

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Elizabeth Hopkins	Team: Team # 5	CCRB Case #: 200914700	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/18/2009 11:45 PM	Location of Incident: 25th Avenue and 99th Street	18 Mo. SOL 3/18/2011	Precinct: 115		
Date/Time CV Reported Sat, 09/19/2009 8:14 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 09/19/2009 8:14 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Madera	03722	947198	115 PCT
2. SGT Victoria Hayden	01551	933837	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Victoria Hayden	Abuse: SGT Victoria Hayden authorized the stop of § 87(2)(b) and § 87(2)(b)	
B.POM Michael Madera	Abuse: PO Michael Madera frisked § 87(2)(b)	
C.SGT Victoria Hayden	Abuse: SGT Victoria Hayden searched § 87(2)(b)	
D.POM Michael Madera	Discourtesy: PO Michael Madera acted rudely toward § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) who was not a witness to this incident, filed the following complaint on the CCRB's Call Processing System on September 19, 2009. On September 18, 2009, § 87(2)(b) and § 87(2)(b) were seated inside of § 87(2)(b)'s vehicle in the vicinity of 25th Avenue and 99th Street, in Queens. They were stopped by SGT Victoria Hayden and PO Michael Madera, and the following allegations resulted:

- **Allegation A – Abuse of Authority: SGT Victoria Hayden authorized the stop of § 87(2)(b) and § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
- **Allegation B – Abuse of Authority: PO Michael Madera frisked § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
- **Allegation C – Abuse of Authority: SGT Victoria Hayden searched § 87(2)(b)**
- **Allegation D – Discourtesy: PO Michael Hayden acted rudely towards § 87(2)(b) § 87(2)(g)**
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)
§ 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Mediation was offered to § 87(2)(b) and § 87(2)(b) on October 6, 2009, at which time they indicated that they would be in touch in the future regarding their decision to pursue mediation or investigation. On December 17, 2009, § 87(2)(b) stated that he did not want to mediate this complaint. The investigator was unable to reach § 87(2)(b) at his known address or telephone number § 87(2)(g)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b) (encl. 5A-E)

- § 87(2)(b) is an § 87(2)(b) year old black male; he is five feet and three inches tall, weighs one hundred and seventy pounds, and has brown hair and brown eyes. § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on October 6, 2009. On September 18, 2009 at approximately 11:45 p.m., § 87(2)(b) sat in his parked car, a maroon Mitsubishi Mirage, with § 87(2)(b) on 25th Avenue near the corner of 99th Street, in Queens. They sat in the car for about twenty minutes, after having dropped off a female friend of § 87(2)(b)'s and parking about three houses down from § 87(2)(b)'s house. § 87(2)(b) was wearing a grey hooded sweatshirt, purple basketball shorts, and Adidas slippers. § 87(2)(b) stated that § 87(2)(b) was wearing a brown jacket, black shirt, blue pants and black boots.

A marked NYPD patrol car slowly turned onto 25th Avenue from 99th Street and stopped; its sirens and lights came on. Two officers, determined through investigation to be SGT Victoria

Hayden and PO Michael Madera, exited the vehicle. PO Madera went to § 87(2)(b)'s window and SGT Hayden to § 87(2)(b)'s window. PO Madera asked if they had seen anyone suspicious in the area; they both responded that they had not. PO Madera said that § 87(2)(b) fit the description of someone they were looking for, but did not elaborate, and told § 87(2)(b) to step out the car. § 87(2)(b) and § 87(2)(b) exited the car and provided identification as requested. PO Madera patted § 87(2)(b)'s body from his shoulders to his calves. SGT Hayden had § 87(2)(b) lift up his shirt but § 87(2)(b) did not see her touch § 87(2)(b). PO Madera explained that he had taken their identification to record the stop and said that he would write a report. After writing down their information, he returned their identification. The officers returned to their car and drove away.

Victim: § 87(2)(b) (encl. 6A-D)

- § 87(2)(b) is a § 87(2)(b) year old Hispanic male; he is five feet and four inches tall and weighs one hundred and fifty nine pounds; he has brown hair and brown eyes. § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on October 6, 2009. His statement was largely consistent with that of § 87(2)(b) with the following exceptions. SGT Hayden asked why they were at the location and § 87(2)(b) said that they had been sitting and talking; he asked what was going on and SGT Hayden responded that there had been a shooting. § 87(2)(b) asked where the shooting had occurred and she said a couple of blocks north. SGT Hayden told § 87(2)(b) to lift his shirt, which he did. She did not touch his body. SGT Hayden then used her radio and § 87(2)(b) asked if he could put his shirt down; she said that it was. PO Madera threw § 87(2)(b)'s identification over the hood of the car; it hit him in the middle of his chest. § 87(2)(b) did not respond but took his identification. The officers then left.

NYPD Statements:

Subject Officer: SGT VICTORIA HAYDEN (encl. 7A-G)

- SGT Victoria Hayden is a § 87(2)(b)-year old black female; she is five feet and nine inches tall, weighs one hundred and thirty-seven pounds, and has brown hair and brown eyes.
- On September 18, 2009, SGT Hayden worked from 11:16 p.m. to 6:12 a.m. as Impact Supervisor. She was partnered with PO Michael Madera, dressed in uniform, and assigned a marked patrol car.

Memo Book

SGT Hayden had no memo book entries relevant to this incident.

CCRB Statement

SGT Hayden was interviewed at the CCRB on March 18, 2010 and April 15, 2010. On September 18, 2009 at approximately 11:40 p.m., SGT Hayden and PO Madera were on routine patrol when they received a radio call that two black males were involved in a shooting in the vicinity of 99th Street and 25th Avenue. SGT Hayden did not recall specifically where the shooting had occurred or if the two males were known to be on foot or in a vehicle.

As they looked for the perpetrators involved in the shooting, SGT Hayden and PO Madera observed two males who fit the description, seated inside of a parked vehicle. SGT Hayden did not recall any activity on the block and did not recall other people in the vicinity between this stop and the reported shooting. SGT Hayden did not recall if this was the first stop that she

conducted in connection with this shooting but believed there was at least one other stop, possibly afterwards. She did not give instruction to PO Madera as far as how to proceed. SGT Hayden stated that her intention upon approaching the two males was to find the perpetrator involved in the shooting. Because they fit the description, SGT Hayden believed they might have been involved in criminal activity and she was suspicious as she approached. SGT Hayden and PO Madera asked the two males, who were cooperative, to exit their vehicle. SGT Hayden interacted with § 87(2)(b). She observed a bulge that could have been a weapon as § 87(2)(b) stood out of the vehicle, but did not recall at what point during the incident she noticed the bulge. She frisked § 87(2)(b)'s waistband for her safety. SGT Hayden did not recall what she ultimately believed the bulge to be but stated that it was not a weapon. SGT Hayden did not search § 87(2)(b). § 87(2)(b) did not instruct him to lift his shirt, and stated that § 87(2)(b) did not lift his shirt of his own accord. § 87(2)(b) was compliant during this incident. SGT Hayden was unable to see PO Madera and did not know if he conducted a frisk of the § 87(2)(b). SGT Hayden did not see a bulge on § 87(2)(b) who was not near her, and did not have any interaction with § 87(2)(b).

Through this investigation it was determined that § 87(2)(b) and § 87(2)(b) were not the perpetrators. Their responses to the officers' questions regarding their actions and motives were satisfactory and it did not seem that they had committed the crime, but SGT Hayden did not recall what § 87(2)(b) and § 87(2)(b) said they were doing and could not be any more specific as to how it was determined that they were not the subjects. PO Madera completed the required paperwork. SGT Hayden stated that she did not prepare a memo book entry because she believed PO Madera would do so. Upon realizing they were not the suspects, the officers left. SGT Hayden did not observe PO Madera throw an identification card at one of the civilians. The stop took approximately five minutes.

Subject Officer: PO MICHAEL MADERA

- *PO Michael Madera is a § 87(2)(b) year old Hispanic male. He is five feet and eleven inches tall, weighs two hundred and twenty pounds, and has black hair and brown eyes.*
- *On September 18, 2010, PO Madera was assigned to sergeant's operator with a sergeant whom he could not recall; he worked from 9:30 p.m. to 6:05 a.m. and was assigned an unmarked motor vehicle and dressed in plainclothes.*

Memo Book (encl. 8A-B)

PO Madera had no memo book entry for this incident.

Stop, Question and Frisk Reports (encl. 8D-F)

§ 87(2)(b) and § 87(2)(b) were stopped by PO Madera because they fit a description and were within the proximity to the scene of a suspected offense. § 87(2)(b) was not frisked or searched. § 87(2)(b) was frisked as a result of his furtive movements.

CCRB Statement (encl. 8G-H)

PO Madera was interviewed at the CCRB on January 26, 2009. He had very little recollection of this incident but noted that a male was shot on 94th Street, possibly at the intersection of 25th Avenue, and that he and a sergeant whom he could not identify canvassed the area. They conducted a stop of two males who were seated inside of a vehicle. The civilians were calm and compliant during the stop and told the officers that they live in the vicinity. PO Madera did not recall if he interacted with the driver or the passenger of the vehicle and did not recall if he conducted a frisk. PO Madera stated that he did not throw an individual's identification at him.

NYPD Documents

SPRINTS: (encl. 9D-O)

§ 87(2)(b)

On September 18, 2009, at 10:53 p.m., a caller identified as “§ 87(2)(b)” who provided his number, reported that he heard, but did not see, shots fired in the vicinity of 95th Street and 24th Avenue. He did not know if anybody was hurt. At 10:54 p.m., § 87(2)(b) stated that he observed an individual running. At 10:55 p.m., an unidentified female caller stated that she observed a male, bloody, in the vicinity.

§ 87(2)(b)

At 10:55 p.m. an anonymous reported stated that the perpetrator, a black male wearing a white t-shirt, black jeans, and black fitted cap, fled towards 23rd Avenue. At 10:56 p.m., the caller stated that police officers were at the location.

§ 87(2)(b)

At 10:55 p.m., a caller identified as “§ 87(2)(b)” who provided her telephone number, stated that a male was shot at Jackson Mill Road and 24th Avenue. At 10:57 p.m., on the authority of the crime sergeant, a Level 1 [Local Patrol Borough Task Force] mobilization was called in regards to the male shot. The crime sergeant indicated that an AIDED was likely. 11:01 p.m., Detective Cooke reported that the perpetrator, an Hispanic male, about six feet tall and wearing all green, fled westbound on 24th Avenue. At 11:02 p.m., PO Sullivan reported that the perpetrator was a light-skinned black or Hispanic male in a grey shirt and blue jeans. [Active radio throughout.] At 11:30 p.m., the impact sergeant reported that he/she was conducting a canvas. At 1:01 a.m., the crime sergeant indicated that the Level 1 mobilization was still active. [Active radio throughout.] At 5:55 a.m., the Level 1 mobilization was terminated over zone 33 and at 6:00 a.m., the Level 1 mobilization was terminated over all CW radio frequencies.

§ 87(2)(b)

At 10:58 p.m., a male caller identified as “§ 87(2)(b)” who provided a telephone number, reported that he observed shots were fired from a blue Honda Accord with black windows at the above vicinity. Two males fled on foot; one went towards LaGuardia Airport and the other in the opposite direction, and police were reported to be at the scene.

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of March 31, 2010 with regard to the incident (encl. 10A).

Civilians’ Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilians’ CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (encl. 3A-C).

Subject Officers’ CCRB Histories

- SGT Victoria Hayden has been a member of the service for six years and there are no substantiated CCRB allegations against her (encl. 2A).
- PO Michael Madera has been a member of the service for one year and there are no substantiated CCRB allegations against him (encl. B).

Conclusion

Identification of Subject Officers

SGT Hayden stated that she interacted with § 87(2)(b) while PO Madera interacted with § 87(2)(b) which was also indicated by the civilians. The officers' presence was corroborated by the UF250s prepared by PO Madera.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: SGT Victoria Hayden authorized the stop of § 87(2)(b)

and § 87(2)(b)

SGT Hayden and PO Madera indicated that they stopped § 87(2)(b) and § 87(2)(b) while canvassing for a shooter. SPRINT reports indicate that the shooting occurred approximately fifty minutes before § 87(2)(b) and § 87(2)(b) were stopped, and approximately five blocks from where they were parked. Alternate descriptions of the perpetrator were provided by multiple reporters, both identified and anonymous, as well as officers. These descriptions include a black male wearing a white t-shirt, black jeans, and black fitted cap; a six feet tall Hispanic male wearing all green, as reported by DT Cooke; and a light-skinned black or Hispanic male in a grey shirt and blue jeans, reported by PO Sullivan. An additional witness indicated that shots were fired from a blue Honda and that two males fled the scene on foot. SGT Hayden and PO Madera indicated that § 87(2)(b) a black male, and § 87(2)(b) a light-skinned Hispanic male, were stopped because they fit the description of the perpetrator(s) and were in close proximity to the scene of the crime. § 87(2)(b) and § 87(2)(b) stated that this information was communicated to them by the officers at the time of the stop, and these factors were also notated on the Stop, Question and Frisk Report prepared by PO Madera. According to Kamins' New York Search & Seizure, "a 911 call from an identified citizen, describing a person with a gun at a specified location or a person who has just committed a violent crime, will provide police with reasonable suspicion, especially when the defendant is the only person at the location fitting the description ... [or] the suspect is in close spatial and temporal proximity to the crime" (2-62, 2008 ed., encl. 1A-B), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: PO Michael Madera frisked § 87(2)(b)

§ 87(2)(b) alleged that he was frisked by PO Madera, but PO Madera had no recollection of frisking § 87(2)(b) and SGT Hayden was unable to see PO Madera and § 87(2)(b) at the time. It is noted on the UF-250 that § 87(2)(b) was not frisked or searched. § 87(2)(g)

§ 87(2)(g)

According to Kamins, "when an officer stops a suspect because he reasonably believes the individual committed a *violent* crime," a frisk is permitted, even "in the absence of a specific, articulated danger... Under these circumstances, the reasonable suspicion justifies not only the stop, but also the frisk, thus making it unnecessary to particularize an independent source for the belief of danger" (2-81, 2008 ed., encl. 1C), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)
[Redacted]

Allegation C – Abuse of Authority: SGT Victoria Hayden searched § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) was instructed to lift his shirt by SGT Hayden. SGT Hayden denied this or any other search of § 87(2)(b) but stated that she conducted a frisk of § 87(2)(b) upon observing a bulge that could have been a weapon at his waistband (The UF-250 indicates that § 87(2)(b) was frisked due to his furtive movements). SGT Hayden did not recall what the bulge was determined to be but stated that it was not a weapon. § 87(2)(g) “the right to frisk does not permit an officer to conduct a full-blown search” (Kamins, 2-76, 2009 ed., encl. 1D-E) § 87(2)(g)

[Redacted]

Allegation D – Discourtesy: PO Michael Madera acted rudely towards § 87(2)(b)

Although § 87(2)(b) alleged that PO Madera threw § 87(2)(b)'s identification card at him, § 87(2)(b) did not reiterate this complaint. PO Madera and SGT Hayden denied that PO Madera enacted this discourtesy § 87(2)(g)

[Redacted]

§ 87(4-b) § 87(2)(g)
[Redacted]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date