

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Khristoph A. Becker	Team: Team # 6	CCRB Case #: 200906868	<input checked="" type="checkbox"/> Force	<input 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) Wednesday, 04/29/2009 12:46 AM	Location of Incident: 260 Broadway, outside of § 87(2)(b)	Precinct: 120	18 Mo. SOL 10/29/2010	EO SOL 10/29/2010	
Date/Time CV Reported Wed, 04/29/2009 12:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/05/2009 12:24 PM		

  

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

  

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

  

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Pantaleo	13293	942805	120 PCT
2. Officers			

  

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Brian Rabbitte	00073	899738	120 PCT
2. POM Nicholas Fazio	13932	936576	120 PCT
3. POM Timothy Lake	14127	936903	120 PCT

  

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B. POM Daniel Pantaleo	Abuse: PO Daniel Pantaleo did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

### Synopsis

On April 29, 2009, § 87(2)(b) called IAB and filed this complaint, generating IAB Log # 09-20742 (enc. 8a). On May 05, 2009, the complaint was forwarded to the CCRB (enc. 9a-b). On April 28, 2009, at approximately 11:30pm, § 87(2)(b) received a call that his grandmother, § 87(2)(b) had passed away. He took a taxi to her apartment at 260 Broadway, § 87(2)(b) in Staten Island. When he arrived, § 87(2)(b) walked directly toward the apartment without saying anything and was in the process of opening the door when PO Timothy Lake and PO Nicholas Fazio, both of the 120<sup>th</sup> Precinct, grabbed him and pulled him back. An officer, PO1, swiftly removed a four-inch knife from his pocket and PO Lake and PO Fazio pushed § 87(2)(b) away from the door. For approximately fifteen minutes, the officers told § 87(2)(b) to back away from the apartment as he screamed and cursed at them, and continued trying to get into the apartment. § 87(2)(b) then attempted to mediate at which point Sgt. Brian Rabbitte of the 120<sup>th</sup> Precinct allegedly picked him up and threw him into § 87(2)(b) grew increasingly angry, clenched his fists, and threatened to hit the officers. When § 87(2)(b) took a step toward the officers, they grabbed him and allegedly threw him to the ground. Some officers allegedly kicked his head and punched his ribs and upper torso while others held his limbs (**Allegation A**). One of the officers allegedly punched his temple. Sgt. Rabbitte allegedly stepped on § 87(2)(b)'s face and neck, which was against a concrete walkway. He later requested medical treatment, which PO Pantaleo allegedly did not provide (**Allegation B**). § 87(2)(b) . § 87(2)(b) did not take pictures of his injuries, nor did he seek medical treatment.

§ 87(2)(b), § 87(2)(g)

### Summary of Complaint

On April 29, 2009, § 87(2)(b) was arrested. His arrest photo showed no visible injuries (enc. 10a). Also on April 29, 2009, § 87(2)(b) filed a complaint with IAB and stated that he received a call that his grandmother was in her apartment (enc. 8a). § 87(2)(b) went to her apartment and saw fourteen or fifteen police officers standing around in a circle. He tried to walk into the apartment and an officer grabbed him by the hood of his sweatshirt and said he could not enter the apartment. Another officer grabbed a pocketknife out of his pocket. § 87(2)(b) then started yelling and swearing at the officers because he wanted to enter the apartment. An officer grabbed him and threw him to the ground, and he was punched in the ribs and stomach while he was being handcuffed. A Sergeant then stepped on his face and neck. § 87(2)(b) had pain to his ribs. The officer who punched him and stepped on his face was not his arresting officer.

On May 22, 2009, § 87(2)(b) (§ 87(2)(b)) was interviewed at the CCRB (enc. 11a-f). His testimony was consistent with his IAB statement, with the following additional information:

On April 29, 2009, at approximately 11:30pm, § 87(2)(b) received voice messages from his sisters and brother, § 87(2)(b) saying that their grandmother, § 87(2)(b) had passed away. The messages asked him to go to § 87(2)(b) § 87(2)(b)'s apartment at 260-§ 87(2)(b) Broadway in Staten Island. § 87(2)(b) took a taxi to her residence and was still wearing his work attire, which included an approximately four-inch sheet-metal knife (he is a plumber).

When he arrived, at approximately 12am, eight to thirteen uniformed officers were standing in a circle outside of her apartment. Some officers were on their cell phones, others were talking, and some were laughing. § 87(2)(b)'s wife § 87(2)(b) their baby, and the baby's grandmother § 87(2)(b) were about thirty or forty yards away. There were also five or six other tenants of the building that witnessed at least some of the incident.

§ 87(2)(b) noticed that his grandmother's door was open, except for the sliding screen door, and he could see her about five feet inside the apartment lying in a pool of blood. An officer in business attire, PO1, was inside, and another officer in business clothing, PO2, stood by the door taking notes. § 87(2)(b) walked toward the apartment—crying, but without saying anything—and was opening the screen door when three uniformed officers grabbed him, identified by the investigation PO Lake (white, male, short, 5'4"-5", stocky, uniform, 32-35, clean cut), PO Fazio (white, male, tall, uniform, 6'0"), and an unidentified officer, PO5 (white, male, tall, uniform, 6'0"). PO Fazio or PO5 grabbed him by the hood of his sweatshirt and pulled him back, causing the zipper to choke him for a couple of seconds, while PO Lake quickly went into his left pants pocket and pulled out the sheet-metal knife. § 87(2)(b) said the knife probably created a bulge because his work pants were tight. That was the only pocket the officers went into at this point and they had not yet said anything to him.

When the officers pulled § 87(2)(b)'s hood, he became upset and said: "I want to see my grandmother. Let me go." One of the officers said: "You cannot go in there right now because we're doing our investigation." § 87(2)(b) responded: "I want to see my grandmother." He was waving his hands around in the air and screaming at the top of his lungs. PO Lake, PO Pantaleo (identified by § 87(2)(b) who put a face to a name when he saw the judge), and a sixth officer, PO6 (sandy/red/blond hair, male, 27-28 years old, crew cut but long on top, white, 6'0"-1", clean cut, 170-180lbs) then repeatedly pushed § 87(2)(b) until he was about ten feet away from the door. § 87(2)(b) resisted by grabbing a nearby fence and holding on. He began calling the officers "racist pigs" and "crackers" and was yelling. He also told the officers that they were not showing any discretion, allowing his grandmother to be in plain view. They kept saying, "Back away from the apartment." But § 87(2)(b) kept trying to force his way into the apartment. Every time he would try to get to the door, they would all pull him back. Words were exchanged for about ten to fifteen minutes.

A Sergeant, identified by the investigation as Sgt. Rabbitte (white, male, blond crew cut hair, 5'6"-8", 170-175lbs, late 40s/early 50s, had three light blue stripes on his left and right shoulder, dark blue uniform, clean cut), told § 87(2)(b) "Control your brother." § 87(2)(b) responded: "I can't control him. He's upset right now." § 87(2)(b) put himself between § 87(2)(b) and Sgt. Rabbitte, as § 87(2)(b) continued to exchange words. Sgt. Rabbitte said: "You know what? Forget this." He then picked § 87(2)(b) up by the shirt collar and threw him into § 87(2)(b) causing no injury. § 87(2)(b) then "exploded" by lashing out verbally, not physically. He said things to the effect of "fuck you cracker head pigs." He also threatened to hit them. He was a few meters away from the officers and his hands were at his sides, clenched into fists.

§ 87(2)(b) then took a step or two toward the officers, at which point five or six officers grabbed him and threw him to the ground. He did not resist or say anything at this point, or for the remainder of the incident. He hit the ground face first. Two officers grabbed each of his arms, another grabbed his head, and two others grabbed each of his legs. As they forced him to the ground, some officers kicked his head and punched his ribs and upper torso while other officers held each of his limbs. Sgt. Rabbitte, PO Pantaleo, and PO Lake each held one of his limbs. PO6 was one of the officers who kicked and punched him. They then surrounded him in a big circle so no one outside the circle could clearly see what was going on. They handcuffed § 87(2)(b) while holding his legs in the air. Another officer then punched him on his temple. Sgt. Rabbitte took his boot and stepped on § 87(2)(b)'s face and neck area, which was against the concrete. § 87(2)(b) either could not or would not stand up, so PO Pantaleo, PO6, and another officer dragged him to a patrol car after telling him to get up and walk. He did not respond, and was crying and upset. His feet and knees slid across the ground, causing no injury, and he was put inside a marked patrol car. PO Pantaleo and PO6 frisked and searched him. Ten minutes later, Sgt. Rabbitte approached the car and said, "There is no reason for you to act like that."

PO Pantaleo then drove him to the precinct and placed him in a cell for about twenty minutes. About twenty-five or thirty minutes after he was handcuffed, § 87(2)(b) started getting sharp pains in his stomach and threw up stomach acid, food, and what appeared to be blood. He assumed this was from having been kicked and punched in the torso and stomach area. But he was also dehydrated from crying and sweating, and suspected that his adrenaline might also have contributed to his throwing up. PO

Pantaleo saw him throw up, and § 87(2)(b) asked him for medical attention. PO Pantaleo said, “Wait a minute. We’ll see what we can do.” § 87(2)(b)’s arrest was processed and he never received treatment.

He had minor cuts and bruises from the pavement, Sgt. Rabbitte’s boot, and from the kicking and punching. § 87(2)(b) had a cut over his right eyebrow from Sgt. Rabbitte grinding his boot into his head. He had a cut on his lip from being thrown to the ground or from being punched. He had a scratch on his Adam’s apple from being grabbed, possibly by the hood. He had no other injuries and the cuts were minor (as noted in his phone statement, § 87(2)(b) never sought professional medical treatment).

### **Results of Investigation**

#### **Civilian Statement:** § 87(2)(b)

On May 27, 2009, § 87(2)(b) (male, black, 5’7”, 170lbs, black hair, brown eyes) was interviewed at the CCRB (enc. 12a-f). His statement was consistent with § 87(2)(b)’s statement, with the following additional information:

On April 28, 2009, at approximately 10:45pm, § 87(2)(b) found his grandmother in her apartment, not moving. It was clear that she had passed away, so he called the police. Approximately ten uniformed officers arrived and were standing in a huddle, laughing and joking, while § 87(2)(b) stood about ten feet away from them, crying and grieving.

§ 87(2)(b) then arrived and walked straight towards the apartment and was about to walk through the door when a uniformed officer, identified by his pedigree information as PO Lake (male, white, 5’9”, muscular, 250lbs, 25, black hair, clean shaven, uniform), grabbed his hood and said, “You can’t go in there.” Since § 87(2)(b) had just left work, he was still carrying a knife—which was visible—in his pocket. An officer grabbed the knife and put it into his own pocket.

About five seconds after being grabbed by the hood, § 87(2)(b) attempted to enter his grandmother’s apartment for a second time. PO Lake wrapped his arms around § 87(2)(b) in a bear hug and yanked him away, nearly throwing him to the ground. Officers continued saying, “You can’t go into the apartment.” § 87(2)(b) persisted: “I just want to see my grandmother.” § 87(2)(b) and § 87(2)(b) were standing on the other side of the officers but could clearly see § 87(2)(b). PO Lake and other officers § 87(2)(b) could not describe then pushed § 87(2)(b) away from the door. § 87(2)(b)’s arms were by his sides, but he kept trying to walk forward and said, “Stop pushing me. Don’t put your fucking hands on me.” At this point, § 87(2)(b) intervened by saying to PO Lake, “Just leave him alone. He’s very upset right now. We just had a terrible loss. Stop pushing him because you’re making the situation worse.” § 87(2)(b) then walked away for a bit and calmed down.

About ten minutes later, § 87(2)(b) then returned and Sgt. Rabbitte asked § 87(2)(b) to calm his brother down. § 87(2)(b) stood between Sgt. Rabbitte and § 87(2)(b) and said, “Listen. Nobody can calm him down right now because he’s very upset, and you’re not making it any better by pushing him and getting in his face.” Sgt. Rabbitte then pushed § 87(2)(b) into § 87(2)(b) saying, “Go calm your brother down.” He pushed § 87(2)(b) under his shoulders with two hands, very hard, causing him to hit into § 87(2)(b). His head, shoulders, and arms made contact with § 87(2)(b) causing pain but no injury.

This further upset both § 87(2)(b) and § 87(2)(b) said, “Why did you push my brother?” § 87(2)(b) pointed at the officers, called them “pigs”, and said, “Stay the fuck out of my face.” The dispute was only verbal at this point. § 87(2)(b) stayed between § 87(2)(b) and the officers, trying to break it up. Sgt. Rabbitte then pushed § 87(2)(b) who responded by walking forward with his hands at his sides and saying, “Stop putting your hands on me. Don’t touch me anymore. You don’t need to touch me anymore.” Sgt. Rabbitte, PO Lake, and many other officers were talking back. § 87(2)(b) did not recall what words Sgt. Rabbitte used, but he heard an unidentified officer say “fuck.” § 87(2)(b) did not recall the sentence in which the word was used.

Sgt. Rabbitte then put his right arm around § 87(2)(b)'s neck and forced him to the ground. Four or five other officers helped, including PO Lake. § 87(2)(b) could not see exactly who did what at this point; he just saw arms flailing. § 87(2)(b) did not try to resist because the officers had no trouble getting him to the ground. PO Lake grabbed § 87(2)(b)'s legs. Officers surrounded § 87(2)(b) in a circle and kicked and punched him, but § 87(2)(b) did not know which officers. He could see elbows and arms snapping back and forth, which he interpreted as punching. This lasted about five seconds. PO Lake and Sgt. Rabbitte were in the circle. An additional unidentified officer, PO3 (6'3"-4", Russian accent, uniform, 200lbs, late 20s, black hair, white, clean shaven), was making sure other civilians stayed away. The civilians were yelling, "Don't hit him. Don't hurt him." There were about three civilians and they had arrived because of the yelling, right before the Sgt. Rabbitte pushed § 87(2)(b) into his brother. PO3 pushed § 87(2)(b) with two hands on her shoulders as he told her to "back the fuck up."

PO Lake then handcuffed § 87(2)(b) while Sgt. Rabbitte put a knee into his back. § 87(2)(b) was screaming, "Get off of me," but did not physically resist. § 87(2)(b) later told § 87(2)(b) that his left forearm was hurt, and § 87(2)(b) could see a black and blue mark. § 87(2)(b) did not know what exactly about the arrest caused the injury. § 87(2)(b)'s shoulder was also hurting him after the incident. About one year ago he broke his left shoulder and it frequently bothered him before the incident occurred. This incident might have exacerbated the injury. There were no other injuries.

**Civilian Statement:** § 87(2)(b)

On May 27, 2009, § 87(2)(b) (§ 87(2)(b)) was interviewed at the CCRB (enc. 13a-e). Her statements were consistent with § 87(2)(b) and § 87(2)(b)'s statements, with the following additional information:

On April 29, 2009, § 87(2)(b) and § 87(2)(b) were at 260-§ Broadway in Staten Island because § 87(2)(b)'s grandmother had passed away. It was well lit from overhead lamp lights and she did not have to be very close to see individuals' faces. They were there for about two and one half hours before § 87(2)(b) arrived.

About three minutes into the incident, § 87(2)(b) attempted to move § 87(2)(b) away from an officer. Another officer then pushed her with one hand on her right shoulder, causing her to stumble but not fall. She became upset and said, "Why did you push me?" The officer responded, "We're pushing everybody." § 87(2)(b) then went and stood by § 87(2)(b). She did not recall the officer in any way. The officers gathered into a big crowd and told § 87(2)(b) to calm § 87(2)(b) down. At this point, § 87(2)(b) was in front of § 87(2)(b) and an officer identified as Sgt. Rabbitte pushed § 87(2)(b) into § 87(2)(b). § 87(2)(b) tried to calm his brother by talking to him but was unable to do so.

Two unidentified officers then grabbed § 87(2)(b) slammed him to the ground, and handcuffed him. This was the only force she witnessed and could not describe it in detail because she was upset and turned away. § 87(2)(b) seemed like he was hurting from the incident. He said his back and face hurt. § 87(2)(b) saw a mark on his face, under his right eye. It looked like a bruise but she did not remember clearly, and she did not know what caused the injury. She did not recall him having any other injuries. § 87(2)(b) was able to describe three officers, but she did not remember their roles in the incident: PO1 (male, 5'5", fat with a belly, late 30s, white, laughing, uniform), PO2 (male, blond, uniform, 5'7"-8", 185lbs, 28-29), and PO3 (male, uniform, tall, black hair, 5'9", short and shaped goatee, early 30s, medium build). § 87(2)(b) recently saw PO2 at § 87(2)(b) where she works, and stated that his name is Nick.

**Civilian Statement:** § 87(2)(b)

On August 10, 2009, § 87(2)(b) (§ 87(2)(b)) who was identified while the undersigned investigator conducted fieldwork at the incident location, was interviewed at § 87(2)(b), in Staten Island (enc. 14a-c). § 87(2)(g)

On April 29, 2009, at approximately 12:46am, § 87(2)(b) became aware that her neighbor, § 87(2)(b) had died. There was no crime scene tape, but three uniformed officers (PO1, PO2, and PO3) were standing in front of the apartment to keep people out while a plain-clothed detective conducted an

investigation to determine how § 87(2)(b) died. PO1 was an approximately 5'8", 160lbs, white male in his late 20s or early 30s; PO2 was an approximately 6'1" white male; and PO3 was an approximately 5'10" white male. Based on their respective heights, as well as their CCRB statements, the three officers were identified as PO Lake, PO Pantaleo, and PO Fazio, respectively.

§ 87(2)(b)'s grandson, § 87(2)(b) soon came walking down a pathway from Castleton Avenue. He wanted to go into his grandmother's apartment but the officers would not let him. PO Lake said, "You can't go in there." § 87(2)(b) did not respond and kept walking. He did not say anything for the duration of the incident. PO Lake was standing about ten feet away from the front door when he grabbed § 87(2)(b) by wrapping his arms around him in a bear hug. § 87(2)(b) pushed his arms out to break the hold.

Because § 87(2)(b) seemed to be overpowering PO Lake, PO Pantaleo and PO Fazio grabbed § 87(2)(b)'s arms. § 87(2)(b) did not hit anyone, but was trying to break free. He scuffled around by moving his feet in an effort to get into the apartment. The officers said, "If you don't stop then we're going to lock you up," and told him to calm down. § 87(2)(b) told the officers, "Don't you hit him." She was standing there to make sure they did not. None of the officers hit § 87(2)(b) and they did not take him to the ground. The struggle lasted about five minutes. The officers then took § 87(2)(b) to a patrol car. § 87(2)(b) did not remember him being handcuffed.

She stated that if the officers had hit him, then she would have reported it to the newspapers. § 87(2)(b) never pushed an officer and § 87(2)(b) did not see a knife. She did not see § 87(2)(b) remove his sweatshirt. § 87(2)(b) did not hear anyone use any curse words.

#### **Identification of Officers Interviewed**

PO Pantaleo was identified from BADS as § 87(2)(b)'s arresting officer (enc. 34a). Sgt. Rabbitte was identified as the supervisor on scene from PO Pantaleo's UF 61 report (enc. 17a-b). PO Keating and PO Viggiano were identified from the SPRINT and Roll Call (enc. 30a; 32a-f). PO Fazio and PO Lake were identified from PO Pantaleo's CCRB interview (enc. 21a-c). From the officer interviews, it was determined that after changing vehicles, PO Kelly was not at the incident location despite the below-referenced roll call.

#### **Officer Statement: Sergeant Brian Rabbitte, 120<sup>th</sup> Precinct**

On July 30, 2009, Sergeant Brian Rabbitte (§ 87(2)(b)) was interviewed by the CCRB (enc. 16a-c). On April 29, 2009, Sgt. Rabbitte worked from 2:50pm to 11:47pm as the housing patrol sergeant. He worked with PO Pantaleo and was dressed in uniform. He did not bring his memo book to the interview because he was recently transferred to another command, but later faxed it to the investigator. A copy of his memo book reads: "2300 DOA @ 260 Broadway. 2310 84. 2330 crime scene established DOA investigation 120 squad notified. 0045 1 under criminal possession of a weapon" (enc. 15a)

On April 29, 2009, at approximately 10:00pm, Sgt. Rabbitte received a 911 call for a DOA. When he arrived, it was not entirely clear what happened, so he treated it as a crime scene by quartering off the area with tape and safeguarding it until fingerprints and evidence could be collected. Besides the detectives who eventually showed up, the only officers on scene were Sgt. Rabbitte, PO Pantaleo, PO Fazio, and PO Lake.

At approximately 12:15pm, an individual, later identified as § 87(2)(b) showed up. The officers were safeguarding the area but did not see him approach because they were busy speaking with his brother, § 87(2)(b). Sgt. Rabbitte and the officers were approximately ten feet to the side of the entrance when they noticed § 87(2)(b). He must have ducked under the crime scene tape. The officers all said, "Hey, hey, hey! What are you doing?" Sgt. Rabbitte simultaneously grabbed § 87(2)(b)'s arm and put an open hand on his chest to prevent him from entering the apartment. § 87(2)(b) cross-blocked his arm away. He tensed his body and said, "That's my grandmother. I want to see my grandmother's house." Sgt. Rabbitte said, "Sir. Sir, listen. You can't go in there." The officers pushed him back with two hands on his chest until he was about ten feet away from the door. They did not push very hard. Sgt. Rabbitte assisted by

grabbing his arm with one hand and using an open hand to guide. § 87(2)(b) said, "Hey. That's my brother." There were also some other onlookers but it was mostly calm because it was late.

Within the first two minutes of this interaction, Sgt. Rabbitte noticed a knife clipped to one of § 87(2)(b)'s pockets. One of the officers removed the knife without his even noticing and showed it to Sgt. Rabbitte, but he did not remember which officer. At this point, Sgt. Rabbitte did not want to arrest § 87(2)(b) because his grandmother had just died and there were certain allowances for carrying a knife if it is for work. When Sgt. Rabbitte asked him about the knife, he did not give a legal or rational answer for possessing it. He just said, "Fuck you. I got it." He was just bantering.

Sgt. Rabbitte wanted § 87(2)(b) to help explain the situation because he was not getting anywhere and it was a delicate situation with the grandmother. Sgt. Rabbitte just wanted to put § 87(2)(b) into his brother's care and concern. But § 87(2)(b) exploded with racial epithets, hostility, and aggressive behavior. There was no major struggle but he continued trying to enter the apartment. He said things like, "Fuck you guys. I'm going in there." Sgt. Rabbitte said, "Sir. You can't go in there. It's a crime scene." The racial epithets he used were, "You white mother fuckers. You Pigs." The officers did not react and just said, "Calm down." Sgt. Rabbitte would not have minded if § 87(2)(b) was loud and mourning, but he started to wonder what § 87(2)(b)'s motivation was for entering the apartment.

The officers formed a line in front of Sgt. Rabbitte to prevent § 87(2)(b) from going past them. He started bumping into the officers with his chest, which they tolerated for a while. § 87(2)(b) tried to raise his arms as the officers held his arms down; they had their hands on his arms because they were not sure if he might take a swing. Remembering the knife, Sgt. Rabbitte hoped § 87(2)(b) did not have any other weapons. § 87(2)(b) started to surge towards the officers with his entire body. Because the location was a senior citizen development, Sgt. Rabbitte was concerned about waking people up and a crowd gathering, which occurred shortly thereafter. A crowd of approximately ten to fifteen people gathered about ten feet away from the officers. § 87(2)(b) also started becoming agitated. Sgt. Rabbitte asked the § 87(2)(b) "Can you help us out here?" But he did not want to get involved. Sgt. Rabbitte never touched § 87(2)(b).

The officers were at a stalemate. Sgt. Rabbitte began thinking that he would need to arrest § 87(2)(b) because he was not calming down and did not seem to be mourning. Sgt. Rabbitte was very tolerant. He did not want to arrest the grandson of a DOA but there was no way to stop it. After about twenty minutes, Sgt. Rabbitte told the officers to take him into custody. Sgt. Rabbitte deemed him to be under arrest for CPW. He did not want to charge him with disorderly conduct considering his dead grandmother. When asked why he waited twenty minutes to arrest § 87(2)(b) for CPW (as the knife was recovered at the beginning of the incident), Sgt. Rabbitte stated that he had made allowances because of the dead grandmother, and that he could have simply issued him a criminal summons.

The officers turned him around and handcuffed him without much trouble. Each of the officers had a hand on him while the handcuffs were applied. Sgt. Rabbitte did not remember if § 87(2)(b) remained on his feet while being handcuffed. There was no big brawl and none of the officers tried to take him to the ground; he was not violent to the point of needing to take him down to Sgt. Rabbitte's recollection. Sgt. Rabbitte and PO Pantaleo put him in the patrol car. PO Pantaleo drove him to the precinct while Sgt. Rabbitte remained on scene.

Neither Sgt. Rabbitte nor any of the officers grabbed him and threw him to the ground. Neither Sgt. Rabbitte nor any of the officers kicked or punched him anywhere on his body. Sgt. Rabbitte never stepped on his face or his neck, and neither did any of the officers. When PO Pantaleo and Sgt. Rabbitte escorted him the patrol car, they did not drag him; he walked. § 87(2)(b) had no injuries, did not say anything about being injured, and never requested medical treatment. Sgt. Rabbitte was not aware of him throwing up in the cell. No one pushed § 87(2)(b) and she never tried to get involved or move towards the group. No other officers responded to the scene. Neither Sgt. Rabbitte nor any officers said, "fuck". § 87(2)(b) did push Sgt. Rabbitte a few times with his hands on his chest.

**§ 87(2)(b)'s Complaint and Arrest Reports by Officer Daniel Pantaleo**

On April 29, 2009, § 87(2)(b) was arrested by PO Pantaleo for Criminal Possession of a Weapon, OGA, Resisting Arrest, and Disorderly Conduct (enc. 18a-b). The narrative of the arrest report states: "At the time and place of occurrence, § 87(2)(b) was in possession of a gravity knife, and resisted and flailed his arms when PO Pantaleo attempted to arrest him. He also refused to listen to lawful orders from PO Pantaleo." The narrative of the criminal court complaint states that § 87(2)(b) called the officers "fucking pigs" and threatened: "I'll fuck you all up" (enc. 19a-b). § 87(2)(b) was also reported to have repeatedly pushed Sgt. Rabbitte. While being arrested, he flailed and swung his arms and failed to place his hands behind his back when directed to do so. He also possessed a gravity knife in his pocket.

**Officer Statement: Officer Daniel Pantaleo, 120<sup>th</sup> Precinct**

On July 23, 2009, Officer Daniel Pantaleo (male, white, 6'1", 195lbs, brown hair, blue eyes) was interviewed at the CCRB (enc. 21a-c). On April 28, 2009, PO Pantaleo worked from 4:00pm to 12:00am as Sergeant Rabbitte's operator, was dressed in uniform, and was assigned to a marked RMP. A copy of his memo book reads: "2300 DOA @ 260 Broadway. 2310 84. 0046 1 under S/L § 87(2)(b) § 87(2)(b) CPW/Dis Con/ Resis/OGA. Sgt on scene" (enc. 20a-b). His statement was consistent with Sgt. Rabbitte's statement, with the following exceptions and additional information:

Approximately forty-five minutes after PO Pantaleo and Sgt. Rabbitte responded, § 87(2)(b) arrived and walked directly toward the apartment door without saying anything. PO Fazio and PO Lake were standing immediately in front of the apartment door, so § 87(2)(b) attempted to walk between them to gain entry into the apartment. Either PO Fazio or PO Lake said, "Where are you going?" The officers (PO Pantaleo did not know if it was just one or both of the officers) tried to stop him by placing an open hand on § 87(2)(b)'s chest, at which point § 87(2)(b) removed his sweatshirt as if preparing to fight and said, "Fuck you. I'm going to fuck you up. We're going to do it this way." At this point, PO Pantaleo saw a knife clipped to § 87(2)(b)'s right pocket. Either PO Fazio or PO Lake removed it, for safety reasons, and later handed it to PO Pantaleo. PO Pantaleo and Sgt. Rabbitte were approximately five feet away from § 87(2)(b) at this point.

Understanding that his grandmother had passed, the officers gave him more leeway than they normally would by asking him to walk down the street and to calm down instead of immediately arresting him. PO Pantaleo tried to escort him down the block, saying, "Take a walk down the block," but § 87(2)(b) kept slapping their hands away, cursing, and trying to enter the apartment. Sgt. Rabbitte also tried to escort him down the block, with similar results. Physically, he would just walk forward with his fists clenched by his sides. In sum, § 87(2)(b) attempted to enter the apartment approximately five or six times. Each time he was stopped and told to walk down the block. He continued to refuse and to say, addressing no one in particular, "Fuck you. I'm going in there. I'm going to fuck you up." PO Pantaleo asked § 87(2)(b) to calm his brother down and he replied, "He's not going to listen to me." After about five minutes, once other civilians started coming out of the building, Sgt. Rabbitte decided to place him under arrest for disorderly conduct and criminal possession of a weapon. Both his words and his actions caused him to be arrested.

When arresting § 87(2)(b) he refused to give his hands and swung his arms. PO Lake, PO Fazio, and PO Pantaleo grabbed him and put him to the ground. Sgt. Rabbitte did not assist. PO Fazio grabbed § 87(2)(b)'s hands while the other officers pushed him to the ground. He landed on the ground either face-down or on his side. Neither PO Pantaleo nor any of the officers punched or kicked him. Once on the ground he finally gave the officers his hands. Neither Sgt. Rabbitte nor any officer stepped on § 87(2)(b)'s face or neck area. The only physical contact Sgt. Rabbitte had with § 87(2)(b) was in the beginning, when Sgt. Rabbitte tried to keep him back and to escort him down the block; Sgt. Rabbitte did not help effect the arrest.

Once handcuffs were applied, PO Pantaleo walked him to the patrol car. He was not dragged and he was not injured. PO Pantaleo drove him to the precinct and placed him in a cell, where he regurgitated, once. This was approximately twenty minutes after the incident. PO Pantaleo did not know why he threw up and he did not request medical treatment. According to procedure, prisoners must request medical treatment to receive it.



§ 87(2)(b) and § 87(2)(b) were right next to § 87(2)(b) the entire time. PO Pantaleo did not know if Sgt. Rabbitte had any interaction with § 87(2)(b). PO Pantaleo did not remember § 87(2)(b) standing between § 87(2)(b) and Sgt. Rabbitte at any point, and he did not remember Sgt. Rabbitte pushing § 87(2)(b) into § 87(2)(b). PO Pantaleo did not recall § 87(2)(b) being pushed or any officer having any interaction with her. While § 87(2)(b) did slap Sgt. Rabbitte's hands away, he did not push Sgt. Rabbitte.

**Officer Statement: Officer Nicholas Fazio, 120<sup>th</sup> Precinct**

On August 06, 2009, Officer Nicholas Fazio (§ 87(2)(b)) was interviewed at the CCRB (enc. 23a-c). On April 28, 2009, PO Fazio worked from 4:00pm to 12:00am and was assigned to the W.B. Housing Development in a marked patrol car with RMP number 2233. He worked with PO Lake and was dressed in uniform. From his memo book, he read: "On April 28, 2009, at approximately 2255, my partner and I received a call for a 10-54, which is an unconscious person at 260 Broadway, § 87(2)(b) 0115 end of tour" (enc. 22a-b). PO Fazio's statement was consistent with PO Pantaleo's statement, with the following additional information:

On April 28, 2009, PO Fazio and PO Lake were the first officers to arrive at 260 Broadway in Staten Island. PO Fazio and PO Lake entered the apartment to investigate and found blood all over the apartment, leading them to believe it was a crime scene. PO Fazio and PO Lake notified Sgt. Rabbitte and his operator, PO Pantaleo. PO Fazio and PO Lake established a perimeter—which nobody was permitted to enter—to maintain the integrity of the crime scene. The perimeter consisted of the two officers standing in front of the door. PO Fazio did not recall tape being used for the perimeter. Sgt. Rabbitte and PO Pantaleo arrived approximately twenty minutes after PO Fazio and PO Lake had arrived. There were no other officers on scene at this point. Two officers from Tour 1 arrived later on, but PO Fazio did not recall their names.

Approximately twenty minutes after Sgt. Rabbitte arrived, § 87(2)(b) attempted to walk past the officers. PO Fazio and PO Lake said, "What's going on? Who are you?" PO Fazio might have put a hand on § 87(2)(b) at this point to stop his motion. § 87(2)(b) responded: "That's my grandmother in there." He was screaming and flailing his arms within one foot of PO Fazio's face, which PO Fazio took as a threat. § 87(2)(b) also cursed by repeating: "Go fuck yourself! I'm going in there!" On a scale of one-to-ten, § 87(2)(b)'s voice was at a ten. PO Fazio did not recall any other sentences § 87(2)(b) used, but remember him saying "fuck" a lot. There was never a pushing or shoving match. PO Fazio and PO Lake just stood in front of the door.

PO Fazio said, "I'm sorry for your loss, but we're conducting an investigation right now." § 87(2)(b) repeated, "Go fuck yourself; I'm going in there," and then took off his hooded sweatshirt and threw it on the ground as if preparing to fight. He got within one foot of the officers' faces and said: "I don't give a fuck. I'm going in there." He continued to flail his arms in the officers' faces, threateningly.

PO Fazio asked § 87(2)(b) to calm his brother down. § 87(2)(b) said, "Look, he's upset. What do you want me to do? I can't do anything about it." There were neighbors and possibly family members around outside, and a circle started to form. § 87(2)(b) continued cursing and getting into the officers' faces. The officers continued telling him, "We know you're upset. Just calm down a little bit and talk to your brother." Having taken a few steps back from the officers, § 87(2)(b) then stepped toward Sgt. Rabbitte and pushed him with one hand. PO Fazio did not know what part of Sgt. Rabbitte's body was pushed, but he did see the push. PO Fazio could not estimate how hard § 87(2)(b) pushed, and did not remember if the push caused Sgt. Rabbitte to step back. Sgt. Rabbitte became upset, something PO Fazio concluded based on Sgt. Rabbitte's decision to then arrest § 87(2)(b) by saying, loudly: "He's going back to the precinct." PO Fazio did not recall Sergeant Rabbitte pushing or making any physical contact with § 87(2)(b).

Handcuffs were applied, but PO Fazio did not recall who applied them. § 87(2)(b) resisted by throwing his arms around, and he might have held onto a nearby fence. PO Fazio grabbed one of his arms to help control him, so handcuffs could be applied. Other officers also grabbed § 87(2)(b)'s arms, but PO Fazio did not recall who. PO Fazio used no other force, and he did not recall any other officer using

force besides grabbing § 87(2)(b) to apply handcuffs. PO Fazio did not recall if § 87(2)(b) was standing up while he was handcuffed, or if an officer grabbed him and threw him to the ground. Neither PO Fazio nor any officers kicked or punched § 87(2)(b) anywhere on his body. PO Fazio did not see Sgt. Rabbitte step on § 87(2)(b)'s face or neck area.

A knife was recovered from his person, but only after he was under arrest and in handcuffs, which is when PO Fazio first became aware of the knife. It was recovered according to normal arrest procedure. He was then brought to the RMP and back to the precinct. PO Fazio did not take § 87(2)(b) to the precinct but he did go there. Once back at the precinct, he had calmed down a little bit and apologized at least three times for his behavior to PO Fazio and PO Lake. PO Fazio was unaware of him throwing up in the cells.

#### **Officer Statement: Officer Timothy Lake, 120<sup>th</sup> Precinct**

On August 11, 2009, Officer Timothy Lake § 87(2)(b) was interviewed at the CCRB (enc. 25a-c). On April 28, 2009, he worked with PO Fazio and was dressed in uniform. From his memo book, he read: "2300 10-54, which is an ambulance case, at 260 Broadway, § 87(2)(b). It was a confirmed DOA. Relieved at 0050. End of tour 0115" (enc. 24a-c). His statement was consistent with PO Fazio's, with the following additional information:

On April 28, 2009, PO Lake saw § 87(2)(b) who was wearing a black, hooded sweatshirt, walking from Castleton Avenue toward the apartment. He looked angry and heated; his face appeared upset and his fists were clenched. When § 87(2)(b) was within three or four feet of the officers, PO Fazio and PO Lake said, "Where are you going? You can't go in there." They tried to block his way into the apartment but he walked between them, brushing them with his shoulders. § 87(2)(b) made it about one foot inside the apartment and screamed, "It's my grandmother! I want to see my grandmother!" To prevent him from disrupting the crime scene, PO Lake grabbed him, possibly by the hood, and pulled him out of the apartment. There was no crime scene tape.

§ 87(2)(b) loudly yelled, "Get your fucking hands off me, you fucking pigs! If one of you fucking pigs touches me again I'm going to punch you!" He then removed his black sweatshirt as if preparing to fight, moved to within one foot of PO Lake's face, and threatened: "If you touch me again I'm going to punch you." PO Lake said, "Calm down. Take care of your family. You don't want to do this. Do this for your grandmother." § 87(2)(b) replied: "I don't care." PO Fazio was at PO Lake's side.

§ 87(2)(b) might have continued trying to enter the apartment, but no physical contact was necessary to push him away from the door because § 87(2)(b) held him back. PO Lake did not remember Sgt. Rabbitte having any physical contact with § 87(2)(b) he did not throw or push him into § 87(2)(b) § 87(2)(b). Sgt. Rabbitte did ask § 87(2)(b) to calm § 87(2)(b) down, but PO Lake did not remember his exact words.

§ 87(2)(b) then pushed Sgt. Rabbitte, so the officers arrested him. PO Lake did not see the push, but PO Pantaleo later told him that it occurred. § 87(2)(b) resisted arrest by flailing his arms in an effort to pull them away. Because he was resisting, PO Lake, PO Fazio, and PO Pantaleo put him to the ground to facilitate the handcuffing. To put § 87(2)(b) to the ground, PO Lake grabbed him by the arm and might have swept his leg in a non-forceful way, but he did not explicitly remember. He did not throw § 87(2)(b) to the ground. PO Pantaleo also might have grabbed an arm to assist.

Neither PO Lake nor any officer punched or kicked § 87(2)(b). Neither Sgt. Rabbitte nor any officer stepped on § 87(2)(b)'s face or neck area while he was on the ground. PO Lake was not aware of him ever requesting medical treatment. He did not appear injured and did not indicate being injured in any way. § 87(2)(b) apologized to the officers once he was back at the precinct. PO Lake did not know if he threw up in the cells.

#### **Police Documents**

SPRINT # W00559 was generated from the incident and indicated that RMP 2233 and a Sergeant of the 120<sup>th</sup> Precinct arrested one individual (enc. 30a). The command log noted § 87(2)(b)'s arrest and described his physical/mental condition as apparently normal (enc. 31a). The Roll Call indicated that Sgt.

Rabbitte was the housing supervisor and PO Pantaleo was his operator, assigned to RMP4761; PO Fazio, PO Lake, and PO Kelly were assigned to housing in RMP 5742; and PO Keating and PO Viggiano were assigned to patrol sectors EFGH in RMP 2233 (enc. 32a-f). § 87(2)(b)'s property voucher lists two keys and two white metal name plates, which were kept for safety reasons, and one gravity knife, which was kept as evidence.

### **Criminal Conviction History**

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

§ 87(2)(b) has no criminal history.

### **Officer and Civilian CCRB Histories**

PO Pantaleo has had no substantiated allegations filed against him with the CCRB in his three years of service to the NYPD (enc. 2a).

§ 87(2)(b)  
§ 87(2)(b) has filed no previous complaints with the CCRB (enc. 7a).

### **Conclusions and Recommendations**

#### **Officer Identification**

§ 87(2)(b) alleged that an officer pushed him into § 87(2)(b) and § 87(2)(b) further alleged that this same officer stepped on his face and neck. § 87(2)(b) alleged that officers grabbed him and threw him to the ground. PO Pantaleo acknowledged that he, PO Fazio, and PO Lake grabbed him and put him to the ground. Each of the officers interviewed acknowledged that minimal force was used to arrest § 87(2)(b) and denied that they punched or kicked him. An independent witness testified that § 87(2)(b) was never hit. Since all testimony and documentation indicates that the only officers on scene were from the 120<sup>th</sup> Precinct, the allegation is being pleaded against "Officers" of the 120<sup>th</sup> Precinct.

§ 87(2)(b) also alleged that he vomited in his cell and subsequently asked his arresting officer, PO Pantaleo, for medical treatment. PO Pantaleo denied the allegation but acknowledged that he was the officer who saw § 87(2)(b) throw up in the cells. A refusal to provide medical treatment allegation is therefore being pleaded against him.

#### **Undisputed Facts**

It is undisputed that PO Lake and PO Fazio attempted to stop § 87(2)(b) from entering § 87(2)(b)'s apartment. It is undisputed that PO Pantaleo, PO Lake, and PO Fazio grabbed § 87(2)(b) and put him to the ground during his arrest.

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)t

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

#### **Allegations Not Pleaded**

§ 87(2)(b) alleged that an officer quickly removed a knife from his pocket when he first attempted to enter § 87(2)(b)'s apartment. However, because it was clear from § 87(2)(b) and PO Pantaleo's statements that the knife was in plain view, removing the knife did not constitute a search. This allegation is therefore not being pled in this case.

§ 87(2)(b) alleged that an officer pushed § 87(2)(b) and told her to "back the fuck up." § 87(2)(b) maintained that she was pushed, but did not mention the discourtesy. § 87(2)(b) also reported that when she asked the officer why he pushed her, he responded: "We're pushing everybody." Given the crowd of people who were watching the incident unfold, it was determined that § 87(2)(b) was pushed by officers exercising crowd control, according to procedure. And since § 87(2)(b) did not allege a discourtesy, these allegations are not being pled in this case.

#### **Allegation A) Officers used physical force against § 87(2)(b) and § 87(2)(b)**

§ 87(2)(b) alleged that PO Pantaleo, PO Fazio, and PO Lake grabbed him and threw him to the ground. He also alleged that officers punched and kicked him, and that he sustained a cut on his lip that might have resulted from being punched. § 87(2)(b) further alleged that Sgt. Rabbitte stepped on his face and neck, which were against concrete, and that he sustained a cut above his right eyebrow. According to Patrol Guide Procedure 203-11, officers may use only that amount of force necessary to overcome resistance in order to effect an arrest (enc. 1a-b). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### **Allegation B) PO Daniel Pantaleo did not obtain medical treatment for § 87(2)(b)**

§ 87(2)(b) alleged that PO Pantaleo did not obtain medical treatment for him. Since § 87(2)(b) threw up in the cells, it is plausible that he requested medical treatment. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: