

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Ho	Team: Team # 5	CCRB Case #: 201306200	<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 type="checkbox"/> Injury
Incident Date(s) Thu, 06/20/2013 10:40 AM	Location of Incident: [REDACTED]	Precinct: 20	18 Mo. SOL 12/20/2014	EO SOL 12/20/2014	
Date/Time CV Reported Mon, 07/08/2013 12:01 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/11/2013 2:42 PM		

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Rodriguez	10703	§ 87(2)(b)	020 PCT
2. POM Michael Williams	30460	§ 87(2)(b)	020 PCT
3. DI Brian McGinn	00000	§ 87(2)(b)	020 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John Oconnor	05175	§ 87(2)(b)	020 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Juan Rodriguez	Abuse of Authority: PO Juan Rodriguez stopped § 87(2)(b) [REDACTED].	A . § 87(2)(g) [REDACTED]
B . POM Juan Rodriguez	Force: PO Juan Rodriguez used physical force against § 87(2)(b) [REDACTED].	B . § 87(2)(g) [REDACTED]
C . POM Michael Williams	Force: PO Michael Williams used physical force against § 87(2)(b) [REDACTED].	C . § 87(2)(g) [REDACTED]
D . POM Juan Rodriguez	Abuse of Authority: PO Juan Rodriguez threatened to arrest § 87(2)(b) [REDACTED].	D . § 87(2)(g) [REDACTED]
E . POM Michael Williams	Abuse of Authority: PO Michael Williams frisked § 87(2)(b) [REDACTED].	E . § 87(2)(g) [REDACTED]
F . POM Juan Rodriguez	Abuse of Authority: PO Juan Rodriguez frisked § 87(2)(b) [REDACTED].	F . § 87(2)(g) [REDACTED]
G . POM Juan Rodriguez	Abuse of Authority: PO Juan Rodriguez searched § 87(2)(b) [REDACTED].	G . § 87(2)(g) [REDACTED]
H . POM Michael Williams	Abuse of Authority: PO Michael Williams threatened to arrest § 87(2)(b) [REDACTED].	H . § 87(2)(g) [REDACTED]
I . POM Juan Rodriguez	Other: PO Juan Rodriguez intentionally made a false official statement when he said force was not used to remove § 87(2)(b) [REDACTED] from his vehicle.	I . § 87(2)(g) [REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

A complaint was filed by § 87(2)(b) with IAB on July 7, 2013, generating log #2013-29177 (encl. 5a-b). The case was subsequently referred to the CCRB on July 11, 2013 (encl. 5c-d).

On June 20, 2013, at 10:40 a.m. § 87(2)(b) was approached by PO Juan Rodriguez and PO Michael Williams in front of 120 West 82nd Street in Manhattan. The following allegations resulted:

- **Allegation A: Abuse of Authority – PO Juan Rodriguez stopped** § 87(2)(b)
§ 87(2)(g)
- **Allegation B: Force – PO Juan Rodriguez used physical force against** § 87(2)(b)
§ 87(2)(g)
- **Allegation C: Force – PO Michael Williams used physical force against** § 87(2)(b)
§ 87(2)(g)
- **Allegation D: Abuse of Authority – PO Juan Rodriguez threatened to arrest** § 87(2)(b)
§ 87(2)(g)
- **Allegation E: Abuse of Authority – PO Michael Williams frisked** § 87(2)(b)
§ 87(2)(g)
- **Allegation F: Abuse of Authority – PO Juan Rodriguez frisked** § 87(2)(b)
- **Allegation G: Abuse of Authority – PO Juan Rodriguez searched** § 87(2)(b)
§ 87(2)(g)
- **Allegation H: Abuse of Authority – PO Michael Williams threatened to arrest** § 87(2)(b)
§ 87(2)(g)
- **Allegation I: Other – PO Juan Rodriguez intentionally made a false official statement when he said force was not used to remove** § 87(2)(b) **from his vehicle.**
§ 87(2)(g)
- § 87(4-b), § 87(2)(g)
- § 87(2)(b)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

§ 87(2)(b)

IAB Statement

§ 87(2)(b) alleged that PO Rodriguez and an unidentified male black officer were rude and discourteous for no reason. Both officers were yelling and threatening to arrest him if he did not comply. § 87(2)(b) did not understand why he was being yelled at over a parking spot. The unidentified officer was holding handcuffs, claiming that he would arrest him if he continued to question them. Both officers forced him out of his vehicle and pushed him onto the trunk of his vehicle. PO Rodriguez then conducted a frisk of him for no reason.

CCRB Testimony

§ 87(2)(b) made statements pertaining to this incident in filing his complaint on July 11, 2013 with the CCRB (encl. 5b-c), providing a telephone statement on July 23, 2013 (encl. 6) and in person at the CCRB on August 9, 2013 (encl. 7a-f). His statements § 87(2)(g) are summarized below.

On June 20th, 2013, at approximately 10:15 a.m., § 87(2)(b) and his coworker § 87(2)(b) parked their black, Toyota Prius in front of a dry cleaner at § 87(2)(b) in Manhattan, § 87(2)(b).

As they parked the car, an unmarked sedan approached § 87(2)(b) on the passenger side and a plainclothes officer (identified by the investigation as PO Juan Rodriguez, described by § 87(2)(b) as a Caucasian man, 5'7" tall, 35+ years old, 175 pounds, medium build, light brown hair, wore jeans and a baseball t-shirt) told them to move because the spot was reserved for NYPD vehicles. At this time, § 87(2)(b) was not aware PO Rodriguez was a police officer since there were no markings or police identification in plain view. § 87(2)(b) asked PO Rodriguez if there was any sign indicating the space was reserved and PO Rodriguez motioned toward a sign obscured by a tree. Only when § 87(2)(b) stuck his head out the window was he able to see the sign. § 87(2)(b) informed § 87(2)(b) that there was a sign and § 87(2)(b) commented that the tree should be cut. § 87(2)(b) relayed the comment to PO Rodriguez. PO Rodriguez yelled at the men to move the car. § 87(2)(b) complied, moving the car to a truck offloading area 40 feet ahead. When § 87(2)(b) looked back, he saw PO Rodriguez park in the space they vacated. Then, § 87(2)(b) and § 87(2)(b) walked to the § 87(2)(b).

Twenty minutes later, § 87(2)(b) and § 87(2)(b) returned to their vehicle and began filling out paperwork. At 10:40 a.m., five minutes later, PO Rodriguez pounded the roof of their vehicle three times and yelled at the two men to get out of the car and said, "You're under arrest!" Then, PO Rodriguez opened the door, grabbed § 87(2)(b) by his right arm and pulled him out of the car with his left hand. At this time, § 87(2)(b) voluntarily stepped out of the car. § 87(2)(b) could smell alcohol on PO Rodriguez's breath. He believed the officer was intoxicated.

PO Rodriguez was joined by a second officer (identified by the investigation as PO Michael Williams, described by § 87(2)(b) as a black man, bald, 5'7" tall, medium build, 38+ years old, and 170-180 pounds. § 87(2)(b) noticed the presence of PO Williams when PO Rodriguez pulled one of his arms behind his back and PO Williams grabbed his other arm to complete the same motion. The two officers walked § 87(2)(b) to the back of his car and pushed him against the trunk. PO Williams applied pressure to the back of § 87(2)(b)'s head and pushed him into the rear windshield. § 87(2)(b) asked the officers why he was being arrested and PO Williams told him that he was being arrested for taking a reserved parking space and for disrespecting a police officer. § 87(2)(b) later stated in his interview that the officers informed him they were arresting him for suggesting they cut down the tree.

PO Williams continued to push § 87(2)(b)'s head against the rear window while

applying pressure to his back. § 87(2)(b) wore jeans and the contents of his pockets created a slight bulge. PO Rodriguez searched § 87(2)(b)'s front right pants pocket and pulled out his keys and wallet. PO Williams patted down § 87(2)(b)'s rear pockets but did not search them. § 87(2)(b) saw PO Rodriguez make a fist and believed that he may have been holding something and was planning on implicating § 87(2)(b). § 87(2)(b) asked § 87(2)(b) to take his phone out and begin recording because the situation made him uncomfortable.

The officers asked § 87(2)(b) for his identification and he showed them his § 87(2)(b) and § 87(2)(b). § 87(2)(b) handed the cards to PO Rodriguez. The officers informed § 87(2)(b) that they were insufficient and took his wallet from his hands. PO Rodriguez and PO Williams exchanged the wallet between them multiple times as they rifled through its contents. § 87(2)(b) saw papers' falling from his wallet as it was passed between them. He could not tell if money fell from his wallet as well. § 87(2)(b) asked the officers to pick the papers up but they did not. PO Rodriguez returned § 87(2)(b)'s wallet but held on to his identification cards.

PO Rodriguez and PO Williams informed § 87(2)(b) he was under arrest but § 87(2)(b) asked to see a sergeant. The officers walked § 87(2)(b) one block to the 20th Precinct stationhouse to see a sergeant. The officers told the two men to wait inside and PO Williams returned five minutes later with a sergeant (identified by the investigation as Sgt. John O'Connor, described by § 87(2)(b) as a Caucasian man, 5'7" tall, dark brown hair, heavyset, 200+ pounds, 35-40 years old, wearing a white shirt and jeans). Sgt. O'Connor asked PO Williams whom § 87(2)(b) was complaining about. Sgt. O'Connor did not seem surprised that PO Rodriguez was involved. § 87(2)(b) told Sgt. O'Connor what had happened and Sgt. O'Connor informed § 87(2)(b) it was all a misunderstanding. § 87(2)(b) and § 87(2)(b) agreed there was no problem.

During this time, PO Rodriguez continued to yell and draw attention from bystanders on the street. § 87(2)(b) could not recall what PO Rodriguez said. § 87(2)(b) was given his two IDs back at the police station. When § 87(2)(b) went to return his IDs into his wallet, he noticed a \$50 bill missing from his wallet. He asked Sgt. O'Connor where his money was and accused PO Rodriguez of stealing his money. PO Rodriguez yelled back at § 87(2)(b) drawing attention from bystanders as he denied knowing what happened to the money. Sgt. O'Connor suggested § 87(2)(b) walk to back where his car was to look for it. § 87(2)(b) rushed back to the street to search for the \$50 bill but did not find it.

(CCRB case number § 87(2)(b) was created and subsequently referred to IAB. It noted § 87(2)(b)'s misplaced currency and an anonymous complaint to § 87(2)(b)'s employer, which claimed he had behaved irrationally toward officers.) § 87(2)(b) assumed the anonymous complaint was filed by PO Rodriguez in retaliation to this complaint with the CCRB.

Victim: § 87(2)(b)

§ 87(2)(b)

CCRB Testimony (encl. 8a-f)

§ 87(2)(b) was interviewed at the CCRB on September 4, 2013. § 87(2)(g)

On June 20, 2013, at 10:40 a.m., § 87(2)(b) and § 87(2)(b) were parked in front of § 87(2)(b) in Manhattan when a gray Honda Accord pulled up alongside his vehicle and lowered its window. § 87(2)(b) described the driver, identified by investigation as PO Rodriguez, as a Caucasian man with black curly hair, brown eyes, 6'0" tall, normal complexion, in his early 30s, and weighing 200 pounds. PO Rodriguez showed his police plaque to § 87(2)(b) and they showed their § 87(2)(b) parking permit to PO Rodriguez while explaining who

they were. § 87(2)(b) commented to PO Rodriguez that the parking sign was not visible. His comment particularly angered PO Rodriguez and PO Rodriguez began to yell at § 87(2)(b).

After § 87(2)(b) parked and they § 87(2)(b), they returned to their vehicle to § 87(2)(b). § 87(2)(b) could not recall whether officers knocked on the car to get their attention before PO Rodriguez, accompanied by another officer (identified by the investigation as PO Michael Williams, described by § 87(2)(b) as a Black man with glasses, shaved bald head, 5'9" tall, in his mid-30s, and weighing 200-210 pounds) came up to § 87(2)(b)'s door, opened it, pulled § 87(2)(b) out of the car and threw his body onto the back of the car. § 87(2)(b) stated he immediately exited the vehicle and walked toward the rear of the car, where § 87(2)(b) had been led by PO Rodriguez and PO Williams. § 87(2)(b) later stated that when he walked to the rear of the car, § 87(2)(b) was already on the car. He did not witness § 87(2)(b) being brought to the back of the car or thrown onto the car.

As PO Rodriguez and PO Williams searched § 87(2)(b) emptying the contents of his pockets onto the car, they informed him he was going to be arrested. There was also a pair of handcuffs placed on the car. § 87(2)(b) went to take a video with his phone but PO Rodriguez and PO Williams informed him he had to stay away or he would also be arrested. § 87(2)(b) walked 10 feet away and was still close enough to see what the officers were doing. PO Rodriguez and PO Williams found § 87(2)(b)'s § 87(2)(b) and his § 87(2)(b). PO Rodriguez and PO Williams did not recover anything during their search of § 87(2)(b) and informed him he would not be arrested. § 87(2)(b) stated that this was an intimidating circumstance that § 87(2)(b) did not provoke. PO Rodriguez and PO Williams had no motive to search or arrest § 87(2)(b). § 87(2)(b) put the items that were removed back into his pockets. § 87(2)(b) told § 87(2)(b) that a \$50 bill was missing from his wallet. He asked § 87(2)(b) to accompany him to the 20th Precinct stationhouse so he could make a complaint. § 87(2)(b) saw PO Rodriguez walk behind the desk area as he and § 87(2)(b) waited to speak to a supervisor. A sergeant (identified by the investigation as Sgt. John O'Connor, described by § 87(2)(b) as a Caucasian man with light brown short hair and a thick neck, wearing a light gray t-shirt, is well built, in his 40s, and weighing 230 pounds) spoke to § 87(2)(b). Sgt. O'Connor was apologetic and said, "Let's forget about this, he made a mistake." As § 87(2)(b) and § 87(2)(b) exited the stationhouse, PO Rodriguez told § 87(2)(b) that he had nothing against him but did not like the way § 87(2)(b) spoke to him. Having known § 87(2)(b) for § 87(2)(b) years, § 87(2)(b) stated that § 87(2)(b) would never yell at an officer and is quiet by nature. Then, both men informed Sgt. O'Connor that they thought PO Rodriguez was intoxicated. § 87(2)(b) stated that Sgt. O'Connor explained that maybe it was PO Rodriguez's stomach or medication he was taking that gave off a smell similar to alcohol. When § 87(2)(b) was asked to explain what the sergeant meant, he could not clarify.

NYPD Statements:

Subject Officer: PO JUAN RODRIGUEZ

PO Juan Rodriguez, § 87(2)(b) old at the time of the incident, is a Hispanic-white man, 6'1" tall, weighs 190 pounds, with black hair and blue eyes. PO Juan Rodriguez worked from 9:30 a.m. to 5:05 p.m. on June 20, 2013. He was in plainclothes and assigned to anti-crime within the 20th Precinct with PO Lamont Deaderick, PO Christopher Shaw, PO Isaac Moultry, and Sgt. John O'Connor, working on foot. At the time of the incident, PO Rodriguez was driving his personal car, a § 87(2)(b), and assisted by PO Michael Williams.

Memo Book (encl. 9a-d)

At 10:40 a.m., I stopped § 87(2)(b) (Hispanic male) and § 87(2)(b) (Caucasian male) at West 82nd Street and Columbus Avenue. The two § 87(2)(b) were illegally parked. I asked the driver to move and he complied. The passenger was very aggressive, cursing and possibly intoxicated. After they moved the car, I

approached the car with assistance from PO Williams. § 87(2)(b) was still very aggressive, so I pulled him out of the car for my safety. Once I verified identification, he wanted to speak to my supervisor. They came to the 20th Precinct, and I brought Sgt. O'Connor to mediate. They left the precinct and never stated he wanted to make a complaint. They walked out of the precinct, came back in, and stated he was missing \$50. § 87(2)(b) stated he was going to check by his car but then never came back. § 87(2)(b) was extremely irate, anti-cop, and appeared to attempt to create a police situation. No police action was taken or summons issued.

CCRB Testimony (encl. 9e-h)

On August 22, 2013, PO Juan Rodriguez was interviewed at the CCRB. On June 20, 2013, at 10:40 a.m., PO Rodriguez was driving on 82nd Street in Manhattan to find parking for his personal car, a § 87(2)(b). PO Rodriguez saw an unfamiliar car parked in a police-only parking space that had no official plates. He observed two unfamiliar passengers, § 87(2)(b) (driver) and § 87(2)(b) (passenger), so he decided to approach them in his car. PO Rodriguez drove up alongside the car and leaned over to talk to § 87(2)(b). Ignoring § 87(2)(b), PO Rodriguez asked § 87(2)(b) "Excuse me sir, can you please move your car? This is police parking only." § 87(2)(b) showed PO Rodriguez a § 87(2)(b) parking plaque but PO Rodriguez informed § 87(2)(b) it was still police parking and showed § 87(2)(b) his NYPD parking plaque. § 87(2)(b) complied and pulled out of the parking spot. As they left, § 87(2)(b) said to the officer, "Fuck you. Relax. Fucking asshole." Caught off guard by § 87(2)(b)'s outburst, PO Rodriguez decided not to engage in any further interaction with § 87(2)(b) as they pulled into a space further up the block, next to a fire hydrant.

PO Rodriguez did not want the issue to escalate, so instead of approaching them again for illegally parking, he parked his car in the space they vacated and walked back to the 20th Precinct stationhouse. Inside the stationhouse, PO Rodriguez wondered what § 87(2)(b) was doing, and wondered whether he would damage his personal car out of spite. He considered § 87(2)(b)'s erratic behavior and his heavy accent, and assumed § 87(2)(b) was not in a right state of mind and perhaps there was also a language barrier. He did not recall the car having § 87(2)(b) and it made him question the authenticity of their parking permit.

PO Rodriguez walked back outside and caught a uniformed officer's attention. He asked PO Michael Williams for assistance in approaching § 87(2)(b). § 87(2)(b) was in the passenger's seat and § 87(2)(b) was not in sight. Approaching § 87(2)(b), PO Rodriguez asked, "Excuse me sir, what's the problem? What's the issue?" § 87(2)(b) retorted, "Fuck you!" PO Rodriguez and PO Williams immediately asked § 87(2)(b) to step out of the vehicle. PO Rodriguez did not have to pull § 87(2)(b) out from the vehicle; § 87(2)(b) compliantly stepped out and they directed him to stand at the rear of the car. § 87(2)(b) appeared irate and possibly intoxicated, and PO Rodriguez considered § 87(2)(b) to be a risk to his safety. He decided he would frisk him. He asked § 87(2)(b) "Do you have any weapons?" § 87(2)(b) put up both his hands and replied "No, no!" PO Rodriguez told him he would check just to make sure. PO Rodriguez observed that § 87(2)(b) was conducting himself as if he were "on something" (under the influence of an unknown substance). PO Rodriguez positioned § 87(2)(b) to face him as he placed one hand on § 87(2)(b)'s chest in case he became violent. PO Rodriguez frisked § 87(2)(b) with his free hand, feeling a set of keys and a rectangular hard object in § 87(2)(b)'s pocket. No weapons were recovered as a result of the search. He removed the wallet to see what it was, and opened it to view its contents. From the wallet, PO Rodriguez found § 87(2)(b)'s work identification card and § 87(2)(b).

At this time, § 87(2)(b) arrived at the scene and appeared embarrassed by the turn of events. He showed his identification to PO Rodriguez and PO Williams, and § 87(2)(b). § 87(2)(b) then attempted to mediate the situation but § 87(2)(b) continued to be rude to PO Rodriguez and PO Williams. PO Rodriguez stated that PO Williams was also surprised by § 87(2)(b)'s behavior. PO Williams, § 87(2)(b)

§ 87(2)(b) asked § 87(2)(b) “Is this how you talk to members in uniform? You should know the chain of command. How do you talk to members of service this way?” § 87(2)(b) never answered PO Williams and § 87(2)(b) appeared to be very uncomfortable with the situation. At this point, PO Rodriguez asked § 87(2)(b) to speak to his supervisor. § 87(2)(b) told the officer to call 311, and said to § 87(2)(b) “Tape this, tape this!” § 87(2)(b) never took out his phone to record the incident and PO Rodriguez was not aware of § 87(2)(b) taking any videos or pictures of the incident. Then, § 87(2)(b) asked to speak to PO Rodriguez’s supervisor. PO Rodriguez agreed to do so. He held on to § 87(2)(b)’s identification as he handed § 87(2)(b) back his wallet and the four men walked to the 20th Precinct stationhouse.

At the stationhouse, Sgt. John O’Connor attempted to mediate between PO Rodriguez and § 87(2)(b). However, PO Rodriguez noted that § 87(2)(b) was still very irate, disruptive, and disorderly. § 87(2)(b) yelled at Sgt. O’Connor, accusing PO Rodriguez of misconduct. PO Rodriguez wondered how § 87(2)(b) could speak to an officer in that manner, and asked him, “Are you intoxicated?” § 87(2)(b) retorted, “You’re intoxicated! You’re intoxicated!” Afterward Sgt. O’Connor mediated the situation, § 87(2)(b) walked out of the stationhouse. PO Rodriguez noted that § 87(2)(b) never stated he wanted to make a complaint or anything else. He observed § 87(2)(b) pat his pockets as he left the precinct, turn around, and announce that he was missing \$50. PO Rodriguez and Sgt. O’Connor suggested he check his car and if he couldn’t find it to come back. § 87(2)(b) never returned to the stationhouse.

PO Rodriguez denied having issued a summons to § 87(2)(b) and never discussed arresting him. He could not recall any handcuffs being pulled out, and if so, claimed they would not be his because he was in plainclothes and did not have a pair with him at the time of the incident. When asked why a UF-250 was not filled out for § 87(2)(b) PO Rodriguez claimed he had asked his commanding officer, DI Brian McGinn, a half hour after § 87(2)(b) left the stationhouse, whether he needed to fill one out. DI McGinn informed him he did not have to.

Subject Officer: PO MICHAEL WILLIAMS

PO Michael Williams, § 87(2)(b) old at the time of the incident, is a black man, 5’9” tall, weighs 178 pounds, with black hair and brown eyes. PO Michael Williams worked from 7:05 a.m. to 3:40 p.m. on June 20, 2013. He was in uniform and assigned to sector patrol H in the 20th Precinct with PO Eric Murray in van § 87(2)(b). At the time of the incident, he was with PO Juan Rodriguez.

Memo Book (encl. 10a-c)

There are no entries in PO Williams’ memo book regarding this incident.

CCRB Testimony (encl. 10d-f)

On September 12, 2013, PO Michael Williams was interviewed at the CCRB. At 10:40 a.m. on June 20, 2013, PO Williams was approached by PO Juan Rodriguez outside the 20th Precinct stationhouse in Manhattan and asked if he could accompany him to speak to an individual. With no further information provided, PO Williams agreed. There was no further discussion about the nature of the incident and nothing to suggest an arrest was imminent as PO Williams followed PO Rodriguez across the street onto West 82nd Street, north of Columbus Avenue, to a parked vehicle. PO Williams stopped seven feet from the rear passenger side of the vehicle while PO Rodriguez approached the front passenger door. PO Williams observed PO Rodriguez, unannounced, open the car door and grab § 87(2)(b) out of the vehicle by his right arm. PO Rodriguez escorted § 87(2)(b) to the rear of the vehicle. At this time, PO Williams believed the situation would lead to an arrest so he took out his handcuffs. PO Rodriguez immediately turned to PO Williams and informed him that it was not an arrest so he returned his handcuffs to its holster. He did not place the handcuffs on the vehicle or threaten § 87(2)(b) with arrest.

On the sidewalk, standing to PO Williams’ left was § 87(2)(b). PO Williams did not know if § 87(2)(b) was initially inside the car and he did not notice him step out of the vehicle.

Although § 87(2)(b) did not approach PO Rodriguez and § 87(2)(b) at the rear of the vehicle, he attempted to verbally intervene. PO Williams could not recall what § 87(2)(b) said, and recalled seeing § 87(2)(b) with a camera but did not know if any pictures were taken. PO Williams issued a command for § 87(2)(b) to step back, and § 87(2)(b) complied. PO Williams asked § 87(2)(b) “Do you want to be placed under arrest?” He could not remember the action taken by § 87(2)(b) that caused him to tell § 87(2)(b) he could be placed under arrest. Although PO Williams could not recall what the specific action was, he remembered it would not have constituted a criminal offense. PO Williams stated that if § 87(2)(b) would have been arrested, it would not have been for what he was doing, but for what he failed to do. In lieu of an arrest, he would have issued § 87(2)(b) a summons for failure to obey a lawful order.

Meanwhile, § 87(2)(b) remained engaged in a loud argument with PO Rodriguez, who had frisked § 87(2)(b). PO Williams did not know PO Rodriguez’s reason for the search since he did not think weapons were involved. PO Williams did not participate in frisking § 87(2)(b). PO Williams was unsure whether PO Rodriguez pulled § 87(2)(b)’s wallet out from his pocket or if § 87(2)(b) provided it to PO Rodriguez. PO Rodriguez opened the wallet to look at its contents. PO Williams did not personally see § 87(2)(b)’s wallet or identification cards and PO Rodriguez did not hand PO Williams § 87(2)(b)’s wallet.

§ 87(2)(b) declared he wanted to speak to a supervisor so PO Rodriguez escorted him to the 20th Precinct stationhouse. PO Williams followed PO Rodriguez and § 87(2)(b) and was unaware of the whereabouts of § 87(2)(b). At the stationhouse, PO Williams left the group in the lobby to go inside the stationhouse. This was the end of his interaction with PO Rodriguez and § 87(2)(b). Afterwards, PO Rodriguez did not discuss with PO Williams what had transpired inside the stationhouse.

Subject Officer: SGT JOHN O’CONNOR

Sgt. John O’Connor, § 87(2)(b) old at the time of the incident, is a Caucasian man, 6’1” tall, weighs 255 pounds, with brown hair and brown eyes. Sgt. John O’Connor worked from 9:30 a.m. to 8:35 p.m. on June 20, 2013. He was in plainclothes and inside the 20th Precinct stationhouse at the time of the incident.

Memo Book (encl. 11a-b)

At 10:50 a.m., Sgt. O’Connor was with PO Rodriguez, § 87(2)(b) and § 87(2)(b) at the 20th Precinct stationhouse to mediate a parking issue that occurred at West 82nd Street and Columbus Avenue.

CCRB Testimony (encl. 11c-e)

On September 19, 2013, Sgt. John O’Connor was interviewed at the CCRB. On June 20, 2013, at 10:50 a.m., Sgt. O’Connor was approached by PO Rodriguez inside the 20th Precinct stationhouse. PO Rodriguez informed him there were two individuals he had asked to move from a police-only parking zone, and an argument had ensued. PO Rodriguez did not elaborate further.

Sgt. O’Connor greeted § 87(2)(b) and § 87(2)(b) in the lobby of the stationhouse, identified himself, and asked how he could help § 87(2)(b) and § 87(2)(b). § 87(2)(b) was slightly disorderly, flailing his arms, acting upset and aggravated as he informed Sgt. O’Connor of his argument with PO Rodriguez. Then, standing by the doorway of the stationhouse, Sgt. O’Connor spoke to each individual separately to hear both sides of the story. Sgt. O’Connor learned that § 87(2)(b) and § 87(2)(b) had parked in a police only parking zone. When PO Rodriguez asked them to leave, § 87(2)(b) became irate toward PO Rodriguez, yelling and cursing at him. § 87(2)(b) stated he had come to the stationhouse to let PO Rodriguez’s supervisor know he did not appreciate PO Rodriguez’s behavior and his loudness. Having known PO Rodriguez and worked with him for many years, Sgt. O’Connor explained that PO Rodriguez is a loud talker. § 87(2)(b) informed Sgt. O’Connor that PO Rodriguez was loud and he did not

appreciate how PO Rodriguez asked them to move their car. PO Rodriguez let Sgt. O'Connor know that it was § 87(2)(b) who was being loud and rude to him.

Sgt. O'Connor spoke to § 87(2)(b) and offered to process a complaint for him. § 87(2)(b) stated that he did not want to file a complaint, he just wanted PO Rodriguez's supervisor to know that he did not appreciate PO Rodriguez's behavior and his loudness. Had § 87(2)(b) asked to make a complaint, Sgt. O'Connor would have processed it, albeit feeling it would have been unnecessary because there were no allegations. Sgt. O'Connor then pointed to a sign on the wall that hung approximately five feet away with the CCRB's number on it and said to § 87(2)(b) "If you want to make a complaint at any time, you can take down that number." He was unsure whether § 87(2)(b) and § 87(2)(b) acknowledged the sign.

Having spoken to both parties, Sgt. O'Connor let § 87(2)(b) know that PO Rodriguez did not appreciate being cursed and yelled at. He was able to calm § 87(2)(b) and apologized to § 87(2)(b) and § 87(2)(b) for PO Rodriguez's behavior. They left the stationhouse satisfied with Sgt. O'Connor's mediation.

During their conversation, Sgt. O'Connor did not hear any allegations of § 87(2)(b) or PO Rodriguez being intoxicated, and did not hear any allegations of a misplaced \$50 bill. Sgt. O'Connor did not hear about any circumstances of a stop, frisk or search, and no one made any indications it had occurred. Sgt. O'Connor was not aware if a UF-250 was prepared. From the information he had gathered, a UF-250 would not have been required.

Attempts to Interview Officers

Since PO Rodriguez stated DI McGinn instructed him not to complete a UF-250 report for § 87(2)(b) the undersigned investigator attempted to interview DI McGinn to confirm or deny PO Rodriguez's statement. § 87(2)(g)

Status of Civil Proceedings (encl. 15e)

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of October 17, 2013, one month after the 90-day filing deadline, with regard to the incident.

Civilians Criminal History (encl. 13a-d)

- As of February 6, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)
- As of February 6, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)

Civilians CCRB History (encl. 3a-b)

- This is the first CCRB complaint filed by § 87(2)(b)
 - § 87(4-b), § 87(2)(g)
 - § 87(4-b), § 87(2)(g)
- § 87(2)(b) has never filed a complaint with the CCRB.

Subject Officers CCRB History (encl. 2a-c)

- PO Juan Rodriguez has been a member of the service for 9 years and there are no substantiated CCRB allegations against him.
- PO Michael Williams has been a member of the service for 13 years and there are no substantiated CCRB allegations against him.
- DI Brian McGinn has been a member of the service for 26 years and there is one substantiated CCRB allegation against him.
 - In CCRB case #6394104, a force allegation made in 1994 was substantiated against DI McGinn. There is no record of the NYPD disposition for this case.

Conclusion

Identification of Subject Officers

In the original complaint filed with IAB, the reporting sergeant identified PO Juan Rodriguez as the subject officer. PO Rodriguez confirmed his role in the incident and the roles of PO Michael Williams and DI Brian McGinn. PO Michael Williams confirmed his presence at the scene for the duration of the incident. The investigation was unable to obtain a statement from DI McGinn to verify his role in the incident. Therefore, **Allegations A, B, D, F, G, and I** are pled against PO Rodriguez, **Allegations C, E, H and K** are pled against PO Williams, and **Allegation J** is pled against DI McGinn.

Allegations Not Pleaded

- **Stop** – PO Michael Williams acted in assistance to PO Juan Rodriguez’s actions.
- **Threat of arrest** - PO Michael Williams acted in assistance to PO Juan Rodriguez’s actions, in which he assumed § 87(2)(b) would be arrested.

Investigative Findings and Recommendations

- **Allegation A: Abuse of Authority – PO Juan Rodriguez stopped** § 87(2)(b)

PO Juan Rodriguez acknowledged stopping § 87(2)(b). According to PO Rodriguez, the following factors contributed to his decision to stop § 87(2)(b): he observed § 87(2)(b) continuing to stare at him after he parked his vehicle and walked to the 20th Precinct stationhouse. PO Rodriguez thought that § 87(2)(b) was intoxicated, irate, anti-police, a public risk, acting abnormally, and thought § 87(2)(b)’s close proximity to PO Rodriguez’s car posed a potential threat. As PO Rodriguez walked over to the vehicle, he asked PO Williams for assistance. With no further information provided by PO Rodriguez, PO Williams agreed to follow PO Rodriguez to § 87(2)(b)’s vehicle and let PO Rodriguez take lead of the situation. PO Williams stood near the vehicle as he watched PO Rodriguez pull § 87(2)(b) from the vehicle.

An officer may stop a person only “when he reasonably suspects that such a person is committing, has committed, or is about to commit either (a) a felony or (b) a misdemeanor defined by the law” (encl.1b-d). NYPD Patrol Guide, Section 212-11

§ 87(2)(g)

§ 87(2)(b)’s anger was displayed verbally; he made no movements and took no additional actions indicative of crime or intent to physically threaten PO Rodriguez. Aside from § 87(2)(b)’s anger, PO Rodriguez did not see him do anything to indicate that he was intoxicated.

§ 87(2)(g)

§ 87(2)(g)

- **Allegation B: Force – PO Juan Rodriguez used physical force against** § 87(2)(b)

In their testimonies, § 87(2)(b) and PO Michael Williams confirm

that they observed PO Juan Rodriguez physically pull § 87(2)(b) out of the vehicle. In his memo book, PO Rodriguez wrote that he pulled § 87(2)(b) out of the vehicle.

However, in his CCRB testimony, PO Rodriguez denied using force to remove § 87(2)(b) from his vehicle. PO Rodriguez claimed he had asked § 87(2)(b) out of his vehicle for his safety because § 87(2)(b) became aggressive, flailing his arms and excessively cursing at PO Rodriguez after he approached him a second time. PO Rodriguez stated that § 87(2)(b) compliantly exited the vehicle and no force was used.

Officers must “use minimum necessary force” at the scene of a police incident (encl. 1h-i). NYPD Patrol Guide, Section 203-11

§ 87(2)(b) neither physically resisted nor did PO Rodriguez use more force against § 87(2)(b) than necessary when PO Rodriguez pulled § 87(2)(b) out of the vehicle. § 87(2)(g)

§ 87(2)(g)

▪ **Allegation C: Force – PO Michael Williams used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Michael Williams assisted PO Juan Rodriguez in escorting him to the back of his vehicle. His arms had been pulled behind his back by both officers, with PO Rodriguez grasping one arm and PO Williams grasping his other arm, and his head pushed against the trunk of his vehicle by PO Williams. § 87(2)(b) who was still seated in the driver’s side of the vehicle, could not see what the officers did with § 87(2)(b) immediately after he had been pulled out from the vehicle.

In his testimony, PO Rodriguez claimed § 87(2)(b) compliantly stepped out of the vehicle. PO Rodriguez stated that § 87(2)(b) had not been pulled from the vehicle and was not placed face down on the trunk of his vehicle by PO Williams or himself. § 87(2)(b) was facing PO Rodriguez as PO Rodriguez held one hand to his chest and searched him with the other.

When PO Williams approached the vehicle, he claimed he stood seven feet from the rear passenger side of the vehicle while PO Rodriguez approached the front passenger door. PO Williams observed PO Rodriguez open the car door and grab § 87(2)(b) out of the vehicle and escort § 87(2)(b) to the rear of the vehicle.

§ 87(2)(g)

▪ **Allegation D: Abuse of Authority – PO Juan Rodriguez threatened to arrest § 87(2)(b)**

§ 87(2)(b) alleged that as PO Juan Rodriguez initially approached his vehicle and hit his roof to garner his attention, PO Rodriguez also yelled out to § 87(2)(b) that he was under arrest. In his testimony, § 87(2)(b) stated that PO Rodriguez informed § 87(2)(b) he was going to be arrested as he was being searched.

PO Rodriguez stated he never informed § 87(2)(b) he would be arrested and did not discuss arresting § 87(2)(b) with PO Williams. In addition, PO Rodriguez noted he did not have any handcuffs on him at that time.

PO Williams agreed to provide PO Rodriguez with assistance with no further information provided by PO Rodriguez. He observed PO Rodriguez pull § 87(2)(b) from the vehicle and escort him to the rear of the vehicle. PO Williams stated that based on PO Rodriguez’s actions, he assumed the situation would lead to an arrest so he pulled out his handcuffs to assist PO Rodriguez.

§ 87(2)(g)

▪ **Allegation E: Abuse of Authority – PO Michael Williams frisked § 87(2)(b)**

§ 87(2)(b) alleged that PO Michael Williams frisked his rear pants pockets. PO Williams denied assisting PO Rodriguez in patting down § 87(2)(b) § 87(2)(g)

- **Allegation F: Abuse of Authority – PO Juan Rodriguez frisked** § 87(2)(b)
- **Allegation G: Abuse of Authority – PO Juan Rodriguez searched** § 87(2)(b)

PO Rodriguez admitted frisking § 87(2)(b) then reaching into his pocket, removing a wallet, and opening the wallet to review its contents. PO Rodriguez acknowledged that § 87(2)(b) compliantly stepped out of his car when ordered to do so and that, although § 87(2)(b) was irate and possibly intoxicated, he provided no physical resistance and was nonviolent throughout the incident. Simply because § 87(2)(b) was angry, PO Rodriguez asked him whether he had any weapons. When § 87(2)(b) denied having weapons, PO Rodriguez frisked him and felt a set of keys and a wallet, which he described as a “rectangular, hard object.” PO Rodriguez then reached in to § 87(2)(b)s pants pocket to remove the wallet and opened it to view its contents. No weapons were recovered from the search.

A frisk is permissible when an officer has reasonable suspicion that a person is armed and dangerous (encl. 1s-z). *Arizona v. Johnson*, 555 U.S. 323 (2009) An amorphous bulge does not provide reasonable suspicion that a person possesses a weapon (encl. 1aa-cc). *People v. Marine*, 536 N.Y.S.2d 425 (1989 – 1st Dept.)

In order to search a person, an officer must have probable cause to believe the person has committed a crime (encl. 1dd-nn). *People v. De Bour*, 40 N.Y.2d 210 When a frisk reveals an object which could reasonably be mistaken for a weapon, an officer may search the area where the hard object is located (encl. 1oo-qq). *People v. Hill*, 569 N.Y.S.2d 227 (1991 – 4th Dept.)

Here, PO Rodriguez frisked § 87(2)(b) based upon his irate behavior and possible intoxication. However, PO Rodriguez openly acknowledged that § 87(2)(b) provided no physical resistance and was nonviolent throughout the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Rodriguez neither observed § 87(2)(b) committing a crime nor suspected him of doing anything criminal. § 87(2)(g)

- **Allegation H: Abuse of Authority – PO Michael Williams threatened to arrest** § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that he was threatened with arrest if he did not step away from the officers and § 87(2)(b) as he attempted to take a video of the incident. In his testimony, PO Michael Williams revealed that he threatened to arrest § 87(2)(b) However, PO Williams could not recall the specific action § 87(2)(b) made that prompted him to threaten him with arrest, but remembered it would not have constituted as criminal activity. But in lieu of an arrest, PO Williams stated he would have issued a summons for failure to obey a lawful order.

An officer may make an arrest without a warrant “for a crime (within presence or not) and reasonable cause exists that arrested person committed the crime” (encl. 1k-l). NYPD Patrol Guide, Section 208-01(3)(b)

PO Williams admitted that § 87(2)(b) s actions which prompted his threat to arrest would not have constituted criminal activity. § 87(2)(g)

▪ **Allegation I: Other – PO Juan Rodriguez intentionally made a false official statement when he said force was not used to remove § 87(2)(b) from his vehicle.**

When PO Juan Rodriguez was asked if he pulled § 87(2)(b) out of the car, he stated “No. I asked him to step out of the car.” According to PO Rodriguez, § 87(2)(b) compliantly stepped out of the vehicle. However, in his memo book, PO Rodriguez § 87(2)(g) wrote, “Male was still very aggressive, pulled out of car, safety.” In addition to PO Rodriguez’s own memo book entry, § 87(2)(b) and PO Michael Williams also told the CCRB that PO Rodriguez pulled § 87(2)(b) out of the vehicle.

Section 203-08 of the Patrol Guide states that “the intentional making of a false statement is prohibited” and an officer may be terminated for providing a false official statement (encl. 1a). To prove that a false official statement has occurred, it must be shown that: 1) a statement was made during an official investigation; 2) that the statement was material to the investigation, and; 3) that the statement was intentionally false (encl. 1m-s). Dep’t. of Correction v. Centeno OATH Index No. 2031/04 (Mar. 16, 2005)

§ 87(2)(g)

§ 87(2)(g)

▪ § 87(4-b), § 87(2)(g)

▪

Team: 5

Investigator: _____	Rebecca Ho _____	7/02/2014 _____
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date



POLICE DEPARTMENT CITY OF NEW YORK

February 18, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Juan Rodriguez
Tax Registry No. 937408
19 Detective Squad
Disciplinary Case No. 2014-12197

Charges and Specifications:

1. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty, in the vicinity of 120 West 82nd Street, New York County, abused his authority as a member of the New York City Police Department in that he stopped Julio Mendoza without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 1 - STOP & FRISK
2. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty, in the vicinity of 120 West 82nd Street, New York County, abused his authority as a member of the New York City Police Department in that he frisked Julio Mendoza without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 2 - STOP & FRISK
3. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty, in the vicinity of 120 West 82nd Street, New York County, abused his authority as a member of the New York City Police Department in that he searched Julio Mendoza without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 3 - STOP & FRISK
4. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty in the vicinity of 120 West 82nd Street, New York County, did wrongfully use force against Julio Mendoza, in that he grabbed Mr. Mendoza and pulled him out of his vehicle.
P.G. 203-11, Page 1, Paragraph 2 - USE OF FORCE

Appearances:

For CCRB-APU: Raasheja Page, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038

Hearing Dates:

November 17 and 24, 2015

Decision:

Guilty

Trial Commissioner:

DCT Rosemarie Maldonado

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 17 and 24, 2015. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Julio Mendoza, Leonid Trubman and Sergeant Michael Williams as witnesses. Respondent testified on his own behalf and entered the hearsay statement of Sergeant John O'Connor into evidence. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The instant matter arose when two New York City Department of Consumer Affairs investigators parked in an area designated for NYPD vehicles. The following facts are

undisputed. At approximately 1120 hours on June 20, 2013, Inspectors Julio Mendoza and Leonid Trubman arrived at 120 West 82nd Street in Manhattan to conduct an inspection at a drycleaner. (Tr. 16, 62-63) They had driven to that location in a black Prius owned by the City. Trubman was driving and Mendoza was in the passenger seat. They found a space in front of the drycleaner and parked.

That day Respondent was assigned to the day tour of the 20th Precinct Anti-Crime Unit. He arrived at the precinct, located on West 82nd Street, and had difficulty finding parking. He left his car in front of the precinct "poorly parked" so that he could sign in and change. (Tr. 119-20) When he returned, in plainclothes, to move his vehicle, he observed Trubman and Mendoza's Prius parked in a spot designated for police officers. (Tr. 122-23). Respondent pulled up to the Prius on the passenger side, pointed out the sign and informed Trubman and Mendoza that they were in a police parking area. (Tr. 62-63, 123) Trubman showed Respondent a Consumer Affairs plaque and moved the vehicle further up the block. (Tr. 63, 125)

Respondent remained in his vehicle for approximately twenty minutes, checking phone messages. (Tr. 153) During this period Trubman and Mendoza conducted the inspection and returned to the Prius to complete paperwork. Respondent asked Police Officer Michael Williams, who was in uniform, for his assistance and they approached the Prius. (Tr. 128) During their interaction, Mendoza exited the vehicle and was frisked and searched. (Tr. 91, 129, 156-59)

When Mendoza asked to speak to Respondent's supervisor, he was escorted to the precinct. (Tr. 23-25) He spoke with Sergeant John O'Connor and left without filing a formal complaint. (Respondent's Ex. ("RX" A). No summonses were issued. (Tr. 58) Mendoza later

called 311 and initiated a complaint against Respondent. Similarly, Respondent called 311 and initiated a complaint against Mendoza. (Tr. 29, 162-163)

At issue is whether Respondent engaged in misconduct by stopping, frisking, searching Mendoza and whether he used unauthorized force. For the reasons set forth below, I find that Respondent is guilty of the charged misconduct.

According to Mendoza, Respondent pulled up next to their vehicle and began "screaming" that their parking space was reserved for police officers. (Tr. 16) He contended Respondent did not identify himself but pointed out a sign for police parking on that street. Mendoza asserted that it was blocked by a tree and commented to Respondent that the tree should be trimmed. (Tr. 17-19)

According to Mendoza, it took about 20 minutes for them to park further up the block and conduct the inspection. Afterwards, he sat in the vehicle with Trubman to complete paperwork. They were in the car for "less than a minute" when Respondent banged on the car and demanded that he exit. (Tr. 20, 49) Respondent then "opened the door and grabbed my hand and pulled [him] out." He was then taken to the rear of the car, pushed against the trunk, frisked and searched. (Tr. 20-22, 54) At trial, Mendoza claimed that Respondent pulled his wallet from his right back pocket and began looking inside. Mendoza was carrying his metal Consumer Affairs shield in a leather case, as well as his wallet.¹ Mendoza denied threatening, cursing at or making any physical moves toward Respondent. (Tr. 28)

¹ On cross-examination, the APU prosecutor stipulated that a transcript of Mendoza's initial CCRB interview indicated that he told investigators his wallet and his metal shield were in his back pocket and agreed that the items created a noticeable bulge. (Tr. 33-34) The transcript was not entered into evidence but was read on the record to Mendoza. Mendoza did not recall being asked these questions or giving those answers. It was further stipulated that at the same interview, the transcript provides that Mendoza told investigators that he pulled his wallet from his own pocket. When confronted with this statement, Mendoza testified, "I guess I told them that." (Tr. 36)

Mendoza asked to see a supervisor and after several requests was escorted to the precinct. (Tr. 23-24) He recalled that the sergeant apologized and suggested it had been a misunderstanding. According to Mendoza, Respondent began screaming, "jumping and spitting," and he detected a "real strong smell" of alcohol on his breath. (Tr. 26, 57) When his wallet was returned to him, he noticed that \$50 was missing. He immediately informed the sergeant about the money and added that he believed Respondent was drunk. (Tr. 27-28)² On the advice of his Consumer Affairs supervisor, he later called 311 and made a complaint.

Mendoza's co-worker, Mr. Trubman, corroborated much of his account. He agreed that the police parking sign was blocked by a large tree and that Mendoza commented that the tree should be trimmed. They then quickly moved their car to a legal spot. (Tr. 63, 84) Trubman also confirmed that, after they completed the inspection at the drycleaner, the officers "yanked inspector Mendoza out of the car" and "got him leaning on the car with both of his hands on the trunk" (Tr. 65) When asked on cross-examination if he saw the officers physically remove Mendoza from the car, he acquiesced, "I didn't see . . . it happened very quickly. I saw the door open. Somebody grabbed him and he was out" (Tr. 72) He described Respondent as "very aggressive" and saw the officers go through Mendoza's pockets. Trubman recalled feeling "a little bit shocked because it was unprovoked." (Tr. 66, 69) However, unlike Mendoza, he testified that Respondent showed them a Department parking plaque and did not recall Respondent banging on the car. (Tr. 63, 71-72) Trubman tried to film the incident on his cell

² An interview with Sergeant O'Connor was entered into evidence. O'Connor told CCRB investigators that though Mendoza was disorderly when he came into the precinct, he calmed down and did not wish to make a formal complaint. O'Connor stated that he was not told anything about cursing, or a frisk and did not recall any allegations of intoxication or missing money. (RX A at 6-13).

phone but was told he would be arrested if he continued to do so. As a result, he was only able to snap one still photo. (Tr. 67; CCRB Ex. 1)

When they later met with the precinct supervisor, Trubman recounted that the sergeant suggested that they could “keep [the incident] between us,” as they were all City employees. (Tr. 70) He concurred with Mendoza that he smelled alcohol on Respondent’s breath. (Tr. 80)³

Respondent presented a markedly different account of how the incident escalated. He testified at trial that as soon as he first approached the vehicle to inform Trubman he was parked in a police spot, Mendoza became irate, directing curse words at him. Trubman, Respondent testified, was “no issue” and moved the vehicle, albeit into a spot near a fire hydrant.⁴ As they moved, Mendoza continued to curse and Respondent was “astonished” by his behavior. (Tr. 124-26)

Respondent pulled into the spot and remained in his vehicle for some time, checking messages on his phones. As he exited about ten to twenty minutes later, he looked at his mirror and noticed Mendoza waving his arms in the air, sticking his head out of the car, yelling, “fucking asshole, fucking cops.” (Tr. 126-27) Believing that Mendoza might be an EDP, or that the Consumer Affairs plaque might be phony, Respondent flagged down Williams, who was in uniform, to “take a walk with him.” (Tr. 127-28) Respondent explained that he thought having a uniformed officer might help because “maybe [Mendoza] misunderstood me.” (Tr. 128)

Respondent recounted that Mendoza was alone in the vehicle, still cursing at him, as he and Williams approached. He recalled, “I walk over to him, and I go, sir is there a problem? He is still cursing . . . And I am like completely shocked. . . I said to myself maybe he doesn’t

³ A fitness for duty report, prepared by Respondent’s Commanding Officer, Inspector Brian McGinn, provided that Respondent was observed on the date in question and was found to be fit for duty. (RX C)

⁴ Respondent agreed that no summons was issued for illegal parking. (Tr. 157)

understand. Maybe it will be better if I explain it to him outside of the car." (Tr. 129) He asked Mendoza to step out and Mendoza opened the door. Respondent put his hand on the door for safety and "escort[ed]" Mendoza to the rear of the vehicle, placing his hand on his arm. He claimed that no force was used and Mendoza walked "on his own free will and accord." (Tr. 129-30, 156)

Because Mendoza was lunging, spitting and yelling, Respondent explained that he feared for his safety. However, he told Williams not to handcuff him as he was only trying to conduct an investigation. (Tr. 130-31) Respondent acquiesced that though Mendoza was acting aggressively, he made no verbal threats of violence or attempts to physically attack Respondent. (Tr. 158-60)

Respondent further stated that he saw "things . . . like bulges" in Mendoza's pockets and conducted a pat-down and a search. He frisked the waistband and pocket areas and felt something "hard [like] metal." He asked Mendoza to take it out of his pocket. Mendoza complied and handed Respondent a wallet containing a metal Consumer Affairs shield. (Tr. 131-32, 159)

At this point, Respondent recalled that Trubman tried to inquire about what was happening. (Tr. 133-34) He testified that Mendoza was encouraging Trubman to record the incident and was trying to get the attention of passersby. Respondent testified he had "never had a situation like this ever with somebody" and he asked Mendoza, "What is your problem?" Mendoza then said he wanted to speak to Respondent's supervisor. Respondent retorted that he wanted to speak to Mendoza's Consumer Affairs supervisor. (Tr. 135)

They then walked to the precinct, where Respondent stood with Sergeant O'Connor while he spoke with Mendoza and Trubman. At one point, Respondent recalled interjecting that

Mendoza might be drunk and Mendoza then alleged that Respondent was drunk. The situation ended, according to Respondent, when Mendoza stated that he was missing fifty dollars and went to look for it outside. (Tr. 138-39) He did not return to the precinct. After Mendoza had filed a complaint against him, Respondent called 311 and filed a complaint against Mendoza. (Tr. 142, 163)

Summarizing the incident, Respondent stated, "I wanted to find out who he was, his identification, and I also wanted for my safety. He was acting aggressive . . . lunging towards me, flailing his arms . . . cursing at me, creating . . . a possible violent situation. I wanted to find out if he had any weapons on him . . . I would rather be safe than sorry . . . I was like doing an investigation. Maybe possible weapon, possibly a forged instrument, disorderly conduct. . . I was just trying to conduct an investigation . . . Once I discovered what his credentials are . . . I tried to give him . . . a professional courtesy as a City employee, I said to myself . . . maybe this is a misunderstanding" (Tr. 143-45) He further explained that Anti-Crime police officers are "proactive" and "don't walk away from situations" where they believe there is a possible crime. (Tr. 166) He stated that he was "not really" upset during the course of the incident and remained "very calm." (Tr. 161)

Additional testimony was provided by Sergeant Michael Williams. Williams recalled that Respondent did not elaborate on why he needed assistance but stated that he had "no problem" backing up another officer. He agreed Respondent did not bang on the Prius as they approached. (Tr. 98) He did testify, however, that Respondent, not Mendoza, opened the Prius door and that Respondent "grabbed the gentleman by the arm and took him out of the vehicle." On cross-examination, Williams explained that Respondent did not drag Mendoza from the vehicle and that Mendoza did not resist. (Tr. 99) When he saw Respondent remove Mendoza out

of the vehicle, he believed they were about to effectuate an arrest until Respondent told him to put his handcuffs away. (Tr. 91)

Once Mendoza was out of the vehicle, Williams stated that he and Respondent had a "heated argument." He did not recall the substance of what was said but stated that Mendoza was more agitated than Respondent. (Tr. 92) He recalled that Trubman tried to "add his two cents" and got close to the officers. Williams instructed him to stay back and warned him that he could be arrested for disobeying a lawful order. (Tr. 93)

Williams could not recall whether Mendoza handed his wallet to Respondent or whether Respondent removed it from his person. (Tr. 94-95) Williams confirmed, however, that he did observe Respondent frisking Mendoza and removing ID from his wallet. (Tr. 94) He stated that he did not witness anything that he believed could be a weapon and was not in fear for his safety at any point during the encounter. (Tr. 94-95)

At issue is whether Respondent was authorized to stop, frisk and search Mendoza and whether he used force wrongfully. Whether Respondent was justified in elevating the level of this encounter turns on a thorough consideration of all relevant facts. A tribunal must be particularly careful to assess the factual circumstances known by the police officer at the time. *People v. Medina*, 107 A.D.2d 302 (2nd Dept. 1985)

Police action beyond a request for information requires an elevated level of suspicion regarding criminal activity. Patrol Guide Procedure 212-11 addresses the criteria for conducting a Level 3 stop: When a uniformed member of service reasonably suspects a person has "committed, is committing or is about to commit a felony or a Penal Law misdemeanor," that officer may "stop [the] person and request identification and explanation of conduct." *See also People v. DeBour*, 40 NY2d 210 (1976) Reasonable suspicion has been defined as "the quantum

of knowledge sufficient to induce an ordinarily prudent and cautious [officer] under the circumstances to believe criminal activity is at hand." *People v. Cantor*, 36 N.Y.2d 106, 112-113 (1975); see also P.G. 212-11, p.2. As articulated by the courts, reasonable suspicion "may not rest on equivocal or innocuous behavior that is susceptible of an innocent as well as a culpable interpretation." *People v. Brannon*, 16 N.Y.3d 596 (2011), citing *People v. Carrasquillo*, 54 N.Y.2d 248 (1981).

After closely observing Respondent at trial, and reviewing the record as a whole, this tribunal is convinced that much of his testimony concerning the stop, frisk, search and use of force was not worthy of belief. Specifically, I did not credit Respondent's account that Mendoza acted in a manner justifying this elevated level of police action. I do not doubt that Mendoza expressed displeasure over Respondent's directive to move the Prius. In fact, at trial Mendoza still seemed annoyed about the encounter. His described conduct, however, did not provide a reasonable basis to suspect criminal activity. More significantly, much of Respondent's statement that he thought the Consumer Affairs parking plaque was a forged instrument had the markings of an after-thought tailored to bolster his defense. Within this context, Respondent's decision to stop Mendoza was not consistent with permissible factors described in the Patrol Guide.

This tribunal also finds that Respondent "wrongfully used force against Mendoza by grabbing him and pulling him out of his vehicle." Although Respondent acknowledged placing his hand on Mendoza "for safety reasons," he maintained that Mendoza himself opened the car door and "got out on his own free will and accord." (Tr. 130, 144) Other witnesses, however, credibly discredited this account by testifying that Respondent did, in fact, forcibly remove Mendoza from the vehicle. Mendoza recounted that Respondent opened the Prius door, grabbed

his right wrist and “pulled [him] out” of the vehicle. (Tr. 21) I found that his statement as to the type of force used was credible and devoid of undue exaggeration or embellishment. For example, when asked if he sustained injuries, he readily admitted that he had not. (Tr. 58) Moreover, Mendoza’s testimony was corroborated by that of Trubman, a very credible witness who asserted that Respondent “yanked” Mendoza out of the vehicle. Though Trubman did concede that this happened very quickly, he remained consistent in his position that Mendoza was “grabbed” and taken out of the vehicle. (Tr. 71-72) Officer Williams also testified that Respondent opened the door and “grabbed the gentleman by the arm and took him out of the vehicle.” (Tr. 90) Based on the credible testimony of three witnesses, I find that Respondent did grab Mendoza and pull him from the vehicle.

Having made this finding, the inquiry turns to whether Respondent had any justification to forcibly remove Mendoza from the vehicle. I find that he did not.

All uniformed members of the service are “responsible and accountable for the proper use of force under appropriate circumstances” and should use only “minimum necessary force.” Patrol Guide Procedure 203-11. The tribunal is unpersuaded that the use of any force was necessary here. As outlined above, there was no reasonable suspicion that Mendoza had committed or was committing a crime or that Respondent’s safety was threatened. In fact, Respondent acquiesced that Mendoza did not verbally threaten force nor make any actual attempts to physically attack him. (Tr. 160) Within this context, Respondent’s claim that Mendoza was “belligerent” was insufficient. In fact, Officer Williams confirmed that although Mendoza was agitated he was not in fear for his safety at any point during the encounter. (Tr. 94-95) In sum, the credible evidence failed to establish reasonable circumstances that would justify Respondent placing his hands on Mendoza and removing him from a vehicle.

The incident did not end here. Respondent admitted that he frisked Mendoza. “Absent reasonable suspicion of involvement in a crime, there [is] no basis to stop and detain appellant and, thus, no basis for even considering conducting a frisk.” *Matter of Darryl C.*, 98 A.D.3d 69, 74 (1st Dep’t 2012), *citing DeBour*, 40 N.Y.2d at 223. Inasmuch as Respondent had insufficient legal authority to stop Mendoza, it follows that he had no authority to conduct a frisk subsequent to the unlawful stop.

It is also important to note that Respondent was mistaken in believing that a bulge in Mendoza’s back pocket immediately created the reasonable suspicion required for a frisk as set forth in Patrol Guide provision 212-11. Articulable factors about the bulge’s size, shape, and placement must “justify the conclusion—that is, the reasonable suspicion—that the bulge is a weapon.” *See United States v. Jackson*, 2015 U.S. Dist. LEXIS 98980 (S.D.N.Y. July 29, 2015). Although Respondent articulated that the wallet was larger than the one displayed in court by Mendoza, this was insufficient within this context to justify further action. The “mere observation of an undefinable bulge in a person’s pocket is insufficient as a basis for a frisk or search.” *People v. Howard*, 147 A.D.2d 177, 181 (1st Dep’t. 1989).

As the stop and frisk were unlawful, the subsequent search of Mendoza was also without sufficient legal authority. The tribunal acknowledges that Mendoza initially told CCRB investigators that he had pulled out his own wallet but altered that narrative at trial, testifying that Respondent went inside his pockets and “dump[ed]” them. However, Respondent, after being expressly asked by counsel on cross-examination, whether he “searched Mendoza or not” answered affirmatively, confirming that a search did take place. (Tr. 159) Thus, Respondent conducted an unauthorized search.

In making these findings I note that it is troubling that Respondent seemingly targeted Mendoza because he balked at being asked to move his parked vehicle. Improper police action is punishable if an officer acted "with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper." *McGinle v. Town of Greenburgh*, 48 N.Y.2d 949, 951, 425 N.Y.S.2d 61, 62 (1979); *Police Department v. Dowd*, OATH Index No. 1189/90 (Oct. 5, 1990), *aff'd in part and rev'd in part on other grounds*, Comm'r Decision (Nov. 20, 1990). Here, the preponderance of credible evidence shows that Respondent acted punitively and in bad faith when he gratuitously stopped Mendoza, grabbed him and forced him out of the car. Accordingly, I find that the preponderance of the credible evidence supports a finding that Respondent engaged in the misconduct set forth in Specifications 1, 2, 3 and 4.

PENALTY RECOMMENDATIONS

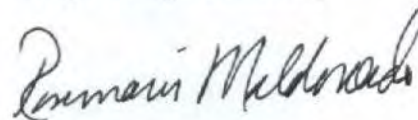
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Administrative Prosecutor seeks a penalty of eight vacation days. Taking into account the circumstances of this matter, the gratuitous nature of the conduct as well as the fact that Respondent was the subject of charges and specifications to which he pled Guilty in 2012, ten (10) vacation days is a more appropriate penalty to address the misconduct at hand.

This penalty is also consistent with recent Department precedent in similar matters. Recently, a sixteen-year detective forfeited twelve vacation days for unlawfully stopping one

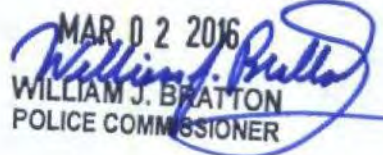
individual; unlawfully frisking two individuals, pushing and punching one of the individuals. *Disciplinary Case No. 2014-11925* (November 20, 2015). Similarly in *Disciplinary Case No. 2014-11562* (September 23, 2015), a five-year police officer forfeited fifteen (15) vacation days for unlawfully frisking individual and pushing his head into a fence, causing injury. The instant matter can be distinguished as the force used was more moderate and did not result in any injuries to the complainant. As such, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

MAR 02 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JUAN RODRIGUEZ
TAX REGISTRY NO. 937408
DISCIPLINARY CASE NO. 2014-12197

Respondent was appointed to the Department on January 10, 2005. His last three evaluations were 4.0 overall ratings of "Highly Competent" in 2014 and 2015. He has six medals for Excellent Police Duty and one medal for Meritorious Police Duty.

In 2012, Respondent pled guilty to failing to properly safeguard his firearm and failing to vouch for the identification of an individual who he had arrested. He received a penalty of twenty vacation days.

For your consideration.

Rosemarie Maldonado
Deputy Commissioner Trials