



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

**Letitia James
Attorney General**

May 27, 2026

Via E-mail

Police Commissioner Kevin Catalina
Suffolk County Police Department
30 Yaphank Avenue
Yaphank, NY 11980

Re: Executive Law §75(5)(b) Referral of Police Officer Anthony Nunziata
OAG Matter No. 1-818146918

Dear Commissioner Catalina,

The Office of the New York State Attorney General has reviewed your agency's Executive Law § 75(5)(b) referral of complaints involving Officer Anthony Nunziata from July 2024 to February 2025. Based on our review, we have not made a finding of a pattern or practice of misconduct, use of excessive force, or acts of dishonesty by Officer Nunziata with respect to the referred complaints.

However, we do find that with respect to #2025-00375, Officer Nunziata conducted an improper vehicle search on February 13, 2025. The findings of fact described below are based on an evaluation of the evidentiary record using a preponderance of the evidence standard. We request a written response within 90 days pursuant to Executive Law § 75(5)(c) as to SPD's actions in response to our recommendation that Officer Nunziata be retrained on the constitutional standards for vehicle searches.

On February 13, 2025, at approximately 9:20pm, Officer Nunziata conducted a traffic stop of the Complainant's vehicle for observed VTL violations. He was the first officer to approach the stopped vehicle and stood at the front passenger window. He ordered the Complainant to roll the window down, and the Complainant complied. Officer Nunziata leaned into the open front passenger window and asked, "When we (referring to SPD officers) were coming up to the car, what were you reaching for?" The Complainant responded that he was reaching for his cell phone. Video footage captured by a camera mounted to the roof of the Complainant's vehicle showed him holding a cell phone while speaking to Officer Nunziata. BWC showed Officer Nunziata ordered the Complainant to exit the vehicle and another officer opened the driver's side door. After opening the driver's side door, another officer's BWC showed the Complainant sitting in the driver's seat, holding his cell phone in his right hand, and speaking to someone. Officer Nunziata then opened the front passenger side door and his BWC

also captured the Complainant sitting in the driver's seat and holding his cell phone. Another SPD officer gave several orders to exit, and the Complainant complied after approximately 45 seconds and continued to hold onto his cell phone. He later told officers he was calling his wife. Once the Complainant was outside his vehicle, an officer frisked him and Officer Nunziata searched the driver's side, center console, underneath the driver's seat, back seat, and passenger seat. As the Complainant was being frisked, an SPD officer told him that he was not under arrest. The officer recovered a pocketknife from inside Complainant's pants pocket and eventually gave it back to Complainant and allowed him to return to his vehicle.¹

SCPD's internal investigation assessed Officer Nunziata's vehicle search using the standard for a limited protective search pursuant to *People v. Mundo*, 99 NY2d 55 (2002) and concluded that the search of the vehicle was justified. However, *Mundo* only permits an officer to conduct a limited protective search for weapons if they have sufficient cause to believe that there is a substantial likelihood that there is a weapon in the vehicle and that the weapon presents an actual and specific danger to the officer's safety.² Here, the observation of the Complainant "reaching" while SPD officers were approaching his vehicle does not rise to the level of articulable facts demonstrating a substantial likelihood of a weapon inside the vehicle, particularly given that the officers could see that the Complainant was holding a mobile phone.³ Also, Officer Nunziata's search was not limited to the area in which the Complainant appeared to be reaching given the Complainant's position in the driver's seat. And finally, the Complainant's taking of a few moments to comply with officers' orders to exit does not rise to the level of furtive or suspicious activity indicating an actual and specific danger to officer safety.⁴

While SCPD's internal investigation analyzed the search based on the limited protective search doctrine, in the Traffic Stop Version 2.0 report, the officers indicated that they had a lawful basis to conduct a vehicle search based on New York's exceptions to the search warrant requirement. These exceptions apply when probable cause to search exists independently from an arrest or there's a nexus between the probable cause to search and the crime for which an

¹ SPD documentation of the incident described the item recovered from the Complainant's pants pocket as a "pocketknife" and possession of such knife is not a per se crime under Penal Law § 265.01(1).

² *People v. Mundo*, 99 NY2d 55 (2002); see also *People v. Baksh*, 113 AD3d 626 (2d Dept 2014) (explaining that "a limited search for weapons [...] requires a substantial likelihood of a weapon in the car, and a resulting danger to the officer's safety that is actual and specific").

³ See e.g., *People v. Scott*, 216 AD3d 552, 554 (1st Dept 2023) (finding "[n]o such actual and specific danger [because] the officers did not testify to seeing a bulge suggestive of a weapon, to seeing defendant reach for his waistband, or any other act of concealment beyond general descriptions of the car and defendant's movements, which were in any event explicable once the officer discovered that defendant had been eating"); *People v. Hackett*, 47 AD3d 1122, 1124 (3rd Dept 2008) (observation of car occupant's nervous behavior insufficient to permit a limited search); *People v. Chann*, 221 AD2d 155 (1st Dept 1995), lv. denied 87 N.Y.2d 919 (1996) (observation that car occupant looked away and slumped down insufficient to permit a limited search); *People v. Guzman*, 153 AD2d 320, 323, 551 N.Y.S.2d 709 (4th Dept 1990) (observation that car occupant bent down insufficient to permit a limited search).

⁴ *People v. Scott*, 216 AD3d 552, 554 (1st Dept 2023).

arrest is being made. Based on our review, these exceptions would not justify Officer Nunziata's vehicular search.

As mentioned in the limited protective search analysis above, Officer Nunziata's observation of the Complainant's "reaching" did not demonstrate a substantial likelihood that he criminally possessed a firearm. Absent a reason to believe the Complainant's vehicle contained contraband or evidence of a crime, Officer Nunziata did not have the authority to search the driver's side, center console, underneath the driver's seat, back seat, and passenger seat.⁵

Alternatively, Officer Nunziata did not have the authority to search the Complainant's vehicle based on a nexus between an arrestable offense and probable cause to search. Here, SPD officers did not have probable cause to arrest the Complainant for any crime.⁶

To prevent further unconstitutional searches, we recommend that Officer Nunziata receive retraining on the automobile exceptions to the warrant requirement.

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

Sincerely,

Simone Manigo
Assistant Attorney General
New York State Office of the Attorney General

⁵ See *People v. Marcial*, 211 AD3d 98 (2d Dept 2022) (findings circumstances known to the police at the time of the vehicle search did not give probable cause to conclude the vehicle contained evidence of a crime because officers did not observe weapons or contraband in plain view or recover contraband on defendant's person when taken into custody).

⁶ *People v. Johnson*, 183 AD3d 1273 (4th Dept 2020) ("Applying our State Constitution, the Court of Appeals has held that when police want to search a vehicle at the time they arrest its occupant, 'the police must not only have probable cause to search the vehicle but [...] there must also be a nexus between the arrest and the probable cause to search.' The requirement of a connection between the 'probable cause to search and the crime for which the arrest is being made' is 'flexible' inasmuch as a court need not focus 'solely on the crimes for which a defendant was formally arrested'. The proper inquiry [...] is simply whether the circumstances gave the officer probable cause to search the vehicle.").