



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

September 5, 2024

Via E-mail

Commissioner Joseph A. Gramaglia
Buffalo Police Department
68 Court Street
Buffalo, NY 14202

Re: Letter regarding Executive Law § 75(5)(b) Referral of Police Officer Richard Hy
OAG Matter No. 1-793388787

Dear Commissioner Gramaglia,

We have reviewed your agency's referral of Detective Richard Hy pursuant to Executive Law Section § 75(5)(b). Based on our review, we conclude that that Detective Hy engaged in a pattern of misconduct of escalating encounters with civilians, including by using physical force, discourtesy, and unprofessional conduct.

I. Overview of Investigation

The department referred Detective Hy to our office on February 5, 2022. Detective Hy joined the Buffalo Police Department ("BPD") in 2012 and was previously assigned to the since-disbanded Strike Force and Housing Units. The department sustained eight complaints against Detective Hy between 2015 and 2021, most of which involved violations of the department's standards of conduct or social media policy. In 2023, he was promoted to Detective and later that year, to Lieutenant. We understand that he decided to return to his prior rank as a Detective and that he is currently assigned to D District.

The February 5, 2022 referral was based on five complaints. Following receipt of the referral, OAG personnel obtained information from BPD regarding two additional complaints and learned of an additional incident from local news, resulting in a total of eight incidents since 2019. To investigate these incidents, OAG reviewed the agency's internal investigative and disciplinary files associated with each incident, the policies that governed the alleged misconduct, and Detective Hy's disciplinary record. OAG personnel interviewed several of the complainants and witnesses. On February 7, 2024, OAG personnel interviewed Detective Hy.

II. Findings

OAG's determination is based on the three incidents described below.

A. Incident 1, IC2021-057

On June 19, 2021, Detective Hy struck a motorcyclist with his patrol car during a traffic stop. Prior to the traffic stop, Detective Hy began following a group of motorcyclists who were revving their engines loudly. According to the Police Report written by Detective Hy, Complainant 1 was part of the group. Detective Hy attempted to conduct a traffic stop, and the group drove around him, then continued driving, running two red lights and crossing the double yellow line to drive around other vehicles. At some point, Detective Hy was able to pull ahead of Complainant 1 and his patrol car stopped at a red light at the intersection of Delaware Avenue and Edward Street. No other motorcyclists were present.

Surveillance video from across the street and footage from Detective Hy's body-worn camera captured the events that followed. The surveillance video shows Detective Hy's patrol vehicle driving toward the intersection and stopping at the traffic light with the vehicle's emergency lights activated. Complainant 1 pulls up behind Detective Hy's patrol car, and the emergency lights are deactivated. Within seconds, Detective Hy's patrol car reverses and strikes Complainant 1's motorcycle. The motorcycle and Complainant 1 fall to the ground, and Detective Hy reactivates the emergency lights, exits the vehicle, and runs toward Complainant 1.

Detective Hy then activated his body-worn camera. When the footage starts, Complainant 1 is lying on the ground on his side, handcuffed, and Detective Hy is standing next to him searching his pockets. Detective Hy attempted to help him sit up, at which point Complainant 1 complained of back pain, requested an ambulance, and asked to remain on the ground. He stated: "He just fucking backed into me, no lights on or nothing." He repeated this several times, and Detective Hy responded, "and you were going forward" and later, "you should have stopped."

Other officers arrived, and Detective Hy explained what occurred to a Lieutenant, stating: "I backed up to stop him. He's going forward, I'm going backwards, I hit his vehicle. I did." The Lieutenant asked Detective Hy why Complainant 1 was handcuffed, and Detective Hy told him that there was probable cause for obstructing governmental administration based on Complainant 1 evading him.

Complainant 1 gave his account to the Lieutenant as well, stating, "I'm behind him. He has no lights on. He turned his lights off at this red light. I'm standing behind him, on my bike. He turns the reverse lights on. I can't go nowhere. He hits me off my bike, right here. He hit me off my bike, with no lights or anything. You can't hit me—I'm on two fucking wheels, man. I'm on two wheels. I'm on two wheels." He continued, "I heard him tell you that I hit his car, that I went forward. I did not go forward. I was in neutral. At a red light, in neutral." Complainant 1 then stated, "I'm going to sue the fuck out of you."

Detective Hy continued to engage with Complainant 1, stating "Why didn't you stop the first time I hit the lights?" When Complainant 1 disputed this and suggested that the dashboard camera on Detective Hy's vehicle would not support Detective Hy's account, Detective Hy stated, "It's going to show you pulling over right away when I hit the lights? It is? It is? Is it?"

It's not?" Complainant 1 told Detective Hy to call his attorney, and Detective Hy responded: "Alright bud, there we go." Detective Hy talked about how each of them would have to testify at a deposition if Complainant 1 sued him, stating, "You're going to say that you pulled over right away when I gave you my lights, right? Right? Is that what you're going to say? Amazing. Tell me more." Complainant 1 did not respond.

Complainant 1 asked about the handcuffs, and Detective Hy advised him that he was under arrest for obstructing governmental administration. The verbal exchange continued. Complainant 1 alleged that Detective Hy backed up to try to stop him because the patrol vehicle did not have a camera on the rear of the vehicle and the collision would not be captured on video. Detective Hy responded: "I already told you what I did. I told my Lieutenant what I did." They argued about whether Complainant 1 was moving forward at the time of the collision, and Detective Hy asked him again whether he stopped when Detective Hy initially activated his emergency lights. Detective Hy continued, "Bro, I'm not here to try to fucking kill you. I'm trying to stop you because you're acting like an asshole." Complainant 1 questioned how he could have been running from Detective Hy when he was behind him, and Detective Hy repeated, "Did you pull over right away? Did you pull over right away when I hit my lights? Did you pull over right away when I hit my lights? Did you rev your engine real loud, go around me, and then evade me? Why aren't you answering those questions? Those are interesting questions."

Complainant 1 was subsequently transported to the hospital for evaluation. He was charged with obstructing governmental administration in the second degree (N.Y. Penal Law § 195.05) and five violations of the Vehicle and Traffic Law. The charges were later dismissed and sealed.

In Detective Hy's written statement about the incident, he stated that he "backed up [his] patrol vehicle to close the distance and prevent the individual from going forward and around the vehicle again. The individual continued forward and attempted to go around [his] vehicle, and in doing so, collided with [his] rear bumper on the passenger side."¹ The Internal Affairs Division investigated the incident and filed two charges against Detective Hy. The charges alleged that he failed to "properly care for and use equipment that was assigned to him" and that he conducted "himself in such a manner or performed an act prejudicial to the good order, discipline or reputation of the Department." Internal Affairs concluded that Complainant 1's motorcycle was stopped when it was struck by Detective Hy's patrol car (contrary to Detective Hy's written statement).² Detective Hy agreed to forfeit 15 vacation days to settle the matter.

We agree with the Department that Detective Hy's conduct violated the BPD's Rules and Regulations. We make three additional findings.

First, we find that Detective Hy was discourteous to Complainant 1 during his conversations with him after the incident, a violation of Chapter I, Section 2.13 of the BPD's

¹ During his OAG interview, Detective Hy further explained that he "used [his] vehicle camera in order to back up but [he] was too late in braking and so [he] struck the front of [Complainant 1's] vehicle."

² Detective Hy testified during his OAG interview that in his written account, he stated that Complainant 1's motorcycle was moving forward, but when he was interviewed by Internal Affairs, he clarified that it looked like the motorcycle was moving forward based on the back up camera.

Rules and Regulations. He cursed at him multiple times and told him he was “acting like an asshole.”

Second, we find that Detective Hy used excessive force against Complainant 1 when he attempted to effectuate a traffic stop by backing into his motorcycle, a violation of the Fourth Amendment of the United States Constitution, Article I, § 12 of the New York State Constitution, and BPD’s Use of Force Policy.

To evaluate an officer’s use of force under the Federal and State Constitutions, courts consider the objective reasonableness of the force based on the “facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989); *Macareno v. City of New York*, 187 A.D.3d 1164, 1166 (2d Dep’t 2020) (applying *Graham* factors to excessive force claim under Federal and State Constitutions). The inquiry is “whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Id.* at 397 (internal quotation marks omitted); see also *Mazzariello v. Town of Cheektowaga*, 305 A.D.2d 1118, 1119 (4th Dep’t 2003). BPD’s Use of Force Policy directs officers to use “only that amount of physical force that is objectively reasonable to achieve a legitimate law enforcement objective” and prohibits “excessive or unreasonable force.”

The force used by Detective Hy to effectuate a traffic stop of Complainant 1 was excessive. The most serious crime for which there may have been probable cause was obstructing governmental administration in the second degree, a misdemeanor. N.Y. Penal Law § 195.05. There is no indication that Complainant 1 posed an immediate threat to the safety of Detective Hy or others. Before being struck by Detective Hy’s patrol car, Complainant 1 was stopped behind Detective Hy’s vehicle at a red light. Finally, even assuming that Complainant 1 was attempting to evade Detective Hy prior to the use of force (which is disputed), it was not reasonable to back up to strike the motorcycle. The force used by Detective Hy to attempt to detain Complainant 1 was unreasonable and excessive.

In his OAG interview, Detective Hy denied that he intended to hit Complainant 1. However, he acknowledged that he observed Complainant 1 behind him (surveillance video shows that Complainant 1 was no more than several feet behind him), put the patrol car in reverse in order to detain Complainant 1, and backed up toward Complainant 1, striking him.

Third, Detective Hy’s questioning of Complainant 1 at the scene violated Complainant 1’s right against self-incrimination under the Fifth Amendment of the United States Constitution and Article I, § 6 of the New York Constitution and the Department’s Interrogations Policy. When an individual is subject to custodial interrogation, an officer must administer Miranda warnings before questioning them. *People v. Doll*, 21 N.Y.3d 665, 670 (2013); *People v. Harris*, 48 N.Y.2d 208, 215 (1979). To determine whether the individual is in custody, “[t]he standard to be applied is whether a reasonable person, innocent of any crime, would have felt free to leave.” *Harris*, 48 N.Y.2d at 215. Courts consider several factors when making this determination, including “the amount of time the individual spent with the police, whether his freedom of action was significantly restricted, the location of the questioning and atmosphere under which he was questioned, his degree of cooperation, whether he was apprised of his

constitutional rights, and whether the questioning was investigatory or accusatory in nature.” *People v. Macklin*, 202 A.D.2d 445, 446 (2d Dep’t 1994). Custodial interrogation includes “express questioning” as well as “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.” *People v. Ferro*, 63 N.Y.2d 316, 322 (1984). The Department’s Interrogations Policy states that when an officer is conducting a custodial interrogation, Miranda warnings must be given before questioning begins, and defines such an interrogation as, among other things, when “the person has been taken into custody, or otherwise deprived of his freedom in a significant way.” Interrogations Policy 3.3.

After Detective Hy struck Complainant 1’s motorcycle, Complainant 1 was handcuffed and lying on the ground when Detective Hy asked him, using several confrontational formulations, why he did not stop when Detective Hy activated his emergency lights. Complainant 1 was in custody at this time, as he was handcuffed, unable to leave until an ambulance arrived, and subjected to accusatory questioning by Detective Hy. *See People v. Clanton*, 151 A.D.3d 1576, 1578 (4th Dep’t 2017) (suppressing handcuffed defendant’s statement made in response to questioning about running from police officers). After those initial exchanges, Detective Hy told Complainant 1 that he was under arrest for obstructing and denied him use of his cell phone. At this point, Complainant 1 was clearly in custody, and the questioning continued. Detective Hy concluded the interrogation by asking, “Did you pull over right away? Did you pull over right away when I hit my lights? Did you pull over right away when I hit my lights? Did you rev your engine real loud, go around me, and then evade me? Why aren’t you answering those questions? Those are interesting questions.”

Detective Hy was seeking an incriminating response that would have been material to proving the offense with which Complainant 1 was charged without providing the Miranda warnings required by the Federal and State Constitutions and the Department’s Interrogations Policy. During his OAG interview, Detective Hy confirmed that he was “trying to elicit a confession from [Complainant 1] regarding him trying to go around me.” When he was asked whether an incriminating response by Complainant 1 would have been admissible in the subsequent criminal proceedings, he stated that it would. He further testified that he did not remember if Complainant 1 had been given Miranda warnings at the time he questioned him.

For these reasons, we find that Detective Hy committed misconduct during this incident.

B. Incident 2, EC2021-037

On July 18, 2021, Detective Hy and several other officers responded to a robbery call near the intersection of Pennsylvania and Trenton streets. Detective Hy arrived first and spoke to the victim a few blocks away, and the victim stated that he had been robbed at gunpoint by a group of individuals. The victim got in Detective Hy’s police car, and they drove to the location to attempt to identify the perpetrators.

The following facts are based on our review of Detective Hy’s body-worn camera footage of this incident.

When Detective Hy and the victim arrived at the location, the victim identified several individuals as responsible for the robbery, including Complainant 2, who was 14-years old at the time. As Detective Hy and Officer Connor Frascatore attempted to take the individuals into custody, one of the individuals threw a fanny pack to another individual and both of them began running. Officer Frascatore apprehended the individual who caught the fanny pack, which was later found to contain a gun.

After chasing those individuals, Detective Hy went back to the corner where Complainant 2 (who was not one of the two individuals who had run off) was standing with several bystanders. Detective Hy approached Complainant 2 and said, "come here fat boy." Complainant 2 responded, "Fat boy?" Detective Hy grabbed the back of his shirt and pushed him into the back of a police car. Several individuals began yelling. One of the individuals can be heard stating, "He's a minor," and Detective Hy responded, "I don't give a fuck, back up!" Once Complainant 2 was in the back of the car, Complainant 2A, Complainant 2's brother, stated "He's 14-years old n*****. What the fuck is wrong with you? He's 14-years old." Detective Hy told Complainant 2A to "back up," then stepped toward him and pushed him. Complainant 2A responded "get your hands off me" and repeated "he's 14-years old." Detective Hy responded: "I don't give a fuck." As Detective Hy walked away, Complainant 2A can be heard saying "take your badge off n*****." At that point, another officer arrived and stood by the police car with Complainant 2 in the back seat. Detective Hy walked away and confirmed the apprehension of another individual. While he walked away, Complainant 2B, Complainant 2's father, approached him, and Detective Hy pushed him and said, "get away."

Approximately a minute later, Detective Hy came back to the police car with Complainant 2 in the back seat. At that time, two officers were standing next to the police car with Complainant 2 inside and in between the police car and the other bystanders. Neither officer was physically engaging with Complainant 2A, 2B or the other bystanders when Detective Hy approached. Detective Hy told Complainant 2B to "get away from the car" and pushed him away. He repeated "get away from my car" several times, moved toward Complainant 2A and pushed his chest with both hands. He pushed another bystander who was recording the incident while repeating "get away from the car." Complainant 2A yelled at Detective Hy, "Do what you gotta do n*****; do what you gotta do n*****." At that point, one of the two officers standing between the police car and Complainant 2A and the other bystanders directed them to "back up," but did not initiate physical contact with any of them.

When Detective Hy returned to his police car, the victim identified an additional individual from the group of bystanders, and Detective Hy arrested him. That individual does not appear to speak to Detective Hy during the arrest, but Detective Hy told him, "You're going to jail for a fucking robbery." After that individual was secured in another police vehicle, Detective Hy went back to his police car and yelled out the window to the crowd, "You're going to jail for robbery with a firearm, have a nice day!"

The scene became chaotic shortly after when Complainant 2B allegedly attempted to open the door of the police car with Complainant 2 inside. Complainant 2A and 2B were subsequently arrested, and force was used by Detective Hy and the other officers on scene to effectuate those arrests. Complainant 2 was charged with robbery in the second degree (Penal Law § 160.10).

The Internal Affairs Division investigated the incident. Detective Hy was exonerated with regard to the excessive force allegation, but the department sustained the allegation of discourtesy. The matter was discussed with Detective Hy at a Deputy Commissioner Conference, and no further action was taken.

We agree with the Department that Detective Hy was discourteous and violated BPD policy, specifically, Chapter I, Section 2.13 of the BPD's Rules and Regulations. The department focused on Detective Hy calling Complainant 2 "fat boy," but there were several instances of discourtesy including Detective Hy repeatedly cursing at bystanders and escalating an already tense incident by yelling at the crowd that gathered.

We further find that Detective Hy violated the BPD's Use of Force policy, section 6.2, which states that officers "should, when practicable and reasonable, avoid the Use of Force by using De-Escalation Techniques . . . before resorting to force and to reduce the need for force." The policy continues: "Members should not use tactics that unnecessarily escalate an encounter or create a need for force." While effectuating the arrest of Complainant 2, Detective Hy verbally engaged with Complainant 2's brother, Complainant 2A, cursing at him and pushing him. Minutes later, he returned to the area where Complainant 2A and the bystanders were located. At this time, two officers were standing between the police car (with Complainant 2 inside) and the bystanders. Detective Hy verbally and physically engaged with Complainant 2A again and was the only officer to do on the scene. Detective Hy's conduct toward Complainant 2A escalated the incident and led to him using unnecessary force against Complainant 2A.

For these reasons, we conclude that Detective Hy committed misconduct during this incident.

C. Incident 3

On June 23, 2020, Detective Hy was involved in a verbal altercation with Individual 3 during a response to a neighbor dispute. Detective Hy arrived to assist other officers after Individual 3 pushed an officer to try to prevent the officer from detaining his wife. Detective Hy observed that officer and Individual 3 talking and approached them. Body-worn camera footage from the officers on scene captured the events that followed.

Individual 3 stated that his daughter and other family members were Buffalo Police officers and that he knew the Police Commissioner and the Mayor. After explaining what happened, he said "I didn't mean to tackle you, but I mean, you threw my wife pretty hard on the ground and I didn't appreciate that." He also told the officer he needed to "chill out" and stated that the officer would have reacted similarly if someone put their hands on his wife.

Detective Hy then confronted Individual 3 and handcuffed him, saying: "You wanna drop another copper's name? You want to scream about how you know Gramaglia or the mayor? Why don't you shut the fuck up? Shut your goddamn mouth. Put your hands behind your back. Put your hands behind your back. You want to be difficult? You want to say I know all these coppers, I know all these things? You want to make us look dirty? Is that what you want to do? How am I helping you now? Tell me how can I help you. Shut up and let me talk to you, you old geezer. Shut up. Shut up and let me talk to you. Because you had so much to say and you touch a cop! So let me talk to you, Guy! Let me talk to you, Guy! Quiet! Quiet! No, you're

not done talking yet. I'm not done talking to you. So, let's be quiet, dad, so son can get some words in." He began to talk to Individual 3 about the attempt to influence them by referring to police officers in the family and public officials. When Individual 3 continued to talk over him, Detective Hy took him to a patrol car.

BPD did not receive a complaint regarding Detective Hy's conduct during this call, but the incident received media attention, and the body-worn camera footage was released by local news stations. The Internal Affairs Division did not review Detective Hy's conduct.

We find that Detective Hy was discourteous and violated BPD policy, specifically, Chapter I, Section 2.13 of the BPD's Rules and Regulations. He cursed and yelled at Individual 3 in an unprofessional manner, which could have led to further escalation of a tense situation. For these reasons, we conclude that Detective Hy committed misconduct during this incident.

III. Conclusions and Recommendations

The incidents described above constitute a pattern of misconduct, specifically, escalating encounters with civilians, including by using physical force, discourtesy, and unprofessional conduct. This conduct violated the Department's policies and the Federal and State Constitutions.

Executive Law § 75(5)(b) requires that the OAG "determine whether the subject officer . . . has engaged in a pattern or practice of misconduct, use of excessive force, or acts of dishonesty." To identify a pattern of misconduct for purposes of Executive Law § 75(5)(b), we look to whether the subject officer engaged in multiple acts of similar misconduct.

Here, Detective Hy was repeatedly discourteous and unprofessional during encounters with civilians and escalated the encounters, including by using physical force.

- Detective Hy struck Complainant 1 on his motorcycle during a traffic stop, and after doing so, acted in discourteous manner toward Complainant 1 and questioned Complainant 1 without giving the required Miranda warnings.
- Detective Hy was discourteous toward Complainant 2A and escalated the encounter by using unnecessary force.
- Detective Hy yelled and cursed at Individual 3 during an investigation of a neighbor dispute.

Detective Hy also has a history of misconduct. As noted, the Department sustained eight complaints against him between 2015 and 2021, including two of the incidents the OAG reviewed.

The OAG is not recommending specific disciplinary action for Detective Hy given the expiration of the applicable statute of limitations for the incidents discussed in this report. However, given his history, more significant discipline was warranted for striking Complainant 1 on his motorcycle.

The OAG recommends the following remedial actions:

- 1) Monitoring and Progressive Discipline. We recommend that BPD create a plan for monitoring Detective Hy's conduct and impose progressive discipline for any future misconduct.
- 2) Interrogations Training. Detective Hy's questioning of Complainant 1 demonstrated a misunderstanding of when Miranda warnings must be given. We recommend that the Department re-train Detective Hy on Miranda warnings and custodial interrogations and review with him the relevant case law and the Department's Interrogations Policy. The Department should also consider re-training all officers on these topics to ensure that officers comply with state and federal law.
- 3) Use of Force and De-escalation Training. We recommend that the Department provide additional training to Detective Hy regarding the use of force and de-escalation techniques.

Pursuant to Executive Law § 75(5)(c), the Buffalo Police Department shall inform the OAG within 90 days of the actions it is taking in connection with these recommendations.

We appreciate the cooperation of you and your agency.

Thank you,

LETITIA JAMES
Attorney General of the State of New York

By: Tyler Nims
Bureau Chief
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