

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leah Abeles	Team: Team # 1	CCRB Case #: 200401687	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 02/22/2004 9:05 PM	Location of Incident: in front of § 87(2)(b)	Precinct: 48	18 Mo. SOL 8/22/2005	EO SOL 8/22/2005	
Date/Time CV Reported Tue, 02/24/2004 5:28 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 02/24/2004 5:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Lisa Davis	16106	928158	048 PCT
2. POM Jonah Eisenberg	05651	928241	048 PCT
3. POM Miguel Frias	02814	930184	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonah Eisenberg	Discourtesy: PO Jonah Eisenberg spoke rudely to § 87(2)(b) and § 87(2)(b)	
B.POF Lisa Davis	Abuse: PO Lisa Davis refused to provide her shield number to § 87(2)(b)	
C.POM Jonah Eisenberg	Abuse: PO Jonah Eisenberg refused to provide his shield number to § 87(2)(b)	
D.POM Miguel Frias	Abuse: PO Miguel Frias refused to provide his shield number to § 87(2)(b)	

Synopsis

On 02/22/04, § 87(2)(b) and his girlfriend § 87(2)(b) were sitting inside § 87(2)(b)'s double-parked car on Webster Ave. in the Bronx when PO Lisa Davis and PO Jonah Eisenberg, accompanied by PO Miguel Frias, approached them. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Davis issued § 87(2)(b) a summons for double-parking, after which § 87(2)(b) requested the officers' shield numbers. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

The complainant, § 87(2)(b) is a § 87(2)(b). § 87(2)(b) was interviewed by the CCRB on 03/09/04 (enc. 8A-E). He stated that on 02/22/04, at approximately 9:05 PM, he and his girlfriend, § 87(2)(b) dropped off his younger brother in front of § 87(2)(b) in the Bronx. § 87(2)(b)'s brother went inside the building while he and § 87(2)(b) remained in the car. § 87(2)(b) was in the driver's seat and § 87(2)(b) was sitting in the backseat. § 87(2)(b) describes his car as a green Dodge Neon with Massachusetts license plate number § 87(2)(b). § 87(2)(b) stated that, although he was not double-parked, his vehicle was roughly five feet from the curb.

About 30 seconds after § 87(2)(b)'s brother had gone into the building, § 87(2)(b) observed two marked police vehicles, a van followed by a sedan, driving past him on Webster Ave. Both vehicles stopped, turned on their sirens, and made U-turns. The sedan parked behind § 87(2)(b)'s vehicle and the van parked in front of his car, then moved so that it was beside his vehicle on the driver's side.

Three uniformed police officers exited the van. § 87(2)(b) described these officers as a male white, a male Hispanic, and a female white. They were later identified as PO Jonah Eisenberg, PO Miguel Frias, and PO Lisa Davis, respectively. PO Frias approached § 87(2)(b)'s vehicle on the driver's side and PO Eisenberg approached on the passenger side. PO Davis stood in front of the police van. The two officers inside the marked sedan remained in their vehicle for five to ten minutes, then exited to issue a summons to the minivan parked behind § 87(2)(b)'s vehicle.

PO Eisenberg opened the passenger side door of § 87(2)(b)'s vehicle. He pointed out that § 87(2)(b) had out-of-state license plates and asked him if the car was stolen. He also asked where § 87(2)(b) had obtained the vehicle and why his windows were tinted. § 87(2)(b) reported that PO Eisenberg asked him a series of questions to which he tried to respond. He informed PO Eisenberg that the vehicle was not stolen and that it was registered out of town. § 87(2)(b) also stated that the officers were wasting their time and protested the manner in which they had approached him.

PO Eisenberg then yelled at § 87(2)(b) to provide his license and registration. He stated that the officers were "yelling and screaming" while he looked for his information. § 87(2)(b) asked the officers if they could close the door because she was cold. PO Eisenberg responded, "We'll close the door when we feel like it." § 87(2)(b) then volunteered to get out of the car so that the officers could close the door. He did so and provided his license and registration to PO Eisenberg, who had walked around to the driver's side. PO Eisenberg continued to ask § 87(2)(b) questions about the car being stolen and pointed out that an expired New York State registration sticker was still adhered to the vehicle's windshield. § 87(2)(b) maintained that the car was his and stated that the vehicle had previously been registered in New York State. He also expressed that he believed the way the officers had approached him was wrong.

The officers instructed § 87(2)(b) to get back into his vehicle, then returned to their van. Both PO Eisenberg and PO Frias then returned to the driver's side of § 87(2)(b)'s vehicle and returned his license and registration. PO Eisenberg told § 87(2)(b) that he could get a ticket for his windshield and that he needed to scratch off the expired New York State registration. PO Davis then exited the van, approached § 87(2)(b) and handed him a summons for double-parking (enc.15). All three officers then began walking back toward their van. PO Davis stated, "Yeah, I wrote it," and muttered something under her breath.

At this point, § 87(2)(b) stated, "Hold on. Wait. Where do you guys think you're going? Let me get badge numbers." All three officers stopped walking and faced § 87(2)(b). PO Eisenberg grabbed the front of his shirt with his forefingers and held up his shield for two to three seconds. § 87(2)(b) could see all three officers' shields, but none of them verbally provided their shield numbers. § 87(2)(b) then stated, "Let me get a pen," and began complaining about the summons he had received, calling the situation "bullshit." § 87(2)(b) tried to retrieve a pen from § 87(2)(b) but she did not have one. As he was trying to find a pen, the officers began walking back to their van. § 87(2)(b) again stated, "Hold up. Wait, wait! don't go nowhere!" None of the officers stopped, but got into their van and started the engine. § 87(2)(b) stated, "Hold up! Wait! Badge numbers! I couldn't find a pen. Hold up! Wait! Let me get a pen." The officers did not respond, but rolled up their windows and drove away.

Immediately following this incident, § 87(2)(b) and § 87(2)(b) proceeded to the 48th precinct to file a civilian complaint. An officer there advised § 87(2)(b) to lodge his complaint with the CCRB and § 87(2)(b) did so two days later. At the time he filed his complaint with the call processing system, § 87(2)(b) gave only PO Davis's name. § 87(2)(b) was contacted by the CCRB for further information regarding his complaint on 03/01/04, at which time he stated that he was only able to obtain PO Davis's name. He could not provide the names or shield numbers of PO Eisenberg or PO Frias because "they wouldn't give me their badge numbers."

Results of Investigation

Efforts to Locate and Interview Other Witnesses

As § 87(2)(b) had reported that his girlfriend, § 87(2)(b) was in the car with him at the time of the incident in question, multiple attempts were made to contact § 87(2)(b). Unfortunately, § 87(2)(b) was unable to provide any contact information for her at the time of his interview. He suggested that § 87(2)(b) could be contacted at his own address and telephone number. Several attempts were made to contact § 87(2)(b) through § 87(2)(b) by telephone and by mail before § 87(2)(b) was reached on 03/30/04. At that time, he stated that § 87(2)(b) did not want to be involved in the investigation as she was already testifying as a witness in an unrelated criminal trial. § 87(2)(b) did provide § 87(2)(b)'s cellular telephone number so that she could be contacted directly, but did not know her exact address. He stated that § 87(2)(b) lived § 87(2)(b).

Attempts were made to contact § 87(2)(b) by telephone on 04/01/04, 04/13/04, and 04/29/04. However, each time, an automated message responded, stating that § 87(2)(b)'s cell phone was "not receiving calls at this time." A field visit was made to § 87(2)(b)'s neighborhood on 04/16/04, but her apartment could not be found. § 87(2)(g)

Further attempts were made to contact § 87(2)(b) following this field visit. On 04/29/04, he agreed to obtain § 87(2)(b)'s exact address, but failed to contact the CCRB thereafter. Telephone calls were placed to § 87(2)(b)'s residence on 05/24/04, 05/29/04, 05/30/04, 06/01/04, and 06/02/04, and contact letters were mailed to § 87(2)(b) on 05/24/04 and 06/02/04, with no response. It was therefore impossible to locate § 87(2)(b) for an interview in regards to this investigation.

Officer Accounts

PO Jonah Eisenberg

PO Jonah Eisenberg, a white male, was interviewed by the CCRB on 04/14/04 (enc. 14A-C). He stated that on 02/22/04, he, PO Lisa Davis, and PO Miguel Frias were assigned to traffic enforcement and were working out of a marked police van. At approximately 9:05 PM, they were travelling northbound on Webster Ave. when they observed two double-parked vehicles. PO Eisenberg described one vehicle, § 87(2)(b), as having dark tinted windows. The other, which was parked behind it, was a minivan.

PO Eisenberg, who was driving, made a U-turn and stopped the van in front of the vehicle with tinted windows. He reported that his intention was to issue both vehicles summonses for double-parking. He had no suspicion of any other violation or crime.

The officers exited their van and PO Frias approached the minivan to issue it a summons. While he was doing so, the owner of the minivan appeared on the scene. PO Eisenberg and PO Davis approached § 87(2)(b)'s vehicle, with PO Eisenberg on the passenger's side and PO Davis on the driver's side. PO Eisenberg observed § 87(2)(b) and § 87(2)(b) from the passenger's side for five to ten seconds to determine if there was anything dangerous occurring inside. He did not recall whether he opened the passenger side door, but stated that he might have. After determining that § 87(2)(b) and § 87(2)(b) were not dangerous, PO Eisenberg proceeded to the driver's side.

§ 87(2)(b) opened his door, explaining that his windows were not working. PO Davis informed him that he was double-parked and that she was going to issue him a summons. § 87(2)(b) became upset. He did not raise his voice, but told PO Davis that she could not issue him a summons while he was inside his car. PO Eisenberg informed § 87(2)(b) that the car was double-parked whether he was sitting inside it or not. He did not raise his voice at § 87(2)(b) and did not recall PO Davis doing so. PO Eisenberg stated that he did not think he requested § 87(2)(b)'s license and registration and did not think that § 87(2)(b) provided that information. PO Eisenberg did not have any interaction with the passenger of the vehicle, § 87(2)(b). He did not recall if either civilian complained of being cold.

Both PO Eisenberg and PO Davis returned to their van, where PO Davis wrote § 87(2)(b) a summons for double-parking. He did not recall if PO Frias also returned to the van or if PO Frias had any interaction with § 87(2)(b) or § 87(2)(b).

Once PO Davis had written the summons, she and PO Eisenberg returned to § 87(2)(b)'s vehicle. PO Davis approached on the driver's side. PO Eisenberg initially stated that he could not recall who handed the summons to § 87(2)(b), then later reported that PO Davis did. PO Eisenberg could not recall where he was standing in relation to § 87(2)(b)'s vehicle at this time.

After receiving the summons, § 87(2)(b) still upset, exited his car and requested a shield number. PO Eisenberg initially stated that this request was directed at PO Davis, but when questioned further, admitted he did not know at whom the request was directed. § 87(2)(b) was holding a piece of paper and asked, "Do you have a pen?" PO Eisenberg was unsure at whom this request was directed, but assumed that § 87(2)(b) wished to record the shield number. PO Davis stated, "My information is on the summons." However, PO Eisenberg was unsure if this statement was made before or after § 87(2)(b) requested the shield number. PO Eisenberg did not verbally provide his shield number because "from what I understood, [the request] wasn't directed at me." He does not recall if PO Davis verbally provided her shield number, but stated that PO Frias did not. However, PO Eisenberg could not recall where PO Frias was at the time § 87(2)(b) requested the shield number or if he was even in the vicinity of § 87(2)(b)'s vehicle.

Following this interaction, the officers got back into their van and left the scene. PO Eisenberg did not hear § 87(2)(b) make a second request for any officer's shield number.

PO Lisa Davis

PO Lisa Davis, a white female, was interviewed by the CCRB on 04/01/04 (enc. 10A-C). PO Davis concurred with PO Eisenberg that it was his decision to stop their van in order to issue a summons to § 87(2)(b)'s vehicle and that there was no suspicion of any other crime or violation. She stated that when all three officers exited the van, PO Eisenberg approached § 87(2)(b)'s vehicle on the driver's side while she stood behind him. She could not recall where PO Frias was at this time.

PO Eisenberg spoke with § 87(2)(b) but PO Davis could not report what was said between them. She described both § 87(2)(b) and PO Eisenberg as being calm during their interaction and stated that PO Eisenberg was not using a forceful tone of voice. PO Davis could not recall whether PO Frias ever spoke with § 87(2)(b) but stated that she did not. § 87(2)(b) provided his driver's license, although PO Davis could not recall whether or not PO Eisenberg had ever requested it.

All three officers returned to the police van to write the summons, since PO Davis had left her summons book inside. PO Eisenberg asked PO Davis if she wanted to issue the summons and she agreed to do so. After she finished writing the summons, PO Eisenberg exited the van and handed the summons to § 87(2)(b). PO Davis could not recall if she or PO Frias exited the van or what § 87(2)(b)'s reaction was to being issued a summons.

After handing the summons to § 87(2)(b), PO Eisenberg got back into the van and the officers left the scene. PO Davis did not recall § 87(2)(b) requesting any of the officers' shield numbers. She stated that she did not offer § 87(2)(b) her shield number because he never asked for it. PO Davis did not recall § 87(2)(b) requesting that the officers wait a moment or indicating that he wished to speak to them further. She did not recall him stating that he was trying to retrieve a pen.

PO Miguel Frias

PO Miguel Frias, an Hispanic male, was interviewed by the CCRB on 04/09/04 (enc. 12A-C). He concurred with PO Eisenberg and PO Davis that PO Eisenberg made the decision to stop the police van to issue summonses both to § 87(2)(b) and the vehicle parked behind him, a minivan. Upon exiting their vehicle, PO Davis and PO Eisenberg approached § 87(2)(b)'s vehicle, while PO Frias approached the minivan. As he was walking over to the minivan, PO Frias looked back and observed § 87(2)(b) open his driver's side door. PO Eisenberg then swung the door fully open. PO Davis and primarily PO Eisenberg then spoke with § 87(2)(b) whom PO Frias believes was "complaining about something." However, he did not hear the extent of their conversation.

PO Frias issued a summons to the minivan, during which time its owner appeared on the scene. PO Frias spoke with the driver, then returned to the police van, where PO Davis was now issuing a summons to § 87(2)(b). On his way back, he observed that § 87(2)(b) looked "pissed" and was slouched in his seat. PO Frias did not interact directly with § 87(2)(b).

Once § 87(2)(b) was issued the summons, all three officers were walking back to their van with their backs to § 87(2)(b) when he exited his vehicle. He walked toward the driver's side of the police van, which was parked nose to nose with his vehicle, and stated, "I want badge numbers." PO Frias and PO Eisenberg turned around to show § 87(2)(b) their shields. PO Eisenberg read his aloud. PO Frias could not recall exactly where PO Davis was and was unsure of whether she turned around as well. He stated, "I believe she did turn around, but I don't know." He also stated that he believed PO Davis turned her shoulder so that § 87(2)(b) could see her shield. When asked whether he believed this to be the case or whether he had seen it, PO Frias stated, "I saw it." § 87(2)(b) had a pen and paper with him, but PO Frias did not see him record any of the officers' shield numbers. PO Frias estimated that he was turned toward § 87(2)(b) for approximately 30 seconds before getting back inside the van. § 87(2)(b) did not state that he had not obtained the officers' shield numbers. He did not tell the officers to wait or tell them not to get back inside their van. When PO Frias got into the van, § 87(2)(b) was walking back toward his car.

Disposition of Summons

In order to determine the disposition of § 87(2)(b)'s summons, the New York City Department of Finance website was consulted on 06/24/04. A hearing regarding the double-parking summons PO Davis issued to § 87(2)(b) was held. § 87(2)(b) was found not guilty (enc. 17).

Officers' CCRB History

PO Davis and PO Eisenberg have been on the police force for two years, while PO Frias has only a one-year tenure. This is the first CCRB complaint against each of these officers.

Conclusions and Recommendations

§ 87(2)(g)
§ 87(2)(b) stated that PO Eisenberg demanded his license and registration. While PO Davis reported that § 87(2)(b)

provided his license, she could not recall whether PO Eisenberg requested this information. PO Eisenberg, in turn, stated that he may have, although he could not remember definitively. § 87(2)(g)

§ 87(2)(g) Although § 87(2)(b) was found not guilty of his parking summons, all three officers reported that he was double-parked. § 87(2)(b) himself admitted that he was parked five feet from the curb, § 87(2)(g)

§ 87(2)(b) alleges that PO Eisenberg yelled at him and told § 87(2)(b) “We’ll close the door when we feel like it,” during this stop. § 87(2)(g) “the propriety of words must be judged with regard to the mores of the community [and] the realities of life in New York City” (Police Department v. Matias, OATH Index Nos. 1996/00 & 1997/00). PD v. Matias also found that profanity is permissible to “gain compliance with an order” and the same sentiment can be applied to discourtesies not involving profanity. § 87(2)(g)

§ 87(2)(g) Each person interviewed gave a distinctly different account of what occurred. § 87(2)(g) § 87(2)(b) reported that all three officers were walking back to their van at the time he requested their shield numbers. § 87(2)(g) PO Frias and PO Eisenberg also confirmed § 87(2)(b)’s testimony that he made a general request for shield numbers.

§ 87(2)(g) PO Davis issued a summons to § 87(2)(b) from which he obtained her name and tax number. Although PO Davis reported that PO Eisenberg handed the summons to § 87(2)(b) both § 87(2)(b) and PO Eisenberg maintained that PO Davis handed him the summons. § 87(2)(g)

Unlike PO Davis, PO Frias admitted to hearing § 87(2)(b)’s request and stated that he turned around to show his shield to § 87(2)(b) in response. § 87(2)(g) PO Eisenberg also admitted to hearing § 87(2)(b)’s request, but stated that he did not respond to it because he did not believe it to be directed at him. § 87(2)(g) § 87(2)(b) himself stated that PO Eisenberg held up his shield to show to § 87(2)(b) and PO Frias stated that PO Eisenberg verbally provided his shield number to § 87(2)(b) § 87(2)(g)

§ 87(2)(g) § 87(2)(b) reported that he repeatedly told the officers to wait while he retrieved a pen to record their information. Based on Interim Order 24 updating Patrol Guide procedure 203-09, an officer must allow a person “ample time” to note his or her information (enc. 2). § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: