

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Janine Zajac	Team: Team # 1	CCRB Case #: 200911033	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/16/2009 7:15 PM	Location of Incident: York Street F-train station	Precinct: 84	18 Mo. SOL 1/16/2011	EO SOL 1/16/2011	
Date/Time CV Reported Fri, 07/17/2009 10:48 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 07/17/2009 11:33 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Abdelmessih	01319	939839	TB DT30

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Suarez	07545	924527	TB DT30
2. POM Jefrin Decastro	02169	938327	TB DT30

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Abdelmessih	Abuse: PO Joseph Abdelmessiah stopped § 87(2)(b)	
B.POM Joseph Abdelmessih	Abuse: PO Joseph Abdelmessiah threatened to arrest § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

At 10:48 PM on July 17, 2009, § 87(2)(b) filed a complaint with the CCRB by using the agency's website.

At approximately 7:15 PM on July 16, 2009, § 87(2)(b) was at the York Street F-train station in Brooklyn when he interacted with PO Joseph Abdelmessiah of Transit District 30. The following allegations resulted from this interaction:

- **Allegation A - Abuse of Authority:** PO Joseph Abdelmessiah stopped § 87(2)(b)
- **Allegation B – Abuse of Authority:** PO Joseph Abdelmessiah threatened to arrest § 87(2)(b)
§ 87(2)(b), § 87(2)(g)
- § 87(2)(g), § 87(4-b)

Results of Investigation

Complainant: § 87(2)(b)

- § 87(2)(b) year-old white male, 5'9", weight 160 lbs, with brown hair and brown eyes.
§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on August 13, 2009 (encl. 9a-i). His in-person statement was consistent with the original written statement he provided when he filed his complaint online. At approximately 7:15 PM on July 16, 2009, § 87(2)(b) was going to a gallery opening at Powerhouse Books in the Dumbo area of Brooklyn. He got off the F train at the York Street station and exited the train. He did not have his camera with him at the time, and therefore decided to use his cell phone camera to take pictures on the platform before he exited the station. § 87(2)(b) drew a diagram of the platform, which shows that he exited the train at the far end of the platform and walked up the platform toward an exit. While he walked up the platform, § 87(2)(b) took two pictures with his cell phone, which he estimated took a couple of minutes. § 87(2)(b) came upon a booth that was located in the center of the platform and was closer to the exit. § 87(2)(b) indicated the booth in his drawing with a square, and his position near the booth with a dot labeled with a "D." The booth had green tinted windows with graffiti on them and a flickering television inside of it. § 87(2)(b) lifted up his cell phone to take a picture of the booth.

An officer, identified through investigation as PO Abdelmessiah, stepped from behind the booth and approached § 87(2)(b) described him as a Hispanic male who stood approximately five feet and nine inches tall with a muscular build, short and straight dark hair, dark eyes, and approximately 35-40 years old. PO Abdelmessiah asked, "Can I help you?" This was the first time that § 87(2)(b) saw PO Abdelmessiah, and they were approximately one foot apart at this point. PO Abdelmessiah was dressed in uniform and was working by himself, and § 87(2)(b) did not notice any other officers nearby. § 87(2)(b) indicated where the officer came from on the drawing with an "O" and an arrow. § 87(2)(b) said, "Taking pictures with my cell phone." § 87(2)(b) then turned around and began to walk away.

§ 87(2)(b) walked two or three feet away and PO Abdelmessiah said in a raised voice, “Hey, get back here. Do you want to get arrested?” PO Abdelmessiah took out his handcuffs and held them up in front of his own shoulder and dangled them. § 87(2)(b) stopped and said, “No, I’m sorry.” PO Abdelmessiah walked over to § 87(2)(b) and said, “You can’t take pictures in here.” He asked § 87(2)(b) what he was taking pictures of and § 87(2)(b) said that he was taking pictures of the colors of the booth. PO Abdelmessiah said, “What colors? I don’t see any colors.” § 87(2)(b) explained to him that he was photographing the graffiti and the colors of the booth, and PO Abdelmessiah said, “Let me see your phone. You can’t take photos of police equipment.” § 87(2)(b) explained that he had not yet taken any pictures and showed PO Abdelmessiah his cell phone. PO Abdelmessiah told § 87(2)(b) to delete the photo, and § 87(2)(b) explained again that he had not taken a photo and scrolled through a couple of pictures. PO Abdelmessiah said something along the lines of, “Delete those photos or I’ll arrest you,” but he could not remember the exact words that were used. § 87(2)(b) closed his phone and began to walk away. He could not recall what PO Abdelmessiah’s parting words were, but he thought that he told him not to take photos in the subway.

§ 87(2)(b) presented a copy of operations order number 14 issued by the NYPD on April 3, 2009 concerning the investigations of individuals engaged in suspicious photography or video surveillance, which he obtained from the internet. § 87(2)(b) read from the first article, “Members of the service are reminded that the photography and videotaping of public places, buildings, and structures are common activities in New York City. Given the city’s prominence as a tourist destination, practically all such photography will have no connection to terrorism or unlawful conduct.” He also read, “Members of the service may not demand to view photographs taken by a person absent consent or exigent circumstances. When there is probable cause to believe that the camera, film, or other media contains evidence of criminal activity, the item may be seized and a search warrant may be obtained in order to view its contents.” § 87(2)(b) also read, “In addition, a person who has taken pictures should not be directed to delete or destroy images stored within the device.”

§ 87(2)(b) viewed three photo arrays which included photos of three possible subject officers and filler photos at the CCRB on November 13, 2009. He reiterated that the subject officer was definitely Hispanic and had a square head. PO Abdelmessiah was identified as the likely subject officer after § 87(2)(b) viewed the original photo arrays. Further contact with § 87(2)(b) was made on December 3, 2009 and March 1, 2010 in an attempt to have him view an array which included PO Abdelmessiah’s photo. § 87(2)(b) however, was out of the state indefinitely when he was reached in December, and on March 1, 2010 he stated that he no longer lives in New York and is therefore unavailable to view more photos.

NYPD Statements:

Subject Officer: PO JOSEPH ABDELMESSIAH

- § 87(2)(b)
- *On the date of the incident he worked from 7:05 AM until 3:30 PM for his regular tour, and then worked overtime from 3:30 PM until 8:15 PM at the York Street F-train station. He was working alone and was dressed in uniform.*

Memo book

PO Abdelmessiah did not have memo book entries pertaining to this incident. At 7:02 PM he wrote that he was at the York Street station, and at 7:58 PM he wrote that he was relieved from his post by PO Camacho (encl. 10a-b).

CCRB Testimony

PO Abdelmessiah, whose name is misspelled in CTS as “Abdelmessih,” was interviewed at the CCRB on January 26, 2010 (encl. 11a-b). On the date of the incident, PO Abdelmessiah worked an overtime post at the York Street F-Train station where he is assigned to sit in a booth on the platform and monitor the screen inside of the booth. This station is the last one before Manhattan, and this overtime high-alert post is specifically meant to look for terrorist activity. Although PO Abdelmessiah did not have an independent recollection of this particular incident, at 6:58 PM he boarded a southbound F-train from Manhattan to Brooklyn, and at 7:02 PM he was present at the York Street station. At 7:58 PM he was relieved from his post at the York Street station by PO Camacho. PO Abdelmessiah did not recognize the case file photograph of § 87(2)(b). He did not recall interacting with someone on this particular date or seeing someone taking pictures with their cell phone.

PO Abdelmessiah sees people taking pictures on the platform approximately twice a week. PO Abdelmessiah said that if he sees people taking pictures on the platform he will approach them and question them. If they do not do anything to raise his level of suspicion he will let them go, otherwise he will inform his supervisor. This questioning consists of him finding out why the person is taking pictures. He said that if someone is using commercial camera equipment that requires a certain type of flash they will be issued a summons for unauthorized photography in the subway, which is a transit summons with a \$25.00 fee. PO Abdelmessiah referenced a memo book insert regarding code 1050.9C which pertains to photography in the subway. This code concerns photography and video filming. Such filming could be an arrestable offense. A cell phone camera does not qualify as this kind of equipment and use of a cell phone camera would not be summonsable or arrestable. PO Abdelmessiah stated again that he did not have any recollection of this incident.

NYPD Documents

Roll call

The Transit District 30 roll call for the date and time of the incident confirmed that PO Camacho was assigned to the “Omega Booth” for a 7:15 PM until 11:15 PM (encl. 17a-f). The roll call for tour 2 for the date of the incident shows that PO Abdelmessiah signed out at 8:00 PM after working an overtime assignment listed as “tunnel” (encl. 17g).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 28, 2010 with regard to this incident.

Civilian Criminal History

- As of January 27, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b).

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2a).

Subject Officer CCRB History

- PO Abdelmessiah has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 1a).

Conclusion

Identification of Subject Officer

PO Abdelmessiah was identified by PO Camacho’s memo book (encl. 16a-c). PO Camacho wrote that he relieved PO Abdelmessiah at 7:56 PM. Based on the information gained in officer interviews about the overtime post at the “Omega Booth” as a solo post worked either before or after an officer’s regular tour, it was clear that PO Abdelmessiah would have been at or near the booth at the time of the incident. PO Abdelmessiah’s photo matched the description that § 87(2)(b) provided in his original statement and during his photo array viewing. PO Abdelmessiah is identified in CTS as white, but his skin tone is dark and he could plausibly be considered Hispanic. PO Abdelmessiah’s memo book also places him at the “Omega Booth” at the time of the incident.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Joseph Abdelmessiah stopped § 87(2)(b)
Allegation B – Abuse of Authority: PO Joseph Abdelmessiah threatened to arrest § 87(2)(b)

While it is clear that PO Abdelmessiah is the subject officer in this complaint, he did not recall the incident in question. Without recalling the particulars of this incident, PO Abdelmessiah described his typical actions while assigned to this post – and they are consistent with § 87(2)(b) description of the incident. PO Abdelmessiah said that he approaches people on the platform if they are taking pictures and questions them. PO Abdelmessiah said that if he is satisfied with the answers that whomever he stops provides, he lets them go. In this incident, however, it was clear that § 87(2)(b) was not free to leave when PO Abdelmessiah said, “Hey, get back here.” According to the Street Encounters Legal Issued memo book insert (encl. 3a), when a civilian is not free to leave, the encounter rises to the level of a stop. § 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g) [Redacted]

§ 87(2)(g), § 87(4-b) [Redacted]

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date