



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

June 20, 2025

Police Commissioner Jessica Tisch
New York City Police Department
One Police Plaza
New York, NY 10038

Via Email

Re: Letter regarding Executive Law 75(5)(b) Referral of Detective Eric Bernard,
OAG Matter No. 1-794795127

Dear Commissioner Tisch,

The Office of the New York State Attorney General ("OAG") has reviewed your agency's referral of Detective Eric Bernard pursuant to Executive Law Section 75(5)(b). Based on our review, we have concluded that Det. Bernard engaged in a pattern of misconduct related to his participation in stops, frisks, and searches, in contravention of the Fourth Amendment of the U.S. Constitution, Article I, Section 12 of the New York State Constitution, and NYPD rules and procedures.

Our findings are based on a review of following incidents:

- CCRB 202003552: On May 25, 2020, Det. Bernard, Sergeant Eloise Walter, and Police Officer Christopher Chin, all assigned to the 46th Precinct anti-crime team in the Bronx, were patrolling in an unmarked police vehicle driven by Police Officer Agon Pukaj. Sgt. Walter and PO Chin exited the vehicle first and pursued Individual One, who they stopped with Det. Bernard. PO Chin frisked Individual One, grabbed his phone, handed it to Det. Bernard, and continued to frisk then search Individual One. Det. Bernard obtained the passcode to the phone from Individual One, searched through password protected contents of the phone and manipulated through various pages of the phone. He acted as though he was returning the phone but withheld it when Individual One reached for it. He ultimately returned the phone.

A panel of the CCRB met on April 20, 2022 and submitted its findings to NYPD on April 21, 2022. The CCRB substantiated findings that Det. Bernard, PO Chin and Sgt. Walter abused their authority by stopping Individual One without reasonable suspicion of criminal activity, that PO Chin abused his authority when he frisked and searched

Individual One without legal justification, and that Sgt. Walter abused her authority when she supervised and implicitly authorized PO Chin's illegal frisk and search. The CCRB further found that Det. Bernard searched Individual One's phone unlawfully. Finally, the CCRB found that Det. Bernard and PO Chin provided misleading official statements to the CCRB in advancement of an apparent attempt to conceal the encounter, which the CCRB supported with several facts suggesting an awareness that their actions were against department policy.

The CCRB recommended that charges be served on Det. Bernard. However, NYPD administratively closed the case. NYPD informed OAG that the case was administratively closed "due to its receipt [of CCRB's findings] within 60 days of" the expiration of the statute of limitations for commencement of disciplinary action under Civil Service Law § 75, which provides eighteen months. In this case, NYPD received CCRB's findings on April 22, 2022 and the administrative statute of limitations expired more than one month later, on May 25, 2022.¹

- CCRB 202300450: On January 13, 2023, Individual Two was in the rear seat of an Uber, driven by Individual Three. The vehicle was stopped within the confines of the 48th Precinct in the Bronx by Det. Bernard and Police Officers Daniel Demarco and Michael Phipps, who were assigned to the Neighborhood Safety Team, because Individual Two was not wearing a seatbelt. Det. Bernard ordered him out of the vehicle and immediately conducted a frisk. He brought Individual Two to the back of the vehicle and obtained his pedigree information while POs Demarco and Phipps searched the rear seat of the Uber. Nothing was recovered. Individual Two was released without a summons.

A panel of the CCRB met on April 17, 2024 and submitted the findings to NYPD on April 18, 2024. CCRB substantiated allegations that Det. Bernard abused his authority when he unlawfully frisked Individual Two, and that POs Demarco and Phipps abused their authority when they unlawfully searched the vehicle.

CCRB recommended that NYPD provide Formalized Training to Det. Bernard, however NYPD informed OAG that the case was administratively closed "due to the receipt of [CCRB's findings] within 60 business days" of the expiration of the statute of limitations.

¹ The NYPD Independent Federal Monitor has expressed concern that in 2022, the former Police Commissioner dismissed at least 425 substantiated misconduct cases on the grounds that they were submitted to NYPD too close in time to the statute of limitations date. "Of particular concern to the Monitor, 48 of the cases were findings of improper stop, question, frisk or search of person ("SQFS") by the officer." This case involving Det. Bernard appear to be one of those 48 cases. The Monitor further observed that NYPD did not impose non-disciplinary remedial measures, like training, that would not have been impacted by the statute of limitations for discipline when it administratively closed these cases, which happened here. New York Police Department Monitor, Twenty-First Report of the Independent Monitor, NYPD MONITOR (Sept. 4, 2024), available at https://www.nypdmonitor.org/wp-content/uploads/2024/09/21st-Monitor-Report-General-Compliance-Report_Stamped.pdf.

NYPD received CCRB's findings on April 18, 2024 and the administrative statute of limitations expired almost three months later, on July 13, 2024.

- IA Log 2023-9656: NYPD's Internal Affairs Bureau investigated an incident involving Det. Bernard's use of force against Individual Four on March 26, 2023, after IAB was notified pursuant to NYPD's mandatory force reporting procedures. We reviewed BWC footage, video surveillance footage, and NYPD documents related to the incident and IAB's internal investigation.

On March 26, 2023 at approximately 12:20am, Det. Bernard was working with Officer (now Detective²) Carolyn Daley and Police Officer Clarence Brown, as part of the Neighborhood Safety Team. According to PO Daley's Stop Report, they were patrolling along East Tremont Avenue and Valentine/Anthony Avenue within the confines of the 46th Precinct, where just over twenty-four hours earlier NYPD had confirmed gunfire after a ShotSpotter activation. Body-worn camera footage shows that Det. Bernard stopped his police vehicle in front of a bodega on East Tremont for several seconds before POs Daley and Brown exited and walked into the bodega. Det. Bernard followed approximately 30 seconds later. They walked directly to the back and approached Individual Four, who was standing next to another person and appeared to be texting on his cell phone when the officers approached. Individual Four immediately provided them with identification. POs Brown and Daley each proceeded to frisk Individual Four and Brown grabbed his arm. In response, Individual Four pulled away from the officers and the incident quickly escalated. Individual Four resisted the officers' attempts to restrain him and a physical struggle ensued. POs Brown, Daley, and Det. Bernard deployed their tasers against Individual Four multiple times in drive stun mode, recovered a firearm from his person, and arrested him, charging him with criminal possession of a weapon in the second degree, a class C violent felony, and other charges. Individual Four was hospitalized because of the use of force.

PO Daley wrote in her Stop Report that the officers observed Individual Four standing inside the store "engaging in what appeared to be a hand-to-hand drug sale." She reported that the officers approached Individual Four, engaged him in conversation, and that while the officers were "conversing" with him, he "began blading his body" away from police view, and that he was "guarding the left side of his chest with his arm in an attempt to obstruct the officers view." PO Daley claimed that she observed a "bulky square object" protruding from the inside of his vest when he clenched his left arm towards his chest, that he dropped to the ground, and she frisked him. The Threat, Resistance, or Injury (TRI) Report prepared by Captain Odell Despot provides a similar narrative. PO Daley's narrative implies that Individual Four attempted to obstruct the officers' view of his left side while the officers were merely "conversing him," that PO Daley alone frisked him, and that she did so only after he dropped to the ground.

² Det. Daley was promoted on November 21, 2023.

The video footage contradicts this narrative in several respects. First, the justification for the officers' initial approach is not credible. It would have been impossible for the officers to have observed a hand-to-hand interaction from their vantage point: they were seated inside their vehicle, dozens of feet away from where Individual Four was standing, his body from the neck down blocked by several shelves in the store. When they entered the store, Individual Four and the individual standing with him were on their cell phones, and there was no visible "bulging object" or "bulky square object" protruding from inside Individual Four's vest or pocket area. Additionally, the reports do not include several critical facts: that upon approaching Individual Four, POs Daley and Brown each frisked Individual Four within one minute of the encounter, that PO Brown grabbed Individual Four's arm, and that Individual Four began to pull away from the officers only in response to PO Brown grabbing Individual Four's arm and frisking him.

Individual Four, who had bail set at his criminal court arraignment, was released from custody on his own recognizance on March 31, 2023. Individual Four was not indicted on the felony charges and the criminal case against him was dismissed and sealed on August 22, 2023.

The officers' approach and frisks of Individual Four appear to be unlawful given the inconsistencies between NYPD documents and video footage depicting the encounter, including video surveillance from the store and body-worn camera footage. The reports appear to have been written to overcome constitutional deficiencies.

The NYPD, which documented its review of the officers' written reports, BWC footage, and video surveillance, did not note any of the above inconsistencies, assess the legality of the stop and frisks, or refer the matter to the CCRB. Instead, they found that the officers used force in accordance with the Department's guidelines and that it was reported appropriately.

- CCRB 202302519: This investigation was conducted by CCRB's Racial Profiling and Biased Policing Unit. On March 17, 2023, Individual Five, a Black male, was walking within the confines of the 46th Precinct towards the Fordham Road subway station when Bernard, Det. Daley (then a police officer) and Officer James Geberth pulled up to him in an unmarked vehicle. Det. Bernard, who was driving, continued to drive alongside Individual Five. When Individual Five walked through parked cars and began to cross the street, PO Daley approached him and stopped him, and was followed by Geberth. Det. Bernard exited the vehicle and walked toward Individual Five's right side. PO Daley frisked the front of Individual Five's coat and frisked and searched his coat pockets. Nothing was recovered. When Individual Five removed his earbuds and placed them in his pocket, Det. Bernard instructed him not to put his hand in his pocket and held on to his right forearm. PO Daley continued to frisk Individual Five. The encounter concluded when the officers entered their vehicle and drove away.

The CCRB submitted its findings to NYPD on July 30, 2024. The CCRB substantiated allegations that PO Daley abused her authority by initiating a stop of Individual Five, frisking him, and searching him without legal justification and that she was motivated in part by racial bias. Charges against Det. Daley are currently pending. While Det. Bernard

did not initiate the stop or search Individual Five, his participation in this encounter is consistent with the pattern we have identified.³

Based on the above incidents, we conclude that Det. Bernard engaged in a pattern of unlawful stops, frisks, and searches. In one incident, he and his partners used significant force after an initially unlawful encounter.

Det. Bernard began his career at NYPD in 2015. As an officer, he was part of the 46th Precinct's anti-crime team. In 2022, he was promoted to the rank of Detective, assigned to NYPD's Neighborhood Safety Team (NST) in the Bronx. The NST is a specialized unit in which officers engage in proactive enforcement.⁴ In February 2024, Det. Bernard took an assignment as administrative assistant to the executive officer of Patrol Borough Bronx.

In two of the cases described above, NYPD stated that it did not pursue disciplinary measures because the CCRB did not provide its findings within 60 business days of the expiration of the 18-month administrative statute of limitations. In her September 4, 2024 Compliance Report, the Independent Federal Monitor expressed concerns about this practice, which we share.⁵ It is our understanding that NYPD has changed its practice such that it no longer will automatically reject CCRB findings that are issued fewer than 60 business days prior to the expiration of the statute of limitations, which is a positive step.

In addition, with respect to those two substantiated cases, the NYPD did not provide training to Det. Bernard, even though training is not discipline and thus not subject to the statute of limitations for discipline. As the Monitor observed, "[m]any of the SQFS [Stop, Question, Frisk, Search] cases were ones where the CCRB had recommended training in lieu of discipline. Training and instructions can be imposed even after the 18-month SOL in Section 75, as they are not considered discipline under Section 75. Thus, each of those cases could have proceeded without being dismissed by the NYPD for SOL reasons."⁶

Finally, we note that these incidents occurred while Det. Bernard was assigned to the NST, which has been identified by the Monitor as making more improper *Terry* stops than patrol units.⁷

To address the issues described above, we recommend that NYPD provide Det. Bernard with formalized training related to the requirements of DeBour and the Fourth Amendment.

³ An allegation that Det. Bernard failed to provide his business card to Individual Five was unfounded.

⁴ New York Police Department Monitor, Nineteenth Report of the Independent Monitor, NYPD MONITOR (June 5, 2023), at 3-4, available at <https://www.nypdmonitor.org/wp-content/uploads/2023/06/NST-Report.pdf>.

⁵ New York Police Department Monitor, Twenty-First Report of the Independent Monitor, NYPD MONITOR (September 4, 2024) at 47, available at https://www.nypdmonitor.org/wp-content/uploads/2024/09/21st-Monitor-Report-General-Compliance-Report_Stamped.pdf.

⁶ *Id.* at 48.

⁷ *Id.* at 3.

Because the above incidents are beyond the 18-month statute of limitations, we are not recommending specific discipline as to Det. Bernard.

We request a written response from NYPD within 90 days pursuant to Executive Law § 75(5)(c), including documentation of training received.

Thank you,

LETITIA JAMES
Attorney General of the State of New York

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