

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chanan Berkovits	Team: Team # 4	CCRB Case #: 201105030	<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) Wed, 04/20/2011 5:00 PM	Location of Incident: [REDACTED]	Precinct: 81	18 Mo. SOL 10/20/2012	EO SOL 10/20/2012	
Date/Time CV Reported Wed, 04/20/2011 5:12 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/20/2011 5:12 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Fawad Khan	07739	§ 87(2)(b)	NARCBBN
2. DT3 James Delumen	03621	§ 87(2)(b)	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A . DT3 James Delumen	Abuse of Authority: Det. James Delumen stopped § 87(2)(b) [REDACTED]	A . § 87(2)(g) [REDACTED]
B . DT3 Fawad Khan	Abuse of Authority: Det. Fawad Khan searched § 87(2)(b) [REDACTED].	B . § 87(2)(g) [REDACTED]
C . DT3 James Delumen	Force: Det. James Delumen used physical force against § 87(2)(b) [REDACTED].	C . § 87(2)(g) [REDACTED]
D . DT3 James Delumen	Abuse of Authority: Det. James Delumen searched § 87(2)(b) [REDACTED].	D . § 87(2)(g) [REDACTED]
E . DT3 Fawad Khan	Other: Det. Fawad Kahn provided a false official statement.	E . § 87(2)(g) [REDACTED]

Case Summary

§ 87(2)(b) filed a complaint with Internal Affairs on April 20, 2011, generating log number 11-17957 (encl. 5-6). § 87(2)(b) also filed a complaint with the CCRB over the phone on April 21, 2011 (encl. 7-8).

On April 20, 2011, Det. James Delumen stopped § 87(2)(b) near the intersection of § 87(2)(b) in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority** Det. James Delumen stopped § 87(2)(b) § 87(2)(g)
- **Allegation B – Abuse of Authority:** Det. Fawad Khan searched § 87(2)(b) § 87(2)(g)
- **Allegation C – Force:** Det. James Delumen used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation D – Abuse of Authority:** Det. James Delumen searched § 87(2)(b) § 87(2)(g)
- **Allegation E – Other Misconduct:** Det Fawad Khan provided a false official statement. § 87(2)(g)

This case was reassigned to Inv. Catherine Cosmai after the resignation of Inv. Jason Resnikoff. It was then reassigned to Inv. Chanan Berkovits after the resignation of Inv. Cosmai.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on May 10, 2011 (encl. 9-15A). § 87(2)(b) provided additional information on March 12, 2012 (encl. 15B). On April 20, 2011, at approximately 5:00 p.m., § 87(2)(b) was leaving a corner grocery store, where she checked a lottery number but did not buy anything or interact with anyone, when officers identified through the investigation as Det. James Delumen and Det. Fawad Khan of Narcotics Borough Brooklyn North, approached her. Det. Delumen was a white male who stood approximately 6'3'' tall, had a slim build, was in his 40s, and was wearing jeans and a backwards cap. Det. Khan was a white male who stood approximately 5'5'' tall, was in his 40s, had a husky

build, and was dressed in plainclothes. § 87(2)(b) did not hear the officers tell her to stop because she was listening to music with headphones, but she assumed that they had done so because they were approaching her. The officers got close enough to § 87(2)(b) for her to hear them over the music and told her to remove her headphones. She complied. During her interview, § 87(2)(b) stated that Det. Khan went into § 87(2)(b)'s left jacket pocket and took out her keys, without frisking the outside of the pocket first. § 87(2)(b) did not recall what type of jacket she was wearing during this incident. During her telephone statement, § 87(2)(b) did not have any objects in any of her pockets. She did not have a cigarette lighter because she does not smoke. Det. Delumen twisted § 87(2)(b)'s right arm behind her back and took out § 87(2)(b)'s money from her right jacket pocket, also without frisking the outside of the pocket first. § 87(2)(b) did not have anything else in any of her pockets. § 87(2)(b) had torn her right rotator cuff in November of 2010, and Det. Delumen's actions aggravated the injury. Neither officer asked § 87(2)(b) to identify herself or provide identification. § 87(2)(b) complied with being stopped and searched and did not raise her voice during this incident. § 87(2)(b) asked why the officers were stopping her, and one of the officers informed her that someone had called a complaint against her, but he did not specify what the complaint was. § 87(2)(b)'s neighbors, Shateema § 87(2)(b) and § 87(2)(b) approached and asked the officers what they were doing to § 87(2)(b). The officers said that they were not doing anything to her. Det. Khan and Det. Delumen returned § 87(2)(b)'s keys and money to her. The officers left the scene. § 87(2)(b) walked to her boyfriend's residence and called 311 regarding her aggravated shoulder injury. An ambulance arrived and took her to § 87(2)(b). § 87(2)(b) was diagnosed with "contusion extremity" to her right shoulder.

Witness: § 87(2)(b)

§ 87(2)(b) provided a brief telephone statement on June 28, 2011 (encl. 16) On April 20, 2011, at approximately 5:00 p.m. § 87(2)(b) was outside § 87(2)(b) in Brooklyn with her cousin, § 87(2)(b) observed an individual, known to the CCRB as § 87(2)(b) walking down the street. An unmarked car stopped near § 87(2)(b). Two officers, identified through the investigation as Det. Khan and Det. Delumen, exited the car. Each of the officers grabbed one of § 87(2)(b)'s arms and pushed her up against a gate. The officers asked § 87(2)(b) "What you got?" § 87(2)(b) tried to pull away from the officers and said, "Get off me. I don't have anything." The officers told § 87(2)(b) to calm down. They said, "We just need to check you. Where are you coming from?" The officers reached into § 87(2)(b)'s pockets and removed their contents.

§ 87(2)(b) refused to cooperate with the investigation's attempts to obtain an official statement from her.

Attempts to Contact Civilians

The investigation made the following attempts to contact § 87(2)(b). On May 27, 2011, a first please call letter was mailed to § 87(2)(b). On December 15, 2011, a final please call letter was mailed to § 87(2)(b). As of February 1, 2012, these letters have not been returned to the CCRB. On May 25, 2011, and May 27, 2011, two calls were placed to § 87(2)(b) and two messages were left. On June 28, 2011, a third call was placed to § 87(2)(b) but § 87(2)(b) hung up the phone on the investigator before he had an opportunity to speak to her. On July 14, 2011, a fourth call was placed to § 87(2)(b). A female answered, but hung up the phone when the investigator identified himself.

NYPD Statement(s):

Subject Officer: DET. JAMES DELUMEN

- § 87(2)(b)-year-old white male, 6'2" tall, 205 pounds, green eyes, bald.
- Assigned to the chase car, worked in plainclothes from 2:00 p.m. to 10:33 p.m. with Det. Khan, operating out of a black Hyundai.

Stop and Frisk Report

The stop and frisk report which Det. Delumen prepared for § 87(2)(b) (encl. 17) records that she was suspected of criminal sale of a controlled substance. She was stopped because of actions indicative of engaging in a drug transaction, furtive movements, and a suspicious bulge which appeared to be a knife. Additional factors included that the area has a high incidence of the suspected crime, as well as evasive, false, or inconsistent responses to questions. She was frisked because of furtive movements and the suspicious bulge. She was searched because of a hard object.

Memo Book Entries

Det. Delumen had the following memo book entry pertaining to this incident (encl. 18-22): "1650 -- In the vicinity of § 87(2)(b) did observe hand to hand transaction between male black and female black. Attempted to stop female black at which time request was ignored. Told female black to stop again and female black immediately became irate and belligerent. Female black was holding keys in hand and began to dispute while waving both hands and stomping. Female black did provide inconsistent responses as to her recent whereabouts and did deny interacting with the male black. Female black made several furtive [movements] to her right jacket pocket where I did observe what appeared to be a knife. Female black continued to wave hands and would not let me frisk area where bulge was observed. I did then hold female black's hand to prevent female black from refusing my frisk of bulge. Female black did then yell, 'My hand is dislocated.' I did frisk bulge and felt hard object. While holding female black's hand I did then locate a lighter where the hard object was felt. I let go of female's hand and she walked off and then requested my shield number, which I gave to her. Female black refused to provide information and stated she would make a complaint."

CCRB Testimony

Det. Delumen was interviewed at the CCRB on January 11, 2012 (encl. 23-26). On April 20, 2011, at approximately 4:50 p.m., Det. Delumen and Det. Kahn were observing § 87(2)(b) in Brooklyn. This building is a drug-prone location. There are frequently individuals conducting drug transactions outside, and numerous narcotics arrests have been made there. There was a black male standing in front of the building. A female, known to the CCRB as § 87(2)(b) approached the black male, placed her hand on top of his, and then walked down § 87(2)(b) towards § 87(2)(b). § 87(2)(b) interacted with the black male for approximately 15-20 seconds. The physical contact between § 87(2)(b) and the black male looked like a hand-to-hand drug transaction rather than a handshake. Det. Delumen did not see § 87(2)(b) and the black male exchange any objects.

Det. Delumen and Det. Kahn exited their car and crossed the street toward § 87(2)(b). Det. Delumen identified himself as a police officer and told § 87(2)(b) to stop. § 87(2)(b) looked at Det. Delumen and kept walking. Det. Delumen did not recall if § 87(2)(b) was wearing headphones. Det. Delumen intended to stop § 87(2)(b) in order to see if she would acknowledge talking to the black male and or receiving anything illegal from him. Det. Delumen believed that § 87(2)(b) may have received illegal substances from the black male because of

his training as a narcotics officer regarding how hand-to-hand drug sales are conducted, and because § 87(2)(b) is a drug-prone location. Det. Delumen told § 87(2)(b) to stop approximately 1-2 more times before she complied. § 87(2)(b) immediately became irate and started stomping her feet. She had a set of keys in her hand and started waving her arms around. Det. Delumen was concerned that he or Det. Kahn would be cut by § 87(2)(b)'s keys.

Det. Delumen asked § 87(2)(b) from where she had come, and she answered that she came from around the corner. Det. Delumen asked § 87(2)(b) what she had been doing in front of § 87(2)(b) and she said that she had not been in front of that building. Det. Delumen asked § 87(2)(b) why she had been talking to the male black, and she denied talking to anyone. Det. Delumen observed a bulge in § 87(2)(b)'s jacket pocket. The bulge was rectangular, approximately two inches long, and approximately one inch wide. The size and shape were similar to a knife or a box cutter. Det. Delumen asked § 87(2)(b) what was in her pocket, and she said that she had nothing in her pocket. Det. Delumen attempted to frisk the bulge, but § 87(2)(b) waved her hand in front of the pocket to prevent him from doing so. § 87(2)(b) then reached towards her pocket but did not make contact with it. Det. Delumen grabbed § 87(2)(b)'s wrist with one hand. Initially during his interview, Det. Delumen stated that he grabbed § 87(2)(b)'s hand so that she could no longer prevent him from frisking her. Later in his interview, he stated that he grabbed her hand in order to prevent her from removing what appeared to be a knife from her pocket. § 87(2)(b) stopped waving her arms and yelled, "You dislocated my wrist." Det. Delumen did not twist § 87(2)(b)'s arm behind her back. With his other hand, Det. Delumen frisked the bulge in § 87(2)(b)'s pocket and felt a hard object. Det. Delumen reached into § 87(2)(b)'s pocket and removed a cigarette lighter. There was nothing else in the pocket. Det. Delumen did not frisk or search any other parts of § 87(2)(b)'s body. He did not see Det. Kahn do so. Det. Kahn did not make any physical contact with § 87(2)(b).

Subject Officer: DET. FAWAD KHAN

- § 87(2)(b)-year-old Asian male, 5'11" tall, 229 pounds, black hair, brown eyes.
- Assigned to a buy and bust operation, worked in plainclothes from 2:00 p.m. to 10:33 p.m. with Det. Delumen, operating out of a black Honda.

Memo Book Entries

Det. Delumen had the following memo book entry pertaining to this incident (encl. 27-30): "1650 -- In the vicinity of § 87(2)(b) did observe hand to hand transaction between male black and female black. Attempted to stop female black at which time request was ignored. Told female black to stop again and female black immediately became irate and belligerent. Female black was holding keys in hand and began to dispute while waving both hands and stomping. Female black did provide inconsistent responses as to her recent whereabouts and did deny interacting with the male black. Female black made several furtive movements to her right jacket pocket where what appeared to be a knife was observed. Female black continued to wave hands and would not let a frisk of the area be conducted where bulge was observed. I did then hold female black's hand to prevent female black from refusing the frisk of bulge. Female black did then yell, 'My hand is dislocated.' A frisk of the area was conducted and hard object was felt. While holding female black's hand a lighter was found where the hard object was felt. I let go of female's hand and she walked away and then requested my shield number, which I provided to her, at which point she stated she would make a complaint."

CCRB Testimony

Det. Khan was interviewed at the CCRB on January 12, 2012 (encl. 31-32). § 87(2)(g)

Det. Khan and Det. Delumen were observing § 87(2)(b) in Brooklyn which is a narcotics-prone location. Det. Khan corroborated Det. Delumen's account of § 87(2)(b)'s interaction with the black male, although he added that § 87(2)(b) and the black male had a conversation before making physical contact, and he could not describe their physical contact other than as "hands touching."

As § 87(2)(b) passed the officers' vehicle, Det. Khan and Det. Delumen exited it and asked her to stop. Det. Khan and Det. Delumen told Ms. § 87(2)(b) to stop approximately 2-5 times before she complied. There was no indication that § 87(2)(b) heard the officers' instructions prior to when she complied with them. Det. Delumen asked § 87(2)(b) from where she had come, if she had stopped to talk to the black male, and what conversation she had had with the black male. § 87(2)(b) denied ever interacting with the black male. Det. Khan believed that § 87(2)(b) provided other inconsistent responses to questions, but he did not recall what they were. § 87(2)(b) was holding keys, and while waving her arms, she came close to striking the officers in their faces with the keys.

§ 87(2)(b) repeatedly reached towards her right jacket pocket. Det. Khan did not recall if § 87(2)(b) made contact with the pocket. He did not recall how many times she reached toward the pocket. Det. Khan observed a bulge in that same pocket, but he did not recall the size of the bulge. The bulge was the shape of a knife, but Det. Khan could not describe it in any greater detail. Det. Delumen grabbed § 87(2)(b)'s arm to prevent her from striking the officers with her keys. Later that evening, when preparing his memo book entry, Det. Khan accidentally wrote that he had grabbed § 87(2)(b)'s hand even though, in reality, he never made any physical contact with her. Det. Delumen frisked the pocket of § 87(2)(b)'s coat where the bulge was. He did not frisk any other part of § 87(2)(b)'s body. § 87(2)(b) resisted being frisked by pulling her body away from Det. Delumen. Det. Delumen reached in the pocket and removed a cigarette lighter. Det. Delumen did not search any other areas of § 87(2)(b)'s person. Det. Khan did not frisk or search § 87(2)(b). Det. Khan did not observe Det. Delumen twist § 87(2)(b)'s arm behind her back.

Medical Records

§ 87(2)(b)'s medical records (encl. 33-54) show that § 87(2)(b) complained of shoulder pain after her arm was twisted. Her arm was immobilized. She was diagnosed with a contusion to her extremity.

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 25, 2012 with regard to the incident (encl. 60).

Civilian Criminal History

- As of January 31, 2012, Office of Court Administration records reveal no criminal convictions for § 87(2)(b).

Civilian CCRB History

- § 87(2)(b) has filed the following CCRB complaints (encl. 4):

- § 87(2)(b)
- § 87(2)(b)

- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Subject Officer(s) CCRB History

- Det. Khan has been a member of the service for 11 years and there are no substantiated CCRB allegations against him (encl. 3).
- Det. Delumen has been a member of the service for 13 years and there is one substantiated CCRB allegations against him (encl. 1B-2):
 - Pursuant to case number 200003690, a premises entered and searched allegation was substantiated against Det. Delumen. Charges were recommended, but he received no disciplinary action.

Conclusion

Identification of Subject Officer(s)

- Given that Det. Delumen prepared the stop and frisk report for this incident, and that both officers acknowledged that he was the only officer who interacted with § 87(2)(b) a stop allegation has been pleaded against him. Given that Det. Delumen acknowledged making physical contact with § 87(2)(b) a physical force allegation has been pleaded against him. Given that § 87(2)(b) alleged that both officers present during this incident reached into her pockets, a search of person allegation has been pleaded against Det. Delumen.
- Det. Khan acknowledged interacting with § 87(2)(b) Given that § 87(2)(b) alleged that both officers present during this incident reached into her pockets, a search of person allegation has been pleaded against Det. Khan. Because Det. Khan prepared a memo book entry regarding this incident which he knew to be inaccurate, a false official statement allegation has been pleaded against him.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Det. James Deluman stopped § 87(2)(b)

§ 87(2)(b) stated that she was leaving a store and had not interacted with anyone when Det. Delumen stopped her. Det. Delumen stated that he observed § 87(2)(b) engage in what appeared to be a hand-to-hand drug transaction at a drug-prone location. Det. Khan corroborated his account. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation B – Abuse of Authority: Det. Fawad Khan searched § 87(2)(b)

§ 87(2)(b) stated that Det. Khan reached into her pocket and removed her keys. § 87(2)(b) stated that she observed officers reach into § 87(2)(b) s pockets, but she did not provide any details regarding this action. In his CCRB interview, Det. Khan stated that he never

made any physical contact with § 87(2)(b) however, his memo book entries stated that he frisked and search § 87(2)(b) s pocket. Det. Delumen corroborated Det. Khan's account.

§ 87(2)(g)
[REDACTED]

Allegation C – Force: Det. James Delumen used physical force against § 87(2)(b)

§ 87(2)(b) stated that Det. Delumen grabbed her arm and twisted it behind her back. § 87(2)(b) stated that officers grabbed both of § 87(2)(b) s arms and pushed her against a wall. She did not recount § 87(2)(b) s arm being twisted behind her back; however she was never questioned directly about that subject. Det. Delumen stated that he grabbed § 87(2)(b) s hand and held it without twisting it behind her back. Det. Khan corroborated Det. Delumen's account. § 87(2)(g)

[REDACTED]

Allegation D – Abuse of Authority: Det. James Delumen searched § 87(2)(b)

§ 87(2)(b) alleged Det. Delumen approached her and reached into her pocket without frisking it. She complied with being stopped and did not raise her voice. She alleged that she was not questioned prior to when Det. Delumen searched her. § 87(2)(b) also stated that officers reached into § 87(2)(b) s pockets; however, § 87(2)(b) did not specify whether or not officers frisked § 87(2)(b) s pockets before reaching into them. She did not provide any details regarding § 87(2)(b) s behavior during the stop. Det. Delumen stated that upon being stopped, § 87(2)(b) held her keys in her hand and waved her arms around in a such a way that he was concerned that § 87(2)(b) would strike him or Det. Khan. § 87(2)(b) provided false responses to questions. Det. Delumen observed a bulge in § 87(2)(b) s pocket, and observed § 87(2)(b) reach towards that pocket. These factors led Det. Delumen to frisk the pocket. Upon feeling a hard object in § 87(2)(b) s pocket, Det. Delumen reached into it and found a lighter. Det. Khan corroborated Det. Delumen's account. § 87(2)(g)

[REDACTED]

Allegation E – Other Misconduct: Det. Fawad Khan provided a false official statement.

Det. Khan's memo book entry states that he grabbed § 87(2)(b) s hand. During his statement to the CCRB, Det. Khan stated that he never had any physical contact with § 87(2)(b) and it was in fact Det. Deluman who grabbed § 87(2)(b) s hand. Det. Khan testified that he had attributed Det. Delumen's action to himself in his memo book by accident.

§ 87(2)(g)
[REDACTED] A comparison of Det. Khan's memo book entries to Det. Delumen's memo book entries shows that they are word-for-word matches. § 87(2)(g)
[REDACTED] Patrol Guide procedure 203-08 (encl. 1A) describes a false official statement as, "lying in an official Department document or report." § 87(2)(g)

Team: 4

:

Investigator: _____	Chanan Berkovits	March 13, 2012
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date