

201504954  
Robert King

On April 20, 2015, Sergeant King directed the officer driving the police vehicle in which he was riding to pull over a particular car. The officer did not know the reason the stop was being conducted. As Sergeant King later confirmed, he directed that the officer pull over the car because it had air fresheners dangling from the rear-view mirror.

Once the vehicle was stopped, Sergeant King searched under the passenger seat of the vehicle where he saw a brown paper bag. In his interview, Sergeant King stated that he searched the bag because he saw the outline of a gun. The officer with him did not see the outline of a gun. The officers ran the man's driver's license and determined it was suspended. The man was arrested and placed in a police vehicle.

After the man was arrested, Sergeant King searched the vehicle again. The officer stated that every time a person is arrested, the vehicle is searched because "that's what we do." Sergeant King, perhaps aware that searching vehicles of arrestees without probable cause is unlawful, testified that the man told him to go to the car and search for his wallet, and that's why he was searching the car a second time. A bystander recorded the search, in which Sergeant King is searching the vehicle and saying to himself, "he's into this shit, this fucking guy," and does not recover a wallet.

The CCRB found that the second search was not lawful and that Sergeant King made a false official statement when he stated the man had directed him to search for his wallet in the car. The NYPD did not punish Sergeant King, who is now a Lieutenant in the 25<sup>th</sup> Precinct.

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Peter Hoy (S7)	Team: Squad #14	CCRB Case #: 201504954	<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) Monday, 04/20/2015 6:30 PM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 10/20/2016	EO SOL 10/20/2016	
Date/Time CV Reported Mon, 06/08/2015 10:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/17/2015 11:13 AM		

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Tony Basilio	06027	§ 87(2)(b)	052 PCT
2. SGT Robert King	03180	§ 87(2)(b)	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Fairoze Edoe	06355	§ 87(2)(b)	052 PCT
2. POM Brendan Mcmorrow	12059	§ 87(2)(b)	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Robert King	Abuse of Authority: Sgt. Robert King stopped the car in which § 87(2)(b) was an occupant.	A . § 87(2)(g)
B . SGT Robert King	Abuse of Authority: Sgt. Robert King searched the car in which § 87(2)(b) was an occupant.	B . § 87(2)(g)
C . SGT Robert King	Abuse of Authority: Sgt. Robert King searched the car in which § 87(2)(b) was an occupant.	C . § 87(2)(g)
D . POM Tony Basilio	Force: PO Tony Basilio used physical force against § 87(2)(b).	D . § 87(2)(g)
E . SGT Robert King	Other: There is evidence suggesting Sgt. Robert King provided a false official statement in violation of PG 203-08.	E . § 87(2)(g)

### Case Summary

On April 20, 2015, at approximately 6:30 p.m., near § 87(2)(b) in the Bronx, § 87(2)(b) was driving when he was pulled over by Sgt. Robert King and PO Tony Basilio of the 52<sup>nd</sup> Precinct (**Allegation A**). When the officers ran § 87(2)(b) license, they determined it was suspended. Although § 87(2)(b) claims to have shown the officers paperwork indicating that the suspension was lifted, the officers asked him to step out of the vehicle and arrested him. Before § 87(2)(b) was removed from the vehicle, Sgt. King searched the vehicle (**Allegation B**). After § 87(2)(b) was removed from the vehicle and arrested, Sgt. King again searched the vehicle (**Allegation C**). Also during the stop, PO Basilio allegedly pushed § 87(2)(b) in a way that caused an injury to his wrist (**Allegation D**). § 87(2)(b) was taken to the stationhouse and eventually released with a summons and a DAT. During the investigation, the undersigned determined there is evidence suggesting Sgt. Robert King provided a false official statement in violation of Patrol Guide section 203-08 (**Allegation E**).

The case received coverage in the NY Daily News (Board Review 01) and as a result, was placed on the CCRB's sensitive case list. The case was originally assigned to Investigator Rebecca Jacobson, but on September 18, 2015, it was reassigned to Investigative Manager Peter Hoy due its sensitive nature.

The CCRB obtained video footage from § 87(2)(b) who recorded part of the incident on his cell phone. The unedited footage is attached to IA 46 and marked Board Review 02. Three clips that have been edited in length are attached to IAs 83, 84, and 85, marked Board Review 03, 04, and 05, and embedded in this report:



201504954 Clip 1.mp4



201504954 Clip 2.mp4



201504954 Clip 3.mp4

### Mediation, Civil and Criminal Histories

- The case was deemed unsuitable for mediation because § 87(2)(b) had a related open criminal case, was injured during the incident, and is pursuing a law suit in regard. Furthermore, the case is also being investigated by IAB; as of October 6, 2015, IAB had not completed its investigation.
- On May 29, 2015, § 87(2)(b) filed a Notice of Claim against the City of New York for an unspecified amount. (Board Review 16) § 87(2)(g)
- § 87(2)(b)

### Civilian and Officer CCRB Histories

- § 87(2)(b) has not been involved in any previous CCRB complaints. (Board Review 06)
- Sgt. King has been a member of service for 16 years and, in total, has been a subject of 36 CCRB allegations involving 17 cases. § 87(2)(g) he was the subject of one previous vehicle search allegation, which was closed as victim uncooperative. In case 201200585 allegations that he stopped and searched and individual were substantiated and Command Discipline B was recommended. In cases 210411481 and 201500954, frisk and strip-search allegations were substantiated, respectively. The dispositions for each are still pending.
- PO Basilio has been a member of service for 11 years and he has not been a subject in any other CCRB complaints.

### Potential Issues

- The investigation was delayed for two primary reasons: 1) the complaint was filed two months late,

and 2) § 87(2)(b) initially refused to participate in the investigation due to his ongoing criminal case. However, a month after the CCRB received the complaint from IAB, § 87(2)(b) and his attorney agreed to an interview and he was subsequently interviewed on July 22, 2015.

- During a CCRB interview with PO Fairoze Edo, it became clear that he and his partner, PO Brendan McMorrow, only arrived at the incident location after the allegations occurred and could not provide substantive testimony regarding the allegations. Accordingly, PO McMorrow was not interviewed.

### Findings and Recommendations

#### Allegations Not Pleaded

§ 87(2)(b) complained that his handcuffs were applied tightly; however, because he did not allege that the handcuffs were ever re-tightened, and because the injury to his wrist is addressed as part of the force allegation discussed below, this is not being pleaded separately from **Allegation D**.

Although Sgt. King can be heard in the video saying the words “shit” and “fucking,” he makes these remarks to himself when no one is around. Because the remarks were neither alleged by a civilian not directed at any civilian, they are not being pleaded.

#### Allegation A – Abuse of Authority: Sgt. Robert King stopped the car in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was pulled over at the time and place of occurrence. § 87(2)(b) said that during the incident, Sgt. King told him he had been stopped because he had air fresheners obstructing his windshield. § 87(2)(b) admitted that he an air freshener hanging from his rearview mirror.

Sgt. King testified that he observed § 87(2)(b) vehicle driving erratically and change lanes two to three times without signaling, and that he also observed tree-shaped air fresheners hanging in the vehicle. Sgt. King believed these prevented § 87(2)(b) from having a clear view of the road, so he decided to pull his car over in order to issue him a summons.

PO Basilio testified that Sgt. King ordered him to perform the car stop. At the time of the stop, PO Basilio did not know the reason for the stop, but believed that Sgt. King had observed a violation. It was not until later that Sgt. King explained to PO Basilio that he had observed an obstructed windshield. PO Basilio confirmed that during the stop, he also observed an object hanging from § 87(2)(b) mirror, and that he later issued § 87(2)(b) a summons for “windshield obstructed view.” (Board Review 14)

Captured on video is a conversation between PO Basilio and PO Edo, in which they discuss the fact that PO Basilio did not initially know why § 87(2)(b) was pulled over and that it was Sgt. King’s decision. (Board Review 05)

Vehicle and Traffic Law §375-30 states it is unlawful for any person to operate a motor vehicle with any object hung in the vehicle in such a manner as to obstruct or interfere with the view through the windshield. (Board Review 07)

In *Whren v United States*, 517 U.S. 806 (1996) (Board Review 08) the United States Supreme Court held that officers can stop motorists observed committing traffic violations as a pretext to investigate more serious crimes. The New York State Court of Appeals has also held such pretext stops to be permissible. *People v Robinson*, 97 N.Y.2d 341 (2001) (Board Review 09)

§ 87(2)(g)

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§ 87(2)(g)

**Allegation B – Abuse of Authority: Sgt. Robert King searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) alleged that while he was still in his vehicle, Sgt. King opened his rear door and searched behind the front seats. He said Sgt. King explained the search by saying there appeared to be a weapon in the rear of the vehicle. § 87(2)(b) noticed an empty black plastic bag in the back of his car.

Sgt. King admitted entering and searching the vehicle while § 87(2)(b) was still inside. He said he had observed a brown paper bag sticking out from underneath the front passenger’s seat that appeared to have the outline of a gun. Sgt. King thought the “way the bag was sitting” was suspicious and added that § 87(2)(b) was being belligerent, defensive, and asking the officers questions. Sgt. King also described § 87(2)(b) as nervous. Fearing for the safety of PO Basilio and himself, Sgt. King opened the door, reached into the vehicle and grabbed the bag, which was empty. When § 87(2)(b) complained about the search, Sgt. King explained that he had suspected there was a weapon in the lung-able area.

PO Basilio confirmed that Sgt. King checked a bag behind the passenger’s seat. PO Basilio recalled the bag as black and did not see the outline of the weapon in the bag. He said § 87(2)(b) did not do anything to indicate that he had a weapon, but described him as a “little bit loud,” and said he had to be asked multiple times for his license and registration.

Video captured the conversation between § 87(2)(b) and Sgt. King, just after § 87(2)(b) exits the vehicle, in which § 87(2)(b) asks why the vehicle was searched and Sgt. King explains that there was a bag under the seat that had the outline of a weapon. (Board Review 03)

An exception to the warrant requirement and to the requirement for probable cause to search a car exists to protect against the danger that an arrestee may gain access to a weapon. The scope of a search must be limited to the area from within which the person might gain possession of a weapon. *People v Blasich* 73 NY2d 673, 678, 541 NE2d 40, 543 NYS2d 40 (1989) (Board Review 11)

§ 87(2)(g)

**Allegation C – Abuse of Authority: Sgt. Robert King searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) § 87(2)(g) Sgt. King also entered and searched § 87(2)(b) vehicle a second time, after § 87(2)(b) had been removed from his car, handcuffed, and secured in the police vehicle. Sgt. King explained that § 87(2)(b) had asked him to get his wallet from the car, but did not specify where in the car it was. Sgt. King returned to § 87(2)(b) car, opened the driver’s side door, and looked for the wallet in the driver and passenger areas, including the center console and glove compartment, but not the backseat or trunk. Sgt. King said he did not suspect § 87(2)(b) of having narcotics.

Video footage captured Sgt. King entering the front driver’s side door, after § 87(2)(b) had been removed, and searching the area around the front seats. The audio captured Sgt. King saying, “He’s into this shit, this fucking guy.” (Board Review 04)

PO Basilio said both he and Sgt. King searched § 87(2)(b) vehicle after the arrest. He explained

that once a person is arrested, his vehicle is searched to check for weapons or drugs. Nothing about § 87(2)(b) made PO Basilio suspect he had drugs or weapons. PO Basilio said that § 87(2)(b) “resisted” by moving his arms and complaining about being arrested, but that he was not fighting and the officers did not have to “do anything physical” to him. PO Basilio explained that after arresting § 87(2)(b) they searched the car because “that’s what we do.” PO Basilio said the car was searched only at the scene of the arrest and said he considered that search to be an inventory search.

PO Edoe testified that he drove the car to the stationhouse, but said he did not search it or know if an inventory search was conducted.

The appellate courts have repeatedly upheld the arrest and search of defendants where the police have probable cause to believe that a driver has a suspended license. *People v Derrell*, 26 Misc. 3d 679 (2009) (Board Review 10) However, only in some circumstances may that search extend to the arrestee’s vehicle. The exception to the warrant requirement and to the requirement for probable cause to search a car exists to protect against the danger that an arrestee may gain access to a weapon or may be able to destroy or conceal critical evidence. *People v Blasich* 73 NY2d 673, 678, 541 NE2d 40, 543 NYS2d 40 (1989) (Board Review 11) Police may only search a vehicle incident to arrest when the arrestee is unsecured and within reach of the passenger compartment, or when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. A search of a vehicle is not justified when a defendant is handcuffed and away from the car at the time of the search, without any possibility of reaching into the car to obtain a weapon or destroy evidence. *People v Derrell* 26 Misc. 3d 679 (2009); *Arizona v Gant*, 556 US 332 (2009) (Board Review 12)

§ 87(2)(g)

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**Allegation D – Force: PO Tony Basilio used physical force against § 87(2)(b)**

It is undisputed that PO Basilio handcuffed § 87(2)(b) and escorted him to the officers’ vehicle. § 87(2)(b) testified that during the incident, PO Basilio told him to stop resisting, but § 87(2)(b) denied that he resisted and said he cooperated with walking toward the car. § 87(2)(b) explained that because the handcuffs were applied tightly, he winced in pain and moved his arms around, and noted that he had difficulty entering the vehicle because the opening of the car door was small. Allegedly, PO Basilio pushed § 87(2)(b) towards the car, held him by the forearms, and then shoved him into the vehicle. § 87(2)(b) landed on his left wrist, aggravating the pain he felt in his wrist. § 87(2)(b) did not request medical attention while in police custody, but on April 30, 2015, § 87(2)(b) went to § 87(2)(b)

and was diagnosed with a fractured wrist (Medical Records).

PO Basilio acknowledged that § 87(2)(b) became upset when he was handcuffed and that Sgt. King came over and instructed § 87(2)(b) to calm down. PO Basilio said § 87(2)(b) resisted by moving his arms and complaining about being arrested. Sgt. King recalled that after § 87(2)(b) was out of the car, he was “belligerent,” asking questions, moving his arms around, and stiffened his arms so the officers could not handcuff him. PO Basilio acknowledged handcuffing § 87(2)(b) but denied that either officer did “anything physical” to § 87(2)(b).

Patrol Guide section 203-11 states that only the amount of force necessary to overcome resistance will be used to effect an arrest. (Board Review 13)

Based on § 87(2)(b) medical records, it is evident that he was injured during the incident. § 87(2)(g)

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**Allegation E – Other: There is evidence suggesting Sgt. Robert King provided a false official statement in violation of PG 203-08.**

The CCRB recommends that the NYPD conduct further investigation as there is evidence to suggest that Sgt. Robert King provided a false official statement. The evidence is as follows:

During Sgt. King’s CCRB interview, he explained that he searched § 87(2)(b) vehicle a second time, after § 87(2)(b) was arrested, in order to retrieve § 87(2)(b) wallet.

At <13:06> in his interview recording, Sgt. King said, “After he was under arrest, he requested that he get, that I get his wallet out of the car, and I went back to his vehicle and I looked for his wallet because he asked me to go get his wallet.”

When prompted by his legal counsel, Sgt. King again said, “I was looking for his wallet.”

Video footage captures Sgt. King enter the front driver’s side door and search the area around the front seats. At <00:35>, the video captures Sgt. King saying, “He’s into this shit, this fucking guy.” (Board Review 04)

Patrol Guide Procedure 203-08 states that intentionally making a false official statement is prohibited and will be subject to disciplinary action (Board Review 18). The statement must be proven to have been made, material, and intentionally false. Dep’t of Correction v. Centeno, OATH Index No. 2031/04, p.4 (2005) (Board Review 17).

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

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

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