

201601066
Patrick Fyvie

On February 3, 2016 SGT Fyvie responded to a call for assistance of a “violent EDP”. Sergeant Fyvie kicked open the apartment door of the man that was locked from the inside by a security bar. After entering the apartment, Sergeant Fyvie and the other officers entered the bedroom. The man was standing in the right corner of the bedroom, closest to the bedroom entrance. Sergeant Fyvie was first in the room and tasered the man twice.

During his CCRB interview, Sergeant Fyvie stated that because the man was wearing a leather bracelet with spikes all around it and that he was waving his arms around, he determined that the man had a dangerous weapon and was a threat to himself and the officers. The Less Lethal Equipment Report (Report) prepared in regards to this incident did not have anything about the man having a dangerous weapon or instrument. The Report stated that the man had stated he had smoked synthetic cannabinoids prior to the incident.

During his CCRB interviews, Sergeant Fyvie first stated he had not prepared a report about his use of the taser and that someone else prepared it with information he provided. Then during his second interview, Sergeant Fyvie stated he prepared the report immediately after going back to the stationhouse with a supervisor, whom he couldn't remember.

Called back for a second interview regarding the discrepancy in his testimony, Sergeant Fyvie stated that the bracelet wasn't mentioned in the Report as a “result of human error” since it was his first time filling out a taser report. The other officers that were present testified in their CCRB interviews that there was no indication at the time that the man had a weapon. The officers also testified that the man was not trying to injure himself or them at the time he was tased.

When asked when the man had stated he had smoked synthetic cannabinoids, Sergeant Fyvie stated the man never said it to him. The man had said it to the officers that went with him to the hospital and they had told Sergeant Fyvie later that evening. Sergeant Fyvie was then asked to explain how he could have been provided with this information later in the day, yet he previously testified to had filled out the Report immediately after the incident. Sergeant Fyvie reiterated that, to his memory, he filled out the report immediately after the incident.

The Report did not mention the second taser cycle. When asked why the Report only referred to the first taser cycle, Sergeant Fyvie testified that the discrepancy was a result of “human error” and that he definitely used two taser cycles.

The CCRB found Sergeant Fyvie had twice used the taser on the man with no legal justification, and that he had made false statements in his CCRB interview.

The NYPD disciplined Sergeant Fyvie by forcing him to forfeit 15 vacation days.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #16	CCRB Case #: 201601066	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/23/2016 5:00 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 7/23/2017	EO SOL 7/23/2017	
Date/Time CV Reported Tue, 02/09/2016 1:34 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/09/2016 1:34 PM		

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Ely Gonzalez	25463	§ 87(2)(b)	046 PCT
2. SGT Patrick Fyvie	3501	§ 87(2)(b)	046 PCT
3. POF Camille Williams	31175	§ 87(2)(b)	046 PCT
4. POM Jovan Williams	07306	§ 87(2)(b)	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rayon Grant	11238	§ 87(2)(b)	046 PCT
2. POF Tricia Grant	16810	§ 87(2)(b)	046 PCT
3. POM Alexander Whalen	12221	§ 87(2)(b)	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Ely Gonzalez	Abuse of Authority: Police Officer Ely Gonzalez attempted to enter § 87(2)(b) in the Bronx.	A . § 87(2)(g)
B . POF Camille Williams	Abuse of Authority: Police Officer Camille Williams attempted to enter § 87(2)(b) in the Bronx.	B . § 87(2)(g)
C . POM Jovan Williams	Abuse of Authority: Police Officer Jovan Williams attempted to enter § 87(2)(b) in the Bronx.	C . § 87(2)(g)
D . SGT Patrick Fyvie	Abuse of Authority: Sergeant Patrick Fyvie entered § 87(2)(b) in the Bronx.	D . § 87(2)(g)
E . SGT Patrick Fyvie	Force: Sergeant Patrick Fyvie used a taser against § 87(2)(b).	E . § 87(2)(g)
F . SGT Patrick Fyvie	Force: Sergeant Patrick Fyvie used a taser against § 87(2)(b).	F . § 87(2)(g)
G . SGT Patrick Fyvie	Other: There is evidence suggesting Sergeant Patrick Fyvie provided a false official statement in violation of Patrol Guide Procedure 203-08.	G . § 87(2)(g)

Case Summary

On February 3, 2016, § 87(2)(b) called 3-1-1 to file this complaint and was transferred to IAB. Original IAB log # 16-4014 was generated. On February 9, 2016, this complaint was referred to the CCRB.

On January 23, 2016, at approximately 5:00 PM, § 87(2)(b) was moving boxes of his belongings out of his apartment, located at § 87(2)(b) in the Bronx. § 87(2)(b) neighbor confronted him with a knife because she said he was making too much noise and was slamming his door. § 87(2)(b) went back into his apartment. After about 20 minutes, PO Ely Gonzalez, PO Camille Williams, and PO Jovan Williams arrived at § 87(2)(b) responding to 911 calls to the location. PO Gonzalez, PO Camille Williams, and PO Jovan Williams obtained a key to § 87(2)(b) apartment from the security guard for the building. PO Gonzalez, PO Camille Williams, and PO Jovan Williams attempted to enter § 87(2)(b) apartment using the key (**Allegations A through C**). However, the officers were unable to enter because there was a security bar lock on the door. Officers requested a supervisor to the scene. Sgt. Patrick Fyvie responded to the location. Sgt. Fyvie kicked § 87(2)(b) door twice, causing the door to open. Sgt. Fyvie entered the apartment followed by other officers (**Allegation D**). Once in the apartment, officers went into § 87(2)(b) bedroom, where he was standing in the corner. Sgt. Fyvie used his taser against § 87(2)(b) (**Allegation E**). Sgt. Fyvie used a second cycle of the taser on § 87(2)(b) (**Allegation F**).

§ 87(2)(b) was brought to § 87(2)(b) as an emotionally disturbed person as a result of this incident. An AIDED was prepared (Board Review 01). § 87(2)(b) was admitted to the hospital's psychiatric ward on § 87(2)(b) and discharged on § 87(2)(b) (Board Review 16 and 24).

No video footage was obtained of this incident.

The age of this case exceeded 90 days due to questions that arose while drafting the Board Recommendation Report, which required more evidence to be collected and two more officers to be interviewed.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because a taser was used on § 87(2)(b) and he spent multiple days in the hospital as a result of this incident.
- As of April 28, 2016, § 87(2)(b) did not file a notice of claim regarding this incident (Board Review 02).
- § 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) eighth complaint filed with the CCRB over the past 14 years.
- PO Gonzalez has one prior complaint in which mediation was attempted.
- This is the first complaint filed against PO Camille Williams.
- This is the first complaint filed against PO Jovan Williams.

- Sgt. Fyvie has five prior allegations stemming from three different complaints, none of which were substantiated. § 87(2)(g)

Potential Issues

- PO Camille Williams and PO Jovan Williams appeared for their interviews on the same day, although they were scheduled for separate days. After PO Camille Williams' interview, PBA counsel Brian Welsome told PO Jovan Williams that the investigators were going to ask PO Jovan Williams about a spiked bracelet that § 87(2)(b) was wearing at the time of the incident (Board Review 04). § 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Ely Gonzalez attempted to enter

§ 87(2)(b) in the Bronx.

Allegation B – Abuse of Authority: Police Officer Camille Williams attempted to enter

§ 87(2)(b) in the Bronx.

Allegation C – Abuse of Authority: Police Officer Jovan Williams attempted to enter

§ 87(2)(b) in the Bronx.

It is undisputed that PO Gonzalez, PO Jovan Williams, and PO Camille Williams attempted to enter § 87(2)(b) using a key provided by the security guard of § 87(2)(b). Given that the officers did not know the door would not open when they attempted entry into § 87(2)(b) apartment, using a key obtained from the security guard of the building, the attempted entry will be analyzed as an entry.

§ 87(2)(b) was interviewed at the Bronx Library Center on March 2, 2016 (Board Review 05). On January 23, 2016, at approximately 5:00 p.m., § 87(2)(b) was in his apartment, located at § 87(2)(b) heard banging on his door. § 87(2)(b) asked who was there and a voice responded saying it was the police. § 87(2)(b) asked the officers what they wanted. The officers said they wanted to talk to him. § 87(2)(b) told the officers he was not feeling well. After a few minutes, the officers used a key to unlock the door to his apartment. A security guard in the building later told § 87(2)(b) that he had to give the officers the key. § 87(2)(b) also had a security bar lock on the door, so the officers were ultimately unable to open the door using the key.

PO Gonzalez was interviewed at the CCRB on March 15, 2016 (Board Review 06). On January 23, 2016, PO Gonzalez was working with PO Jovan Williams and PO Camille Williams. They responded to a call for an emotionally disturbed person at § 87(2)(b). When they arrived, the officers spoke with the security guard, who stated he called 911 to report that § 87(2)(b) was in the hallway screaming. The officers went to the second floor and saw § 87(2)(b) in his apartment screaming, with the door open. The officers did not enter the apartment and told § 87(2)(b) to keep his door closed. The officers resumed patrol and marked the job as no EDP. At approximately 5:09 p.m., another call came over the radio for a dispute at § 87(2)(b). The officers responded to § 87(2)(b) again. When they arrived, they spoke with § 87(2)(b) neighbor, who stated that § 87(2)(b) had threatened to hurt her and her children. Then the officers went to the door to § 87(2)(b) apartment. The door was initially open, but § 87(2)(b) slammed the door to his apartment. No threats were observed by officers. PO Gonzalez heard § 87(2)(b) screaming and throwing objects around inside. PO Gonzalez said that the officers were concerned that § 87(2)(b) was going to hurt himself, so they called for a sergeant to respond.

Before the sergeant arrived, the security guard for the building gave the officers a key. PO Gonzalez did not remember who specifically was given the key. The officers attempted to enter the apartment using the key, but were ultimately unsuccessful.

PO Camille Williams was interviewed at the CCRB on June 1, 2016 (Board Review 07). PO Camille Williams corroborated PO Gonzalez's testimony regarding speaking with § 87(2)(b) neighbor who stated that he was making threats to her, and regarding the attempted entry with the key before Sgt. Fyvie responded. Before the officers obtained a key from the building's security guard, § 87(2)(b) was yelling at the officers saying "fuck you" and claiming that he had set "booby traps" that he would use if they entered his apartment. PO Camille Williams stated that the officers called for a sergeant to respond because they were unable to enter the apartment with the key, which they obtained from the security guard.

PO Jovan Williams was interviewed at the CCRB on June 1, 2016 (Board Review 08). PO Jovan Williams also stated that the officers spoke with § 87(2)(b) neighbor, but the neighbor only stated that she made complaints about his loud music, profanity, and banging noises. PO Jovan Williams did not say that § 87(2)(b) neighbor complained of § 87(2)(b) making threats against her. PO Jovan Williams corroborated PO Camille Williams' testimony regarding § 87(2)(b) stating that he was setting "booby traps" in his apartment. PO Jovan Williams also said the officers obtained the key from the security guard before Sgt. Fyvie arrived. However, PO Jovan Williams stated that the officers waited until Sgt. Fyvie arrived to attempt to enter the apartment with the key because they were not allowed to attempt entry without a sergeant present.

Sgt. Fyvie was interviewed at the CCRB on April 5, 2016 (Board Review 09) and on September 2, 2016 (Board Review 23). Sgt. Fyvie did not know if the officers obtained a key to enter the apartment, but said if they did, it was before he arrived.

While PO Jovan Williams stated that he and PO Gonzalez and PO Camille Williams waited for Sgt. Fyvie to arrive before using the key to try and open the door to § 87(2)(b) apartment, both PO Gonzalez and PO Camille Williams stated that they used the key before Sgt. Fyvie arrived. Sgt. Fyvie also stated that he was not present when the key was used to attempt to enter the apartment. Therefore, the preponderance of the evidence indicates that PO Gonzalez, PO Camille Williams, and PO Jovan Williams attempted to enter the apartment with a key before Sgt. Fyvie arrived.

The courts have outlined three elements to determine whether exigent circumstances exist to justify entry without a warrant. 1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. 2) The search must not be primarily motivated by intent to arrest and seize evidence. 3) There must be some reasonable basis, approximating to probable cause, to associate the emergency with the area to be searched. In order to justify a warrantless entry, all three parts of the exigency requirement must be met. People v. Musto 966 N.Y.S.2d 263 (2013), referencing People v. Mitchell 39 NY2d 173 (1976) (Board Review 10).

New York courts have generally held that officers may have the right to enter without a warrant upon receiving a report of an emotionally disturbed person when the officers can demonstrate that there is an emergency at hand § 87(2)(g)

§ 87(2)(b) In several of these cases, the entry is based upon knowledge from a third party about the defendant's established mental condition. In People v. Eckhardt 305 A.D.2d 860 (2003) (Board Review 17), officers based their entry upon information they had received about the resident's depression in combination with an open order of protection and signs that the resident's belongings and pet had been left unattended for some period of time. In People v. Stergiou 279 A.D.2d 860 (2003) (Board Review 18), officers prepared to make an emergency

entry based upon information from the defendant's psychiatrist that the defendant intended to kill himself and had four bottles of gasoline in his apartment. In People v. Reilly 155 A.D.2d 961 (1989) (Board Review 19), officers went to the defendant's home based on a report from the defendant's employer that he sounded depressed and, upon hearing the defendant state that he had killed his family, entered to verify the statement and render aid.

In cases where the officers respond to a general report of an emotionally disturbed person, the officers have based their decision to enter based upon multiple objective pieces of information that point to a condition requiring an immediate need for their assistance. In People v. Lenart 91 A.D.2d 132 (1983) (Board Review 20), officers responded in regards to a report of male running naked through the streets and into a residence, and, upon arrival, were able to observe through the opened apartment door that the apartment was in a disruptive condition and grumbling or growling noises, which led them to believe that someone other than the defendant might be present. In People v. Salazar 290 A.D.2d 256 (2002) (Board Review 21), officers engaged in an emergency entry after the defendant had engaged in violent conduct, made threats, and exhibited a disturbed mental condition. This behavior was not only reported by the victim-witness, persons encountered on the street outside the defendant's apartment, and other sources, but was also observed by the officers. In People v. Greenleaf 222 A.D.2d 838 (1995) (Board Review 22), officers based their entry upon the report of several witnesses who had heard slamming and banging in the apartment in addition to a male's cry for help.

In this case, the officers only based their decision on the report from a neighbor who alleged that § 87(2)(b) had threatened her, and the sound of § 87(2)(b) throwing objects and yelling profanity from inside his apartment. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

All officer testimony described § 87(2)(b) making a lot of noise inside of his apartment and using profanity. However, only PO Gonzalez stated that he was worried that § 87(2)(b) was going to hurt himself while he was breaking things inside of his apartment. Neither PO Camille Williams nor PO Jovan Williams stated that they attempted to enter § 87(2)(b) apartment out of concern for his safety. § 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: Sergeant Patrick Fyvie entered

§ 87(2)(b) **in the Bronx.**

It is undisputed that Sgt. Fyvie entered § 87(2)(b) residence, located at § 87(2)(b) in the Bronx, followed by other officers.

§ 87(2)(b) (Board Review 05) stated that after the officers unsuccessfully tried to enter his apartment using a key, he ran into his bedroom because he did not want to interact with the officers. After several minutes, the officers broke the security bar on his door and four to six officers entered the apartment. § 87(2)(b) did not know what the officers used to break the security bar on his door because he had run into his bedroom.

Sgt. Fyvie (Board Review 09 and 23) stated that on January 23, 2016, he was in an RMP with his driver, PO Whalen. Sgt. Fyvie received a call over the radio that his assistance was being requested at § 87(2)(b). On the computer screen in the RMP, Sgt. Fyvie saw the description of the job said it was for a violent EDP. When he arrived, Sgt. Fyvie went into the building and to the second floor hallway where his officers were standing outside of § 87(2)(b) apartment, § 87(2)(b). Sgt. Fyvie did not speak with anyone in the building before getting to the second floor. The officers explained to Sgt. Fyvie that § 87(2)(b) had been threatening his neighbors before they got there and that they had been communicating with § 87(2)(b) through the door, but he would not open the door. Sgt. Fyvie knocked on the door and told § 87(2)(b) that he wanted to speak with him. Sgt. Fyvie got § 87(2)(b) to slide a piece of mail under the door with his name on it. The officers looked up § 87(2)(b) name on an NYPD smart phone and learned that § 87(2)(b) had a previous firearms arrest and an AIDED/resisting EDP job. Sgt. Fyvie asked § 87(2)(b) if he was on any medication. § 87(2)(b) said he was and that he would write it down. § 87(2)(b) never slid a piece of paper with his medications on it under the door. After about five minutes, § 87(2)(b) opened the door ajar. On the door was a latch like on a hotel door, preventing the door from opening further. § 87(2)(b) became combative with Sgt. Fyvie after Sgt. Fyvie said he had not been in the military, and told Sgt. Fyvie that he would “fuck him up.” Sgt. Fyvie heard § 87(2)(b) start breaking things inside of his apartment. § 87(2)(b) stated that he was ready to die. Sgt. Fyvie was concerned for § 87(2)(b) safety and the safety of the other officers, and so felt he had to enter the apartment. Sgt. Fyvie kicked the door twice, causing the latch to come undone and the door to open. Sgt. Fyvie entered the apartment, followed by the other officers.

PO Gonzalez was interviewed at the CCRB on March 15, 2016 (Board Review 06). After Sgt. Fyvie arrived, he was attempting to speak with § 87(2)(b) through the door and ordered him to open the door. § 87(2)(b) was continuously yelling inside his apartment and cursing at the officers, stating “Fuck you!”

PO Camille Williams (Board Review 07) did not know whether or not there was another person in the apartment with § 87(2)(b) and said that it is always a fear as a police officer.

PO Jovan Williams (Board Review 08) did not recall if § 87(2)(b) made any additional statements after Sgt. Fyvie arrived.

In a call to 911 (Board Review 14-15), § 87(2)(b) neighbor said she was in fear of her life and said that § 87(2)(b) was harassing her. She said that she had spoken with the officers to file a report, but the officers said there was nothing they could do. She requested that a sergeant respond to the location.

As outlined above, the courts have established three elements required to justify warrantless entry, People v. Musto 966 N.Y.S.2d 263 (2013) (Board Review 10).

with information he gave them. However, during his second interview at the CCRB (Board Review 23), Sgt. Fyvie stated that he prepared the taser report with the help of a supervisor, whom he could not remember. Sgt. Fyvie stated that he went back to the stationhouse and filled out the report immediately after the incident, while PO Gonzalez, PO Camille Williams, and PO Jovan Williams went with § 87(2)(b) to the hospital. After filling out the report, Sgt. Fyvie quickly resumed patrol because he was the only patrol supervisor at the time.

The Less Lethal Equipment Report prepared in regards to this incident (Board Review 12) notes that § 87(2)(b) was acting irrational and refused to comply with officers orders, became violent and attempted to attack officers as they attempted to physically restrain him, and that § 87(2)(b) stated that he had smoked synthetic cannabinoids (K2) prior to incident. Additionally, the report noted that § 87(2)(b) did not have a dangerous instrument or weapon. During his second interview at the CCRB (Board Review 23), Sgt. Fyvie was presented with the report. After confirming that he reviewed the report and that his signature was on the report, Sgt. Fyvie was asked to explain the discrepancies between the narrative on the report and his testimony. Sgt. Fyvie was asked to explain at what point during the incident § 87(2)(b) became violent and attempted to attack officers, and he said this was after the first taser cycle and before the second taser cycle. Sgt. Fyvie was asked why the bracelet was not mentioned at all in the report, and why the report had indicated that § 87(2)(b) did not possess a dangerous object or weapon, given that the bracelet played such a large role in his decision to taser § 87(2)(b). Sgt. Fyvie stated that this was a result of human error and said that this was the only time he ever filled out a taser report. Sgt. Fyvie was also asked when § 87(2)(b) stated that he had smoked synthetic cannabinoids. Sgt. Fyvie said he forgot to bring it up in his testimony. Sgt. Fyvie stated that § 87(2)(b) never said this to him, but said it to the officers who went with him to the hospital. Sgt. Fyvie said that PO Gonzalez told him about this statement later that evening when they were both back at the stationhouse. Sgt. Fyvie was asked to reconcile this timeline with his earlier statement, in which he said that he filled out the report immediately after the incident then resumed patrol. Sgt. Fyvie was unable to clarify when he spoke with PO Gonzalez and reiterated that, to his memory, he filled out the report immediately after the incident.

PO Gonzalez (Board Review 06) stated that, after the officers entered the apartment, he saw § 87(2)(b) run into his bedroom. There was a lot of debris on the floor of the apartment which was difficult to get through. § 87(2)(b) screamed to the officers, “Fuck you guys. Come get me.” Sgt. Fyvie had his taser out and reached the bedroom first. PO Gonzalez heard Sgt. Fyvie state, “Let me see your hands. Let me see your hands.” All of the officers rushed into the bedroom and PO Gonzalez saw § 87(2)(b) in the right corner of the bedroom, closest to the entrance. PO Gonzalez heard the sound of the taser. PO Gonzalez never saw Sgt. Fyvie shoot the taser. Sgt. Fyvie stated, “Get him. Get him.” PO Gonzalez rushed around Sgt. Fyvie and towards § 87(2)(b) who was on the floor from being shocked by the taser. PO Gonzalez handcuffed § 87(2)(b) with the assistance of another officer. There was no indication that § 87(2)(b) had a weapon.

PO Camille Williams (Board Review 07) stated that, in the hallway immediately inside of the apartment, there was furniture, suitcases, shopping carts, brooms, and other items. PO Camille Williams saw a pot of boiling water on the stove. In the bathroom, the bathtub was filled with water and objects. The officers entered § 87(2)(b) bedroom. Sgt. Fyvie told § 87(2)(b) to show his hands. PO Camille Williams did not remember where § 87(2)(b) hands were. PO Camille Williams did not remember § 87(2)(b) reaction to Sgt. Fyvie’s commands, but did not remember any resistance. § 87(2)(b) was standing in the corner to the right. A few seconds after entering the bedroom, Sgt. Fyvie tasered § 87(2)(b). PO Camille Williams did not recall § 87(2)(b) having

§ 87(2)(g)

Allegation F – Force: Sergeant Patrick Fyvie used a taser against § 87(2)(b)

Sgt. Fyvie (Board Review 09 and 23) stated that after § 87(2)(b) fell to the ground as a result of the first taser cycle, which lasted five seconds, the officers got around § 87(2)(b) and tried to place him in handcuffs. § 87(2)(b) was lying partially on his side and partially on his stomach with his arms pinned under him. He stated that § 87(2)(b) would not give up his arms and the spiked bracelet was not secured. Sgt. Fyvie thought the bracelet could still hurt § 87(2)(b) or one of the officers. During his first interview at the CCRB, Sgt. Fyvie stated he did not know how long it was between taser cycles, but stated that it was not long. During his second interview at the CCRB, Sgt. Fyvie stated that one second after the first taser cycle completed, he used a second taser cycle on § 87(2)(b). After the second cycle, the officers were able to secure § 87(2)(b) arms and remove the spiked bracelet.

As discussed above, the Less Lethal Report that was prepared in regards to this incident (Board Review 12) indicated that § 87(2)(b) became violent and attempted to attack officers. During his second interview at the CCRB (Board Review 23), when asked how § 87(2)(b) was violent and attempted to attack officers, Sgt. Fyvie stated that between the two taser cycles, § 87(2)(b) was clenching his body and would not give up his arms to be handcuffed. Sgt. Fyvie said that § 87(2)(b) was attacking officers because he would not give up his bracelet, which could have been used as a deadly weapon. Additionally, the report stated that § 87(2)(b) was tasered for five seconds then physically restrained, and did not mention a second taser cycle. When asked why the report only referred to one taser cycle, Sgt. Fyvie said that the discrepancy was a result of human error and he definitely used two taser cycles against § 87(2)(b).

As outlined above, the Patrol Guide states that a Conducted Energy Device (CED) should only be used against persons who are actively physically resisting, exhibiting active physical aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present, 212-117 Use of Conducted Energy Devices (CED) (Board Review 13).

According to Sgt. Fyvie's testimony, § 87(2)(b) fell to the ground and landed on his side, partially on his stomach with his arms pinned under him. Sgt. Fyvie stated that § 87(2)(b) would not give up his arms while on the ground because of how he was positioned. § 87(2)(g)

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date