



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

January 21, 2025

Chief of Police Steve Rotunno
Cicero Police Department
6200 New York Highway 31
Cicero, New York 13039

Via Email

Re: Executive Law § 75(5)(b) Referral of Police Officer Kyle Harrington
OAG Matter No. 1-816496728

Dear Chief Rotunno,

We have reviewed your agency's November 29, 2023 referral of Officer Kyle Harrington pursuant to Executive Law § 75(5)(b). Based on our review, we have not made a finding that Officer Harrington engaged in a pattern of misconduct, use of excessive force, or acts of dishonesty with respect to the referred complaints.

However, we do find that with respect to Complaint Number 2023-4, Officer Harrington detained an individual without proper justification and violated the courtesy policy of the Town of Cicero Police Department (CPD), and with respect to and 21-312216, he repeatedly used profanity towards a complainant in front of a minor, also in violation of CPD policy. Our findings and recommendations regarding these incidents are described below. We request a written response within 90 days as to CPD's actions in response to our recommendations.

I. FINDINGS

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

A. IA 21-312216

On June 6, 2021, Complainant 1-A filed a lawsuit against Cicero Police Department alleging that Officer Harrington used excessive force while arresting her, injuring her clavicle which required medical treatment. Body-worn camera (BWC) footage shows that Officer Harrington responded on June 6, 2021, to a report that Complainant 1-A was violating an order of protection by going to the home of her daughter and her ex-partner, Complainant 1-B. While

speaking with Complainant 1-B and his wife in the presence of the complainants' minor child, Officer Harrington used profane language to address Complainant 1-B, threatening to leave (Harrington BWC 12:03), and demanding that he stop talking (Harrington BWC 12:23). Later, while Officer Harrington was in his vehicle, he observed Complainant 1-A exit her driveway, walk up to Complainant 1-B's truck, and reach inside the driver's side window. Officer Harrington rushed to the truck and pulled Complainant 1-A back from the truck. (Harrington BWC 27:26.) Although CPD Internal Affairs determined that the allegation of excessive force was unfounded, it did not address Officer Harrington's discourtesy and use of profane language.

We concur that Officer Harrington's force was not excessive. However, Section 37 of Cicero Police Department's Police Rules of Conduct Policy Number A-14.100 prohibits members from using "coarse, violent, profane or insolent language or gestures" and directs them to be "tactful in the performance of their duties, [] control their tempers, and exercise the utmost patience and discretion." Officer Harrington swore at Complainant 1-B multiple times in the presence of a minor child, escalating tensions at an already sensitive domestic dispute and violating CPD's courtesy policy.

B. IA-2023-4

On June 19, 2023, Complainant 4-A filed a complaint alleging that Officer Harrington entered his home without a warrant as CPD officers were responding to a report of a suicidal male with a firearm made by Complainant 4-A's son, Complainant 4-B. While Officer Harrington and Sgt. Leo were at the residence, Complainant 4-A's daughter, Complainant 4-C, approached the house. Sgt. Leo called her back and told her not to go to the house. (Leo BWC at 0:10-0:45.) She complied but then, from a distance, saw her brother, Complainant 4-D, start approaching the house. (*Id.* at 0:45-1:00.) Sgt. Leo and Officer Harrington followed Complainants 4-C and 4-D as they approached the house but did not direct them to stop their approach. When they stopped outside of the house, Sgt. Leo asked for Complainant 4-D, who was speaking to his father on his cell phone, to tell his father to "come outside." (*Id.* at 2:25-2:45.) When the father indicated he would not come outside, Sgt. Leo told Complainants 4-C and 4-D, "Do not go into the house or you will both be arrested." *Id.* Neither complainant moved, but Complainant 4-D mumbled, "Okay, arrest me." Officer Harrington then asked Complainant 4-D, "Do you have an issue listening?" and placed him in handcuffs, with assistance from Sgt. Leo. Complainant 4-D did not move or resist. (Harrington BWC at 4:00-4:30.)

While walking Complainant 4-D to the patrol car, Officer Harrington told the complainant, "You need to learn to shut your mouth. You're 16; you're clearly not as smart as you think you are." (*Id.* at 5:09-5:24.) Shortly thereafter, Complainant 4-D's mother, who appeared distraught, approached the patrol car. Officer Harrington told the mother that Complainant 4-D "thinks that he doesn't need to listen to the police. And he's trying to go . . . he's trying to go into a house where your ex-husband may or may not have a shotgun. But this genius and your daughter . . ." (*Id.* at 5:45-6:18.) At that point, Officer Harrington ran back to the home and assisted other officers with placing Complainant 4-A in custody.

After Complainant 4-A's arrest, Officer Harrington received authorization from Sgt. Leo to release Complainant 4-D and he removed the complainant from the patrol car. But before uncuffing him, Officer Harrington told him, "You were given a lawful order to stay away from the house, to not go in the house, and you think you're going to laugh at the Sergeant." (*Id.* at 10:00-10:05.) To this, Complainant 4-D said he has the right to laugh, prompting Officer Harrington to argue with the minor as to whether the police should have let his father kill himself. (*Id.* at 10:05-10:45.) When Complainant 4-C interjected into the conversation, Officer Harrington threatened to place her in the back of the patrol car but did not ultimately do so. (*Id.* at 10:45-12:30.) Sgt. Leo ultimately uncuffed Complainant 4-D and released him without charges. Upon investigation, CPD's IA found no violations of department policy or procedures and closed the complaint as unfounded.

After reviewing BWC from the incident, our Office finds that although there was an applicable exception to the warrant requirement that authorized Complainant 4-A's seizure under New York Mental Hygiene Law Section 9.41,¹ Officer Harrington lacked any basis to detain Complainant 4-D and engaged in discourteous and argumentative behavior towards him in violation of CPD's courtesy policy. Although "not every use of handcuffs automatically renders a stop an arrest requiring probable cause to satisfy Fourth Amendment reasonableness," police must at least have "a reasonable basis to think that the person detained poses a present physical threat and that handcuffing is the least intrusive means to protect against that threat." *United States v. Bailey*, 743 F.3d 322, 340 (2d Cir. 2014). There was no reasonable basis to detain Complainant 4-D. Although Officer Harrington asserted in his incident narrative that Complainant 4-D's statement "OK, arrest me" was tantamount to disobeying Sgt. Leo's order to not go into the house, it is not. Complainant 4-D did not in fact go into—or make any physical movements suggesting an attempt to go into—the house after being directed not to do so. His retort is the type of "verbal criticism and challenge directed at police officers" that is protected by the First Amendment. *City of Houston v. Hill*, 482 U.S. 451, 461 (1987); *see also Kerman v. City of New York*, 261 F.3d 229, 241–42 (2d Cir. 2001) "Speech directed at police officers will be protected unless it is 'likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.'"). Accordingly, Officer Harrington's detention of Complainant 4-D was unlawful.

Officer Harrington also unnecessarily prolonged the detention. A valid detention must "last no longer than is necessary to effectuate the purpose" of the detention. *Floyer v. Royer*, 460 U.S. 491, 500 (1983). Here, after Complainant 4-A was taken into custody and despite receiving authorization to release Complainant 4-D, Officer Harrington kept Complainant 4-D handcuffed for an additional nine minutes to engage in an extended argument with both him and his sister—two minors who had just experienced a highly traumatic incident involving their father—about obeying orders. Officer Harrington's initial detention and prolongment beyond even the stated purpose of the detention of Complainant 4-D were unlawful.

In addition, Officer Harrington's disparagement of the minor son's intelligence, his constant reminders to him of his father's suicidal threats, and his engagement in arguments about

¹ *Torcivia v. Suffolk Cnty.*, 17 F.4th 342, 357 (2d Cir. 2021) (providing that the apprehension of an individual who has threatened suicide and arms inside home meet "special needs" warrant exception).

the incident lacked the “tact” demanded by CPD’s courtesy policy and unnecessarily escalated an already traumatic event.

II. RECOMMENDATIONS

While these individual instances of discourtesy and unlawful detention do not amount to a pattern of misconduct, they should be addressed with additional training of Officer Harrington as to when individuals may be handcuffed and detained and how to appropriately and with courtesy respond to domestic incidents, particularly those involving minors.

Pursuant to Executive Law § 75(5)(c), please notify the OAG within 90 days of any actions your agency has taken in response to our recommendations.

Sincerely,

LETITIA JAMES
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By: Lillian Marquez
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