

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Esme Trontz	Team: Squad #2	CCRB Case #: 202005853	<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) Tuesday, 08/25/2020 6:58 PM	Location of Incident: 803 Soundview Avenue	Precinct: 43	18 Mo. SOL 2/25/2022	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 08/26/2020 9:21 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 08/26/2020 9:21 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Freddy Difo	08770	957544	PSA 8
2. POM Miguel Perea	19829	962678	PSA 8
3. An officer			PSA 8

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer questioned § 87(2)(b)	
B. POM Miguel Perea	Abuse: Police Officer Miguel Perea frisked § 87(2)(b)	
C. POM Freddy Difo	Abuse: Police Officer Freddy Difo frisked § 87(2)(b)	
D. POM Miguel Perea	Abuse: Police Officer Miguel Perea searched § 87(2)(b)	
E. POM Freddy Difo	Abuse: Police Officer Freddy Difo searched § 87(2)(b)	
F. POM Miguel Perea	Abuse: Police Officer Miguel Perea searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
G. POM Freddy Difo	Force: Police Officer Freddy Difo used physical force against § 87(2)(b)	
H. POM Freddy Difo	Abuse: Police Officer Freddy Difo searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
I. POM Miguel Perea	Force: Police Officer Miguel Perea used physical force against § 87(2)(b)	
J. POM Freddy Difo	Force: Police Officer Freddy Difo used physical force against § 87(2)(b)	
K. POM Miguel Perea	Abuse: Police Officer Miguel Perea refused to provide his name to § 87(2)(b)	
L. POM Miguel Perea	Abuse: Police Officer Miguel Perea refused to provide his shield number to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on August 26, 2020, via the online portal, on behalf of himself and his girlfriend, § 87(2)(b).

At approximately 6:58 p.m. on August 25, 2020, § 87(2)(b) and § 87(2)(b) were sitting in the parking lot of a laundromat at 803 Soundview Avenue in the Bronx. § 87(2)(b) who was 8 ½ months pregnant, sat in the passenger seat of their vehicle with the passenger door open, and § 87(2)(b) sat in a lawn chair outside the car immediately next to her. Police Officers Miguel Perea and Freddy Difo of Police Service Area 8 arrived in an unmarked vehicle and approached the couple. One officer allegedly asked § 87(2)(b) if he had any weapons on him (**Allegation A: Abuse of Authority-Question**, § 87(2)(g)). Police Officer Perea asked § 87(2)(b) to stand up and take off the small messenger bag he was wearing; § 87(2)(b) took it off and handed it to § 87(2)(b) who was still sitting in the car. Both officers asked § 87(2)(b) to hand them the bag, but she refused to give it to them. The officers handcuffed § 87(2)(b) and both officers allegedly frisked and searched him before putting him in their vehicle (**Allegations B, C, D, E: Abuse of Authority-Frisk and Search of Person**, § 87(2)(g)). Police Officer Perea reached into § 87(2)(b) and § 87(2)(b)'s car to try to grab the bag, but § 87(2)(b) covered it with her body (**Allegation F: Abuse of Authority-Vehicle Search**, § 87(2)(g)).

The officers escorted § 87(2)(b) to the police vehicle as § 87(2)(b) exited her vehicle and recorded the interaction on her phone. § 87(2)(b) yelled to § 87(2)(b) “Close the car door!” § 87(2)(b) turned around and began running toward the open passenger door as Police Officer Difo ran behind her. As § 87(2)(b) began to attempt to close the door with one hand, Police Officer Difo allegedly pushed her from behind into the passenger seat (**Allegation G: Physical Force**, § 87(2)(g)). Police Officer Difo reached into the passenger seat and successfully grabbed the bag (**Allegation H: Abuse of Authority-Vehicle Search**, § 87(2)(g)). Both officers allegedly used force to place § 87(2)(b) in the back of the police vehicle (**Allegations I and J: Physical Force**, § 87(2)(g)). § 87(2)(b) asked Police Officer Perea for his name and allegedly asked for his shield number, but he did not provide this information to her (**Allegations K: Abuse of Authority-Refusal to Provide Name**, § 87(2)(g); and **Allegation L: Abuse of Authority-Refusal to Provide Shield Number**, § 87(2)(g)). § 87(2)(b) was transported to the PSA 8 stationhouse and released the same day with a summons for § 87(2)(b). No one else was arrested or summonsed.

BWC footage from the BWCs of Police Officers Difo and Perea were obtained for this incident, which are attached in IAs #64 and #65, respectively (Board Review #01, #02). They are summarized in IA #66 (Board Review #03). Cell phone videos from § 87(2)(b) and an unidentified bystander were also obtained, and are attached in IAs #57 and #58, respectively (Board Review #04, #05). They are summarized in IA #68 (Board Review #06). A relevant subclip from the unidentified bystander’s video is attached in IA #112 (Board Review #07).

Findings and Recommendations

Allegation (A) Abuse of Authority: An officer questioned § 87(2)(b)

§ 87(2)(b) was interviewed on September 18, 2020 via telephone (Board Review #08). A written notarized statement was received from her on September 30, 2020 (Board Review #20). Police Officers Perea and Difo were interviewed on January 25, 2021 at the CCRB.

§ 87(2)(b) and § 87(2)(b) civil attorneys allowed § 87(2)(b) to provide a statement for the

investigation but did not allow the investigation to obtain a statement from § 87(2)(b). They, however, did not wish for the Agency to close the case pending litigation. Because a detailed verbal statement and a written notarized statement were obtained from § 87(2)(b) along with several civilian and BWC videos, the investigation proceeded without the statement from § 87(2)(b).

In his initial complaint, § 87(2)(b) stated that when the officers approached, one of them asked him if he had any weapons, but he did not specify which officer asked. § 87(2)(b) did not hear any officer ask § 87(2)(b) if he had any weapons but also stated that she did not pay attention to a few seconds of § 87(2)(b) initial conversation with the officers because she was looking at her phone.

Police Officer Perea testified that neither he nor his partner asked § 87(2)(b) if he had weapons on him. He had no reason to believe there was a weapon in § 87(2)(b) bag and noted that a weapon would have been easy to see through § 87(2)(b) basketball shorts, thus making it unnecessary to ask if he had a weapon. Police Officer Difo did not know whether he or Police Officer Perea asked § 87(2)(b) if he had weapons and likewise stated that he had no reason to believe there was a weapon in § 87(2)(b) bag.

None of the videos obtained show either officer asking § 87(2)(b) if he had weapons. However, none of them capture the audio of the entirety of the initial conversation between § 87(2)(b) and the officers, with the audio of the BWCs beginning shortly after the officers begin speaking with § 87(2)(b).

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- Allegation (B) Abuse of Authority: Police Officer Miguel Perea frisked § 87(2)(b)**
- Allegation (C) Abuse of Authority: Police Officer Freddy Difo frisked § 87(2)(b)**
- Allegation (D) Abuse of Authority: Police Officer Miguel Perea searched § 87(2)(b)**
- Allegation (E) Abuse of Authority: Police Officer Freddy Difo searched § 87(2)(b)**

§ 87(2)(b) testified that either or both Police Officer Perea and Police Officer Difo frisked and searched § 87(2)(b) while handcuffing him.

Both officers testified that they approached § 87(2)(b) because they saw him crumbling a substance into some kind of paper. Police Officer Perea saw that the substance was a small handful of a green and leafy material and Police Officer Difo described the amount as a quarter-sized handful. Both officers smelled an odor of marijuana once they were next to § 87(2)(b). Upon noticing the officers, § 87(2)(b) crumpled this paper and tossed it into his messenger bag and handed the bag to § 87(2)(b) who refused to give the bag with the marijuana inside to the officers.

Police Officer Perea believed he frisked and searched § 87(2)(b) after he was handcuffed. Police Officer Difo could not remember whether he frisked and/or searched § 87(2)(b) on scene, but stated that if he did not, he would have done so at the stationhouse.

§ 87(2)(b) was released from the stationhouse with a summons for § 87(2)(b), and the property voucher shows that he possessed a packet of marijuana (which was confirmed by a field test), and a packet of alleged marijuana (Board Review #09).

Though no footage available shows clearly the physical interactions between the officers and § 87(2)(b) as they cuffed him because the officers move quickly, § 87(2)(b)'s cell phone video (Board Review 04) and the cell phone video from the unknown bystander (Board Review 05) show the best view. These videos appear to show that after both officers cuff § 87(2)(b) they both briefly frisk his torso.

§ 87(2)(g)

Patrol Guide Procedure 208-03 requires officers to “immediately field search/frisk prisoner” for contraband and/or evidence after the prisoner has been cuffed (Board Review #10). New York State Penal Law §221.05 states that a person is guilty of unlawful possession of marihuana, a violation, when they knowingly and unlawfully possess marijuana. New York State Penal Law §221.10 states that a person is guilty of criminal possession of marihuana in the fifth degree, a misdemeanor, when they knowingly and unlawfully possess marijuana in a public place and the marijuana is open to public view (Board Review #11).

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Miguel Perea searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (G) Physical Force: Police Officer Freddy Difo used physical force against § 87(2)(b).

Allegation (H) Abuse of Authority: Police Officer Freddy Difo searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that, before the officers cuffed § 87(2)(b) they attempted to retrieve the messenger bag from § 87(2)(b) by asking her several times, but § 87(2)(b) refused to relinquish it. Police Officer Perea briefly reached into the passenger seat through the open door to attempt to grab the bag, but § 87(2)(b) blocked his hand with her body and prevented him from taking it. As the officers escorted § 87(2)(b) to the police vehicle, § 87(2)(b) exited her vehicle, left the passenger door open with the bag in the passenger seat, and walked closer to the police vehicle to record the interaction. § 87(2)(b) screamed, “Close the car door!” In response, § 87(2)(b) immediately turned back to their car, and Police Officer Difo ran after her. In a matter of seconds, Police Officer Difo reached into the passenger seat and successfully grabbed the bag, making physical contact with § 87(2)(b) in the process.

§ 87(2)(b) stated that once she got to the passenger door, she put one hand on the door and the other on the body of the car and began closing the door. Though she could not remember where exactly Police Officer Difo pushed her, she remembered that she felt pressure on her left side and fell onto her belly and her right knee. She was also not exactly sure where her belly and knee hit but it was either the seat, door, or dashboard. § 87(2)(b) grabbed the bag at some point; thus, when Police Officer Difo also grabbed the bag, he pulled § 87(2)(b) out of the car, and she landed on the ground on her left hip and knee. At some point later, she noticed that her knee was bleeding. Later, after the officers drove away with § 87(2)(b) § 87(2)(b) started to feel pain in her lower “pelvic area” and collapsed on the ground, learning later that she was having contractions at this moment. She went to the Emergency Room, where doctors told her she suffered trauma to her belly and was going into labor, though she did not give birth at this time.

Police Officer Difo testified that he noticed § 87(2)(b) was very pregnant at the beginning of the

incident. Later, he ran toward § 87(2)(b)'s car, because “if she closed the door, [they] had nothing,” or no evidence of § 87(2)(b) crime. Once he arrived at the car, § 87(2)(b) started trying to close the car door. He reached into the car with his right hand and started to grab the bag; at the same time, § 87(2)(b) was just behind him and slightly to the right. Police Officer Difo could not tell what § 87(2)(b) was doing at this time but noted that he saw on his BWC footage that she seemed to attempt to grab the bag but “grabbed air” instead. Once he successfully grabbed the bag, Police Officer Difo turned his body so that his back was to § 87(2)(b). At some point, his back made contact with the front of her body; he could not tell precisely where it touched, but this contact occurred when they were both standing. He could not tell whether this contact made either of them move in a specific way. Police Officer Difo saw on his BWC footage that after he grabbed the bag, § 87(2)(b) sat onto the passenger seat or ledge of the car, but he had not seen this during the incident. Police Officer Difo denied ever shoving or pushing § 87(2)(b). If § 87(2)(b) had successfully closed the car door, Police Officer Difo would have remained on-scene and called his sergeant or lieutenant to ask them what to do next.

The subclip of the cell phone video from the unidentified individual provides the clearest view of Police Officer Difo’s contact with § 87(2)(b) which lasts only three to four seconds (Board Review #07). The camera follows Police Officer Difo as he runs quickly toward § 87(2)(b)'s car; § 87(2)(b) is seen reaching for the open passenger door of her car with her outstretched right arm and her torso bent forward in the doorway of the front passenger doorway. Police Officer Difo approaches the passenger seat by scaling the side of the vehicle on § 87(2)(b)'s left side. As he continues to move to the right and forward into the passenger seat area, § 87(2)(b) is directly to his right, and his right hip strikes § 87(2)(b) in the back. § 87(2)(b) then appears to fall onto the floor of the passenger seat. Police Officer Difo exits the vehicle with the bag in hand, and § 87(2)(b) appears to fall forward onto her knees as she tries to grab the bag from him.

Patrol Guide Procedure 221-01 allows officers to use reasonable force to obtain compliance from civilians, and states that the primary duty of all members of service is to protect human life (Board Review #12). Officers must take into account several factors when evaluating the reasonableness of their force used, which include the nature and severity of the crime and/or circumstances, actions taken by the subject, the immediacy of the perceived threat to anyone, the size, age, and condition of the subject in comparison to the officer, and the presence of a hostile crowd.

New York v. Belton, 453 U.S. 454 [1981] states that an officer who has made a lawful custodial arrest of the occupant of an automobile may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile and examine the contents of any containers found within the passenger compartment, such as a bag, that the officer has probable cause to believe contains contraband or evidence that is at risk of being concealed or destroyed (Board Review #21).

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Allegation (I) Force: Police Officer Miguel Perea used physical Force against § 87(2)(b)

Allegation (J) Force: Police Officer Freddy Difo Used physical force against § 87(2)(b)

It is undisputed that the officers physically struggled to place § 87(2)(b) into the police vehicle.

§ 87(2)(b) testified that while the officers walked § 87(2)(b) to the police vehicle, they pulled on his arms and pushed him forward. Both officers then struggled with his legs and forced him into the vehicle.

Police Officer Perea testified that § 87(2)(b) who was considerably taller than himself, refused to enter the police vehicle by tensing his body and kicking his legs, possibly hitting Police Officer Perea twice. Police Officer Perea attempted to get him into the car while telling him to relax. Police Officer Perea eventually got § 87(2)(b) into the vehicle once Police Officer Difo assisted in pulling him in.

The cell phone video from the unidentified bystander shows Police Officer Perea attempting to place § 87(2)(b) into the backseat of the police vehicle, from 00:41 until 1:20 into the video (Board Review 05). During these 40 seconds, Police Officer Perea attempts to push § 87(2)(b) into the backseat by pushing on his torso, while § 87(2)(b) stands up, screams, and appears to push back on Police Officer Perea. Police Officer Difo successfully sweeps his foot behind § 87(2)(b) ankle, causing him to fall into the backseat.

Patrol Guide Procedure 221-01 allows officers to use the reasonable force to overcome resistance and obtain compliance from civilians (Board Review #12). Officers must consider several factors to determine what amount of force is reasonable, including the size and age of the subject, whether the subject is actively resisting custody, the presence of a hostile crowd, the actions the subject takes and the duration that they perform these actions.

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Allegation (K) Abuse of Authority: Police Officer Miguel Perea refused to provide his name to § 87(2)(b)

Allegation (L) Abuse of Authority: Police Officer Miguel Perea refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) testified that she asked both officers for their names and shield numbers approximately three to four times, after which Police Officer Difo showed her his shield, from which she was able to obtain his information, but Police Officer Perea never provided his name and shield number.

Both officers stated that when they were trying to place § 87(2)(b) into the police vehicle, a group of people, including § 87(2)(b) screamed and repeatedly asked the officers for their names and shield numbers. Police Officer Perea could not recall whether he ever gave his name and shield number to § 87(2)(b) and thought she may have specifically asked him for his name and shield number. The only reason he may not have provided it was because he was focusing on getting § 87(2)(b) into the police vehicle.

The cell phone video taken by § 87(2)(b) shows, starting at 2:40 into the video, that she asks Police Officer Perea, “What is your name?” approximately 12 times within about one minute (Board Review #04). During this time, both officers struggle to place § 87(2)(b) into the car, then Police Officer Perea shuts the door, walks around the back of the car, and enters the backseat to sit next to § 87(2)(b). Other bystanders are heard yelling and seen filming throughout this time period. Police Officer Perea never provides his name or shield number to § 87(2)(b).

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Patrol Guide Procedure 203-09 requires officers to courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests the information (Board Review #13).

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Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review #14, #15).
- Police Officer Freddy Difo has been a member-of-service for six years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Miguel Perea has been a member-of-service for four years and has been a subject in two CCRB cases and nine allegations, none of which have been substantiated.

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