

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kathryn Duffy	Team: Team # 1	CCRB Case #: 200810117	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 07/04/2008 8:25 PM	Location of Incident: Delancey and Mangin Streets	Precinct: 07	18 Mo. SOL 1/4/2010	EO SOL 1/4/2010	
Date/Time CV Reported Wed, 07/16/2008 8:50 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/16/2008 8:50 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Maurice Harrington	06286	934992	052 PCT
2. POM Joel Medina	30430	935297	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Robert Mainor	93180	931802	040 PCT
2. POM Manuel Cruz	27205	945627	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joel Medina	Force: PO Joel Medina struck § 87(2)(b) with an asp.	
B.POM Maurice Harrington	Force: PO Maurice Harrington struck § 87(2)(b) with an asp.	

Synopsis

The following complaint of police misconduct was originally referred to the CCRB from IAB on July 9, 2008, using log number 08-30076, but was referred back to IAB because no civilian had complained. This referral was assigned CCRB case number 200809789. On July 16, 2008, § 87(2)(b) a resident of § 87(2)(b) in Brooklyn, called the CCRB intake line and made a duplicate complaint, which was assigned the current case number, CCRB 200810117. That complaint was assigned to Inv. Seth Ullman on July 22, 2008, but was reassigned to Inv. Kathryn Duffy on July 30, 2008, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

On July 4, 2008, at approximately 8:25 pm, § 87(2)(b) was attempting to cross a pedestrian overpass at the intersection of Delancey and Mangin Streets in Manhattan to watch the July 4th fireworks display with his girlfriend, § 87(2)(b) § 87(2)(b) and § 87(2)(b) had spent the day at East River Park, and § 87(2)(b) was returning from a trip to buy ice while § 87(2)(b) waited inside the park. When he approached the overpass, he encountered Officers Maurice Harrington and Joel Medina from the 52nd Precinct, who were on a special assignment for the fireworks display. PO Harrington and PO Medina suspected § 87(2)(b) of carrying alcohol and denied him entry into the park without first searching his bag. § 87(2)(b) began a verbal altercation with the officers, who then denied him entry regardless of whether his bag was searched. § 87(2)(b) did not leave, but continued to shout at both officers and attempt to gain entry to East River Park.

PO Medina and PO Harrington asserted that § 87(2)(b) began to strike them with his fists and an umbrella that he was carrying, but the investigation could not corroborate this claim. PO Medina struck § 87(2)(b) in the left arm with his asp, causing him to fall back to the ground (**allegation A**). While on the ground, both PO Medina and PO Harrington struck § 87(2)(b) about the upper and lower body with their asps. At one point, § 87(2)(b) held PO Medina's asp in his hands, but he did not attempt to swing it or otherwise use force against the officers. PO Harrington took PO Medina's asp from § 87(2)(b) and began to hit him about the legs with it (**allegation B**). § 87(2)(b) passively resisted by refusing to comply with PO Medina's instructions to roll over onto his stomach to be handcuffed, but did not actively resist by kicking or swinging his arms at the officers. PO Harrington struck § 87(2)(b) approximately a dozen times before an officer identified by the investigation as PO Manuel Cruz from the 52nd Precinct walked to § 87(2)(b) who was being held by PO Medina as PO Harrington struck him, and flipped him over so that he could be handcuffed. A crowd of civilians formed, some of whom filmed PO Harrington striking § 87(2)(b) on a digital recorder. The individuals who filmed the incident were identified by the investigation as § 87(2)(b) and § 87(2)(b) brothers who are residents of § 87(2)(b) in Manhattan.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) a resident of § 87(2)(b) in Brooklyn, is a § 87(2)(b) -year-old black male who stands 5'8" tall and weighs 185 lbs. § 87(2)(b) § 87(2)(b) filed a notice of claim against the City of New York on § 87(2)(b) § 87(2)(b). He made an in-person statement to the CCRB on August 5, 2008, at the offices of his civil attorney, § 87(2)(b), at § 87(2)(b). His statements were consistent.

On July 4, 2008, § 87(2)(b) spent the afternoon at East River Park near the Williamsburg Bridge with his girlfriend, § 87(2)(b) who is a resident of § 87(2)(b) in Manhattan. § 87(2)(b) and § 87(2)(b) had a cookout and were drinking soda and fruit juice. § 87(2)(b) denied consuming any alcoholic beverages. They were not accompanied by anyone else in the park, but made acquaintances while they were there.

At approximately 7:30 pm, § 87(2)(b) left East River Park via the pedestrian walkway crossing FDR Drive to buy some ice. He carried an 18"-long umbrella, because it had been raining intermittently. He bought ice at a bodega approximately six blocks away on Delancey Street. He carried the ice in a black plastic bag in his right hand, carried the umbrella in his left hand, and returned to the pedestrian ramp on Delancey Street, beneath the Williamsburg Bridge, at approximately 8:20 pm. § 87(2)(b) said that the bag of ice protruded from the top of the black plastic bag and was clearly visible.

As § 87(2)(b) approached the park, he noticed two officers dressed in uniform, identified by the investigation as PO Maurice Harrington¹ and PO Joel Medina², both assigned to the 52nd Precinct, guarding the entrance to the pedestrian walkway. He moved to pass them, and both PO Harrington and PO Medina said, "There's no alcohol allowed in the park." § 87(2)(b) told the officers that he did not have any alcohol in the bag, and said, "I'm going in the park." § 87(2)(b) verbally protested (he first told the interviewing investigator, "We had words," and later said that they were exchanging "smart remarks.") He told PO Harrington, "I'm getting in that park. Who died and made you captain of the ship?" He stated that PO Harrington cursed at him, but could not recall the specifics of what was said. PO Harrington told § 87(2)(b) that he was in charge, and he was not going to allow him to enter the park. § 87(2)(b) responded that he was going to get in, and the exchange continued in this manner. PO Harrington demanded to look inside the bag, and § 87(2)(b) held the bag toward PO Harrington, but PO Harrington did not search it. PO Harrington then grabbed § 87(2)(b) on the upper left arm, and on his lower left side near the kidney, and "swung [him] around," telling him, "You can go." § 87(2)(b) clarified that he meant that PO Harrington pushed him around to walk away from the park entrance.

When he was denied entrance into the park and directed away, § 87(2)(b) said, "You don't have to fucking put your hands on me!" He then called § 87(2)(b) on his mobile phone, which he held in his right hand while still carrying both the bag of ice and the umbrella, to inform her that he was being denied entry to East River Park. § 87(2)(b) and the officers continued to have a verbal exchange (they were approximately five feet away) while he was on the phone, but § 87(2)(b) did not recall the specifics of what was said. He then ended the call to § 87(2)(b) turned back toward the officers and saw that PO Harrington was placing a pair of black leather gloves on his hands, and he and PO Medina were moving toward him. He might have slipped the mobile phone into his pocket – he did not recall – and then continued to protest his exclusion from the park. He stood with both hands raised, elbows bent, with his hands at the level of his head as he spoke, still holding both the bag of ice and the umbrella. PO Harrington and PO Medina extended their asps, and came toward § 87(2)(b). He dropped the bag of ice to the ground, and water and ice began to pour out. He thought that he dropped the umbrella, and possibly the phone, if it was still in his hand, at the same time, but was not certain. An officer then struck him with the asp in the left forearm; he did not remember which officer struck him first.

Both PO Harrington and PO Medina struck § 87(2)(b) about the upper body with their asps, and he held his hands and arms crossed in front of his face in a protective motion and stepped back several times to avoid the blows. § 87(2)(b) thought that he was struck approximately ten times before he fell backwards to the ground. As he fell backwards, he clutched one of the asps, which he thought was PO Medina's, against his chest with his arms crossed in front of him. PO Medina ordered him to let the asp go, and he removed it from § 87(2)(b)'s grip and tossed it to the side. In his statements to broadcast media outlets on July 29 and 30, 2008, § 87(2)(b) said, "They said I was drunk and then they kept hitting me and hitting me.... I grabbed that baton because I was afraid they were going to keep hitting me and hit me in my head. They were hitting me for five minutes before that tape started. I was just trying to get them to stop hitting

¹ PO Harrington: Black male officer dressed in uniform, 5'9", 200 lbs, black leather gloves, video shows glasses.

² PO Medina: Hispanic male officer dressed in uniform, 5'6", 165 lbs, light to medium complexion.

me.” PO Medina attempted to handcuff § 87(2)(b) who rolled about on the ground and struggled to avoid the officers. PO Harrington picked up PO Medina’s asp from the ground and continued to strike § 87(2)(b)

After PO Harrington picked up PO Medina’s asp from the ground, he struck § 87(2)(b) about the legs from twelve to fifteen more times. § 87(2)(b) said that PO Harrington had lost his own asp by this point, but it was unclear how or where the asp went. He later pointed out the discarded asp when viewing the video footage of the incident during his interview. § 87(2)(b) remained on his back on the ground. He moved about and struggled to resist the blows and being handcuffed, but did not strike out at PO Harrington or PO Medina. As PO Harrington struck § 87(2)(b) PO Medina continued to struggle to place the second handcuff on him. A third officer, identified by the investigation as PO Manuel Cruz from the 52nd Precinct³, approached on foot and said something to the effect of, “Stop. That’s enough,” to PO Harrington, but he did not immediately stop.

By this time, a small crowd had gathered, and onlookers were shouting at the officers. § 87(2)(b) did not know any of the onlookers but noticed an individual holding a video camera. § 87(2)(b) had crossed the pedestrian ramp by this point and confronted the officers by asking, “Why are you doing that to him?” § 87(2)(b) said that § 87(2)(b) was “hysterical” and spoke with a raised voice, as did several members of the crowd. PO Cruz spoke to § 87(2)(b) and persuaded her to calm down. PO Medina secured the second handcuff on § 87(2)(b) and additional officers, including a sergeant, identified by the investigation as Sgt. Robert Mainor from the 40th Precinct, arrived. § 87(2)(b) said that he shouted to the crowd, “Is anybody taping this?” He heard voices respond, “Yes!” but he did not know the people who responded. He described them as two young Hispanic males who were about his height. He remained on the ground while § 87(2)(b) spoke to the officers, and after a few minutes, he was transported to § 87(2)(b) in an ambulance.

At § 87(2)(b) § 87(2)(b) was given a tetanus shot (the asp strikes broke the skin on his legs and caused him to bleed) and pain medication. X-rays were taken, but § 87(2)(b) did not know whether they had shown any fractures. After approximately three hours, he was taken to the 7th Precinct stationhouse to process his arrest.

Inside the 7th Precinct stationhouse prisoner holding cell area, he noticed the two young Hispanic males who had been present for the incident. They told him that they had taped the incident and given the disc to § 87(2)(b) before themselves being arrested for § 87(2)(b). § 87(2)(b) fell asleep in the cell, and when he woke up, the two young Hispanic men had been released. He never learned their names and could not describe them in any detail. Upon his release, he received a property voucher for the umbrella. He learned that § 87(2)(b) had in fact obtained a recording of the incident, which began as he fell back to the ground, after the initial strikes of the officers’ asps. § 87(2)(b) provided a copy of the recording to the investigation. During the viewing, he pointed out the location of the dropped bag of ice, the thrown baton, and the dropped umbrella. He identified PO Cruz, Sgt. Mainor, and § 87(2)(b) and noted the points at which each arrived at the scene of the incident. An unidentified female is heard screaming things such as, “Why are you hitting him for no reason? What did he do?” in the background. § 87(2)(b) did not know this woman.

§ 87(2)(b) provided a series of fourteen photographs taken in the New York County courthouse the day after the incident, July 5, 2008. The photographs depict bruising and lacerations about § 87(2)(b)’s body, including bruising to his left arm, shoulder, and right knee. The bruises to his upper body include one oblong bruise covering § 87(2)(b)’s top left shoulder, which appears to be approximately twelve inches long by four to five inches wide. This abrasion has a distinct, lighter colored line approximately one inch wide running the length of the injury. A second abrasion running across § 87(2)(b)’s left bicep, which appears to be approximately five inches wide and ten or more inches across, exhibits a similar one-inch-wide line across the length of the bruised area. § 87(2)(b) identified the body parts and injuries depicted in each photograph and noted his physical location at the moment that each injury was received. § 87(2)(b)

³ PO3: Hispanic male officer dressed in uniform, 5’11”, 200 -210 lbs, light-skinned.

sought follow-up care at § 87(2)(b) after his release, and on the date of the interview was undergoing physical therapy for his injuries at § 87(2)(b).

§ 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) 160.50. His criminal charges were later dismissed in court.

Video Footage

§ 87(2)(b) obtained video footage of the incident through § 87(2)(b) from a member of the crowd identified by the investigation as § 87(2)(b) or § 87(2)(b). The footage is enclosed on a disc labeled § 87(2)(b) incident video, July 4, 2008, 2008101117." The footage is contained on title menu two of three under the heading "July 4 2008 8:12 AM."

The recording opens to a view of § 87(2)(b) lying on his back on the ground at the intersection of Delancey and Mangin Streets in front of the East River Park pedestrian overpass. Officers Medina and Harrington are crouched over him, and § 87(2)(b) is gripping the end of one of the officers' batons (identified by § 87(2)(b) as PO Medina's baton) while both officers are gripping the middle and handle end of the baton. § 87(2)(b) is pulling the baton toward his chest and does not appear to be attempting to swing it, although the view of his grip on the baton is obscured. PO Medina taps § 87(2)(b) in the face with his left hand, while § 87(2)(b) simultaneously begins to move his left arm around PO Harrington's body. PO Harrington is positioned with one knee to § 87(2)(b)'s chest on the right § 87(2)(b)'s left) while PO Medina is positioned behind him from the camera's view, to the left of PO Harrington and with one knee on the right side of § 87(2)(b)'s body.

As § 87(2)(b) begins to try to move his left arm, PO Medina is able to gain a grip on the baton and tosses it to the side. The baton lands approximately one foot away from § 87(2)(b)'s head. Both officers move from their positions on top of § 87(2)(b) and begin to move him to a sitting position, revealing that § 87(2)(b)'s right hand is handcuffed and that PO Medina is gripping the second cuff. As the officers attempt to move § 87(2)(b) upward and move both hands behind his back, he squirms and resists their efforts. He appears to be trying to lie back down on the ground. PO Medina is to his front § 87(2)(b) has now curled onto his right side) manipulating his cuffed right hand, while PO Harrington is attempting to move § 87(2)(b)'s left hand behind him. § 87(2)(b) resists by moving his arms and curling his knees up to his chest; he has lost his left shoe. PO Harrington reaches for the discarded baton, which is lying a foot or two away to the right of § 87(2)(b)'s head, and hits § 87(2)(b) seven times in rapid succession on his knees and shins, primarily on his left leg. § 87(2)(b) begins to scream and curls his body, sometimes jutting a leg outward. The leg movements appear to be reflexive reactions rather than a deliberate attempt to kick either PO Harrington or PO Medina, and his legs and feet do not strike either officer. The baton flies out of PO Harrington's hand with the seventh blow and lands between five and ten feet to the left of § 87(2)(b) from the camera's perspective.

When the baton flies out of PO Harrington's hand, PO Medina remains on § 87(2)(b) and continues to attempt to secure his other hand while PO Harrington walks the distance between his original position and the baton. He picks up the baton, circles around PO Medina and § 87(2)(b) (who has now curled to his left side but is still on the ground, with PO Medina holding his right hand by the free handcuff) and strikes § 87(2)(b) again on his right kneecap. § 87(2)(b) curls his legs tighter, screams out, rolls farther to his left, and tries to grip his knees with his handcuffed hand. PO Harrington circles in front of § 87(2)(b) from the camera's point of view and strikes him twice more. The surrounding crowd, which has been vocal throughout this interaction, begins to scream, and another officer, identified by PO Harrington as PO Manuel Cruz from the 52nd Precinct, walks into the camera frame. He is standing on the sidewalk to the right of PO Medina from the camera's perspective, on PO Medina's left side. He is holding his open hand toward § 87(2)(b) from the sidewalk and is speaking to either the officers or § 87(2)(b) § 87(2)(b) looks at him and appears to respond by beginning to move his torso to a sitting position; however, PO Harrington moves around to the left side and strikes him in the leg once more. § 87(2)(b) gestures toward PO Harrington and appears to be saying something to the effect of "Hold on," but it is not audible over the noise from the crowd. § 87(2)(b) lies prone on his back as PO Medina continues to hold his right arm up by the handcuff. PO Cruz leans over § 87(2)(b) and appears to be speaking to him, and § 87(2)(b)

appears to be speaking to PO Harrington, who is standing over him with baton in hand. § 87(2)(b) points at PO Harrington as PO Cruz offers § 87(2)(b) his hand. § 87(2)(b) bats PO Cruz's hand away and lies back, but PO Harrington takes § 87(2)(b)'s right hand from PO Medina and, with PO Cruz's assistance, flips § 87(2)(b) to his stomach, and PO Harrington secures the second cuff. § 87(2)(b) begins to scream out again and may be saying something about his back.

§ 87(2)(b) lies on his side on the ground, handcuffed, as § 87(2)(b) approaches and begins to question the officers present. PO Cruz attempts to take her aside and speak to her as PO Medina gathers § 87(2)(b)'s property, including a red and blue baseball cap and his left shoe, from a twenty-foot area around the scene of the incident. As the camera pans out to capture the group of officers speaking with § 87(2)(b) the screen catches the umbrella, which is on the ground, in the street, approximately ten feet to the left of the entrance to the pedestrian overpass and about three feet to the left of the curb. The shot also shows the bag of ice, which is on the ground two to three feet from the ramp of the pedestrian overpass, on the sidewalk. The camera pans in to a close-up of § 87(2)(b)'s legs, which are visibly lacerated and are bleeding heavily enough that the blood drips on the ground.

As the crowd begins to disperse and pedestrians begin to cross the overpass into the park, a marked patrol vehicle with turret lights activated rolls up to the scene of the incident, and three officers dressed in uniform (one of whom was identified by PO Harrington as Sgt. Robert Mainor from the 40th Precinct) exit the vehicle and approach § 87(2)(b) PO Harrington, PO Medina, PO Cruz, and § 87(2)(b) who is lying face down on the street. After an uneventful period of a minute or two, § 87(2)(b) sits up with his legs splayed in front of him, looks at the cameraman, and says, "I hope you got his on tape, man. I hope you got these mother fuckers. Oh, shit. Oh, shit, my arm, man." He lies back down. The camera operator speaks to an unknown person off camera, stating, "They didn't call no bus or nothing, man. He went down and they just kept on hitting him."

Medical Records and Statements Therein

§ 87(2)(b) was brought to § 87(2)(b) Center in police custody by ambulance on July 4, 2008, at approximately 9:00 pm. He complained of moderate pain to his right leg and severe pain to both wrists. He told EMS personnel that he had a history of diabetes, hypertension, and psychiatric disease, and was currently taking Zoloft and Prozac. He stated that he was "beat up" by police.

On § 87(2)(b), § 87(2)(b), a counselor at § 87(2)(b), wrote a progress note regarding § 87(2)(b)'s ongoing psychiatric treatment. She stated that § 87(2)(b) had missed an appointment but that she later found that he was in the § 87(2)(b) Emergency Department receiving treatment for injuries incurred on July 4, 2008. Upon visiting the emergency room to see § 87(2)(b) § 87(2)(b) noted that his right eye was "filled with blood" and that he was reporting back pain. § 87(2)(b) told § 87(2)(b) that he had been beaten by a police officer with a baton on the Fourth of July.

On § 87(2)(b), § 87(2)(b) had an initial consultation for Physical Therapy with § 87(2)(b). He stated that he was beaten by two police officers on July 4, 2008, and had since experienced pain rated eight on a scale of one-to-ten to his left wrist, both ankles, both knees, right leg, and lower back.

On September 10, 2008, § 87(2)(b)'s individualized treatment plan with the § 87(2)(b) was reviewed by his treatment team. In the review, it was noted that § 87(2)(b) "reported stress-related symptoms (mental preoccupation, waking up in a cold sweat) related to an incident experienced on July 4, 2008, when he was beaten by a police officer and arrested. Patient disputes the charges under which he was arrested and has hired legal representation; his case received press coverage for police brutality. He is undergoing physical therapy for his injuries and will require knee surgery."

Notice of Claim

In his notice of claim against the City of New York, filed § 87(2)(b), § 87(2)(b) stated that Officers Harrington and Medina assaulted, battered, and used force that was not necessary to perform their physical

duties. He claimed that Officers Harrington and Medina failed to perform their duties in a prudent and careful manner, which resulted in injuries to his right leg, left leg, right hand, and back, as well as emotional distress.

Results of Investigation

Civilian Statements

§ 87(2)(b)

§ 87(2)(b) a resident of § 87(2)(b) called the CCRB in response to a contact letter on October 14, 2008, and provided the following statement. § 87(2)(b) has no prior knowledge of § 87(2)(b) or the officers involved.

At approximately 8:00 pm on July 4, 2008, § 87(2)(b) was on his balcony, which is directly above the incident location, using his binoculars. He resides on the 21st floor of a high-rise directly adjacent to and facing the Williamsburg Bridge. § 87(2)(b) was observing people moving in and out of East River Park, using binoculars which he described as "pretty good."

At some point, § 87(2)(b) noticed that police were stationed outside the entrance to the park and were checking individuals by looking into the bags and backpacks of passersby and questioning them. He specifically noticed two male police officers identified by the investigation as PO Maurice Harrington and PO Joel Medina stopping individuals, who included a man identified by the investigation as § 87(2)(b). § 87(2)(b) could not hear anything from his vantage point, but said that it appeared that the officers had denied § 87(2)(b) entry into the park. § 87(2)(b) appeared to be frustrated, because he walked away from the officers, talked on a cellular phone, and then approached them again approximately three times. Although § 87(2)(b) could not hear anything, he thought that the officers instructed § 87(2)(b) to go away.

After approaching and retreating several times, § 87(2)(b) approached the officers "up in their faces" and appeared to try to push through them to enter the park. § 87(2)(b) was not sure how or what part of the officers' bodies § 87(2)(b) touched, and he did not know whether punches were thrown by § 87(2)(b) or either of the officers. He was certain physical contact was made. After § 87(2)(b)'s attempt to push through the officers, PO Harrington and PO Medina moved forward toward § 87(2)(b) as he backed away. § 87(2)(b) did not see anything in the officers' hands but thought they were about to place § 87(2)(b) under arrest, as they appeared to be grabbing for his arms. § 87(2)(b) backed away, and after a few steps, swung an umbrella toward the officers. § 87(2)(b) did not think the umbrella made contact with either officer. PO Harrington and PO Medina continued to "try to subdue" § 87(2)(b) but § 87(2)(b) could not articulate the officers' actions in more detail.

As § 87(2)(b) backed away, at least one of the officers § 87(2)(b) was not sure which) took out a baton and swung it toward him, which caused him to fall back to the ground. While on the ground, § 87(2)(b) continued to resist by refusing to roll over and be handcuffed. § 87(2)(b) noticed one of the officers striking § 87(2)(b) on the shins with a baton, but he still would not comply and allow himself to be handcuffed. As PO Harrington struck § 87(2)(b)'s legs, a crowd gathered. § 87(2)(b) noticed a young black or Hispanic male with a video camera taping the incident, but the man arrived about halfway through the incident and had not captured § 87(2)(b)'s initial behavior toward the officers. A female identified by the investigation as § 87(2)(b) emerged from the crowd and appeared to be "very upset." § 87(2)(b) said that many of the onlookers wielded camera phones and appeared to be capturing images from the incident. He thought the whole event lasted about five minutes. His wife, § 87(2)(b) also witnessed a portion of the incident, but did not see any events that § 87(2)(b) did not also witness.

§ 87(2)(b)

§ 87(2)(b) a resident of § 87(2)(b) was called by the undersigned investigator on October 24, 2008, and provided the following statement. § 87(2)(b)'s apartment overlooks the incident location.

On July 4, 2008, at approximately 8:30 pm, § 87(2)(b) looked out her window on the 15th floor of her building, which faces the Williamsburg Bridge. She noticed a commotion where two or three male police officers in uniform, identified as PO Harrington and PO Medina, were struggling to handcuff an individual identified as § 87(2)(b) § 87(2)(b) struggled by pulling his hands away from the officers. § 87(2)(b) did not see § 87(2)(b) hit or strike the officers at any time, but he was clearly not complying with their instructions. She could hear shouting from the scene of the incident, but she was too far away to hear what was being said. As § 87(2)(b) struggled with the officers, a crowd of fifteen to twenty people formed. Members of the crowd were shouting, and several people were filming the incident. After a few minutes, one of the officers started to strike § 87(2)(b) with a baton to "make him go down." § 87(2)(b) said that she feared for the officers' safety, not because of any threat from § 87(2)(b) but because the crowd was loud and seemed to be becoming unruly. However, no members of the crowd ever took any action against the officers. A woman who appeared to know § 87(2)(b) (identified by the investigation as § 87(2)(b)) arrived at the scene of the incident and began shouting and screaming at the officers. § 87(2)(b) § 87(2)(b) turned away from her window when back-up officers arrived but before § 87(2)(b) was in custody.

Witnesses not Interviewed and Attempts to Contact

The investigation did not obtain a sworn statement from § 87(2)(b)'s companion, § 87(2)(b) because she did not cooperate with the investigation. Contact letters were mailed to § 87(2)(b)'s address on August 26, 2008, October 8, 2008, and October 26, 2008. § 87(2)(b) called the undersigned investigator on October 14, 2008, and confirmed that she received at least one of the letters, provided her telephone number, and scheduled an in-person interview on October 24, 2008. On that date, § 87(2)(b) did not appear for her scheduled appointment. On November 3, 2008, the undersigned called § 87(2)(b) at the number provided, but the call was ended when the undersigned identified herself as an investigator. On the same day, the undersigned left a voicemail message with § 87(2)(b) indicating that she must be in contact if she wished to make a statement. § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) brothers who are residents of § 87(2)(b), a NYCHA complex on the north side of the Williamsburg Bridge, were also unavailable to provide sworn statements. § 87(2)(g)

§ 87(2)(b) Contact letters were mailed to both brothers at their address of record on August 26, 2008, September 18, 2008, and October 8, 2008. DMV confirmed this address, but a search of the Lexis-Nexis database produced negative results. On September 8, 2008, § 87(2)(b) called the undersigned investigator and left a voicemail message including a contact number and an instruction to contact him after 3:00 pm. The undersigned called this number on September 9, 2008, to find that it was linked to an unidentified woman named § 87(2)(b) after leaving a voicemail message, the undersigned also attempted variations on the number provided to protect against error. None of the alternate numbers attempted were working numbers. The undersigned attempted contact through this number, leaving voicemails each time, on September 12, 2008, and September 25, 2008, with negative results. On October 16, 2008, the undersigned conducted a field visit to the § 87(2)(b)'s address. There was no answer at the door, and a contact letter was left at the location. Neither § 87(2)(b) nor § 87(2)(b) has responded to contact attempts as of the date of this report.

§ 87(2)(b) a resident of § 87(2)(b) a building south of the Williamsburg Bridge, is the wife of § 87(2)(b) and was present with him while he watched the interaction between § 87(2)(b) and officers of the NYPD. § 87(2)(g)

Officer Statements

PO Maurice Harrington

PO Maurice Harrington is a black male officer who stands 5'11" and weighs 195 lbs. He is currently assigned to Housing Boro Manhattan – VIPER, but he was assigned to the 52nd Precinct and was working on the Macy's Fireworks Display 4th of July Detail on the incident date. On July 4, 2008, PO Harrington was working with PO Joel Medina from the 52nd Precinct and both officers were dressed in uniform. They were assigned to a foot post at the entrance to the pedestrian overpass crossing FDR Drive at the intersection of Delancey and Mangin Streets in Manhattan. They were supervised by Sgt. Robert Mainor from the 40th Precinct.

PO Harrington's memo book entry regarding this incident stated that an individual later identified as § 87(2)(b) was placed under arrest at the corner of Delancey Street and Mangin Street in Manhattan at 8:25 pm. He noted in this entry that § 87(2)(b) was told several times that he could not enter the park without his bag being searched, but he refused to submit to the search. He noted that § 87(2)(b) was stopped earlier because he was in possession of alcohol. According to the memo book entry, § 87(2)(b) returned after being refused entry, became combative, and tried to gain entry to the park against the orders of the officers. He then became violent and swung an umbrella and his fists at both officers, who then hit him in the lower extremities to control him.

PO Harrington prepared property and evidence vouchers while processing § 87(2)(b)'s arrest on July 4, 2008. The arrest evidence consisted of a Laila Rowe silver and black transparent umbrella. Additional vouchers were prepared for § 87(2)(b)'s personal property, including items such as jewelry, a cellular phone, and keys. PO Harrington provided a narrative for the report prepared regarding § 87(2)(b)'s arrest on July 4, 2008. The narrative stated that § 87(2)(b) was told he could not enter the fireworks viewing area with alcoholic beverages, and was instructed to return without alcohol. § 87(2)(b) left the area and returned, but would not allow his bag to be searched. § 87(2)(b) appeared to be intoxicated. He cursed at the officers and attempted to gain entry to the park several times. The officers instructed him to leave, as he would not be allowed entry, and § 87(2)(b) struck both officers with his fists and swung an umbrella at them several times. He then refused to be handcuffed. The report indicates that force was used by the arresting officer, PO Harrington, to overcome assault.

PO Harrington was interviewed at the CCRB on March 18, 2009, and provided the following statement. On July 4, 2008, at approximately 8:00 pm, PO Maurice Harrington and PO Joel Medina from the 52nd Precinct were checking the bags and coolers of civilians crossing the pedestrian overpass into East River Park prior to viewing the holiday fireworks display. PO Harrington said that there had been a standing order from Sgt. Mainor to search the bags and coolers of all civilians attempting to enter to ensure that they did not carry any alcoholic beverages into the park. Both officers were standing blocking the entrance to the overpass, and were searching the bags of civilians as they approached. PO Medina stood to the left of PO Harrington. There was a group of seven to ten civilians waiting to have their bags searched, and they waited in an orderly manner. PO Harrington was not sure how many civilians were present and could not recall any elements of their physical descriptions.

A man identified by PO Harrington as § 87(2)(b) waited in line, and then approached PO Medina. § 87(2)(b) had a black plastic bag slung over his right shoulder, but PO Harrington could not see the contents of the bag. He did, however, assert that he heard the sound of bottles clinking inside the bag, and said that PO Medina later told him that there were several glass bottles of either Corona or Heineken beer inside the bag. PO Medina advised § 87(2)(b) that he had to search the bag, and § 87(2)(b) removed it from his shoulder and presented it to PO Medina, who looked inside. Upon seeing the bottles of beer, PO Medina advised § 87(2)(b) that there was no alcohol permitted inside the park. PO Medina told § 87(2)(b) that he could dispose of the alcohol and come back.

§ 87(2)(b) was clearly angered by PO Medina's instructions, and he began to protest the prohibition of his bag. He stated that an officer stationed earlier at the same post had allowed him to pass through without being searched, and he demanded to know on what authority he was being denied entry. PO Medina explained the order to prevent civilians in possession of alcohol from entering the park. The two argued for

between five and seven minutes. During their interaction, § 87(2)(b) cursed and called PO Medina names. PO Harrington remembered him saying at one point, “This is bullshit.” PO Harrington continued to search the bags of civilians entering the park, but at one point, he stopped to observe what was taking place between PO Medina and § 87(2)(b) to ensure that PO Medina did not need any assistance. He did not, and the interaction continued for about five minutes, ending when § 87(2)(b) walked away.

After approximately fifteen minutes, during which PO Harrington and PO Medina continued to search the bags and coolers of the civilian entrants to the park, § 87(2)(b) returned. PO Harrington did not know whether he had disposed of the beer bottles that PO Medina had noted earlier, but he was still in possession of the black plastic bag, which he carried slung over his right shoulder. He was also carrying an umbrella in his left hand. § 87(2)(b) waited in line with the other individuals waiting to be searched by PO Harrington. When it was his turn, PO Harrington told him that he was going to have to search the plastic bag before he would be allowed to enter the park.

When § 87(2)(b) heard that he was still required to have his bag searched, he asked, “For what?” PO Harrington explained the policy regarding alcohol in the park. § 87(2)(b) reacted in a manner that PO Harrington described as irate and angry. He asked, “What gives you the right to search me?” PO Harrington stated that he continued calmly to explain the orders he had received regarding entry into the park, as § 87(2)(b) shouted at him, waved his hands, and used profanity. PO Harrington specified that § 87(2)(b) called him a “bitch-ass nigger” and a “faggot cop,” among other things, and did not listen to PO Harrington’s instructions. PO Harrington said that he explained to § 87(2)(b) that the search was voluntary and that he did not have to submit to having his bag searched, but that he could not otherwise enter the park. PO Harrington said that he then told § 87(2)(b) that he would not be allowed to enter the park whether or not he submitted to the search, because he was behaving violently and might hurt other people in the park. PO Harrington indicated that he verbalized all of this to § 87(2)(b).

As § 87(2)(b) was shouting and waving his arms, he advanced on the officers and tried to push through PO Harrington and PO Medina, who was still to the left of PO Harrington. PO Harrington described § 87(2)(b) move as “trying to knock [the officers] over,” but he did not make physical contact with either officer, as PO Harrington pushed his right hand against § 87(2)(b) s left shoulder to create distance between them. § 87(2)(b) then swung at PO Harrington with his umbrella, which he swung with his left hand. PO Harrington blocked the swing by raising his right forearm. The umbrella hit PO Harrington in the forearm, but did not injure him or cause marks or bruising. § 87(2)(b) might have then dropped the umbrella; PO Harrington was not sure. He took the bag that had been over his right shoulder and swung it around and to the ground in front of the officers. PO Harrington stated that he thought § 87(2)(b) was trying to hit him and PO Medina with the bag, but it did not make any contact with them. The bag burst open when it hit the ground, revealing that it had been filled with ice and no alcoholic beverages.

When § 87(2)(b) threw the bag of ice to the ground, he then moved toward PO Harrington and PO Medina while swinging his fists. PO Harrington felt several blows about his chest and abdomen, but he was wearing a bulletproof vest at the time and the blows did not injure him. He believed that PO Medina was also struck by § 87(2)(b). PO Harrington and PO Medina moved forward as § 87(2)(b) moved backward, until all three were in the street beside the pedestrian overpass. PO Harrington said that all three were wrestling and “engaged in a fist fight.” § 87(2)(b) backed up from the officers, raised his fists, and shouted something like, “Come on, let’s do this!”

At this point, PO Medina took out his extendable baton. PO Harrington could not remember whether PO Medina struck § 87(2)(b) with the baton, or what part of his body might have been struck. However, § 87(2)(b) almost immediately acquired a grip on the end of the baton and would not let it go. He fell backwards to the ground, but continued to hold the baton, and began to kick and “flare” his legs at the officers. PO Harrington did not think § 87(2)(b) was ever successful in his attempts to kick him, but could not account for whether PO Medina was kicked. Both officers shouted at § 87(2)(b) “Stop resisting! Give us your hands!”

§ 87(2)(b) continued to lie on his back and struggle against the officers’ attempts to handcuff him. Eventually, either PO Harrington or PO Medina obtained the asp from § 87(2)(b) and threw it to the side.

PO Harrington then removed his asp and began to strike § 87(2)(b) numerous times about the legs, while PO Medina struggled to grip § 87(2)(b)'s hands and continued to issue verbal commands. When watching a recording of the incident obtained by the investigation, PO Harrington could not identify a moment at which § 87(2)(b) kicked or attempted to kick either him or PO Medina. He could not identify any actions that made him fear an assault, or identify any active rather than passive resistance on the part of § 87(2)(b). He stated that the attempted kicks and punches all occurred before the beginning of the video and were therefore not captured. He denied striking § 87(2)(b) with the extendable baton before portion of the incident captured on tape. He stated that he used the extendable baton because § 87(2)(b) continued to resist being handcuffed. He did not recall how many times he struck § 87(2)(b) but said that he eventually "gave up" and allowed himself to be cuffed. Once both handcuffs were in place, PO Harrington stopped striking § 87(2)(b) with the asp.

At approximately the same time as § 87(2)(b) "gave up," another officer, whom PO Harrington identified as PO Cruz from the 52nd Precinct, walked up to him and began to speak to him, § 87(2)(b) and PO Medina. PO Harrington could not remember what he said, nor could he remember the nature of the interaction he had with a woman identified by the investigation as § 87(2)(b) a friend of § 87(2)(b) who arrived at the scene of the incident after § 87(2)(b) was handcuffed. PO Harrington asked that the video be allowed to continue so that he could point out a particular moment at which § 87(2)(b) called out, "Is anyone recording this?" but he could not pinpoint that moment on the video. At the conclusion of the incident, a marked patrol vehicle pulled up to the scene, and individuals exited the vehicle. PO Harrington identified one of these officers as Sgt. Robert Mainor from the 40th Precinct. He could not recall where Sgt. Mainor had been stationed for the Fireworks Detail, and could not recall what they discussed after the incident's conclusion.

When § 87(2)(b) was handcuffed, PO Harrington and PO Medina transported him to the 7th Precinct stationhouse for arrest processing. PO Harrington later escorted § 87(2)(b) to the hospital, but he did not know what treatment or diagnosis § 87(2)(b) received.

PO Joel Medina

PO Joel Medina from the 52nd Precinct is a Hispanic male officer who stands 5'10" and weighs approximately 200 lbs. On July 4, 2008, PO Medina was assigned to the fireworks detail and worked within the confines of the 7th Precinct at the Delancey Street pedestrian overpass to East River Park with PO Maurice Harrington. Both officers were dressed in uniform and worked from 2:00 pm until 11:15 pm, although PO Medina extended his tour for arrest processing and medical treatment and did not in fact leave work until 9:30 am the next day. He noted in his memo book that one person was placed under arrest at 8:25 pm. He added, "...pain in my back in apprehending violent perp. Advised Sgt. Mainor."

PO Medina was interviewed at the CCRB on February 20, 2009, and made the following statement. On July 4, 2008, at approximately 8:00 pm, PO Medina and PO Harrington were stationed at the pedestrian walkway crossing FDR Drive at the intersection of Delancey and Mangin Streets in Manhattan. They were guarding the entrance to East River Park on the orders of their supervisors, who had instructed them to stop all civilians about to enter the park and make sure that they were not carrying alcohol or weapons. PO Medina and PO Harrington had been checking the bags of the civilians making their way into the park, and there was a line of more than twenty people waiting to have their bags checked.

The sixth person in line was an individual identified by PO Medina as § 87(2)(b) § 87(2)(b) was carrying an umbrella, and a plastic shopping bag in which a clear plastic bag of ice was visible. § 87(2)(b) broke out of the line and tried to walk past PO Medina and PO Harrington, while saying, "You don't have to search my fucking bag." PO Medina used the word "violent" to describe § 87(2)(b)'s demeanor at this point in the incident, but he was unable to identify any specific physical threat. PO Medina stopped § 87(2)(b) from passing by verbally instructing him to stop, and explained that he would not be allowed into the park unless his bag was searched.

§ 87(2)(b) said, "You bitch-ass mother fuckers are not searching my bag," and slung the bag over his shoulder. PO Medina reached out for the bag (he explained that he was worried that § 87(2)(b) might hit

him with it) and as he did so, he felt a rectangular hard object that was about 8" x 6" wide and about 2" thick. He stated that he believed this object to be a liquor bottle of some kind. PO Medina continued to explain to § 87(2)(b) that he would not be permitted into the park with alcohol, and that his bag must be searched before entering. § 87(2)(b) refused and continued to use profanity toward PO Medina. This exchange continued in the same manner for about three minutes, with PO Medina arguing with § 87(2)(b) as PO Harrington continued to check the bags of the queued civilians. § 87(2)(b) finally stood to the side and left the area. PO Medina went back to checking the bags of the waiting civilians.

After between five and seven minutes, § 87(2)(b) returned to the pedestrian overpass. He still had the black plastic shopping bag and umbrella. § 87(2)(b) attempted to circumvent the line of civilians waiting to get their bags searched but left again when he saw that every civilian trying to enter the overpass was being searched. (PO Medina was not clear about § 87(2)(b)'s actions and behavior on his second attempt to enter the park, but specified that he made three separate attempts to enter). After two to three minutes, § 87(2)(b) returned.

When he returned the third time, § 87(2)(b) walked around the line of civilians and attempted to push past PO Medina and PO Harrington, who was standing to the right and about a foot in front of PO Medina. PO Medina was not sure where § 87(2)(b) came from but assumed that he had gone across Delancey Street to dispose of the bottle of alcohol. § 87(2)(b) still had the bag of ice and the umbrella. He tried to push in between the two officers and made contact with PO Medina's left torso. (It was not clear how § 87(2)(b) would have made contact with the left side of PO Medina's torso if he passed between PO Medina, who was on the left, and PO Harrington, on the right. PO Medina's and PO Harrington's descriptions of their standing positions were consistent.) PO Medina stood in front of § 87(2)(b) and again explained that he could not enter the park with alcohol. § 87(2)(b) continued to refuse to let PO Medina search his bag, and argued with him. PO Medina stated at one point in the interview that § 87(2)(b) yelled, "Fuck you, I'll fuck you up," but at another point he stated that § 87(2)(b) called him and PO Harrington "bitch-ass niggers." He still had the bag of ice slung over one shoulder. PO Medina tried to reason with § 87(2)(b) for a few minutes, until § 87(2)(b) angrily took the bag slung over his right shoulder, swung it over his head with one hand, and threw it to the ground, where it hit both of PO Medina's feet. PO Medina was not injured by the bag, but determined at that point that § 87(2)(b) was "too violent to let go." He added that, when § 87(2)(b) swung the bag, he pushed a light-complexioned, heavy-set woman who was standing behind him. The woman fell to the ground, and PO Medina said "kids were scared," although he could not describe or specify any particular children who were in danger. The woman was not treated by police and had left the scene by the end of the incident, so PO Medina was unable to identify her. PO Medina described the push and fall of the woman several times but none of the descriptions was consistent.

When § 87(2)(b) dropped the bag of ice on PO Medina's feet, he continued to hold the umbrella in his right hand. PO Medina decided to arrest him at this point, because he had pushed the unidentified woman (he later stated that between nine and twelve unidentified civilians were affected by § 87(2)(b)'s step back, and that he decided to arrest him because multiple families with small children were in the immediate vicinity.) PO Medina stepped toward § 87(2)(b) and commanded him to give him his hands. § 87(2)(b) did not cooperate, but instead stepped toward PO Medina and began to grapple with him. He attempted to punch PO Medina with his closed left fist, and connected with the right side of PO Medina's back and body. However, PO Medina did not sustain any injuries or bruising as a result of the punches, and explained that § 87(2)(b) was not able to punch him hard because he was stepping into the punch and thereby absorbed much of the force.

PO Medina extended his asp baton and struck § 87(2)(b) who was now swinging the umbrella, which he held in his right hand, in the left shoulder. PO Medina struck § 87(2)(b) twice on the upper left arm. At an unknown point (PO Medina said "after a while" but could not be more specific) PO Harrington engaged in the struggle. PO Harrington was to PO Medina's left, and blocked his view of § 87(2)(b)'s umbrella, although he stated that § 87(2)(b) continued to swing the umbrella. He did not know whether PO Harrington was struck by the umbrella, but he was struck once on the left wrist. He did not incur any bruising or other injury from the blow, but his watch was broken while struggling with § 87(2)(b) and he later noticed (after the incident had concluded) that his middle finger and lower back were in pain.

As PO Medina and PO Harrington pushed § 87(2)(b) backward, he was able to grab PO Medina's asp and held it to his chest as he fell backward onto the ground. PO Medina struggled to get the asp from § 87(2)(b) who was laying on his back, and was able to take the asp, toss it to the side, and put one of § 87(2)(b)'s hands (the video indicates that this was § 87(2)(b)'s right hand) in a handcuff. However, § 87(2)(b) did not comply with PO Medina's repeated verbal commands to "give me your hands!" Instead, he rolled, struggled, and moved his hands about to avoid being cuffed. When § 87(2)(b) refused to be handcuffed, PO Harrington began to strike him about the legs and shins with his asp. PO Medina could not say how many times PO Harrington struck § 87(2)(b) who remained on his back on the ground. Another officer, whom PO Medina could not identify, approached and assisted PO Medina and PO Harrington in flipping § 87(2)(b) over and securing the second cuff.

When the incident was concluded, a large group of civilians was standing about and watching. There were also several male officers dressed in uniform, but PO Medina could not identify any of them when he watched the video footage of the incident. § 87(2)(b) was arrested and processed at the 7th Precinct stationhouse. PO Medina said that he noted his back pain to their supervisor, Sgt. Mainor, and was later treated at § 87(2)(b). However, he would not sign medical release forms allowing the investigation to obtain records of his treatment there. He stated that he thought he left on line-of-duty leave on the same day as the incident, but was not certain.

Officers Not Interviewed

Sgt. Robert Mainor from the 40th Precinct and PO Manuel Cruz from the 52nd Precinct are noted as witnesses to the incident but were not interviewed by the undersigned investigator. Neither Sgt. Mainor nor PO Cruz witnessed any portion of the incident that was not already captured on film, and their statements therefore would not affect the outcome of the investigation.

Medical Records and Diagnoses

§ 87(2)(b)

§ 87(2)(b) was brought to § 87(2)(b) in police custody by ambulance on July 4, 2008, at approximately 9:00 pm. He complained of moderate pain to his right leg and severe pain to both wrists. He told EMS personnel that he had a history of diabetes, hypertension, and psychiatric disease, and was currently taking Zoloft and Prozac. He presented with multiple abrasions and was diagnosed with contusions and instructed to follow up if pain continued. The physician later noted that § 87(2)(b) is schizophrenic and bipolar. The same physician noted that § 87(2)(b)'s injuries included facial trauma; his left shoulder, left clavicle, left humerus, left forearm, left wrist, and right tibia and fibula were all checked for fractures and exhibited bruising and abrasions in the case of the upper body, and bruising, abrasions, and lacerations on the right and left legs. § 87(2)(b) did not have sufficient range in his left shoulder to lift his arm over his head. X-rays were taken and no fractures were found.

§ 87(2)(b)

On § 87(2)(b), § 87(2)(b) had an initial consultation for Physical Therapy with § 87(2)(b). He complained of pain to his left wrist, both ankles, both knees, right leg, and lower back, and stated that he had undergone a lumbar discectomy in 2003 due to a prior injury. § 87(2)(b) was experiencing lumbar muscle spasms at the time of the appointment. He was able to fully extend his left wrist with pain. He had tenderness to both knees over the patella but could use full range of motion with both legs. Both ankles could extend fully with mild pain. He was prescribed two to three physical therapy sessions per week. On § 87(2)(b), § 87(2)(b) was re-evaluated and continued to complain of pain to his lumbar region and knees. § 87(2)(b) prescribed surgery for § 87(2)(b)'s meniscal tear.

§ 87(2)(b)

§ 87(2)(b) located at § 87(2)(b), performed an MRI of § 87(2)(b)'s right knee on § 87(2)(b). The MRI revealed a horizontal tear in the posterior horn of the medial meniscus. All tendons were intact and no fractures were noted.

§ 87(2)(b)

§ 87(2)(b)'s psychiatric treatment plan was reviewed on § 87(2)(b). He was diagnosed with recurrent major depression with psychotic features with a history of polysubstance abuse. He has received treatment at this facility since § 87(2)(b). At the time of the quarterly review § 87(2)(b) reported experiencing auditory hallucinations of a non-command nature, and denied experiencing paranoid ideation or use of or cravings for legal or illegal addictive substances, but cited stress related to ongoing legal and medical repercussions of the July 4, 2008 incident. Identifying coping mechanisms to avoid stress-related exacerbation of his psychotic symptoms was outlined as a primary focus of § 87(2)(b)'s treatment regimen.

Police Documents

The arrest report related to this incident indicates that § 87(2)(b) was charged with § 87(2)(b)

The 7th Precinct command log indicates that § 87(2)(b) was brought to the 7th Precinct stationhouse, transported to § 87(2)(b) and then returned to the 7th Precinct stationhouse before being transported to Manhattan Central Booking. The command log indicates that § 87(2)(b) and § 87(2)(b) were arrested for graffiti by PO Salvatore Tamburello from the 7th Precinct in an incident unrelated to § 87(2)(b)'s complaint. The prisoner holding cell roster indicates that § 87(2)(b) and § 87(2)(b) and § 87(2)(b) were in the holding cell area at the same time, but that the § 87(2)(b) brothers were released into their mother's custody a few hours before § 87(2)(b) was transported to Central Booking. PO Medina's Line of Duty paperwork was requested with negative results.

Media Coverage

A clip of the video footage of the incident, lasting approximately thirty seconds, was released to various media outlets and broadcast on § 87(2)(b) § 87(2)(b)

(encl)

§ 87(2)(b)

Notice of Claim

In his notice of claim against the City of New York, § 87(2)(b) claimed physical and psychological injuries and demanded compensation in the amount of \$3,000,000.00. § 87(2)(b) testified in a 50-H hearing on § 87(2)(b).

Civilian CCRB and Criminal History

§ 87(2)(b) has no prior history of complaints with the CCRB. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officers' CCRB History

PO Maurice Harrington is a four-year veteran of the NYPD. He has no history of substantiated allegations, but was placed on modified assignment with the Housing Boro VIPER unit pending IAB investigation of the incident. PO Joel Medina is also a four-year veteran of the NYPD with no history of substantiated allegations.

Conclusions and Recommendations

Officer Identification and Pleading of Allegations

PO Harrington, § 87(2)(b) s arresting officer, was identified by name in the original IAB spin-off and in § 87(2)(b) s subsequent complaint. He and his partner, PO Medina, were identified by news organizations, IAB, and § 87(2)(b) s civil attorney prior to providing CCRB testimony and verifying that they were the officers depicted in video footage of the incident.

Allegation Not Pleaded

§ 87(2)(b) mentioned in his in-person interview that PO Harrington was “cursing at [him].” However, he could not recall the specifics of the “cursing” and did not articulate a specific complaint about discourteous words. § 87(2)(g)

Undisputed Facts

The events captured on video footage are not in dispute in this case, including whether and to what extent force was used in arresting § 87(2)(b). It is not in dispute that, prior to the events portrayed on the video footage, § 87(2)(b) became engaged in at least a verbal dispute with Officers Maurice Harrington and Joel Medina at the pedestrian overpass to East River Park. It is not in dispute that § 87(2)(b) left and returned to continue arguing with the officers at least two times before the situation escalated.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

Both PO Harrington and PO Medina stated that § 87(2)(b) was behaving in a violent manner, but § 87(2)(b) denied this. § 87(2)(g)

§ 87(2)(b) admitted to behaving in an argumentative manner toward the officers, and to refusing to comply with their initial instructions. § 87(2)(g)

§ 87(2)(b) corroborated the general movement pattern described by § 87(2)(b) in that he saw him first approach the officers, walk away briefly after being denied entry to the park, talk on a cellular phone, then return to try once more to enter the viewing area. He described § 87(2)(b) “getting up in [the

officers’] faces,” but he did not see § 87(2)(b) strike or otherwise physically threaten the officers. § 87(2)(b) also saw the confrontation; she did not see § 87(2)(b) strike either of the officers.

According to both officers, § 87(2)(b) swung his bag of ice over his shoulder and dropped it to the ground at PO Medina’s feet. PO Medina stated that he believed that § 87(2)(b) was trying to intentionally hit him with the bag, although he did not succeed in hitting PO Medina, and both PO Harrington and PO Medina stated that § 87(2)(b) then began to swing his umbrella at them. Although PO Harrington and PO Medina provided inconsistent statements about § 87(2)(b)’s use of the umbrella and his attempts to use the bag of ice against PO Medina, § 87(2)(b) corroborated that § 87(2)(b) was swinging an umbrella at some point prior to being taken to the ground. § 87(2)(g)

§ 87(2)(b) stated that one or both of the officers extended their asps at this point and began to strike him, and PO Medina acknowledged that he struck § 87(2)(b) twice in the left arm. § 87(2)(g) PO Harrington denied using his baton at this stage of the incident. Once PO Medina struck § 87(2)(b) it is undisputed on all accounts that § 87(2)(b) backed up and fell backwards to the ground. As he fell, § 87(2)(b) gained a grip on the end of PO Medina’s baton. As he lay on his back, he continued to clutch the end of the baton despite PO Medina’s and PO Harrington’s orders to let it go. The baton was removed from § 87(2)(b)’s hands, and PO Medina struggled to handcuff § 87(2)(b) who was passively resisting, as PO Harrington walked to retrieve PO Medina’s discarded baton from the ground.

After retrieving the baton, PO Harrington immediately hit § 87(2)(b) seven times on the shins and knees. § 87(2)(b) twisted his body and moved his feet, but did not kick or otherwise attempt to strike either PO Harrington or PO Medina, who was still attempting to get § 87(2)(b)’s second hand to place him in handcuffs. After the seventh baton strike, PO Medina’s baton slipped out of PO Harrington’s hand and landed several feet away. PO Harrington walked to the spot where the baton dropped and picked it up, while § 87(2)(b) continued to lie passively on the ground next to PO Medina. PO Harrington then struck § 87(2)(b) on the left kneecap, before moving to the side and striking him twice more on the other leg. PO Manuel Cruz from the 52nd Precinct walked up to § 87(2)(b) and Officers Harrington and Medina and spoke to them. PO Harrington struck § 87(2)(b) once more on the legs before PO Cruz assisted him and PO Medina in flipping § 87(2)(b) to his stomach and securing his left hand in the second cuff.

Allegation A: PO Joel Medina struck § 87(2)(b) with an asp.

§ 87(2)(g) Although he denied doing so, an independent witness confirmed that § 87(2)(b) waved an umbrella at the officers and engaged closely enough with them that they would have reasonably perceived a potential physical threat.

Patrol Guide Procedure 203-11 charges officers of the NYPD to “use minimum necessary force,” and to “employ non-lethal alternatives, as appropriate.” The Police Student’s Guide, Use of Force expands on the Patrol Guide by outlining specific conditions and their appropriate responses. In the case of a “physical assault likely to cause physical injury,” the use of batons or fists to answer the threat is justified. § 87(2)(g)

§ 87(2)(g) 2) (g)

Allegation B: PO Maurice Harrington struck § 87(2)(b) with an asp.

§ 87(2)(g)

As evidenced by the footage of the incident, § 87(2)(b) offered only passive resistance from that point forward. He did not comply with PO Medina’s and PO Harrington’s orders to give them his hands, but the video reflects that he did not kick or strike either officer, as asserted by PO Harrington. The video reflects PO Harrington striking § 87(2)(b) on the legs with a baton eleven times as he lies on the ground in front of the pedestrian overpass ramp. The blows resulted in multiple lacerations, abrasions, and a tear to § 87(2)(b) s meniscus.

The Police Student’s Guide to the Use of Force, Scale of Escalating Force, as mentioned above, confines the justification for use of a baton against a civilian to those instances in which there is a “physical assault likely to cause physical injury,” either to the officer in question or to other civilians. In cases which involve “minor physical resistance: grappling, going limp, pulling or pushing away, etc.” the Guide states that the appropriate force response is “compliance techniques: wrestling holds and grips designed to physically overpower subjects and / or to inflict physical pain that ends when the technique is stopped and that causes no lasting injury.” As noted above, Patrol Guide Procedure 203-11 lays the foundation for the scale of escalating force by instructing officers to use minimum necessary force. In the OATH case *PD v. Murphy and Canovas*, decided August 5, 2003, it was established that even in circumstances in which some force is justified, an officer will be guilty of misconduct if the actions taken are “. . .neither the best or only option available to him at the time.” If the officer is able to “see the encounter unfold and ha[s] time to assess how to subdue” the suspect in question, then he is obligated to use the minimum necessary force by utilizing “the other tactics available to him.”

§ 87(2)(g)

§ 87(2)(g)

Investigator:
Kathryn Duffy
Supervisor:
Reviewed by:
Reviewed by:

Date: May 27, 2009
Date:
Date:
Date: