

**NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE**

**REPORT AND FINDINGS PURSUANT TO EXECUTIVE LAW §75(3) REGARDING
JULY 20, 2022 INCIDENT AND THE CITY OF TONAWANDA POLICE
DEPARTMENT**

December 29, 2023

I. EXECUTIVE SUMMARY

New York Executive Law § 75 establishes the Law Enforcement Misconduct Investigative Office within the Office of the Attorney General (“OAG”). Executive Law § 75(3) authorizes the OAG to “receive and investigate complaints from any source” concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse in any covered agency.” At the conclusion of such an investigation, the OAG may determine “whether disciplinary action, civil or criminal prosecution . . . is warranted” and prepare and release a public report detailing its findings and recommendations. Executive Law § 75(3)(c)-(d).

The OAG was made aware of a social media video showing a July 2022 incident involving the use of force against two teenage boys by an officer of the City of Tonawanda Police Department (“TPD”). Our office opened an investigation. This report sets forth the OAG’s findings.

Based on our review of documentary evidence, video footage, and interviews with witnesses and Detective Lieutenant Robert Clontz,¹ we conclude that he improperly arrested two teenage boys without reasonable cause to do so, used excessive force (including a chokehold) in arresting one of the boys, and made a series of poor tactical decisions that escalated the situation into a physical altercation involving not only himself and the boys, but also bystanders.²

Section II of the report provides an overview of the OAG’s investigation of this incident. Section III describes the OAG’s findings. Section IV sets forth recommendations to the agency.

II. OVERVIEW OF INVESTIGATION

The OAG received an anonymous tip of a social media video showing a TPD officer grabbing a teenage boy by the neck. Our office opened an investigation into the incident. In connection with the investigation, we interviewed witnesses; reviewed evidence including body worn camera (“BWC”) footage, civilian video, photographs, witness statements, and arrest and charging documents; and conducted a sworn interview with Det. Lt. Clontz.

¹ Det. Lt. Clontz was subsequently promoted to Chief of the TPD. This report refers to his rank at the time of the incident.

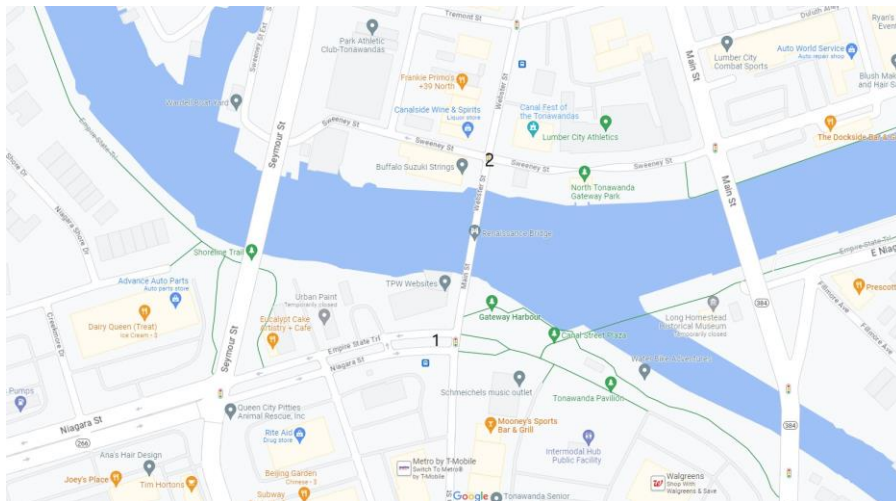
² The OAG has not made any finding, one way or the other, with respect to whether the force used on the other boy was excessive.

III. FINDINGS

A. Factual Overview

These findings of fact are based on an evaluation of the evidentiary record using a preponderance of the evidence standard.

On July 20, two teenage brothers were at Canal Fest, a large outdoor festival in the cities of Tonawanda and North Tonawanda. The older brother (“Minor 1”), a 16-year-old, was on foot. His younger brother (“Minor 2”), a 15-year-old, was riding a bicycle. Several TPD officers, including Det. Lt. Clontz and Det. Tom Harmon, stopped the boys near the corner of Main and Niagara Streets in Tonawanda. The officers directed Minor 2 to dismount from the bike. After a short encounter, the officers directed the boys to leave on foot, and the boys began walking toward the Renaissance Bridge that connects Tonawanda and North Tonawanda.



Location 1: approximate site of initial encounter

Location 2: approximate site of arrests

Det. Lt. Clontz followed the boys for approximately one minute at a walk, closing the distance and catching up to the boys on the bridge. Det. Lt. Clontz told OAG that he decided to follow the boys because they were yelling and screaming and had been thrown out of the festival grounds. Det. Lt. Clontz was by himself as he followed the boys, although he said that he assumed Det. Harmon was right behind him.

Minor 1 turned back and said, “we’re in NT [North Tonawanda], go back to your district,” and Det. Lt. Clontz responded, “you think you are. You’re not welcome over here, you’re going to get arrested.” The boys asked why they would be arrested, and Det. Lt. Clontz responded “disorderly conduct now, for your mouth.” As the boys continued to walk across the bridge toward North Tonawanda, Det. Lt. Clontz followed immediately behind them, and twice pushed Minor 1, first in the back and a few seconds later on the shoulder, and repeatedly

instructed the boys to “keep going.” At 5:54:35, Minor 1 told Det. Lt. Clontz to “stay over to your side. This isn’t even your district. This isn’t even Tonawanda.” While Minor 1 raised his voice to address Det. Lt. Clontz, BWC footage shows that Minor 1 was not attracting significant public attention at the time, nor was his volume particularly notable in the setting of a large outdoor festival. A few seconds later, Minor 2, who was walking his bike in front of Minor 1, told Det. Lt. Clontz to “suck my dick.” A passerby can be heard off-camera stating, “if I said that, I’d get arrested.”

Minor 1 then pulled out his cell phone and began to record himself and Det. Lt. Clontz as they both continued to walk, with Det. Lt. Clontz following within arm’s length of Minor 1. At 5:54:50, immediately after Minor 1 began filming the encounter on his cell phone, Det. Lt. Clontz placed his hand on Minor 1’s neck and stated, “come on, you’re under arrest.” According to Det. Lt. Clontz, he decided to make an arrest at this point because the boys were making unreasonable noise, beginning to attract attention, and had yelled the word “dick.”

Rather than stop, Minor 1 ducked his shoulder to evade Det. Lt. Clontz’s grip and continued walking. Det. Lt. Clontz continued to follow the boys at a walk, and at the North Tonawanda side of the bridge, as Minor 1 continued to walk away, he grabbed Minor 1’s arms from behind. While he struggled with Minor 1, Det. Lt. Clontz’s body camera became dislodged, and the next several seconds were not captured on video.

Minor 2 began to film the encounter with his cell phone. This cell phone footage shows Minor 1 standing at the intersection of Sweeney and Webster streets astride a metal rail traffic divider with one leg on either side of the rail. Det. Lt. Clontz is on one side of the divide with his arm around Minor 1’s neck. A civilian is standing directly next to Minor 1 on the other side and says to Det. Lt. Clontz, “can I grab him?” The civilian then grabs Minor 1’s neck from the other side, and both men are pulling the boy’s neck.



At 5:56:15, Det. Harmon and other TPD officers arrived. Det. Lt. Clontz, Det. Harmon, and Officer Heather Grimmer took Minor 1 to the ground and handcuffed him. Det. Harmon's body camera footage shows that at 5:57:17, Det. Harmon and Officer Grimmer brought Minor 1 to a seated position.

Det. Lt. Clontz then moved toward Minor 2. Det. Harmon's BWC appears to show Minor 2 take a few steps away from Det. Lt. Clontz, at which point Minor 2 was knocked to the ground by a member of the public. Det. Lt. Clontz applied a hold to Minor 2's neck and forced him into a prone position. With the hold around Minor 2's neck, Det. Lt. Clontz fell forward, hitting his head on the pavement and twisting Minor 2's body by the neck.



Det. Harmon's BWC shows that Det. Lt. Clontz maintained the hold for approximately 50 seconds while Det. Harmon and another officer attempted to apply handcuffs, though Minor 2's left arm appears to have been pinned beneath him due to the body weight of Det. Lt. Clontz. Det. Harmon was ultimately able to apply the handcuff to Minor 2's left arm, at which point both boys were taken to the police station.

An eyewitness told OAG that a crowd had formed and "people were instigating the other young man at this point. I did not see what happened to provoke this, but he was also then placed in a chokehold. I remember thinking, 'these are just kids. Are chokeholds really necessary?' The cops were much larger than the young men."

In his interview with OAG, Det. Lt. Clontz stated that he was attempting to apply a "seatbelt hold" to Minor 2, a technique he had seen in an online mixed martial arts video. He told OAG that this was the first time he had attempted to employ this tactic, and stated that he did not intend or attempt to administer a chokehold, which is a prohibited technique under the New York

State Model Use of Force Policy and TPD's Use of Force Policy, as discussed in more detail below.³

Minor 1 was charged with disorderly conduct, resisting arrest, obstructing governmental administration, and harassment. Minor 2 was charged with attempted criminal possession of a loaded firearm in the second degree, attempted robbery, attempted grand larceny in the fourth degree of a firearm, resisting arrest, obstructing governmental administration, attempted criminal possession of a weapon, disorderly conduct for unreasonable noise, disorderly conduct for obscene language, and harassment in the second degree. According to Det. Lt. Clontz, the attempted robbery, larceny, and gun charges were based on statements by a civilian bystander who had seen Minor 2 approach Det. Lt. Clontz while he was attempting to arrest Minor 1 and had mistakenly believed that Minor 2 had reached for Det. Lt. Clontz's gun. Det. Lt. Clontz later contacted the District Attorney's office to advise that the attempted robbery, larceny, and gun charges should be dropped based on further explanation from the witness that the witness had not actually seen Minor 2 make any attempt to reach for or grab Det. Lt. Clontz's gun.

B. OAG's Conclusions

Det. Lt. Clontz committed multiple violations of law and policy. He unnecessarily followed the boys by himself while they were leaving the festival in compliance with the officers' direction, escalated the encounter by repeatedly engaging with the boys as they walked away, and made unauthorized arrests and used excessive force. His actions resulted in a significant public disturbance and injuries to the boys and himself, all of which could, and should, have been avoided.

1. Det. Lt. Clontz lacked reasonable cause to arrest Minor 1 for Disorderly Conduct

The initial basis for Minor 1's arrest was the charge of disorderly conduct (Penal Law § 240.20), which is a violation—a low-level non-criminal offense that is less serious than a misdemeanor or felony. Arrests for violations are assessed under the "reasonable cause" standard. CPL 140.10. Courts have interpreted "reasonable cause" as "the equivalent of probable cause." *People v. Ortiz*, 63 Misc.3d 32, 34 (1st Dep't 2019).

Det. Lt. Clontz lacked reasonable cause to arrest Minor 1 for disorderly conduct for two reasons: first, Minor 1 had not used profanity at the time Det. Lt. Clontz chose to initiate a custodial arrest, and second, his statements had been directed solely at the officer.

³ The use of a chokehold or similar restraint may also subject a police officer to criminal liability. Under Penal Law 121.13-a, the use of "a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air" by a police officer is a felony if it "causes serious physical injury or death."

Under Penal Law § 240.20(3), “[a] person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof ... [i]n a public place, he uses abusive or obscene language, or makes an obscene gesture.”

Here, although the boys were behaving rudely to the officer, they were complying with his direction to leave Canal Fest and their behavior did not rise to the level of disorderly conduct. The boys were not directing threatening or obscene language at civilians or involved in a significant disturbance at the time that Det. Lt. Clontz attempted to arrest Minor 1. Indeed, at the point where Det. Lt. Clontz first told Minor 1 that he was under arrest, only Minor 2 (not Minor 1) had used profanity audible on Det. Lt. Clontz’s BWC. Minor 1 had said to Det. Lt. Clontz, “we’re in NT,” “go back to your district,” “for what?” (in response to Det. Lt. Clontz telling the boys they were going to get arrested), “you are delusional,” and “stay over to your side, this isn’t even Tonawanda.” These statements are not “abusive or obscene.”

Additionally, the Court of Appeals has set a high bar for disorderly conduct when the subject of the purportedly abusive or obscene language is a police officer. In *People v. Baker*, the Court of Appeals concluded that a police officer lacked reasonable cause to arrest a man for disorderly conduct who had sworn at the officer during the daytime on a public street, attracting a small crowd. The Court emphasized that:

The fact that defendant’s abusive statements were directed exclusively at a police officer—a party trained to defuse situations involving angry or emotionally distraught persons—further undermines any inference that there was a threat of public harm, particularly since the police officer was in a position of safety and could have closed his windows and ignored defendant... But isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the “public harm” *mens rea* necessary to support a disorderly conduct charge.

People v. Baker, 20 N.Y.3d 354, 363 (2013). The Court of Appeals similarly held that there was no probable cause to arrest a man for disorderly conduct after the man shouted obscenities at police officers at a subway station in Manhattan, “provoking looks of surprise and curiosity from some passengers and evasive movements from others.” *People v. Gonzalez*, 25 N.Y.2d 1100, 1101 (2015); *see also Stern v. Shammass*, 2015 WL 6440647, at *3 (E.D.N.Y. Oct. 21, 2015) (explaining that “abusive or obscene language is not unlawful if it is constitutionally protected speech, and with respect to words directed at police officers, language is only unlawful when it contains fighting words that tend to incite an *immediate* breach of the peace”) (emphasis in original).

Minor 1 was also charged with disorderly conduct under Penal Law § 240.20(2), which penalizes making “unreasonable noise.” While Minor 1 may have raised his voice, he was outside in the daytime on a public street during a large outdoor festival. Under these circumstances, the decibel level of the boys’ voices was unremarkable and did not amount to “a noise of a type or volume that a reasonable person, under the circumstances, would not tolerate.” N.Y. Penal Law § 240.20(2).

2. The arrest of Minor 2, who was 15 years old, was not authorized

Because Minor 2 was only fifteen years old, he was not subject to arrest for the violations of disorderly conduct and harassment in the second degree. Prior to Det. Lt. Clontz seeking to use physical force to arrest Minor 2, Minor 2 had stated that he was 15 years old, which is audible both on Det. Lt. Clontz’s BWC and Minor 2’s cellphone footage, and thus Det. Lt. Clontz knew or should have known that Minor 2 was under the legal age for arrest for a custodial arrest for disorderly conduct. *Matter of Victor*, 9 N.Y.3d 84, 87-88 (2007); *Matter of Iyona G.*, 60 A.D.3d 1403, 1404 (4th Dep’t 2009); see also *McKinney’s Family Court Act § 301.2, Practice Commentaries* (“A person under the age of 16 cannot be arrested or charged with a violation or a non-misdemeanor offense; examples include traffic violations and disorderly conduct.”).⁴

3. Det. Lt. Clontz used excessive force arresting Minor 2⁵

Det. Lt. Clontz used excessive force against Minor 2 in violation of the Fourth Amendment of the United States Constitution and Article I, § 12 of the New York State Constitution. The force applied was also inconsistent with TPD policy restricting the use of chokeholds.

TPD’s Use of Force Policy allows officers to use only such force “that is objectively reasonable under the circumstances for the officer involved to affect an arrest, prevent an escape, or in defense of themselves or others.” TPD policy regarding determining the reasonableness of force provides factors including “the severity of the crime or circumstances; the level and immediacy of the threat or resistance posed by the suspect; the potential for injury to citizens, officers, and suspects; the risk or attempt of the subject to escape; the knowledge, training, and experience of the officer; officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects; and other environmental conditions or exigent circumstances.” These factors are in line with those established by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989) and subsequent rulings.

⁴ While Minor 2 was charged with other non-violation offenses, those offenses are not relevant to Dt. Lt. Clontz’s initial decision to arrest Minor 2 because they either resulted from Minor 2’s reaction to the arrest (resisting arrest and obstruction of governmental administration) or were premised on subsequent and erroneous statements from a bystander.

⁵ Due to the lack of clear video evidence, OAG does not make a finding one way or the other regarding whether the force used to arrest Minor 1 was excessive.

TPD's policy on prohibited uses of force defines chokeholds as "a physical maneuver that restricts an individual's ability to breathe for the purpose of incapacitation" and prohibits chokeholds "*except in those situations where the use of deadly force is allowed by law,*" (emphasis in original). TPD policy explains that deadly force may be used "by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death."

TPD's definition of chokehold is narrower than the definition in the New York State Model Use of Force Policy, which prohibits "[a]ny application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited unless deadly physical force is authorized." Unlike the Model Policy, TPD's policy may be read to incorporate an intent element ("for the purpose of incapacitation") and does not appear to apply to actions that may obstruct blood circulation.

In these respects, TPD's policy is not compliant with New York Executive Law § 840(4)(d)(3), which requires that agencies adopt a policy that is at least as stringent as the model policy.

The force that Det. Lt. Clontz used on Minor 2 was excessive. To begin with, disorderly conduct is an offense where "the severity of the crime is unquestionably slight." *Brown v. City of New York*, 798 F.3d 94 (2d Cir. 2015) (applying the *Graham* factors to an arrest for disorderly conduct). The level and immediacy of any threat or resistance posed by Minor 2 was low, if any. Det. Lt. Clontz had no reason to fear for his safety, and he was significantly larger than Minor 2, who is listed as weighing 125 lbs. and standing 5'4" tall on his arrest report. At the point at which Det. Lt. Clontz engaged with Minor 2, numerous other police officers were in the area.

Video footage of the arrest shows that Det. Lt. Clontz's bicep and forearm were wrapped around Minor 2's neck for approximately 50 seconds while the boy was in a semi-prone position, which made the technique particularly dangerous. This action was an "application of pressure to the throat, windpipe, [or] neck ... in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation." It thus was prohibited by TPD's Use of Force policy (and by New York State's Model Use of Force policy) because there were no circumstances that would have warranted the application of deadly force. TPD Use of Force Policy VII.B; New York State Model Policy VII.C.

Det. Lt. Clontz told OAG that this was the first time he had attempted to employ a "seatbelt hold." He stated that his arm was on Minor 2's neck because of Minor 2's actions rather than his own and that he believed that the technique was within department policy. Regardless of his intentions, the application of this technique resulted in the use of a dangerous chokehold on a young person in a situation in which the use of deadly force clearly was not permissible.

4. Det. Lt. Clontz made a series of poor tactical decisions

In addition to the issues noted above, Det. Lt. Clontz made several poor tactical decisions that heightened the risks from the interaction.

First, Det. Lt. Clontz followed the boys, closed with them, and sought to arrest Minor 1 without reasonable cause to do so, as described above. He then initiated force without first issuing clear commands to Minor 1 and allowing the opportunity for compliance. Det. Lt. Clontz not only failed to de-escalate this encounter, but affirmatively escalated it.

Second, he followed the two boys by himself, without backup. Because he was alone when he initiated the arrest of Minor 1, he was unable to rely on other officers for assistance. Prior to engaging in a physical struggle with Minor 1, he did not call for backup. And because his radio and camera were knocked off grappling with Minor 1, he was unable to request help. This led to the highly risky situation in which a member of the public stepped in to attempt to assist in a forcible arrest, grappling with Minor 1 and wrenching the boy's neck in a potentially dangerous manner.

Third, in attempting to arrest the boys, Det. Lt. Clontz used a technique, which he described as a "seatbelt hold," that he had learned from an online video. He told the OAG that he had not previously used this technique. The use of this maneuver resulted in the application of a dangerous and prohibited chokehold restraint to the neck of a 15-year old.

IV. RECOMMENDATIONS

As detailed above, the OAG concludes that Det. Lt. Clontz: (1) improperly arrested Minor 1, a 16-year old boy, without reasonable cause; (2) arrested Minor 2, Minor 1's 15-year old brother, for violations without authorization; (3) used excessive force in arresting Minor 2; and (4) made a series of poor decisions throughout the incident.

We request that TPD undertake the following remedial actions:

- TPD should review the July 20, 2022 incident and discipline Det. Lt. Clontz for his conduct.
- TPD must update its use of force policy to comply with Executive Law § 840, specifically prohibiting the application of any maneuver that runs a reasonable risk of depriving the brain of blood and/or oxygen, including but not limited to chokeholds, neck restraints, and other similar techniques. Absent justification for the use of deadly force, the policy should clearly state that such techniques are prohibited for any purpose, not only for the purpose of incapacitation. In addition, the updated use of force policy should expressly address the concepts of necessity, proportionality, and de-escalation.

- TPD should provide all personnel with ongoing, annual training of at least 8 hours on the updated use of force policy, use of force decision-making, and de-escalation strategies and techniques.
- TPD should adopt a policy, and train its officers, on interacting with young people. This policy should make clear that, pursuant to New York law, officers may not arrest minors under the age of 16 who are not committing a criminal (i.e., misdemeanor or felony) offense.

Pursuant to Executive Law § 75(5)(c), the TPD shall advise the OAG within 90 days as to the steps that the TPD has taken with respect to these recommended remedial actions. The response should include a summary of the TPD's findings and any discipline imposed.