



**Office of the New York State
Attorney General**

**Letitia James
Attorney General**

June 20, 2025

Via E-mail

Commissioner Alphonso Wright
Buffalo Police Department
68 Court Street
Buffalo, NY 14202

Re: Letter regarding Executive Law § 75(5)(b) Referral of Police Officer Justin Ayala
OAG Matter No. 1-793388847

Dear Commissioner Wright,

We have reviewed your agency's referral of Officer Justin Ayala pursuant to Executive Law Section § 75(5)(b). Based on our review, we conclude that Officer Ayala engaged in a pattern of excessive force and abuse of authority, including unprofessional conduct and an unjustified search.

I. Overview of Investigation

The department referred Officer Ayala to our office on February 5, 2022. The February 5, 2022 referral was based on five complaints. During the investigation, the Buffalo Police Department ("BPD") forwarded nine additional complaints it received between 2022 and 2024, after the referral was made. To investigate these incidents, OAG reviewed the agency's internal investigative and disciplinary files associated with each incident, the policies that governed the alleged misconduct, and Officer Ayala's disciplinary record. On October 9, 2024, OAG personnel interviewed Officer Ayala.

II. Findings

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

A. Incident 1, IC2023-008

On October 31, 2021, Officer Ayala responded to a Halloween party to assist officers during a fight call. Officer Ayala and others responded to the scene after one officer was struck by a civilian and requested back up. When Officer Ayala arrived, officers were struggling with that civilian on the ground, and Officer Ayala assisted with handcuffing him. BWC 2021-10-

31_0020- Ayala at 0:30-1:27. Body worn camera footage from other officers at the scene shows that near the area where officers were struggling with the civilian, there were several bystanders, one of which was Complainant 1. Complainant 1 was recording with his phone and tried to explain to officers that his friend was not resisting. An officer told Complainant 1 to “get back.” Complainant 1 was agitated about the treatment of his friend and moved closer to the struggle. Complainant 1 tried to talk to a female officer who was standing near the struggle, and she directed him to “get back.” Complainant 1 moved back. Another officer directed him to “get back,” and Complainant 1 responded, “I’m not.” That officer decided to detain Complainant 1. BWC 2021-10-31_0020- Lesniak at 0:30-1:44.

Officer Ayala saw officers taking Complainant 1 to the ground and ran over to assist. BWC 2021-10-31_0020- Ayala at 1:27-1:51. Complainant 1 was positioned on his stomach on the ground, and several officers were attempting to secure his hands and apply handcuffs while directing Complainant 1 to put his hands behind his back. Officer Ayala was on top of Complainant 1’s lower back and got ahold of Complainant 1’s left arm immediately. BWC 2021-10-31_0020- Ayala at 1:27-2:01. On the body-worn camera footage, officers can be heard shouting, “stop fucking resisting!” and “give me your fucking hand now!” A Lieutenant who had responded to the initial call looked on.

Less than ten seconds after Officer Ayala got ahold of Complainant 1’s left arm, Officer Matthew Serafini, who was standing by Complainant 1’s head, began to knee Complainant 1’s head and upper body before he was pulled back by another officer. BWC 2021-10-31_0020- Ayala at 2:01-2:14; BWC 2021-10-31_0020- Rogowski at 1:58-2:10. Officers continued to give Complainant 1 directives to put his right arm behind his back, and he responded twice, “I’m laying on it.” During his OAG interview, Officer Ayala testified that he did not hear Complainant 1 responding that he was unable to move his arm, but at least one officer indicated that he heard Complainant 1 during the internal investigation. Officer Serafini then told the other officers that Complainant 1 was reaching for his waistband. BWC 2021-10-31_0020- Ayala at 2:13-2:20. During the internal investigation, Officer Ayala and two officers at the scene recalled that they heard a metal scraping sound (which they later believed was his belt buckle). At this point, less than 20 seconds after the knee strikes began, Officer Ayala struck Complainant 1 twice on the right side of his head near his right eye. During the internal investigation, Officer Ayala stated that he attempted to strike Complainant 1 in the shoulder area but missed and hit him in the eyebrow.

Officers continued to give Complainant 1 verbal commands to put his right hand behind his back, and he responded, “I’m trying to.” Another officer yelled, “if you don’t give your hands, I’m gonna fucking spray you.” Officer Ayala reiterated, “I’ve got one,” and Complainant 1 again responded, “I’m laying on it.” Another officer deployed chemical agent projector (“CAP”) spray at the Lieutenant’s direction, and they were able to secure the right arm and handcuff Complainant 1 by pulling his arm out from under his body, approximately one minute and 20 seconds after he was taken to the ground. BWC 2021-10-31_0020- Ayala at 2:13-3:14; BWC 2021-10-31_0020- Rogowski at 2:30-2:37. Body-worn camera footage shows that when Complainant 1 was turned onto his side, his face and right eye appeared swollen and bloody. Officer Ayala told the dispatcher that they needed an ambulance on scene, and Officer Ayala and another officer put Complainant 1 into a patrol car. BWC 2021-10-31_0020- Ayala at 3:21-4:52.

Complainant 1 was charged with obstructing governmental administration in the second degree, resisting arrest, and criminal possession of a controlled substance in the seventh degree based on cocaine recovered from his pocket during the arrest. He was treated at the hospital for a closed head injury, facial contusions, a large right periorbital hematoma, and severe soft tissue swelling of the right side of his face. He was subsequently transferred to a trauma center to evaluate the eye injury.

The Department's investigation concluded that the strikes by Officer Ayala and the knee strikes by Officer Serafini were reasonable, and both officers were exonerated.

We find that Officer Ayala's head strikes violated the Fourth Amendment of the United States Constitution, Article I, § 12 of the New York State Constitution, and the Department's Use of Force policy.

To evaluate an officer's use of force under the Federal and State Constitutions, courts consider the objective reasonableness of the force based on the "facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, 490 U.S. 386, 396 (1989); *Macareno v. City of New York*, 187 A.D.3d 1164, 1166 (2d Dep't 2020) (applying *Graham* factors to excessive force claim under Federal and State Constitutions). The inquiry is "whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397 (internal quotation marks omitted); see also *Mazzariello v. Town of Cheektowaga*, 305 A.D.2d 1118, 1119 (4th Dep't 2003). BPD's Use of Force policy directs officers to use "only that amount of physical force that is objectively reasonable to achieve a legitimate law enforcement objective" and prohibits "excessive or unreasonable force." Use of Force policy 6.1. The Use of Force policy also contains a continuum which outlines categories of behavior by subjects and the generally authorized force options for each category.

Officer Ayala's strikes were excessive. As for the *Graham* factors, Complainant 1 was arrested for obstructing governmental administration, a misdemeanor. Complainant 1 did not appear to be an immediate threat to the safety of the officers or others. He was on the ground, surrounded by officers, with his right arm trapped underneath him, and his left arm was restrained by Officer Ayala during the entire incident. Officer Serafini stated that he believed Complainant 1 was reaching for his waistband but given that his right arm was trapped (and officers had to help pull his arm out), it is unlikely that Complainant 1 could have taken any action to threaten the safety of the officers or others. Finally, Complainant 1 was not actively resisting arrest or evading arrest by flight. He was unable to move his right arm and comply with the officers' commands, and other than that, no resistance of any kind was noted by the officers in their reports or mentioned by officers in the body-worn camera footage. He also told officers repeatedly that he could not move his arm. Further, when Officer Ayala was asked during his OAG interview whether Complainant 1 engaged in active or passive resistance, he described it as passive resistance. In addition to the *Graham* factors, Complainant 1's injury was severe. Complainant 1 sustained a head injury, severe swelling, and contusions and was transferred to a

trauma center for an emergency evaluation of his right eye. It was not objectively reasonable to administer head strikes under these circumstances.

The strikes also appear to have been contrary to the Department's Use of Force policy, because they were not objectively reasonable and because strikes were not authorized unless the subject engaged in physical resistance, which is defined as "resistance or aggression that is aimed directly at the Officer," including "grabbing, pushing, punching, kicking, biting, throwing objects, or any behavior in which the Officer becomes the object of the subject's actions." Use of Force policy 6.3. Complainant 1 did not engage in these actions at any point in the encounter, and as such, Officer Ayala was not authorized to use strikes based on the Department's continuum.

For these reasons, we find that Officer Ayala committed misconduct during this incident.

While the conduct of other officers during this incident is outside the scope of this referral, OAG has serious concerns about the knee strikes administered by Officer Serafini. Officer Serafini kned Complainant 1 three times in the upper body, very close to the head and neck, seconds after Complainant 1 was brought to the ground. The strikes were swift and painful, as evidenced by Complainant 1 yelling out in pain. Moreover, they were clearly unreasonable and disproportionate to Complainant 1's failure (or inability) to provide his arm for handcuffing, especially given the other officers restraining Complainant 1.

B. Incident 2, IC2023-065

On May 7, 2023, Officer Ayala and several other BPD officers responded to a dispute between a mother and her 14-year-old daughter. When Officer Ayala arrived, several officers were speaking with the mother, Complainant 2, in front of her home. Her teenage daughter, Complainant 2A, was across the street (approximately 15-20 feet from the officers) on the sidewalk yelling and cursing at the officers and her mother. The officers and Complainant 2 discussed leaving Complainant 2A outside and departing because the dispute had ended. BWC_2023_05_07_0515 at 1:10-2:20. During the conversation, Officer Ayala and Complainant 2 discussed that Complainant 2A was 14-years old, and Officer Ayala stated, "I can't deal with that shit for four more years" and "you got four years, fuck that shit." He continued "I ain't worried about her, she didn't do nothing anyways." Officer Ayala described a previous encounter with Complainant 2A and recounted, "last time she got out of the car, she's a pussy, she ran." Officer Ayala continued, "people that want to fight us, you know what they do? They hop out the car and they fight us. They don't talk about how they want to fight us. She ran like a pussy." BWC_2023_05_07_0515 at 2:20-2:58.

Complainant 2A overheard this comment and started yelling at the officers and walking toward them. Officer Ayala motioned toward Complainant 2A and said "c'mon, c'mon, I'm right here, c'mon." Complainant 2A reached toward Officer Ayala and he grabbed her arms and took her to the ground. BWC_2023_05_07_0515 at 2:58-3:20. Other officers assisted with handcuffing Complainant 2A. While officers handcuffed her, one officer can be heard asking "still think it's a smart idea?" BWC_2023_05_07_0515 at 3:20-3:38. Complainant 2A said "no," and the officer responded, "then shut the fuck up." BWC_2023_05_07_0515 at 3:20-3:38. Once she was handcuffed, Officer Ayala and another officer stood her up and walked her to a

patrol car. While they escorted her to the patrol car, her arms were pulled up toward her shoulders. BWC_2023_05_07_0515 at 4:00. During his OAG interview, Officer Ayala stated that Complainant 2A refused to walk to the patrol car, and as a result, they tilted her body forward to get her to walk. Officer Ayala stated that this caused her arms to move higher but that they were not at shoulder-level, just straight back. There is no mention of Complainant 2A's refusal to walk to the patrol car in any of Officer Ayala's reports regarding this incident, and based on the body-worn camera footage, there were no commands given to Complainant 2A while she was being escorted to the patrol car.

Other officers on the scene charged Complainant 2A with obstructing governmental administration in the second degree and resisting arrest. During his OAG interview, Officer Ayala testified that he did not believe there was probable cause for obstructing, but the decision would have been left to the primary officers on the call. The arrest report states that Complainant 2A resisted arrest by tensing her body and attempting to recoil both her arms beneath her chest. Complainant 2A suffered road rash injuries to her face from the takedown and arrest.

During his OAG interview, Officer Ayala stated that he made these comments out of frustration and acknowledged that they were inappropriate. Instead of sustaining the allegation of misconduct, BPD concluded its internal investigation with a finding of "other." Officer Ayala was required to attend a conference with a supervisor to discuss his conduct.

In this incident, Officer Ayala was highly discourteous and unprofessional and violated BPD policy, specifically, Chapter I, Section 2.13 of BPD's Rules and Regulations. We further find that Officer Ayala violated the Use of Force policy, section 6.2(J), which states that officers "should not use tactics that unnecessarily escalate an encounter or create a need for force." The officers and Complainant 2 were discussing ending the call and leaving. Complainant 2 and Complainant 2A had been separated, and no further action was necessary. To the extent that the officers remained on scene, they should have attempted to calm Complainant 2A (a 14-year-old female) and de-escalate the situation. Instead, Officer Ayala used insulting and highly inappropriate language within ear shot of Complainant 2A that he should have anticipated would provoke a reaction. When Complainant 2A approached him upon hearing his insulting comments, Officer Ayala welcomed a physical confrontation with her and encouraged her to make contact with him, knowing what the result would be. Officer Ayala's comments led to unnecessary force being used against Complainant 2A, injuries, and an arrest that could have been avoided.

For these reasons, we conclude that Officer Ayala committed misconduct during this incident.

C. Incident 3, IC 2023-164

On June 8, 2023, Officer Ayala responded to the scene of an investigation involving a stolen vehicle. Two officers pursued the vehicle and pulled behind it, at which point the driver stopped the vehicle and took off running. The vehicle was left in neutral and rolled backward into the officers' patrol car. When Officer Ayala arrived, he saw that the stolen vehicle had struck the patrol car belonging to the officers who had first responded. He told several officers on the scene to turn off their body-worn cameras, asked for keys to the patrol car, and moved the

patrol car so that the patrol car and the stolen vehicle were no longer touching. Because the stolen vehicle was still in neutral, it again rolled backward and struck the patrol vehicle a second time and another vehicle in the area.

During BPD's internal investigation, Officer Ayala stated that he moved the patrol car to see if there was any damage and because the vehicle would eventually be towed. He also stated that he did not know that accident investigators were going to be notified, otherwise he would not have moved the patrol car. He stated that he did not move the patrol car to hide the fact that the accident had occurred. Further, he explained that he asked officers to turn off their body-worn cameras to make jokes.

The Department's internal investigation concluded that Officer Ayala interfered with the investigation of a city-involved accident and violated the body-worn camera policy. On February 2, 2024, the Department served charges against Officer Ayala for violations of Chapter I (section 1.1) and Chapter III (sections 3.2(a) and/or 3.2(b)) of BPD's Rules and Regulations, and the body-worn camera policy. Officer Ayala pled guilty and accepted a one-day suspension to resolve the charges.

We agree with the Department's conclusions. For this reason, we conclude that Officer Ayala committed misconduct during this incident.

D. Incident 4, IC2023-140

On July 16, 2023, Officer Ayala and his partner responded to assist with a traffic stop. Another officer had observed the vehicle following other vehicles too closely and initiated the traffic stop. According to the police report, the driver of the vehicle was uncooperative, smelled of alcohol, and had glassy eyes. In addition to the driver, there were two passengers in the vehicle: Complainant 4 and a young child. The officer detained the driver at which point Complainant 4 exited the vehicle. The police report states that Complainant 4 began to interfere with the investigation and ran back into the driver's side of the vehicle without any explanation. At that point, Officer Ayala and his partner attempted to detain Complainant 4. Officer Ayala's BWC footage shows he and his partner arriving at the scene and immediately engaging with Complainant 4 by giving her directives to exit the vehicle. Complainant 4 refused to comply and kicked Officer Ayala's partner. They removed Complainant 4 from the vehicle and instructed her to put her hands behind her back for handcuffing, but she refused. Officer Ayala then used his taser to administer a drive stun to Complainant 4's left leg. Officer Ayala and his partner were able to bring Complainant 4 to the ground and handcuff her. They helped Complainant 4 stand up and walked her to the patrol car. While Officer Ayala walked Complainant 4 to the patrol car, she expressed concern about the child in the car. In response, Officer Ayala held Complainant 4's arms up behind her back and instructed her to "walk." Body-worn camera footage shows Officer Ayala holding Complainant 4's arms straight out behind her in a similar manner as he had done with Complainant 2A. BWC_2023-07-16_0507 at 1:25-1:35. Complainant 4 continued to try to move back toward the vehicle which contained the child, and both Officer Ayala and his partner had to pull her toward the patrol car.

During his OAG interview, Officer Ayala stated that when he and his partner tried to get Complainant 4 into the patrol car, she refused, and they gave her verbal commands. Body-worn

camera footage shows Complainant 4 yelling “fuck you” and calling Officer Ayala’s partner a “bitch” before his partner tells her “to get the fuck in the car.” Complainant 4 then spat at Officer Ayala’s partner. BWC_2023-07-16_0507 at 1:50-2:10. Officer Ayala’s partner pushed Complainant 4 into the patrol car and shouted, “she spit in my fucking mouth.” Officer Ayala then deployed his CAP spray at Complainant 4’s face while she was handcuffed and sitting inside of the patrol car. During his OAG interview, Officer Ayala stated that Complainant 4 pulled her feet into the car only seconds before he deployed the CAP spray, but this is difficult to confirm based on the body-worn camera footage. Complainant 4 was subsequently charged with obstructing governmental administration in the second degree and harassment in the second degree.

The Department’s internal investigation concluded that Officer Ayala used excessive force when he deployed the CAP spray. On March 6, 2024, the Department served nine charges against Officer Ayala, including for using CAP spray when Complainant 4 was handcuffed and in the patrol car, for using retaliatory force, and for failing to use de-escalation techniques. Officer Ayala pled guilty and accepted a 10-day suspension to resolve the charges.

We agree with the Department’s conclusions. For this reason, we conclude that Officer Ayala committed misconduct during this incident.

E. Incident 5, EC2024-091

On August 22, 2024, Officer Ayala and his partner conducted a traffic stop. According to Officer Ayala’s police report, they observed a vehicle pull away from the curb without using a turn signal and speeding. When Officer Ayala and his partner caught up to the vehicle, his partner activated the emergency lights and walked over to talk to the driver. While his partner talked to the driver, Officer Ayala stood by the passenger side of the vehicle shining his flashlight inside of the vehicle. There were three individuals in the vehicle—the driver, the front passenger, and the rear passenger.

Officer Ayala’s partner told the driver the reason for the stop, and the driver handed Officer Ayala’s partner his driver’s license. His partner asked the driver where he was going, and the driver responded that he was “dropping someone off.” His partner asked him where he was dropping someone off, and the driver pointed behind him but did not respond verbally and looked at the front passenger. The front passenger responded to the officer, stating, “my house is at the corner.” The officer asked where they were coming from, and the driver and the front passenger both responded, “Wendy’s.” The officer asked if everything was valid, and the driver responded that the car was registered in his mother’s name. Officer Ayala and his partner returned to the patrol vehicle to check the driver’s license. BWC_X60A7226E at 0:30-1:35. During Officer Ayala’s OAG interview and in his police report, he indicated that he observed marijuana in a clear plastic baggie next to the rear passenger and that the car smelled like burnt marijuana. He estimated that the baggie contained a quarter of an ounce of marijuana. He also confirmed that he did not observe any additional marijuana.

Officer Ayala and his partner got back into their patrol car and discussed that the driver did not know where his friend lived. Officer Ayala recalled that the vehicle went down three different streets to end up back at the same location and was “flying” down the street. His

partner stated, “he’s super nervous too.” His partner asked Officer Ayala, “you want to write him for the signal?” Officer Ayala continued to review the driver’s information, notified the dispatcher that they were conducting a traffic stop, and asked for an additional car for back up. During his OAG interview, Officer Ayala stated that he did not agree to write the ticket because they needed to continue their investigation to determine if the occupants possessed more than the three ounces of marijuana permitted by New York law. Officer Ayala told his partner, “go ahead and get them out,” and his partner said, “for what? Take em out?” At that point, Officer Ayala and his partner got out of the patrol car and approached the vehicle. His partner seemed unsure and asked Officer Ayala, “is he valid or no?” Officer Ayala responded, “get them out.” BWC_X60A7226E at 1:35-4:21.

Officer Ayala’s partner asked the driver to get out of the car and asked him if he had anything on him or anything inside the car, and the driver said no. The officer then conducted a frisk of the driver. During the frisk, the driver stated that there was money in the car, and the officer said he was not concerned about that. He escorted the driver to the patrol car and asked him to get in the back seat. The driver asked what he did and whether he was under arrest, and the officer responded, “are you in cuffs?” The officer indicated that they would “explain everything” shortly. BWC_X60A7226E at 4:30-5:55. During his OAG interview, Officer Ayala testified that at this point, he had decided that they would conduct a search of the vehicle to determine if the occupants possessed more than three ounces of marijuana.¹ During his OAG interview, Officer Ayala testified that, because he would be conducting a vehicle search, the occupants would be placed in the back of patrol cars, and to be placed into the back of patrol cars, they had to be frisked.²

After the driver was escorted to a patrol car, Officer Ayala talked to the front passenger and directed him to get out of the vehicle. The front passenger asked why he was being asked to exit and did not get out of the vehicle initially. The front passenger was wearing a black satchel, and Officer Ayala instructed him to take it off and place it on the dashboard. The front passenger removed his satchel but continued to ask for the reason he was being asked to get out of the vehicle, and Officer Ayala repeated his instruction. Officer Ayala’s partner then said, “get out of the car before you get ripped out of the car, what do you want?” The front passenger exited the vehicle, and Officer Ayala frisked him. During his OAG interview, Officer Ayala testified that during the frisk, he felt a small baggie and pulled a small baggie of marijuana out of the front passenger’s pocket. He estimated that this baggie contained approximately two grams of marijuana. Officer Ayala walked the front passenger to a patrol car and put him in the back seat. By this time, Lieutenant Eric Hofschneider and four other officers were on scene. BWC_X60A80667 at 5:50-7:06.

Officer Ayala’s partner then asked the rear passenger to exit the vehicle, the rear passenger exited, and his partner frisked him. The officer asked him about a bag in his pocket, and the rear passenger stated that it was a bag of marijuana. The officer took it out and placed it on the back seat of the vehicle. The officer saw that the rear passenger had an ankle monitor, and

¹ Penal Law § 222.05(1)(a) allows adults over the age of 21 to possess up to three ounces of cannabis and up to 24 grams of concentrated cannabis.

² Officer Ayala described the vehicle search as an inventory search.

the rear passenger said he had just been released from jail. The rear passenger was also placed in the back of a patrol car. BWC_X60A7226E at 7:05-8:31.

The officers on scene began a search of the vehicle, including the driver's seat, center console, and back seat. During his OAG interview, Officer Ayala stated that the only reason for the vehicle search was to determine if the occupants were in compliance with New York law regarding personal use of marijuana, Penal Law § 222.05. Officer Ayala searched the back seat of the vehicle, including the inside of a black purse. Body-worn camera footage shows food and wrappers from Wendy's in the vehicle. One officer searched the black satchel belonging to the front passenger and located latex gloves and a clear baggie containing 4 live Smith & Wesson .40 caliber rounds. After the discovery of the rounds, Officer Ayala opened the trunk and searched its contents. Officers searched under the hood as well. Nothing further was recovered. BWC_X60A80667 at 9:50-11:42.

Officer Ayala instructed his partner to search the front passenger again, and his partner did so. His partner asked the front passenger for his name and identification, whether he had anything on him, and where he was staying. The front passenger provided an address. When Lt. Hofschneider overheard the front passenger's name, he came over and asked the front passenger if he still had an ankle monitor. The front passenger said no and continued "Y'all can't do shit to me." Lt. Hofschneider responded, "Shut up, I don't give a fuck, I'll slap the fuck out of you." BWC_X60A7226E at 11:40-13:25. Lt. Hofschneider then made another offensive comment. As Lt. Hofschneider walked away, he turned to another officer and said, "That probably pissed him off that I said that. He say anything when I said that?" The officer he was speaking to laughed. BWC_X60A87444 at 1:30-1:50. After the second frisk of the front passenger, Officer Ayala's partner conducted a second frisk of the driver as well. BWC_X60A7226E at 13:25-14:05.

It is not clear how much longer the driver and passengers were detained, because the body-worn camera footage ends before the stop concluded. Based on the timestamps in the footage reviewed by OAG, the stop lasted at least 24 minutes, and at the conclusion of the footage, the driver and passengers were still in patrol cars. The patrol car's history report indicates that Officer Ayala and his partner were back at headquarters approximately sixty-five minutes after they initiated the stop. The driver was issued a ticket for failing to use a turn signal.

The Department's internal investigation focused on discourtesy, body-worn camera policy violations, and the searches conducted by the officers. The Department exonerated Officer Ayala but found that a Detective and Lt. Hofschneider violated the body-worn camera policy.

We find that Officer Ayala's frisk of the front passenger and the search of the vehicle violated the Fourth Amendment of the United States Constitution and Article I, § 12 of the New York State Constitution.

To conduct a frisk during a traffic stop without probable cause to believe the individual committed a crime, an officer "must have knowledge of some fact or circumstance that supports a reasonable suspicion that the [individual] is armed or poses a threat to safety." *People v.*

Hodge, 206 A.D.3d 1682, 1685 (4th Dep’t 2022) (quotation marks omitted). To constitute reasonable suspicion, the officer’s knowledge must be “more than subjective” and cannot be based solely on a hunch or gut reaction. *People v. Sobotker*, 43 N.Y.2d 559, 564 (1978).

Based on these circumstances, Officer Ayala did not have the requisite level of suspicion to frisk and detain the front passenger. Officer Ayala’s police report indicates that he observed the vehicle pulling away from the curb without a signal and speeding. In the body-worn camera footage, he also described that the vehicle went down three different streets to attempt to evade them. When his partner talked to the driver of the vehicle, the driver provided his license and registration immediately (which were valid), but the driver appeared confused about where the front passenger lived. There was no mention of any observations of the front passenger during Officer Ayala’s conversation with his partner in the patrol car or in his police report. When Officer Ayala was asked about the frisk during his OAG interview, he stated that there was no specific reason to frisk the front passenger but that he had to frisk him before putting him in the back of a patrol car. The facts here do not support a reasonable suspicion that the front passenger—or the other occupants—were armed or posed a threat to the officers’ safety.³

To search a vehicle without a warrant, the circumstances must support the application of an exception to the warrant requirement. Three exceptions apply when there is probable cause that a crime has been committed, specifically, (1) the automobile exception, (2) the search incident to a lawful arrest exception, and (3) the exigency exception. *See People v. Blasich*, 73 N.Y.2d 673, 677-79 (1989); *People v. White*, 70 A.D.3d 1316, 1317 (4th Dep’t 2010). There is also the plain view doctrine, which allows an officer to seize evidence of a crime when the officer is lawfully in a position to observe it, has lawful access when they seize it, and the incriminating character of the item is immediately apparent. *People v. Velasquez*, 110 A.D.3d 835, 835 (2d Dep’t 2013). In addition, there is a narrow exception under New York law that permits an officer to conduct a limited protective search of a vehicle during a traffic stop if “the totality of the information available supports a reasonable conclusion that there is a substantial likelihood of a weapon within the vehicle that poses an actual and specific threat to the officers’ safety.” *People v. Scott*, 216 A.D.3d 552, 553 (1st Dep’t 2023). If there is a substantial likelihood of a weapon that poses an actual and specific threat to the officer’s safety, an officer may conduct a search of the areas where his observations indicate the weapon is located. *See People v. Jones*, 39 A.D.3d 1169, 1171 (4th Dep’t 2007).

Officer Ayala’s basis for the search was to determine if the occupants possessed more marijuana than permitted under Penal Law § 222.05. Initially, the amount of marijuana they

³ BPD interviewed all of the officers at the scene during the internal investigation, and several officers indicated that the front passenger was well known to them and had posted photographs of himself on social media with firearms. During his OAG interview, Officer Ayala identified the front passenger by his name, but he did not indicate at what point during the stop he recognized him. In the BWC footage, Officer Ayala and his partner did not discuss the front passenger’s identity or any concerns about the front passenger when they were in the patrol car reviewing the driver’s information. The front passenger’s name is first mentioned after all of the occupants were frisked and put in patrol cars and after officers began searching the vehicle and located the rounds in the front passenger’s satchel. When Officer Ayala’s partner conducted the second frisk of the front passenger, his partner asked the front passenger for his name, and Lt. Hofschneider overheard his name and recognized him. At that time, Lt. Hofschneider told Officer Ayala and the other officers the front passenger’s name, and Officer Ayala responded, “it might be, it might be.” BWC_X60A80667 at 12:50-13:06.

observed in plain view was significantly less than three ounces, the maximum amount that adults can possess. As such, Officer Ayala did not have probable cause that the occupants violated Penal Law § 222.05. Additionally, Penal Law § 222.05 provides that probable cause that a crime has been committed cannot be based solely on the “odor of burnt cannabis” or the “possession of or suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in this article,” either separately or in combination with each other. Relying on the small amount of marijuana they observed to support probable cause and a vehicle search clearly violated this provision. Penal Law § 222.05(4) provides for certain exceptions when an officer is investigating whether a driver is operating a vehicle while impaired by drugs or alcohol, but that was not the basis for Officer Ayala’s investigation or the vehicle search. During his OAG interview, Officer Ayala was clear that the only basis for the investigation and search was to determine compliance with Penal Law § 222.05. The officers did not discuss any physical indicators of impaired driving, conduct any field sobriety tests, or contact a drug recognition expert.

Neither a limited protective search nor a full search of the vehicle was lawful for any other reason. As discussed above, Officer Ayala and his partner did not have reasonable suspicion that the occupants of the vehicle were armed or posed a threat to their safety when they frisked them. During the frisks, nothing was recovered except a bag of marijuana, and each of the occupants was placed in a patrol car without handcuffs. There were no additional circumstances that would support a substantial likelihood of a weapon and the officers’ intrusion into the vehicle. Even if there were, the search conducted during this traffic stop was expansive and went far beyond the limited search the law allows. Additionally, none of the warrant exceptions discussed above applied to this vehicle search. Officer Ayala and his partner had probable cause of a violation of the Vehicle & Traffic Law, but there was no probable cause that a crime had been committed. As a result, the automobile exception, the search incident to arrest exception, and the exigency exception did not apply. The plain view doctrine also did not apply, because the officers did not observe anything in plain view other than a lawful amount of marijuana when they approached the vehicle. The most significant item they located during the search—the rounds—were found inside of a closed satchel belonging to the front passenger, another level of intrusion that was clearly unlawful.

For these reasons, we conclude that Officer Ayala committed misconduct during this incident.

III. Conclusions and Recommendations

The incidents described above constitute a pattern of excessive force and unprofessional conduct. This conduct violated the Department’s policies and the Federal and State Constitutions.

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

Here, Officer Ayala used excessive force and was unprofessional during several incidents:

- Officer Ayala struck Complainant 1 in the face during an arrest when Complainant 1 failed to provide one of his arms for handcuffing;
- Officer Ayala made offensive and provocative comments to a 14-year-old female, Complainant 2A, needlessly escalating the encounter and resulting in an unnecessary arrest and use of force;
- Officer Ayala interfered with a city-involved accident and violated BPD's body-worn camera policy;
- Officer Ayala deployed CAP spray against Complainant 4, who was handcuffed and inside of a patrol car; and
- Officer Ayala conducted an illegal frisk and vehicle search during a traffic stop in Incident 5.

The OAG recommends the following remedial actions:

- 1) Discipline. BPD should discipline Officer Ayala for the unlawful frisk and vehicle search he conducted during Incident 5, taking into account his established history of misconduct.
- 2) Monitoring and Progressive Discipline for Future Misconduct. BPD should develop a plan for monitoring Officer Ayala's conduct, including periodic review of reports and video footage of arrests and uses of force by Internal Affairs or a supervisor. We recommend that a member of the Internal Affairs Division discuss the findings herein and the imperative to prevent future incidents with Officer Ayala immediately. Additionally, these findings should be incorporated into Officer Ayala's next performance evaluation. For any future misconduct by Officer Ayala, disciplinary action should be progressive and account for the violations described above.
- 3) Limiting the Use of "Other." We recommend that BPD no longer use the disposition of "other" when the evidence clearly shows that the officer committed misconduct, such as in Incident 2.
- 4) Search and Seizure Training. The justification given by Officer Ayala for the frisks and the vehicle search in Incident 5 demonstrates a misunderstanding of search and seizure law and of the recent changes regarding marijuana in Penal Law § 222.05. OAG previously identified similar issues, including in a November 28, 2023 letter regarding the referral of Officer Lawrence Briggs and a December 28, 2023 letter regarding the referral of Officer Davon Ottey. BPD advised that it would be reinstating training by the Erie County District Attorney's Office regarding search and seizure law and *People v. DeBour*. In your response, please advise whether that training has occurred, when it occurred, and which officers were trained. If the training has not occurred, we recommend that BPD provide such a training in the next 12 months and require attendance by all officers, including supervisors that respond to traffic stops.

- 5) Use of Force and De-escalation Training. We recommend that the Department provide additional training to Officer Ayala regarding the use of force and de-escalation techniques in addition to any such training that is required on an annual basis.

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

We appreciate the cooperation of you and your agency.

Thank you,

LETITIA JAMES
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