



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

May 23, 2024

Chief Todd Waldin
Cohoes Police Department
97 Mohawk Street
Cohoes, New York 12047

Via Email

Re: Letter regarding Executive Law 75(5)(b) Referral of Police Officer Joseph Murphy, OAG Matter No. 1-794403157

Dear Chief Waldin,

We have reviewed your agency's August 9, 2022 referral of Officer Joseph Murphy pursuant to Executive Law Section 75(5)(b). Based on our investigation, we have concluded that Officer Murphy engaged in a pattern of excessive force and false arrests in violation of the Fourth Amendment, as well as untruthfulness to other Cohoes Police Department (CPD) personnel. We also note two off-duty "road rage" incidents, including an April 2023 incident that may have violated CPD's Rules of Conduct on Conduct Unbecoming (Section 102).

Following receipt of the referral, OAG personnel reviewed CPD's internal investigative files, disciplinary outcomes, relevant police paperwork, and policies that governed the alleged misconduct. We interviewed several individuals who made complaints against Officer Murphy, witnesses to those incidents, and Officer Murphy.

This letter sets forth the OAG's findings, conclusions, and recommendations pursuant to Executive Law § 75(5)(c).

I. FINDINGS

A. Complaint 1

1. Factual Background

The following narrative is based on CPD records and video footage, CPD Taser training materials and policy, and interviews with Complainant 1 (a Black male in his 30s), Complainant

1's girlfriend (who witnessed part of the incident), and Officer Murphy. Where accounts diverge, we describe the different statements and our assessment of the evidence.

On April 23, 2019, at approximately 12:00 pm., Officer Murphy pulled over Complainant 1 in the vicinity of Columbia Street and Broadway in Cohoes. Officer Murphy subsequently ticketed Complainant 1 for not having a registration sticker and for having a cracked windshield.

According to Complainant 1, he was in the car with his one-year-old daughter, on his way to pick up his girlfriend from work to take her to lunch. Complainant 1 stated to OAG that when Officer Murphy approached the car, Complainant 1 had his license, registration, and insurance cards ready. Believing that the stop was racially motivated, he refused to roll his window down, cracking it open enough to slip the paperwork through. Complainant 1 recalled that Officer Murphy had "attitude" because he refused to roll his window all the way down. After reviewing the documents, Officer Murphy "threw" Complainant 1's insurance information at the window and it landed on the ground outside his car. Officer Murphy walked back towards his police vehicle, presumably to write a ticket. Complainant 1 exited his car to get the insurance information from the ground next to his car. Officer Murphy ordered him to get back in the car. Complainant 1 complied with this order. Subsequently, Complainant 1 was issued the tickets and permitted to leave. Officer Murphy stated during his interview that he recalled the Complainant being "belligerent and argumentative" during this stop. [Transcript of Murphy Executive Law 75(4) Examination at 30 ("Murphy Tr.")].

According to Complainant 1, as he drove away, he observed Officer Murphy follow him on Columbia Street until he turned onto Village Green Drive to pick up his girlfriend. Complainant 1 then observed Officer Murphy pull into a Stewart's shop located at 480 Columbia Street in Cohoes. After picking up his girlfriend, the Complainant proceeded to drive back down on Columbia Street. He observed Officer Murphy's car behind him. At an intersection at the bottom of Columbia Street, Complainant 1 was in the left lane. Officer Murphy pulled up next to him on the right.

Complainant 1 and his girlfriend both stated to OAG personnel that they observed Officer Murphy blowing kisses out his window and making a hand gesture to mimic a gun towards Complainant 1. Complainant 1 described it as a "gun motion" with his hand and his girlfriend described it as putting his "fingers up like a gun."

At his interview with the OAG, Officer Murphy acknowledged that at some point after the initial stop his car was next to Complainant 1's car, but he denied making these gestures. [Murphy Tr. 36].

Complainant 1 then drove to the CPD station with the intention of filing a complaint against Officer Murphy. His girlfriend recalled that they parked on Ontario Street, next to the post office, cattycorner to the police parking lot.

Video footage from inside the stationhouse confirms that Complainant 1 walked into the stationhouse from the Ontario Street entrance at 12:21pm. and walked out at 12:27pm. Complainant 1 stated to the OAG that an officer inside the station told him that no one was

available to take his complaint. Complainant 1 left the station without having filed a formal complaint.¹

After leaving the station, Complainant 1 again encountered Officer Murphy, who was seated in his patrol car in the parking lot.

Video footage from a camera outside the police station shows Officer Murphy cross Congress Street into the police parking lot and get into his car. The Complainant subsequently enters the frame and stands on the sidewalk 4.5 parking spaces (approximately 35 feet) away from Officer Murphy, who was seated in his car with the door closed and window open. Complainant 1 was facing Officer Murphy, holding up an object that appears to be a cell phone and appears to be recording or attempting to record a video.

The video from the parking lot depicts words being exchanged between Officer Murphy sitting in his car and the Complainant. Officer Murphy then exits his car and walks towards Complainant 1. As Officer Murphy walks towards him, Complainant 1 remains where he is on the sidewalk and keeps the cell phone up. As Officer Murphy advances to within several feet of Complainant 1, Complainant 1 backs up so that he is outside the video frame with his shadow still visible. He appears to be standing still, facing Officer Murphy, holding up his cell phone.

The video depicts Officer Murphy draw his Taser and brandish it at Complainant 1. Based on the video footage, Officer Murphy drew his Taser within 15 seconds of exiting his car. The video footage shows that Officer Murphy then took Complainant 1 into custody as four other uniformed officers approached.

According to Officer Murphy, while seated in his patrol car, he observed Complainant 1 walk from Ontario Street into the parking lot while yelling and swearing at him. Officer Murphy stated that Complainant 1 yelled and swore, “suck my dick” and “f---you, you f---ing cracker.” He exited the police vehicle, walked towards Complainant 1, informed him he was under arrest, and ordered him to place his hands behind his back. Officer Murphy claimed that he told Complainant 1 “several more times” to place his hands behind his back but that Complainant 1 “continued to refuse.” Officer Murphy confirmed that he then drew his Taser and pointed it at Complainant 1, and that Complainant 1 was then taken into custody. [Murphy Tr. 39].

According to Complainant 1, he exited the CPD building and saw that Officer Murphy was sitting in his car in the parking lot. Complainant 1 walked towards Officer Murphy’s car and held his phone up to “live stream” his encounter with Officer Murphy. Officer Murphy began taunting him while seated in his car. Complainant 1 stated that he responded by telling Officer Murphy to “suck a dick.” Officer Murphy stepped out of his car and walked towards the Complainant. Complainant 1 stated that he stood still and filmed Officer Murphy as he approached. When Officer Murphy took out his Taser, pointed it at him, and told him that he was under arrest and to place his hands behind his back, Complainant 1 complied.

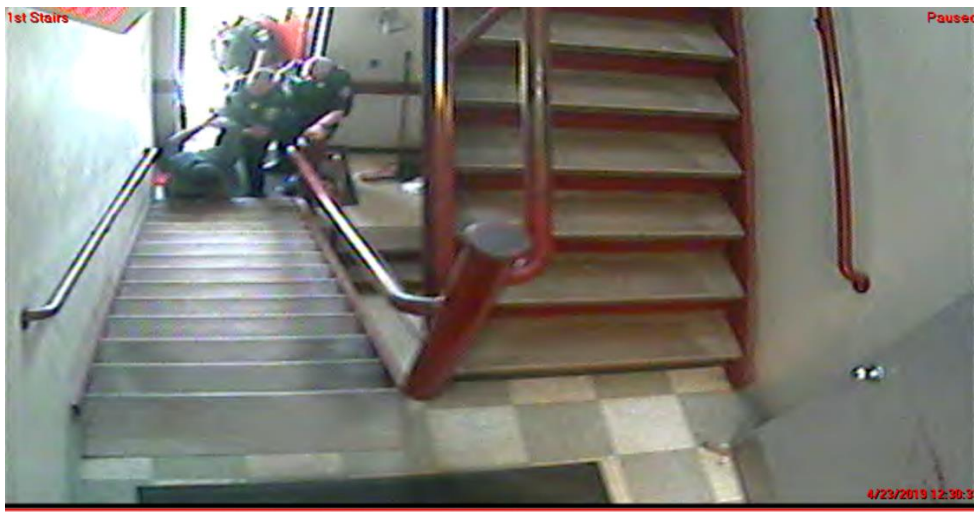
¹ CPD’s current Citizen Complaint – Internal Affairs Policy provides: “Citizen complaints may be received in person, by telephone, by mail, by referral from an outside agency or by any other reasonable means. Complaints may be made anonymously or by a third person. All complaints will be investigated to the extent possible based on the information provided... No employee of the department shall interfere with, discourage or unnecessarily delay the receipt of a complaint.”

Complainant 1 was then escorted into the CPD building. Video surveillance from an interior stairwell depicts Complainant 1 handcuffed with his hands behind his back and being led towards the stairs by Officer Murphy as other officers look on. At the bottom of the stairs, Complainant 1 abruptly moves his body to his left, at which point Officer Murphy pushes Complainant 1 down onto the stairs. According to Complainant 1, his wrist was in pain because the handcuffs were tight, and while he was being led by Officer Murphy, Officer Murphy bent his wrists, causing Complainant 1 more pain and he moved to try to get away from Officer Murphy who was causing him this pain, but he was not trying to escape.

The video then showed Officer Murphy attempt to lift Complainant 1 up by his arm, without success. Subsequently, as Complainant 1 is face-down on the stairs, Officer Murphy places his fist on the Complainant 1's head and pushes it into the stairs. When asked at his interview with the OAG why he pushed the Complainant's head against the stairs using his fist, Officer Murphy's responded that he was not sure why he did that. [Murphy Tr. 54].



The same video depicts Officer Murphy trying to pick up the Complainant 1 by his rear cuffed wrist, extending his arms and twisting his shoulders.



When another officer intervenes and speaks with Complainant 1, he stands up on his own and walks up the stairs.

Video footage from the booking area depicts the Complainant upset that he was arrested. He tells the other officers what happened after he received the summons from Officer Murphy. Then Officer Murphy comes into the room to process the arrest. While speaking with Complainant 1, Officer Murphy called him a “jerkoff” and accused him of “playing the race card.” Eventually, Complainant 1 was charged with Disorderly Conduct, P.L. §240.20(2) (unreasonable noise) and §240.20(3) (abusive or obscene language), Resisting Arrest, P.L. §205.30, and Obstructing Governmental Administration, P.L. §195.05, and released with desk appearance tickets. The charges ultimately were dismissed.

At Officer Murphy’s interview, he stated that he believed everything ended well with Complainant 1 because Complainant 1 apologized and they “hugged.” By contrast, Complainant 1 stated in his interview with OAG personnel that in the booking room, he was concerned that Officer Murphy would lock him up overnight or would do something to harm him further. The Complainant’s girlfriend and young daughter were waiting for him outside in the car, so he apologized to Officer Murphy in the hopes that he would be released.

2. OAG’s Conclusions Regarding Complaint 1

a. Officer Murphy Lacked Probable Cause to Arrest Complainant 1

Officer Murphy unlawfully arrested Complainant 1 in violation of the Fourth Amendment because a reasonable officer would not have concluded that there was the required probable cause that the Complainant committed an offense.

As to Disorderly Conduct, Penal Law § 240.20(3) provides that “[a] person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof in a public place, he uses abusive or obscene language, or makes an obscene gesture.” This charge requires “proof of an intent to threaten public safety, peace or order (or the reckless creation of such a risk).” *People v. Baker*, 20 N.Y.3d 354, 359 (2013). Specifically, “a person may be guilty of disorderly conduct only when the situation extends beyond the exchange between the individual disputants to a point where it becomes a potential or immediate public problem.” *Id.* at 359-60 (quoting *People v. Weaver*, 16 N.Y.3d 123, 128 (2011)). In the context of interactions with police officers, “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.” *Id.* at 363.

Here, while Complainant 1 used obscenities, the short dispute outside the police station was confined to him and Officer Murphy. *See People v. Gonzalez*, 25 N.Y.3d 1100 (2015) (holding that there was no support for disorderly conduct charge where defendant shouted obscenities at police officers in subway station because the situation did not move beyond an exchange between individual disputants); *see also Baker*, 20 N.Y.3d at 363. The fact that Complainant 1’s 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,” as the Court of Appeals explained in *Gonzalez*, 25 N.Y.3d at 363.

Nor were the arrests for Resisting Arrest or Obstructing Governmental Administration lawful. First, the offenses of Resisting Arrest and Obstruction of Governmental Administration both require an authorized arrest or authorized governmental conduct, which was not present here. “A key element of resisting arrest is the existence of an authorized arrest, including a finding that the arrest was premised on probable cause.” *People v. Jensen*, 86 N.Y.2d 248, 253 (1995). Therefore, “an individual who intentionally prevents an unauthorized arrest is not guilty of resisting arrest.” *Id* (internal citations omitted). Likewise, for an individual to be guilty of obstructing governmental administration, the police must have been “engaged in authorized conduct.” *People v. Lupinacci*, 191 A.D.2d 589 (2nd Dept. 1993). “When the official function involved is an arrest, it must be shown that the arrest was authorized.” *People v. Vogel*, 116 Misc.2d 332, 333 (App. Term, 2nd Dept. 1982). Because there was no probable cause for the initial arrest for disorderly conduct, there should have been no arrest for Resisting Arrest or Obstruction of Governmental Administration.

Second, regardless of the existence of probable cause for the disorderly conduct arrest, Complainant 1 did not satisfy the elements for resisting arrest or obstruction of governmental administration. He was completely handcuffed within 26 seconds from the time at which Officer Murphy exited his patrol car and the video clearly shows that during this short period the Complainant did not take any physical actions to obstruct or avoid arrest.²

b. Officer Murphy Used Excessive Force Against Complainant 1

We also conclude that Officer Murphy used excessive force when he used his fist to push Complainant 1’s head into the stairs while Complainant 1’s hands were handcuffed behind his back. Complainant 1 was restrained and accompanied by at least two other officers in addition to Officer Murphy, and Officer Murphy was not able to provide any explanation, when asked by OAG personnel, as to why he took this action. This gratuitous use of force on a handcuffed individual who was in the custody of several officers and who presented no threat of harm or flight was excessive in violation of the Fourth Amendment and CPD’s Use of Force policy, which adopts the Fourth Amendment objective reasonableness standard. *See, e.g., Lennox v. Miller*, No. 19-1675 (2d Cir. 2020); *Frost v. New York City Police*, 980 F.3d 231 (2^d Cir. 2020); *Amnesty America v. Town of West Hartford*, 361 F.3d 113 (2d. Cir. 2004).

B. Complaint 2

1. Factual Background

² In his Use of Force report for this incident, Officer Murphy checked boxes indicating that Complainant 1’s level of resistance was “verbal”, “non-compliant”, and “passive resistance”, and did not check off boxes indicating that the Complainant attempted to “escape” or showed “physical aggression.”

The following narrative is derived from our review of CPD's IA investigative materials, CPD documents associated with this incident, video taken by Complainant 2, and interviews with Complainant 2 (a brown-skinned Latino man in his 40s) and Officer Murphy.

On November 22, 2019, Officer Murphy conducted a traffic stop of Complainant 2. According to Complainant 2, he kept his window rolled up while he gathered his license, registration, and insurance cards. Officer Murphy acted "hostile" in response, banging on his window. This initial encounter ended with Officer Murphy issuing Complainant 2 with two tickets for failing to stop at a stop sign and for a broken plate lamp (VTL §376, VTL§1110). According to Officer Murphy, the Complainant was rude during this exchange. He was using profanities and refused to answer his questions.

Following the traffic stop, Complainant 2 returned to his house, where he had a second interaction with Officer Murphy. The distance between the initial stop and Complainant's home was approximately a half mile.

After exiting his car, Complainant 2 saw Officer Murphy driving past his house. Complainant 2 believed that Officer Murphy followed him home. According to Complainant 2, as Officer Murphy was driving by, the Complainant stated something to the effect of "F---ing pig." Officer Murphy stopped his car, exited, and asked Complainant 2 what he said. Complainant 2 walked to the front door of his home, entered, and tried to close his door. Officer Murphy put his foot in the doorway to prevent it from closing and then entered the Complainant's home.

According to Officer Murphy, he did not follow the Complainant home, but instead coincidentally happened to be driving by the Complainant's house when he saw him outside. According to Officer Murphy, as he drove past Complainant 2, he heard Complainant 2 yell, "F-- you, you f---ing pig. I'll beat your f---ing ass." Officer Murphy then exited his vehicle and approached Complainant 2, who Officer Murphy claimed was now in the "common doorway to [a] multi-unit address." Officer Murphy subsequently wrote in his arrest paperwork that he followed Complainant 2 into the building to explain that Complainant 2's actions were a violation of law, and that his entry was permissible because he was in the common hallway of a multi-dwelling home. [Murphy Tr. 71].

The Cohoes Office of Building and Planning confirmed to the OAG that Complainant 2's address is a single unit home, and that the front door is a private door that leads only to Complainant 2's unit.

Once inside his home, Complainant 2 began recording the interaction on his cell phone. The following facts are derived directly from the video footage, which was provided by CPD.

Officer Murphy was inside Complainant 2's home and stated, "You're gonna swear like that in public . . . you're going to get arrested." Complainant 2 responded, "I'm in my house right now, you're invading my privacy, you [are] not welcome, you're intruding right now." Officer Murphy stated that Complainant 2 was "not in your private home, you're in a common hallway." Complainant 2 stated that he would like Officer Murphy to leave and that he "pays for this." He stated several times, "this is my house, this is my hallway."

Officer Murphy told Complainant 2 that he needed to "grow up and be a man is what you need to do." Again, Complainant 2 responded, "Bye, I'm in my house. Bye." Officer Murphy responded, "You're not in your house, this is what's called a common hallway, so you can go

upstairs if you want.” Complainant 2 responded that this is “my hallway, I paid for this.” Officer Murphy replied, “Congratulations, I’m proud of you.”

Officer Murphy told Complainant 2 that if he yelled all those things he yelled outside, he was “going to get a police officer’s response.” Complainant 2 stated, “I’m in my house right now, where’s your beef now?” Officer Murphy told the Complainant not to be a “tough guy out there and then try to be a tough guy in here because you’ve got a camera, now all of a sudden you want to be a tough guy.” Officer Murphy stated, “You say all those things out there but you’re not man enough to say them in here.” Again, Complainant 2 says, “I am in my house,” and “I am in my home.” Officer Murphy responded, “You know exactly the fact that you can’t act like a man, that’s the problem,” and “when you want to act like a man, let me know.”

Complainant 2 stated, “You are abusing your authority . . . you are harassing me right now . . . You are in my home . . . I know my rights . . . I feel threatened right now.” Officer Murphy responded, “You can’t feel threatened . . . if you felt threatened, you have every right to back up, right?” Complainant 2 said, “I would like to close my door, it’s cold.” While continuing to refuse to leave his home, Officer Murphy then asked, “You feel threatened? Do you feel threatened, [Complainant 2]? Because you can back up,” while remaining inside Complainant 2’s home. The two continued to engage in a verbal argument.

Officer Murphy stated, “I’ll tell you what. You swear like that out in the street one more time and you’re going to get arrested next time, you understand?” Complainant continued to say emphatically: “you are in my house, and you are harassing me, I feel threatened, get out of my house!” At this point, Officer Murphy turned to leave, but then comes back and placed his hands on Complainant 2’s chest. Complainant 2 then says, “you are touching me, get your hands off of me, goodbye, get out of my house.” Officer Murphy again says, “Here’s what I’m going to tell you. You yell and swear out there in the street like that again you’re going to get arrested. Do you understand?” Complainant 2 responded, “I don’t care what you say.” Officer Murphy asked, “Do you understand?” Complainant 2 responded, “I don’t care.” Officer Murphy replied, “You better care, because I want to make sure you understand, otherwise I’ll arrest you for it right now.” While Officer Murphy was saying this, Complainant 2 repeatedly says, “bye,” and “get out of my face.”

Officer Murphy asked Complainant 2, “Would you rather I arrest you for it right now, or you want to listen?” Complainant 2 stated, “You can’t arrest me . . . I’m in my house.” Officer Murphy asked him, “When you got out of your car, what did you say when you got out of your car? Now be a man and admit what you said.” Complainant 2 again asked Officer Murphy to “please get out of my house.” Officer Murphy again asked, “Okay, so do you understand that if you [swear out in the street again] you’re going to get arrested?” Complainant 2 refused to engage with Officer Murphy on the subject and tells him that Officer Murphy was “going to be on YouTube tonight.” Again, Officer Murphy asked, “Do you understand?” Complainant 2 responded, “I would like you to leave the house.” Officer Murphy stated, “Do you understand that you’re going to be arrested?” Again, Complainant 2 stated, “I would like you to leave, please.” Officer Murphy then says, “All right I’ll tell you what, we are going to just arrest you now.” At this point, the video footage ends.

During the exchange, Complainant 2’s girlfriend can be heard in the background asking Officer Murphy to leave. Officer Murphy responded by telling her to “shut up”.

Complainant 2 was charged with Disorderly Conduct (PL §240.20). The charge was later dismissed.

2. The Agency's Investigation and Determination

On February 25, 2020, Complainant 2 filed a complaint against Officer Murphy. The video taken by Complainant 2 was provided to the department. CPD determined that the allegation of misconduct was substantiated. This same complaint was forwarded to the District Attorney's Office. On February 25, 2020, the Mayor of Cohoes contacted the Public Safety Commissioner Ward to inform him that the Albany County District Attorney's Office separately had alerted him to the above incident. At a meeting between Commissioner James Ward, Officer Murphy, and Lt. Keefe, Commissioner Ward admonished Officer Murphy for the conduct depicted in the video. Lt. Keefe stated that "there have been a few situations similar to this," and it was "becoming a pattern." This discussion was documented in a summary note from the CPD dated February 25, 2020.

On March 12, 2020, Commissioner Ward spoke again to Officer Murphy. Officer Murphy's response was that he understood that he needed to have "less arguing/debating," be "more decisive, less personal, less confrontational, [and] more tolerant." Commissioner Ward advised Officer Murphy that the next time he had an incident like this he would take formal disciplinary action.

3. OAG's Conclusions Regarding Complainant 2

We agree with CPD's substantiated finding of misconduct. As discussed below, we also find that Officer Murphy's conduct violated the Fourth Amendment in two respects.

a. Unlawful Arrest

Officer Murphy unlawfully arrested Complainant 2 in violation of the Fourth Amendment because there was no probable cause that he committed the violation of disorderly conduct. As was the case with Complainant 1, Complainant 2 at most spoke isolated obscenities towards Officer Murphy, and the dispute was confined to him and Officer Murphy. The Court of Appeals has repeatedly made clear that an arrest for disorderly conduct is not justified under these circumstances. *See People v. Gonzalez*, 25 N.Y. 3d 1100 (2015); *People v. Baker*, 20 N.Y. 3d 354, 363 (2013).

b. Unlawful Entry

The Fourth Amendment has "drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *People v. Levan*, 62 N.Y.2d 139, 145 (1984). Accordingly, "seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980).

When Officer Murphy entered Complainant 2's home without the consent of Complainant 2 and arrested him inside, he violated the Fourth Amendment by crossing the threshold of the home without a warrant. *See U.S. v. Allen*, 813 F.3d 76, 78 (2d Cir. 2016).

The warrantless entry and arrest cannot be justified by exigent circumstances, including hot pursuit. Complainant 2 was alleged to have committed no more than a noncriminal violation and there was no risk of destruction of evidence, escape from the home, or imminent harm of violence. *See, e.g., Lange v. California*, 141 S.Ct. 2011, 2017 (2021). In addition, Officer Murphy admittedly had not formed the intent to arrest Complainant 2 until after an argument inside his home, so the exception for “hot pursuit” does not apply. *See United States v. Corder*, 724 Fed. Appx. 394, 402-403 (6th Cir. 2018), *cert. denied*, 138 S.Ct. 2632 (2018) (finding that government failed to establish that officer was in hot pursuit given officer’s admission at trial that “he had not decide[d] to arrest the suspect until after he reached across threshold and [the suspect] resisted” and that suspect’s “alleged disorderly conduct was a non-ongoing, non-violent misdemeanor that lacked any destructible physical evidence”).

C. Complaint 3

Complaint 3 involves a traffic stop that escalated into a use of force incident involving Officer Murphy’s repeated use of his Taser on the driver in the presence of the driver’s 12-year-old daughter.

The following facts and conclusions are derived from our review of CPD’s IA investigative materials, CPD documents associated with the incident, CPD taser training materials, and interviews with Complainant 3 (a Black male in his 50s), Complainant 3’s 12-year-old daughter, who witnessed the incident, and Officer Murphy.

1. Factual background

On May 21, 2020, at approximately 10:10 pm., Complainant 3 was stopped on Congress Street by Officer Murphy for multiple traffic violations. He was issued tickets for Operating a Motor Vehicle without stop lamp (VTL §374(40)(A)); Unsafe Turn/Failure to Signal (VTL §1163), Operating a Motor Vehicle with Improper Plate (VTL §402), Operating a Motor Vehicle without Insurance (VTL §319), Operating an Unregistered Motor Vehicle (VTL §401), and License Registration violation (VTL §509). The Complainant was also charged with crimes of Resisting Arrest (PL §205.30) and Obstructing Governmental Administration (PL §195.05). According to court records, the Complainant pled guilty to a violation of Disorderly Conduct (PL §240.20) and paid a fine.

According to Complainant 3, he was on his way to an on-call job in Albany as part of his employment at an HVAC company. He was accompanied by his 12-year-old daughter, who otherwise would have been home alone.

Officer Murphy, who had been sitting stationary on Congress Street just north of Columbia Street in Cohoes, observed that Complainant 3’s passenger side stop lamp was not working. Officer Murphy ran the license plates and verified with dispatch that the plate information did not match the vehicle.

Officer Murphy and Complainant 3 and his daughter provided divergent accounts of what occurred next.

According to Officer Murphy, when he approached Complainant 3’s car, Complainant 3 was “immediately yelling and swearing about being pulled over” and was “so irate that he was

unable to produce his vehicle registration.” [Murphy Tr. 96]. After approximately one minute, Complainant 3 produced his registration, and he tried to aggressively slam it into Officer Murphy’s hands, but it fell on the ground. Officer Murphy ordered Complainant 3 to get out of his vehicle, retrieve the registration from the ground, and get back in his car. Complainant 3 complied with this order. When Complainant 3 got back in his car, his left leg remained outside of the car, and he was holding the door open with his foot. [Murphy Tr. 97].

According to Officer Murphy, he ordered Complainant 3 to put his leg back in his car and close the door several times due to “safety concerns,” but Complainant 3 refused. Then, Officer Murphy ordered Complainant 3 to step out of the vehicle, which he claimed Complainant 3 also refused to do. Officer Murphy then attempted to close the driver’s side door while Complainant 3’s foot was still outside of the car. According to Officer Murphy, when he attempted to close the door, Complainant 3 kicked him in the left leg. [Murphy Tr. 101-102].

According to Officer Murphy, at this time he called for backup, drew his Taser, and ordered Complainant 3 to place his hands behind his back or he would be tased. When Complainant 3 refused several times, Officer Murphy deployed the taser in drive stun mode into Complainant 3’s left rib cage area while he and his daughter remained seated in the car. [Murphy Tr. 98-99].

According to Officer Murphy, Complainant 3 made “several attempts to grab the taser.” Officer Murphy stepped back, placed the cartridge back on the taser, and advised Complainant 3 again that he would be tased if he did not place his hands behind his back. After several more warnings and refusals, Officer Murphy tased Complainant 3 two more times as he sat in the car. In total, Complainant 3 was tased three times. [Murphy Tr. 117:23-25]. Complainant 3 then placed his hands behind his back and was handcuffed. At some point during this encounter, other officers arrived at the scene. [Murphy Tr. 122-123].

According to Officer Murphy, upon being pulled from the car after being handcuffed, Complainant 3 “beg[a]n thrashing about and attempting to pull away from the officers,” so he was taken to the ground. From there, he was placed in a police vehicle. [Murphy Tr. 120-121].

The accounts provided by Complainant 3 and his daughter differ.

According to Complainant 3, after he provided his license and insurance, Officer Murphy informed him that he was going to have to tow his car. Complainant 3 asked if he and his daughter could get out of the car if it was being towed, and Officer Murphy ordered him to stay inside and leave his hands in front. Complainant 3 complied. Then Officer Murphy ordered him out of the car. Complainant 3 started to get out of the car when Officer Murphy shut the door on his left foot. Complainant 3 screamed, “My foot!” Officer Murphy stated, “Get back in the f---ing car.” Complainant 3 responded, “But you just said to get out the car,” and Officer Murphy replied, “And now I’m telling you to get back in the f---ing car.” Subsequently, Officer Murphy again asked Complainant 3 to get out of the car. Complainant 3 asked Officer Murphy if he would give him a moment so that he could get some things out of his car. Officer Murphy pulled out his Taser and said, “You not going to get out of the car?” Complainant 3 responded, “Yeah, can I get my phone so I can call my job and tell them I’m not going to make it? Because I’m the on-call.” Officer Murphy replied, “No, get out of the car.” Complainant 3 stated, “Alright, I’m going to get out of the car.”

Complainant 3 stated that he said he would get out of the car, but before he could do so, Officer Murphy tased him, grabbed him, threw him out of the car, put his knee on his head, and other police officers who had arrived started kicking him before placing him in handcuffs. The Complainant denied trying to grab the Taser.

According to Complainant 3's daughter, Officer Murphy gave him several inconsistent commands to get out of the car and remain inside the car. Officer Murphy ordered her father to step out of the car, then step in the car, and then told him that if he did not get out of the car, he was going to tase him. She stated that her father asked, "Why you keep telling me to get in and out of the car?" Then, Officer Murphy "just tased him, inside the car even though I was [] screaming 'no, no please don't,' out of fear." According to the daughter, her father was tased and then taken out of the car where he was then thrown to the ground and kicked by officers.

Complainant 3's daughter began recording the interaction on her cell phone after Complainant 3 had been taken to the ground. The video starts late into the encounter and does not depict the force used by Officer Murphy or other officers.

Photographs were taken of Complainant 3's injuries at the CPD station. From the Taser, he suffered one puncture wound to his front left rib cage area and one puncture wound next to his left nipple. He also had a bruise below his left eye, and a bruise and gash to his left elbow. He was evaluated by Empire Ambulance.

Complainant 3 was released on appearance tickets. He went to the hospital the next day, complaining of pain to his shoulder, which he attributed to Officer Murphy's repeated refusal to loosen the handcuffs upon request.

On June 1, 2020, Complainant 3 made a formal complaint against Officer Murphy. While an internal investigation was commenced, it was never formally completed and no resolution was recorded, apparently because the investigating officer was waiting for contact from a civil attorney engaged by Complainant 3 or his family.

2. OAG's Conclusions Regarding Complainant 3

Officer Murphy's use of his Taser in drive-stun mode on Complainant 3 as he sat in his car was not objectively reasonable under the Fourth Amendment and was not in compliance with CPD's Use of Force policy.

CPD's Use of Force Policy states that "force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of oneself or another." Under the Fourth Amendment and CPD policy, "a police officer may use only such force as is 'objectively reasonable' under the circumstances . . . judged by a reasonable officer on the scene." CPD's Taser Policy states that "the force applied by means of the Taser must be reasonable and necessary."

When determining whether force is reasonable, CPD instructs its officers to weigh several non-exhaustive factors, including the severity of the crime or circumstance, whether the suspect poses an imminent threat to the safety of officers or others, and whether the suspect is actively resisting or attempting to evade arrest by flight. These factors parallel those established by the Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), and succeeding cases.

Here, Complainant 3 was alleged only to have committed non-criminal traffic violations and potentially the misdemeanor of Obstruction of Governmental Administration at the time that the Taser was first deployed. Even crediting Officer Murphy's account of the interaction over that of Complainant 3 and his daughter, at the moment in which Officer Murphy first used the Taser, Complainant 3 was at most refusing to comply with Officer Murphy's command to put his hands behind his back or exit his vehicle after Officer Murphy previously had given him contradictory commands to get out of the car, then get back into the car, and to close the car door. He was seated next to his 12-year-old daughter and was not an active threat to Officer Murphy, who already had called for backup from other officers.³ Consequently, the use of the Taser was unnecessary, not proportionate to any resistance posed by Complainant 3, and thus unreasonable under the circumstances. See *Penree by Penree v. City of Utica*, 694 Fed.Appx. 30 (2d Cir. 2017) (holding that a reasonable jury could find that using a Taser on a man who was accused of a non-criminal violation and was standing in his house but not complying with officers' requests was excessive); *Hulett v. City of Syracuse*, 253 F. Supp. 3d 462 (N.D.N.Y. 2017) (holding that a reasonable jury could find that using a Taser on a disabled man who was ignoring officers' commands to exit a bus was excessive).

D. Complaint 4

In January 2021, a CPD internal investigation concluded that Officer Murphy had received an allegation of criminal activity from a member of the public but had not appropriately informed other officers of that allegation, and that he had not been truthful during the CPD's internal investigation of the incident. For this violation, Officer Murphy received a written reprimand. After reviewing the investigative file and interviewing Officer Murphy, we agree with the CPD's determination.

E. Complaint 5

In July 2021, a CPD internal investigation concluded that Officer Murphy had revealed investigative information to a member of the public in violation of CPD's Rules of Conduct. After reviewing the investigative file and interviewing Officer Murphy, we agree with the CPD's determination.

F. Complaint 6

In September 2021, a CPD internal investigation concluded that that Officer Murphy had not been truthful about filing worker's compensation paperwork and had falsely accused a CPD employee and a town employee of having lost that paperwork, in violation of §§ 102 (conduct unbecoming an officer); 116 (truthfulness); 123 (immoral conduct). For this misconduct, Officer Murphy served a 30-day suspension without pay. After reviewing the investigative file and interviewing Officer Murphy, we agree with the CPD's determination.

³ While Officer Murphy contended that Complainant 3 kicked him with his left leg while sitting in the driver's seat when Officer Murphy sought to close the car door, this purported action occurred before he ordered Complainant 3 to exit the vehicle, and all witnesses agree that at the time Officer Murphy used the Taser, Complainant 3 was sitting in his car.

G. Off-duty Traffic Incidents

In 2018 and 2023, Officer Murphy was involved in two traffic disputes that raise serious concerns regarding his temper and self-restraint, and whether he engaged in conduct unbecoming of an officer under CPD policy.

1. Complaint 7

On January 4, 2018, Officer Murphy and another individual (hereinafter “Complainant 7”) were driving on Route 787, when Complainant 7 apparently “cut off” Officer Murphy’s car. Officer Murphy followed Complainant 7. According to an eyewitness, both drivers were zigzagging on the highway at a high rate of speed for several miles. Both exited the highway. At a stop light, according to the eyewitness, the Complainant stepped out of his vehicle, approached the vehicle driven by Officer Murphy and through the window attempted to punch Officer Murphy. Officer Murphy then stepped out of his vehicle and a fight ensued. The witness also jumped out of his car and tackled the Complainant 7 to the ground, at which point Officer Murphy got on top of the complainant and told the witness that he was a police officer and to call 911. The witness further stated that it appeared Officer Murphy was just holding him down. According to the Complainant, he was punched and kicked repeatedly by Officer Murphy while on the ground. His medical records indicate that he suffered an ocular fracture, a concussion and a broken nose. Complainant 7 was arrested and charged with Resisting Arrest, Assault on a police officer, and Reckless driving. He pled guilty to charges of Disorderly Conduct, PL §240.20(3) and Moving from Lane Unsafely, VTL §1128A.

While Complainant 7, rather than Officer Murphy, was charged with criminal offenses stemming from this incident, Officer Murphy’s decision to engage with Complainant 7 for several miles down the highway while driving in an aggressive and risky manner reflects lapses in judgment and may have violated CPD’s Conduct Unbecoming policy.

2. Complaint 8

The second incident occurred on April 23, 2023. According to the driver (“Complainant 8”), he was on his way to work at 7:30 in the morning at an auto shop in a nearby town. Complainant 8 was on Route 32 when a car driven by Officer Murphy approached at a high rate of speed and nearly rear-ended him. Complainant 8 pressed his brakes to keep Officer Murphy’s car at a distance. After exiting Route 32, at a light, Officer Murphy cut off the Complainant’s car and, according to Complainant 8, he had to act quickly to avoid an accident. Complainant 8 proceeded to drive to his worksite which was less than a mile from the Route 32 exit. As he exited his car, he saw that Officer Murphy had followed him into the parking lot and was taunting him from his car. The Complainant had an ax that he stated he had brought to work to sharpen, which he retrieved from his car. Officer Murphy stated: “That’s a good way to get killed, I’ll shoot you, I am a cop.”

The Complainant stated to OAG personnel that he was “shocked to learn that this person was a cop and [I] felt that this officer was abusing his authority by his actions on the road and his

threat.” Officers from Bethlehem PD responded and stated to Complainant 8 that, because he had an ax, Officer Murphy could seek criminal charges against him accusing him of threatening him with a weapon. Complainant 8 was advised that Officer Murphy would not pursue criminal charges if Complainant 8 likewise would not pursue charges. Complainant 8 stated to OAG personnel that he felt he had no choice but to withdraw his complaint to Bethlehem PD.

As in the 2018 incident, Officer Murphy escalated a traffic incident and followed another driver in an aggressive and risky manner. He then initiated an encounter with that driver that could have resulted in violence. These decisions reflect serious lapses in judgment and a lack of self-control. Officer Murphy’s conduct with respect to this incident appears to have violated CPD’s Rules of Conduct §§ 102 (conduct unbecoming an officer) and 132 (respect for civilians).

II. CONCLUSIONS AND RECOMMENDATIONS

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, Officer Murphy engaged in repeated acts of inappropriate conduct:

- Officer Murphy’s conduct with respect to Complainants 1, 2, and 3 violated the Fourth Amendment in several aspects. He arrested Complainants 1 and 2 without probable cause. He used excessive force against Complainant 1 by pushing his head into the stairwell of the CPD station while Complainant 1 was handcuffed and used a Taser against Complainant 3 who at most was passively refusing to comply with his request to exit the vehicle. He also entered Complainant 2’s dwelling without a warrant or exigency and refused to leave after this was clearly explained to him, as documented on video of the encounter.
- With respect to Complaints 4, 5, and 6, Officer Murphy was not truthful with other CPD personnel.
- With respect to the “road rage” incident in Complaint 8, Officer Murphy demonstrated poor judgment and a lack of self-control in following and confronting another driver and likely violated CPD’s Rules of Conduct §§ 102 (conduct unbecoming an officer) and 132 (respect for civilians).

We recommend that CPD take the following remedial actions to address Officer Murphy’s conduct:

- Commence an administrative investigation into Officer Murphy’s conduct with respect to Complaint 8 (the April 2023 off-duty incident). Should the agency substantiate this allegation, we recommend that the penalty take into account Officer Murphy’s prior misconduct.
- Given Officer Murphy’s repeated misconduct and the risk that future misconduct may pose to the public and to CPD, we recommend that he be assigned to administrative duties that do not involve contact with the public.

- Given the frequency and severity of the incidents described above, CPD should consider imposing discipline, and potentially termination, based on Officer Murphy’s pattern of misconduct, to the extent such discipline is consistent with the Civil Service Law and not precluded by the 18-month administrative statute of limitations.
- Ensure that clear-cut incidents of misconduct like what happened to Complainant #2 (which involved documented discourtesy, unauthorized entry into a home, and false arrest), result in discipline rather than a warning, especially where a similar course of conduct has been noted.
- Update CPD’s Taser policy to provide additional guidance on the circumstances in which officers may deploy a Taser. For example, the New York City Police Department’s Patrol Guide states that a Controlled Electronic Weapon (or Taser) “should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s)” and that “[d]rive stun mode should not be the primary method of use unless exceptional circumstances exist.”⁴

We request pursuant to Executive Law § 75(5)(c) that CPD respond within 90 days of the actions it is taking in response to this letter.⁵

Thank you,

LETITIA JAMES
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⁴ New York City Police Department, Patrol Guide 221-08, available at https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide4.pdf.

⁵ Executive Law § 75(5)(c) provides that “[t]he head of any covered agency shall advise the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly within ninety days of the issuance of a report by the law enforcement misconduct investigative office as to the remedial action that the agency has taken in response to any recommendation for such action contained in such report.”