

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Donaghy	Team: Squad #14	CCRB Case #: 201905294	<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) Saturday, 06/15/2019 3:00 PM	Location of Incident: [REDACTED]	Precinct: 25	18 Mo. SOL 12/15/2020	EO SOL 8/1/2021	
Date/Time CV Reported Tue, 06/18/2019 11:30 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/18/2019 11:30 AM		

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Evan Dukas	25207	§ 87(2)(b)	ESS 02
2. SGT Robert Reid	3724	§ 87(2)(b)	PSA 5
3. DTS John Facchini	04188	§ 87(2)(b)	ESS 02

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Yoon	12023	§ 87(2)(b)	PSA 5
2. POF Ebony Burgess	29735	§ 87(2)(b)	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A . SGT Robert Reid	Abuse of Authority: Sergeant Robert Reid entered § 87(2)(b) [REDACTED]	A . § 87(2)(g)
B . SGT Robert Reid	Abuse of Authority: Sergeant Robert Reid forcibly removed § 87(2)(b) [REDACTED] to the hospital.	B . § 87(2)(g)
C . POM Evan Dukas	Force: Police Officer Evan Dukas used physical force against § 87(2)(b) [REDACTED]	C . § 87(2)(g)
D . DTS John Facchini	Force: Detective John Facchini used physical force against § 87(2)(b) [REDACTED]	D . § 87(2)(g)
E . POM Evan Dukas	Other: There is evidence suggesting Police Officer Evan Dukas provided a false official statement in violation of Patrol Guide Procedure 203-08.	E . § 87(2)(g)

## Case Summary

On June 18, 2019, § 87(2)(b) called the CCRB, and filed the following complaint via phone.

On June 15, 2019, at approximately 3:00 p.m., § 87(2)(b) was alone inside her apartment at § 87(2)(b) in Manhattan. § 87(2)(b) heard knocking at her door, and when she went to look through her front door's peephole she saw that multiple officers, including PO Daniel Yoon and PO Ebony Burgess of PSA 5, were standing in the hallway outside of her apartment. § 87(2)(b) upon being told through the door that officers were responding to a 911 call expressing concern for her wellbeing, stated that she was fine and did not wish for the officers to enter her apartment. § 87(2)(b) then walked away from the door of her apartment. At this time, PO Yoon called the Emergency Services Unit and requested their assistance for entry into the location. PO Yoon's supervisor, SGT Robert Reid, also of PSA 5, subsequently arrived on scene (**Allegation A: Abuse of Authority – § 87(2)(g)**) (**Allegation B: Abuse of Authority – § 87(2)(g)**). After SGT Reid's arrival ESU officers, including PO Evan Dukas and DTS John Facchini, entered § 87(2)(b)'s apartment. PO Dukas and DTS Facchini allegedly took § 87(2)(b) to the ground (**Allegation C: Force – § 87(2)(g)**) (**Allegation D: Force – § 87(2)(g)**) and handcuffed her. § 87(2)(b) was removed to § 87(2)(b) Hospital. No arrests or summonses resulted from this incident.

In an ESU report regarding this incident (Board Review 01) PO Dukas stated that § 87(2)(b) had voluntarily surrendered without incident (**Allegation E: § 87(2)(g)**).

The investigation obtained body-worn camera (BWC) footage of this incident; from PO Yoon (Board Review 02), PO Jessie Bucholtz (Board Review 03), PO Gihee Yang (Board Review 04), PO Raphael Munetes (Board Review 05), PO Ebony Burgess (Board Review 06), SGT Robert Reid (Board Review 07) (Board Review 09), and PO Eileen Cotonpelaez (Board Review 08). The relevant aspects of which are discussed in further detail below. The BWC Deployment Roster for June 27, 2019 (Board Review 22), showed that at the time of this incident no ESU officers were equipped with BWC.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Sergeant Robert Reid entered § 87(2)(b) in Manhattan.

### Allegation (B) Abuse of Authority: Sergeant Robert Reid forcibly removed § 87(2)(b) to the hospital.

It is undisputed that, though PO Yoon made the original call to ESU reporting § 87(2)(b) as a barricaded EDP, PO Yoon's commanding officer, SGT Robert Reid arrived on scene before ESU entered § 87(2)(b)'s apartment and § 87(2)(b) was removed as an EDP. Given that SGT Reid was the ranking officer present at the time of both the entry and the removal, these allegations are pleaded to him.

§ 87(2)(b) testified that immediately prior to the arrival of officers she had been listening to music inside her apartment. § 87(2)(b) stated that she did not make any statements that she believed would have audible to her neighbors, and she did not make any threats. While § 87(2)(b) was in her bedroom she heard knocking at the door of her apartment, and, without opening the door, she spoke to PO Burgess and PO Yoon of PSA 5. PO Burgess told § 87(2)(b) that someone had placed a 911 call expressing concern over her wellbeing. § 87(2)(b) replied by stating that she was alone in her apartment with her dog, that she was feeling fine, and that she would not open the door because she was traumatized due to previous interactions with the NYPD. Shortly afterwards, § 87(2)(b) banged on the inside of the door and told PO Burgess to leave her alone, before walking away from her door.

Shortly afterwards, § 87(2)(b) heard a loud banging on her front door, and when she approached the door she saw that the top of it had been pushed into her apartment. § 87(2)(b)

looked through the peephole and saw PO Dukas, who instructed § 87(2)(b) to open the door, and saw that he was there with EMS. § 87(2)(b) replied that she would not open the door, and stated again that she was fine. Shortly afterwards, ESU forced open the door to her apartment and § 87(2)(b) was placed into handcuffs and removed to § 87(2)(b) Hospital.

§ 87(2)(b)

During their CCRB statements, both PO Burgess and PO Yoon stated that original radio run for this incident reported that § 87(2)(b) was threatening to hurt people in social media postings. Upon arriving at § 87(2)(b)'s apartment, PO Yoon and PO Burgess attempted to speak with § 87(2)(b) through the door to her apartment. PO Yoon was not able to recall how § 87(2)(b) responded to officers attempting to speak with her through the door, and PO Burgess stated that did not recall any reply from § 87(2)(b) through the door. PO Yoon stated that, while in the hallway outside of § 87(2)(b)'s apartment, PO Burgess found § 87(2)(b)'s social media information and accessed a livestream wherein § 87(2)(b) appeared to be threatening to kill people. However, when asked about this livestream PO Burgess stated that she did not remember accessing a livestream by § 87(2)(b) during this incident.

After several minutes of attempting to communicate through the door, both PO Burgess and PO Yoon recalled hearing a sudden loud bang from inside the apartment, as if an object had just impacted against the inside of the door. PO Yoon stated that this noise, in combination with the 911 phone call and the threatening social media posts, caused him to report § 87(2)(b) to ESU as a barricaded EDP.

The AIDED prepared by PO Yoon for this incident (Board Review 10) states that § 87(2)(b) was emotionally disturbed during this incident, placed herself in a dangerous situation, and verbally threatened others. In the narrative, PO Yoon states that § 87(2)(b) refused to open the door to her apartment and began to threaten officers and throw items at the door.

The CCRB obtained the original 911 call for this incident (Board Review 11). In it, the 911 caller, who identified herself as § 87(2)(b)'s neighbor, stated that § 87(2)(b) was screaming and throwing things inside of her apartment, was known to be bi-polar, and had been making posts that day on Instagram about “demons” and “killing people.” The neighbor stated that officers should accompany medical personnel because § 87(2)(b) got into “a fight” with officers during a previous incident and that “anything in her home could be a weapon.” Radio communications between PO Burgess and the 911 operator, captured a callback conversation between the 911 operator and the neighbor at the request of PO Burgess, in which the neighbor confirmed that § 87(2)(b) was still inside her apartment.

The ICAD readout for this phone call (Board Review 14), reported that § 87(2)(b) was a bipolar female who was posting that she wanted to kill people and was having a “manic attack.”

The CCRB obtained PO Yoon's BWC of this incident (Board Review 02), which shows that while outside of § 87(2)(b)'s apartment at video player timecode 3:45, PO Yoon asks over the radio why § 87(2)(b) was reported to be an EDP, and the radio dispatcher responds, “It says female, bipolar, posting she wants to kill people.” PO Yoon then repeatedly knocks on the door while asking § 87(2)(b) to open it. § 87(2)(b) initially replies at timecode 4:55, “Open the door for what?” before the entire door vibrates and makes a loud sound as § 87(2)(b) strikes the

door from the inside. § 87(2)(b) then states, “Tell the fucking truth, bitch, tell the fucking truth. She almost died in here and nobody opened the door, don’t come in here [inaudible].” When PO Yoon asks again for § 87(2)(b) to open the door, she yells, “Suck my dick and tell the truth!” while striking the door repeatedly from the inside.

At timecode 6:16, PO Yoon states, “Ma’am, if you don’t open the door, we’re going to break the door down.” § 87(2)(b) initially does not reply, and then at timecode 6:42 she yells repeatedly, “Suck my dick!” At timecode 6:50 PO Burgess approaches the door and attempts to speak through it, asking § 87(2)(b) if she can just speak to officers, and asking for her name. Without verbally responding, at timecode 7:20 § 87(2)(b) strikes the inside of the door with such force that the door visibly vibrates and creates enough sound that PO Burgess jumps back into PO Yoon in surprise. At timecode 7:43, PO Yoon speaks into his radio receiver to call ESU to the scene for a barricaded EDP.

The CCRB also obtained SGT Reid’s BWC footage of this incident (Board Review 07), which showed that SGT Reid arrived on scene at the same time as ESU, and was therefore present for the entry and removal.

According to Patrol Guide Procedure No. 221-13 (Board Review 17) a person is to be considered emotionally disturbed if they appear to be mentally ill or temporarily deranged and they are conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others. An officer is authorized to request the response of the Emergency Services Unit if a person is determined to be emotionally disturbed and is isolated or contained.

To analyze emergency circumstances, the courts utilize a three-part test: “(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) The search must not be primarily motivated by intent to arrest and seize evidence; (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.” People v. Rodriguez, 77 A.D.3d 280 (2010) (Board Review 18).

The courts have made rulings in favor of emergency doctrine entries into the residences of allegedly emotionally disturbed persons. In People v. Salazar 290 A.D.2d 256 (2002) (Board Review 19), officers entered a defendant’s residence after the defendant had engaged in violent conduct, made threats, and exhibited what officers considered to be a disturbed mental condition. Further, the courts have generally ruled that a defendant’s demeanor around a door is materially relevant to an emergency doctrine analysis. In both People v DePaula 179 A.D.2d 424 (1992) (Board Review 20) and People v Love 204 A.D.2d 97 (1994) (Board Review 21), a defendant opening the door to an apartment, seeing that it was the police, and then attempting to close the door again was one of the factors that helped constitute a valid basis for an objective belief that an emergency existed.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation (C) Force: Police Officer Evan Dukas used physical force against § 87(2)(b)**

**Allegation (D) Force: Detective John Facchini used physical force against § 87(2)(b)**

During her CCRB interview, § 87(2)(b) stated that after ESU officers broke the lock on her apartment's front door and entered her apartment, she stood near the front door and held her phone out to record them entering. PO Dukas and DTS Facchini then approached her and each grabbed her by her forearms and attempted to pull her to the ground. § 87(2)(b) resisted them by pulling her arms and her body away from them and falling to the floor, landing on her behind. § 87(2)(b) then wrapped her legs around a table which was next to her, which ultimately broke as officers attempted to stand her up. § 87(2)(b) then allegedly lost consciousness as officers attempted to stand her up.

During his CCRB interview, PO Dukas stated that he had no independent recollection of this incident, but that § 87(2)(b) had voluntarily surrendered to ESU following a negotiation based on the ESU Report he prepared. Upon being presented with BWC showing § 87(2)(b) being forcibly removed from the apartment, PO Dukas stated that officers had forcibly entered § 87(2)(b)'s apartment during this incident, but that he still did not have an independent recollection of this incident.

A Threat, Resistance, or Injury Report Worksheet was not prepared in relation to this incident (Board Review 27).

During their CCRB interviews, PO Burgess and PO Yoon both stated that at the point they entered § 87(2)(b)'s apartment, § 87(2)(b) was already seated on the floor and was handcuffed.

PO Burgess' BWC footage (Board Review 05), is the earliest that captures PO Dukas and DTS Fucchini's actions inside the apartment. At timecode 42:46, PO Dukas and DTS Fucchini are standing over § 87(2)(b) who is sitting on the ground in her kitchen in handcuffs. § 87(2)(b) repeatedly refuses to stand up, screams at the officers, and at timecode 43:29 when PO Burgess, PO Dukas, and then PO Yoon and DTS Fucchini attempt to lift § 87(2)(b) to place her into a stair-chair, she resists being lifted by wrapping her legs around a kitchen table and thrashing her body. Officers ultimately pull § 87(2)(b) from the table and place her into the stair-chair

Patrol Guide Procedure 221-01 (Board Review 16) dictates that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, otherwise protect life, when it is reasonable to place a person in custody, or to prevent escape from custody. Patrol Guide Procedure 221-13 (Board Review 17) authorizes officers to use restraining equipment, including handcuffs, to remove an emotionally disturbed person to an ambulance should they resist being removed.

§ 87(2)(g)

[REDACTED]

**Allegation (E) Other Misconduct: There is evidence suggesting Police Officer Evan Dukas provided a false official statement in violation of Patrol Guide Procedure 203-08.**

The CCRB found evidence suggesting that PO Dukas provided a false official statement regarding this incident when he generated an ESU Report that classified this incident as a “voluntary surrender” and a “negotiated surrender”. The date of this incident is listed as June 15, 2019, and the date of this report is listed as June 22, 2019. A spin-off case was sent to IAB under CCRB case number 202008485. The evidence is as follows:

PO Dukas was interviewed by the CCRB on September 18, 2020, and during that interview he stated that he had no independent recollection of this incident. PO Dukas was presented with PO Burgess’ BWC video of this incident (Board Review 05), which, as described under **Allegation C** and **Allegation D**, shows PO Dukas and other ESU officers forcibly restraining and removing a resisting § 87(2)(b) from her apartment.

PO Dukas subsequently stated that ESU officers had forcibly entered and removed § 87(2)(b) from her apartment, and that § 87(2)(b) did not voluntarily surrender. When PO Dukas was asked why he stated that § 87(2)(b) had voluntarily surrendered during his incident in his ESU report, which he referred to as a “Two” report, he stated that it, “Could just be a minor mistake from making the two - that is really basically it.”

Patrol Guide Procedure 203-08 (Board Review 23) prohibits an officer from making a false official statement and states that an officer found to have made such a statement will be subject to disciplinary action. The statement must be proven to have been made, material, and intentionally false.

§ 87(2)(g)

[REDACTED]

**Civilian and Officer CCRB Histories**

- § 87(2)(b) [REDACTED]
  - [REDACTED]
- SGT Reid has been a member-of-service for nineteen years and has been a subject in five CCRB cases and ten allegations, none of which have been substantiated. SGT Reid’s CCRB history does not reflect any patterns pertinent to this investigation.
- PO Dukas has been a member-of-service for eleven years and has been a subject in two CCRB cases and four allegations, none of which have been substantiated. PO Dukas’ CCRB history does not reflect any patterns pertinent to this investigation.
- DTS Facchini has been a member-of-service for eighteen years and has been a subject in six cases and ten allegations, of which one has been substantiated:
  - 200612602 involved a substantiated allegation of a stop against DTS Fucchini. The Board recommended charges and the NYPD gave instruction.

- DTS Facchini’s CCRB history does not reflect any patterns pertinent to this investigation.

**Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of December 2, 2020, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards to this complaint.
- § 87(2)(b) [REDACTED]

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Squad No.: 14

Investigator: Matthew Donaghy                      Inv. Matthew Donaghy                      February 8, 2021  
Signature    Print Title & Name    Date

Squad Leader: Cassandra Fenkel                      IM Cassandra Fenkel                      February 8, 2021  
Signature    Print Title & Name    Date

Reviewer: \_\_\_\_\_  
Signature    Print Title & Name    Date