

201600739  
Darrell Lowe  
Warren Lopez

On January 22, 2016 PO Lowe and PO Lopez conducted a vertical patrol in a New York City Housing Authority building when they reached a man who turned and walked away from them and into his apartment. They followed the man towards his apartment, stopping along the way to stop, frisk and search an individual. When the man's mother later exited the apartment, the officers took advantage of the open door to enter the apartment. The above was captured by security footage in the building.

In the man's apartment, the man started to record the officers with his personal cell phone. The officers arrested the man and took him to the precinct, where he was strip searched.

In their CCRB interview, both officers stated that the man ran away from them, that they ran after him, that they did not encounter anyone on the way to his apartment, and that once they reached the apartment the man had just slammed the door on them, but left it ajar, allowing them to enter. Every one of these statements is contradicted by the video footage.

The CCRB substantiated allegations that PO Lopez conducted an unlawful stop, and that PO Lowe had conducted an unlawful stop, improperly entered the apartment, conducted an unlawful frisk and search, and had unlawfully authorized a strip search at the precinct. It also found that both officers made false official statements in their interviews.

The NYPD compelled PO Lopez to forfeit three vacation days and compelled PO Lowe to forfeit 17 vacation days.

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #9	CCRB Case #: 201600739	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 01/22/2016 8:19 PM	Location of Incident: [REDACTED]	Precinct: 48	18 Mo. SOL 7/22/2017	EO SOL 7/22/2017	
Date/Time CV Reported Fri, 01/22/2016 9:41 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/27/2016 11:16 AM		

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

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Darrell Lowe	31849	§ 87(2)(b)	PBBX
2. POM Warren Lopez	29434	§ 87(2)(b)	PBBX
3. POM Joseph Murray	06464	§ 87(2)(b)	048 PCT
4. POM Alex Torres	27260	§ 87(2)(b)	048 PCT
5. SGT Frank Amill	02290	§ 87(2)(b)	PBBX
6. SGT Lauren Diaz	04807	§ 87(2)(b)	048 PCT
7. POM Brian Kovarik	21898	§ 87(2)(b)	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Mcknight	7955	§ 87(2)(b)	PBBX
2. POM Brian Cintron	14743	§ 87(2)(b)	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Darrell Lowe	Abuse of Authority: PO Darrell Lowe stopped § 87(2)(b) [REDACTED].	A . § 87(2)(g) [REDACTED]
B . POM Darrell Lowe	Abuse of Authority: PO Darrell Lowe frisked § 87(2)(b) [REDACTED].	B . § 87(2)(g) [REDACTED]
C . POM Darrell Lowe	Abuse of Authority: PO Darrell Lowe searched § 87(2)(b) [REDACTED].	C . § 87(2)(g) [REDACTED]
D . POM Warren Lopez	Abuse of Authority: PO Warren Lopez stopped § 87(2)(b) [REDACTED].	D . § 87(2)(g) [REDACTED]
E . POM Darrell Lowe	Abuse of Authority: PO Darrell Lowe entered § 87(2)(b) [REDACTED] in the Bronx.	E . § 87(2)(g) [REDACTED]
F . POM Darrell Lowe	Abuse of Authority: PO Darrell Lowe interfered with the recording of § 87(2)(b) [REDACTED].	F . § 87(2)(g) [REDACTED]
G . POM Brian Kovarik	Abuse of Authority: PO Brian Kovarik interfered with the recording of § 87(2)(b) [REDACTED].	G . § 87(2)(g) [REDACTED]

Officer(s)	Allegation	Investigator Recommendation
H . POM Brian Kovarik	Force: PO Brian Kovarik used physical force against § 87(2)(b) .	H . § 87(2)(g)
I . POM Brian Kovarik	Abuse of Authority: PO Brian Kovarik searched the bag of § 87(2)(b) .	I . § 87(2)(g)
J . POM Darrell Lowe	Force: PO Darrell Lowe used physical force against § 87(2)(b) .	J . § 87(2)(g)
K . POM Darrell Lowe	Force: PO Darrell Lowe used physical force against § 87(2)(b) .	K . § 87(2)(g)
L . POM Joseph Murray	Force: PO Joseph Murray used pepper spray against § 87(2)(b) .	L . § 87(2)(g)
M . POM Brian Kovarik	Force: PO Brian Kovarik used physical force against § 87(2)(b) .	M . § 87(2)(g)
N . SGT Lauren Diaz	Abuse of Authority: Sgt. Lauren Diaz did not obtain medical treatment for § 87(2)(b) .	N . § 87(2)(g)
O . SGT Frank Amill	Abuse of Authority: At the 48th Precinct stationhouse, Sergeant Frank Amill authorized the strip-search of § 87(2)(b) .	O . § 87(2)(g)
P . POM Darrell Lowe	Abuse of Authority: At the 48th Precinct stationhouse, PO Darrell Lowe strip-searched § 87(2)(b) .	P . § 87(2)(g)
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
T . POM Darrell Lowe	Other: There is evidence suggesting PO Darrell Lowe provided a false official statement in violation of Patrol Guide Procedure 203-08.	T . § 87(2)(g)
U . POM Warren Lopez	Other: There is evidence suggesting PO Warren Lopez provided a false official statement in violation of Patrol Guide Procedure 203-08.	U . § 87(2)(g)

### Case Summary

On January 22, 2016, § 87(2)(b) called the Internal Affairs Bureau (IAB) Command Center and filed this complaint (IAB original log number 2016-2609). The complaint was forwarded to the Civilian Complaint Review Board (CCRB) on January 27, 2016. Video footage captures the incident.

On January 22, 2016, at approximately 8:19 p.m. § 87(2)(b) and three other individuals—§ 87(2)(b) and § 87(2)(b) were in the fourth floor hallway of § 87(2)(b) outside of § 87(2)(b) where § 87(2)(b) and § 87(2)(b) reside. § 87(2)(b) was giving a haircut to § 87(2)(b) while § 87(2)(b) and § 87(2)(b) sat in the hallway.

PO Darrell Lowe and PO Warren Lopez of Patrol Borough Bronx were conducting a vertical patrol of § 87(2)(b) as there is a sign posted on the building indicating that it is a Clean Halls Building (Board Review 01). PO Lowe and PO Lopez arrived on the fourth floor via an elevator and reportedly observed § 87(2)(b) with a lit marijuana cigarette (Board Review 02). Video footage shows that PO Lowe and PO Lopez walked directly towards § 87(2)(b) who was out of frame of the camera, and then § 87(2)(b) walked past them and walked inside § 87(2)(b) closing the door behind him, without any apparent attempt by PO Lowe or PO Lopez to physically stop him.



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After § 87(2)(b) entered his apartment, video footage shows that PO Lowe stopped, frisked, and searched § 87(2)(b) (**Allegations A-C**). PO Lopez then took a hold of § 87(2)(b) by his arm and did not let him go for over two minutes (**Allegation D**). § 87(2)(b) was not arrested or issued a summons as a result of the incident. Neither PO Lowe nor PO Lopez prepared a Stop, Question and Frisk Report regarding § 87(2)(b) (**Allegations R and S**). Approximately 37 seconds after § 87(2)(b) entered his apartment, his mother, § 87(2)(b) exited the apartment and walked into the fourth floor hallway to § 87(2)(b). § 87(2)(b) remained inside the apartment, sticking his head into the hallway. § 87(2)(b) walked back inside her apartment, and PO Lowe walked behind her, entering the apartment while § 87(2)(b)'s back was turned (**Allegation E**).



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From inside his apartment, § 87(2)(b) began recording the incident on a cellphone; from outside of the apartment, § 87(2)(b) began recording the incident on a cellphone. § 87(2)(b) repeatedly told PO Lowe and PO Lopez, who joined PO Lowe in the entryway inside the apartment, that they were not welcome and that they needed a warrant. Video footage recorded by both § 87(2)(b) and § 87(2)(b) captures PO Lowe interfering with § 87(2)(b)'s

video footage by shining a flashlight directly at the recording device for over 10 seconds (**Allegation F**).



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PO Lowe called for additional units to the location (Board Review 03), and approximately four minutes after PO Lowe entered § 87(2)(b) PO Brian Kovarik and PO Brian Cintron, both from the 48<sup>th</sup> Precinct, arrived on the fourth floor of the location. § 87(2)(b) continued recording the incident on a cellphone in the hallway outside the apartment. Video footage shows that immediately upon arriving, PO Kovarik removed the cellphone from § 87(2)(b)'s hand, pushed him on the chest against a wall, and in the back, away from the apartment (**Allegations G and H**). § 87(2)(b) walked towards § 87(2)(b) and PO Kovarik searched a bag that § 87(2)(b) held (**Allegation I**).



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PO Lowe entered further inside of § 87(2)(b) and he pushed § 87(2)(b) (**Allegation J**). § 87(2)(b) fell to the ground.



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§ 87(2)(b)'s mother, § 87(2)(b) was also inside of § 87(2)(b) during the incident. § 87(2)(b) fell to the ground under her own volition. § 87(2)(b) alleged that while she was lying on the floor, PO Lowe kicked her in the face (**Allegation K**). § 87(2)(b) fled into a back bedroom inside the apartment. PO Lowe, PO Lopez, and PO Joseph Murray of the 48<sup>th</sup> Precinct proceeded to the rear bedroom where § 87(2)(b) had fled. PO Murray used pepper spray against § 87(2)(b) (**Allegation L**).

§ 87(2)(b) entered § 87(2)(b) from the hallway, and he was forced back out of the apartment, into the hallway. Video footage shows that once § 87(2)(b) was outside of the apartment, PO Kovarik pushed him in the back (**Allegation M**).



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§ 87(2)(b) was escorted out of the apartment in handcuffs. Additional officers, including Sgt. Lauren Diaz of the 48<sup>th</sup> Precinct and PO Alex Torres, arrived at the location during the incident. § 87(4-b), § 87(2)(g)

§ 87(2)(b) alleged that she complained to Sgt. Lauren Diaz of the 48<sup>th</sup> Precinct that § 87(2)(b) had been injured, and that Sgt. Diaz did not request or otherwise provide medical attention (**Allegation N**).

§ 87(2)(b) was transported to the 48<sup>th</sup> Precinct stationhouse. PO Lowe asked Sergeant Frank Amill to authorize the strip-search of § 87(2)(b) and Sgt. Amill authorized it (**Allegation O**). PO Lowe took § 87(2)(b) to a bathroom inside the 48<sup>th</sup> Precinct stationhouse and strip-searched him (**Allegation P**). The strip-search yielded negative results (Board Review 02).

§ 87(2)(b) was charged with resisting arrest, obstruction of governmental administration, criminal possession of a controlled substance in the seventh degree, criminal possession of marijuana in the fifth degree, and unlawful possession of marijuana (Board Review 02).

The CCRB found evidence that both PO Lowe and PO Lopez provided a false official statement regarding this incident (**Allegations T and U**). A spin-off case was forwarded to IAB on April 8, 2016, regarding the false official statements (Board Review 04).

Administrative Prosecution Unit attorney Heather Cook consulted with the undersigned and Supervisor De Angelo regarding this case.

#### **Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation, because § 87(2)(b) was arrested as a result of the incident (Board Review 02).
- On January 24, 2016, § 87(2)(b)'s criminal case regarding this incident was resolved when he pled guilty to disorderly conduct (Board Review 05); § 87(2)(b) was fined and conditionally discharged.
- Aside from the conviction regarding this incident, in the past 10 years, § 87(2)(b) has not been convicted of a crime in New York City (Board Review 06).
- § 87(2)(b)  
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- § 87(2)(b)  
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§ 87(2)(b)
- Neither § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) has been arrested in New York City in the past 10 years (Board Review 09).

#### **Civilian and Officer CCRB Histories**

- This was the first CCRB complaint filed by § 87(2)(b) (Board Review 10).
  - § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)
- This was the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) were involved (Board Review 11).

- PO Darrell Lowe has been a member of service for two years, and he was the subject of three previous CCRB allegations, two of which were unfounded and one force allegation which was exonerated.
  - PO Lowe is currently identified as a subject officer in one pending CCRB investigation, CCRB case number 201601121, in which he is the subject of ten allegations: pepper spray, two physical force allegations, two strip-search allegations, an entry, a threat of arrest, a discourtesy, and two stops.
    - CCRB case number 201601121 was filed by § 87(2)(b) and each victim in this case, CCRB case number 201600739, is also listed as a victim in CCRB case number 201601121, with the exception of § 87(2)(b)
- PO Warren Lopez has been a member of service for two years, and he has been the subject of three previous CCRB allegations; one allegation was unfounded, a force allegation was exonerated, and a threat of force allegation was unsubstantiated.
- PO Joseph Murray has been a member of service for 12 years, and he has been the subject of nine previous CCRB allegations (not including § 87(4-b), § 87(2)(g) one complaint which was mediated). None of the prior CCRB allegations against PO Murray were substantiated, and this is the first CCRB allegation against him regarding the use of pepper spray.
- PO Alex Torres has been a member of service for 15 years, and he has been the subject of 34 previous CCRB allegations, five of which were substantiated.
  - In CCRB 200307611 the following three allegations were substantiated and the CCRB recommended charges for each substantiated allegation: force, threat of force, and refusal to provide name/shield number. PO Torres was found not guilty by the NYPD regarding all three substantiated allegations.
  - In CCRB 200406244, a force allegation and an offensive language (race) allegation were each substantiated, and the CCRB recommended charges for both substantiated allegations. The NYPD dismissed the charges.
  - § 87(4-b), § 87(2)(g)
- Sgt. Frank Amill has been a member of service for nine years, and he has been the subject of nine previous CCRB allegations, one of which was substantiated.
  - In CCRB 201017481 a frisk allegation was substantiated, and the CCRB recommended instructions. § 87(4-b), § 87(2)(g) The NYPD issued Sgt. Amill instructions in regards.
- Sgt. Lauren Diaz has been a member of service for nine years, and she has been the subject of three previous CCRB allegations, none of which were substantiated.
  - Sgt. Diaz is currently identified as a subject officer in one open CCRB case in which she is the subject of three allegations.
- PO Brian Kovarik has been a member of service for three years, and he has been the subject of 18 previous CCRB allegations, none of which were substantiated.
  - § 87(4-b), § 87(2)(g)

## **Findings and Recommendations**

**Allegation A – Abuse of Authority: PO Darrell Lowe stopped** § 87(2)(b)

**Allegation B – Abuse of Authority: PO Darrell Lowe frisked** § 87(2)(b)

**Allegation C – Abuse of Authority: PO Darrell Lowe searched** § 87(2)(b)

On January 22, 2016, at approximately 8:19 p.m. PO Darrell Lowe and his partner, PO Warren Lopez, were conducting a vertical patrol of § 87(2)(b) § 87(2)(b) was sitting in the fourth floor hallway with three other individuals, one of whom, § 87(2)(b) was allegedly smoking a marijuana cigarette. Video footage irrefutably shows that § 87(2)(b) was not smoking any sort of cigarette, and no one interviewed by the CCRB alleged that § 87(2)(b) was guilty of any crime.

Soon after PO Lowe and PO Lopez arrived at the fourth floor, § 87(2)(b) walked inside of his apartment, § 87(2)(b) § 87(2)(b) stood up, at which point PO Lowe physically stopped § 87(2)(b) frisked him, and reached inside his pants pocket.

PO Lowe testified (Board Review 12) that other than potentially asking § 87(2)(b) for his identification to make sure he lived there or had justification for being there, he did not interact with him. PO Lowe testified that he did not frisk or search § 87(2)(b) as far as he could recall. PO Lowe testified that there was no indication that § 87(2)(b) had a weapon on his person.



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After PO Lowe was presented the above video footage, he acknowledged that the video footage shows him stopping, frisking, and searching § 87(2)(b) PO Lowe testified that he took these actions for his safety, to ensure that § 87(2)(b) did not have a weapon. PO Lowe maintained that there was no specific indication that § 87(2)(b) had a weapon on his person, and he testified that even after frisking § 87(2)(b) there was no indication that § 87(2)(b) had a weapon on his person.

An officer may stop a person if the officer reasonably suspects that the person is committing, has committed, or is about to commit a crime; an officer may frisk a person if there is reasonable suspicion that the person is armed and dangerous, *People v. De Bour*, 40 N.Y.2d 210 (1976) (Board Review 13).

An officer may not search a person if a frisk of the person fails to reveal a weapon, *People v. Rodriguez*, 856 N.Y.S.2d 502 (2008) (Board Review 34).

§ 87(2)(g)

**Allegation D – Abuse of Authority: PO Warren Lopez stopped** § 87(2)(b)



After PO Lowe stopped, frisked and searched § 87(2)(b) with negative results for any illicit item, PO Lopez approached § 87(2)(b) and took hold of § 87(2)(b)'s arm. PO Lopez maintained his hold of § 87(2)(b) for over two minutes.

PO Lopez acknowledged that he grabbed § 87(2)(b) but he testified he held him for only approximately 10 seconds (Board Review 14). PO Lopez testified that he did this because § 87(2)(b) was "right behind [PO Lopez] the whole time, pretty much breathing on [him]." Video footage contradicts PO Lopez's testimony that § 87(2)(b) stood close behind PO Lopez.



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After PO Lopez was presented with the above video footage, he acknowledged that § 87(2)(b) was not standing in close proximity behind him. PO Lopez testified that he held onto § 87(2)(b) because he was worried that other civilians in the hallway could attack him from behind, and if this occurred, he could try to hide behind § 87(2)(b).

An officer may stop a person if the officer reasonably suspects that the person is committing, has committed, or is about to commit a crime, People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 13).

§ 87(2)(g)

**Allegation E – Abuse of Authority: PO Darrell Lowe entered § 87(2)(b) in the Bronx.**

It is undisputed that PO Lowe entered § 87(2)(b) without a warrant and without consent. PO Lowe entered the apartment approximately 50 seconds after § 87(2)(b) had walked inside the apartment and closed the door behind him-- after PO Lowe and PO Lopez reportedly observed him smoking a marijuana cigarette.

PO Lowe testified (Board Review 12) that he entered the apartment, "so they couldn't shut [the door]." PO Lowe added that § 87(2)(b) was under arrest regarding the marijuana cigarette, and that it was "hot pursuit." PO Lowe further testified that at the time he entered the apartment, aside from § 87(2)(b) having possessed the marijuana cigarette, he had not observed him do anything else for which he could have been arrested.

§ 87(2)(b) was ultimately arrested as a result of the incident, and his only charges were for four misdemeanors and one violation (Board Review 02).

When a suspect retreats into his house, and the suspected crime is only a violation or misdemeanor, the "hot pursuit" exception to the warrant requirement does not apply, People v. Cruz, 41 Misc. 3d 1222(A) (2013) (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

**Allegation F- Abuse of Authority: PO Darrell Lowe interfered with the recording of** § 87(2)(b)

As PO Lowe stood in the entryway of § 87(2)(b)'s apartment, § 87(2)(b)'s mother and grandmother, § 87(2)(b) and § 87(2)(b) stood directly in front of PO Lowe. § 87(2)(b) stood behind them and began recording the incident on a cellphone. PO Lowe took out his flashlight and shined the light at the camera for more than ten seconds.

PO Lowe testified (Board Review 12) that he “may have” shined his flashlight at the cellphone held by § 87(2)(b) but he did not recall. PO Lowe testified that there was no reason to do this. Video footage shows that PO Lowe shined his flashlight at the cellphone held by § 87(2)(b) for approximately 10 seconds.



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After PO Lowe was presented with the above video footage, PO Lowe testified that he shined the flashlight to indicate to § 87(2)(b) to exit his apartment, and that there was no other reason to have shone his flashlight.

It is lawful for onlookers to video tape police incidents, Patrol Guide Procedure 208-03, (Board Review 16).

§ 87(2)(g)

**Allegation G – Abuse of Authority: PO Brian Kovarik interfered with the recording of**

§ 87(2)(b)

Shortly after PO Lowe entered § 87(2)(b) of § 87(2)(b) § 87(2)(b) began recording the incident on a cellphone, while standing in the hallway outside of the apartment. § 87(2)(b) and at least one other civilian stood directly next to § 87(2)(b). Approximately four minutes after PO Lowe had first entered the apartment, PO Brian Kovarik arrived at the location in response to a request for additional units that PO Lowe had put over the radio (Board Review 03).

PO Kovarik originally testified (Board Review 17) that when he arrived, he verbally requested that § 87(2)(b) clear the scene, but § 87(2)(b) refused. PO Kovarik testified that § 87(2)(b) repeatedly attempted to move past PO Kovarik to get inside the apartment, and in

response, PO Kovarik pushed him approximately three times. PO Kovarik testified that after he pushed § 87(2)(b) put a cellphone in his face and seemed to be recording the incident. PO Kovarik testified that he removed the cellphone from § 87(2)(b) because § 87(2)(b) had put the cellphone in his face.



After viewing the above video footage, PO Kovarik acknowledged that the video shows him making physical contact with § 87(2)(b) within a few seconds of arriving on the floor in question. PO Kovarik testified that he was concerned with officer safety and that § 87(2)(b) “refused to get out of the area.”

At the scene of a police incident, an officer must use the minimum necessary force, Patrol Guide Procedure 203-11, (Board Review 18).

**Allegation I – Abuse of Authority: PO Brian Kovarik searched the bag of § 87(2)(b)**

PO Kovarik (Board Review 17) acknowledged searching a bag which was held by § 87(2)(b). PO Kovarik testified that he did not see § 87(2)(b) retrieve the bag, he just

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saw him with it, and he was concerned that there might be a weapon inside the bag. PO Kovarik testified that aside from there clearly being something inside the bag, he had no idea what was inside of it. PO Kovarik testified that he opened the bag, saw that there were no weapons inside, and returned the bag to § 87(2)(b)

To justify a search, an officer must have probable cause to believe the person has committed a crime, People v. De Bour, 40 N.Y.2d 210 (1976).

§ 87(2)(g)

**Allegation J – Force: PO Darrell Lowe used physical force against § 87(2)(b)**

It is undisputed that PO Lowe stood inside the entryway of § 87(2)(b) of § 87(2)(b) in the Bronx, and that § 87(2)(b) stood directly in front of him, refusing him further entry into her apartment. § 87(2)(b) repeatedly told PO Lowe that he could not enter her apartment. It is further undisputed that PO Lowe eventually entered further inside the apartment.

§ 87(2)(b) alleged (Board Review 20) that PO Lowe pushed her by her right hand and left side, causing her to fall to the ground.

§ 87(2)(b) testified (Board Review 21) that PO Lowe grabbed § 87(2)(b) by each of her biceps and forced her to the ground. § 87(2)(b) testified (Board Review 22) that PO Lowe grabbed § 87(2)(b) by her arm and pushed her to the floor. § 87(2)(b) testified (Board Review 19) that PO Lowe pushed § 87(2)(b) by both of her arms, forcing her to the ground.

PO Lowe testified (Board Review 12) that he was able to bypass § 87(2)(b) to enter further into the apartment by “blading his body,” and “shimmying” between § 87(2)(b) and § 87(2)(b). PO Lowe acknowledged making physical contact with one or both of them, but he stated that one hand was tucked into his body and one hand covered the holster of his firearm. PO Lowe denied ever grabbing § 87(2)(b) and he denied ever forcing § 87(2)(b) to the ground. PO Lowe denied ever seeing § 87(2)(b) fall to the ground and denied seeing her on the ground at any point during the incident.

PO Lopez (Board Review 14) testified that an officer pushed § 87(2)(b) “out of the way,” although he denied that it was PO Lowe.

Video footage appears to show PO Lowe push § 87(2)(b) to the ground.



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At the scene of a police incident, an officer must use the minimum force necessary, Patrol Guide Procedure 203-11 (Board Review 18).

§ 87(2)(g)

§ 87(2)(g)

**Allegation K – Force: PO Darrell Lowe used physical force against § 87(2)(b)**

§ 87(2)(b) testified (Board Review 22) that as PO Lowe entered further into the apartment, she fell to the ground as a result of her own weakness—no one physically forced her to the ground. § 87(2)(b) alleged that PO Lowe then kicked her in the face while she was on the ground.

§ 87(2)(b) (Board Review 22) corroborated § 87(2)(b)'s allegation, testifying that PO Lowe “stepped on” the face of § 87(2)(b) for approximately one second. However, § 87(2)(b) also testified that PO Lowe pushed § 87(2)(b) to the ground.

PO Lowe testified (Board Review 12) that he never kicked § 87(2)(b) in the face, nor did he ever come into contact with § 87(2)(b)'s face or *visa versa*. PO Lowe and PO Lopez (Board Review 14) both testified that while § 87(2)(b) was lying on the ground, she grabbed a hold of PO Lowe's leg and held onto it as PO Lowe attempted to move further into the apartment.

Medical records, (Privileged Records), a photograph provided by § 87(2)(b) (Board Review 23) and a video provided by § 87(2)(b) all indicate that § 87(2)(b) had an observable injury around the time of the incident.



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§ 87(2)(g)

**Allegation L – Force: PO Joseph Murray used pepper spray against § 87(2)(b)**

As PO Lowe, PO Lopez, and other officers, including PO Murray, entered into § 87(2)(b) § 87(2)(b) retreated to the rear of the apartment. PO Lowe (Board Review 12), PO Lopez (Board Review 14), and PO Murray (Board Review 24) were consistent in testifying that they alone proceeded to the rear of the apartment to apprehend § 87(2)(b). Several other civilians, including young children, were inside the apartment at the time when officers entered the apartment to apprehend § 87(2)(b).

§ 87(2)(b) testified (Board Review 21) that once in the rear of the apartment, he allowed himself to be handcuffed, and after he was handcuffed, pepper spray was used against him.





§ 87(2)(g)

**Allegation N – Abuse of Authority: Sergeant Lauren Diaz did not obtain medical treatment for § 87(2)(b)**

§ 87(2)(b) testified (Board Review 20) that after § 87(2)(b) was removed from the apartment in handcuffs, she told Sergeant Lauren Diaz that § 87(2)(b) was injured. § 87(2)(b) alleged that Sgt. Diaz did not respond to her in any way, and that she left without calling for medical attention.

Sgt. Diaz (Board Review 25) corroborated that § 87(2)(b) was saying something about her mother, but Sgt. Diaz did not recall specifically what § 87(2)(b) said. Sgt. Diaz did not recall § 87(2)(b) referencing an injury to her mother, § 87(2)(b) or otherwise requesting medical attention. Sgt. Diaz denied refusing to obtain medical treatment on behalf of any civilian.

Medical records, (Privileged Records), a photograph provided by § 87(2)(b) (Board Review 23), and a video provided by § 87(2)(b) all indicate that § 87(2)(b) had an observable injury around the time when § 87(2)(b) allegedly requested medical attention on her behalf.

No other civilian interviewed by the CCRB corroborated that § 87(2)(b) reported that § 87(2)(b) was injured or otherwise requested medical attention on behalf of § 87(2)(b). No officer interviewed by the CCRB acknowledged that they were made aware of an injury to § 87(2)(b) in any capacity. No officer interviewed by the CCRB testified that they were aware of medical attention being called to the location.

Emergency Medical Services responded to the location, and eventually transported § 87(2)(b) to the hospital (Privileged Records).

§ 87(2)(g)

**Allegation O – Abuse of Authority: At the 48<sup>th</sup> Precinct stationhouse, Sergeant Frank Amill authorized the strip-search of § 87(2)(b)**

**Allegation P – Abuse of Authority: At the 48<sup>th</sup> Precinct stationhouse, PO Darrell Lowe strip-searched § 87(2)(b)**

§ 87(2)(b) alleged (Board Review 21) that after he was brought to the 48<sup>th</sup> Precinct stationhouse, PO Lowe strip-searched him. Sgt. Amill (Board Review 27) acknowledged authorizing the strip-search of § 87(2)(b) and he testified that PO Lowe requested his

authorization to perform the strip-search. PO Lowe testified (Board Review 12) that he was “not aware” if § 87(2)(b) was strip-searched.

The Criminal Complaint Report (Board Review 26) and Arrest Report (Board Review 02) both indicate that § 87(2)(b) was strip-searched with negative results. Both reports indicate that PO Lowe prepared the reports and that PO Lowe was the reporting officer.

After being presented with the Criminal Complaint Report, PO Lowe testified that based on the report, § 87(2)(b) was in fact strip-searched. PO Lowe testified that he was not aware of any reason to strip-search § 87(2)(b).

Sgt. Amill testified that he authorized the strip-search of § 87(2)(b) upon the request of PO Lowe, because PO Lowe told him that § 87(2)(b) had been fidgeting in the back of a police vehicle. Sgt. Amill testified that PO Lowe did not provide him any more details regarding the fidgeting, and that the reported fidgeting was the only reason he authorized the strip-search of § 87(2)(b). Sgt. Amill did not ask PO Lowe any follow-up questions regarding why he wished to strip-search § 87(2)(b).

An officer may conduct a strip-search when the officer possesses reasonable suspicion that the arrestee is concealing evidence underneath clothing. People v. Hall, 10 NY3d 303 (2008) (Board Review 28).

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]



§ 87(4-b), § 87(2)(g)

**Allegation T – Other: There is evidence suggesting that PO Darrell Lowe provided a false official statement in violation of Patrol Guide Procedure 203-08.**

The CCRB found evidence suggesting that PO Lowe provided a false official statement regarding this incident. A spin-off case was referred to IAB in regards, under CCRB case number 201602870 (Board Review 04). PO Lowe was interviewed by the CCRB regarding this incident on April 1, 2016 (Board Review 12). During this interview, PO Lowe made several statements which were false or contradicted by material evidence, including but not limited to the following:

(1) PO Lowe testified that while he was approximately 15 feet away from § 87(2)(b) ran at a "pretty quick pace" from PO Lowe into his apartment. Video footage shows that PO Lowe was within a few feet of § 87(2)(b) when he walked away from PO Lowe and proceeded to walk into his apartment.

(2) PO Lowe testified that he and his partner, PO Lopez, quickened their pace in an attempt to stop § 87(2)(b) from running away from them. Video footage shows that this did not occur.

(3) PO Lowe testified that he did not make physical contact with any male in the hallway of the apartment, as far as he remembered, and that he did not do anything to determine whether

any of the individuals in the hallway had anything on their persons that could hurt him. Video footage shows that PO Lowe stopped, frisked, and searched an individual in the hallway.

(4) PO Lowe testified that he entered § 87(2)(b)'s apartment after § 87(2)(b) left the apartment door wide open and ran back inside the apartment. Video footage shows that PO Lowe entered the apartment immediately behind § 87(2)(b)'s mother, § 87(2)(b) whose back was turned to PO Lowe at the time he entered.

(5) PO Lowe testified that during the incident he took out his flashlight, but he stated that he did not recall why or what he did with the flashlight. When asked, PO Lowe said he may have shined the flashlight at a cellphone held by § 87(2)(b) but that there was no reason to do this. Video footage shows PO Lowe shining a flashlight at a cellphone held by § 87(2)(b). After PO Lowe viewed this video footage, he said that he shined his flashlight at § 87(2)(b)'s cellphone to indicate to him to exit the apartment, and for no other reason.

(6) PO Lowe testified that he was not aware if § 87(2)(b) was strip-searched. A criminal complaint report and arrest report, both of which indicate that PO Lowe was the reporting officer and the officer who entered the report, each state that § 87(2)(b) was strip-searched.

An officer is prohibited from making a false official statement, and an officer found to have made such a statement will be subject to disciplinary action, Patrol Guide Procedure 203-08 (Board Review 35). The statement must be proven to have been made, material, and intentionally false, Correction v. Centeno OATH Index No. 2031/04 (2005) (Board Review 36).

§ 87(2)(g)

**Allegation U – Other: There is evidence suggesting that PO Warren Lopez provided a false official statement in violation of Patrol Guide Procedure 203-08.**

The CCRB found evidence suggesting that PO Lopez provided a false official statement regarding this incident. A spin-off case was referred to IAB in regards, under CCRB case number 201602870 (Board Review 04). PO Lopez was interviewed by the CCRB regarding this incident on April 5, 2016 (Board Review 14). During this interview, PO Lopez made several statements which were false or contradicted by material evidence, including but not limited to the following:

(1) PO Lopez testified that upon approaching § 87(2)(b) ran from him and PO Lowe into his apartment. Video footage of the incident shows that § 87(2)(b) walked away from PO Lopez and PO Lowe into an apartment.

(2) PO Lopez testified that he and PO Lowe ran after § 87(2)(b) at full speed in an attempt to stop him. Video footage shows that neither PO Lopez nor PO Lowe ran after § 87(2)(b).

(3) PO Lopez testified that when § 87(2)(b) ran inside his apartment he shut the door "in the faces" of him and PO Lowe, and that he and PO Lowe stood within one foot of the door when § 87(2)(b) closed the door. Video footage shows that PO Lowe and PO Lopez were not near the door when § 87(2)(b) shut it.

(4) PO Lopez made the following memo book entry (Board Review 37) in regards to the incident: "Perp took off running into his apartment, close door in our faces. Perp 10 sec[ond]s later opens door, says we need a search warrant to enter apartment. Since in foot (hot) pursuit, we try to make arrest. Perp pushes his grandmother and mother in front of us to prevent being apprehended." PO Lopez testified that he recalled making the memo book entry regarding this incident almost immediately after the incident occurred. Video footage contradicts the substance of PO Lopez's memo book entry.

An officer is prohibited from making a false official statement, and an officer found to have made such a statement will be subject to disciplinary action, Patrol Guide Procedure 203-08 (Board Review 35). The statement must be proven to have been made, material, and intentionally false, Correction v. Centeno OATH Index No. 2031/04 (2005) (Board Review 36).

§ 87(2)(g)

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Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

