

CCRB INVESTIGATIVE RECOMMENDATION

Investigator Assigned: Chelsea Yogerst	Team: Squad #11	CCRB Case # : 201601216	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourtesy
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Date/Time of Incident: Sun, 02/14/2016 12:10 AM	Location of Incident: 1850 Jerome Avenue between East 176th Street and Mount Hope Place	Pct. of Occurrence: 46	Date S.O.L. Expires: 08/14/2017	
Date/Time C/V Reported: Mon, 02/15/2016 11:18 AM	C/V Reported At: CCRB	How C/V Reported: Call Processing System	Date/Time Received at CCRB: Mon, 02/15/2016 11:18 AM	

Complainant/Victim	Type	Home Address
1. Kevin Kirby	Comp/Victim	519 West 148th Street Apt. 2, New York, NY, 10031
2. Abbas Chudhary	Victim	8601 101 Avenue 2nd FL, Ozone Park, NY, 11416

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jeffrey Heilig	01065	941886	PBBX SU
2. POM Joseph Signorile	29637	949663	PBBX SU
3. POM Michael Romanello	02483	952185	PBBX SU

Officer(s)	Allegation	Recommendation
A. SGT Jeffrey Heilig	Abuse of Authority: Sgt. Jeffrey Heilig stopped the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.	A. Exonerated
B. POM Joseph Signorile	Abuse of Authority: PO Joseph Signorile stopped the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.	B. Exonerated
C. POM Michael Romanello	Abuse of Authority: PO Michael Romanello stopped the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.	C. Exonerated
D. POM Joseph Signorile	Force: PO Joseph Signorile used physical force against Kevin Kirby.	D. Unfounded
E. POM Joseph Signorile	Abuse of Authority: PO Joseph Signorile frisked Kevin Kirby.	E. Substantiated
F. POM Joseph Signorile	Abuse of Authority: PO Joseph Signorile searched Kevin Kirby.	F. Substantiated
G. POM Joseph Signorile	Force: PO Joseph Signorile used physical force against Kevin Kirby.	G. Unfounded
H. SGT Jeffrey Heilig	Abuse of Authority: Sgt. Jeffrey Heilig threatened to arrest Kevin Kirby.	H. Unsubstantiated
I. POM Joseph Signorile	Abuse of Authority: PO Joseph Signorile searched the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.	I. Substantiated
J. SGT Jeffrey Heilig	Abuse of Authority: Sgt. Jeffrey Heilig refused to provide his shield number to Kevin Kirby.	J. Unsubstantiated
K. POM Joseph Signorile	Abuse of Authority: PO Joseph Signorile refused to provide his shield number to Kevin Kirby.	K. Unsubstantiated
L. POM Michael Romanello	Abuse of Authority: PO Michael Romanello refused to provide his shield number to Kevin Kirby.	L. Unsubstantiated

Case Summary

On February 14, 2016, at approximately 12:01 a.m., Kevin Kirby was picked up from his residence at 519 West 148th Street in Manhattan by an Uber car driven by Abbas Chudhary. Mr. Kirby requested that Mr. Chudhary take him to his friend's residence at 2065 Morris Avenue in the Bronx. At 12:10am, the vehicle was pulled over at 1850 Jerome Avenue in the Bronx by Sgt. Jeffery Heilig, PO Joseph Signorile, and PO Michael Romanello, all of the Patrol Borough Bronx (Allegations A-C). PO Signorile allegedly grabbed the collar of Mr. Kirby's jacket and pulled him out of the back passenger seat of the vehicle (Allegation D). PO Signorile patted down Mr. Kirby's sweatpants pockets, jacket pockets his chest area and down his legs (Allegation E). PO Signorile reached into both of his front sweatpants pockets (Allegation F). PO Signorile allegedly struck Mr. Kirby in the neck area, grabbed onto his shoulders and forcefully turned him around (Allegations G). Sgt. Heilig allegedly told Mr. Kirby that they could arrest him for having an open container of alcohol (Allegation H). PO Signorile searched the back of the vehicle (Allegation I). Mr. Kirby allegedly requested the badge number of all three officers but they did not provide them (Allegation J-L). The officers did not arrest Mr. Kirby or Mr. Chudhary or issue them any summonses or documentation.



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Mr. Kirby provided video footage that captures a few seconds of this incident that he recorded on his cell phone.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because Mr. Kirby is planning on filing a lawsuit.
- On April 27, 2016, an inquiry was sent to the NYC Comptroller's Office to determine whether Mr. Kirby has filed a Notice of Claim regarding the incident. The results are pending and will be included in the case file upon their receipt (Board Review 37). On April 22, 2016, an inquiry was sent to the NYC Comptroller's Office to determine whether Mr. Chudhary has filed a Notice of Claim regarding the incident. The results are pending and will be included in the case file upon their receipt (Board Review 29).
- According to OCA, Mr. Kirby and Mr. Chudhary do not have prior criminal convictions (Board Review 21 and 31).

Civilian and Officers CCRB Histories

- This is Mr. Kirby and Mr. Chudhary's first CCRB complaint (Board Review 22 and 30).
- Sgt. Heilig has been a member of the service for 9 years and has 8 allegations in 3 prior cases. Among these allegations, there are no substantiated allegations or patterns relevant to this case.
- PO Signorile has been a member of the service for 5 years and has 6 allegations in 3 prior cases. Among these allegations, there are no substantiated allegations or patterns relevant to this case. In case 201506687, he was cited for failing to prepare a memo book.
- PO Romanello has been a member of the service for 4 years and has 7 allegations in 5 prior cases. Among these allegations, there are no patterns relevant to this case. In case

201301175, a refusal to obtain medical treatment allegation was substantiated; the Board recommended charges; PO Romanello was found not guilty after the trial. In case 201506687, he was cited for failing to prepare a memo book.

Findings and Recommendation

Allegations not Pleaded

- **Question** Mr. Kirby stated that before he exited the vehicle, PO Signorile asked him if he had anything in his pockets, and Mr. Kirby admitted he had an open container of alcohol. Although PO Signorile stated that prior to frisking Mr. Kirby, he asked Mr. Kirby if he had any weapons, Mr. Kirby never alleged this. As a result, no question is being pleaded.
- **Interfere with ability to record** Mr. Kirby stated that while he was being searched by PO Signorile, he extended his arm out in front of him and began to record the officers using his cell phone, resulting in the video footage he provided. He alleged that PO Signorile squeezed the outside of his hand that was holding the cell phone and told him to put his phone away. Because Mr. Kirby admitted that he began to record on his phone when PO Signorile was within close proximity to him and while he was performing an official police function, it was lawful for PO Signorile to request that Mr. Kirby put his phone away for his own safety. Therefore, an interference with ability to record allegation was not pleaded.



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Recommendations

Allegation A-Abuse of Authority: Sgt. Jeffrey Heilig stopped the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.

Allegation B-Abuse of Authority: PO Joseph Signorile stopped the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.

Allegation C-Abuse of Authority: PO Michael Romanello stopped the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.

As documented in photos taken of Mr. Chudhary's vehicle at his residence, he has a decorative object hanging from his rearview mirror (Board Review 12 and 15). The officers consistently stated that they stopped Mr. Chudhary's vehicle for the VTL infraction regarding the obstructed windshield, which they all noted in their memo books (Board Review 23, 24, 25). It is undisputed that the officers did not issue a summons to Mr. Chudhary regarding the infraction.

Mr. Chudhary stated that when PO Romanello approached the driver's side of the vehicle, he asked Mr. Chudhary if everything was okay with his passenger and if anything was wrong. He then explained to Mr. Chudhary that he had been pulled over so that they could check his passenger but did not provide any specific reasons why. PO Romanello then requested Mr. Chudhary's license and paperwork and asked him if Mr. Kirby was a good guy. Mr. Chudhary provided the requested documentation and informed PO Romanello that Mr. Kirby was a good guy and was not causing any problems (Board Review 32).

Mr. Kirby stated that he was unable to hear the discussion between PO Romanello and Mr. Chudhary. Towards the end of the incident, Mr. Kirby asked PO Romanello why they had stopped him. PO Romanello told him that it was because there had been reports of cab drivers being robbed in the neighborhood. When Mr. Kirby asked PO Romanello if he matched the description of someone they were looking for in the neighborhood, he told him that he did not and they were just doing their jobs because there had been reports of robberies (Board Review 33).

The officers all stated that they used their discretion and chose not to issue a summons regarding the obstruction. PO Romanello testified that once he approached Mr. Chudhary, he explained to him that he had been stopped because of the obstructed view. PO Romanello did not recall asking Mr. Chudhary about Mr. Kirby and did not recall Mr. Chudhary ever expressing to him that he felt unsafe with Mr. Kirby (Board Review 27).

VTL §375 (30) states that it is unlawful to hang anything on or inside a vehicle that obstructs the view of the operator through the windshield (Board Review 34). A vehicle stop due to probable cause of the occurrence of a traffic violation is reasonable detention per the Fourth Amendment even if additional law enforcement purpose ultimately precipitates the stop. Whren v. United States, 517 U.S. 806 (1996) (Board Review 09).

Although Mr. Chudhary stated that the only explanation he received from the officers for the vehicle stop was that they needed to check Mr. Kirby and although no summonses were issued, all three officers corroborated and noted in their memo books (see Board Review 23, 24, 25) that they stopped Mr. Chudhary's vehicle because of an obstructed view and let him go with a warning in lieu of a summons. The photographs of Mr. Chudhary's vehicle corroborates that there was an item hanging from the rearview mirror. Even if the officers had additional reasons for wanting to stop Mr. Chudhary's vehicle, the vehicle stop was justified because the officers observed Mr. Chudhary commit a traffic violation. Therefore, it is recommended that **Allegations A-C** be closed as **exonerated**.

Allegation D-Force: PO Joseph Signorile used physical force against Kevin Kirby.

Mr. Kirby stated he had not noticed Mr. Chudhary make any traffic infractions and asked him what he had done. In response, Mr. Chudhary told him that he did not know. Once they had been pulled over, PO Signorile and Sgt. Heilig approached Mr. Kirby, who was seated in the back of the vehicle on the passenger side. PO Romanello approached Mr. Chudhary on the driver's side. PO Signorile asked Mr. Kirby where the Uber had picked him up. In response, Mr. Kirby told him his home address. PO Signorile then asked Mr. Kirby where he was going. Mr. Kirby showed him a text message with the address to his friend's apartment because he did not recall the exact address. PO Signorile then opened the back passenger seat door, instructed Mr. Kirby to get out of the vehicle and asked him if he had anything in his pockets. Mr. Kirby informed him that he did not have anything other than a closed bottle of Hennessy Privilege in his jacket pocket. The bottle was 275 ML and was approximately half full. While Mr. Kirby was in the process of exiting the vehicle through the door, PO Signorile grabbed the collar of his jacket and pulled him out of the vehicle. When PO Signorile grabbed Mr. Kirby's collar, Mr. Kirby was half-way out of the vehicle and was half standing on his own because his right foot was already out of the vehicle. PO Signorile did not say anything to Mr. Kirby as he pulled him from the vehicle.

Mr. Chudhary stated that once Mr. Kirby entered into his vehicle, Mr. Kirby spoke on his cell phone in a regular tone. Mr. Chudhary did not hear what Mr. Kirby said or who he spoke to during the conversation but he did not sound angry. Mr. Chudhary and Mr. Kirby did not speak to each other during the drive. Mr. Chudhary did not have any problems with Mr. Kirby and did not believe he was intoxicated. While PO Romanello spoke to Mr. Chudhary, an officer opened up the back passenger door of the vehicle and instructed Mr. Kirby to exit the vehicle. Mr. Kirby complied and exited the vehicle on his own. Mr. Chudhary denied that the officer physically removed Mr. Kirby from the vehicle or grabbed or pulled Mr. Kirby.

PO Signorile stated that upon approaching the passenger side of the vehicle, he observed Mr. Kirby holding a medium-sized bottle of Hennessy to the left of him. PO Signorile knew that the bottle was open because it was half full. PO Signorile immediately opened the passenger side door and informed Mr. Kirby that he could not have an open bottle of alcohol in the vehicle. Mr. Kirby was irate and began to scream and tell him that he could have the bottle of alcohol. Mr. Kirby also gestured with his hands, which he held in front of him at chest level and raised towards PO Signorile's face. It was possible that Mr. Kirby was intoxicated because he was yelling and using hand gestures; however, there were no additional reasons why PO Signorile believed he was intoxicated. PO Signorile instructed Mr. Kirby to exit the vehicle because he was acting violently and irately and because he was nervous for himself, his partners, and the driver of the vehicle. He also wanted to ensure that Mr. Kirby did not have any weapons before he spoke to him further. He could not recall how many times he asked Mr. Kirby to exit the vehicle. PO Signorile could not recall if he had to assist Mr. Kirby with getting out of the vehicle but denied pulling him by the collar or using any additional form of physical force to remove him from the vehicle (Board Review 26).

Sgt. Heilig stated that while he was standing near the rear driver's side window, he observed PO Signorile speaking to Mr. Kirby. He initially could not hear their conversation but decided to approach the passenger side of the vehicle once he noticed that they had been conversing for a while. Once there, he heard PO Signorile speak to Mr. Kirby about the fact that he had an open container of alcohol in the vehicle. Sgt. Heilig did not observe the bottle of alcohol. PO Signorile asked Mr. Kirby to step out of the vehicle because he had an open container of alcohol, which is a violation. Mr. Kirby initially refused to exit the vehicle and told the officers that he was not drinking the alcohol. The officers attempted to explain to Mr. Kirby that it didn't matter that he was not drinking it because the mere possession of an open bottle of alcohol in the vehicle is a violation. Mr. Kirby continued to speak over the officers and had to be asked more than once to exit the vehicle before he finally did. Sgt. Heilig felt unsafe because Mr. Kirby did not want to exit the vehicle and because Mr. Kirby continued to yell at them, which he considered to be abnormal behavior. Sgt. Heilig denied that officers assisted Mr. Kirby out of the vehicle and denied that PO Signorile ever grabbed Mr. Kirby by his collar while he was exiting the vehicle (Board Review 28).

PO Romanello did not recall if Mr. Kirby got out on his own or was instructed to exit the vehicle. He denied seeing either of his partners grab Mr. Kirby's collar or make physical contact with him as he was getting out of the vehicle.

Because Mr. Chudary, an independent witness, and all three officers consistently stated that Mr. Kirby was not pulled out of the vehicle, the investigation is crediting their version of events. As a result, the investigation determined by a preponderance of the evidence that PO Signorile did not use physical force to remove Mr. Kirby from the vehicle. Therefore, it is recommended that Allegation D be closed as unfounded.

Allegation E-Abuse of Authority: PO Joseph Signorile frisked Kevin Kirby.

Allegation F-Abuse of Authority: PO Joseph Signorile searched Kevin Kirby.

It is undisputed that PO Signorile frisked Mr. Kirby.

Mr. Kirby stated that once he was fully out of the vehicle, he stood facing towards PO Signorile and Sgt. Heilig with his back up against the Uber car. PO Signorile patted down the front pockets of his sweatpants, which were located on the left and right side near his waist. The left pants pocket contained Mr. Kirby's wallet and the right pants pocket contained his keys and Blistex lip balm. PO Signorile then patted down the two outside pockets on his jacket, which were located on the left and right side near his waist and one interior pocket, which was located on the right side of the jacket. Mr. Kirby had the bottle of alcohol in the left outside pocket of his jacket but did not have anything else in any of his jacket pockets. PO Signorile also patted down Mr. Kirby's chest region. Mr. Kirby asked PO Signorile why he was searching him. In response, PO Signorile told Mr. Kirby that he had to ensure that he did not have a gun or a knife on him. PO Signorile then turned Mr. Kirby around so that he faced towards the vehicle with his arms fully extended forward and so that his hands were spread on the roof of the vehicle. Mr. Kirby was then patted all the way down his legs. PO Signorile reached into both of the front pockets of Mr. Kirby's sweatpants. Mr. Kirby believed that Sgt. Heilig may have participated in reaching into his pockets, but he could not be sure because he was not facing him. He did not recall the officers saying anything while his pockets were searched. Mr. Kirby did not recall if the officers removed any items from his pockets and did not recall if the officers had any of his items in their possession.

Mr. Chudhary stated that PO Signorile and Sgt. Heilig patted down Mr. Kirby's clothing and went through all of his pockets including both of the top pockets of his pants and his jacket pockets.

PO Signorile stated that once Mr. Kirby exited the vehicle, he asked Mr. Kirby to turn and face the vehicle. PO Signorile asked Mr. Kirby if he had any weapons on him because Mr. Kirby had been acting irately by screaming that he was allowed to have an open bottle of alcohol and was gesturing with his hands at chest level and raised towards PO Signorile's face. PO Signorile wanted to ensure that he did not have any weapons that could hurt him, his partners or the taxi driver, while he continued with their discussion. There were no additional reasons why he asked him this question. PO Signorile did not recall if Mr. Kirby responded to the question. At this time, Sgt. Heilig and PO Romanello had approached PO Signorile and Mr. Kirby because they could hear that Mr. Kirby was irate.

PO Signorile then performed a frisk because Mr. Kirby had been using hand gestures, acting irately and because he wanted to ensure that he did not have any weapons that could hurt him, his partners or the taxi driver, while he continued with their discussion. PO Signorile denied

there was any additional reason why he suspected that Mr. Kirby could have a weapon. PO Signorile quickly patted down Mr. Kirby on the outside areas of his clothes which included his coat pockets, pants pockets and around his chest. PO Signorile patted down these specific areas because these are areas where people could conceal weapons and because in the past, PO Signorile has pulled weapons from these specific areas. PO Signorile denied that there were any additional reasons why he patted down these specific areas and denied that he observed any bulges on Mr. Kirby. He denied that he patted Mr. Kirby down anywhere else. Sgt. Heilig did not assist in patting Mr. Kirby down. While PO Signorile was patting down Mr. Kirby, he remained angry and his demeanor did not change. He continued to yell at PO Signorile. PO Signorile denied that he ever reached inside of Mr. Kirby's pockets or removed anything from his person. The bottle of liquor remained in the taxi on the seat.

Sgt. Heilig testified that PO Signorile frisked Mr. Kirby for their safety because they were standing in close proximity to him, because situations can escalate quickly and because he had a committed a violation by having an open container of alcohol. When Sgt. Heilig was asked if there was anything on Mr. Kirby's body that led him to suspect that he had a weapon, he stated that Mr. Kirby was wearing heavy clothes but he wasn't the officer closest to him. Sgt. Heilig could not recall where Mr. Kirby was frisked other than his waistband and could not recall if PO Signorile reached into Mr. Kirby's pockets.

PO Romanello testified that PO Signorile patted Mr. Kirby down because his actions, which included gesturing with his hands in front of him, making lots of movements, and speaking in a loud and threatening manner, led the officers to believe that he may be concealing a weapon. PO Signorile wanted to ensure that the situation did not escalate and feared for his safety, the safety of his partners and the safety of Mr. Chudhary. PO Romanello feared for his safety and suspected Mr. Kirby of having a weapon because of his actions, demeanor and because he had already committed a violation by having the open container of alcohol.

In People v. Feldman 2014 NY Slip Op 1377 (2014), the court held that the totality of information could justify a frisk, even if each individual action could be innocuous, and in this case, the officer's earlier observation of furtive movements and attempting to stuff something under a seat, the officer's observation that something was protruding from the same seat, and that another civilian in the vehicle began a physical struggle with another officer, caused the officer to reasonably fear for his safety and reasonably believe that the defendant might possess a weapon (Board Review 35). To justify a search, an officer must have probable cause to believe that the person has committed a crime People v. DeBour 40 NY 2d 2010 (1976) (Board Review 10).

The only reasons that PO Signorile could articulate for frisking Mr. Kirby was his uncooperative demeanor which included gesturing with his hands while yelling at the officers that he was allowed to have an open container of alcohol. None of the officers stated that they saw anything on Mr. Kirby that resembled a weapon. PO Signorile denied observing any bulges on Mr. Kirby and only frisked the specific areas that he did because weapons could potentially be concealed there. Sgt. Heilig only believed that Mr. Kirby had a weapon because he was wearing heavy clothing. In addition, Mr. Chudhary's vehicle was only pulled over because it had an obstructed view and Mr. Kirby was only instructed to exit the vehicle because he had an open container of alcohol, both of which are non-violent offenses. As a result, the totality of this information—

innocuous actions including gesturing while yelling and disputing the illegality of having an open container of alcohol and wearing a heavy coat in February in a vehicle that had an obstructed windshield—did not create reasonable suspicion that Mr. Kirby was armed. As a result, PO Signorile's frisk of Mr. Kirby was not justified. Therefore, it is recommended that **Allegation E** be closed as **substantiated**.

Although PO Signorile denied searching Mr. Kirby, both Mr. Kirby and Mr. Chudhary, an independent witness to this incident, were consistent in the fact that PO Signorile reached into the top pockets of Mr. Kirby's pants. Therefore, the investigation is crediting that the search did happen. Given that PO Signorile did not express that the frisk revealed anything that further raised his level of suspicion, and the investigation determined he did not have reasonable suspicion for the frisk, there were no factors that created probable cause that Mr. Kirby was armed. As a result, PO Signorile's search of Mr. Kirby was not justified. Therefore, it is recommended that **Allegation F** be closed as **substantiated**.

Allegation G-Force: PO Joseph Signorile used physical force against Kevin Kirby.

Mr. Kirby stated that as he was attempting to memorize the license plate number of the officers' vehicle by reciting it out loud, PO Signorile noticed him doing so and subsequently struck him in the neck area. He instructed Mr. Kirby to look and listen to him while he was talking and proceeded to grab onto his shoulders near his biceps and forcefully turn him around so that the license plate was no longer in his view. Mr. Kirby acknowledged that he did not obtain any injuries or receive any medical treatment as a result of the force used against him.

Mr. Chudhary did not allege seeing any officers strike Mr. Kirby in the neck, grab him by his shoulders or forcefully turn him around. He denied seeing the officers grab or pull Mr. Kirby during the incident.

PO Signorile denied that he struck Mr. Kirby in the neck, grabbed him by the shoulders or made any form of physical contact with him other than patting him down. PO Signorile did not recall Mr. Kirby ever reciting the license plate number out loud and denied that he or his partners ever told Mr. Kirby to stop memorizing the license plate number.

Sgt. Heilig denied that his partners struck Mr. Kirby in the neck. He could not recall if his partners ever grabbed Mr. Kirby by the shoulders or forcefully turned him around. He also did not recall if Mr. Kirby ever attempted to memorize the license plate of their vehicle.

PO Romanello denied that his partners struck Mr. Kirby in the neck, forcefully turned him around or grabbed him by the shoulders.

Because Mr. Chudary, an independent witness, and all three officers consistently stated that Mr. Kirby was not struck in the neck, grabbed by his shoulders or forcefully turned around, the investigation is crediting their version of events. As a result, the investigation determined by a preponderance of the evidence that PO Signorile did not use physical force against Mr. Kirby. Therefore, it is recommended that **Allegation G** be closed as **unfounded**.

Allegation H-Abuse of Authority: Sgt. Jeffrey Heilig threatened to arrest Kevin Kirby.
Mr. Kirby stated that when Sgt. Heilig told him that he had an open container of alcohol, which is illegal, he responded by telling Sgt. Heilig that he had not consumed any alcohol and that the bottle was small, closed and in his pocket. Sgt. Heilig continuously told Mr. Kirby that they could arrest him for having an open container because the bottle was not sealed. Mr. Kirby questioned whether he actually had an open container and asked the officers to just give him a ticket. Sgt. Heilig told Mr. Kirby that they could not just issue him a ticket and asked him if he wanted to go to jail that night. Mr. Kirby told Sgt. Heilig that he did not.

Mr. Chudhary could not hear any of the conversation between Mr. Kirby and the officers because his window was closed.

Sgt. Heilig tried to explain to Mr. Kirby that he had committed a violation. Mr. Kirby continued to yell over Sgt. Heilig as he was attempting to speak to him. Sgt. Heilig did tell Mr. Kirby that he could get a ticket for having an open container but did not recall telling Mr. Kirby that he could be arrested for having an open container. Sgt. Heilig explained in his CCRB interview that, in general, when individuals commit any violation, they are breaking the law, and can subsequently be brought back to the station house and arrested. Sgt. Heilig did not recall asking Mr. Kirby if he wanted to go to jail.

PO Signorile denied hearing Sgt. Heilig threaten to arrest Mr. Kirby, tell him that he could be arrested for having an open container or ask him if he wanted to go to jail that night.

PO Romanello did not recall hearing Sgt. Heilig threaten to arrest Mr. Kirby, tell him that he could be arrested for having an open container or ask him if he wanted to go to jail that night.

VTL § 1227 states that any operator or passenger of a vehicle with an open container containing an alcoholic beverage is guilty of this traffic infraction (Board Review 36).

Although Sgt. Heilig acknowledged that he believed that anyone who commits a violation can subsequently be brought back to the station house and arrested, he did not recall telling Mr. Kirby that he could be arrested and did not recall asking him if he wanted to go to jail, and only recalled explaining to Mr. Kirby that he could receive a ticket for having an open container. Due to conflicting testimony and absent additional evidence, the investigation was unable to determine by a preponderance of evidence whether Sgt. Heilig threatened to arrest Mr. Kirby. Therefore, it is recommended that **Allegation H** be closed as **unsubstantiated**.

Allegation I-Abuse of Authority: PO Joseph Signorile searched the vehicle in which Abbas Chudhary and Kevin Kirby were occupants.

Mr. Chudhary stated that either PO Signorile or Sgt. Heilig put his head inside the back of the vehicle and searched the back seats and underneath the floor mats. The officer did not mention what he was looking for. Mr. Chudhary did not see the officer remove anything from his vehicle.

Mr. Kirby did not allege that any officers searched Mr. Chudhary's vehicle.

PO Signorile testified that the back passenger door was open and his head crossed the threshold of the door. He then searched the back of the vehicle in the general area where Mr. Kirby had been sitting, including underneath the doormats and in between the seats. The vehicle search lasted for less than thirty seconds. PO Signorile searched the back of the vehicle to ensure that there was no weapon in the vehicle. He believed that there may have been a weapon inside the vehicle because Mr. Kirby had been yelling at the officers and using hand gestures. There were no additional reasons why he believed that there was a weapon inside vehicle. PO Signorile was concerned that if there was a weapon inside the vehicle, Mr. Kirby may return to the vehicle and use it to take out his frustration on Mr. Chudhary. PO Signorile did not find or remove anything from the vehicle.

Sgt. Heilig did not recall if either of his partners searched the vehicle because he was standing towards the back of the vehicle and was focusing all of his energy and attention on trying to speak to Mr. Kirby. When Sgt. Heilig was asked if he believed that there was a weapon inside the vehicle, he stated that his suspicion was raised because Mr. Kirby did not want to exit the vehicle and because Mr. Kirby was yelling. He did not recall there being any additional reasons why he believed there may have been a weapon inside the vehicle.

PO Romanello did not recall if either of his partners searched the vehicle and did not recall there being a discussion between him and his partners regarding the fact that there may be a weapon inside the vehicle.

An officer may conduct a limited search of a vehicle if there is a substantial likelihood that a weapon, which presents an actual and specific danger to the officers' safety, is located within the vehicle. People v. Baksh, 2014 NY Slip OP 112 (Board Review 11).

Mr. Kirby's uncooperative demeanor was not reason enough for PO Signorile to suspect that there was a substantial likelihood that a weapon was present inside the vehicle. The investigation determined that PO Signorile was unjustified in searching the vehicle. Therefore, it is recommended that Allegation I be closed as substantiated.

Allegation J-Abuse of Authority: Sgt. Jeffrey Heilig refused to provide his shield number to Kevin Kirby.

Allegation K-Abuse of Authority: PO Joseph Signorile refused to provide his shield number to Kevin Kirby.

Allegation L- Abuse of Authority: PO Michael Romanello refused to provide his shield number to Kevin Kirby.

Mr. Kirby stated that he asked PO Signorile and Sgt. Heilig both specifically and more generally for their badge number at least five times but they ignored him. When Mr. Kirby made the requests, both officers were standing in front of him and were approximately a foot away. He could not recall if he made eye contact with the officers, but believed that they heard his requests because he was speaking clearly, loudly and because he made the requests multiple times. Toward the end of the incident, Mr. Kirby asked PO Romanello for all of the officers' badge numbers. PO Romanello was the only officer that responded to Mr. Kirby's request for their badge numbers and told him that they would provide them in a second. Mr. Kirby continued to tell PO Romanello that he needed to see his badge number or some form of identification. PO

Romanello told him that that he would provide their badge numbers to him when they were done. A few minutes later, Mr. Kirby repeated that he needed their badge numbers. PO Romanello told him that he would give him their badge numbers once he returned to the Uber car. Because Mr. Kirby believed that the officers were going to try and drive away without providing their identification, Mr. Kirby told the officers that he would remain where he was to wait for them to give him their badge numbers. PO Signorile escorted Mr. Kirby back to the Uber car and informed him that if he remained in the vehicle, they would give him their badge numbers. PO Signorile returned to the officers' vehicle and simultaneously entered it with Sgt. Heilig and PO Romanello. The officers then immediately drove away from the scene without providing their badge numbers.


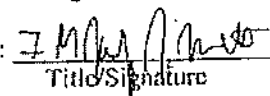
Mr. Chudhary could not hear any of the conversation between Mr. Kirby and the officers because his window was closed. He denied hearing Mr. Kirby request the badge numbers or any form of identification from the officers.

Sgt. Heilig and PO Romanello did not recall Mr. Kirby ever requesting their shield numbers or their partner's shield numbers. They also did not recall denying or seeing their partners deny Mr. Kirby their shield numbers.

PO Signorile denied that Mr. Kirby ever requested his or his partner's shield number and denied that he or his partners ever denied Mr. Kirby their shield numbers.

Although it is undisputed that Mr. Kirby was upset about the stop from the onset and although he did take a photograph of the officers' license plate and provide it to the CCRB when he filed his complaint (Board Review 20), all three officers denied hearing Mr. Kirby request the officers' shield numbers. Mr. Chudhary was not able to hear the conversation. Due to conflicting testimony and absent additional evidence, the investigation was unable to determine by a preponderance of evidence whether Sgt. Heilig, PO Signorile and PO Romanello refused to provide their shield numbers to Mr. Kirby when requested that they do so. Therefore, it is recommended that Allegations J-L be closed as **unsubstantiated**.

Squad: 11

Investigator:		Chelsea Yogurt	4/27/16
	Signature	Print	Date
Squad Leader:		Jennifer J. Huet	4.27.16
	Title/Signature	Print	Date
Reviewer:			
	Title/Signature	Print	Date