

201508604
Jasen Perez

The forty-sixth precinct designated a certain apartment building a “condition” because people tended to gather in front of it to socialize. On October 15, 2015, four officers drove by the building at 7:00 pm and saw a group of young men in front of it. They approached and asked the men to disperse. The men declined to do so. The officers proceeded to arrest one of the men, who asked his friend to start recording the incident. The friend did so, but put his phone away when another officer approached and threatened him. The man was eventually taken to the precinct and released with three summonses: littering, failure to disperse, and obstructing pedestrian traffic.

The video recording showed that one officer, Jasen Perez, had cursed at the young men, and called the person recording a “street lawyer” while pushing him away from the arrest. PO Perez was interviewed twice. The first time he denied remembering the incident at all, said that he wasn’t sure it was his voice in the video, and that after viewing the video he still could not remember the incident very well.

PO Perez was interviewed twice with regard to this incident. In his first interview, he stated that he denied using profanity and stated he could not recall with individuals recording him. After shown the video, which shows him placing one person in front of the person recording and cursing at the recorder, he again stated he did not interfere with recording.

In a second interview, he was unable to provide a reason that he forcibly moved one man in front of the camera, and denied that he could recognize his own voice cursing.

During PO Perez’s second interview, his PBA representative, Kate Kilduff-Conlon, wrote notes and attempted to pass them to PO Perez while the interview was ongoing. When asked to provide the notes, Ms. Kilduff-Conlon stated that they were protected by the attorney-client privilege, put her handbag on the table to block the investigator’s view of the notes, and eventually delayed the interview for two and a half hours, before again attempting to pass notes to PO Perez, eventually tapping his leg under the table while he was responding.

The CCRB substantiated allegations of abuse of authority and discourtesy against PO Perez and another officer who conducted the stop

The NYPD disciplined PO Perez by giving him a Command Discipline-B

Ms. Kilduff-Conlon, the PBA attorney, is now the Manager of Employee Relations at ProHealth Care

Interview Details

COMPLAINANT/VICTIM: [REDACTED]

On October 9, 2015, [REDACTED] provided a sworn CCRB statement.

On October 1, 2015, at approximately 7 p.m., [REDACTED] his cousin [REDACTED] his brother [REDACTED] and his friend [REDACTED] were talking amongst each other for ten to fifteen minutes in front of an apartment building located at [REDACTED] in the Bronx. At the time, [REDACTED] was wearing a hoodie which had three pockets, sneakers, and blue jeans that had six pockets. [REDACTED] had his phone, keys, and a wallet in his pant pockets, but the items did not create any noticeable bulges. [REDACTED] and [REDACTED] did not make any hand-to-hand contact or suspicious hand movements while they were conversing.

[REDACTED] said good-bye to [REDACTED] and [REDACTED] and began to walk away from them and towards a bodega named [REDACTED]. While [REDACTED] was walking, he observed an unmarked gold RMP pass him and park near the fire hydrant located in front of [REDACTED]. PO1 immediately exited from the back passenger-side seat of the unmarked RMP, while PO2 exited the driver's seat. [REDACTED] recognized PO1 and PO2 from his interaction with them during an incident that occurred on September 11, 2015. As soon as PO1 exited the unmarked RMP, she stated towards [REDACTED] "You don't hear them calling you?" At that moment, [REDACTED] turned around and noticed PO3 and PO4 were walking approximately three feet behind him. [REDACTED] did not see PO3 or PO4 while he was talking with [REDACTED] and [REDACTED] nor did he notice PO3 or PO4's presence while he was walking towards [REDACTED]. Before PO1 made the aforementioned statement, [REDACTED] did not hear any officers calling out to him.

PO1 then directed [REDACTED] to get against the wall and place his hands up on the wall. [REDACTED] complied and PO3 frisked [REDACTED] chest, arms, torso, and waistband. [REDACTED] did not overhear PO1 direct PO3 to frisk him. After conducting the frisk, PO3 grabbed [REDACTED] left arm and handcuffed him. PO3 never searched [REDACTED] pockets. While PO3 was handcuffing him, [REDACTED] yelled out to [REDACTED] to record what was happening. When [REDACTED] took out his cell phone in order to record the incident, PO2 "got in his [REDACTED] face" and stated, "If you record, I'm taking you too." [REDACTED] immediately put his cell phone away and PO2 continued to stand near [REDACTED] to ensure that no one else would record what was happening. However, [REDACTED] was standing behind PO2 at the time and was video recording the incident with his cell phone. When [REDACTED] yelled out again for [REDACTED] to record the incident, PO3 told [REDACTED] "Stop being a little bitch, shut up." [REDACTED] told PO3 that he was not doing anything besides telling [REDACTED] to record because what was happening to him was wrong. As PO3 was escorting [REDACTED] to the unmarked gold RMP, [REDACTED] repeatedly asked PO3 why he was handcuffed. PO3 told [REDACTED] that he would have been issued a summons, but he had to make a scene so he was going to be transported to the stationhouse for disorderly conduct. [REDACTED] could not recall there being anyone else besides [REDACTED] and [REDACTED] being present at the incident location and watching the incident. Once inside the unmarked gold RMP, PO2 told [REDACTED] that because he wanted people to record the incident, the officers were going to drop him off at the stationhouse and return to the incident location to get his friends. [REDACTED] asked PO3 what he was doing wrong and PO3 only responded that [REDACTED] was going to have a long winter.

Once at the 46th Precinct stationhouse, [REDACTED] was placed in a cell. From within his cell, [REDACTED] asked every officer that passed him, if he could make a phone call. The officers told [REDACTED] that they were not his arresting officer and could not help him. [REDACTED] was never given his one phone call and after an unknown amount of time, he was released from his cell and brought to the front desk, where PO1 was standing. [REDACTED] told PO1 that the officers did not allow him to have his one phone call and PO1 told him that he did not get his phone call because they were releasing him anyways. [REDACTED] was released with three summonses issued by PO3: # [REDACTED] for littering, # [REDACTED] for obstructing pedestrian traffic, and # [REDACTED] for refusal to disperse. [REDACTED] was issued the same three summonses during an incident that occurred on September 11, 2015, which included PO1 and PO2. [REDACTED] stated that many people from the area that are stopped by the officers he interacted with are also issued the same summonses.

Once [REDACTED] was released, an unidentified friend told him that the officers had returned to the incident location and arrested several more individuals. [REDACTED] was not present when the officers returned to the incident location and he could not provide any information regarding the unidentified friend who told him the aforementioned information. [REDACTED] stated that his brother [REDACTED] began recording the incident at the time he was handcuffed. He also indicated that the bodega [REDACTED] has video cameras positioned outside that would have captured the incident from the beginning. [REDACTED] identified the owner of [REDACTED] as a man named [REDACTED] and provided his phone number, [REDACTED].

Interview Details

Mediation and investigation were discussed and [REDACTED] accepted mediation because he wants to speak to the officers about their conduct and how his interaction with the officers has negatively influenced him. [REDACTED] was informed that the CCRB cannot affect the disposition of his summons and the mediation would deal with the officers' conduct. He was also informed that since [REDACTED] was also a victim during the incident, he would also need to accept mediating the complaint.

PO1: Female, White, 5'4" to 5'5" tall, thin build, early-30s, long black hair, light brown eyes, in plainclothes

PO2: Male, Hispanic, 4'11" tall, 150 pounds, thin build, mid-20s, black hair with balding spots, dark colored eyes, in uniform

PO3: Male, Hispanic, 5'2" to 5'3" tall, muscular build, late-20s, black hair, brown eyes, in uniform, may have tattoo on arm

PO4: Male, White, 6'3" tall, late-20s to early-30s, thin or average build, blonde hair, had facial hair, in uniform

Interview Details

VICTIM:

- [REDACTED] -years-old at the time of the incident, is a 6-foot tall, 245-pounds Hispanic male who has black hair and brown eyes.
- When this complaint was filed with the CCRB on October 9, 2015, [REDACTED] identified [REDACTED] as a witness and contact attempts to him were exhausted on December 1, 2015. On December 2, 2015, [REDACTED] called the CCRB and provided a detailed phone statement, which identified him as a victim of a discourtesy. [REDACTED] was then changed from a witness to a victim in this case.

CCRB STATEMENT

On December 16, 2015, [REDACTED] provided a sworn CCRB statement over the phone.

On October 1, 2015, at approximately 7 p.m., [REDACTED] and his friends [REDACTED] and two unidentified males exited an apartment building, located at [REDACTED] in the Bronx, and stood in front of the apartment building on the sidewalk talking amongst themselves. They were not drinking and there were no items on the ground aside from a few strawberries. While [REDACTED] and their two unidentified male friends were talking to each other, several people had passed by them in order to enter the building, but they had not been blocking the entranceway of the apartment building and no one made any statements for the group of friends to move out of the way. Aside from [REDACTED] and their two unidentified male friends, no one else was standing in front of the apartment building with them. After talking in front of the apartment building for approximately five minutes, [REDACTED] began walking away from the group of friends towards the bodega, located at [REDACTED]. Simultaneously, [REDACTED] observed an unmarked RMP pull-up alongside the sidewalk where [REDACTED] and his friends were standing and PO1-PO4 exited the unmarked RMP. Before PO1-PO4 had arrived, [REDACTED] had not noticed the same unmarked RMP drive past him and he did not overhear any officers give directives to him and his friends to disperse beforehand.

PO1-PO4 did not approach or speak with [REDACTED] or the two unidentified male friends when the officers exited the unmarked RMP. As soon as PO1-PO4 exited the unmarked RMP at the same time, they all walked directly towards [REDACTED] who had already been walking towards the bodega. [REDACTED] did not overhear any of the officers make any statements while they were walking after [REDACTED] believed that the officers may have told [REDACTED] to stop once the officers were closer to [REDACTED] but [REDACTED] was not sure of this since he was standing approximately 200 to 300 feet away from [REDACTED] and the officers at the time. Once [REDACTED] and the four officers were standing in front of the bodega, [REDACTED] observed one of the unidentified officers push [REDACTED] back so his chest was against a wall and place him in handcuffs. At that point, [REDACTED] and the two unidentified male friends began walking towards the bodega to see what was happening and [REDACTED] began video recording the incident with his cell phone. When [REDACTED] was standing closer to the bodega, he overheard [REDACTED] asking the officers why he was being arrested and what was going on. [REDACTED] heard the unidentified officer who handcuffed [REDACTED] tell [REDACTED] "Stop being a little bitch." Simultaneously, [REDACTED] began asking aloud what was happening and why [REDACTED] was being arrested and PO1 told him, "Get the fuck out of here" and "Look at this guy trying to be a fucking street lawyer." PO1 also placed his hand on [REDACTED] shoulder and tried to move [REDACTED] in front of [REDACTED] who was still video recording the incident in an effort to block [REDACTED] cell phone from recording the incident. [REDACTED] was also asking aloud why [REDACTED] was being arrested and [REDACTED] heard one of the unidentified male officers tell [REDACTED] "Shut up or I'll arrest you too." After several minutes, the officers placed [REDACTED] in the unmarked RMP and drove away without directing anyone to disperse.

No crowd or additional civilians gathered to watch what was happening and no civilians tried to interfere with the officers. There were approximately four or five unidentified individuals also standing and talking amongst themselves on the sidewalk in front of the bodega, but [REDACTED] did not know them and those individuals had been present in front of the bodega before the officers arrived. [REDACTED] was cooperative throughout the incident and did not provide any resistance against the officers. Only [REDACTED] was arrested and the officers did not summons or arrest any other individuals.

PO1: Male, Hispanic, 5'9"-5'10" tall, stocky build, 30-32 years old, black hair, in uniform
PO2: Female, White, 5'6"-5'7" tall, mid-30's, dirty blonde hair, in plainclothes
PO3: Male, Asian or White, 6'1" tall, mid-30's, average build, black hair, in uniform
PO4: Male, White, 6'1"-6'2" tall, mid-30's, average build, dirty blonde hair, in uniform

Interview Details

PO Johnny Chalen

On October 1, 2015, PO Chalen was assigned to conditions auto within the 46th Precinct. PO Chalen worked a tour of 1500 to 2335. PO Chalen was partnered with PO Perez and worked in uniformed and assigned to an unmarked RMP [REDACTED] which is a brown Lincoln passenger car.

Memo book:

1900 In front of [REDACTED] male stopped. [REDACTED]. Three summonses issued. (PO Chalen noted all summons numbers in his memo book but did not read them into the record).

*** PO Chalen did not discuss arriving to the location prior to 7pm until 40 minutes into his testimony.

CCRB Testimony:

PO Chalen was interviewed at the CCRB on November 18, 2015.

On October 1, 2015, PO Chalen and PO Perez were driving down [REDACTED] heading southbound. PO Chalen could not recall who was operating the vehicle at the time. This area is known to have a condition which includes smoking, drinking, gambling, the use of drugs, open containers and a lot of garbage around. In addition, during Community Board Meetings, residents complain that individuals that gather in front of this location have weapons and block the entrance, which make it difficult to enter and exit the building. PO Chalen and PO Perez always go around this area to make sure to bring the condition down to a minimum. The entrance to [REDACTED] has a gate that is never locked and is left completely wide open. PO Chalen is not certain if this building is an F-tap building. Individuals like to mingle around this area a lot. The individuals either stand in front of the door or push it to the side. This is a common area to gather since individuals can throw items into the garbage quickly or run into the building and disappear. PO Chalen and PO Perez frequently return to this area during their patrol due to this condition.

At approximately 6pm, PO Chalen and PO Perez returned to the location and saw a group by the entrance of [REDACTED]. The officers, from their vehicle, issued a verbal order to disperse. The individuals were not drinking, playing dice, but rather just standing by the building. The officers told the group, which also consisted of [REDACTED] to disperse and then the officers left. PO Chalen did repeat himself multiple times for the group to disperse. PO Chalen could not recall if PO Perez also ordered the group to disperse. PO Chalen could not remember if PO Perez issued any directives to [REDACTED] at this time. The individuals sucked their teeth, responded back to the officers and just stood around. The officers issued the order to disperse again and the officers left the scene. PO Chalen did observe [REDACTED] at this time. PO Chalen is familiar with [REDACTED] given that he has been stopped prior to this incident. [REDACTED] has been brought back to the 46th Precinct as well.

At approximately 7pm, the officers returned to [REDACTED]. PO Chalen and PO Perez observed a group of people, possibly eight, nine, or more individuals standing in front of this location. The individuals were sitting on crates. The individuals in this area already know the vehicle that PO Chalen and PO Perez operate. Therefore, prior to approaching the area, the individuals at the scene were dropping their bottles and cups. Given that PO Chalen always has his window open a crack, he was able to hear some bottles break on the sidewalk. Due to the positioning of [REDACTED] and given that there were many individuals blocking the entrance of the building, this made it difficult for individuals to enter and exit the building. However, at this time, he did not observe any individuals attempting to enter or exit the building.

PO Chalen and PO Perez pulled over their vehicle. Both PO Chalen and PO Perez made the decision to approach the group. There were other individuals walking with their kids attempting to get around the group. Right before PO Chalen and PO Perez exited the vehicle, [REDACTED] made a "police sound" signifying there were officers around and attempt to leave. PO Chalen described the noise as a "whoop, whoop" which means police are present.

PO Chalen and PO Perez walked over to the group and in particular to [REDACTED] who was amongst the group. The group was on the sidewalk. Their intention was to stop the group and issue littering summonses. Many individuals in the group dispersed to their own way, which is the reason why solely [REDACTED] was stopped. In [REDACTED] immediate area were a couple of dice. PO Chalen and PO Perez wanted to stop [REDACTED] for the dice, drinking and "everything." Given that PO Chalen was with PO Perez, and they did not want to lose sight of each other, they remained together and approached [REDACTED]. The officers and [REDACTED] were standing next to [REDACTED] by an awning of a store. PO Chalen approached [REDACTED] first and told him

Interview Details

to stop. Prior to stopping [REDACTED] PO Chalen did not observe [REDACTED] drinking. PO Chalen did observe [REDACTED] do a hand gesture as if he was dropping something. PO Chalen and PO Perez were approximately the length of a hood of a car. When PO Chalen approached, the dice were right around [REDACTED] area, on the ground by [REDACTED] feet. [REDACTED] responded to PO Chalen's command to stop by walking a little bit further. PO Chalen had to repeat the order several times before [REDACTED] eventually stopped. PO Perez was standing next to PO Chalen at this time. [REDACTED] was asked what he was up to but [REDACTED] did not want to answer any questions. Later in his interview, PO Chalen stated seconds after he approached [REDACTED] he requested his identification. PO Chalen could not remember if [REDACTED] provided his identification on the scene or later at the stationhouse.

[REDACTED] told the officers that they were bothering him, harassing him and he was late for work. [REDACTED] demeanor was excited and he wanted to scream. [REDACTED] then called out to another individual to tell them to record. [REDACTED] yelled for individuals in the area to come and watch the incident. By this time a crowd had gathered. PO Chalen could not tell how many individuals were around but knew that there was a group behind as well as to the right of PO Chalen and PO Perez, which consisted of approximately more than five individuals. There was a group to the right, was walking over to watch or interfere with the officers' investigation, and were approximately a car's length away. Individuals in the crowd were yelling at [REDACTED] and the officers, but he did not remember what the crowd was yelling.

There was an individual in the crowd recording, but PO Chalen did not know where this individual came from and if he had been there prior. PO Perez told this individual to step back. PO Chalen did not know if PO Perez made any other statements to this individual. Neither PO Chalen nor PO Perez ever threatened to arrest any individuals regarding recording the incident. No other civilians were summonsed. PO Chalen's focus was on [REDACTED] and therefore PO Chalen did not notice other members of the crowd.

Given that the officers were being surrounded by a lot of individuals and the fact that they intended to issue him a summons for the violation of obstructing the entrance of the building, PO Chalen made the decision to place him in handcuffs and bring him to the precinct where they could issue the summons. [REDACTED] would be released if he had no open warrants.

PO Chalen gave [REDACTED] a directive to place his hands behind his back. Initially, PO Chalen attempted to reach [REDACTED] left arm to bring it behind [REDACTED] but [REDACTED] pulled forward. [REDACTED] continued yelling for the crowd to record. PO Chalen was eventually able to handcuff him. PO Perez did not assist with the handcuffing process. At this time, PO Perez was looking around and ensuring that there were no individuals behind them. [REDACTED] was informed that he would be issued a summons at the precinct. [REDACTED] continued insulting the officers in the patrol car.

PO Chalen never gave the crowd an opportunity to interfere with [REDACTED] apprehension. Neither PO Chalen nor PO Perez called for additional officers to respond. PO Chalen did not recall using profanity against [REDACTED] PO Chalen never told [REDACTED] "Fucking little bitch just shut up." PO Chalen never heard any officer make this statement or use profanity during the incident. PO Chalen and PO Perez patrol with Sgt. Barbato. However, PO Chalen could not remember if Sgt. Barbato was present on this date.

Once [REDACTED] was brought back to the precinct, he was searched to ensure he had no weapons. [REDACTED] was then placed into a holding cell. The officers ran [REDACTED] for any open warrants. Once no warrants popped up, [REDACTED] was issued a summons and released.

When directly asked if [REDACTED] was in violation of any other infractions other than obstructing the entrance of the building, PO Chalen responded that he knows he issued two other summonses to [REDACTED] but did not know what they were for. PO Chalen responded that if he issued [REDACTED] any summonses, the violation would have occurred on the scene. PO Chalen was presented with copies of the three summonses issued to [REDACTED] After reviewing the summonses, PO Chalen clarified that the summons issued for refusal to disperse was due to the fact that [REDACTED] was warned, prior to the officers stopping by a second time, to disperse.

The third summons issued to [REDACTED] was for littering. This violation pertained to the dice that were on the ground. [REDACTED] never made any indication that those were his dice. When directly asked if [REDACTED] was asked if the dice pertained to him, PO

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responded that he questioned what [REDACTED] was doing at the location but since [REDACTED] was yelling, they received no response. PO Chalen did not include any statements in the narrative of the summonses given that “he would be there for days.”

After viewing all three summonses, PO Chalen stated that prior to be taken to the stationhouse, [REDACTED] was in violation of the littering, being warned (to disperse) and the obstruction. PO Chalen could not recall how long [REDACTED] was at the stationhouse prior to being released. PO Chalen was not given any directives by a supervisor to summons [REDACTED] was not arrested for these violations as in the Bronx; individuals are not arrested for criminal court summonses. Therefore, based on this, PO Chalen decided to release [REDACTED] with summonses. [REDACTED] was not issued a summons for open container since PO Chalen did not see him in possession of any bottles.

Video Presentation

The video footage is 45 seconds long. Upon seeing the video footage, PO Chalen identified Sgt. Barbato as being present as well as PO Nikqi and PO Perez. He confirmed at the 6 second mark, PO Nikqi was on scene.

At the 2 second mark there was a male voice that said, “Shut the fuck up”. PO Chalen confirmed that he heard this statement. When he asked if he recognized the male voice, he stated that he did not and was not sure if this was an officer’s voice or an individual in the crowd. He did not know if this was his voice, PO Perez, PO Nikqi. PO Chalen remembered that Sgt. Barbato and PO Nikqi were also with PO Chalen and PO Perez in the vehicle. PO Chalen believed that PO Nikqi had an arrest and Sgt. Barbato stayed to help process the arrest. However, upon viewing the footage, he recalled that they were in the vehicle. PO Chalen could not remember Sgt. Barbato interacting with [REDACTED]

PO Chalen could not recall whether PO Nikqi or Sgt. Barbato were in the vehicle with PO Perez and PO Chalen when they first issued the order to disperse. However, one or the other was in the vehicle.

The second time they responded to the scene, both Sgt. Barbato and PO Nikqi were in the vehicle. The decision to stop the group was a simultaneous decision and not one directed by the sergeant.

At the 10 second mark, PO Chalen identified himself as the officer standing behind [REDACTED] handcuffing him. PO Chalen stated that PO Nikqi could also be seen in the clip. PO Chalen did not recall whether PO Nikqi had any interaction with [REDACTED] [REDACTED] When questioned whether Sgt. Barbato gave a directive to take [REDACTED] back to the stationhouse, PO Chalen responded that he was not given any direct order to handcuff [REDACTED]

On the footage a civilian’s voice could be heard stating, “You got me in cuffs for no reason.” PO Chalen stated that since he was handcuffing [REDACTED] it is obvious that it would be his voice. PO Chalen did not recognize the voice specifically as [REDACTED] but assumed it was based on the statement.

PO Chalen stated that the 45 second clip shows that Sgt. Barbato and PO Nikqi remained with PO Chalen and PO Perez. He was not sure what they were doing on this date otherwise. He added that until he saw the footage, he did not remember they were there with him and PO Perez.

Interview Details

PO Valdrin Nikqi

On October 1, 2015, PO Nikqi worked a tour of 1500 to 2335. He was assigned as to the 46th Precinct Conditions Unit. PO Nikqi was working with PO Chalen, PO Perez and Sgt. Barbato. PO Nikqi was working in uniform and assigned to an unmarked RMP

Memo book:

No memo book entries regarding this incident or for October 1, 2015.

CCRB Testimony:

PO Nikqi was interviewed at the CCRB on December 8, 2015.

PO Nikqi had no independent recollection of this incident. PO Nikqi was provided with a brief synopsis of the incident. He was informed that an individual named, [REDACTED] was standing in front of [REDACTED] [REDACTED] walked over to [REDACTED] [REDACTED] which was described as a bodega. In front of the bodega, [REDACTED] encountered officers and was then brought back to the stationhouse.

Given that the synopsis did not refresh his memory of the incident, PO Nikqi was provided with a photo of [REDACTED] PO Nikqi confirmed that he was in one marked patrol car with PO Chalen, PO Perez and Sgt. Barbato. He confirmed that he did stop one male during his tour but this stop did not occur at 7pm.

PO Nikqi referred to his memo book and saw that he had two arrests on this date. One arrest occurred at 4:50pm. This individual was subsequently released with a desk appearance ticket at 5:47pm. His second arrest occurred at 8:15pm. There were no individual's named [REDACTED] at this location.

During his tour he could not remember his partners issuing any summonses. He could not recall anything out of the ordinary occurring on this date involving a crowd gathering. However, he did state that the location is a big issue in the precinct. There is always a crowd hanging outside of the location, [REDACTED] drinking and causing noise. The bodega is very big in regards to noise complaints and there is always a crowd. PO Nikqi could not recall if on this specific date having an incident. There are always individuals drinking, littering, hanging out and playing dice. This area is a residential area. This location is the number one issue on their agenda. PO Nikqi confirmed that on this date he issued orders to disperse if they are not waiting for food from the deli.

PO Nikqi could not recall if PO Chalen arrested any individuals on this date. PO Nikqi could not recall on this date any individuals attempting to record his interaction or his partners interactions with any civilians. He did not hear his partners threatening to arrest any individuals for video recording on this date. PO Nikqi did not use profanity nor heard his partners using profanity on this date. He did not hear his partners stating, "Fucking little bitch. Shut up."

Given that they are the conditions team, it is common for PO Nikqi and his partners to go to these types of locations, especially in front of buildings, where individuals like to hang out, drink, litter and play dice, making it "a horrible place for people to live." The team responds to these areas and tells individuals to leave the sidewalk. In addition, the team looks for other conditions such as robberies. PO Nikqi could not recall on this date, responding to [REDACTED]

Video Presentation

At the 1 second mark of the video PO Nikqi identified himself and Sgt. Barbato. PO Nikqi identified PO Perez at the 11 second mark. Standing in front of PO Nikqi, at the 13 second mark, he identified PO Chalen.

After presenting the video footage, PO Nikqi stated that he recalled the incident. PBA representative Florence Friedman requested a break to consult with PO Nikqi. At 9:02am the record was paused and it resumed with all parties present at 9:05am.

Resumed Interview after reviewing footage and recalling the incident:

PO Nikqi could not recall the operator of the vehicle as this was not noted in his memo book. It is common that he and his partner switch driving duties and it is therefore not consistent. This all depends on the events of the tour. [REDACTED] is a big condition in the precinct.

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On October 1, 2015, at approximately 7pm, PO Nikqi and his partners were driving down [REDACTED]. Sgt. Barbato was in the vehicle and always sits behind the passenger seat. The officers observed a large group outside. There is a lounge down the street, which has a lot of individuals walking in and out frequently. There is a lot of pedestrian traffic on this sidewalk. PO Nikqi could not estimate how many individuals were around at this time.

The group was asked very nicely to disperse the area. The officers asked if anyone was waiting for food from the store. Given that the group responded that they were not waiting for food, they were told to leave. PO Nikqi and his partners never exited the vehicle. An individual, identified as [REDACTED] screamed at the officers. PO Nikqi did not know what exactly was said, but stated it was a "smart comment." No other individuals screamed at the officers. Given that some individuals began to walk away, the officers drove away. PO Nikqi did not see [REDACTED] walk away. PO Nikqi considered this action a warning to the individuals to leave. The officers drove, made a right onto [REDACTED], and then a right [REDACTED], another right on [REDACTED] and then drove right back to [REDACTED] and the individuals were still standing in the same area. It took approximately 3-4 minutes before they came back around.

When the officers arrived back at [REDACTED] [REDACTED] was still standing at the location along with five or six other individuals. (PO Nikqi later testified that there were 1-2 other individuals with [REDACTED]. The individuals were in front of the bodega. Some individuals were sitting on the milk crates and some were standing under the awning with styrofoam cups in their hands. PO Nikqi could not remember if there was any indication whether these individuals were drinking. He also could not remember if these individuals were a part of the previous group.

[REDACTED] was standing in the front of the group. However, PO Nikqi could not recall specifically what [REDACTED] was doing. The crowd was in violation of blocking pedestrian traffic in that no other individuals could walk through the group and they would have to resort to crossing the street. PO Nikqi did not observe any individuals attempting to walk by the group, which is why just a warning was issued on the first occasion.

PO Chalen approached [REDACTED] and stated that he was already instructed to leave and why he did not comply. [REDACTED] responded that he did not have to leave. PO Nikqi could not recall any other statements made by [REDACTED]. Sgt. Barbato never gave any directive to approach [REDACTED] was in violation of failure to disperse. PO Nikqi did not observe any other violations. The other individuals standing along with [REDACTED] started walking away once they observed the officers approached. However, they later stopped and turned around to record. There was an officer, PO Nikqi did not recall which, assisting in ensuring that no one in the group came after them.

PO Chalen requested [REDACTED] identification. [REDACTED] as PO Nikqi stated could be observed from the video, was very hyper and did not want to provide his identification. Due to his behavior, he was handcuffed and placed under arrest. [REDACTED] was informed of why he was being arrested and brought to the stationhouse and began screaming. PO Nikqi did not recall assisting in handcuffing [REDACTED].

PO Nikqi explained that if an individual does not have identification the officers attempt to assist. However, due to [REDACTED] behavior, and individuals getting closer, they had to place him in handcuffs. PO Nikqi referred to the video and stated that it shows PO Perez pushing individuals back. There were more than five individuals gathering. PO Nikqi could not remember if these individuals were trying to interfere and where they came from. PO Nikqi did not observe any individuals recording or comments about video recording. PO Nikqi was not certain if [REDACTED] was saying anything to the crowd and if the crowd was conversing with him.

[REDACTED] could have received a summons from the scene, but since [REDACTED] did not want it, PO Chalen decided to bring him back to the stationhouse. [REDACTED] was threatening, loud, and caused his friends to exit the bodega and gather. [REDACTED] wanted to cause a scene. PO Chalen placed the handcuffs on [REDACTED].

Neither Sgt. Barbato nor PO Nikqi had a verbal interaction with [REDACTED]. PO Nikqi did not notice if [REDACTED] had been drinking. No other individuals were arrested or summonsed. PO Nikqi was not familiar with [REDACTED] on past occasions.

Interview Details

PO Jasen Perez

On October 1, 2015, PO Perez worked a tour of 1500x2335. PO Perez was assigned to the 46th Precinct Conditions team. He was in uniform and was assigned to an unmarked beige/tan Lincoln Town Car. He did not recall his RMP number. He was working with PO Nikqi and PO Chalen.

Memo book:

PO Perez did not have any memo book entries in regards to this incident, [REDACTED] or anything on October 1, 2015.

CCRB Testimony:

PO Perez was interviewed at the CCRB on November 24, 2015.

Initially PO Perez did not recall the incident. He was presented with a photo of [REDACTED] which was taken at the CCRB. PO Perez did not recognize [REDACTED]. He was provided with a synopsis of the incident. He was informed that on October 1, 2015, [REDACTED] was standing in front of [REDACTED] when officers approached. [REDACTED] was handcuffed and then brought to the stationhouse. PO Perez could not recall if he responded to this location on this date nor whether he or his partners stopped any males at this location. PO Perez confirmed that he was with PO Chalen and PO Nikqi during the entirety of his tour. PO Perez could not recall meeting with any other officers, or Sgt. Barbato, during his tour. PO Perez did not make any arrests on this date.

PO Nikqi arrested two individuals on this date at two other locations, none around 7pm. During his tour he could not recall any individuals blocking pedestrian traffic. He could not recall interacting with any individuals attempting to record. He did not use any profanity during his tour nor recall his partners using profanity towards any civilians. PO Perez never told any civilians to "Stop being a little bitch and shut up." He never heard any officer make this statement during his tour. He did not recall if his partners issued any summonses during his tour. PO Perez did prepare two separate criminal court summonses for public urination at different times and different locations. The officers never changed vehicles. He could not recall issuing any orders for any civilians to disperse at any time during his tour.

Video Presentation

The 45 second video was played once. At the 7 second mark of the video, PO Perez identified Sgt. Barbato, who was in plainclothes. He identified PO Nikqi, who was in uniform, standing next to Sgt. Barbato. PO Perez was directed to the background, behind Sgt. Barbato. He identified PO Chalen and described him as the smaller officer. PO Perez could not identify the individual in the video. PO Perez identified himself at the 8 second mark of the video.

At the 2 second mark, PO Perez was directed to the voice stating, "Shut the fuck up." PO Perez could not tell whose voice this was. PO Perez did not recall making this statement, did not know if any one did make this statement nor could he identify the voice as his own. Following this remark, an individual on the video could be heard saying, "You got me in cuffs for no reason." PO Perez did not know who made this remark.

Statement following reviewing the footage:

Following his review of the video, PO Perez stated that his memory of the incident was a little refreshed. He recalled himself, PO Nikqi, PO Chalen and Sgt. Barbato exiting the vehicle. His partners interacted with [REDACTED]. PO Perez was standing by the location and ensuring that no individuals interacted with Sgt. Barbato or his partners. Sgt. Barbato remained in the vehicle with all of the officers for the entirety of the tour.

All officers exited the vehicle at the same time for safety purposes. He did not know whose decision it was to exit the vehicle or if Sgt. Barbato gave any orders to exit the vehicle. PO Perez did not recall any conversation prior to exiting the vehicle. There was a group in front of [REDACTED]. PO Perez did not recall the size of the group, what they were doing or any observations he in particular made on this date. PO Perez did not know why his partners interacted with the individual on the video, identified as [REDACTED].

PO Perez did not know the actions of his partners as PO Perez went to one side of the group to separate the individuals, and his partners were on the other side. PO Perez did not recall if [REDACTED] was in front of the bodega and did not know if his partners observed anything to make him exit the vehicle. PO Perez did not recall what [REDACTED] was doing prior to exiting the vehicle.

Interview Details

He did recall that PO Chalen was interacting with [REDACTED] but did not know why PO Chalen interacted with [REDACTED]. There was an individual that was walking towards Sgt. Barbato and PO Perez's partner, so PO Perez issued an instruction to step away for the officers' safety. He did not know how long this interaction lasted.

PO Perez could not recall if [REDACTED] was making any statements to the group. PO Perez could not recall any specific statements or dialogue. PO Perez never interfered with any recording of the incident. He never told any civilians to not record. PO Perez did not recall threatening any civilians with arrest if they record the incident nor heard any officer make this threat. He did not recall Sgt. Barbato interacting with any civilians.

PO Perez could not recall if there were additional individuals that approached the group. PO Perez did not know why [REDACTED] was placed in handcuffs and arrested. However, he did know that [REDACTED] was transported to the stationhouse following the incident. He was not made aware of why [REDACTED] was arrested even upon his arrival at the stationhouse. PO Perez did not know if [REDACTED] was disorderly and could not recall [REDACTED] demeanor. From PO Perez's observation he could not recall [REDACTED] committing any observations. No other individuals were arrested or detained. PO Perez was not aware of what charges were placed on [REDACTED].

Interview Details

Sgt. Laura Barbato

On October 1, 2015, Sgt. Barbato worked a tour 1450x2347. Sgt. Barbato was in plainclothes and assigned to unmarked vehicle number [REDACTED]. This vehicle is a beige Crown Victoria. Sgt. Barbato was assigned as the conditions sergeant and the anti-crime supervisor within the confines of the 46th Precinct. She worked with PO Perez.

Memo book:

There were no memo book entries in regards to this incident. At approximately 1550 hours, Sgt. Barbato's memo book reflects that she was doing routine patrol. At 1815 hours she was 98. She had no memo book entries reflecting [REDACTED].

CCRB Testimony:

Sgt. Barbato was interviewed at the CCRB On December 1, 2015.

This location, [REDACTED] is a bodega. This bodega is a big condition within the confines of the 46th Precinct as it usually has groups of people on the sidewalk, drinking out in public, smoking marijuana and playing dice. There are a lot of 311 complaints that come in due this condition.

On October 1, 2015, at approximately 7pm, Sgt. Barbato and PO Perez were patrolling the area. PO Perez was operating the vehicle. Sgt. Barbato could not recall if there were any other officers with them as this was not noted in her memo book. When Sgt. Barbato and PO Perez approached [REDACTED] they observed a large group of people in front of it. The officers drove through the area slowly to observe the crowd. Though the officers have an unmarked car, but it is an obvious police vehicle, individuals in the area knew they were officers. There were approximately 7 or 8 people standing in front of the doorway to the bodega, obstructing pedestrian traffic. Sgt. Barbato observed individuals attempting to enter and exit the bodega and due to the group, the individuals had to go around the group. This only occurred once. Sgt. Barbato observed no other violations at this time. The officers drove around the block, to allow the civilians to leave. It took approximately two minutes to go around the block.

When the officers return to the location, a few individuals noticed the vehicle and leave. The officers stopped the vehicle in front of the bodega and exited the vehicle. At this time PO Nikqi and PO Chalen were present. Sgt. Barbato believed that PO Nikqi and PO Chalen were in a different vehicle; however, all four officers exited their vehicles at the same time to approach the group.

There were alcohol bottles and Corona (beers) on the ground. Some bottles were still cold and other bottles were falling over and pouring out. There was a smell of marijuana in the air. Sgt. Barbato did not observe any members of the group playing dice. Sgt. Barbato and the officers wanted to move the individuals out of the area. Sgt. Barbato did not speak with any individuals on the scene. However, the other officers did interact with the individuals and told them to disperse and clear the sidewalk. PO Perez was mostly the officer that was issuing the several directives. A few individuals walked away and complied. However, there were a few that wanted to hang around and be combative and angry. One individual in particular, [REDACTED] stated he was not moving because he lives there, the officers were harassing him. [REDACTED] began yelling for individuals to come over to record the incident because he was going to file a lawsuit. Sgt. Barbato did not observe [REDACTED] drinking and did not remember if he had anything in his hands. A photo of [REDACTED] which was taken at the CCRB, was presented to Sgt. Barbato. She confirmed that the individual in the photo was [REDACTED]. Sgt. Barbato did not interact with [REDACTED] and saw what was going on with [REDACTED] from the distance.

The individuals that did disperse still hung around the area. These individuals were standing near the RMP and some across the street. Additionally, several individuals across the street approach to see what was happening. Sgt. Barbato had not seen the members of the group that were across the street prior to them coming over. These individuals were just watching the incident. There were at least six individuals across the street. Sgt. Barbato had not heard any of these individuals speaking to the officers or [REDACTED]. There was a member of the initial group that attempted to record the incident but none attempted to interfere with what was occurring. Sgt. Barbato did tell the individuals in the crowd that they could record but they could not be right on top of the officers. She told the group that if they wished to record they must step back and do this from a distance. PO Perez was talking to the crowd and in particular to someone who was recording. However, she was not aware of what he stated to this individual. She did not remember an officer threatening to arrest anyone if they recorded the incident. PO Chalen and PO Nikqi were participating with crowd control.

Interview Details

One of the officers did request [REDACTED] identification; however, Sgt. Barbato did not know which. Sgt. Barbato believed that PO Perez was the officer that was interacting with [REDACTED]. Sgt. Barbato did not know at which point his identification was requested. She did not believe that [REDACTED] ever attempted to walk away.

Due to the size of the crowd that was forming, it became unsafe for the officers. At this time, he was placed in handcuffs to be taken back to the stationhouse. Sgt. Barbato believed that it was PO Perez's decision to remove [REDACTED] to the stationhouse solely due to the fact that he issued the summonses. At this time, [REDACTED] was in violation of blocking pedestrian traffic. Sgt. Barbato did not recall any other violations. Sgt. Barbato explained that if her officers feel like they are unsafe and he is not able to do his job at the scene, she will "back him up" and "verify that."

Given that the officers were outnumbered. Therefore, [REDACTED] was placed in handcuffs. [REDACTED] was taken back to the 46th Precinct where he was issued summonses. Given that [REDACTED] was taken for a violation, he was summonsed rather than arrested.

There was discussion about [REDACTED] littering but she was not certain. She believed he was summonsed for littering. There was a lot of debris around [REDACTED] but Sgt. Barbato did not personally observe [REDACTED] littering. She did not overhear [REDACTED] or an officer stating that the debris was his. Sgt. Barbato did not recall on this date any 311 calls to this location. Sgt. Barbato did not use profanity against [REDACTED] or heard an officer used profanity or state, "Stop being a little bitch. Shut up."

Video Presentation:

A 45 second video was presented to Sgt. Barbato.

At the 2 second mark, Sgt. Barbato was directed to the statement, "Shut the fuck up." She did not recognize the voice but affirmed that she heard it. When directed to the voice, "you have me cuffed for no reason", Sgt. Barbato stated that she could imagine that it was [REDACTED] that made this remark given that he was the only one in handcuffs.

At the 6 second mark, Sgt. Barbato identified herself and PO Nikqi. At the 9 second mark, she stated that the officer that was standing in front of PO Nikqi as PO Perez. She stated that PO Chalen was standing behind [REDACTED] PO Nikqi is standing behind PO Chalen.

Following seeing the video, she did not wish to add any other statements. She added that there was a lot that went on prior to the recording of this portion of the incident. Sgt. Barbato, PO Nikqi and PO Chalen were doing crowd control. When compliance was not obtained, it became very difficult and [REDACTED] was placed under arrest.

Interview Details

PO JASEN PEREZ

On March 3, 2016, PO Perez was interviewed a second time for this case due to additional information not known at the time of his first interview on November 24, 2015. Before PO Perez provided his statement on March 3, 2016, he reviewed the audio recording of his first interview alongside PBA Rep. Kate Kilduff-Conlon.

CCRB STATEMENT

PO Perez is not familiar with and does not personally know [REDACTED] and [REDACTED]. He does not know who or which individuals were part of the group present at the incident location on October 1, 2015. When asked if he feared for his safety or felt threatened by the group of civilian witnesses during the incident, PO Perez stated that he only told the individuals to back away for the officers' safety. At the 04:14 minute mark, before PO Perez fully completed his previous response, PBA Rep. Kilduff-Conlon stated towards PO Perez, "Okay so you were..so you were concerned for your safety" and PO Perez responded, "Yes."

At the 04:21 minute mark, PO Perez was asked if there were any specific actions by the civilians that caused him to instruct the civilians to back away and he stated it was for precautionary reasons. At this time, Inv. Landino observed PBA Rep. Kilduff-Conlon write a phrase on her note paper, angled the paper towards PO Perez, and PO Perez glanced at the paper. At 04:32 minute mark, after providing his previous response, PO Perez added, "They were too close to us and I just told them to back away until we were done."

At the 04:39 minute mark, Inv. Landino asked PBA Rep. Kate Kilduff-Conlon what she had written on her note paper. PBA Rep. Kate Kilduff-Conlon responded, "That's absolutely none of your business, attorney-client privilege." Inv. Landino told PBA Rep. Kate Kilduff-Conlon that she had written something on the piece of paper to show PO Perez. PBA Rep. Kate Kilduff-Conlon stated, "I wrote something on my paper. Whether or not PO Perez happened to look at my paper, I have no idea. These are my own notes; attorney-client privilege." Inv. Landino attempted to convey understanding of attorney-client privilege and re-emphasized the fact that *after PO Perez was asked the previous question [about civilians' actions], PBA Rep. Kate Kilduff-Conlon had written an answer on the paper to show PO Perez.* PBA Rep. Kate Kilduff-Conlon stated that Inv. Landino did not understand and proceeded to ask PO Perez, "Do you have a different answer?" PO Perez stated, "No mam."

Inv. Landino stated that PO Perez had glanced at the paper and after doing so, PBA Rep. Kate Kilduff-Conlon scribbled out what she had written on the paper shown to PO Perez. PBA Rep. Kate Kilduff-Conlon responded, "I can't say it was..going to glance out the window and somebody's going to put a sign up in the window or do something about that." Inv. Landino explained that the paper was directly in front of PO Perez and the window was not. Inv. Landino continued to ask PBA Rep. Kate Kilduff-Conlon what she had written on the paper, but PBA Rep. Kate Kilduff-Conlon would repeatedly state that it was none of the investigator's business and the papers were her notes.

At the 05:39 minute mark, Inv. Maclure stated for the record that he saw the attorney write "too close" on the paper. Inv. Landino informed PBA Rep. Kate Kilduff-Conlon that her note paper would need to be taken as since she made the notation for PO Perez in the investigators' presence. PBA Rep. Kate Kilduff-Conlon refused to provide her note paper and argued that she did not know what Inv. Maclure thought he saw. PBA Rep. Kate Kilduff-Conlon began a tirade about PO Perez being called to the CCRB a second time and that Inv. Landino should ask PO Perez whether his response was his own feeling.

At the 6:34 minute mark, Inv. Landino and Inv. Maclure observed PBA Rep. Kilduff-Conlon slam her hand bag on the interview table, in between Inv. Maclure and the area she was writing her notes as to block the investigators line of vision. *This was not stated for the record.* Inv. Landino continued to convey the fact that PBA Rep. Kate Kilduff-Conlon had written something on her note paper and pushed the paper towards PO Perez's line of vision. In response, PBA Rep. Kilduff-Conlon stated, "That's your opinion. The vision of the officer, he can probably see behind him for all I know."

At the 07:34 minute mark, Inv. Landino informed PBA Rep. Kilduff-Conlon that her action of writing something on the sheet of paper, turning the paper towards PO Perez who then glanced at the paper and answered the interview question, is considered coaching the officer and requested the note paper several more times. PBA Rep. Kilduff-Conlon continued trying to convince the investigators that what she wrote on the paper was protected by attorney-client privilege and by the courts and threatened to end the interview.

At the 10:20 minute mark, Inv. Landino paused the interview to consult with IM Jessica Pena.

PO JASEN PEREZ

Due to an interference issue with PBA Representative Kate Kilduff-Conlon during the first part of PO Perez's interview and the subsequent two and a half hour delay to continue the interview on the part of Ms. Conlon the second part of PO Perez's interview was recorded on a second audio file. The second part of PO Perez's interview began at 1:29 p.m. PBA Representative Kate Kilduff-Conlon, IM Jessica Pena, and Inv. William Maclure were present during the interview.

At 19 seconds of the audio recording, IM Pena asked Ms. Conlon if the interview could proceed. Ms. Conlon stated that she had to create a wall to keep prying eyes off of her notes she would be taking. Ms. Conlon asked IM Pena to instruct her investigators to not peer at her notes she would be making during the interview. In response, IM Pena stated the interview would proceed.

At 40 seconds of the audio recording, Ms. Conlon again asked IM Pena to instruct the investigator not too peer at her notes. IM Pena informed Ms. Conlon she would not do so. Ms. Conlon directed IM Pena, "Talk to your investigator to mind his own business." At 57 seconds, Ms. Conlon instructed Inv. Maclure to not look at her notes.

At the 1:35 minute mark of the audio recording, IM Pena stated for the record that Ms. Conlon was placing her hand bag and another bag on the interview table. At the 1:39 minute mark, Ms. Conlon asked IM Pena if she also wanted to know when she combs her or puts on lip gloss or lipstick.

PO Perez did not recall threatening to arrest any individuals present during the incident. He did not recall any other officers present during the incident threaten to arrest any individuals during the incident. All PO Perez could remember was that an individual, identified via the investigation as [REDACTED] was arrested at the scene and later released with a summons.

PO Perez recalled either one or several individuals began video recording the incident at some point either in front of him or behind him. PO Perez could not recall if he interacted with the individuals who were recording or any statements he may have made to the individuals since the incident occurred six months ago and he cannot remember what he said or did yesterday. At the time of the incident, PO Perez only told the individuals to step back for his and his team's safety until the officers finished speaking with [REDACTED] PO Perez could not recall any physical altercation with the individuals and he did not strike anymore, nor did anyone strike him. If PO Perez did assist any individuals with moving then he just told them to step back with his hand gestures or physically guided them lightly backwards away from the officers.

PO Perez could not remember if he or any other officers made a statement during the incident about individuals being street lawyers. PO Perez could not recall stating, "This fucking street lawyer right here wanna be the big one" during the incident. He did not remember any statements he may have made or statements made by other officers during the incident.

VIDEO FOOTAGE

At the 6:43 minute mark, the video footage from the incident was played. At the 7:30 minute mark, PO Perez requested the video be played again. At the 7:39 minute mark, the video footage was played a second time. After the video footage was played a second time, PO Perez was asked if the video refreshed his recollection regarding the previous interview questions and if he wanted to add anything to the record about the incident. PO Perez stated that he did not know who made that statement [shut the fuckup] at the beginning of the video.

At the 9:41 minute mark of the audio recording, IM Pena stated for the record that Ms. Conlon had written something down on her paper and showed it to PO Perez. In response, Ms. Conlon stated, "That's right and there was no pending question, attorney-client privilege."

At the 10:57 minute mark of the audio recording, Ms. Conlon objected to Inv. Landino directing PO Perez's attention to the "stand back" statement in the video footage.

At the 7 second mark of the video footage, PO Perez identified himself as the officer standing at the far-right of the camera frame and also identified Sgt. Barbato and PO Nikqi. PO Perez was directed to the statement beginning at the 7 second mark of the video recording, "Stand over there. Right there. No, no in front of your boy." PO Perez identified himself as having made the aforementioned statement to the individual whose head briefly blocked the video footage at the __ seconds mark. PO Perez stated he made the aforementioned statement in a general sense because he wanted to ensure all the individuals were standing where he

knew they were going to be for his own safety. He made the aforementioned statement first to one of the individuals standing behind the individual whose head was seen blocking the video footage then told the latter individual to “stand there.” From the beginning of the audio recording until the 10 second mark, PO Perez did not hear himself instruct any other individuals to back away.

At the 12:53 minute mark of the audio recording, Ms. Conlon stated for the record that the individuals PO Perez referenced were not seen on the video footage.

At the 10 second mark of the video footage, PO Perez acknowledged leading an individual, who was standing in front of the video camera, with his left hand so the individual could move over and back-up for PO Perez’s safety. He indicated that he felt safer knowing that the individuals were grouped together and he knew where they were. PO Perez did not recall any statements made by the individuals in response to him guiding the individual back.

At the 20 second mark of the video footage, PO Perez identified himself as the only male individual shown on the screenshot. PO Perez was told to listen for the following statement made at the 19 and 20 second mark of the video footage, “This fucking street lawyer right here wanna be the big one.” The video footage was played from the 17 second mark to the 20 second mark four times at PO Perez’s request. After the fourth time, he was asked if he could identify the voice of the statement. PO Perez stated, “Possibly could be mine or somebody else that’s not in the picture frame.”

At the 18:04 minute mark of the audio recording, PO Perez was asked if his answer was that the voice could be his or if he thought the voice was his. *At the 18:09 minute mark, IM Pena stated for the record that Ms. Conlon had tapped PO Perez [leg with her leg under the table] (inaudible due to Ms. Conlon’s screaming). Ms. Conlon began screaming that she did not tap PO Perez or anyone, that it was getting ridiculous, and not to accuse her of things she did not do.*

PO Perez was asked again to clarify his previous answer regarding the identification of the voice on the video footage. PO Perez requested the relevant part of the video footage be played again. After hearing the aforementioned profane statement a fifth time, PO Perez stated, “Possibly could be mine.” He then stated that he could not recall one-hundred percent if the voice was his or someone else in the background not shown in the camera fine. For the record, PO Perez clarified that the voice could have belonged to him, the individual recording, or the other individual he told to back away.

At the 19:54 minute mark of the audio recording, Ms. Conlon stated for the record that she was moving her phone and putting it in her bag.

When PO Perez was asked if he had anything to add to the record that was not asked, he requested to watch the video again just in case he was called back a third time so he can memorize it.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Squad #6	CCRB Case #: 201508604	<input type="checkbox"/> Force	<input checked="" 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) Thursday, 10/01/2015 7:00 PM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 4/1/2017	EO SOL 4/1/2017	
Date/Time CV Reported Fri, 10/09/2015 1:12 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 10/09/2015 1:12 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Johnny Chalen	09575	947694	046 PCT
2. POM Jasen Perez	10775	949470	046 PCT
3. SGT Laura Barbato	270	944350	046 PCT
4. POM Valdrin Nikqi	07009	954177	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez interfered with § 87(2)(b) use of a recording device.	A . § 87(2)(g)
B . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b).	B . § 87(2)(g)
C . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b).	C . § 87(2)(g)
D . POM Johnny Chalen	Discourtesy: Police Officer Johnny Chalen spoke discourteously to § 87(2)(b).	D . § 87(2)(g)
E . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez interfered with § 87(2)(b) use of a recording device.	E . § 87(2)(g)
F . POM Jasen Perez	Discourtesy: Police Officer Jasen Perez spoke discourteously to § 87(2)(b).	F . § 87(2)(g)
G . POM Johnny Chalen	Abuse of Authority: Police Officer Johnny Chalen improperly summonsed § 87(2)(b) for littering and obstruction of pedestrian traffic.	G . § 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
K . POM Jasen Perez	Other: There is evidence suggesting Police Officer Jasen Perez provided a false official statement in violation of PG 203-08.	K . § 87(2)(g)

Case Summary

This case exceeded the 90-day benchmark due to the case remaining with the Alternative Dispute Resolution Unit for two-weeks, the undersigned's one-month Grand Jury duty obligation, and the necessity of re-interviewing an officer.

On October 9, 2015, § 87(2)(b) filed this complaint in-person at the CCRB (BR01).

On October 1, 2015, at approximately 7 p.m., § 87(2)(b) his brother § 87(2)(b) his cousin § 87(2)(b) and his friend § 87(2)(b) were standing and talking amongst each other in front of the apartment building located at § 87(2)(b) in the Bronx. As § 87(2)(b) began walking away from the group towards § 87(2)(b) § 87(2)(b) PO Johnny Chalen, PO Jasen Perez, Sgt. Laura Barbato, and PO Valdrin Nikqi of the 46th Precinct arrived at the location and exited their unmarked RMP. The officers immediately approached § 87(2)(b) and briefly spoke with him before PO Chalen placed him in handcuffs. While PO Chalen was handcuffing § 87(2)(b) and an unknown amount of unidentified individuals began gathering near § 87(2)(b) and § 87(2)(b) started to video record the incident with his cell phone.

§ 87(2)(b) yelled for § 87(2)(b) to video record what was happening. When § 87(2)(b) took out his cell phone in order to video record the incident, PO Perez allegedly told him, "If you record, I'm taking you too" (**Allegation A** and **Allegation B**). § 87(2)(b) asked the officers why § 87(2)(b) was being arrested and in response, PO Perez allegedly told him, "Shut up or I'll arrest you too" (**Allegation C**). When § 87(2)(b) yelled a second time for § 87(2)(b) to video record the incident, PO Chalen told him, "Stop being a little bitch. Shut up" (**Allegation D**). When § 87(2)(b) asked the officers why § 87(2)(b) was being arrested, PO Perez physically guided § 87(2)(b) in front of § 87(2)(b) in an effort to obstruct § 87(2)(b) video recording (**Allegation E**). As § 87(2)(b) was being escorted to the unmarked RMP, PO Perez told § 87(2)(b) "Get the fuck out of here. Look at this guy trying to be a fucking street lawyer" (**Allegation F**).

§ 87(2)(b) was transported to the 46th Precinct stationhouse and released later that same night with three summonses issued by PO Chalen for littering, obstructing pedestrian traffic, and refusal to disperse (**Allegation G**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) The CCRB found evidence suggesting that PO Perez provided a false official statement regarding this incident (**Allegation K**), which was referred to IAB as spin-off case number 201601542 on February 29, 2016.

This case has video evidence provided by § 87(2)(b) a SnagIt copy of which has been placed below. The full video can be found at Board Review 26 and the transcription of this video can be found at Board Review 21.



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CCRB Case # 201508604

Mediation, Civil and Criminal Histories

- On October 9, 2015, § 87(2)(b) accepted mediation during his CCRB interview. The case was forwarded to the Alternative Dispute Resolution Unit on October 29, 2015 and referred back to the Investigations Unit on November 5, 2015 at the request of § 87(2)(b)
- On March 24, 2016, a request to determine if a Notice of Claim was filed was submitted; confirmation from the New York City Office of the Comptroller will be forwarded upon receipt (BR25).
- On March 17, 2016, New York State Office of Court Administration records revealed no criminal convictions for § 87(2)(b) (BR18). That same day, a database search of the New York State Unified Court system revealed that § 87(2)(b) is scheduled to appear at the Bronx Criminal Court on § 87(2)(b) (BR19).
- § 87(2)(b)
- As of March 17, 2016, New York State Office of Court Administration records revealed no criminal convictions for § 87(2)(b) and § 87(2)(b)

Civilian and Officer CCRB Histories

- PO Perez has been a member of the service for 5 years and this is the second CCRB complaint filed against him. The abuse of authority allegation in his first CCRB complaint was unsubstantiated § 87(2)(g)
- PO Chalen has been a member of the service for 7 years and has 11 CCRB allegations, none of which have been substantiated, § 87(2)(g), § 87(4-b), § 87(2)(g)
- In case number 201600583, discourtesy and frisk allegations are currently being investigated.
- Sgt. Barbato has been a member of the service for 8 years and has 8 CCRB allegations, none of which have been substantiated, § 87(2)(g), § 87(4-b), § 87(2)(g)
- In case number 201600667, stop and search allegations are currently being investigated.
- PO Nikqi has been a member of the service for 3 years and has 7 CCRB allegations, § 87(2)(g). In case number 201508753, he was § 87(4-b), § 87(2)(g) a frisk allegation was substantiated, in which the CCRB recommended formalized training.
 - In case number 201600667, a stop allegation is currently being investigated.
- § 87(2)(b)
- This is § 87(2)(b) and § 87(2)(b) first CCRB complaint (BR08, BR09, and BR23).

Potential Issues

- Since the video footage provided by § 87(2)(b) does not capture the entire incident, the investigation is unable to observe the events preceding § 87(2)(b) being handcuffed.
- On October 27, 2015, the CCRB Field Team attempted to obtain video footage from § 87(2)(b) but all video footage prior to October 3, 2015 had been erased (BR04).
- On October 15, 2015, § 87(2)(b) provided a phone statement to the CCRB, but did not schedule a CCRB interview. Between October 16, 2015 and October 29, 2015, contact attempts via telephone, postal mail, and e-mail were exhausted and unsuccessful in reaching § 87(2)(b) to schedule a CCRB interview.
- Between November 10, 2015 and November 12, 2015, § 87(2)(b) was contacted twice via telephone, voicemails were left, and a please call letter was e-mailed to him and also mailed via the United States Postal Service. On November 12, 2015, § 87(2)(b) called the CCRB, provided a phone statement, and scheduled a CCRB interview for November 18, 2015. § 87(2)(b) missed his scheduled interview and did not call ahead to cancel or reschedule. On November 20, 2015, § 87(2)(b) was called a third time and he stated that he would call the CCRB back because he was sleeping. Between November 20, 2015 and December 9, 2015, contact attempts via telephone, e-mail, and postal mail were exhausted and unsuccessful in reaching § 87(2)(b) to reschedule his CCRB interview (BR05). A search on the Department of Corrections database on March 31, 2016 revealed that § 87(2)(b) is not currently incarcerated (BR 37).
- The investigation originally listed § 87(2)(b) as solely a witness to the incident and later truncated § 87(2)(b) due to exhausting all contact attempts without successfully reaching him. On December 2, 2015, § 87(2)(b) contacted the CCRB, provided a phone statement indicating that PO Perez spoke discourteously to him, and scheduled a CCRB interview for December 9, 2015. § 87(2)(b) missed his scheduled interview and eventually provided a sworn statement over the phone on December 16, 2015, after all the officers in this case were already interviewed. Since PO Perez's discourteous statement alleged by § 87(2)(b) was not mentioned in any of the other civilians' statements and § 87(2)(b) did not provide a sworn statement until after all of the officers were already interviewed by the CCRB, the alleged discourtesy was unable to be thoroughly covered during PO Perez's first CCRB interview. As such, PO Perez was interviewed a second time.

Findings and Recommendations

Allegations Not Pleaded

- **Abuse of Authority:** It is undisputed that § 87(2)(b) was stopped by officers and issued three summonses, but the circumstances that led to the stop are in dispute. Specifically, all of the officers' testimonies are unclear regarding if the original purpose of the stop was to investigate suspected crimes or if it was to simply summons § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
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- **Abuse of Authority:** Since § 87(2)(b) was under arrest and going to be transported to the 46th Precinct stationhouse, a frisk of his outer clothing before placing him in handcuffs and

into the unmarked RMP was procedural and justified. As such, a frisk allegation will not be pleaded against PO Chalen.

- **Force:** § 87(2)(b) and § 87(2)(b) stated that PO Chalen pushed § 87(2)(b) against a wall and handcuffed him. Since § 87(2)(b) stated that he complied with Sgt. Barbato's directive to place his body against the wall with his hands up and never indicated being pushed or forced against the wall, a push allegation will not be pleaded against PO Chalen.

Allegation A – Abuse of Authority: Police Officer Jasen Perez interfered with § 87(2)(b)'s use of a recording device.

Allegation B – Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b)

Allegation C – Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that when he was being handcuffed by PO Chalen, he yelled for § 87(2)(b) to video record what was happening to him. When § 87(2)(b) took out his cell phone to begin video recording, PO Perez allegedly told him, "If you record, I'm taking you too." § 87(2)(b) immediately put his cell phone away and PO Perez allegedly stood next to § 87(2)(b) to ensure that no one else would video record the incident. § 87(2)(b) never indicated that PO Perez threatened to arrest § 87(2)(b) during the incident.

In § 87(2)(b)'s phone statement (BR03), he corroborated that § 87(2)(b) asked him to video record the incident while § 87(2)(b) was being handcuffed. When § 87(2)(b) attempted to remove his cell phone, PO Perez allegedly told him, "Don't record. This is not a movie." § 87(2)(b) never mentioned that PO Perez threatened to arrest § 87(2)(b)

In § 87(2)(b)'s phone statement (BR05), he also corroborated that § 87(2)(b) attempted to video record the incident, but PO Perez allegedly told § 87(2)(b) "If you record, this will happen to you." § 87(2)(b) did not allege that PO Perez threatened to arrest him during the incident.

During § 87(2)(b)'s phone statement (BR06), he did not identify § 87(2)(b) as being present during the incident and indicated that only § 87(2)(b) was video recording the incident. § 87(2)(b) never mentioned officers attempting to interfere with any individual's video recording and stated that at no point during the incident did officers threaten to arrest him, § 87(2)(b) or their two unidentified friends. In his sworn CCRB statement, § 87(2)(b) was consistent with not identifying § 87(2)(b) as being present during the incident and that only § 87(2)(b) was video recording. § 87(2)(b) alleged that when § 87(2)(b) asked the officers why § 87(2)(b) was being arrested, PO Perez allegedly told § 87(2)(b) "Shut up or I'll arrest you too." § 87(2)(b) did not allege that officers threatened to arrest or attempted to interfere with any other individuals' video recording aside from § 87(2)(b)

Initially during PO Perez's first CCRB interview, he could not recall interacting with any individuals attempting to video record the incident. After PO Perez reviewed the video footage provided by § 87(2)(b) he denied interfering with any recording of the incident, denied directing any individuals to not record, and did not recall threatening to arrest any individuals if they recorded the incident or hear any other officer make this threat. During PO Perez's second

CCRB interview, he did not recall threatening to arrest any individuals or hearing any other officers threaten to arrest any individuals. PO Perez did recall individuals video recording during the incident, but did not recall if he interacted with the individuals or made any statements towards them. After reviewing the video footage, PO Perez stated that he generally instructed individuals to move farther away for his and his partners' safety.

PO Chalen corroborated that PO Perez instructed an individual, who was video recording, to step back, but did not know if PO Perez made any other statements to the individual who was recording. PO Chalen denied that he and PO Perez threatened to arrest any individuals if they recorded the incident. Sgt. Barbato stated that an individual was video recording the incident and she told the group of individuals present that they must step back if they wanted to record the incident. PO Perez spoke to the individual recording the incident, but Sgt. Barbato was not aware of what PO Perez may have told this individual. Sgt. Barbato could not remember an officer threatening to arrest any individuals if they recorded the incident. Initially during PO Nikqi's testimony, he could not recall any individuals attempting to record the incident and he did not hear any officers threatening to arrest individuals for video recording. After reviewing the video footage, PO Nikqi stated that the video footage showed PO Perez pushing individuals back, but he did not hear any comments about video recording.

§ 87(2)(b) and § 87(2)(b) corroborated that PO Perez allegedly threatened to arrest § 87(2)(b) if he recorded the incident, but they never alleged that PO Perez threatened to arrest § 87(2)(b). In contrast, § 87(2)(b) does not corroborate that PO Perez threatened to arrest or interfered with § 87(2)(b)'s video recording. Instead, § 87(2)(b) raised the allegation of PO Perez interfering with § 87(2)(b) video recording and threatening to arrest him. All of the officers who were interviewed either denied or did not recall threatening to arrest any individuals who were recording the incident or hearing any officers do so. The provided video footage does not capture any officers threatening to arrest individuals and only depicts PO Perez interfering specifically with § 87(2)(b) video recording.

§ 87(2)(g)
[REDACTED]

Allegation D – Discourtesy: Police Officer Johnny Chalen spoke discourteously to § 87(2)(b)

It is undisputed that PO Chalen verbally interacted with § 87(2)(b) during this incident.

§ 87(2)(b) stated that after he yelled for § 87(2)(b) to video record the incident a second time, PO Chalen told him, "Stop being a little bitch. Shut up." § 87(2)(b)'s phone statement (BR03) did not mention any discourteous statements made by officers towards civilians during the incident. In § 87(2)(b)'s phone statement (BR05), he stated that § 87(2)(b) asked PO Chalen why he was being arrested and in response, PO Chalen told § 87(2)(b) "Shut the

fuck up.” In § 87(2)(b) phone statement (BR06), he only mentioned a discourteous statement made towards him and stated that he did not hear any officer use profanity against any other civilians during the incident. During § 87(2)(b) sworn CCRB statement, he stated that he heard PO Chalen tell § 87(2)(b) “Stop being a little bitch” after § 87(2)(b) asked the officers why he was being arrested.

PO Chalen did not recall using profanity against § 87(2)(b) and denied telling § 87(2)(b) “Fucking little bitch, just shut up.” He did not hear any officers make the aforementioned statement to § 87(2)(b) and he did not hear officers use profanity against § 87(2)(b) during the incident. After reviewing the provided video footage, PO Chalen identified himself as the officer who stood behind and handcuffed § 87(2)(b) at the beginning of the video footage. When PO Chalen was directed to the 1-second mark of the video footage where a male voice was heard stating “shut the fuck up,” he confirmed that he heard the statement, but he did not know if the male’s voice was his and he did not sure if the male’s voice belonged to an officer or a civilian. PO Chalen was then directed to the 3-second mark of the video footage where another male’s voice was heard stating, “You got me in cuffs for no reason.” PO Chalen reasoned that since he was handcuffing § 87(2)(b) then § 87(2)(b) had obviously made the aforementioned statement.

NYPD Patrol Guide Procedure 203-09 instructs officers to be courteous and respectful when interacting with the public (BR27). The use of profanity by an officer may be permissible if it is used to gain a civilian’s cooperation, but it constitutes misconduct if it is used only in retaliation to a civilian’s discourteous remarks, Police Department v. Jean-Mary, OATH Index No. 129/01 (BR28). Hostility, defiance, or provocation from a civilian does not justify an officer’s use of unprofessional and unnecessary language, Police Department v. Teeter, OATH Index No. 590/01 (BR29).

§ 87(2)(g)
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§ 87(2)(g)

Allegation E – Abuse of Authority: Police Officer Jasen Perez interfered with use of a recording device.

Civilian testimony and the video footage provide undisputable evidence that PO Perez intentionally interfered with § 87(2)(b) video recording of the incident.

Although § 87(2)(b) and § 87(2)(b) did not mention any officers interfering with § 87(2)(b) video recording, it is plausible that they were unable to observe the interference from their circumstantial positioning during the incident. Both § 87(2)(b) and § 87(2)(b) corroborated that PO Perez physically moved § 87(2)(b) to stand in front of § 87(2)(b) with the intention of obstructing § 87(2)(b) video footage of the incident.

During PO Perez’s first CCRB interview, he could not recall interacting with any individuals attempting to video record the incident. After PO Perez reviewed the video footage, he denied interfering with any recording of the incident and denied directing any individuals to not record. During the first part of PO Perez’s second CCRB interview, he was asked if he feared for his safety or felt threatened by the civilian witnesses during the incident. In response, PO Perez stated that he only told individuals to back away for officers’ safety. When PO Perez was asked if the civilians made any specific actions which prompted him to direct them to back away, PO Perez stated the directive was issued for precautionary reasons. As PO Perez provided the aforementioned answer of precautionary reasons, PBA Representative Kate Kilduff-Conlon wrote a phrase on her notepaper and moved the notepaper towards PO Perez, who then glanced at it. The phrase “too close” was observed and stated on the CCRB audio recording. After glancing at the notepaper, PO Perez added to his previous response, “They were too close to us” and PBA Representative Kilduff-Conlon then scribbled out the “too close” phrase on her notepaper. Due to this non-verbal interference, the investigation did not credit PO Perez’s response that the civilians were too close to the officers at the incident location causing him to direct the civilians to back away. Furthermore, PBA Representative Kilduff-Conlon’s non-verbal interference consequently led PO Perez’s CCRB second interview to be recorded on two separate audio files.

During the second part of PO Perez’s second CCRB interview, PO Perez recalled one or several individuals video recording the incident either in front of him or behind him, but he did not recall if he interacted with the individuals or made any statements towards them. PO Perez stated that he only told the individuals to step back for police safety and if he did assist any individuals with moving, then he would have told them to step back using hand gestures or physically guided the individuals away from the officers. PO Perez reviewed the video footage and identified himself as the officer who stated, “Stand over there” at the 7-second mark and “Right there; no no, in front of your boy” at the 9-second mark towards the male individual whose head briefly obstructed the video footage at the 8-second and 10-second marks (See above video 201508604_20160325_1512_DM.mp4). When asked about his reason for making the

aforementioned statements, PO Perez indicated that he made those statements because he wanted to ensure that all the individuals were “standing where he knew they were going to be” for his own safety. At the 10-second mark of the video footage, PO Perez identified himself as the officer who was physically guiding a male individual with his left hand. PO Perez did this so the male individual could “move over and back-up” for PO Perez’s safety.

NYPD Patrol Guide Procedure 212-49 instructs officers to cooperate and assist media representatives during an incident and determine if any threat exists to the media representatives’ safety. If no threat safety exists, “members of the service will not interfere with the videotaping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship” (BR30).

§ 87(2)(g) [REDACTED]

[REDACTED]

Allegation F – Discourtesy: Police Officer Jasen Perez spoke discourteously to § 87(2)(b)

[REDACTED]

In § 87(2)(b) phone statement (BR06), he alleged that once he and § 87(2)(b) began asking officers why § 87(2)(b) was being arrested, PO Perez told him, “Shut up. You’re trying to be a street lawyer? Get the fuck out of here.” In § 87(2)(b) sworn CCRB statement, he was consistent that when he asked the officers why § 87(2)(b) was being arrested, PO Perez told him, “Get the fuck out of here. Look at this guy trying to be a fucking street lawyer.”

During § 87(2)(b) phone statement (BR05), he indicated that PO Perez made a statement to Sgt. Barbato about how § 87(2)(b) and his friends were “a bunch of street lawyers,” but did not allege any discourtesies. § 87(2)(b) and § 87(2)(b) did not mention any officers’ statements about civilians being street lawyers, but their lack of corroboration is due to the fact

that they were not in close proximity to § 87(2)(b) and § 87(2)(b) at the time when the discourteous statement was made.

During PO Perez’s first CCRB interview, he denied using profanity during his tour on the incident date, nor did he recall his partners using profanity towards any civilians. PO Perez denied stating towards a civilian, “Stop being a little bitch. Shut up.” During the second part of his second CCRB interview, PO Perez could not remember if he or any other officers made a statement during the incident about individuals being street lawyers. PO Perez could not recall stating to any individuals during the incident, “This fucking street lawyer right here wanna be the big one.” PO Perez was then directed to the 19-second and 20-second marks of the video footage where Sgt. Barbato and PO Perez are seen walking past § 87(2)(b) video recording and a male’s voice is heard in front of the video recording clearly stating, “This fucking street lawyer right here wanna be the big one.” PO Perez identified himself as the only male individual shown on the video footage’s screenshot at the 20-second mark. After PO Perez listened to the aforementioned discourteous statement four times, he was asked to identify the voice of the statement. In response, PO Perez stated, “Possibly could be mine or somebody else that’s not in the picture frame.” When PO Perez was asked to clarify whether his answer meant the voice could be his or if he thought the voice was actually his, Investigative Manager Jessica Pena stated for the record that PBA Representative Kilduff-Conlon tapped PO Perez’s leg underneath the interview room table. The same question was restated and PO Perez asked to review discourteous statement once more. After hearing the discourteous statement a fifth time, PO Perez stated the male voice, “Possibly could be mine,” but he could not recall one-hundred percent if the voice was his or someone else in the background. PO Perez then specified that the male voice could have been his, the individual recording, or the individual he told to back away.

NYPD Patrol Guide Procedure 203-09 instructs officers to be courteous and respectful when interacting with the public (BR27). The use of profanity by an officer may be permissible if it is used to gain a civilian’s cooperation, but it constitutes misconduct if it is used only in retaliation to a civilian’s discourteous remarks, Police Department v. Jean-Mary, OATH Index No. 129/01 (BR28). Hostility, defiance, or provocation from a civilian does not justify an officer’s use of unprofessional and unnecessary language, Police Department v. Teeter, OATH Index No. 590/01 (BR29).

PO Perez is the only male individual observed walking past § 87(2)(b) video recording with Sgt. Barbato at the exact time the discourteous statement is made at the 19-second and 20-second marks of the video footage (See above video 201508604_20160325_1512_DM.mp4). § 87(2)(g)

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Allegation G – Abuse of Authority: Police Officer Johnny Chalen improperly summonsed § 87(2)(b) for littering and obstruction of pedestrian traffic.

It is undisputed that PO Chalen stopped § 87(2)(b) and summonsed him for refusal to disperse, obstruction of pedestrian traffic, and littering.

§ 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) were only standing and talking amongst each other in front of his aunt’s apartment building located at § 87(2)(b). As they were conversing, none of the aforementioned individuals made any hand-to-hand contact or suspicious hand movements. § 87(2)(b) did not observe any officers or hear any officers call out to him while he was speaking with § 87(2)(b) and § 87(2)(b). After talking for ten to fifteen minutes, § 87(2)(b) said good-bye to the aforementioned individuals and began walking away from them towards § 87(2)(b). As § 87(2)(b) was walking towards § 87(2)(b) he observed Sgt. Barbato and PO Perez park their unmarked RMP near the fire hydrant in front of § 87(2)(b) an exit the unmarked RMP. When Sgt. Barbato stated to § 87(2)(b) “You don’t hear them calling you,” § 87(2)(b) turned around and saw PO Chalen and PO Nikqi were walking three-feet behind him. § 87(2)(b) did not observe any officers or hear any officers call out to him while he was speaking with § 87(2)(b) and § 87(2)(b) or while he was walking towards § 87(2)(b). PO Chalen then proceeded to place § 87(2)(b) under arrest. § 87(2)(b) could not recall any additional witnesses being present during the incident aside from § 87(2)(b) and § 87(2)(b).

In § 87(2)(b) s phone statement, he indicated that he, § 87(2)(b) and other unidentified cousins were standing in front of § 87(2)(b) when an unmarked RMP parked along-side them and four officers exited the unmarked RMP and approached the group of individuals. § 87(2)(b) denied that the group was drinking at the time. For reasons unbeknownst to § 87(2)(b) was placed under arrest for disorderly conduct.

In § 87(2)(b) phone statement, he corroborated that he, § 87(2)(b) and two other unidentified individuals were standing and talking amongst each other in front of § 87(2)(b) and did not make any hand-to-hand contact or gestures while they were talking. § 87(2)(b) observed an unmarked RMP driving towards the apartment building they were standing in front of and when § 87(2)(b) also observed the unmarked RMP, he began walking away from the group of individuals since he has had prior encounters with the officers.

Immediately after § 87(2)(b) began walking away from the group of individuals, the unmarked RMP parked in front of § 87(2)(b) and Sgt. Barbato, PO Nikqi, and PO Chalen exited the unmarked RMP and followed § 87(2)(b) while PO Perez proceeded to park the unmarked RMP in front of § 87(2)(b). None of the officers stopped or spoke to § 87(2)(b) or any other individuals from the group and § 87(2)(b) did not hear the officers make any statements to § 87(2)(b) as they were following him. Once § 87(2)(b) was in front of § 87(2)(b) PO Chalen placed him under arrest.

During § 87(2)(b) phone and sworn statements, he corroborated that he, § 87(2)(b) and two unidentified friends were standing and talking amongst each other in front of § 87(2)(b). The group was not drinking and there were no items on the ground aside from a few strawberries. There were no additional individuals standing with the aforementioned group and there were several people that passed the group in order to enter the apartment building, but the group was not blocking the entranceway and no one asked the group to move out of the way. After talking for five minutes, § 87(2)(b) began walking away from the group towards § 87(2)(b) at the same time that § 87(2)(b) observed an unmarked RMP park in front of the apartment building. § 87(2)(b) did not notice the unmarked RMP drive past the group and did not overhear any officers direct the group to disperse beforehand. When PO Perez, Sgt. Barbato, PO Chalen, and PO Nikqi exited the unmarked RMP, they did not stop or speak to anyone except § 87(2)(b). The officers followed § 87(2)(b) and arrested him in front of § 87(2)(b) and § 87(2)(b) did not overhear the officers make any statements to § 87(2)(b) beforehand. Aside from the aforementioned civilians, no other individuals gathered to watch the incident, but there were four or five unidentified individuals already standing in front of § 87(2)(b) prior to the incident who remained for the incident's entirety.

According to PO Chalen, at approximately 6 p.m. on the incident date, he and PO Perez saw a group of individuals that included § 87(2)(b) standing by the entrance of § 87(2)(b). PO Chalen did not observe the group drinking or playing dice and the group seemed to only be standing around. PO Chalen issued multiple verbal orders for the group to disperse from within his unmarked RMP, but the individuals did not comply. After issuing one more order to disperse, the officers quickly kept driving. At approximately 7 p.m. that same night, PO Chalen and PO Perez returned to § 87(2)(b) and observed a group of eight or more individuals standing in front of the location and sitting on crates. PO Chalen stated that since the individuals recognized the unmarked RMP, he was able to hear from his partially opened window, the individuals dropping and breaking their bottles and cups on the sidewalk. PO Chalen further stated that many individuals were blocking the entrance of § 87(2)(b) and making it difficult for individuals to enter and exit the building; however, PO Chalen did not actually observe any individuals attempt to enter or exit the building at the time. With the intention of issuing littering summonses to the group of individuals, PO Chalen and PO Perez parked and exited their unmarked RMP and solely approached § 87(2)(b) since many of the other individuals had already dispersed from the area. Since PO Chalen observed dice on the ground near § 87(2)(b) PO Chalen wanted to specifically stop § 87(2)(b) for "the dice, drinking, and everything." However, PO Chalen did not observe § 87(2)(b) drinking. When asked if he observed § 87(2)(b) playing dice, PO Chalen responded that he did observe § 87(2)(b) make a hand gesture similar to a person dropping something and when PO Chalen approached § 87(2)(b) he observed the dice near § 87(2)(b) feet. PO Chalen directed § 87(2)(b)

to stop multiple times because § 87(2)(b) walked away from the officers. When § 87(2)(b) did stop, PO Chalen asked him what he was doing and requested his identification. § 87(2)(b) did not want to answer PO Chalen's question and PO Chalen could not recall if § 87(2)(b) provided identification at the incident location or at the stationhouse. Since a crowd of more than five individuals gathered, § 87(2)(b) and the individuals began yelling at the officers, and the fact that he was already going to summons § 87(2)(b) for obstructing the entrance of § 87(2)(b) PO Chalen decided to handcuff § 87(2)(b) and transport him to the stationhouse where he could be issued the summons. When PO Chalen was asked during his CCRB interview if § 87(2)(b) committed any other violation aside from obstructing the entranceway of the building, PO Chalen responded that he could not recall what exactly the additional two summonses were issued for, but indicated that since he issued summonses to § 87(2)(b) then the violations would have occurred at the time of the incident. After being presented with § 87(2)(b) three summonses, PO Chalen stated that the refusal to disperse summons was related to the first verbal order to disperse that was given the first time the officers drove by the incident location and the littering summons was issued for the dice on the ground. When asked if § 87(2)(b) was questioned if the dice belonged to him, PO Chalen stated that he did ask § 87(2)(b) what he was doing at the location, but § 87(2)(b) yelled and provided no response. PO Chalen did not include any statements in the narrative of the summons since "he would be there for days" doing so. PO Chalen acknowledged issuing the summonses himself and was not directed to do so by Sgt. Barbato. Only after reviewing the video footage did PO Chalen recall that Sgt. Barbato and PO Nikqi were also present at the on-set of the incident.

Sgt. Barbato stated that she and PO Perez were driving when they observed a crowd of seven or eight individuals standing in front of § 87(2)(b) and obstructing pedestrian traffic. Due to the crowd of individuals, Sgt. Barbato observed individuals attempting to enter and exit § 87(2)(b) but the individuals had to walk around the crowd. This obstruction occurred once and Sgt. Barbato did not observe any other violations at the time. Since the officers' unmarked RMP is known by individuals in the area as a police vehicle, Sgt. Barbato and PO Perez continued to drive past the crowd to allow the crowd to leave. After approximately two minutes, Sgt. Barbato and PO Perez returned to the incident location and parked their unmarked RMP in front of § 87(2)(b) while PO Chalen and PO Nikqi also arrived at the location and exited their police vehicle. A few of the previous individuals left the incident location once they observed the officers and Sgt. Barbato observed liquor bottle on the ground and smelled marijuana. The officers wanted to move the individuals out of the area so PO Perez, PO Chalen, and PO Nikqi directed the individuals to disperse and clear the sidewalk. A few individuals complied, but § 87(2)(b) stated he was not moving and the officers were harassing him. Sgt. Barbato did not observe any members of the group playing dice, did not observe § 87(2)(b) drinking, and did not recall if § 87(2)(b) held anything in his hands. Sgt. Barbato believed it was PO Perez's decision to transport § 87(2)(b) to the stationhouse for officers' safety and to issue him a summons for obstruction pedestrian traffic and did not recall any other violation. When asked about the littering summons, Sgt. Barbato stated that there was a lot of debris around § 87(2)(b) but she did not personally observe § 87(2)(b) litter.

Initially during his first CCRB interview, PO Perez could not recall this incident at all. PO Perez began by stating that he could not recall individuals blocking pedestrian traffic or issuing any

orders for civilians to disperse during his tour. After reviewing the video footage, PO Perez recalled that he arrived at the incident location with Sgt. Barbato, PO Chalen, and PO Nikqi, and observed a group in front of § 87(2)(b). PO Perez could not recall what the group was doing, did not know why his partners interacted with § 87(2)(b), did not recall what § 87(2)(b) was doing, or any of his partner's observations that led them to stop § 87(2)(b). PO Perez did not know if § 87(2)(b) was being disorderly during the incident and did not recall § 87(2)(b) committing any violations.

PO Nikqi confirmed that he, Sgt. Barbato, PO Chalen, and PO Perez were driving when they observed a large crowd gathered in front of § 87(2)(b). From within their unmarked RMP, the officers asked the crowd if anyone was waiting for food from the deli. When the individuals responded that they were not waiting for food, the officers directed the crowd to disperse from the area. Since some of the individuals began walking away, the officers drove away from the location. After approximately three to four minutes, the officers returned to the incident location and observed § 87(2)(b) and five or six individuals standing in front of § 87(2)(b). PO Nikqi later testified that § 87(2)(b) was only with one or two other individuals at the time. PO Nikqi observed some individuals sitting on crates and standing with cups in their hands, but he could not recall specifically what § 87(2)(b) was doing at the time and he did not notice if § 87(2)(b) had been drinking. PO Nikqi stated that the individuals were obstructing pedestrian traffic because no other individuals could walk through the group and would have to cross the street. However, PO Nikqi did not observe any individuals attempt to walk by the group of individuals, which was why he indicated a warning was issued to the group during the first interaction. PO Chalen first approached § 87(2)(b) and told him that he was instructed to leave and asked him why he did not comply with the directive. § 87(2)(b) told PO Chalen that he did not have to leave. At the time, § 87(2)(b) was in violation of refusal to disperse and PO Nikqi did not observe any other violations.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he obstructs vehicular or pedestrian traffic, or congregates with other persons in a public place and refused to comply with a lawful order of the police to disperse. N.Y.S. Criminal Procedure Law §240.20 (5)(6) (BR31). According to People v. Coley, 967 N.Y.S.2d 868 (2013), a person obstructing pedestrian traffic only commits a chargeable offence if he or she demonstrates a “culpable mental state of intent to cause public inconvenience.” To establish intent, the information that officers provide about the situation or its context, must “support and inference that defendant possessed the requisite intent.” Furthermore, “the temporary inconvenience of pedestrians being required to walk around defendant and the apprehended others, without more, is insufficient to sustain” a charge (BR 32). The mere expression that one feels aggrieved by the police – even when uttered in a loud voice – cannot constitute an offense. The freedom of individuals verbally opposing or challenging police action without thereby risking arrest is one of the principle characteristics by which we distinguish a free nation from a police state. People v. Eugene Square, 872 N.Y.S. 2d 693 (2008) (BR33).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

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§ 87(4-b), § 87(2)(g)

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Allegation K - Other Misconduct: There is evidence suggesting Police Officer Jasen Perez provided a false official statement in violation of Patrol Guide Procedure 203-08.

The CCRB found evidence suggesting that PO Perez provided a false official statement regarding this incident. A spin-off case was referred to IAB in regards, under CCRB case number 201601542. The evidence is as follows:

On December 8, 2015, PO Perez provided his first CCRB statement regarding this incident where he denied using profanity and did not recall interacting with individuals attempt to record the incident. After PO Perez was presented with the video footage depicting him moving a male individual in front § 87(2)(b) cell phone and essentially obstructing the video footage, he stated that he never interfered with any recording of the incident. On March 3, 2016, PO Perez was interviewed a second time regarding this incident. During this second interview, PO Perez could not recall if he interacted with the individuals video recording the incident or any statements he may have made to them. He also did not recall telling any individuals, “This fucking street lawyer right here wanna be the big one.” After PO Perez reviewed the video footage several times, he was asked to explain his intention for physically guiding a male individual and directing the male individual to, “Stand over there. Right there. No, no in front of your boy” (See above video 201508604_20160325_1512_DM.mp4). PO Perez responded that made the statement in a general sense to ensure all of the individuals were standing where he knew they would be for his own safety. When PO Perez was directed to the statement, “This fucking street lawyer right here wanna be the big one,” he stated that the voice heard making the statement, “Possibly could be mine or somebody else that’s not in the picture frame.” As PO Perez was asked to clarify if his answer meant that the voice could be his or if he thought the voice was his, PO Perez against stated, “Possibly could be mine,” then stated he could not recall one-hundred percent if the voice was his or someone else in the background not shown on the video footage. PO Perez then stated for the record that the voice could have belonged to him, the individual recording, or the other individual he told to back away.

Patrol Guide Procedure 203-08 states that 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 (BR35). According to Correction v. Centeno OATH Index No. 20301/04 (2205), the statement must be proven to have been made, material, and intentionally false (BR36).

§ 87(2)(g)
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Squad: 6

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____

Title/Signature

Print

Date

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