

## CCRB INVESTIGATIVE RECOMMENDATION

|  |                                     |  |   |                                    |  |
|--|-------------------------------------|--|---|------------------------------------|--|
| Investigator:<br>Alexander Opoku-Agyemang        | Team:<br>Team # 5                   | CCRB Case #:<br>201209982                  | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.              |
|  |                                     |  | <input type="checkbox"/> Abuse                        | <input type="checkbox"/> O.L.      | <input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Sat, 08/11/2012 12:21 PM     | Location of Incident:<br>[REDACTED] | Precinct:<br>41                            | 18 Mo. SOL<br>02/11/2014                              | EO SOL<br>2/11/2014                |  |
| Date/Time CV Reported<br>Sun, 08/12/2012 7:33 PM | CV Reported At:<br>CCRB             | How CV Reported:<br>Call Processing System | Date/Time Received at CCRB<br>Sun, 08/12/2012 7:33 PM |                                    |  |

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

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

| Subject Officer(s)     | Shield | TaxID      | Command |
|------------------------|--------|------------|---------|
| 1. POM Fernando Santos | 11948  | § 87(2)(b) | 041 PCT |
| 2. POM Edward McClain  | 14159  | § 87(2)(b) | 041 PCT |

| Witness Officer(s)   | Shield No | Tax No     | Cmd Name |
|----------------------|-----------|------------|----------|
| 1. POM David Signor  | 26263     | § 87(2)(b) | 041 PCT  |
| 2. SGT John Fennessy | 02630     | § 87(2)(b) | 041 PCT  |

| Officer(s)              | Allegation   | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A . POM Edward McClain  | Force: PO Edward McClain struck § 87(2)(b) with a vehicle.   | A . § 87(2)(g)              |
| B . POM Edward McClain  | Force: PO Edward McClain struck § 87(2)(b) and § 87(2)(b) with a vehicle.  | B . § 87(2)(g)              |
| C . POM Edward McClain  | Other: PO Edward McClain intentionally made a false official statement when he said that his vehicle did not strike § 87(2)(b) motorcycle.                         | C . § 87(2)(g)              |
| D . POM Fernando Santos | Other: PO Fernando Santos intentionally made a false official statement when he stated that the vehicle he was travelling in did not strike § 87(2)(b) motorcycle. | D . § 87(2)(g)              |

**Case Summary**

On August 12, 2012, § 87(2)(b) the aunt of § 87(2)(b) called the CCRB and filed a complaint on the behalf of her sister and § 87(2)(b)'s mother, § 87(2)(b) (Encl. 6A-C). Neither § 87(2)(b) nor § 87(2)(b) witnessed the incident. On August 20, 2012, § 87(2)(b) the civil attorney of § 87(2)(b) filed a complaint on the behalf of § 87(2)(b) via the CCRB website (Encl. 5D-F).

At approximately 12:21 p.m. on August 11, 2012, a dirt bike being ridden by § 87(2)(b) was struck by a marked vehicle driven by PO Edward McClain of the 41<sup>st</sup> Precinct. Shortly thereafter, a dirt bike being driven by § 87(2)(b) with § 87(2)(b) as a passenger, was struck by PO McClain, resulting in § 87(2)(b)'s death. The following allegations resulted:

- **Allegation A – Force – PO Edward McClain struck § 87(2)(b) with a vehicle.**

§ 87(2)(g)

- **Allegation B – Force – PO Edward McClain struck § 87(2)(b) and § 87(2)(b) with a vehicle.**

§ 87(2)(g)

This case was placed on “hold” by the Bronx District Attorney’s Officer from August 22, 2012, to January 25, 2013. Group 54 of the Internal Affairs Bureau conducted an investigation (hereafter “IAB Investigation”) into this incident. Due to the ongoing IAB investigation, the CCRB was unable to obtain NYPD documents relating to this incident until September 5, 2013, substantially delaying the completion of the CCRB investigation.

**Results of Investigation**

**Civilian Statement(s)**

**Complainant/Victim:** § 87(2)(b)

- § 87(2)(b)

**IAB Statement**

On August 12, 2012, § 87(2)(b) was interviewed by IAB investigators at the 41<sup>st</sup> Precinct stationhouse (Encl. 7A). § 87(2)(b) reported that on August 11, 2012, he and a friend, § 87(2)(b) identified via the investigation as § 87(2)(b) drove dirt bikes to the intersection of § 87(2)(b) and § 87(2)(b) to meet a friend, § 87(2)(b) identified via the investigation as § 87(2)(b) who worked at a paint shop at the location. § 87(2)(b) denied having committed any traffic infractions on his way to the location. He was not chased or requested to stop by police officers at any time. At § 87(2)(b) and § 87(2)(b) § 87(2)(b) stopped to talk with § 87(2)(b) when an unknown car struck his dirt bike. The impact knocked § 87(2)(b) to the ground. He stood up and ran toward § 87(2)(b). After running a few yards, § 87(2)(b) jumped on the back of § 87(2)(b)'s dirt bike. As § 87(2)(b) and § 87(2)(b) approached § 87(2)(b) they were struck by a marked car on the right side. The impact caused the dirt

bike to lose control and run into a light pole. Both § 87(2)(b) and § 87(2)(b) were thrown from the dirt bike. § 87(2)(b) was immediately handcuffed and taken to the 41<sup>st</sup> Precinct stationhouse. § 87(2)(b) was removed from the scene by EMS.

### Notice of Claim

On August 21, 2012, § 87(2)(b) filed a Notice of Claim against the City of New York (Encl. 7B-F). § 87(2)(b) reported that, at approximately 12:15 p.m. on August 11, 2012, while seated on a stationary dirt bike legally parked in front of § 87(2)(b) in the Bronx, he was struck by a marked police car, causing him to be thrown to the ground and suffer unspecified injuries. § 87(2)(b) ran and got onto another dirt bike, operated by § 87(2)(b). The marked car chased § 87(2)(b)'s dirt bike and crashed into it, throwing § 87(2)(b) off the dirt bike. § 87(2)(b) suffered further unspecified injuries and § 87(2)(b) died as a result. In totality, § 87(2)(b) suffered a fractured right leg, blunt impact trauma to the head, neck, back, torso, and limbs.

### Attempts to Interview

The CCRB called § 87(2)(b)'s civil attorney, § 87(2)(b) on August 22, 2012, and left a message for him. On August 24, 2012, § 87(2)(b) called the CCRB and stated that he would discuss the case with § 87(2)(b)'s criminal attorney, § 87(2)(b) before scheduling a CCRB interview appointment for § 87(2)(b). Later that day, § 87(2)(b) called the CCRB and scheduled an interview appointment for § 87(2)(b) for September 5, 2012. On September 4, 2012, the CCRB received an email requesting that § 87(2)(b)'s interview appointment on September 5, 2012, be rescheduled to an unspecified date. The CCRB called § 87(2)(b) on September 5, 2012, in regards. § 87(2)(b) stated that he could not reschedule § 87(2)(b)'s interview appointment until the week of September 24, 2012. He promised to call again later that day to schedule a definitive appointment for § 87(2)(b). § 87(2)(b) failed to call the CCRB. Between September 6, 2013, and October 25, 2013, nine calls were made to § 87(2)(b) in an attempt to schedule an interview appointment with § 87(2)(b). § 87(2)(b) did not return these calls.

The initial complaint report provided no contact information for § 87(2)(b) (all contact information listed for him were his attorney's). A LexisNexis search on October 9, 2012, provided the same address for § 87(2)(b) as his arrest report and no telephone number. Letters were sent to § 87(2)(b) at this address on October 9, 2012, and October 18, 2012. These letters were not returned by the US Postal Service but § 87(2)(b) did not respond to these contact attempts.

### Victim:

- § 87(2)(b)

### Report of Autopsy

The Office of the Chief Medical Examiner conducted an autopsy of § 87(2)(b)'s body on § 87(2)(b) (Encl. 8A-J). His cause of death was determined to be "blunt impact of head and neck with complete atlanto-occipital separation" and his manner of death was noted as "homicide (driver of motorcycle in collision with police car and light pole while fleeing police)." His physical examinations revealed abrasions, a laceration, a contusion, scant subdural and subarachnoid hemorrhage, complete atlanto-occipital separation, softening of cervical spinal cord, and neck muscle and soft tissue hemorrhage resulting from blunt impact of his neck and head. The examinations revealed abrasions, fracture of ribs, and contusion of his right lung resulting from blunt impact of his torso. The examinations revealed abrasions, contusions, and muscle hemorrhage of his right shoulder with hypermobility resulting from

blunt impact of his extremities.

**Witness:** § 87(2)(b)

- § 87(2)(b)

**SPRINT #** § 87(2)(b)

At approximately 12:25 p.m. on August 11, 2012, an anonymous caller, later identified by IAB as § 87(2)(b) § 87(2)(b) called 911 (Encl. 9A, 12A). § 87(2)(b) reported that an individual on a motorcycle may have been struck by a police car. § 87(2)(b) specified that he had not seen the potential collision itself. He stated that an individual was on the ground “knocked out.”

**IAB Statement**

On August 11, 2012, § 87(2)(b) was interviewed by IAB investigators at his residence (Encl. 9B). § 87(2)(b) stated that he heard commotion outside his house and exited. When he exited his building, he observed a police car parked approximately five feet from the curb at the corner of § 87(2)(b) and § 87(2)(b) and saw two officers handcuffing two males on the ground beside a motorcycle in front of the police vehicle. § 87(2)(b) did not observe the possible collision himself.

**Witness:** § 87(2)(b)

- § 87(2)(b)

**IAB Statement**

On August 13, 2012, § 87(2)(b) was interviewed by IAB investigators at § 87(2)(b) (Encl. 9D-E). § 87(2)(b) was working in front of § 87(2)(b) when he saw his friends § 87(2)(b) and § 87(2)(b) riding two dirt bikes back and forth along § 87(2)(b) at approximately 60 to 70 miles per hour for five to ten minutes. § 87(2)(b) then stopped along § 87(2)(b) between § 87(2)(b) and § 87(2)(b) beside § 87(2)(b) and § 87(2)(b) conversed while § 87(2)(b) waited across the street on his dirt bike. While § 87(2)(b) and § 87(2)(b) were conversing, § 87(2)(b) screamed to § 87(2)(b) that the police were coming. At this point § 87(2)(b) attempted to ride his bike onto the sidewalk. A police car drove directly behind § 87(2)(b) and as he was dropping his dirt bike, the police car struck the rear wheel of the dirt bike with its front push bar. An officer, identified via the investigation as PO Fernando Santos of the 41<sup>st</sup> Precinct, exited the police car and chased § 87(2)(b) on foot down § 87(2)(b) towards § 87(2)(b) § 87(2)(b) drove his dirt bike to the intersection of § 87(2)(b) and § 87(2)(b). The police car made a U-turn and began to drive down § 87(2)(b) towards § 87(2)(b) § 87(2)(b) jumped onto the back of § 87(2)(b) § 87(2)(b) s dirt bike. The police then turned left from § 87(2)(b) onto § 87(2)(b) and struck the side of § 87(2)(b) s dirt bike. § 87(2)(b) fell from the dirt bike and struck his head on a fire call box.

**Witness:** § 87(2)(b)

- § 87(2)(b)

**IAB Statement**

On August 13, 2012, § 87(2)(b) was interviewed by IAB investigators at § 87(2)(b) (Encl. 9F). On August 14, 2012, a follow-up telephone statement was obtained by an IAB investigator (Encl. 9G). § 87(2)(b) stated that at the time of the incident, he observed § 87(2)(b) driving back and forth on § 87(2)(b) § 87(2)(b) initially stated that, when officers arrived at the location, he observed § 87(2)(b) drop his bike and then run down § 87(2)(b) towards § 87(2)(b)

However, in his subsequent telephone statement, § 87(2)(b) stated that he did not see § 87(2)(b) drop his dirt bike at all and that, at that moment in the incident, he was dealing with customers and not paying attention to what was occurring outside. He clarified that he observed § 87(2)(b) riding his dirt bike before the officers arrived and then observed him running up § 87(2)(b) and did not observe what occurred in between.

### CCRB Testimony

On January 31, 2013, CCRB investigators conducted field work at the incident location (Encl. 9J-K). The investigators spoke with § 87(2)(b) at § 87(2)(b). He stated that he was aware of the incident and had heard the commotion going on outside his store at the time but that he and his workers remained in the store and did not leave to see what was occurring outside.

### Witness: § 87(2)(b)

- § 87(2)(b)

### IAB Statement

On August 16, 2012, § 87(2)(b) was interviewed by IAB investigators at § 87(2)(b) and § 87(2)(b) (Encl. 9H-I). § 87(2)(b) stated he was in front of § 87(2)(b) when he observed § 87(2)(b) and § 87(2)(b) riding dirt bikes on § 87(2)(b). § 87(2)(b) stopped his dirt bike at the intersection of § 87(2)(b) and § 87(2)(b) while § 87(2)(b) pulled up in front of § 87(2)(b) and spoke with § 87(2)(b). § 87(2)(b)'s dirt bike was in a standing position in the street with the engine on. As a police car approached § 87(2)(b) § 87(2)(b) shouted to § 87(2)(b) "Don't run, don't run." As § 87(2)(b) moved his bike forward towards the sidewalk the police car made contact with the side of § 87(2)(b)'s dirt bike's rear tire. The police car was moving at approximately seven miles per hour. § 87(2)(b)'s dirt bike fell on top of him. § 87(2)(b) freed himself and then ran on the sidewalk along § 87(2)(b) towards a gas station located at the corner of § 87(2)(b). An officer, identified via the investigation as PO Santos, exited the marked car and chased § 87(2)(b) on foot. At this time, § 87(2)(b) drove his dirt bike to the corner of § 87(2)(b) and stopped, while the marked car drove in the same direction and then struck § 87(2)(b)'s dirt bike at approximately 10 to 12 miles per hour. § 87(2)(b)'s dirt bike then struck an FDNY call box. § 87(2)(b) then lay on the ground motionlessly. § 87(2)(b) stated that he did not observe § 87(2)(b) on § 87(2)(b)'s dirt bike at the time that the police car struck § 87(2)(b)'s dirt bike.

### Witness: § 87(2)(b)

- § 87(2)(b)

### CCRB Testimony

On January 31, 2013, CCRB investigators conducted field work at the incident location (Encl. 9L). The investigators spoke with § 87(2)(b) at § 87(2)(b). He stated that he was sitting at his desk inside § 87(2)(b) located at the northwest corner of the intersection of § 87(2)(b) when he heard a loud crash coming from outside. When he walked outside, he saw an individual, identified via the investigation as § 87(2)(b) and a motorbike lying between a light pole and an FDNY call box. § 87(2)(b) was motionless but was being handcuffed by officers.

### NYPD Statement(s):

**Subject Officer: PO EDWARD MCCLAIN**

- PO McClain, § 87(2)(b) old at the time of the incident, is a 5'3" tall, 185-pound white male with brown hair and blue eyes.
- PO McClain worked from 7:05 a.m. on August 11, 2012, to 2:40 a.m. on August 12, 2013. PO McClain was assigned to a conditions unit in the 41<sup>st</sup> Precinct with PO Fernando Santos. They were in uniform and assigned to marked RMP #3256, which belonged to the 49<sup>th</sup> Precinct. PO McClain was the operator.

**Memo Book**

PO McClain's memo book entries (Encl. 11A-C) note that, at 12:17 p.m. on August 11, 2012, he observed a male operating an unregistered yellow dirt bike with no helmet, license plates, facegear, or goggles at the intersection of § 87(2)(b) and § 87(2)(b). At 12:18 p.m., there was a vehicle accident at the corner of § 87(2)(b) and § 87(2)(b) involving a red dirt bike and a perpetrator from a foot pursuit and an unknown male. At 1:06 p.m., PO McClain went to § 87(2)(b). At 4:00 p.m., PO McClain went to the 41<sup>st</sup> Precinct stationhouse and issued five summonses to § 87(2)(b) (Encl. 11E-O).

**CCRB Testimony**

PO McClain was interviewed at the CCRB on October 2, 2013 (Encl. 11S-DD). § 87(2)(g) (Encl. 11P-R).

On August 11, 2012, PO Santos and PO McClain were patrolling within the confines of the 41<sup>st</sup> Precinct in a marked car, with PO McClain driving and PO Santos in the front passenger seat. At approximately 12:05 p.m. PO McClain was driving westbound on § 87(2)(b) coming from § 87(2)(b), when, as he approached the intersection with § 87(2)(b) he observed a male, whom he later identified as § 87(2)(b) riding on a dirt bike, approaching the same intersection from the opposite direction, coming from § 87(2)(b). § 87(2)(b) was wearing a white tank-top and shorts and was riding a white and yellow dirt bike. § 87(2)(b) was riding his dirt bike at a speed of approximately 30 to 40 miles per hour. PO McClain described § 87(2)(b) as a two-way street. PO McClain was driving in the proper lane for westbound traffic, but § 87(2)(b) though he was going eastbound, was also riding his dirt bike in the lane for westbound traffic.

As § 87(2)(b) reached the intersection of § 87(2)(b) and § 87(2)(b) he slowed down and made a right turn onto § 87(2)(b) and continued riding down § 87(2)(b) at approximately 30 to 40 miles per hour. PO McClain's car was approximately two car-lengths from the intersection when he first observed § 87(2)(b) and approximately half-a-car-length away from the intersection when § 87(2)(b) turned onto § 87(2)(b). PO McClain initially indicated that he believed that § 87(2)(b) made the turn onto § 87(2)(b) when he saw the marked car, though he later stated that he did not know whether or not § 87(2)(b) saw him at this time. PO McClain stopped his marked car and said to PO Santos, in regards to § 87(2)(b) "It's dangerous being on those bikes, he could kill someone and he could get killed." PO McClain noted that, in addition to having been driving recklessly in the wrong lanes of traffic, § 87(2)(b) was riding without required safety equipment and the vehicle he was on was not meant for city street travel.

PO McClain described § 87(2)(b) as a one-way street with northbound traffic. After turning onto § 87(2)(b) § 87(2)(b) drove southbound, opposite traffic. PO McClain stated that there was heavy vehicular traffic in the area but he did not specifically recall whether there were any vehicles driving up § 87(2)(b) as § 87(2)(b) drove down the street. PO McClain noted that there was a park and a day care center along the stretch of § 87(2)(b) that he observed § 87(2)(b)

§ 87(2)(b) driving down and that there were pedestrians walking along the street. PO McClain noted that, though no civilians specifically complained about § 87(2)(b)'s dirt bike, complaints about dirt bikes being driven recklessly was a constant problem in the 41<sup>st</sup> Precinct. PO McClain did not make any radio calls in regards to § 87(2)(b)'s dirt bike. PO McClain did not attempt to pursue § 87(2)(b) at this time because it would have been very dangerous to follow him the wrong way down a one-way street at the speed that § 87(2)(b) was traveling. PO McClain further noted that the area was a residential area and there may have been children playing in the street, making it unsafe to pursue § 87(2)(b). PO McClain did not have any conversations with PO Santos specifically about the decision to not pursue § 87(2)(b). PO McClain made no attempt to take a different route to pursue § 87(2)(b) because he believed that, once he had lost sight of him, he would not be able to find him again.

After losing sight of § 87(2)(b) PO McClain and PO Santos decided to go get a meal at a gas station located at the intersection of § 87(2)(b) and § 87(2)(b). From the intersection of § 87(2)(b) and § 87(2)(b) PO McClain drove down § 87(2)(b) to the intersection with § 87(2)(b). PO McClain turned onto § 87(2)(b) and drove down to the intersection with § 87(2)(b). PO McClain made a left turn onto § 87(2)(b) and drove eastbound on § 87(2)(b) towards § 87(2)(b) (PO McClain later stated that he did not fully recollect whether he drove to § 87(2)(b) immediately after his first observation of § 87(2)(b) or whether some time passed).

As PO McClain reached the intersection of § 87(2)(b) he saw § 87(2)(b) still on his dirt bike, a second time. § 87(2)(b) was on § 87(2)(b) about halfway between § 87(2)(b) and § 87(2)(b). PO McClain was driving in the eastbound lane of § 87(2)(b). PO McClain stated that, upon seeing § 87(2)(b) he commented to PO Santos, "That's the guy we saw earlier." When PO McClain saw § 87(2)(b) he § 87(2)(b) was in the process of making a U-turn from the westbound lane, across the double yellow lines in the middle of the street, into the eastbound lane. PO McClain could not estimate the rate of speed § 87(2)(b) was moving at this time. When he finished making the U-turn, § 87(2)(b) was facing the east, away from the officers, and did not appear to have seen the officers. § 87(2)(b) came to a stop and parked his dirt bike in the street, by the sidewalk along the eastbound lane, and remained sitting on it. § 87(2)(b) appeared to be speaking with an individual, identified via the investigation as § 87(2)(b) who was standing beside him on the sidewalk. PO McClain did not see any other dirt bikes in the vicinity aside from § 87(2)(b)'s at this time.

Upon seeing § 87(2)(b) this second time, PO McClain decided to approach and stop § 87(2)(b) in order to check his license, check to see if the dirt bike was stolen, and issue summonses to him for the traffic infractions he had committed at § 87(2)(b) and § 87(2)(b). PO McClain explained that, contrary to the first time he had seen § 87(2)(b) in motion at § 87(2)(b) and § 87(2)(b) when he saw him on the second time on § 87(2)(b) § 87(2)(b) had stopped and he therefore deemed it safe to approach him at this point. PO McClain attempted to accomplish this by attempting to pull up behind § 87(2)(b) as quietly as he could. PO McClain approached § 87(2)(b) at approximately 25 miles per hour.

§ 87(2)(b) did not appear to notice the marked car as it approached him from behind. When the marked car was approximately one car-length behind § 87(2)(b) § 87(2)(b) pointed to the marked car and appeared to alert § 87(2)(b) to its presence. § 87(2)(b) said something to § 87(2)(b) while pointing to the marked car but PO McClain could not hear what § 87(2)(b) said. PO McClain could not recall whether § 87(2)(b) turned his head when § 87(2)(b)

§ 87(2)(b) pointed to the marked car. § 87(2)(b) then started the dirt bike and attempted to drive away from the marked car. PO McClain cut in front of § 87(2)(b)'s dirt bike with the marked car. § 87(2)(b) drove his dirt bike onto the sidewalk, tried to turn the dirt bike to try to go back up towards § 87(2)(b) lost control of the dirt bike, and dropped it onto the sidewalk. PO McClain denied that the marked car made contact with § 87(2)(b)'s dirt bike. He did not see or hear anything that would have led him to believe that the marked car had struck § 87(2)(b)'s dirt bike.

PO Santos exited the marked car while PO McClain remained inside. PO Santos said to § 87(2)(b) "Stop, don't move." PO McClain stated that this was the first time that either he or PO Santos had said anything to § 87(2)(b). § 87(2)(b) ran westbound on § 87(2)(b) on the sidewalk, towards § 87(2)(b). PO Santos pursued him on foot, initially running in the street then onto the sidewalk. At this time, PO McClain still had not seen any other dirt bikes in the vicinity aside from § 87(2)(b)'s dirt bike. PO McClain explained that this was a commercial area and at the time this incident occurred, there were several cars and trucks parked along the street and in motion. There was a paint store and a produce market in the vicinity and there were civilians on the sidewalk and going in and out of the commercial establishments.

PO McClain lost sight of § 87(2)(b) and PO Santos, as they ran on the sidewalk towards § 87(2)(b) and then proceeded to make a U-turn from the eastbound lanes of § 87(2)(b) into the westbound lanes and drove towards § 87(2)(b). PO McClain's intention in making the U-turn was to assist his partner in his foot-pursuit of § 87(2)(b). PO McClain chose to pursue § 87(2)(b) this time "because he's on foot; it's more controlled than being on a dirt bike." As he drove westbound on § 87(2)(b) towards § 87(2)(b) PO McClain was looking around to see where § 87(2)(b) or PO Santos were going but could not see either of them. He looked straight ahead, down § 87(2)(b) and to the right, up § 87(2)(b) and did not see them in either direction. There were cars being driven in the eastbound lane and parked along the sidewalk that prevented PO McClain from seeing to his left, where PO Santos and § 87(2)(b) had been running when he last saw them. PO McClain therefore presumed that they had made a left onto § 87(2)(b). PO McClain therefore began to make a left hand turn from § 87(2)(b) onto § 87(2)(b). PO McClain noted that he had a green light and was making a "normal left-hand turn."

As he was turning onto § 87(2)(b) PO McClain saw a red dirt bike, which he had not seen or heard at any point prior, driven by an individual, a Hispanic male wearing a black t-shirt, whom PO McClain had not seen at any point prior, later identified as § 87(2)(b) driving westbound in the eastbound lane of § 87(2)(b) at the intersection with § 87(2)(b). § 87(2)(b) was sitting on the back of § 87(2)(b)'s dirt bike. PO McClain had not seen when or how § 87(2)(b)'s dirt bike had ended up at that location or § 87(2)(b) had ended up on the back of it.

PO McClain was traveling at approximately 30 miles per hour at this time but could not estimate how fast § 87(2)(b)'s dirt bike was traveling. PO McClain estimated that, when he first saw § 87(2)(b)'s dirt bike, it was half-a-second in front of the marked car, directly in the path of the marked car. PO McClain was "scared" by the sight of the dirt bike and applied the brakes as soon as he saw the dirt bike. PO McClain described the ensuing action as: "The entire front my car went nose-down upon me applying the brakes and I skidded directly into the dirt bike." PO McClain affirmed that he applied the brakes prior to the marked car making contact with § 87(2)(b)'s dirt bike. PO McClain could not estimate how far the marked car travelled after he applied the brakes before it came to a stop. PO McClain did not attempt to change directions or swerve away from § 87(2)(b)'s dirt bike when he saw it because it happened quickly and unexpectedly. PO McClain did not know whether the vehicle swerved or changed



directions on its own when he applied the brakes. PO McClain noted that, normally, he would have expected the car to stop upon him applying the brakes but, in this instance, it skidded along the street. PO McClain stated that there was sand, as well as broken fruit and gas, on the streets at the intersection at the time of this incident. He believed that this contributed to the marked car skidding when he applied the brakes. PO McClain could not estimate how far the dirt bike had travelled from where he made the U-turn to where he saw § 87(2)(b)'s dirt bike.

PO McClain stated that he had not intended to strike or physically contact § 87(2)(b)'s dirt bike with his vehicle and described it as an "accident." After the marked car struck § 87(2)(b)'s dirt bike, the dirt bike struck a pole and the riders, § 87(2)(b) and § 87(2)(b) fell to the ground. § 87(2)(b) stood up immediately and remained standing while § 87(2)(b) remained on the ground. PO Santos arrived at the intersection, ordered § 87(2)(b) to the ground, and handcuffed him. § 87(2)(b) was motionless and did not respond to any verbal commands. PO McClain proceeded to handcuff him. PO McClain then told PO Santos to call an ambulance, which he did immediately. PO McClain and PO Santos did not make any radio calls about this incident until after the marked car had struck § 87(2)(b)'s dirt bike. PO McClain suffered a neck strain as a result of the collision. The airbags of the marked car did not deploy following the collision with the dirt bike. PO McClain stated that he had used RMP #3256 on previous occasions and had had no previous issues with the brakes in that car.

PO McClain later issued summonses to § 87(2)(b) for having no helmet, no license plates, no face-gear or goggles, and riding on the back of another dirt bike.

After PO McClain provided his narrative of the incident and answered follow-up questions, four pieces of video footage of the incident were shown to him and additional questions were asked in regards.

The first video was file 201209982\_20130906\_1541\_DM.avi. The video was played starting at 8 minutes and 6 seconds into the recording (corresponding to a timestamp in the video of 11:21:04 a.m.). PO McClain identified the male in the white shirt sitting on a dirt bike making a U-turn across the hazard lane on § 87(2)(b) and coming to a stop along the side of the street at 8 minutes and 13 seconds (11:21:11 a.m.) as § 87(2)(b). The investigator drew PO McClain's attention to a second dirt bike, driving on the opposite sidewalk along § 87(2)(b). PO McClain stated that he did not see this dirt bike at this point during the incident itself. PO McClain identified the marked car that enters the camera view at approximately 8 minutes and 20 seconds (11:21:18 a.m.) as his marked car.

It was pointed to PO McClain that, at approximately 8 minutes and 25 seconds (11:21:23 a.m.), it appears that the marked car strikes § 87(2)(b)'s dirt bike. PO McClain replied that that was not what he was observing in the video. When asked to describe what he was observing in the video, PO McClain replied: "He sees my car and he tries to drive on the sidewalk and he loses control." At 8 minutes and 39 seconds (11:21:37 a.m.), as the marked car was going off-camera, PO McClain was asked if he had, at that point in the incident, seen the second dirt bike. PO McClain replied that he had not. When asked what would have been impeding his vision, he noted two vehicles in the eastbound lane of § 87(2)(b). It was then pointed out to PO McClain that, at that point in the video, the marked car has already passed all vehicles in the eastbound lane. PO McClain replied that he did not recall where he was looking at that point in the incident and he did not recall if, once he passed the vehicles in the eastbound lane, there were any other physical impediments blocking his view of the second dirt bike.

The second video was file 201209982\_20130906\_1540\_DM.avi. The video was played starting at 15 minutes and 5 seconds into the recording (corresponding to a timestamp in the video of 11:21:13 a.m.).

PO McClain initially stated that he could not see § 87(2)(b)'s dirt bike but once it was pointed out to him by the investigator, he confirmed that he could see it. At approximately 15 minutes and 12 seconds (11:21:21 a.m.) PO McClain confirmed that he could see his marked car. The video was slowed to 50% speed and again it was pointed to PO McClain that it appeared in the video that the marked car strikes § 87(2)(b)'s dirt bike. PO McClain denied that this was the case and was asked to describe what he was observing in the video. PO McClain replied: "It looks like he drives on the sidewalk, and he hits the sidewalk and the bike falls, and he runs."

The third video was file 201209982\_20130906\_1529\_DM.avi. The video was played starting at 19 minutes and 28 seconds into the recording (corresponding to a timestamp in the video of 11:21:11 a.m.) and was played at 50% speed. PO McClain identified the marked car that appears on camera driving eastbound on § 87(2)(b) at this time as his marked car. At 19 minutes and 50 seconds (11:21:33 a.m.) a male in a white shirt, identified by PO McClain as § 87(2)(b) runs into camera view. At 19 minutes and 51 seconds (11:21:34 a.m.) an individual in a black shirt, identified via the investigation as § 87(2)(b) comes into view driving a dirt bike down § 87(2)(b) towards § 87(2)(b). PO McClain stated that he had not become aware of the presence of a second dirt bike at the scene at this point in the incident. At 19 minutes and 54 seconds (11:21:37 a.m.) the marked car begins to come into camera-view. PO McClain stated that he was not sure whether he had seen the second dirt bike at this time, but stated that during the incident he applied the brakes as soon as he saw the second dirt bike. He stated that he did not know what would have prevented him from seeing them at this point if he had not.

At 19 minutes and 55 seconds (11:21:38 a.m.), PO McClain identified a point when he believes he first saw the dirt bike and immediately applied the brakes (Encl. 11AA-DD). At this point in the video, the marked car is fully in camera view, is in the eastbound-lane-side of pedestrian crosswalk across § 87(2)(b) at the intersection of § 87(2)(b) approximately one car-length away from § 87(2)(b)'s dirt bike, which is driving westbound in the eastbound lane on § 87(2)(b) and is in the middle of the intersection with § 87(2)(b). At this point, the front of the marked car visibly dips downwards and PO McClain identified this dipping of the marked car as having resulting from him applying the brakes. PO McClain estimated that he was traveling approximately 30 miles per hour at this point in the video. He could not estimate how fast the dirt bike appeared to be traveling.

The fourth video was file 201209982\_20130906\_1542\_DM.avi. The video was played starting at 6 minutes and 5 seconds into the recording (corresponding to a timestamp in the video of 11:21:25 a.m.) and was played at 50% speed. It was pointed out to PO McClain that, though he stated that he was making a left-hand turn at the time he saw § 87(2)(b)'s dirt bike and applied the brakes in the video his vehicle appears to be going at a diagonal angle towards the dirt bike and continues at this angle after he strikes the dirt bike through to the sidewalk. PO McClain replied: "I wasn't able to finish the turn. I was braking and skidding." PO McClain noted that a wide portion of the street, along the eastern sidewalk of § 87(2)(b) and the southern sidewalk of § 87(2)(b) was a tan color. He identified this as the sand that he referred to in his statement as having contributed to the marked car skidding when he applied the brakes. PO Coster could not identify the gas or fruit, which he noted in his statement was also present on the street, in the video.

**Witness Officer: PO FERNANDO SANTOS**

- PO Santos, § 87(2)(b) old at the time of the incident, is a 5'6" tall, 170-pound Hispanic male with black hair and brown eyes.
- PO Santos worked from 7:05 a.m. on August 11, 2012, to 2:40 a.m. on August 12, 2013. PO Santos, was assigned to a conditions unit in the 41<sup>st</sup> Precinct with PO Edward McClain. They were in

*uniform and assigned to marked RMP #3256, which belonged to the 49<sup>th</sup> Precinct. PO Santos was the recorder. PO Santos has subsequently been promoted to sergeant and reassigned to the 23<sup>rd</sup> Precinct.*

### Memo Book

PO Santos' memo book entries (Encl. 10A-C) note that, at 12:20 p.m. on August 11, 2012, two individuals were arrested at § 87(2)(b) and § 87(2)(b). At 1:00 p.m., he went to § 87(2)(b). At 4:20 p.m., he arrived at the 41<sup>st</sup> Precinct stationhouse.

### CCRB Testimony

PO Santos was interviewed at the CCRB on August 29, 2013 (Encl. 10M-Q). § 87(2)(g) (Encl. 10L).

On August 11, 2012, PO Santos and PO McClain were patrolling within the confines of the 41<sup>st</sup> Precinct in a marked car, with PO McClain driving and PO Santos in the front passenger seat. At approximately 12:00 p.m., they were driving eastbound on § 87(2)(b) when at the intersection with § 87(2)(b) PO Santos observed § 87(2)(b) on a dirt bike, driving southbound on § 87(2)(b) § 87(2)(b) was south of the intersection of § 87(2)(b) and § 87(2)(b) on the side closer to PO Santos, driving towards the intersection of § 87(2)(b) and § 87(2)(b). When PO Santos first saw § 87(2)(b) and his dirt bike, § 87(2)(b) was approximately four or five car lengths south of intersection of § 87(2)(b) and § 87(2)(b) along § 87(2)(b) PO Santos estimated, from the rate at which § 87(2)(b) was moving, that his dirt bike was traveling at over 20 miles per hour. PO Santos described that section of § 87(2)(b) as a one-way street with northbound traffic. PO Santos recalled that § 87(2)(b) was going against the direction of normal traffic but could not recall whether there were any cars driving along that stretch of the road at that time. § 87(2)(b) did not appear to have seen the officers at this time. Both § 87(2)(b) and the officers' marked car were in motion at this time and PO Santos was able to observe § 87(2)(b) for approximately 15 seconds.

PO Santos did not make any attempt to communicate with or stop § 87(2)(b) at this time. PO Santos initially stated, "We didn't pursue the guy because it was a one-way street the opposite way so we decided to just let it go." Upon further questioning, however, PO Santos stated that he and PO McClain had no discussions about his observation of § 87(2)(b) or whether or not to pursue him at this point and, though he believed PO McClain also saw § 87(2)(b) at this initial point, he could not definitively state that he observed his partner looking in the direction of § 87(2)(b) PO Santos stated that, at this point, § 87(2)(b) could have been cited for reckless endangerment, driving the wrong direction, not wearing a helmet, and not having lights on the back of his dirt bike. He stated that, in addition to § 87(2)(b) being a one-way street, it was narrow and there were cars double-parked on the street and so it would have been unsafe to pursue § 87(2)(b)'s dirt bike at that point.

PO Santos and PO McClain continued patrolling the area. At approximately 12:20 p.m., they were driving eastbound on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) approximately two blocks south of § 87(2)(b). At this point, PO Santos observed the same dirt bike and driver he had seen earlier at § 87(2)(b) and § 87(2)(b) § 87(2)(b) who was approximately 10 car lengths in front of the marked car when PO Santos saw him at this point, made a U-turn from the northern lane on § 87(2)(b) to the southern lane and parked along southern edge of § 87(2)(b) between § 87(2)(b) and § 87(2)(b) beside the sidewalk. § 87(2)(b) then remained seated on his stationary dirt bike, facing east, towards § 87(2)(b) away from the direction of the officers, and did not initially appear to be aware of the officers' presence. PO Santos did not notice any other dirt bikes in the vicinity

at this time. PO Santos believed that the fact that § 87(2)(b) was facing away from them would allow the officers to stealthily approach him from behind and apprehend him in that manner. At no point did PO Santos and PO McClain discuss the possibility of striking § 87(2)(b)'s dirt bike with the marked car.

PO McClain continued driving in the southern lane on § 87(2)(b) at a rate of approximately 20 miles per hour, towards § 87(2)(b) and his dirt bike. § 87(2)(b) was parked along the sidewalk to the right of the car, the side closer to PO Santos. § 87(2)(b)'s bike remained parked and he appeared to be unaware of the officers' presence until the marked car was approximately one car-length behind him. At that time, § 87(2)(b) looked to his left and appeared to see the marked car. § 87(2)(b) then appeared to attempt to make a quick U-turn to his right, onto the sidewalk beside which he was parked. As he was making the U-turn, § 87(2)(b)'s dirt bike fell over, onto the sidewalk. PO Santos did not see or feel the marked car strike § 87(2)(b) or his dirt bike at this time. PO Santos believed that, given the fact that § 87(2)(b) was on his side of the car and was "very close" to him at this point, he would have observed if the marked car had made contact with § 87(2)(b)'s dirt bike. PO Santos believed that § 87(2)(b) fell over as a result of losing his balance while making a U-turn, not as a result of it being struck by the marked car.

The marked car came to a stop and PO Santos quickly exited and approached § 87(2)(b) who was lying on the sidewalk, in order to grab him. PO Santos said, "Police, don't move," as he approached § 87(2)(b). PO Santos had not said anything to § 87(2)(b) prior to this point. § 87(2)(b) got up off the ground, stood still for "a second," and then ran westbound on the sidewalk, towards the intersection of § 87(2)(b) leaving his dirt bike on the sidewalk. PO Santos dropped his radio as he prepared to pursue § 87(2)(b) and stopped to pick it up. By the time PO Santos retrieved his radio, § 87(2)(b) was further down the block, already approximately two car-lengths ahead. PO Santos began to run after § 87(2)(b) down the street. As PO Santos began to run, he had also observed PO McClain making a U-turn from the southern lane of § 87(2)(b) onto the northern lane and began driving westbound towards § 87(2)(b) on the northern side of § 87(2)(b). As PO Santos ran, he twisted his ankle and felt a pain in his foot but continued to run after § 87(2)(b). There were several vans, trucks, and a forklift parked along the side of § 87(2)(b) and on the street and PO Santos explained that, because he was running on the street while § 87(2)(b) was running on the sidewalk, these objects and vehicles were blocking his view of § 87(2)(b) and of what was occurring further down the block.

PO Santos continued running down § 87(2)(b) unable to see either § 87(2)(b) or PO McClain and the marked car because of the objects and vehicles in his way. When PO Santos neared the intersection of § 87(2)(b) about three car-lengths away from the intersection, and regained sight of them, the marked car was coming to a stop while § 87(2)(b) and another individual, who was later identified as § 87(2)(b) and another dirt bike, later identified as § 87(2)(b)'s dirt bike, were falling onto the sidewalk from the front-right of the marked car at the southwestern corner of the intersection of § 87(2)(b). PO Santos did not see § 87(2)(b) or § 87(2)(b) strike any poles or objects as they fell over. PO Santos did not see or hear the actual moment of impact between the marked car and the dirt bike. PO Santos heard a "screech" noise, akin to a car breaking abruptly, around this time, but could not recall whether he heard this sound before or after he regained sight of the marked car. PO Santos had not seen when or how the marked car had gone from the northern lane, where he had last seen it, to the southern lane, where it was coming to a stop angled across the lane. The marked car had not yet come to a complete stop when PO Santos regained sight of it and he did not recall if any part of the marked car was on the sidewalk when it finally came to a complete stop. PO Santos had not seen § 87(2)(b) or his

dirt bike prior to that moment and did not know where he had come from or how he had become involved in the incident. PO Santos never observed § 87(2)(b) on § 87(2)(b)'s dirt bike.

As PO Santos approached the southwestern corner of the intersection of § 87(2)(b) he saw § 87(2)(b) getting up from the ground and standing up. PO Santos told § 87(2)(b) to get back on the ground, which he did. PO Santos proceeded to handcuff § 87(2)(b) who was holding his arms far apart so PO Santos used two interlocked handcuffs to handcuff him. PO Santos then observed § 87(2)(b) lying motionless on the ground. PO McClain appeared to be checking § 87(2)(b) for a pulse. PO Santos later observed that § 87(2)(b) was also in handcuffs but he did not know how or when § 87(2)(b) had been handcuffed. PO Santos proceeded to call for an ambulance for § 87(2)(b) and for a supervisor. Approximately one minute after the call, a large number of officers responded to the scene. PO Santos stated that he knew most of these officers “by face” but not “by name” because they worked “patrol” while he worked “conditions.” The ambulance arrived approximately one minute after that.

After PO Santos provided his narrative of the incident and answered follow-up questions, video footage of the incident were shown to him and additional questions were asked in regards to the footage.

The first video was file 201209982\_20130409\_0944.flv. PO Santos identified the male in the white shirt sitting on a dirt bike making a U-turn across the hazard lane on § 87(2)(b) and coming to a stop along the side of the street as the video begins as § 87(2)(b). PO Santos identified the marked car that enters the camera view at approximately 10 seconds as the marked car in which he was a passenger. The video was slowed to 25% speed and the sequence from 10 seconds into the video to 16 seconds into the video, from the marked car entering the view to § 87(2)(b)'s dirt bike falling down, was played for PO Santos and he was asked to describe what he was observing. PO Santos described what he was observing as § 87(2)(b) seeing the marked car approaching him, attempting to make a U-turn onto the sidewalk, and losing his balance in the process. When the Investigator suggested that it could be argued that the footage appeared to show the marked car striking § 87(2)(b)'s dirt bike and knocking him to the ground, he stated that he was not observing such an occurrence in the footage.

The second video was file 201209982\_20130409\_0947.flv. PO Santos identified the male in the white shirt running towards the intersection as § 87(2)(b) who is then seen jumping onto the back of another dirt bike. A marked car then appears to make contact with the rear of the dirt bike. PO Santos stated that he did not see this occurrence during the incident since his view of it was blocked by various objects.

### **Officers not Interviewed**

Sgt. John Fennessy of the 41<sup>st</sup> Precinct, who filed the Police Accident Report for this incident (Encl. 11RR-SS), and Sgt. David Signor, who filed the arrest report for the arrest of § 87(2)(b) (Encl. 11II-MM), both stated in their IAB statements (Encl. 11PP-QQ, 11HH), that they did not witness either alleged collision in this incident, arriving after they had occurred. It was determined that, on the basis of the statements and evidence obtained by the CCRB and IAB, determinations could be reached without their statements. They were therefore not interviewed by the CCRB.

### **NYPD Document(s)**

### **Police Accident Report**

The Police Accident Report (Encl. 11RR-SS) filed for the collision between the marked car and § 87(2)(b)'s dirt bike was filed by Sgt. Fennessy. The report notes that the marked car “rear-ended” the dirt bike. The narrative states that, while the dirt bike was attempting to elude the marked car by traveling westbound on § 87(2)(b) the marked car was attempting to prevent the dirt bike from fleeing. The dirt bike drove into the path of the marked car, causing the marked car to strike the dirt bike. Both passengers on the dirt bike were ejected from the dirt bike. § 87(2)(b) was transported to § 87(2)(b).

### **Arrest Report # § 87(2)(b)**

### **Complaint Report # § 87(2)(b)**

The Arrest Report and Complaint Report (Encl. 11II-MM) for § 87(2)(b)'s arrest was filed by PO Signor. The narrative notes that § 87(2)(b) was observed driving a motorcycle the wrong direction down a one way street and driving it on a sidewalk. He was charged with reckless endangerment, obstructing governmental administration, fleeing officers in a motor vehicle, and resisting arrest.

### **IAB Investigation Closing Report**

Group 54 of the Internal Affairs Bureau conducted an investigation into this incident. The IAB Investigation concluded that § 87(2)(b)'s death was accidental (Encl. 11TT-XX).

### **Other Evidence**

During the course of this investigation, several pieces of video footage were obtained from IAB, media coverage, and § 87(2)(b)'s family. Some of these videos were duplicates of one another. The most pertinent of these videos have been summarized below.

201209982\_20130906\_1541\_DM.avi was obtained from IAB with a note on the DVD noting that the timestamp in the video is 1-hour early. The camera is positioned in front of § 87(2)(b) facing the direction of § 87(2)(b). The intersection of § 87(2)(b) is off-screen, to the left of the camera's position.

At 7 minutes and 8 seconds (11:20:07), two individuals riding dirt bikes enter the view of the camera. The first individual, identified via the investigation as § 87(2)(b) is wearing a black shirt and riding a red dirt bike eastbound in the hazard lane in the middle of § 87(2)(b). The second individual, identified via the investigation as § 87(2)(b) is wearing a white shirt and riding a yellow dirt bike on the sidewalk along the southern side of § 87(2)(b). Both dirt bikes drive back and forth along § 87(2)(b). At 8 minutes and 6 seconds (11:21:04) both § 87(2)(b) and § 87(2)(b) are seen riding westbound on § 87(2)(b) with § 87(2)(b) riding on the sidewalk along the northern side of § 87(2)(b) and § 87(2)(b) riding in the westbound lane of § 87(2)(b). Once he is past § 87(2)(b) § 87(2)(b) the makes a U-turn across the hazard lane on § 87(2)(b) and comes to a stop in the eastbound lane of § 87(2)(b). § 87(2)(b) comes to a stop at the intersection of § 87(2)(b) and § 87(2)(b).

At 8 minutes and 20 seconds (11:21:18 a.m.), as § 87(2)(b)'s dirt bike comes to a stop, a marked car enters the view of the camera, driving eastbound on § 87(2)(b) towards § 87(2)(b). The marked car slows down as it approaches § 87(2)(b)'s dirt bike. As the marked car approaches him, § 87(2)(b) begins to drive his dirt bike forward in the eastbound lane. The marked car veers to the right, towards § 87(2)(b)'s dirt bike and appears to strike the dirt bike,

knocking it and § 87(2)(b) to the ground at 8 minutes and 27 seconds (11:21:25 a.m.) During this sequence § 87(2)(b) has been driving his dirt bike westbound on § 87(2)(b). An officer, identified via the investigation as PO Santos exits the marked car and the marked car begins to make a U-turn. § 87(2)(b) is seen running westbound on the sidewalk. A large Sears truck comes into camera view driving eastbound in the hazard lane of § 87(2)(b). § 87(2)(b) continues to ride his bike eastbound in the westbound lane of § 87(2)(b). At 8 minutes and 37 seconds (11:21:35 a.m.), § 87(2)(b) and § 87(2)(b) converge as they go off camera. At this time, the marked car is driving westbound in the westbound lane of § 87(2)(b). It is parallel to the Sears truck. Driving behind the Sears truck are two mini-vans. At 8 minutes and 38 seconds (11:21:37 a.m.), the marked car drives past the second mini-van. No other vehicle or obstruction appears between the marked car and the intersection of § 87(2)(b) at this point. As it goes off camera, the marked car is veering left, driving across the hazard lane in the middle of § 87(2)(b). At 8 minutes and 46 seconds (11:21:44 a.m.) PO Santos, running westbound in § 87(2)(b) runs off camera as well.

201209982\_20130409\_0944.flv, obtained from DNAinfo.com's media coverage of this incident, shows footage from the same camera footage as 201209982\_20130906\_1541\_DM.avi.

201209982\_20130906\_1540\_DM.avi was obtained from IAB with a note on the DVD noting that the timestamp in the video is 1-hour early. The camera is positioned in front of 1280 § 87(2)(b) facing the direction of § 87(2)(b). This camera faces the same direction as the camera in 201209982\_20130906\_1541\_DM.avi but the camera in this video is closer to § 87(2)(b) and positioned at a slightly different angle. The footage shown in this angle is consistent with the footage shown in 201209982\_20130906\_1541\_DM.avi. At approximately 15 minutes and 12 seconds (11:21:21 a.m.) the marked car appears to strike § 87(2)(b)'s dirt bike, knocking it from the street onto the sidewalk, with the front of the marked car appearing to end up on the sidewalk before reversing.

201209982\_20130906\_1529\_DM.avi was obtained from IAB with a note on the DVD noting that the timestamp in the video is 1-hour early. The camera is positioned in front of § 87(2)(b) facing the intersection of § 87(2)(b). At 19 minutes and 49 seconds (11:21:32 a.m.), a tan minivan is seen making a right turn from § 87(2)(b) onto § 87(2)(b). At 19 minutes and 50 seconds (11:21:33 a.m.) § 87(2)(b) runs into camera view. At 19 minutes and 51 seconds (11:21:34 a.m.) § 87(2)(b) comes into view driving a dirt bike westbound in the eastbound lane of § 87(2)(b) towards § 87(2)(b). At the same time the tan minivan drives off camera. § 87(2)(b) slows down and § 87(2)(b) jumps onto the back of § 87(2)(b)'s dirt bike. At 19 minutes and 54 seconds (11:21:37 a.m.) the marked car begins to come into camera-view. The marked car is driving westbound in the eastbound lane, angled towards the dirt bike in the intersection of § 87(2)(b) and § 87(2)(b). Prior to reaching the crosswalk on the eastern side of the intersection, the marked car is fully in the eastbound lane, despite driving westbound. At 19 minutes and 55 seconds (11:21:38 a.m.), while the marked car is in the eastbound-lane-side of pedestrian crosswalk across § 87(2)(b) at the intersection of § 87(2)(b) approximately one car-length away from § 87(2)(b)'s dirt bike, which is driving westbound in the eastbound lane on § 87(2)(b) and is in the middle of the intersection with § 87(2)(b) the front of the marked car visibly dips downwards and then strikes the rear of the dirt bike. The marked car continues moving forward until it comes to a stop with only its rear in camera view and the dirt bike is fully off camera.

201209982\_20130409\_0947.flv, obtained from Fox5's media coverage of this incident, shows footage from 9 seconds until 29 seconds from the same camera footage as 201209982\_20130906\_1529\_DM.avi.

201209982\_20130906\_1542\_DM.avi was obtained from IAB with a note on the DVD noting that the timestamp in the video is 1-hour early. The camera is located on the Coster Avenue side of § 87(2)(b) facing the intersection of § 87(2)(b) and § 87(2)(b). At 6 minutes and 11 seconds (11:21:32 a.m.) a tan mini-van makes a right turn from § 87(2)(b) onto § 87(2)(b) and goes off camera. At 6 minutes and 16 seconds (11:21:37 a.m.) § 87(2)(b)'s dirt bike, with § 87(2)(b) sitting on the back, comes into view, driving westbound on § 87(2)(b) in a straight line. At 6 minutes and 17 seconds (11:21:37 a.m.), as the dirt bike enters the intersection, the marked car enters the camera, driving at an angle across the cross walk along the eastern side of the intersection, at what appears to be a much faster rate of speed than the dirt bike. In the middle of the intersection of § 87(2)(b) the marked car comes into contact with the rear of the dirt bike. The marked car continues moving forward. § 87(2)(b) and § 87(2)(b) appear to fall onto the hood of the marked car while the front of the marked car pushes the dirt bike along the ground. The marked car comes to a stop at the side walk on the southwestern corner of the intersection, with its front appearing to drive onto the dirt bike. § 87(2)(b) and § 87(2)(b) fall from the front of the marked car and land on the sidewalk in front of the car.

### **Summons/Arrest for Incident and Disposition**

- On May 1, 2013, § 87(2)(b) was found guilty of reckless driving and received a conditional discharge (Encl. 13A-G).

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on August 21, 2012, claiming deliberate indifference by the NYPD resulting in personal injuries and seeking one hundred million dollars as redress (Encl. 7B-F).
- § 87(2)(b) the mother of § 87(2)(b) filed a Notice of Claim with the City of New York on August 22, 2012, claiming police negligence resulting in the death of her son and seeking fifty million dollars as redress (Encl. 8P-S).

### **Civilian(s) Criminal History**

- § 87(2)(b)

### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (Encl. 3B-D).
- § 87(2)(b) has filed the following CCRB complaints (Encl. 3E):
  - § 87(2)(b)

### **Subject Officer(s) CCRB History**

- PO McClain has been a member of the service for six years and there are no substantiated CCRB allegations against him (Encl. 3A).

### **Conclusion**

### **Identification of Subject Officer(s)**

- It is undisputed that PO McClain was the officer who was driving the marked car that is alleged to have struck § 87(2)(b)'s dirt bike and § 87(2)(b)'s dirt bike. Two allegations



of force with a vehicle have been pleaded against PO McClain.

**Investigative Findings and Recommendations**

**Allegation A – Force – PO Edward McClain struck § 87(2)(b) with a vehicle.**

§ 87(2)(b) alleged that his dirt bike was struck by the marked car. § 87(2)(b) and § 87(2)(b) both stated that the marked car made contact with § 87(2)(b)'s dirt bike as it approached him. Video footage from two different cameras also appear to show the marked car veering towards and then striking § 87(2)(b)'s dirt bike and knocking it onto the sidewalk while he was riding it. Both PO McClain and PO Santos denied that the marked car made contact with § 87(2)(b)'s dirt bike. PO McClain stated that, while attempting to stop § 87(2)(b)'s dirt bike, he drove the marked car in front of the dirt bike and that § 87(2)(b) drove onto the sidewalk of his own volition and lost control of his bike. Even after viewing the aforementioned video footage which showed the marked car striking § 87(2)(b)'s dirt bike from behind, both officers maintained that their marked car never made contact with § 87(2)(b)'s dirt bike. On the basis of the video footage showing that the marked car struck § 87(2)(b)'s moving dirt bike, the investigation determined that this did occur.

Penal Law Section 10.00(10) (Encl. 2A-D) defines deadly physical force as physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. Penal Law Section 35.30 (Encl. 2E-F) authorizes deadly physical force by police officers in situations where it is necessary to defend the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force. Patrol Guide Section 203-12 (Encl. 2I-J) states that officer are not to use deadly physical force unless they have probable cause to believe that they must protect themselves or another person from imminent death or serious physical injury.

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Force – PO Edward McClain struck § 87(2)(b) and § 87(2)(b) with a vehicle.**

PO McClain stated that his striking § 87(2)(b)'s dirt bike with the marked car was an accident. He stated that he had not seen § 87(2)(b)'s dirt bike at any point prior to the point when he applied the brakes. PO McClain stated that he lost sight of § 87(2)(b) and PO Santos as they ran on the sidewalk towards § 87(2)(b) and then proceeded to make a U-turn from the eastbound lanes of § 87(2)(b) into the westbound lanes and drove towards § 87(2)(b). As he drove westbound on § 87(2)(b)

§ 87(2)(b) towards § 87(2)(b) PO McClain was looking around to see where § 87(2)(b) or PO Santos had gone but could not see either of them. He looked straight ahead, down § 87(2)(b) and to the right, up § 87(2)(b) and did not see them in either direction. There were cars being driven in the eastbound lane and parked along the sidewalk that prevented PO McClain from seeing to his left, where PO Santos and § 87(2)(b) had been running when he last saw them. PO McClain therefore assumed that they had made a left onto § 87(2)(b) PO McClain therefore began to make a left hand turn from § 87(2)(b) onto § 87(2)(b) PO McClain noted that he had a green light and was making a “normal left-hand turn.” As he was turning onto § 87(2)(b) PO McClain saw § 87(2)(b) s dirt bike, which he had not seen or heard at any point prior. PO McClain had not seen when or how § 87(2)(b) s dirt bike had ended up at that location or § 87(2)(b) had ended up on the back of it.

As soon as he saw § 87(2)(b) s dirt bike, PO McClain stepped on the brake. He stated that, once he press the brake, sand, oil, and broken fruit on the road caused his car to skid into the dirt bike.

Video footage of the incident appears to show the sand noted by PO McClain in the street. The video footage also appears to show that, while about a car-length away from § 87(2)(b) s dirt bike, the front of the marked car dipped suddenly, which PO McClain noted to be the moment when he pressed the brake.

The video footage also shows several vehicles between the marked car and § 87(2)(b) and § 87(2)(b) s dirt bike in the beginning of PO McClain’s driving towards the intersection of § 87(2)(b) and § 87(2)(b) The video, however, also shows that the marked car passed the last of the vehicles approximately three to five seconds before PO McClain notes that he applied the brake. When asked about what would have prevented him from seeing § 87(2)(b) and § 87(2)(b) during this period, PO McClain stated that he did not know. § 87(2)(g)

§ 87(2)(g) the video shows that, PO McClain drove diagonally across the hazard lanes on § 87(2)(b) from the westbound lane into the eastbound lane, as soon as he passed the last vehicle traveling eastbound. Therefore, PO McClain was driving westbound with his vehicle fully in the eastbound lane, before even reaching the crosswalk on the eastern side of the intersection of § 87(2)(b) The marked car continues driving in the same straight diagonal line into and through the back of § 87(2)(b) s dirt bike.

§ 87(2)(g)

§ 87(2)(g)

Team: 5

Investigator: \_\_\_\_\_ Alexander Opoku-Agyemang December 11, 2013  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date