

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #4	CCRB Case #: 202003938	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/03/2020 6:45 PM	Location of Incident: Hollis Avenue and 205 Place	Precinct: 103	18 Mo. SOL 12/3/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 06/04/2020 2:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/04/2020 2:22 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Holder	18361	951823	103 PCT
2. An officer			
3. SGT Edwin Espinal	03384	934831	103 PCT
4. POM Kevin Nicoll	19740	958984	103 PCT
5. POM Brandon Grasser	14283	955961	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Boudouris	13949	955764	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Edwin Espinal	Force: Sergeant Edwin Espinal used physical force against § 87(2)(b)	
B.POM James Holder	Force: Police Officer James Holder used physical force against § 87(2)(b)	
C.POM Kevin Nicoll	Force: Police Officer Kevin Nicoll used physical force against § 87(2)(b)	
D.POM Brandon Grasser	Discourtesy: Police Officer Brandon Grasser acted discourteously toward individuals.	
E. An officer	Discourtesy: An officer gestured discourteously toward individuals.	

Case Summary

On June 4, 2020, § 87(2)(b) filed this complaint with the CCRB online on behalf of § 87(2)(b) and unidentified individuals. § 87(2)(b) witnessed this incident.

On June 3, 2020, at approximately 6:45 p.m., Police Officer James Holder, Police Officer Kevin Nicoll, and Sergeant Edwin Espinal from the 103rd Precinct forcibly arrested § 87(2)(b) at Hollis Avenue and 205th Place in Queens (**Allegations A-C: Force**, § 87(2)(g)). Additional officers arrived on scene, including 103rd Precinct Police Officer Brandon Grasser, who spat toward a crowd of bystanders (**Allegation D: Discourtesy**, § 87(2)(g)). As the officers left the scene, an officer allegedly held his middle finger at the crowd out of the car window (**Allegation E: Discourtesy**, § 87(2)(g)). § 87(2)(b) was brought to the stationhouse where he was ultimately released on charges of § 87(2)(b).

The investigation obtained a cell phone video taken by § 87(2)(b) that partially depicted this incident (Board Review 01).

The NYPD Legal Bureau found nine body-worn camera (BWC) videos related to this incident, but they would not release the videos under the Family Court Act § 166 (Board Review 05). Ultimately, three BWC videos were provided with redactions (Board Review 02-04).

Findings and Recommendations

Allegation (A) Force: Sergeant Edwin Espinal used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer James Holder used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Kevin Nicoll used physical force against § 87(2)(b)

§ 87(2)(b) testified that he was leaving a juice bar on Hollis Avenue when he saw a crowd of people surrounding police officers and § 87(2)(b) (Board Review 06). § 87(2)(b) had his hands up against the metal gate of a closed store while an officer frisked and handcuffed him. § 87(2)(b) learned from someone else in the crowd that the officers had pushed § 87(2)(b) against a fence. § 87(2)(b) did not observe this. § 87(2)(b) did not know any of the people in the crowd. § 87(2)(b) spoke with § 87(2)(b) and his family after the incident, but he only had contact information for § 87(2)(b)'s aunt, § 87(2)(b).

§ 87(2)(b) told the CCRB over the phone that she spoke to § 87(2)(b) and his mother and that neither wanted to be involved in this case (Board Review 07). § 87(2)(b) refused to provide contact information for § 87(2)(b) or his mother. § 87(2)(b) agreed to provide them with contact information for the CCRB.

At no point did § 87(2)(b) or his mother contact the CCRB to follow-up on this case. Thus, the investigation was unable to obtain a statement from § 87(2)(b).

§ 87(2)(b)'s cell phone video did not capture the apprehension or alleged force against § 87(2)(b) (Board Review 01).

The investigation was unable to identify or speak to any other witnesses.

PO Holder testified that he was on 205th Place when he approached § 87(2)(b) who was under arrest for possessing marijuana (Board Review 09). § 87(2)(b) ran from PO Holder. PO Holder and his partners, PO Nicoll and Sgt. Espinal, chased § 87(2)(b) onto Hollis Avenue. As PO

Holder extended his arm and grabbed § 87(2)(b)'s shoulder, PO Nicoll fell onto PO Holder who fell onto § 87(2)(b) who collided with a gated storefront. All three fell to the ground. § 87(2)(b) quickly got to his feet, but Sgt. Espinal took him to the ground again. The officers helped § 87(2)(b) to his feet and handcuffed him. Later at the stationhouse, PO Holder noticed § 87(2)(b) had a bruise on his knee from being brought to the ground. § 87(2)(b) refused medical attention.

Sgt. Espinal's testimony was similar to PO Holder's except that he believed PO Holder ultimately brought § 87(2)(b) to the ground (Board Review 08).

PO Grasser did not arrive on scene until after this part of the incident (Board Review 10).

Sgt. Espinal's body-worn camera (BWC) video showed that PO Holder and PO Nicoll collided while attempting to apprehend § 87(2)(b) as shown at the 00:25 minute-mark of the player's timestamp (Board Review 02). § 87(2)(b) also fell at the 00:27 minute-mark. Sgt. Espinal caught up to § 87(2)(b) but the frame became indistinguishable as if the camera fell from its mount.

TRI report #§ 87(2)(b) noted that the officers performed a forcible takedown of § 87(2)(b) in order to overcome § 87(2)(b)'s resistance (Board Review 11). § 87(2)(b) sustained an abrasion on his right knee and another on his right hand.

According to NYPD Patrol Guide 221-01, officers may use force when it is reasonable to place a person in custody or to prevent escape from custody (Board Review 12).

§ 87(2)(g)
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Allegation (D) Discourtesy: Police Officer Brandon Grasser acted discourteously toward individuals.

§ 87(2)(b) testified that PO Grasser arrived at the scene and approached the crowd who was yelling at the officers arresting § 87(2)(b) (Board Review 06). PO Grasser stepped in front of the crowd and spat at the feet of the individuals in front. The crowd yelled louder, this time at PO Grasser's action.

§ 87(2)(b)'s cell phone video showed, at the 2:40 minute-mark of the player's timestamp, that PO Grasser arrived and immediately stepped in front of the crowd (Board Review 01). At 2:52, PO Grasser spat downward in front of individuals. It is unclear where the spit landed because it was out of frame. An individual or individuals yell louder.

PO Grasser testified that he spat onto the ground because he had a bad taste in his mouth (Board Review 10). PO Grasser did not spit for any other reason, and the action did not have a law enforcement purpose.

NYPD Patrol Guide Procedure 200-02 states that it is an officer's duty to treat every citizen with compassion, courtesy, professionalism, and respect (Board Review 13). Officers are to maintain a higher standard of integrity than expected of others and value human life, respect the dignity of each individual, and render their services with courtesy and civility.

§ 87(2)(g)

Allegation (E) Discourtesy: An officer gestured discourteously toward individuals.

§ 87(2)(b) testified that an officer reached his hand out of the car window and held up his middle finger to the crowd as he left the scene (Board Review 06). § 87(2)(b) was unable to describe the subject officer. He did not know if it was any of the subject officers of the other allegations.

Neither § 87(2)(b)'s cell phone video nor the officers' BWC videos captured this action (Board Review 01 and 02-04, respectively).

Sgt. Espinal, PO Holder, and PO Grasser all denied that any officer held up their middle finger to the crowd (Board Review 08, 09, 10, respectively).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (Board Review 14).
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- Sgt. Espinal has been a member of service for 17 years and has been a subject in 23 additional CCRB complaints and 23 allegations, of which two were substantiated (Board Review 15):
 - 201907390 involved an allegation of interference with recording device that was substantiated. The CCRB recommended Formalized Training, which the NYPD imposed.
 - 201909887 involved a substantiated search allegation. The Board recommended Command Discipline A, and the NYPD imposed no penalty.
- PO Holder has been a member of service for ten years and has been a subject in 11 additional complaints and 35 allegations, of which five were substantiated (Board Review 16):
 - 201502028 involved a substantiated discourtesy allegation. The Board recommended Formalized Training, and the NYPD imposed Command Level Instructions.
 - 201804023 involved substantiated frisk and vehicle search allegations. The Board recommended Formalized Training, and the NYPD imposed Formalized Training.
 - 201904264 involved substantiated failure to provide RTKA card allegations. The Board recommended Command Lvl Instructions, and the NYPD imposed Instructions.
- PO Nicoll has been a member of service for six years and has been a subject in six additional complaints and 14 allegations, of which one was substantiated (Board Review 17):
 - 201809981 involved a substantiated search of person allegation. The Board recommended Command Lvl Instructions and the NYPD imposed Formalized Training.
- PO Grasser has been a member of service for eight years and has been a subject in 15 additional complaints and six allegations, of which one was substantiated (Board Review 18):
 - 201909887 involved a substantiated search of person allegation. The Board recommended Formalized Training, and the NYPD did not impose discipline.

