



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

November 28, 2023

Commissioner Joseph A. Gramaglia
Buffalo Police Department

Via Email

Re: Letter regarding Executive Law 75(5)(b) Referral of Officer Lawrence Briggs
OAG Matter No. 1-793389147

Dear Commissioner Gramaglia,

We have reviewed your agency's referral of Police Officer Lawrence Briggs pursuant to Executive Law Section 75(5)(b). 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 on the part of Officer Briggs.

However, we do find that with respect to EF2019-020, Officer Briggs used excessive force on August 15, 2019 towards the Complainant, violating the Complainant's Fourth Amendment rights and Buffalo Police Department ("BPD") policy.

In this incident, Officer Briggs sought to arrest the Complainant for the possession of a small amount of marijuana, despite Mayor Byron Brown's February 15, 2019 announcement that BPD would no longer make such arrests. He also escalated what should have been a routine traffic stop in order to effectuate this arrest. The 54-year-old disabled Complainant sustained a cervical fracture as a result, and faced numerous criminal charges arising from the incident, all of which were ultimately dismissed in court.

In addition, more than a year later, on December 4, 2020, Officer Briggs searched another Complainant and his vehicle based on the smell of marijuana alone, in contravention of a separate June 10, 2020 Executive Order issued by Mayor Brown prohibiting searches based on the smell or possession of marijuana. Our findings and recommendations regarding these incidents are described below.

1. Factual Overview

On August 15, 2019 at approximately 11 p.m., the Complainant, a 54-year-old Black man, was driving his car at a crowded intersection with cars parked on both sides of the street. At

the corner, he stopped his vehicle in order to let his passenger out. Officer Briggs and Officer Ryan Sanders were in a patrol vehicle at this same intersection and flickered their lights when they saw the Complainant stop his car. After the Complainant did not immediately move his vehicle, the officers exited their vehicle and approached the Complainant's car. According to Officers Briggs and Sanders, they stopped the Complainant for obstructing traffic. The Complainant previously had been pulled over by Officer Briggs a few weeks prior to this incident, and had complained to Officer Briggs's supervisor about the interaction afterwards.

Officer Briggs's BWC footage shows the following: Officer Briggs approaches the passenger's side window of the Complainant's car—which is closed—and states, "There's a blunt in there? Get him out [of] the car." The Complainant acknowledges that there is a blunt in his car and becomes upset when Officer Briggs opens his vehicle's door. Although the Complainant is agitated and cursing, he complies with Officer Briggs's command to step outside of the vehicle.

Once the Complainant exits the vehicle, Officer Sanders leads him to the side of the car. The Complainant places his hands on top of the vehicle. Officer Briggs repeatedly tells the Complainant to spread his legs and bring his feet back. The Complainant says that he is spread out and repeatedly states that he is disabled. While the Complainant has his hands placed on the top of the vehicle, Officer Briggs directs him to put his hands behind his back several times, in order to arrest him. The Complainant again states that he is disabled and keeps his hands on the top of the vehicle where the officers can see them. At this time, Officer Briggs takes the Complainant to the ground as the Complainant can be heard screaming in pain.

After taking the Complainant down, Officer Briggs pins the Complainant, who is lying on his back, to the ground and repeatedly commands the Complainant to put his hands behind his back. The Complainant responds that he has a neck injury. Officer Briggs then rolls the Complainant onto his stomach and pins him down, again repeatedly commanding him to put his hands behind his back. The Complainant responds that he has told Briggs that he has a neck injury. Officer Briggs repeatedly commands the Complainant to roll over and the Complainant responds, "I can't even do that . . . he snapped my neck, I need a neck brace, please." The Complainant adds, "I'm not trying to resist." The officers then call an ambulance.

Officer Briggs can be seen in the BWC footage saying to another officer, "there was a blunt in plain view, I told him to get out of the vehicle." The other officer responds, "You're good." Later in the video, Officer Briggs again states to someone over the phone, "there was a blunt in there in plain view." Officer Briggs states over the phone that the Complainant was blocking traffic, after which the officers got out of the vehicle and saw that he had marijuana in his car, and that the Complainant was "very aggressive and refusing commands," so Officer Briggs "took him to the ground."

* * *

Officer Briggs and Sanders accompanied the Complainant to the hospital, where he was released on an appearance ticket. The medical records from the Complainant's hospital visit state

that the Complainant, who had pre-existing spinal and rotator cuff problems, was diagnosed with a cervical fracture as well as ligamentous damage from the incident.

In the arrest paperwork for the Complainant, Officer Briggs wrote that the Complainant said, “I’ll beat your ass,” but subsequently admitted at the Complainant’s suppression hearing, after rewatching the BWC footage, that the Complainant had not said this. Officer Briggs further wrote in arrest paperwork, and stated to the Internal Affairs Division (“IAD”), that he smelled marijuana coming from the vehicle. Notably, the passenger’s side window was closed when Officer Briggs approached the vehicle on a street crowded with people, and Officer Briggs never mentioned the smell of marijuana at any point on video, either during the incident or during the several instances captured on BWC when he described the incident after the fact. In addition, Officer Sanders, who was standing near the driver’s side of the vehicle with the driver’s side window partially open, told IAD investigators that his partner saw the blunt, and Officer Sanders at no point stated that he smelled any marijuana.

While Officer Briggs told IAD that the blunt he saw was burning, and Officer Sanders stated to IAD that the Complainant admitted to having a lit blunt, the BWC footage reveals that the Complainant never admitted to having a lit blunt, no smoke is visible, and Officer Briggs makes no mention of the blunt being lit. The Complainant, who admitted to having a blunt both on the BWC footage and to IAD, and admitted that the blunt contained marijuana in his IAD interview, maintained in his IAD interview that the blunt was not burning.

Officer Sanders further stated to IAD that, as the Complainant was an older gentleman, he “didn’t feel any threat” from him. Officer Sanders also explained that the Complainant was ultimately cuffed in the front because they were unable to get his hands behind his back.

IAD exonerated both Officer Briggs and Officer Sanders.

The Complainant was charged with disorderly conduct, resisting arrest, obstructing governmental administration in the second degree, and criminal possession of marijuana in the fifth degree (burning marijuana).¹ OAG personnel learned through conversations with the Complainant’s attorney that the blunt was suppressed and all charges were dismissed in the Complainant’s criminal case.

When Officer Briggs was deposed in the Complainant’s civil suit several years later, he stated that he was skeptical of the Complainant’s repeated statements that he was disabled, stating “anybody can tell me they’re disabled.” While being questioned on the circumstances under which the use of force was appropriate, Officer Briggs was asked whether he believed it was appropriate to use force where there was a threat that force was going to be used against him. Officer Briggs responded, “Not exactly . . . sometimes I feel like you have to use force to take control of a situation. That’s how I just feel. Like because like I’m not—you know, we don’t want them to do nothing to us, you know. We’ve got to—if I’m giving somebody multiple

¹ The Complainant was also charged with criminal possession of a weapon in the fourth degree for a knife found in his vehicle after his vehicle was searched, following Officer Briggs’s takedown of the Complainant. This charge was dismissed.

commands to put their hands behind their back and they don't do it, they don't do it, how am I supposed to know what they're going to do to me next."

2. Conclusions

- a. Officer Briggs's arrest of the Complainant was in contravention of Mayor Brown's directive.

Six months before the incident, Mayor Brown had issued a directive calling for "the cessation of enforcement of low-level marijuana possession offenses by the Buffalo Police Department."² As such, Officer Briggs viewing a blunt alone should not have justified an arrest at that time given the mayor's directive, although BPD has informed OAG that it is unable to locate any guidance or training bulletins provided to officers regarding this directive.³

- b. Officer Briggs's unauthorized and excessive force against the Complainant violated the Fourth Amendment and BPD procedures.

The Supreme Court established in *Graham v. O'Connor* four factors that should be considered in determining whether constitutionally excessive force has been used by an officer: "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." 490 U.S. 386 (1989).

Buffalo Police Department Manual of Procedures, Chapter III, Section 3.6 provides, "[m]embers shall not use unnecessary force or violence toward any person, but shall use only such force as may be necessary to accomplish their lawful purpose and in conformity with existing law." Section 6.2 further provides that "[p]hysical force shall only be used when no other viable option is available," and "[w]hen force is used, only that amount of force that is objectively reasonable to overcome a subject's resistance or aggression shall be employed." In addition, "[m]embers should, when practicable and reasonable, avoid the Use of Force by using De-Escalation Techniques" which include "waiting the person out when circumstances permit," "permitting a person to move about when safe," "permitting a person the opportunity to make statements or ask questions," as well as accordant "tactical repositioning." Finally, members should "not use tactics that unnecessarily escalate an encounter or create a need for force."

Section 6.3 outlines the Use of Force Continuum, explaining that "where a subject passively resists the Officer's attempts to gain compliance or is verbally abusive and refuses to comply with the Officer's commands, but is not verbally threatening to cause imminent physical harm to the Officer or another person," the officer shall use "verbal techniques to achieve compliance and if those techniques are unsuccessful, is authorized to take physical control of the subject by grabbing, holding, and /or using customary handcuffing techniques on the subject."

² Available at <https://www.buffalony.gov/DocumentCenter/View/5414/SOTC-PressRelease-2019?bidId=>.

³ While Officer Briggs stated that he saw a burning blunt, no other evidence corroborates this statement. No smoke can be seen on the BWC footage, Officer Sanders never stated that he saw smoke, and the Complainant, who admitted unfavorable facts to IAD, maintained that it was not burning.

This section further states that factors including the subject's injuries and subjective age can alter what level of force is reasonable and cause an officer to de-escalate.⁴

The force Officer Briggs used against the Complainant was excessive, in violation of the Fourth Amendment.

Officer Briggs repeatedly commanded the Complainant to put his hands behind his back, which the Complainant explained several times that he was physically unable to do because he was disabled. For a low-level marijuana possession offense that the city no longer enforced, where the Complainant used only a "non-threatening form of resistance" by not complying with the command to place his hands behind his back and explained that his non-compliance was due to a disability, Officer Briggs unlawfully conducted a takedown of the Complainant and held him to the ground as he screamed of severe neck pain. *See Brown v. City of New York*, 798 F.3d 94, 102-03 (2d Cir. 2015). In addition to the low severity of the offense at issue, Officer Sanders admitted to IAD that, as the Complainant was an older gentleman, he "didn't feel any threat" from him. The Complainant did not seek to leave the scene and stated to the officers, "I'm not trying to resist." *Graham v. O'Connor*, 490 U.S. 386.

Officer Briggs did not acknowledge the Complainant's disability and react accordingly. Several factors were present that would mandate de-escalation of the level of force used, including the Complainant's stated disability, age, and compliance with the commands he was physically able to follow. *See BPD Manual of Procedures*, Chapter III, Section 3.6. Rather than tactically repositioning, Officer Briggs used unreasonable and excessive force against the Complainant. Less aggressive techniques were available to Officer Briggs. For example, the model arrest policy developed by the International Association of Chiefs of Police provides, "Officers may handcuff the arrestee with their hands in the front, or use other appropriate and approved restraining device(s) where the arrestee . . . [h]as a physical handicap [or] [h]as injuries that could be aggravated by standard handcuffing procedures."⁵ The Complainant's injuries may have been avoided if Officer Briggs had tactically pivoted, as BPD policy instructs, and sought to handcuff the Complainant with his hands in front.

* * *

In an additional complaint referred to our office, EC2020-059, Officer Briggs stopped another Complainant on December 4, 2020 for a VTL violation. According to Officer Briggs, he smelled marijuana, then searched both the Complainant and his vehicle. In June 2020, months before this incident, Mayor Brown issued Executive Order No. 2020-001 reiterating his February 2019 order calling for the cessation of the enforcement of low-level marijuana possession

⁴ While handcuffing individuals with disabilities during arrest is not addressed in the BPD manual, Chapter IV, Sections 7.3 and 7.6 of the manual, which address transporting prisoners after arrest, state that "Prisoners shall be handcuffed with their palms facing out and their hands behind their back unless they have an injury or physical deformity that prevents such method of restraint" and Officers may dispense with handcuffing prisoners with disabilities when it is obvious that the prisoner poses no threat to the Officer, or to himself/herself, and the possibility of escape is negligible."

⁵ Model Policy, *Arrests and Investigatory Stops*, 6, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, available at <https://www.theiacp.org/sites/default/files/2020-06/Arrests%20etc.%20June%202020.pdf>.

offenses and requiring the “Police Commissioner to ensure that the smell or possession of marijuana, on its own, no longer be just cause for the search of a person’s residence or vehicle.”⁶ As such, Officer Briggs having smelled marijuana should not have justified any search at that time given the Mayor’s directive. Officer Briggs was exonerated by IAD, and the violation of the Mayor’s Executive Order was at no point addressed during the internal investigation of the complaint. BPD informed OAG that it was unable to locate any guidance or training bulletin regarding this Executive Order.

3. Recommendations

Because the Civil Service Law 75’s 18-month statute of limitations for discipline has elapsed, we are not recommending disciplinary action.

However, given the findings described above, we recommend that BPD (a) provide training to Officer Briggs on use of force and search and seizure law; and (b) review and update BPD rules, policies, and procedures to provide specific guidance on arrests of disabled or injured individuals.

We ask that you inform the Office of the Attorney General within 90 days of the actions BPD is taking in connection with these recommendations, pursuant to Executive Law § 75(5)(c).

Thank you,

Tyler Nims
Chief, Law Enforcement Misconduct Investigative Office
New York State Office of the Attorney General

⁶ Available at <https://www.buffalony.gov/DocumentCenter/View/7602/OA-ExecutiveOrder-Policefinal>.