January 7, 2025

Sheriff Craig D. Apple, Sr.
Office of the Albany County Sheriff
16 Eagle Street
Albany, NY 12207

Via Email

Re: Executive Law § 75(5)(b) Referral of Deputy Sheriff Ryan Cross
OAG Matter No. 1-817668058

Dear Sheriff Apple,

The Office of the New York State Attorney General (OAG) has reviewed your agency's May 17, 2024 referral of then-Deputy Sheriff Ryan Cross (now Senior Investigator Cross)[1] pursuant to Executive Law § 75(5)(b). Based on our review, we conclude that Senior Investigator Cross engaged in a pattern of unjustified detentions, frisks, and searches.

This letter sets forth OAG's findings, conclusions, and recommendations pursuant to Executive Law § 75(5)(c). In particular, we recommend that you discipline Senior Investigator Cross regarding two unlawful searches, retrain him regarding *De Bour* levels justifying searches and seizure and revise agency policies to provide clearer instruction on permissible warrantless searches and seizures, and monitor his performance for one year.

I. Overview of Investigation

The May 17, 2024 referral was based on five complaints, and was subsequently supplemented with four complaints. Five of those complaints are described in detail below. Following receipt of the referral, OAG personnel reviewed the internal investigative and disciplinary files associated with the complaints and governing policies that were provided by Albany County Sheriff's Office (ACSO), as well as related public records. OAG personnel also interviewed Senior Investigator Cross and several complainants.

[1] Ryan Cross was promoted to Senior Investigator in 2025, subsequent to the referral. Senior Investigator Cross is referred to herein by the rank he held at the time of the incident being described.

II. Findings

OAG makes the following findings based on the preponderance of the evidence.

A. Complaint 1, 22 PS-088

1. *Factual Background*

On June 24, 2022, Complainant 1, a Black man, alleged that he was unlawfully arrested and was subjected to excessive force by Deputy Cross during a traffic stop of his brother-in-law the prior day. On June 23, 2022, Deputy Cross and his partner, Senior Investigator Amy Kowalski, stopped a vehicle, which pulled over into a handicapped parking spot in front of the local family court. As Deputy Cross approached, the driver, a Black man, began to exit the vehicle. Deputy Cross directed the driver to stay in the vehicle; the driver complied. (Cross Body-Worn Camera (BWC) 5:36 -5:38 PM.) When the driver asked what he had done, Deputy Cross stated, "You can't be on your phone." The driver explained that he had been looking at his phone for directions. Deputy Cross then asked the driver why he had Vermont plates and, upon observing something in his mouth, asked him what he was chewing. The driver pulled the object—a mint—out of his mouth, said it was a mint and that Deputy Cross's questioning was "scaring" him. He repeatedly asked why he had been pulled over, but complied with Deputy Cross's request to produce his registration and license to Deputy Cross.

Approximately two minutes after Deputy Cross initiated the encounter, Complainant 1 appeared on scene, walked toward the stopped vehicle, and asked what the basis of the stop was, which the driver repeatedly stated that he did not understand. Deputy Cross and his partner did not provide further explanation of the basis for the stop, instead responding that they had already explained the reason to the driver, and ordered Complainant 1, who was standing out of the way of traffic near the front of the parallel-parked car, to move to the sidewalk. The driver stated that Complainant 1 was his "brother" and told Complainant 1 that he had not been told the basis for the stop. (*Id.* 5:38:07 PM.) Deputy Cross repeated his directives to Complainant 1 to get away from the car and threatened to arrest him for being in the street. Complainant 1 remained standing beside the car despite Deputy Cross's directive to move to the sidewalk.

Deputy Cross then went to his car to run the license and registration and learned that, although the car was registered to the driver, the driver's license had been suspended. Deputy Cross then approached the driver, ordered him out of the car, frisked him, and placed him in handcuffs. Deputy Cross stated to the driver, "You're going to be detained right now" and, to Complainant 1, "This is because of you" and "You can't learn to shut your mouth." (*Id.* 5:40:40-5:41:20 PM.) He added to the driver, "Because of the crazy environment, you're going in my car," and then said, "You're getting arrested for a suspended license and we're towing your car." (*Id.* 5:41:20-50 PM.)

As Deputy Cross was placing the driver into his vehicle, Complainant 1's girlfriend appeared on scene and asked SI Kowalski why the driver had been stopped and detained. The girlfriend picked up the car keys that the driver had left on the top of his car to secure the car.

Deputy Cross quickly confiscated the keys and said the car was being towed. The girlfriend asked, "If I'm here, why is it getting towed?" (*Id.* 5:42-5:43 PM.) Complainant 1 then walked to the car and also asked why the car would be towed. Deputy Cross then ordered the complainant and his girlfriend to the sidewalk. Complainant 1 did not move and Deputy Cross began to push him back, repeating, "Get off the road." After the third push, Complainant 1 brushed Deputy Cross's hand off his chest. (*Id.* 5:42:37 PM.) Deputy Cross then said, "Don't you touch me" and continued to push him to the sidewalk. Complainant 1 appeared to stiffen, standing his ground. Deputy Cross then escalated force, pushing more forcefully and taking Complainant 1 to the ground with another officer, and handcuffed him. (*Id.*) Complainant 1 was arrested and later charged with Obstruction of Governmental Administration (OGA).

After placing Complainant 1 under arrest, Deputy Cross searched the stopped car and BWC video appears to capture another officer filling out an inventory sheet; the car was then towed. The driver was released with a summons for his use of a phone while driving and Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree. There is no apparent record of the tow or search other than the BWC footage. Complainant 1's OGA charge was ultimately dismissed. ACSO's internal investigation deemed the allegations of an unlawful arrest and excessive force to be unfounded, due to Complainant 1's refusal to obey lawful commands and interference with a lawful motor vehicle stop and in consideration of the low-level of force used. The ACSO investigation did not assess the lawfulness of the impoundment or of the driver's detention and frisk.

2. OAG Conclusions

Driver's Detention and Frisk

Deputy Cross lacked sufficient justification to frisk and restrain the driver during the stop. As an initial matter, the driver was never arrested. Although Deputy Cross later told the driver that he was under arrest for a suspended license, Deputy Cross initially told the driver that he was only being "detained right now" and he was ultimately released with a summons.[2] At his examination, SI Cross agreed that his statement "detained right now" meant the driver was being temporarily detained and not arrested. (Tr. at 73:4-15.)

"[D]uring such an investigatory *Terry* detention, officers are not automatically entitled to handcuff a detainee and place him in a patrol car." *Smith v. Vill. of Brockport*, No. 19-CV-6404, 2024 WL 3791240, at *8 (W.D.N.Y. Aug. 13, 2024) (citation omitted). "Rather, to do so, the officer must have some articulable suspicion that the subject is 'armed and dangerous.'" *Id.* (cleaned up). Similarly, a frisk may be justified only if the officer has "knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed or poses a threat to safety." *People v. Batista*, 88 N.Y.2d 650, 654 (1996); *People v. Mack*, 26 N.Y.2d 311, 317 (1970); *In re Darryl C.*, 98 A.D.3d 69, 76–78 (1st Dep't 2012); *see also* N.Y. Crim. Proc. Law § 140.50(3) (allowing frisks when the officer "reasonably suspects that he is in danger of physical injury"); *United States v. Mack*, No. 17-CR-6159, 2018 WL 8898465, at *6 (W.D.N.Y. Nov. 29, 2018) ("[A]n officer performing a *Terry* stop may not automatically frisk the individual subject to the stop; rather, to do so, the officer must have some articulable suspicion that the

[2] Custodial arrests for such traffic misdemeanors are disfavored. *See People v. Howell*, 49 N.Y.2d 778 (1980).

subject is 'armed and dangerous.'"). Moreover, "[a]lthough a police officer may reasonably pat down a person before he [or she] places [that person] in the back of a police vehicle, the legitimacy of that procedure depends on the legitimacy of placing [the person] in the police car in the first place." *People v. Richards*, 151 A.D.3d 1717, 1719 (4th Dep't 2017).

Deputy Cross lacked the requisite justification to detain and frisk the driver. He testified that he had not feared for his safety during his initial interaction with the driver or suspect the driver of criminality but asserted that he later needed to "take control of this scene" when Complainant 1 appeared. (Subpoena Hr'g Tr. at 66:18-24, 73:4-15.) As captured on BWC, he told Complainant 1, "This is because of you" when cuffing and frisking the driver and stated that the reason for removing the driver was due to the "crazy environment" created by Complainant 1. When asked why he did not instead detain Complainant 1 to secure the scene, Deputy Cross testified that there was a risk that the driver could have fled in his car. (Tr. 73:16-74:7.) However, video belies that belief as the driver had remained on scene for four minutes after being stopped and, as he acknowledged, Deputy Cross could have ordered the driver out of the vehicle without also cuffing him but did not. (Tr. at 74:14-20.) In any event, such a fear is not a basis for cuffing. *See Smith*, 2024 WL 3791240, at *8. As for the frisk, Deputy Cross could not recall the reason for it (*id.* 75:3-5), and the available BWC does not demonstrate any safety risk that would have justified it. Rather, it appears that the detention was "because of [Complainant 1]," as Deputy said explicitly, rendering the cuffing and frisk unlawful.

Impoundment and Towing of Driver's Vehicle

The impoundment and tow of the vehicle was also unreasonable, undermining the basis of the inventory search. Officers "may exercise their discretion in deciding whether to impound a vehicle," but "must be motivated in part, by a community caretaking function." *United States v. Rivera*, 700 F. Supp. 3d 60, 74 (S.D.N.Y. 2023). Thus, in evaluating an impoundment decision, courts in this Circuit inquire whether the "decision to impound is reasonable . . . based on all the facts and circumstances of a given case," including "(1) the availability of a third party to entrust with the vehicle's safekeeping; (2) the length of time the vehicle would be left unattended; (3) whether the vehicle would become illegally parked if left unattended; (4) the risk of the vehicle being stolen, damaged, or becoming a nuisance if left unattended; (5) whether the vehicle was parked in a public or private space," and (6) "the existence of and an officer's adherence to [] standardized criteria." *United States v. Lyle*, 919 F.3d 716, 731 (2d Cir. 2019). The validity of a subsequent inventory search turns on whether "the subject vehicle was lawfully impounded at the time of the inventory search" and "the inventory search was conducted pursuant to standardized local police procedures." *People v. Gray*, 225 N.Y.S.3d 450, 456 (3d Dep't 2025) (citing cases).

Here, there was at least one other person known to the car's registered owner—Complainant 1's girlfriend—who was present and offered to immediately take custody of the car, asking Deputy Cross, "If I'm here, why is [the car] getting towed?" The car was not parked in a legal parking spot (because it was in a handicapped parking zone), but was out of the way of traffic in a public, safe space near a courthouse and could have been promptly moved. Further, while ACSO Policy does not explicitly state when impoundment is appropriate, it suggests the possibility of impoundment only where there is an "*arrest* for any degree of Aggravated

Unlicensed Operation of a Motor Vehicle." Relatedly, state law does not provide a basis for the tow because the summons issued for the Aggravated Unlicensed Operation of a Vehicle was in the *third* degree, not the first or second degree. *See* N.Y. Veh. & Traffic Law § 511-b (allowing impoundment only for first- and second-degree violations). Based on the totality of these circumstances, it was unreasonable for Deputy Cross to impound the car without first evaluating whether the girlfriend could have taken custody of the vehicle. Where a decision to impound is found to be unlawful, any related inventory search must also be invalidated. *See Gray*, 225 N.Y.S.3d at 456 (concluding impoundment was unlawful when "facts were brought to [the officer's] attention to show that impounding would be unnecessary," specifically the presence of another licensed driver who can take control of the vehicle); *cf. United States v. Duguay*, 93 F.3d 346, 353 (7th Cir. 1996) ("impoundment based solely on an arrestee's status as a driver, owner, or passenger is irrational and inconsistent with 'caretaking' functions" when driver's girlfriend and brother were on scene and could have driven away the car).[3]

Complainant 1's Arrest

Although Deputy Cross arguably may have had probable cause for Complainant 1's arrest for OGA, the arrest was avoidable. Prior to the point that Deputy Cross physically pushed Complainant 1 towards the sidewalk and Complainant 1 brushed his hands away, Deputy Cross agreed that Complainant 1 had not obstructed his actions. (Cross BWC 5:49:35-5:51; Tr. 94:4-95:11.) Throughout the encounter, Complainant 1 was notably agitated, repeatedly asking why his brother-in-law had been pulled over and why his car was being towed. The driver also expressed confusion about the basis for stop. Although Deputy Cross did mention the cell phone usage upon the initial stop, he could have deescalated the encounter by explaining the rationale again to the driver. And as noted above, the tow may not have been necessary; the encounter could have been resolved sooner with a simple summons and, with the driver's permission, releasing the car to Complainant 1 and his girlfriend. Instead, after the driver had already been cuffed and secured, Deputy Cross refused to release the car to Complainant 1 and escalated the incident by pushing Complainant to the sidewalk.

Complainant 1's later actions, including brushing Deputy Cross's hands off him, constituted physical interference of the officer's efforts to remove him from the roadway, justifying his arrest. *See* N.Y. Penal Law 195.05. And the force used to both move him to the sidewalk and effect his arrest, in light of Complainant 1's resistance, was reasonable. *See Bongiorno v. Perilli,* 537 F. Supp. 3d 367, 376 (N.D.N.Y. 2021) (finding forcible takedown was reasonable in light of arrestee's resistance). Nevertheless, as ACSO's own force assessment considers, "reasonable verbal persuasion" could and should have been used to resolve the situation without force. *See* ACSO Use of Force Report at 3.

[3] The failure to comply with inventory protocols may also invalidate an inventory search. *Police v. Johnson*, 1 N.Y.3d 252 (2003) (suppressing gun recovered during arrest of driver with suspended license because inventory form was not completed at the scene or the precinct and therefore failed to comply with inventory search procedures). Here, while the inventory form could not be found, it appears one was filled out on scene based on BWC footage. We recommend that ACSO preserve copies of such forms with case files to ensure inventory searches are not subsequently invalidated based on the failure to maintain the proper documentation.

B. Complaint 2, 23-PS-016

1. Factual Background

On January 28, 2023, Deputy Cross and his partner pulled over Complainant 2, a Black man, for purportedly tailgating a bus and taking too long to signal a turn. Complainant 2 believed that Deputy Cross had tried to intimidate him into consenting to a search by the K-9 Unit and complained that he was being harassed, having been stopped previously by Deputy Cross.

BWC that OAG reviewed shows that Deputy Cross approached Complainant 2, directed him out and to the back of his car, ostensibly to protect them both from oncoming traffic. Deputy Cross said that he does not "write tickets or nothing" but said that he had seen Complainant 2 reach down his pants "as soon as he'd seen [the officers]." (Cross BWC 5:46 PM.) Deputy Cross later told Complainant 2 that he saw this motion while he was driving behind the complainant. (*Id.* at 5:50 PM; Tr. 103:11-104:7.) SI Cross testified that at this point, he did not suspect the individual to be armed, but could have been secreting narcotics. (Tr. 110:10-114:23.) Complainant 2 explained that he was only looking down at his phone. Deputy Cross then called the K-9 Unit. While waiting for that unit to respond, Deputy Cross three times asked Complainant 2 to consent to a search of the car, asserting that such consent would shorten the length of the stop, and asked if there was anything illegal in the car. (Cross BWC 5:48-5:57 PM.) Deputy Cross also warned of the danger of a dog sniff, stating, "We have to alert you that the dog might scratch the car if he jumps on." (*Id.* 5:53-5:54 PM.) SI Cross testified to the OAG that he did not recall there being such a policy at the time requiring such a warning, (Tr. at 106:4-15), and OAG could find none in its review of the agency's policy. SI Cross also stated he was unaware at the time of how the K-9 Unit's dogs alerted. (Tr. 106:16-25.) Regardless, Complainant 2 refused consent each time.

After Deputy Cross's last attempt to obtain consent, Complainant 2 asked if he could retrieve his cell phone from the car. (BWC 5:53-5:57 PM.) Deputy Cross prohibited him from collecting it, speculating that Complainant 2 would call other disruptive people to the scene. However, when Complainant 2 said he wished to record the search of his vehicle, Deputy Cross retrieved the phone from the car. (*Id.*) After handing it to Complainant 2, Deputy Cross asked him to confirm his consent to search, but he denied consent. Deputy Cross then attempted to take back the phone. Deputy Cross released Complainant 2 with a warning only after he was informed that the K-9 Unit was not available to respond to the scene.

ACSO's internal investigation determined that Complainant 2's allegation of harassment was unfounded, finding that there was probable cause for this stop as well as for a previous stop for which he was stopped for an inadequate taillight, a stop prior to that, due to a connection between his car and previously-reported stolen vehicle. The investigator also determined that the allegation of intimidation was unfounded because Deputy Cross had attempted to "find a 'common ground'" by providing the complainant's "cell phone in order to record the search of the vehicle if he was to consent."

2. OAG Conclusions

Deputy Cross lacked the founded suspicion necessary to request a dog sniff or ask for consent to a search. *See People v. Boyea*, 44 A.D.3d 1093, 1095 (3rd Dep't 2007) (request for consent must be based on a founded suspicion of criminality). Deputy Cross noted that he suspected there was contraband in the vehicle based on Complainant 2's movement of stuffing his pants, but did not believe he was armed, which was why he did not frisk him upon exiting the vehicle. (Tr. 111-14.) However, that movement is not enough to establish a founded suspicion of criminality. *See People v. Hightower*, 136 A.D.3d 1396, 1396–97 (4th Dep't 2016) (individual's nervousness, grabbing at his pants pockets, and "illogical and contradictory responses to the officer's questions" "did not give rise to a founded suspicion that criminal activity was afoot); *People v. Howard*, 147 A.D.2d 177, 179–80 (1st Dep't 1989) (defendant's reaching inside his jacket pocket as though he were adjusting something was an "innocuous movement [] readily susceptible of an innocent interpretation" and "would not constitute a founded suspicion that criminal activity was afoot"); *cf. People v. Blandford*, 190 A.D.3d 1033, 138 N.Y.S.3d 710 (3d Dep't 2021) (trooper's observations of defendant's furtive movements *and* engaging in behaviors commonly seen in outdoor drug transactions at a location known for such activity, his "slow roll response" and evasive, inconsistent answers to the trooper's questions created a founded suspicion).

Additionally, we find that Deputy Cross's warning that the dog would scratch the car was unduly coercive. Deputy Cross was not aware that any of the drug-sniffing dogs had or would scratch a car while performing its duties and, contrary to his assertion, there is not in fact such a warning required by ACSO. The warning was therefore unduly coercive and may have undermined any consent given had the search proceeded. *See People v. Lee*, 160 Misc. 2d 181 (Cnty. Ct. Orange Cnty. 1994) (threat that police dog becomes aggressive caused defendant to remove drugs on her person and thus was an impermissible coerced consent).

C. Complaint 3, 23-PS-201

1. Factual Background

On October 5, 2023, Deputy Cross attempted to pull over Complainant 3, a Black man, for lacking front plates on his car. Complainant 3 initially stopped and, after exiting his patrol car, Deputy Cross heard nearby construction workers say, "he's doing something." (Tr. at 150:18-24.) Deputy Cross observed that the driver was "frantically moving" and then fled the stop. (Tr. 134-35, 150:13-17.) Deputy Cross began to pursue the vehicle, alerted dispatch of the pursuit, and followed the car to a location several blocks away, where the car abruptly pulled over and parked. (BWC at 4:36-4:37 PM.) The driver immediately started to exit his vehicle upon pulling over. (*Id.*) At the same time, two female relatives of the driver approached the car; one woman stated, "My baby's in the car." (BWC 4:37:40 PM.) Seeing him exit his car, Deputy Cross directed him to stay in the car, pointed his gun at Complainant 3, and then approached the driver's side door with his gun still drawn. (*Id.*) Complainant 3 sat back down on the driver's seat and asked what he did, noting that he pulled over at that location because it was near his parents' house. (*Id.*) Deputy Cross holstered his gun and applied one cuff to the driver's hand but then the

driver began reaching behind him despite Deputy Cross's directives to show him his hands and to "stop reaching." (*Id.* at 4:37-4:38 PM.) Deputy Cross later described the motion in his paperwork as a movement reaching towards his back waistband. Deputy Cross warned the complainant that he would tase him if he continued to move while he tried to cuff him. (BWC 4:38:08-30 PM.) Complainant 3 retorted, "Let me get out. Stop touching me." (*Id.*) Deputy Cross eventually cuffed, frisked, and secured Complainant 3 in his police vehicle. He testified that he only learned after securing Complainant 3 that the complainant's four-year-old niece was in the backseat at the time and was removed from the car soon after the stop.

After securing the complainant, Deputy Cross searched the front cab, including the center console, followed by the back seat and containers therein, including the complainant's niece's backpack, though he only saw Complainant 3 reach near the driver's seat and center console. (*Id.* at 4:41-4:46.) During the search, two of Complainant 3's relatives had confronted Deputy Cross in the street and objected to his search of the car. (*Id.* at 4:41-4:42 PM.) Deputy Cross explained to the women that he was allowed to search the vehicle and noted to another officer that he believed Complainant 3 had tried to put something in his back pants, in between his buttocks. (*Id.* 4:42-4:44 PM.) However, during his interview with the OAG, Deputy Cross described it as a move towards the center console. (Tr. 139:15-20.) Finding no contraband in the vehicle, Deputy Cross then searched Complainant 3, but again found no contraband. (BWC 4:46-4:49 PM.) Deputy Cross then released the complainant with a traffic summons.

Complainant 3 complained that Deputy Cross failed to activate his lights and used unnecessary force despite his cooperation, endangering him and his young niece. ACSO's internal investigation determined that the force Deputy Cross used was reasonable due to Complainant 3's failure to immediately stop and his physical resistance to Deputy Cross. The findings did not address the lawfulness of the search performed of the complainant's car.

2. OAG Conclusions

In light of the driver's resistance – including fleeing the initial stop and physically evading Deputy Cross's efforts to remove him from the car—Deputy Cross's use of force was reasonable.

However, the plenary search of Complainant 3's car and containers therein required probable cause, which was lacking because the search was based solely on Complainant 3's reaching. *People v. Sierra*, 83 N.Y.2d 928, 929 (1994) (officers did not have reasonable suspicion that individual who was stopped for defective brake lights, grabbed at his waistband, and fled was engaged in criminal activity.). Further, no exception to the probable cause requirement likely existed that would have justified a search of that scope. "Where there is a substantial likelihood that a weapon is present in a vehicle, thereby giving rise to an "actual and specific" danger to officer safety, a limited police search is justified. *People v. Carvey*, 89 N.Y.2d 707, 711 (1997). The Court of Appeals has found that observing an individual makes movements as if to stash something in the front seat, *id.*, or backseat, *People v. Mundo*, 99 N.Y.2d 55 (2002), was sufficient to perform a safety search of the area where the furtive movements had been seen," *id.*

Here, the driver was already cuffed, frisked, and secured in the police car, thus removing the danger he may have presented. *People v. Medina*, 139 A.D.3d 460, 460–61 (1st Dep't 2016) ("Once the officers removed the backpack from the already handcuffed defendant and the backpack was within the officer's dominion and control and outside the grabbable area, there was no longer any safety concern present that would have justified a search of its contents."); *People v. Derrell*, 26 Misc. 3d 697, 708–09, 889 N.Y.S.2d 905, 916–17 (Sup. Ct. N.Y. Cnty. 2009) (similar). And although Deputy Cross said he saw Complainant 3 try to hide something, he believed at the time that the driver had hid something on his person, not in the vehicle. Even crediting Deputy Cross's assessment at his interview that the movement was towards the center console, any protective search must have also been supported by "some other suggestive factor(s)" that there was a "substantial likelihood" that there was a weapon in the car, which were absent here, and should have been limited to the area where the furtive movements were observed (the console) rather than extend to the back seat and its compartments, where the driver had not been reaching. *People v. Newman*, 96 A.D.3d 34 (1st Dep't 2012); *see also People v. Dessasau*, 168 A.D.3d 969, 970 (2d Dep't 2019) (suppressing gun found during protective search "where the defendant already had been removed from the minivan and no one else was in the minivan"); *People v. Jones*, 39 A.D.3d 1169, 1171–72 (4th Dep't 2007) (finding search of back seat was beyond justified search of area based on officer safety when defendant had reached over only to the center console).

Additionally, Deputy Cross did not complete a Use of Force Report for intentionally pointing his firearm at the driver. Any such use of force is required by ACSO General Order 31-SO-19 (VI)(H).

D. Complaint 4, OAG Intake No. 1-91491092

1. Factual Background

On September 4, 2024, Deputy Cross pulled over Complainant 4, a Black woman. Deputy Cross's BWC shows that, after approaching the driver's side, Deputy Cross directed Complainant 4 out of the car, stating "You're not in any trouble" and "I don't write tickets," but then asked whether she had been speeding and, after he directed her to stop, continued driving and drove the wrong way on a one-way street. (Cross BWC 9:44-9:46 AM.) The driver said she had not seen his lights and was didn't realize the street was a one-way until she was on it. Deputy Cross's BWC shows that the driver appeared upset, pacing and grabbing her belly. (*Id.*) When Deputy Cross asked whether something was wrong, the driver said she believed she was pregnant. (*Id.*) Deputy Cross then said, "the way you pulled over, and the way everything is going down so far, my only concern is that there is something in the car or on your person that you shouldn't have." (*Id.*)

Deputy Cross then asked the driver for consent to search the car which she denied. (*Id.* 9:45-9:47 AM.) The passenger at this point also exited the car and objected to the stop as violative of her rights and delaying her from getting to work. (*Id.* 9:47-9:49 AM.) Deputy Cross then requested that a female deputy come to the scene to perform a search of the driver and passenger. After again asking for, and being denied, consent to search, Deputy Cross ran a K-9

search around the car. (*Id.*9:49-9:52 AM.) Although the search was not captured by provided BWC, Deputy Cross told the driver that the dog alerted at the driver's side and then conducted a comprehensive search of the car, including the front seats, back seats, and trunk. (*Id.* 9:52-9:59.) During the search, another deputy mentioned to the driver that they recognized her license plate, prompting the driver to ask whether the stop was based on a tip from a "heroin addict." (*Id.* 9:59-10:00 AM.) While the search of the car's trunk was ongoing, the driver approached the officer searching the trunk to object to his treatment of her possessions. The deputy directed the driver to move back and, when she did not do so immediately, had her cuffed and searched by a female officer, Commander Deyo.[4]

Before the search of the vehicle was finished, Commander Deyo also searched the passenger on the side of the road, while standing behind a car, but still visible from the street and captured on BWC. The commander had the passenger lift up her shirt to inspect their bra. (*Id.*) Following the search, the passenger was crying heavily. Deputy Cross then completed the vehicle search, which he said was for narcotics but did not reveal any contraband, and released the women without any summons and no record of the search but for the BWC footage. As Complainant 4 submitted the complaint to the OAG and not ACSO, ACSO declined to investigate the complaint.

At his OAG interview, SI Cross testified that Complainant 4's stop was based on her observed speeding and driving the wrong way down a one-way street, and not on any tip or other intelligence. (Tr. 174:4-25.) He further explained that when a drug-sniffing dog alerts to contraband in a car and no drugs are discovered in the car, "it's possible that they may have it on the person, so we'll go to the occupants of the vehicle" and search them, but it was possible, as in this case, that both the occupants and the car are simultaneously searched based on a dog alert. (Tr. 176:20-25, 180:17-181:18.)

2. OAG Conclusions

The search of the car, driver, and passenger are all potentially unlawful. Although a canine alert would provide probable cause to search a car,[5] *People v. Devone*, 57 A.D.3d 1240, 1241 (3d Dep't 2010), there did not appear to be any founded suspicion of criminal activity to perform the K-9 search at all. The only information Deputy Cross appeared to be operating on were traffic infractions and the driver's nervousness, neither which justify a K-9 search. *See People v. Garcia,* 20 N.Y.3d 317, 324 (2012) ("nervousness is not an indication of criminality" and therefore insufficient to establish Level II suspicion). Thus, the canine sniff and resulting searches were unlawful.

[4] No Use of Force Report was completed for this cuffing though all uses of force require them to be completed. (ACSO General Order 31-SO-19.) Although Deputy Cross was not responsible for completing that report, we note that ACSO should ensure such reports are being completed pursuant to policy.

[5] We do not assess here whether the dog's training or whether the canine alerts were themselves reliable, but rather assume they are for purposes of our Section 75(5)(b) investigation because it was reasonable for Deputy Cross to rely on the K-9 Unit handlers' verification of any alert.

We additionally note an issue that has not been resolved by New York courts but has been raised by other courts.

It is unlikely that the dog's positive alert on the vehicle would alone supply probable cause to search occupants. A person's mere proximity to people who are suspected of criminal activity, or presence in a location where a search has been authorized by warrant, does not give probable cause to search that person. *Ybarra v. Illinois,* 444 U.S. 85, 91 (1979); *see also U.S. v. Di Re*, 332 U.S. 581, 583-87 (1948) (probable cause to search vehicle did not justify search of all occupants). Instead, "a search or seizure of a person must be supported by probable cause with respect to that person." *Id.* New York courts have concluded that a dog alert would provide probable cause to search the vehicle, *People v. Devone*, 57 A.D.3d 1240, 1243 (2008), *aff'd*, 15 N.Y.3d 106, 31 N.E.2d 70 (2010), but have not addressed the question of whether it would allow a subsequent search of the occupants. However, the highest courts in Iowa, Virginia, Kansas, and Maryland, appellate courts in North Carolina, Kentucky, Idaho, Illinois, Florida, and Ohio[6] and at least one federal district court[7] have found that a dog alert on a vehicle even where the occupant is in the vehicle at the time of the alert does not, alone, provide probable cause to search the vehicle's occupants without an independent showing of probable cause as to each passenger searched.

Here, there was no additional information known to the officers that made it likely that either of the car occupants had contraband as opposed to the possibility that the dog detected an odor of contraband no longer present in the vehicle. Both the driver and passenger had been removed from the car early in the stop and were outside the vehicle when the dog alerted. Given the holdings of numerous federal and state courts summarized above, the driver and passenger should not have been searched even had the dog sniff been lawful.

E. Complaint 5, 25-PS-028

1. Factual Background

On March 12, 2025, Senior Investigator Cross, Commander Alexandria Deyo, Senior Investigator Tyler Young, and Sergeant Jonathan Pushee initiated a stop of Complainant 5, a Black man, for having impermissibly dark window tints. Commander Deyo later reported that, upon coming to a stop, she observed Complainant 5 reaching around for unknown objections. Deputy Cross approached the driver and his silver Mercedes sedan. (Cross BWC 18:24-25.) He

---

[6] *See State v. Stevens*, 970 N.W.2d 598, 607 (Iowa 2022); *Whitehead v. Commonwealth*, 278 Va. 300, 315 (2009); *State v. Anderson*, 136 P.3d 406, 415 (Kan. 2006); *State v. Wallace*, 372 Md. 137, 156 (2002); *State v. Smith*, 222 N.C. App. 253, 261 (2012); *Morton v. Com*., 232 S.W.3d 566, 570 (Ky. Ct. App. 2007); *State v. Gibson*, 141 Idaho 277, 286 (Ct. App. 2005); *People v. Fondia*, 317 Ill. App. 3d 966, 969 (4th Dist. 2000); *Bryant v. State*, 779 So. 2d 464, 465 (Fla. Dist. Ct. App. 2000); *State v. Kelly,* No. 2000-P-0113 2001 WL 1561543 (Ohio App. 11th Dist. Dec. 7, 2001); *compare State v. Voichahoske,* 271 Neb. 64 (2006) (finding that a positive canine alert on a vehicle and subsequent fruitless search of the vehicle, *combined* with evidence of complicity in concealing the identity of the driver of the vehicle, provided probable cause particularized to the passenger that he was concealing drugs on his person). *But see U.S. v. Anchondo*, 156 F.3d 1043 (10th Cir. 1998) (holding that warrantless search of defendant after drug-sniffing canine twice indicated presence of drugs in defendant's vehicle was valid as a search incident to arrest).

[7] *Pfalzgraf v. Reisner*, No. 23-CV-877-JDP, 2025 WL 1095951, at *10 (W.D. Wis. Apr. 11, 2025);

first commented that "It's a nice car, bro" and, observing that the driver had something in his mouth, asked the driver to open his mouth. (*Id.*) Complainant 5 responded that he was chewing on the inside of his cheek and opened his mouth, showing nothing was in his mouth. (*Id.*) Deputy Cross directed him out the car and, after the driver repeatedly questioned why, reached in and opened the door. (*Id.* 18:25-26) Complainant 5 was removed from the car, cuffed and frisked by other officers who were present. Deputy Cross then searched Complainant 5's unzipped cross-body bag, stating, "I thought you were eating coke." During his interview, SI Cross explained that he saw a "white powdery substance . . . consistent with cocaine" on his cross-body bag and on his lips. BWC footage shows several white specks on the cross-body bag but none are visible on Complainant 5's lips.

The officers did not test the visible powder but searched the car and tested several containers found therein. All tests were negative for narcotics.

2. OAG Conclusions

The automobile exception "permits police officers to 'search a vehicle without a warrant when they have probable cause to believe that evidence or contraband will be found there.'" *People v. Hall*, 236 A.D.3d 1334, 1335–36 (4th Dep't 2025) (citing cases). "Bags of white powder have long been recognized as indicative of the presence of drugs . . . ." *People v. Santiago*, 165 A.D.3d 417, 418 (1st Dep't 2018). Similarly, loose white powder may give probable cause to believe contraband is present when coupled with other paraphernalia—such as glassine envelopes, *Singletary v. Bell*, No. 21-CV-02366, 2022 WL 3682224 (E.D.N.Y. Aug. 25, 2022), or small plastic vials and balloons, *Texas v. Brown*, 460 U.S. 730, 734 (1983)—or when coupled with suspicious conduct such as ingesting what appears to be drugs. *See People v. Norman*, 132 A.D.3d 488, 489 (1st Dep't 2015) (officers had reasonable suspicion of criminal activity when they received a tip defendant was dealing drugs, they saw defendant took out tiny blue plastic bags and place them into his mouth, and he had a white substance "all over his face"); *People v. Brewster*, 216 A.D.2d 4 (1st Dep't 1995) (officers had probable cause when they witnessed individual in a drug-prone area engage in several hand-to-hand exchanges of money for an object and, upon police's approach, stuff a plastic bag in his mouth).

Here, though Deputy Cross saw Complainant 5 moving his mouth in a chewing motion, he did not see Complainant 5 ingest anything and did not see anything in his mouth when the driver opened it at his direction. Deputy Cross also did not see any drug paraphernalia in plain view, such as baggies or other containers, and there were no other facts testified to that would suggest the presence of drugs, such as observations of hand-to-hand transactions or the location being in an area known for drug trafficking. Thus, even crediting Deputy Cross's assertion that he could see white powder on Complainant 5's face (which is not visible on the BWC footage) and on the cross-body bag, the specks of loose powder and the driver's chewing alone did not justify the search of Complainant 5's car, his frisk or his detention. *See People v. Mitchell*, 185 A.D.2d 163, 165 (1st Dep't 1992) ("Higgins' testimony that he saw defendant make a motion to his mouth, without any indication that he had seen defendant actually put anything in his mouth, was too speculative and innocuous a basis upon which to rest a conclusion that defendant was hiding contraband").

III. Conclusions and Recommendations

Executive Law § 75(5)(b) requires that 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. Based on our findings, we conclude that SI Cross engaged in a pattern of unjustified searches, frisks, and detentions by a preponderance of the evidence with respect to the following acts:

- Unlawful detention and frisk of Complainant 1's brother-in-law and impoundment and towing of his vehicle, and failure to deescalate;
- Unlawful prolonged detention and requests for consent to search of Complainant 2;
- Unlawful search of Complainant 3's vehicle and failure to record his use of force;
- Unlawful dog sniff around Complainant 4's vehicle and search of occupants;
- Unlawful search of Complainant 5's vehicle.

Regarding Complaints 4 and 5, which remain within the statute of limitations for discipline, we recommend that ACSO impose discipline for those unjustified searches in accordance with progressive discipline principles, taking into account SI Cross's disciplinary history and the pattern finding here, and that ACSO assess whether other officers and supervisors engaged in unjustified searches in those incidents. To address SI Cross's pattern of unjustified searches, frisks, and detentions, we recommend that ACSO retrain SI Cross on the law of search and seizure and monitor his performance for one year. We also recommend that ACSO: (1) revise its towing and impoundment policy to more clearly delineate when impoundment is authorized; and (2) revise its use-of-force policy to emphasize the need to de-escalate.

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

Sincerely,

LETITIA JAMES
New York State Attorney General

By: Lillian Marqez
Deputy Bureau Chief
Law Enforcement Misconduct Investigative Office