) "I need your ID or we're going back to the command." § 87(2)(b) refuses to comply with the officer's directive. At 1:50 minutes, as § 87(2)(b) turns to address Sgt. Hoxha, PO Diaz handcuffs § 87(2)(b) Sgt. Hoxha explains to § 87(2)(b) that they are loitering, and they are all wearing facial masks. At 2:00 minutes, § 87(2)(b) refuses to provide his identification to Sgt. Hoxha by stating, "I don't have to give you mine. If you want to take me in, you can take me in too." Sgt. Hoxha replies, "We will give you a summons at the precinct." At 2:22 minutes, § 87(2)(b) responds, "You can book us in."

At 2:23 minutes of PO Gitto's body worn camera footage **(Board Review 06)**, Sgt. Hoxha instructs PO Gitto to handcuff § 87(2)(b)

§ 87(2)(b) stated **(Board Review 07)** he was standing outside of a church with his brother, § 87(2)(b) and about six other individuals. They were talking amongst themselves while waiting for friends. § 87(2)(b) was holding a cake in a box. § 87(2)(b) was wearing a white hooded sweater and light blue jeans with a blue beanie hat. An unmarked black vehicle parked in front of the group and two officers exited the vehicle. PO Diaz and PO Gitto approached the group and asked everyone to show their identifications. § 87(2)(b) and § 87(2)(b) asked PO Diaz and PO Gitto if they had "probable cause" to stop them. PO Diaz said they had to show ID by law because they were all gathered and soliciting. § 87(2)(b) replied they were not doing anything wrong. PO Diaz said they were loitering. § 87(2)(b) asked how they were loitering if they were not doing anything illegal. PO Diaz said they were wearing facial masks. PO Diaz and PO Gitto continued to ask for identification.

§ 87(2)(b) provided a statement consistent with that of § 87(2)(b) with the following exceptions. He pointed out to PO Diaz said that he and § 87(2)(b) were not wearing facial masks, but some of their friends were wearing a combination of surgical face masks and masks that covered their nose down to their necks **(Board Review 08)**.

PO Diaz **(Board Review 09)** explained that the area where this incident took place is known to have a large concentration of members of the Mara Salvatrucha (MS-13) street gangs. Many members of the community had complained to the 121st Precinct neighborhood coordination officers about the gang members doing graffiti on the walls of structures in the neighborhood. On the day of the incident, PO Diaz, PO Gitto, and Det. Murphy were patrolling, when PO Diaz noticed seven males huddled up in front of a church. Some of the males were on the sidewalk and others were standing on the steps leading to the church. PO Diaz parked a distance away to observe the group for approximately five minutes. Most of the men were wearing facial masks and had blue bandanas hanging from their pockets, which based on trainings he has received as an officer, represent affiliation to a street gang. The color of the bandanas also matched the color of the graffiti displayed in the community. PO Diaz believed the individuals could have been doing graffiti on the church's walls. It was a mutual decision between PO Diaz, PO Gitto, and Det. Murphy to approach the group for loitering on a public sidewalk and impeding pedestrian traffic. During the interview, PO Diaz explained that a subsection within the loitering statute indicated that a group of at least five individuals wearing facial masks standing on a sidewalk or a public place with no legitimate purpose was considered loitering. PO Diaz asked the men for identification. § 87(2)(b) and § 87(2)(b) were the only individuals who failed to comply with this request. Because § 87(2)(b) and § 87(2)(b) refused to provide their identification, they were removed to the

stationhouse to verify their identities before being issued summonses. The rest of the men were issued summonses for loitering on scene. At the stationhouse, PO Diaz found out that the law for loitering changed because of COVID, and the subsection he was referring to was taken out, so the summonses that were issued were voided.

PO Gitto provided a statement consistent with that of PO Diaz **(Board Review 10)**.

Det. Murphy provided a statement consistent with that of PO Diaz with the following exceptions. For approximately ten minutes, the officers observed the group of men walking back and forth from the sidewalk to the stairs of the church. He added that the walls of most of the businesses in the area had been painted with graffiti made by the MS-13 street gang, and it is an area prone to robberies. Based on their knowledge of these conditions and their observations of the men, they decided amongst themselves to approach these individuals for loitering. PO Diaz contacted Sgt. Hoxha via phone to inform him that they were going to stop the men **(Board Review 11)**.

People v. De Bour, 40 N.Y.2d 210 (1976) **(Board Review 13)** states that the common-law right to inquire, is activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion in that a policeman is entitled to interfere with a citizen to the extent necessary to gain explanatory information.

New York State Penal Law § 240.35 **(Board Review 14)** states that a person is guilty of loitering when he: 1. Repealed; 2. loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia; or 3. Repealed; 4. Repealed; 5. loiters or remains in or about school grounds, a college or university building or grounds or a children's overnight camp as defined in section one thousand three hundred ninety-two of the public health law or a summer day camp as defined in section one thousand three hundred ninety-two of the public health law, or loiters, remains in or enters a school bus as defined in section one hundred forty-two of the vehicle and traffic law, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same or loiters or remains in or about such children's overnight camp or summer day camp in violation of conspicuously posted rules or regulations governing entry and use thereof; or 6. loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing or playing any musical instrument.

The 2020 amendment by ch 98, § 1 **(Board Review 14)** deleted former 4, which read: "Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities; or."

NYPD Patrol Guide Procedure 209-09 **(Board Review 15)** instructs officers that, when personally issuing a summons, they are to request that the violator show proof of identity and residence. If there is any doubt about the identity of the violator, officers are to remove them to command for investigation.

§ 87(2)(g)

[redacted]

§ 87(2)(g) Sgt. Hoxha detained § 87(2)(b) and § 87(2)(b) to transport them to the stationhouse to verify their identities. As § 87(2)(b) and § 87(2)(b) were being processed, the officers learned that the subsection for which they were going to be cited had been repealed and the summonses that they were about to be issued were voided. § 87(2)(g) it is recommended that **Allegations A-Q** be closed as **substantiated**.

Allegation (R) Discourtesy: Police Officer Anthony Gitto spoke discourteously to § 87(2)(b)

At 3:20 minutes of PO Gitto's body worn camera footage **(Board Review 06)**, PO Gitto asked § 87(2)(b) "Why are you trying to be a hardass for?"

PO Gitto stated that he asked one of the males, identified via investigation as § 87(2)(b) for ID and informed him he would be released if he showed his ID. § 87(2)(b) said he did not have to provide an ID. PO Gitto placed § 87(2)(b) in handcuffs. PO Gitto acknowledged that he called § 87(2)(b) a "hardass" to get him to comply with providing identification, however, he did not consider this to be a stressful or chaotic environment. **(Board Review 10)**.

NYPD Patrol Guide Procedure 200-02 **(Board Review 16)** states that the NYPD is committed to treating every citizen with compassion, courtesy, professionalism, and respect.

In DAO-DCT Case Number 2013-10143 **(Board Review 17)** the court held that, per precedent, use of profanity by NYPD is "permissible where the officer has resorted to such language in the heat of a highly dangerous situation."

§ 87(2)(g) it is recommended that **Allegation R** be closed a **substantiated**.

Allegation (S) Abuse of Authority: Detective Brian Babiak questioned § 87(2)(b)
Allegation (T) Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)

At 7:15 minutes of Det. Babiak's body worn camera footage **(Board Review 18)**, Det. Babiak asks § 87(2)(b) who has a blue handkerchief hanging out of his pants pocket, "What are you guys flagging? Who are you flagging?" He taps § 87(2)(b) who turns around and says, "I don't have to answer any questions." Det. Babiak says, "You don't have to answer any questions. Blue flag. What are you flagging? MS-13?" The individual does not answer. Det. Babiak says, "Just keep your handkerchief hanging? Blue handkerchief. Who you flagging? Nobody? You guys are tagging your shit all over Port Richmond."

Det. Babiak arrived at the scene to assist PO Diaz, PO Gitto and Det. Diaz. While at the scene, Det. Babiak asked § 87(2)(b) about his affiliation with the street gang, MS-13. He asked him about the colors he was "flagging" with the handkerchief and what the significance is. He observed some of the males wearing blue bandanas, which is usually an indication of gang affiliation, so he just wanted to know who they were affiliated with. It was for his own curiosity and to gather intelligence. Det. Babiak did not see any other indications of gang affiliation. Det. Babiak acknowledged that he used profanity as casual street talk used between two parties. It was not directed at anyone, nor used to be discourteous or derogatory **(Board Review 19)**.

People v. Hollman, 79 N.Y.2d 181 (1992) **(Board Review 20)** states that an officer must

have founded suspicion that criminal activity is afoot to ask accusatory questions.

NYPD Patrol Guide Procedure 200-02 **(Board Review 16)** states that the NYPD is committed to treating every citizen with compassion, courtesy, professionalism, and respect.

In DAO-DCT Case Number 2013-10143 **(Board Review 17)** the court held that, per precedent, use of profanity by NYPD is "permissible where the officer has resorted to such language in the heat of a highly dangerous situation."

As captured in BWC footage, Det. Babiak asked § 87(2)(b) about his affiliation with the street gang, MS-13 after observing that § 87(2)(b) had a blue handkerchief hanging from one of his pants' pockets. § 87(2)(g)

It is therefore recommended that **Allegation S** be closed as **substantiated**.

§ 87(2)(g) it is recommended that **Allegation T** be closed a **substantiated**.

Allegation (U) Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)
Allegation (V) Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)
Allegation (W) Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)
Allegation (X) Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)
Allegation (Y) Discourtesy: Detective Brian Babiak spoke discourteously to § 87(2)(b)

At 17:00 minutes of Det. Babiak's body worn camera footage **(Board Review 18)**, Det. Babiak engages in conversation with the group of men about a location that sells pretzels and about how the price of food has increased over time. As he spoke to the men, he made the following statements, "That big ass pretzel place," "They take all the pretzels and shit…. that fucking place in the mall." The men laughed as Det. Babiak spoke with them and continued to engage him in conversation. At 19:20 minutes, Det. Babiak says, "the fucking flavored drinks. They were a fucking quarter." The men agree and continue the conversation.

While waiting for the summonses to be written, Det. Babiak engaged in conversation with the men. During the conversation, Det. Babiak acknowledged that he used profanity because he considered it casual street talk. It was not directed at anyone, nor used to be discourteous or derogatory **(Board Review 19)**.

NYPD Patrol Guide Procedure 200-02 **(Board Review 16)** states that the NYPD is committed to treating every citizen with compassion, courtesy, professionalism, and respect.

In DAO-DCT Case Number 2013-10143 **(Board Review 17)** the court held that, per precedent, use of profanity by NYPD is "permissible where the officer has resorted to such language in the heat of a highly dangerous situation."

§ 87(2)(g) it is recommended that **Allegations U-Y** be closed a **substantiated**.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 22)**.
- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 23)**.

- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 24)**.
- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 25)**.
- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 26)**.
- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 27)**.
- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 28)**.
- PO Diaz has been a member-of-service for six years and has been a subject in three additional CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Gitto has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- Det. Murphy has been a member-of-service for sixteen years and has been a subject in six additional CCRB complaints and seventeen allegations, none of which were substantiated. § 87(2)
- PO Hasanbegovic has been a member-of-service for six years and has been a subject in three additional CCRB complaints and eight allegations, of which one was substantiated:
  - **202002070** involved a substantiated allegation of retaliatory summons against PO Hasanbegovic. The Board recommended charges and the NYPD has not yet imposed discipline.
- Det. Babiak has been a member-of-service for twenty-one years and has been a subject in three additional CCRB complaints and eight allegations, none of which were substantiated. § 87(2)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of March 14, 2024, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident **(Board Review 29)**.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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RPBP History

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

Squad No.: 11

Investigator:	Tatyana Gonzalez	Inv. Tatyana Gonzalez	3/5/2025
	Signature	Print Title & Name	Date
Squad Leader:	Edwin Pena	IM Edwin Pena	03/05/2025
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date