

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #12	CCRB Case #: 201700134	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 12/30/2016 10:53 PM	Location of Incident: [REDACTED]	Precinct: 40	18 Mo. SOL 6/30/2018	EO SOL 6/30/2018	
Date/Time CV Reported Thu, 01/05/2017 5:07 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 01/05/2017 5:07 PM		

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Fray Severinojimenez	06137	§ 87(2)(b)	PSA 7
2. POM Joseph Millosky	15928	§ 87(2)(b)	PSA 7
3. POM Ronald Tavaréz	20041	§ 87(2)(b)	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Galileo Garcia	01427	§ 87(2)(b)	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A . POM Fray Severinojimenez	Abuse of Authority: At § 87(2)(b) [REDACTED] in the Bronx, Police Officer Fray Severinojimenez stopped § 87(2)(b) [REDACTED].	A . § 87(2)(g) [REDACTED]
B . POM Fray Severinojimenez	Force: At § 87(2)(b) [REDACTED] in the Bronx, Police Officer Fray Severinojimenez used physical force against § 87(2)(b) [REDACTED].	B . § 87(2)(g) [REDACTED]
C . POM Joseph Millosky	Force: At § 87(2)(b) [REDACTED] in the Bronx, Police Officer Joseph Millosky used physical force against § 87(2)(b) [REDACTED].	C . § 87(2)(g) [REDACTED]
D . POM Ronald Tavaréz	Force: At § 87(2)(b) [REDACTED] in the Bronx, Police Officer Ronald Tavaréz used physical force against § 87(2)(b) [REDACTED].	D . § 87(2)(g) [REDACTED]
E . POM Fray Severinojimenez	Discourtesy: En route to the PSA7 stationhouse, Police Officer Fray Severinojimenez spoke discourteously to § 87(2)(b) [REDACTED].	E . § 87(2)(g) [REDACTED]
F . POM Fray Severinojimenez	Other: There is evidence suggesting Police Officer Fray Severinojimenez provided a false official statement in violation of PG 203-08	F . § 87(2)(g) [REDACTED]

### Case Summary

On January 5, 2017, § 87(2)(b) filed this complaint via the CCRB's Call Processing System.

On December 30, 2016, at approximately 10:53 p.m., § 87(2)(b) was inside of § 87(2)(b) in the Bronx, exiting a stairwell into the lobby when Police Officer Fray SeverinoJimenez stopped (**Allegation A**) and questioned him. While providing identification, a half-gram bag of marijuana fell out of § 87(2)(b)'s pocket. PO SeverinoJimenez then grabbed § 87(2)(b)'s left arm, but § 87(2)(b) pulled away from him. After he attempted to pull away, § 87(2)(b) was taken to the ground and placed in handcuffs by PO SeverinoJimenez, Police Officer Joseph Millosky, and Police Officer Ronald Tavarez, all of PSA7 (**Allegation B, C, and D**).

§ 87(2)(b) was then walked to a marked police van by PO Millosky. En route to the PSA7 to the stationhouse, § 87(2)(b) called PO SeverinoJimenez a "house nigger" and he said "fuck you." In response, PO SeverinoJimenez allegedly said, "Fuck you too" or "You asshole" (**Allegation E**).

The CCRB found evidence suggesting that PO SeverinoJimenez provided a false official statement regarding this incident (**Allegation F**) and an IAB Spin-off was generated under CCRB case number 201702234 (Board Review 04)

§ 87(2)(b) was arrested and charged with § 87(2)(b) (Board Review 01).

Video footage of this incident was obtained from a New York City Housing Authority (NYCHA) surveillance camera located inside of § 87(2)(b) in the Bronx (Board Review 02).



201700134\_20170324\_1504\_DM.mp4

(Video1)



201700134\_20170324\_1502\_DM.mp4

(Video2)

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of May 15, 2017, the Notice of Claim Inquiry with the NYC Comptroller's Office was still pending.
- § 87(2)(b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or on behalf of § 87(2)(b) (Board Review 04).
- This is the first CCRB complaint filed against PO SeverinoJimenez, who has been a member of service for one year (see officer history).

- This is the first CCRB complaint filed against PO Tavaréz, who has been a member of service for one year (see officer history).
- This is the first CCRB complaint filed against PO Millosky, who has been a member of service for two years (see officer history).

### **Findings and Recommendations**

#### **Allegation A – Abuse: At § 87(2)(b) in the Bronx, Police Officer Fray Severino Jimenez stopped § 87(2)(b)**

It is undisputed that PO Severino Jimenez was the officer who stopped § 87(2)(b). It is also undisputed that PO Severino Jimenez was the only officer to speak with § 87(2)(b) asking him questions about where he was coming from and requesting to see his identification.

During his in-person statement at the CCRB on January 12, 2017, § 87(2)(b) stated that on December 30, 2016, he went to § 87(2)(b) to visit his mother, § 87(2)(b) who lives in § 87(2)(b) of the building (Board Review 05). § 87(2)(b) was alone and immediately after arriving at the location he went up to the third floor. After he went up to his mother's apartment, knocked on her door, waited for approximately 30 seconds, and decided that his mother was not home, § 87(2)(b) returned to the lobby of the building through a staircase to wait for her outside of the building. As § 87(2)(b) was exiting the stairwell into the lobby of the building, PO Severino Jimenez, PO Tavaréz, and PO Millosky were outside of the stair case. PO Severino Jimenez said, "Hey guy, where are you coming from?" § 87(2)(b) responded by telling PO Severino Jimenez that he was on the third floor of the building visiting his mother. After, PO Severino Jimenez asked § 87(2)(b) for his identification and § 87(2)(b) provided it. § 87(2)(b) asked PO Severino Jimenez what he did wrong. PO Severino Jimenez said, "Well you're trespassing."

On January 20, 2017, § 87(2)(b) provided a Verizon Wireless bill to the investigation that was addressed to his mother, "§ 87(2)(b)," at "§ 87(2)(b)" (Board Review 11).

The investigation obtained the December 30, 2016, NYCHA security footage from the lobby of § 87(2)(b) in the Bronx (Board Review 02). The angles relevant to the investigation capture the inside lobby area immediate to the main entrance of the building (Board Review 06), hereafter referred to as Video1, and a lobby hallway in which the elevator bank and the back entrance to the building can be seen (Board Review 07), hereafter referred to as Video2.

The investigation obtained video footage starting approximately one hour prior to the captured interaction. § 87(2)(b) is not pictured in the surveillance footage until he enters the building in Video1.

At 0:04 of Video1, § 87(2)(b) is pictured entering the lobby of § 87(2)(b) alone. He continues into the frame of Video2, entering the frame at 1:10. Immediately after § 87(2)(b) enters the frame of Video2 he stands in front of the elevator alone, depicted between 1:10 and 1:14. The elevator opens at 1:15 and six individuals enter the elevator. At 1:23 § 87(2)(b) turns away from the elevator, and he enters a door directly adjacent to the elevator, which by the account of all parties leads to a staircase.

At 1:15 of Video2, three individuals, identified by PO Severino Jimenez as himself and his partners (Board Review 08), appear at the top of the frame standing outside of the back of the entrance. PO Severino Jimenez and his partners stand at that door until 2:06, attempting to enter the building. At 2:06, the three officers walk away from the back door, exiting the frame of the camera.

PO SeverinoJimenez, PO Tavarez, and PO Millosky re-enter from the bottom of Video2's frame once more at 3:06. At 3:13, while the three officers are standing at outside of the staircase, § 87(2)(b) exits from the same door that he entered for the first time since he went into the staircase at 1:23. As soon as he exits, he is stopped by the officers.

§ 87(2)(b) entered the staircase once. The only time § 87(2)(b) exits the staircase is the moment he is stopped by PO SeverinoJimenez.

During his CCRB statement, PO SeverinoJimenez stated that he was standing outside of § 87(2)(b) in the Bronx when he observed § 87(2)(b) for the first time standing inside of the lobby of the building (Board Review 08). § 87(2)(b) was standing and speaking with an unidentified individual in front of the building elevators. PO SeverinoJimenez observed § 87(2)(b) go into a stairwell and remain there for approximately five to 10 seconds, after which § 87(2)(b) exited the stairwell and he returned to the same position in front of the elevator with the unidentified individual. § 87(2)(b) and the unidentified individual conversed for another 45 seconds, and then § 87(2)(b) returned into the stairwell once more for another five to 10 seconds, re-exiting, and returning in front of the elevator once more. PO SeverinoJimenez's observations led him to suspect that § 87(2)(b) was trespassing in the building. PO SeverinoJimenez's sole reason for suspecting that § 87(2)(b) was trespassing was the action of § 87(2)(b) entering the stairwell twice for a short amount of time and then § 87(2)(b) returning in front of the elevators. PO SeverinoJimenez did not suspect § 87(2)(b) of committing any other crimes at that time.

PO SeverinoJimenez further stated that he approached and his partners entered the building and approached the two individuals, at which point PO SeverinoJimenez "made eye contact" with the unidentified individual and the unidentified individual immediately walked away into an open elevator and he took the elevator up into the building.

Upon approaching § 87(2)(b) PO SeverinoJimenez asked him if he lived in the building. § 87(2)(b) said that he did not live in the building, but his mother did. § 87(2)(b) then said, "Are you going to harass me?" PO SeverinoJimenez then requested § 87(2)(b)'s identification and § 87(2)(b) complied.

At the conclusion of PO SeverinoJimenez's interview, he was presented the video footage obtained by the investigation. At the conclusion of the video, PO SeverinoJimenez was asked if seeing the video footage either helped him remember the incident more clearly or if he had anything additional to add, to which PO SeverinoJimenez said, "No."

Both PO Tavarez and PO Millosky stated that they were patrolling the grounds of the Mott Haven NYCHA complex when PO SeverinoJimenez informed them that he observed a suspicious individual going "in and out" of § 87(2)(b) (Board Review 09) (Board Review 10). Neither officer observed § 87(2)(b) until PO SeverinoJimenez informed them that he was suspicious of § 87(2)(b). The officers then went into the building to conduct a vertical patrol of the building, a tactic used by PSA officers in which they go to the top floor of a building and patrol the building floor by floor. When the officers entered the building and they approached the elevators to take it to the top floor, § 87(2)(b) exited the stairwell. PO SeverinoJimenez then approached § 87(2)(b) he asked him if he lived in the building, and he asked him to provide identification.

Given that the video evidence corroborates § 87(2)(b)'s account of his movements prior to being stopped, the Verizon Bill corroborated § 87(2)(b)'s claim that he was visiting someone who lives in the building, and that PO Millosky and PO Tavarez both did not see § 87(2)(b) prior to PO SeverinoJimenez stopping him, the investigation is crediting that § 87(2)(b) entered

the location, entered the staircase once, and then returned to the lobby where he was immediately stopped by PO Severino-Jimenez. He was in the building for approximately one minute prior to being stopped by PO SeverinoJimenez.

**Patrol Guide Procedure 212-60** (Board Review 12) To assist the Housing Authority in enforcing its rules and to ensure safe inhabitability in the Housing Authority's buildings, members of the service perform interior patrols of said buildings. During the interior patrol, members of the service must be alert for persons who may be violating Housing Authority rules and regulations, including potentially unauthorized persons within NYCHA property. If such behavior is identified, members of the service can ask if he/she lives in the building, if he/she is visiting someone in the building, and/or if he/she has business in the building.

**People v. De Bour** 40 N.Y. 2d 210 (1976) (Board Review 21) An officer requires reasonable suspicion of criminality to stop an individual.

PO SeverinoJimenez stopped § 87(2)(b) solely on the suspicion of criminal trespass, a suspicion on his observation that § 87(2)(b) continually entered and exited the stairwell and then standing in front of the elevator. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation B – Force: At § 87(2)(b) in the Bronx, Police Officer Fray SeverinoJimenez used physical force against § 87(2)(b)**

**Allegation C – Force: At § 87(2)(b) in the Bronx, Police Officer Joseph Millosky used physical force against § 87(2)(b)**

**Allegation D – Force: At § 87(2)(b) in the Bronx, Police Officer Ronald Tavarez used physical force against § 87(2)(b)**

It is undisputed that while § 87(2)(b) was presenting his identification to PO SeverinoJimenez, a small clear baggie of marijuana fell onto the floor. It is undisputed that after the officers attempted to apprehend § 87(2)(b) for having marijuana visible to the public, § 87(2)(b) resisted the officers' attempts to place him in handcuffs. It is undisputed that § 87(2)(b) resisted the officers' attempts to apprehend him by locking his arms and attempting to pull away from the officers. It is undisputed that the officers used force to overcome § 87(2)(b)'s resistance. It is undisputed that the officers took § 87(2)(b) to the ground by holding one of his legs and causing him to lose balance. It is undisputed that while § 87(2)(b) was on the ground he continued to lock his arms and move his body away from the officers. Finally it is undisputed that the officers placed pressure on § 87(2)(b)'s back and the side of his face, and they forced his arms behind his back to place him into handcuffs.

§ 87(2)(b) stated that when he was initially stopped, he believed that he was stopped unjustly. After the baggie of marijuana fell out of his pocket, PO SeverinoJimenez did not make any statements regarding the marijuana, but instead PO SeverinoJimenez told him that he “was trespassing” (Board Review 13). PO SeverinoJimenez, PO Millosky, and PO Tavarez, then attempted to place § 87(2)(b)'s hands behind his back and into handcuffs. § 87(2)(b) attempted to pull free away from the officers because the only reason for his arrest provided to him was that he was “trespassing” and § 87(2)(b) did not believe he was trespassing because he was visiting his mother.

Additionally § 87(2)(b) stated that after he attempted to pull away, all of the officers grabbed either his arm or upper body and they attempted to place him up against a wall. When they were unable to do so, an officer, identified by the investigation as PO Millosky, “swept” § 87(2)(b)

§ 87(2)(b)'s leg and § 87(2)(b) was taken to the ground. While on the ground, an officer placed heavy pressure on § 87(2)(b)'s back and an officer "twisted" § 87(2)(b)'s arm to place it in handcuffs. § 87(2)(b) stated that he sustained a bruise to his arm, scratches on his legs, and he felt back pain as a result of the force used (Board Review 03).

On January 10, 2017, § 87(2)(b) sought medical treatment at § 87(2)(b) (see medical records). § 87(2)(b) complained of back pain persisting for ten days. He was diagnosed with a strain of his fascia and tendon at neck level and was prescribed Acetaminophen.

Video2 depicts the apprehension of § 87(2)(b). Video2 shows that PO SeverinoJimenez, PO Tavares, and PO Millosky all assisted in the taking of § 87(2)(b) to the ground, the containment of § 87(2)(b) while he was on the ground, and the handcuffing of § 87(2)(b) (Board Review 07).

**NYS Penal Law 221.10** (Board Review 14) A person is guilty of criminal possession of marijuana in the fifth degree when s/he knowingly and unlawfully possesses marijuana in a public place that is open to public view.

**Patrol Guide Procedure 221-01** (Board Review 15) Force may be used when it is reasonable to place a person in custody or to prevent escape from custody.

§ 87(2)(g)

**Allegation E – Discourtesy: En route to the PSA7 stationhouse, Police Officer Fray SeverinoJimenez spoke discourteously to § 87(2)(b)**

It is undisputed that PO SeverinoJimenez was in the transport van when § 87(2)(b) was taken to the PSA7 stationhouse.

§ 87(2)(b) stated that after he was detained he was taken to the transport van. En route to the stationhouse, § 87(2)(b) called PO SeverinoJimenez that he was a "house nigger" and he said "fuck you." In response to those two statements, PO SeverinoJimenez responded by saying either, "Fuck you too" or "You asshole." Additionally, PO SeverinoJimenez said, "We are going to add other charges on to you." PO SeverinoJimenez stated that the charge he was going to add was "lying to a police officer."

PO SeverinoJimenez stated that while transporting § 87(2)(b) to the stationhouse, § 87(2)(b) was yelling at him. § 87(2)(b) was yelling that he was "going to get" PO SeverinoJimenez, that PO SeverinoJimenez "just killed another black man," and that he would see PO SeverinoJimenez again. PO SeverinoJimenez and the other officers in the car did not respond to § 87(2)(b)'s statements in any way.

PO SeverinoJimenez did not recall § 87(2)(b) calling him a "house nigger" or § 87(2)(b) saying "fuck you" to him. PO SeverinoJimenez did not say, "Fuck you too," "You asshole," or "We are going to add other charges on to you." He did not say that he would add a charge of "lying to a police officer" against § 87(2)(b) (Board Review 08).

Both PO Tavares and PO Millosky stated that after the initial struggle inside of § 87(2)(b) they both stayed at the Mott Haven NYCHA complex and they resumed patrol (Board Review 09) (Board Review 10).

As of February 23, 2017, Sergeant Galileo Garcia was no longer a member of the service.

§ 87(2)(g)



§ 87(2)(g)

**Allegation F – Other Misconduct- There is evidence suggesting Police Officer Fray SeverinoJimenez provided a false official statement in violation of PG 203-08.**

The CCRB found evidence suggesting that PO SeverinoJimenez provided a false official statement regarding this incident. A spinoff case was made to under CCRB 201702234 (Board Review 04).

On March 9, 2017, PO SeverinoJimenez provided a statement to the CCRB regarding this incident. PO SeverinoJimenez stated that § 87(2)(b) moved toward him while torquing his upper body with a closed fist and his arm raised as if he was going to strike PO SeverinoJimenez. Police Officer Joseph Millosky then “grabbed” § 87(2)(b) stopping § 87(2)(b) from striking PO SeverinoJimenez. PO SeverinoJimenez stated that § 87(2)(b) did not fully “swing” at him; instead he did a partial swing because PO Millosky stopped him. While providing his statement to the CCRB, PO SeverinoJimenez stated that his and his partners’ use of force was in response to § 87(2)(b)’s attempt to strike him. He did not, at any point, state that the reason for the officers’ use of force against § 87(2)(b) was because § 87(2)(b) resisted arrest.

When presented with the video surveillance footage at the conclusion of his CCRB interview, PO SeverinoJimenez was afforded the opportunity to amend the narrative he provided. PO SeverinoJimenez did not amend his statement; he held that the moment that § 87(2)(b) assaulted/attempted to assault him was at 3:38 in Video2 (Board Review 08).

The video obtained in relation to this case does not depict § 87(2)(b) committing the actions alleged by PO SeverinoJimenez (Board Review 07).

The investigation has also found that PO SeverinoJimenez provided the same narrative regarding § 87(2)(b) attempting to strike him on the Arrest Report for § 87(2)(b) (Arrest number § 87(2)(b) (Board Review 01), the Criminal Court Complaint in regards to that arrest (Board Review 16), and the TRI report for that arrest (TRI § 87(2)(b) (Board Review 17).

On March 23, 2017, both PO Tavaréz and PO Millosky were interviewed at the CCRB and neither officer made mention of § 87(2)(b) attempt to strike any of them or PO SeverinoJimenez. Additionally, PO Millosky completed a TRI (Board Review 18) and at no point did he mention the strike in the TRI.

**Patrol Guide Procedure 203-08** (Board Review 19) An officer is prohibited from making a false official statement and that an officer found to have made such a statement will be subject to disciplinary action.

**Correction v. Centeno OATH Index No. 2031/04 (2005)** (Board Review 20) A false official statement must be proven to have been made, material, and intentionally false.

As noted above, PO SeverinoJimenez stated to the CCRB that § 87(2)(b) attempted to strike him with a closed fist. § 87(2)(g)

§ 87(2)(g)  
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When PO SeverinoJimenez was confronted with the video evidence which contradicted his account, he did not amend his statement. § 87(2)(g)

Squad: 12

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Signature Title/Print Date