

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #14	CCRB Case #: 201905890	<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 checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 07/04/2019 11:00 PM	Location of Incident: [REDACTED]	Precinct: 32	18 Mo. SOL 1/4/2021	EO SOL 8/21/2021	
Date/Time CV Reported Mon, 07/08/2019 9:39 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/08/2019 9:39 AM		

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

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. CPT Neil Zuber	00000	931483	032 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Daniel Wadolowski	732	954413	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A. CPT Neil Zuber	Force: Captain Neil Zuber used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]
B. CPT Neil Zuber	Force: Captain Neil Zuber used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C. CPT Neil Zuber	Force: Captain Neil Zuber used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D. CPT Neil Zuber	Force: Captain Neil Zuber used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
E. Officers	Force: Officers restricted § 87(2)(b) [REDACTED] breathing.	[REDACTED]
F. Officers	Force: Officers hit § 87(2)(b) [REDACTED] against a vehicle.	[REDACTED]
G. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
H. An officer	Force: An officer used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
I. An officer	Force: An officer used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
J. An officer	Force: An officer used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

### Case Summary

On July 8, 2019, § 87(2)(b) filed this complaint with the CCRB via telephone.

On July 4, 2019, at approximately 11 p.m., § 87(2)(b) was at a cookout in the vicinity of § 87(2)(b) in Manhattan to celebrate the Fourth of July with a large group of people, including § 87(2)(b) and § 87(2)(b). Numerous officers, including Captain Neil Zuber, Detective Daniel Wadolowski, and Police Officer Ellen Usher, all of the 32<sup>nd</sup> Precinct, arrived at the location in response to a 10-13 radio run (officer needs assistance). Captain Zuber allegedly squeezed § 87(2)(b) neck and pushed him backwards (**Allegations A and B: Force**, § 87(2)(g)). Captain Zuber allegedly stomped on § 87(2)(b) foot and kept his weight on § 87(2)(b) foot (**Allegation C: Force**, § 87(2)(g)). Captain Zuber punched § 87(2)(b) two times in the abdomen (**Allegation D: Force**, § 87(2)(g)). When § 87(2)(b) was on the ground, officers allegedly restricted his breathing (**Allegation E: Force**, § 87(2)(g)). An officer allegedly pushed § 87(2)(b)'s head into a vehicle (**Allegation F: Force**, § 87(2)(g)). An officer allegedly pushed § 87(2)(b) and told her, "I don't give a fuck" (**Allegation G: Force**, § 87(2)(g)) and **Allegation H: Discourtesy**, § 87(2)(g)). An officer allegedly pushed both § 87(2)(b) and § 87(2)(b) (**Allegations I and J: Force**, § 87(2)(g), § 87(2)(b), § 87(4-b), § 87(2)(g)).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Body-worn camera footage of this incident was obtained and will be discussed in further detail below.

### Findings and Recommendations

**Allegation (A) Force: Captain Neil Zuber used a chokehold against § 87(2)(b)**

**Allegation (B) Force: Captain Neil Zuber used physical force against § 87(2)(b)**

The investigation established the following facts:

§ 87(2)(b) is in the vicinity of a park within the § 87(2)(b) complex, where a large party was occurring to celebrate the Fourth of July. Unidentified officers at the location requested assistance via radio (10-13), which caused a large police response. Most of the responding officers performed crowd control as many individuals were uncompliant in leaving the area. As § 87(2)(b) was exiting the park, he encountered Captain Zuber, who pushed § 87(2)(b) away from him. Officers, including Det. Wadolowski, grabbed § 87(2)(b) who physically resisted the officers. Captain Zuber approached § 87(2)(b) and punched him twice in the abdomen area. § 87(2)(b) went to the ground and officers successfully handcuffed him.

§ 87(2)(b) (BR 01) testified that he left the cookout area to walk to a store at the corner of § 87(2)(b). § 87(2)(b) stopped briefly to speak with a friend before continuing to walk with his friend. As § 87(2)(b) walked, he saw several officers and police vehicles near a group of people, but he did not see what the officers were doing. § 87(2)(b) planned to cross the street to stay away from the group of officers, but before he could do so, an officer asked him where he was going. Captain Zuber was approximately three feet or farther in front of § 87(2)(b) with his back to him. § 87(2)(b) told the officer, "I'm walking down the block. I can't walk down the block?" Captain Zuber turned around and walked toward § 87(2)(b) with his right arm extended and palm open. Captain Zuber grabbed § 87(2)(b) neck with his hand and squeezed his neck "a little bit," but did not say anything to § 87(2)(b). § 87(2)(b) immediately began walking backwards toward the gate to the park and broke free of Captain Zuber's grip.

Det. Wadolowski's body-worn camera footage (BR 02-03) shows a large police presence, as well as multiple civilians, interspersed on a sidewalk outside of a fence. The officers attempt to

clear the area, though are largely unsuccessful in doing so. § 87(2)(b) wearing a white t-shirt, stands in front of Captain Zuber, who is in a white uniformed shirt. § 87(2)(b) and Captain Zuber appear to have a brief conversation, but the contents of the conversation are not audible. Captain Zuber turns his body to the left, in the direction of § 87(2)(b) and extends his left arm outward. It is unclear where Captain Zuber's arm makes contact with § 87(2)(b) but § 87(2)(b) does move back several feet after Captain Zuber extends his arm (see time stamps on player <<00:52 – 01:06>>).

Captain Zuber (BR 04) had a limited recollection of this incident. Captain Zuber responded to the location in regard to a 10-13 (officer needs assistance) put over the radio by one of his units. When Captain Zuber responded, the scene was “absolute chaos,” as there was a large crowd and numerous units of officers on scene. Captain Zuber was focused on identifying the officers who requested assistance and also instructed other officers to perform crowd control. Captain Zuber did not recall being involved in any arrests, including § 87(2)(b) and denied using any physical force against him, including squeezing § 87(2)(b) neck. Captain Zuber reviewed Det. Wadolowski's body-worn camera footage and identified himself as the officer in the white uniformed shirt standing in front of § 87(2)(b). Captain Zuber denied seeing himself push § 87(2)(b) and did not remember any other details of the incident upon reviewing the footage.

Det. Wadolowski (BR 07) had no recollection of seeing Captain Zuber interact with § 87(2)(b) and did not see Captain Zuber use physical force against § 87(2)(b) or make any contact with § 87(2)(b) neck.

§ 87(2)(b), § 87(2)(g)  
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§ 87(2)(b)

**Allegation (C) Force: Captain Neil Zuber used physical force against § 87(2)(b)**

**Allegation (D) Force: Captain Neil Zuber used physical force against § 87(2)(b)**

§ 87(2)(b) testified that after Captain Zuber pushed him, a group of officers approached § 87(2)(b) from behind and grabbed his wrists. § 87(2)(b) moved his body to ask the officers why they were grabbing him, but could not specify how he moved his body. § 87(2)(b) otherwise did not resist the officers. Captain Zuber, who was still in front of § 87(2)(b) lifted his leg and “stomped” on § 87(2)(b) left foot and kept his weight on § 87(2)(b) foot. § 87(2)(b) hands were behind his back at this time, but he was not certain if he was in handcuffs. Captain Zuber then punched § 87(2)(b) on his left side approximately two to three times. § 87(2)(b) then dropped himself to the ground. § 87(2)(b) did not have any pain to his left foot during the incident due to “adrenaline,” but began to experience pain the next day. When § 87(2)(b) went to § 87(2)(b) Hospital on July 6, 2019, medical staff informed him that he broke his foot. Medical staff gave § 87(2)(b) a bandage for his foot and medication for pain. § 87(2)(b) followed up with an orthopedist at § 87(2)(b) Hospital on July 10, 2019, who informed § 87(2)(b) that his foot was not broken, but was sprained.

According to § 87(2)(b) medical records, § 87(2)(b) sought medical treatment for his foot on July 6, 2019, at § 87(2)(b) Hospital, where he informed medical staff that he was assaulted by police officers and had pain to his left ankle, both wrists, and back. Mild swelling to his left ankle was noted, but the x-rays performed of his left ankle did not reveal any sign of acute fracture or dislocation. There was no record of § 87(2)(b) follow-up with the orthopedist in his medical records (see medical records).

Det. Wadolowski's body-worn camera footage shows officers, including Det. Wadolowski, who stands behind § 87(2)(b) grab § 87(2)(b) after Captain Zuber pushed him. Once the officers grab § 87(2)(b) Captain Zuber is no longer captured in the footage. The officers continue to grab § 87(2)(b) arms. § 87(2)(b) says, "Why y'all touching me?" repeatedly. The footage does not clearly capture § 87(2)(b) feet (<<1:04 – 1:30>>).

Police Officer Ellen Usher's body-worn camera footage (BR 05, 03) depicts officers on either side of § 87(2)(b) who is standing. Captain Zuber enters the footage from the left part of the screen, approaches § 87(2)(b) cocks his right arm backward at approximately waist-height, and appears to rapidly move his right arm toward § 87(2)(b) abdomen area. § 87(2)(b) then falls to the ground. The angle of the camera does not definitively show if Captain Zuber made contact with § 87(2)(b) and if he did, where on § 87(2)(b) body he made contact (<<1:48 – 02:00>>).

As discussed in Allegations A and B, Captain Zuber denied using any physical force against § 87(2)(b) including stomping on § 87(2)(b) foot. Upon reviewing PO Usher's body-worn camera footage, Captain Zuber identified himself as the officer who approached § 87(2)(b) and testified that he did so because he was trying to assist the officers who were struggling to handcuff § 87(2)(b). Captain Zuber did not recall what he did to assist the officers, but said that when officers struggle with an individual, they always attempt to gain control of the individual's hands. Captain Zuber denied punching § 87(2)(b) after reviewing the video footage twice.

Force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Some of the factors that should be considered when determining if force is reasonable are: the nature and severity of the crime/circumstances, whether the subject is actively resisting custody, and a presence of a hostile crowd or agitators. NYPD Patrol Guide Procedure 221-01 (BR 06).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation (E) Force: Officers restricted § 87(2)(b) breathing.**

§ 87(2)(b) testified that when he dropped himself to the ground, he landed on his left side with his left arm underneath his body. § 87(2)(b) felt knees on his back, which restricted his breathing. After § 87(2)(b) told the officers once or twice that he could not breathe, the officers got off of his back. § 87(2)(b) then put his left hand behind his back and the officers handcuffed him.

Det. Wadolowski did not hear § 87(2)(b) complain that his breathing was restricted or see any officer restrict § 87(2)(b) breathing. Captain Zuber did not recall § 87(2)(b) making any statements about his inability to breathe.

Det. Wadolowski's body-worn camera footage is consistent with § 87(2)(b) testimony to the extent that § 87(2)(b) lands on the ground on his left side. Officers grab § 87(2)(b) arms to

handcuff him and § 87(2)(b) remains on his left side. After approximately 10 seconds, the officers handcuff § 87(2)(b) and carry him to a police vehicle (<<1:07 – 1:48>>). At no point in the body-worn camera footage does an officer place his or her knee, or any part of their body, on § 87(2)(b) back and § 87(2)(b) does not complain that his breathing has been restricted.

§ 87(2)(b), § 87(2)(g)

**Allegation (F) Force: Officers hit § 87(2)(b) against a vehicle.**

**Allegation (G) Discourtesy: An officer spoke discourteously to § 87(2)(b)**

**Allegation (H) Force: An officer used physical force against § 87(2)(b)**

**Allegation (I) Force: An officer used physical force against § 87(2)(b)**

**Allegation (J) Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(b) did not make allegations on behalf of any other individuals during his sworn statement, but provided contact information for § 87(2)(b) as a witness.

The investigation obtained a telephone statement from § 87(2)(b) (BR 17) in which she made her neighbor, § 87(2)(b) her sister, § 87(2)(b) and uncle, § 87(2)(b) victims of physical force allegations. In her telephone statement, § 87(2)(b) said that officers pushed § 87(2)(b)'s head into a vehicle, and pushed § 87(2)(b) and § 87(2)(b). When § 87(2)(b) attempted to go into the park to find her 3-year-old child, an officer pushed her. § 87(2)(b) told the officer that she was trying to find her child, but the officer responded, "I don't give a fuck." § 87(2)(b) did not provide contact information or pedigree information for § 87(2)(b) or § 87(2)(b) became uncooperative with the investigation after missing two appointments.

The investigation located an arrest report from this incident prepared for § 87(2)(b) and identified additional contact information for him in his arrest report and via LexisNexis, but the investigation was unable to establish contact with § 87(2)(b). The investigation also performed LexisNexis and CLEAR searches for § 87(2)(b) and § 87(2)(b). The LexisNexis and CLEAR searches returned negative results for § 87(2)(b) and several positive results for individuals named § 87(2)(b) spanning ages 38 to 63.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(4-b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first complaint to which § 87(2)(b) and § 87(2)(b) have been a party (BR 10, 13-14).
- Captain Zuber has been a member of service for 17 years and has been named a subject in 13 cases and 32 allegations:
  - 201303672 involved a substantiated allegation of a search (of a person). The Board recommended Charges and the NYPD did not impose any penalty.
  - 201509988 involved a substantiated allegation of a retaliatory arrest. The Board recommended Command Discipline A and the NYPD did not impose any penalty.
  - Captain Zuber’s CCRB history does not reflect any apparent pattern pertinent to this investigation.

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of September 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (BR 11).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 12).

- § 87(2)(b) [Redacted]
- § 87(2)(b) [Redacted]

Squad No.: 14

Investigator:	<u>Casey McCann</u>	<u>Inv. Casey McCann</u>	<u>04/07/2020</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Cassandra Fenkel</u>	<u>IM Cassandra Fenkel</u>	<u>04/08/2020</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date