

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 202003376	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sun, 06/30/2019 7:16 PM	Location of Incident: [REDACTED]	Precinct: 84	18 Mo. SOL 12/30/2020	EO SOL 8/16/2021	
Date/Time CV Reported Tue, 05/19/2020 9:42 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 05/19/2020 9:42 AM		

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

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Dwayne Leon	30992	§ 87(2)(b)	084 PCT
2. POM Maxim Maloshag	3036	§ 87(2)(b)	084 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Jasmin Walls	10477	§ 87(2)(b)	084 PCT
2. POM Craig Schoelermann	19383	§ 87(2)(b)	084 PCT
3. POM Abel Nicolaslachapelle	16402	§ 87(2)(b)	084 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Dwayne Leon	Abuse of Authority: Police Officer Dwayne Leon stopped the A . vehicle in which was an occupant.	§ 87(2)(g)
B . POM Maxim Maloshag	Abuse of Authority: An officer threatened to arrest § 87(2)(b) .	B . § 87(2)(g)
C . POM Dwayne Leon	Untruthful Statement: Police Officer Dwayne Leon provided an inaccurate official statement to the CCRB.	C . § 87(2)(g)

## Case Summary

On May 19, 2020, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On June 30, 2019, § 87(2)(b) allegedly ran numerous red lights on his e-bike, and Police Officer Dwayne Leon of the 84<sup>th</sup> Precinct attempted to pull him over in the vicinity of § 87(2)(b) and § 87(2)(b) in Brooklyn. § 87(2)(b) did not pull over, and he continued riding north on § 87(2)(b), while Police Officer Leon followed § 87(2)(b) in his police vehicle. At § 87(2)(b), § 87(2)(b) turned right into the oncoming lanes of traffic, and Police Officer Leon followed § 87(2)(b) into the oncoming lanes (**Allegation A – Abuse of Authority: Vehicle Stop, § 87(2)(g)**, § 87(2)(b) attempted to evade the police vehicle, fell off his bike, and fractured his leg. § 87(2)(b) initially refused to provide his name and date of birth to the officers, and Police Officer Maxim Maloshag of the 84<sup>th</sup> Precinct told § 87(2)(b) that he would be arrested if he failed to provide this information (**Allegation B – Abuse of Authority: Threat of Arrest, § 87(2)(g)**). An ambulance transported § 87(2)(b) to § 87(2)(b), where he was treated for his injuries and issued three summonses for running red lights issued by Police Officer Leon’s partner, Police Officer Jasmin Walls of the 84<sup>th</sup> Precinct (Board Review 01).

There is evidence that Police Officer Leon provided an inaccurate official statement to the CCRB (**Allegation C – Untruthful Statement, § 87(2)(g)**).

Body-worn camera (BWC) footage was obtained from the BWCs of Police Officer Leon, Police Officer Walls, Police Officer Maloshag, Police Officer Craig Schoelermann of the 84<sup>th</sup> Precinct, and Police Officer Abel Nicholas-LaChapelle of the 84<sup>th</sup> Precinct (IA#47-51, Board Review 02-06). These videos are summarized in IA#57 (Board Review 07).

## Findings and Recommendations

**Allegation (A) Discourtesy: Police Officer Dwayne Leon stopped the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) was interviewed via telephone on May 26, 2020 (Board Review 08). Police Officer Walls was interviewed on September 23, 2020 (Board Review 09), and Police Officer Leon was interviewed on October 22, 2020 (Board Review 10). Contact was unable to be established with witnesses § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) stated that he was riding his e-bike north in the northbound bicycle lane on § 87(2)(b) in Brooklyn when he turned right into the Metrotech pedestrian plaza (§ 87(2)(b)). Realizing he made a wrong turn, § 87(2)(b) made a U-turn, passed a marked SUV that was turning into the plaza, and continued north on § 87(2)(b) in the bicycle lane. § 87(2)(b) heard an officer in the police vehicle say, “Stop the bike,” over the loudspeaker one time, but he had been “nowhere near” this vehicle. He did not believe the officer was addressing him, and he did not believe he did anything wrong, so he continued riding. § 87(2)(b) did not look behind him or notice anyone following him. § 87(2)(b) continued straight through the traffic light at § 87(2)(b). He did not recall whether the signal was red or green, but he noted that there was no pedestrian or vehicular traffic at this intersection. § 87(2)(b) reached a green light at the intersection of § 87(2)(b) Street and turned right (east) onto § 87(2)(b) Street into the oncoming lanes of traffic, but there was no oncoming traffic. § 87(2)(b) then saw a marked SUV on his right, also driving east in the oncoming lanes. The SUV accelerated towards § 87(2)(b) from his right, blocking his path, and forcing him to move towards the sidewalk on his left (the north side

of § 87(2)(b) Street). § 87(2)(b) believed the driver intended to “knock [him] off the road.” This maneuver sent § 87(2)(b) “flying” toward the curb. § 87(2)(b) entered a three-foot gap between two parked cars and tried to push his e-bike onto the curb with his leg. In the process, he “jumped” off his bike and twisted and “snapped” his left leg on the tall curb. § 87(2)(b) believed that had he not gone between the parked cars, the marked SUV would have “sandwiched” him against the parked cars, and his “survival instinct” guided him toward the curb. He described his maneuver toward the curb as a “bad calculated decision” and that he was “[forced] into making the wrong move.” See Board Review 11 for an annotated map for § 87(2)(b)'s version of the events.

Police Officer Leon’s and Police Officer Walls’ BWC footage (Board Review 02, 03) begin with Police Officer Leon driving a police vehicle east on § 87(2)(b) in Brooklyn into the oncoming (westbound) lanes of traffic and toward the north side of § 87(2)(b) Street. Their BWCs are aimed at the police vehicle’s dashboard, so § 87(2)(b) and the traffic on § 87(2)(b) Street are not visible. At runtime 00:10 of Police Officer Leon’s footage, Police Officer Leon exits the police vehicle and walks west toward § 87(2)(b) who is on the sidewalk approximately midway between § 87(2)(b) Extension (across from § 87(2)(b) and is not wearing a helmet. At 00:30, Police Officer Leon says, “You did it on your own.” § 87(2)(b) says, “You tried to hit me off a bike!” At 00:41, § 87(2)(b) shouts, “You went down the wrong side, man, why are you doing this shit to me?! What the fuck did I do man?” Police Officer Leon says, “I was stopping you because you ran the red light,” and, “You ran, like, five of them.” At 01:06, Police Officer Leon requests an ambulance for § 87(2)(b). Police Officer Leon and § 87(2)(b) continue to argue. At 03:14, § 87(2)(b) says he “tried to get off the fucking street because you tried to knock me the fuck off!” At 04:50, Police Officer Leon says, “Why didn't you stop when I tried to pull you over [for] four blocks? You were fleeing.” At 05:24, § 87(2)(b) says, “I had to jump on the sidewalk to avoid getting knocked off my bike.”

At 09:08, Police Officer Leon approaches two basketball players in the adjacent park (identified by Police Officer Walls as § 87(2)(b) and § 87(2)(b) – Board Review 09) and says, “You saw him flip off the bike?” A basketball player says, “What we saw is, we were playing basketball,” and another player says, “You were chasing him.” Police Officer Leon says, “I was trying to stop him.” The first basketball player says, “You was trying to stop him, and you kind of like, I'm not sure exactly what happened, but you kind of like curved him so that he could get off the road.” At 10:28, Police Officer Leon approaches the basketball players again and asks them if they saw § 87(2)(b) “trip over.” A basketball player says, “No, you just like, yeah, you kind of like pushed him. I didn't see it, but...” Police Officer Leon then says, “You didn't see it, alright. Did you see it, yes or no? Alright, don't worry about it.” He then walks back toward § 87(2)(b).

At 15:40 (runtime 13:10 in Police Officer Maloshag’s BWC – Board Review 04), Police Officer Maloshag asks, “You followed him for like five blocks?” Police Officer Leon says, “What he did was, we almost hit him on § 87(2)(b), so we let him go. He was doing every red light, he came here, he saw us, he he tried to... He came across here (points to § 87(2)(b)), it was bad. These kids saw. He came across here, I went far ahead this way (points east on § 87(2)(b) Street), and he hit the sidewalk, and then he flipped over on his own. He was just trying to get away, that's on him. He should have pulled over, that's on him.”

At 16:59, Police Officer Leon speaks to the basketball players again. One says, “We was on the basketball court, we saw your car trying to get him off the road. There was moving traffic coming this way (gestures east). You pulled him off the road, and then he like skid off and flipped off the bike.”

At 19:20, § 87(2)(b) says, “Honestly, I just felt like I could ride off and y'all won't bother me

anymore." Police Officer Leon says, "You can't do that, you can't ride off." At 20:45, Police Officer Leon says, "I went over in this direction purposely to block off incoming traffic." § 87(2)(b) asks, "Sir, protocol, do you drive on the wrong side of the street to chase a bicycle?" Police Officer Leon says he drove into incoming traffic to block the street for § 87(2)(b)'s safety. Police Officer Leon asks § 87(2)(b) if he saw the incoming traffic coming, and § 87(2)(b) said at that point, he had already been moving toward the sidewalk.

In his CCRB interview, Police Officer Leon stated that he was driving south on § 87(2)(b) Street when § 87(2)(b) ran the red light on his e-bike going west on § 87(2)(b) Street, nearly causing Police Officer Leon to collide with § 87(2)(b) who was about 15 feet in front of his vehicle. Police Officer Leon turned right (west) onto § 87(2)(b) Street and pulled behind § 87(2)(b) but "kind of ignored him, let him go." However, § 87(2)(b) repeatedly ran red lights while in front of Police Officer Leon's vehicle. § 87(2)(b) ran the red light at § 87(2)(b) Street and § 87(2)(b) Street, and turned right (north) onto § 87(2)(b) Street. The light turned green, and Police Officer Leon turned right onto § 87(2)(b) Street behind § 87(2)(b). He noted that he was still merely on patrol, and that his intent was not to follow § 87(2)(b). He did not recall the traffic conditions on § 87(2)(b) Street at the time, nor did he recall whether there were any pedestrians in the area. § 87(2)(b) then ran another red light at § 87(2)(b) Street and § 87(2)(b) Avenue (MetroTech pedestrian plaza). Between § 87(2)(b) Street and § 87(2)(b) Avenue, Police Officer Leon engaged his lights and sirens (short burst, not continuous) to pull § 87(2)(b) over to give him a warning. Police Officer Leon did not suspect § 87(2)(b) of any offense other than running red lights on his e-bike. § 87(2)(b) who was approximately one car length ahead of Police Officer Leon, turned his head and looked toward Police Officer Leon, and then ran the red lights at § 87(2)(b) Street and § 87(2)(b) Street, and § 87(2)(b) Street and § 87(2)(b) Street, at full electric speed. § 87(2)(b) turned right (east) into the oncoming (westbound) lanes of traffic on § 87(2)(b) Street, which has three lanes of traffic in each direction, and traffic was flowing toward § 87(2)(b). At this time, Police Officer Leon's lights were fully engaged ("emergency mode"). However, he could not drive into the westbound lanes because there was too much traffic. Midway between § 87(2)(b) Street and § 87(2)(b) Extension, § 87(2)(b) hit the sidewalk on the north side of § 87(2)(b) Street and flipped over onto the sidewalk. From Police Officer Leon's vantage point on § 87(2)(b) Street at the intersection of § 87(2)(b) Street, § 87(2)(b) was to his right, on the opposite side of § 87(2)(b) Street. Police Officer Leon did not believe he had made the right turn onto § 87(2)(b) Street when § 87(2)(b) fell, but he was uncertain. Police Officer Leon denied cutting § 87(2)(b) off such that § 87(2)(b) had to avoid his police vehicle to avoid a crash, and he noted that § 87(2)(b) was in front of his vehicle until he crashed.

Police Officer Leon initially stated that after § 87(2)(b) fell, he turned right into the eastbound lanes of § 87(2)(b) Street due to the westbound traffic, and then made a U-turn into the westbound lanes, where he parked his vehicle approximately 10 feet away from § 87(2)(b). However, after reviewing his BWC footage, Police Officer Leon stated that he did not make a U-turn maneuver, and that he instead drove into the oncoming lanes of § 87(2)(b) Street. Police Officer Leon did not recall whether § 87(2)(b) had already fallen at the moment the video begins. See Board Review 12 for an annotated map of Police Officer Leon's version of the events.

Police Officer Walls stated that when she and Police Officer Leon first observed § 87(2)(b) and nearly crashed into him, they immediately activated the lights and sirens. Once § 87(2)(b) ran another red light, Police Officer Walls used the police vehicle's loudspeaker to tell § 87(2)(b) to pull over. § 87(2)(b) continued to ride his bicycle, and the officers followed behind him. Police Officer Walls and Police Officer Leon were approximately three to six feet behind § 87(2)(b) as they followed him for approximately two to three blocks (Police Officer Walls did not recall their route, and she later stated that § 87(2)(b) ran approximately seven or eight red lights). Police Officer Walls was unable to estimate § 87(2)(b)'s speed but noted he went "quite fast." The pursuit

reached § 87(2)(b) Street and § 87(2)(b) Street, and the officers continued to follow § 87(2)(b) turned east into the westbound (oncoming) lanes of traffic on § 87(2)(b) Street, and Police Officer Leon followed him into these lanes. Police Officer Leon and Police Officer Walls kept their lights and sirens on to alert the oncoming traffic to their presence and prevent the oncoming traffic from approaching. Police Officer Walls did not recall whether any oncoming traffic was actually moving in § 87(2)(b) s direction. § 87(2)(b) hit the curb and fell off his bicycle and onto the sidewalk. When he fell, § 87(2)(b) was ahead of the police vehicle, in Police Officer Walls' 10 o'clock direction (on the police vehicle's driver side), and the police vehicle was "far apart from him" or "a little bit of a distance away from him," but Police Officer Walls noted that she did not "remember any placements." Police Officer Leon tried to match § 87(2)(b) s speed, but Police Officer Walls did not recall how fast the police vehicle was going when § 87(2)(b) fell.

Patrol Guide Procedure 221-15 (Board Review 13) states that upon observing a vehicle which is to be stopped, an officer must initiate the vehicle stop when feasible, and determine the necessity for commencing and continuing a vehicle pursuit by considering the nature of the offense, the time of day, the weather condition, the location and population density, the capability of the police vehicle, and their familiarity with the area. Officers must terminate a vehicle pursuit when the risks to officers and the public outweigh the danger to the community if the suspect is not immediately apprehended.

Patrol Guide Procedure 221-01 (Board Review 14) states, "The primary duty of all members of the service (MOS) is to protect human life, including the lives of individuals being placed in police custody."

It is undisputed that Police Officer Leon followed behind § 87(2)(b) with his lights and sirens from the vicinity of § 87(2)(b) Street and Myrtle Avenue to § 87(2)(b) Street and § 87(2)(b) Street, a distance of approximately one to two blocks, and Police Officer Leon noted that he had driven behind § 87(2)(b) from § 87(2)(b) Street and § 87(2)(b) Street, a total distance of approximately half a mile (Board Review 13). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Maxim Maloshag threatened to arrest**

§ 87(2)(b)

In Police Officer Maloshag’s BWC footage (Board Review 04), beginning at runtime 01:10, the officers repeatedly request § 87(2)(b)’s name and date of birth to issue him summonses, and § 87(2)(b) refuses to provide his information until he receives an ambulance. At runtime 01:35, Police Officer Maloshag says, "You'll have to give him your information or you'll be placed under arrest," and at runtime 01:45, Police Officer Maloshag says § 87(2)(b)’s refusal to provide his identification is enough to arrest him. § 87(2)(b) then states his name and date of birth, but then refuses to repeat it.

§ 87(2)(b) stated that the officers repeatedly asked him for his name, and that in response, he asked the officers what they wanted, but he eventually told them his name. He made no mention of any officer threatening to arrest him for not providing his name.

§ 87(2)(g)

NYPD Patrol Guide Procedure 208-01 (Board Review 15) states an officer may make an arrest without a warrant for a petty offense committed in his presence, including violations and traffic infractions.

Article 33, Section 1212 of the New York State Vehicle and Traffic Law (Board Review 22) prohibits reckless driving, a misdemeanor which it defines as “Using any motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway.”

However, in People v. Howell, 49 N.Y.2d 778 (1980) (Board Review 16), the court expressed that arresting civilians for traffic violations, where an arrest is not necessary and issuing a summons is an available alternative, is not the preferred procedure. Nevertheless, in Santiago v. City of New York, N.Y. Misc. LEXIS 188 (2002) (Board Review 17), the court held that a civilian’s inability to produce identification after an officer observed him commit a traffic infraction, thus making it impossible for the officer to issue a summons, was an aggravating circumstance which would justify an immediate custodial arrest of the civilian.

§ 87(2)(g)

§ 87(2)(g)  
[Redacted]

**Allegation (C) Untruthful Statement: Police Officer Dwayne Leon provided an inaccurate official statement to the CCRB.**

Police Officer Leon’s BWC footage (Board Review 02) begins with him driving east on § 87(2)(b) Street, into the westbound lanes of traffic, and toward the curb on the north side of the street, where he stopped his car. In his CCRB interview, Police Officer Leon initially stated § 87(2)(b) fell while he was at § 87(2)(b) Street and § 87(2)(b) Street, and that he turned into the eastbound lanes of § 87(2)(b) Street due to the westbound traffic. Police Officer Leon then made a U-turn into the westbound lanes, where he parked his vehicle approximately 10 feet away from § 87(2)(b). However, after reviewing his BWC footage, Police Officer Leon stated that he did not make a U-turn maneuver, and that he instead drove into the oncoming lanes of traffic. Police Officer Leon did not recall whether § 87(2)(b) had already fallen at the moment the video begins. Police Officer Leon stated that he reviewed his BWC footage the day before his CCRB interview, and that he did not watch this video in its entirety because he was confident that he did his job correctly. He reviewed the “key points” of the video to prepare for his interview, including when he walked toward § 87(2)(b).


Patrol Guides Procedure 203-08 (Board Review 18) prohibits officers from “making, or causing to be made, an inaccurate official statement,” which it defines as “a statement that a member of service knows, or should know, includes incorrect material information. There is no intent to deceive, but rather the member’s actions are grossly negligent.”

§ 87(2)(g)  
[Redacted]

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 19).
- Police Officer Dwayne Leon has been a member-of-service for five years and has been a subject in two other complaints and two other allegations, neither of which was substantiated. Police Officer Leon’s CCRB history does not reflect any apparent pattern pertinent to this investigation.
- Police Officer Maxim Maloshag has been a member-of-service for six years and has been a subject in 11 other complaints and 19 other allegations, none of which were substantiated. Police Officer Maloshag’s CCRB history does not reflect any apparent patten pertinent to this investigation.

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of November 12, 2020, The Office of the New York City Comptroller has no record of a Notice of Claim being filed regarding this incident (Board Review 20).
- § 87(2)(b) 

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Squad No.:              02    

Investigator:     SI Jean-Paul Lozada              SI Jean-Paul Lozada              12/07/2020      
                                Signature                                  Print Title & Name                                  Date

Squad Leader:     Alexander Opoku-Agyemang              IM Alexander Opoku-Agyemang              12/8/2020      
                                Signature                                  Print Title & Name                                  Date

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