



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

December 20, 2023

Commissioner Patrick Ryder
Nassau County Police Department
1490 Franklin Avenue
Mineola, NY 11501

Via Email

Re: Letter regarding Executive Law 75(5)(b) Referral of Police Officer Brian Nadel,
OAG Matter No. 1-793542797

Dear Commissioner Ryder,

We have reviewed your agency's February 8, 2022 referral of Officer Brian Nadel pursuant to Executive Law Section 75(5)(b). Based on our review, we conclude that Officer Nadel engaged in a pattern of unlawful searches and seizures in violation of the Fourth Amendment with respect to three incidents. In one incident, Officer Nadel also abused his discretion by issuing traffic tickets excessively and retaliatorily. Each incident was reviewed by NCPD supervisors who either did not recognize the constitutional violations or condoned the conduct.

The February 8, 2022 referral included three complaints related to searches and seizures that form the basis of the OAG's findings, including handcuffing an individual during a vehicle stop, frisking occupants of a vehicle and searching the vehicle during a vehicle stop, and searching an individual and his backpack during a pedestrian stop related to a disorderly conduct violation. The referral also included additional complaints that are not the focus of this report.

Following receipt of the referral, OAG personnel reviewed NCPD's internal investigative files, disciplinary outcomes, relevant police paperwork, and policies that governed the alleged misconduct. We interviewed several individuals who made complaints against Officer Nadel, witnesses to those incidents, and Officer Nadel.

This letter sets forth the OAG's findings, conclusions, and recommendations pursuant to Executive Law § 75(5)(c).

FINDINGS

A. Police Officer Brian Nadel

Officer Nadel began his career as a police officer with NCPD in February 2015. He started as a patrol officer in the 1st Precinct. In November 2020, he was assigned to Community Oriented Policing Enforcement (COPE). COPE is part of the Community Affairs Division, which is overseen by the Commissioner. Officer Nadel remains assigned to COPE. COPE is responsible for initiating specialized patrols, in consultation with the Intelligence Unit to guide their enforcement activities and in collaboration with other NCPD units, such as the Bureau of Special Operations (BSO), the Criminal Intelligence Rapid Response Team (CIRRT), and Homeland Security. As a COPE officer, Officer Nadel explained to the OAG that he conducts “proactive patrol and enforcement in areas [he is] told to go.”

He wears a “soft uniform,” which is an NCPD polo shirt and khaki cargo pants, and he and his partner typically drive an unmarked vehicle. According to NCPD, there is no formal training for members assigned to COPE. Training is on the job or via mentors. Members attend trainings ad hoc based upon availability and offerings.

B. Complaint 1

1. Factual Background

The narrative that follows is based on OAG interviews with the Complainant, her husband, and Officer Nadel, along with materials generated by NCPD’s original investigation of her complaint. Where accounts diverge, we describe the different statements and our assessment of the evidence.

On November 16, 2019, at approximately 8:00pm, Complainant One was pulled over in her driveway in Uniondale by Officer Nadel and Officer Powers. The initial reason for the stop is not clear. The officers did not issue Complainant One any tickets or document the stop. Complainant One recalled that the officers pulled her over for excessive window tints, whereas Officer Nadel told the OAG that he pulled her over for failing to stop at a stop sign. During the stop, the officers handcuffed her and searched her vehicle, having allegedly smelled marijuana.

Complainant One stated to the OAG that when the officers approached her car, she tried to open the door to get out, but Officer Nadel closed the door on her. After a brief conversation, one of the officers told her to get out of the car. Complainant One explained to the OAG:

Now they want to immediately ask me, do I have anything in the car. “Absolutely Not.” “Can I check?” “No, because I’m not even sure why you pulled me over.” . . . So then [Officer Nadel] says, “You know what, put your hands behind your back. Stand behind your car.”

Complainant One reported to NCPD that Officer Nadel cursed at her, stating, “Shut the fuck up. Get your ass to the back of the fucking car.”

Complainant One's husband stated that he was at home and heard commotion outside. He stepped out and saw his wife standing outside her car asking the officers "what's going on?" repeatedly, but they "weren't giving her any type of response." He described that when Complainant One was standing outside of her car she was:

[A]lright. She wasn't being disrespectful, she wasn't being loud, she wasn't saying "get away from me," . . . just [asking] "what's going on?" . . . I think by her asking [] what was going on, [the officers were] just like "I'm going to put the cuffs on you to restrain you." But it's not as if she was being violent, cursing, coming at you in any way, just literally asking "what is this about?"

Complainant One's husband explained that after Officer Nadel handcuffed her, she "began to start shaking and crying." The officers then searched her vehicle.

Officer Nadel, who was interviewed by NCPD in January 2020 as part of their internal investigation into this incident, told the investigator that Complainant One was "agitated" and "irate" during the stop, that Complainant One was initially noncompliant with his requests for identification and to exit her vehicle, and that he then instructed her to sit on the bumper of her vehicle but she refused. He then handcuffed Complainant One for her safety and the safety of the officers. Officer Nadel further explained that after the search of the vehicle, he removed the handcuffs and explained to Complainant One that she cannot act irate during a traffic stop. Officer Powers was also interviewed by NCPD and provided a similar account. When Officer Nadel was interviewed by the OAG in 2023, he shared an additional detail for the first time: that Complainant One walked behind his partner as he was searching her vehicle. Officer Nadel told the OAG that he proceeded to handcuff Complainant One "for my safety and yours because you're not listening, and you keep trying to go up behind him."

When Complainant One was interviewed by NCPD about the incident, she confirmed that Officer Nadel asked her to exit her vehicle and sit on her bumper but stated that she complied and was handcuffed for her "attitude."

Regarding the search, Complainant One and her husband each recounted that the officers removed the contents of her vehicle and put them on the front lawn of their home. Her husband remembers that even he "literally . . . helped [the officers] remove some of the bags out [of] the car" to assist with the search.

The officers did not find any contraband in the car and did not issue Complainant One a ticket.

Complainant One explained to the OAG that she was "traumatized" by the event. She said she would "never forget" the incident because "it was the reason I moved away from Uniondale." She described her children "looking out the window crying, they want to know what's going on, why is mommy in handcuffs?" Complainant One and her husband each stated that when she is driving, she is scared when she sees the police.

Complainant One observed racial disparities in traffic stops in her neighborhood and perceived that she was targeted because of her race. She explained, “I see this [police car] parked, every day, a block away from where I live. . . . I always see them pulling over people, young black African Americans, and I’m just going to be honest with you, this particular day it was my turn.”¹

The officers did not document the stop, search or handcuffing of Complainant One, enter the encounter in their memorandum books, or make any radio transmissions regarding the incident, which they were required to do pursuant to NCPD rules and procedures. NCPD officers maintaining a memorandum book “will enter a full and accurate record of the duties performed by him, including . . . any actions taken by him.” Department Rules, Article 6, Rule 1, sub. 2. All officers are required to notify the Communications Bureau “via radio” communication when “conducting car stops.” Department Procedure, OPS 8105.² Officers must also prepare a Physical Condition of Defendant Questionnaire (PDCN Form 79) any time a person is in the custody of the NCPD and subsequently released. NCPD Department Rules, Article 17, Rule 16. The officers did not memorialize the stop, search or handcuffing of Complainant One. But for her complaint to NCPD, there would be no NCPD record of this incident.

2. The Agency’s Investigation and Determination

Complainant One filed a complaint with NCPD’s Internal Affairs Unit on November 20, 2019.

The complaint was investigated by the Patrol Division by Investigating Supervisor Brian Reitan, who interviewed Complainant One, Officer Nadel and Officer Powers. He concluded that Officer Nadel conducted a vehicle stop and handcuffed Complainant One for officer safety. The sole allegation of Unprofessional Conduct was resolved as “undetermined” on January 7, 2020. Officer Nadel was reprimanded for his interactions with the public and was instructed to speak in a “more respectful, professional manner with everyone.” Officer Nadel was also instructed to notify a supervisor and complete a PDCN Form 79 any time an individual is handcuffed. A training ledger was completed.

3. OAG’s Conclusions Regarding Complainant One

Officer Nadel handcuffed Complainant One in violation of the Fourth Amendment and NCPD Rules.

Officer Nadel and his partner pulled over Complainant One in her driveway for an unknown traffic infraction which did not result in a ticket or any NCPD documentation of the

¹ NCPD’s publicly released data shows that Black people in Nassau County were roughly 4.2 to 5.6 times more likely to be subjected to a VTL stop than white people in 2021. *See* LONG ISLAND UNITED TO TRANSFORM POLICING AND COMMUNITY SAFETY, *Monitoring Police Reform in Nassau County*, 22, available at https://2eb0a3f4-58f5-4466-9010-758b8d2d8a91.usrfiles.com/ugd/2eb0a3_cec7ae68636b4321bc787f52df409eb0.pdf.

² OPS 6452, Traffic Stop Data Collection, enacted on January 21, 2021, now requires NCPD officers to document electronically “all vehicle stops and resultant interactions.”

stop. While they justified a search of her vehicle based on a purported odor of marijuana, they found none. The search was conducted in front of Complainant One's home, in view of her husband and children, and potentially her neighbors and others. The encounter culminated in Officer Nadel handcuffing Complainant One. Afterwards, Complainant One perceived she was targeted for her race and stated to the OAG that she moved away from Uniondale and continues to fear the police.

NCPD Department Rules, Article 17, Rule 1, prohibits a person from being "arrested [] or detained except as provided by law." Rule 3, regarding handcuffing, states, "The basic objective of these guidelines is to ensure the safety of the officer, the public, and the person in custody." NCPD Standards of Conduct, Rule 2, prohibits Members of the Department from "engag[ing] in unlawful conduct, whether on or off duty."

The Fourth Amendment protects against unreasonable seizures. "[T]here is no question that the use of handcuffs is a drastic limitation on the liberty of the detainee and, in the absence of probable cause, may only be resorted to where strongly justified by the circumstances." *People v. Acevedo*, 179 A.D.2d 465, 465 (1st Dept. 1992). Handcuffs may be justified during a temporary detention "to promote officer safety, or if the suspect attempts to flee or becomes violent." Barry Kamins, *New York Search & Seizure* § 2.06[5] (2023). However, handcuffs are not justified where an individual, accused of a non-violent, minor offense, acts upset or is a little resistant. For example, in *People v. Steinbergin*, the court held that the use of handcuffs was not justified during an investigative stop where the defendant "was a 'little irate,' but "was not suspected of anything more than street-level drug sale," there was "no reason to believe he was armed, dangerous or likely to flee, and there was no indication that defendant offered any resistance." 159 A.D.3d 591, 592 (1st Dept. 2018). Likewise, in *People v. Blanding*, the court held that handcuffing during an investigatory stop was unlawful under similar circumstances where the defendant acted "a little resistant" when officers asked him to put his hands up. 116 A.D.3d 498, 498-99 (1st Dept. 2014).³

We find that Officer Nadel lacked the requisite legal authority to handcuff Complainant One. While Officer Nadel justified handcuffing Complainant One for her safety and the safety of the officers, there was no reasonable threat to anyone's safety justifying the handcuffing. Complainant One was stopped in her own driveway for a purported traffic infraction, for which she was not given a ticket, rather than for any arrestable, let alone violent, offense. She did not threaten the officers, attempt to flee, and was not believed to be armed or dangerous. The officers searched her vehicle for no more than marijuana, finding none, and she did not physically interfere with that search. Upon removing the handcuffs Officer Nadel admittedly warned the Complainant not to act "irate" during traffic stops. Even crediting Officer Nadel's account to NCPD in 2020, Complainant One was, at most, not immediately compliant with his commands. Here, as in *Steinbergin* and *Blanding*, that the Complainant may have acted "irate" or "a little resistant" does not "strongly justify" the drastic limitation Officer Nadel imposed on her liberty when he handcuffed her. *People v. Acevedo*, 179 A.D.2d 465, 465 (1st Dept. 1992).

³ By contrast, courts have found handcuffing to be justified for officer safety in circumstances where the defendant was suspected of using or possessing a firearm or other weapon, where the defendant was suspected of a violent offense, or where the defendant was intoxicated and attempted to flee. See Kamins, *New York Search & Seizure* § 2.06[5], n.29 (2023).

Because Officer Nadel was not justified in handcuffing Complainant One, he violated the Fourth Amendment, NCPD Arrest Procedures, and NCPD Standards of Conduct.

C. Complaint 2

1. Factual Background

The narrative that follows is based on OAG interviews with Complainant Two, the front-seat passenger of his vehicle, and Officer Nadel, video footage of part of the stop provided by both Complainant Two and the passenger, a 911 call placed by Complainant Two during the incident, and NCPD materials relating to the traffic stop and the investigation of the complaint. Where accounts diverge, we describe the different statements and our assessment of the evidence.

On September 2, 2021, at approximately 8:37pm, Officer Nadel and Officer Schuerlein were assigned to COPE in an unmarked vehicle. Both officers were in plain clothes; Officer Nadel was wearing a gray AC/DC t-shirt and a baseball cap, and Officer Schuerlein was wearing a navy t-shirt and baseball cap. They observed Complainant Two, who was driving a Mercedes, commit several Vehicle and Traffic Law violations, including speeding, failing to maintain lane, and excessive tints on windows, while driving on Hempstead Turnpike in Elmont. They conducted a traffic stop in the vicinity of Hempstead Turnpike and Plainfield Avenue. Video shows that this was a busy, well-lit intersection.

When the officers approached the vehicle, they observed movement inside. Due to the tints on the windows, the officers were unable to determine what was occurring. As they got closer, they observed three individuals inside the car and still saw movement inside, including people “reaching down” and Complainant Two on the phone. According to Complainant Two, he was on the phone with his lawyer.

Officer Schuerlein asked Complainant Two to step out of the car, which he initially refused to do. Officer Nadel described Complainant Two to the OAG as “agitated” and “not happy.” This description is consistent with Complainant Two’s demeanor in the video footage he provided to the OAG, which indicates that Complainant Two believed he had the right to remain inside his vehicle during a traffic stop, a belief he communicated to the officers. Officer Nadel explained to the OAG that after a “back and forth” with Officer Schuerlein, Complainant Two stepped out of the car, along with both passengers. Video footage confirms that as soon as Officer Schuerlein placed his hand on Complainant Two’s arm to pull him out of the vehicle, Complainant Two complied and stepped out of the vehicle.

Complainant Two explained to the OAG that Officer Schuerlein walked him to the back of his vehicle, where he placed Complainant Two against the car and searched him. The front-seat passenger explained to the OAG that Officer Nadel searched his pockets. Officer Nadel told the OAG that all three occupants of the car were frisked. He recalled that Officer Schuerlein frisked Complainant Two, and that he frisked one of the other occupants, but could not remember who.

At least one officer conducted a search of the vehicle. In a Case Report that Officer Nadel prepared the following day, he recorded that the officers found a small amount of marijuana in the vehicle but did not confiscate it or take any other law enforcement action related to the marijuana.

While the officers were searching Complainant Two's car, Complainant Two called 911 to report that he was pulled over for excessive tints, that the officers pulled him out of the car, that they were illegally searching his car, and that he needed a supervisor because he did not feel safe. One of the officers at the scene responded by radio transmission that they did not need a supervisor at the location.

After the officers searched the car, Officer Schuerlein took Complainant Two's information so the officers could mail him summonses for the traffic infractions and Complainant Two and his passengers were permitted to leave.

Officer Nadel issued Complainant Two eleven tickets, totaling an amount owed of \$2818.00. Five of those tickets were for excessive window tints – one for each window, and one each for obstructed license plates, moving from a lane unsafely, failure to use designated lane, improper signaling, unsafe starting, and unlicensed operator. Officer Nadel told the OAG that he decided to write a ticket for each tinted window “based upon [Complainant Two] and his passengers' behavior and demeanor.”

When asked by the OAG, Officer Nadel did not recall that any of the occupants threatened him or his partner during the traffic stop and, when asked, did not state that he believed they were armed or that there was a weapon inside the vehicle. Officer Nadel stated that he believed Complainant Two was “dangerous just based on his demeanor,” which he described as “uncooperative, hostile, agitated,” coupled with not pulling over immediately and movement inside the car.

All the officers present, including a third officer who arrived at the scene after the occupants were removed from the car, told Investigating Sergeant Richard Soto from COPE that Complainant Two and his passengers were saying that they were being harassed because they are Black.

2. The Agency's Investigation and Determination

The following day, Complainant Two made a telephone complaint to NCPD regarding the stop and illegal search of his vehicle and the passengers. He agreed to meet Sgt. Soto at the 5th Precinct to make a written complaint. Complainant Two appeared at the agreed upon time with his two passengers from the incident. According to Sgt. Soto, Complainant Two was holding his phone in his hand and appeared to be recording. Sgt. Soto told him that he could not record within the station house, and Complainant Two eventually complied with the orders to turn off his phone.⁴

⁴ Sgt. Soto's orders for Complainant Two to stop recording may have violated the New York Right to Monitor Act, Civil Rights Law § 79-p, which provides that “[a] person not under arrest or in the custody of a law enforcement

Sgt. Soto interviewed Complainant Two and the officers who were present during the vehicle stop. He concluded that Complainant Two's version of events was very similar to the officers' account, other than he did not believe he had violated vehicle and traffic law offenses. Sgt. Soto closed the complaint as Unfounded.

3. OAG's Conclusions Regarding Complainant Two

Officer Nadel frisked a passenger of the vehicle in violation of the Fourth Amendment and NCPD Rules.

Although there is insufficient evidence to determine whether Officer Nadel conducted a search of the front-seat passenger, such a search would have been a clear violation of the Fourth Amendment. The analysis that follows relates to Officer Nadel's admitted frisk of a passenger of the vehicle.

The Fourth Amendment requires that a frisk for weapons be "supported by objective and particularized facts that [give] rise to a reasonable suspicion that [an individual] is armed and dangerous." *U.S. v. Weaver*, 9 F.4th 129, 147 (2d Cir. 2021); *Michigan v. Long*, 463 U.S. 1032, 1047-48 (1983). NCPD Arrest Procedures, Rule 6, provides that an officer may conduct a "limited protective search for weapons," also known as a frisk, "where there is reasonable suspicion that the subject poses a threat to the safety of the officer." The rule cites New York's statutory authority for frisks, C.P.L. § 140.50(3), and instructs officers to be familiar with that statute.

To determine whether a police officer has the required level of reasonable suspicion that a person is armed and dangerous, New York courts look to "the substance and reliability of the report that brought the officers to the scene, the nature of the crime that the police are investigating, the suspect's behavior and the shape, size, and location of any bulges in the suspect's clothing." *People v. Schuler*, 98 A.D.3d 695, 696 (2d Dept. 2012).

We find that Officer Nadel did not have reasonable suspicion that any of the occupants were armed and dangerous to justify a frisk. Significantly, Officer Nadel did not state to either NCPD or the OAG that he suspected any of the occupants possessed a weapon or that he suspected there was a weapon in the vehicle. Nor did he describe facts that would reasonably support such a conclusion. He stated that he felt the occupants were "dangerous" due to their demeanor, that the car did not pull over immediately, and that there were movements from inside the car. None of these facts either separately or taken together supports a reasonable suspicion that any of the occupants were armed and dangerous.

First, Officer Nadel's description of Complainant Two and the passengers' behavior and demeanor is not indicative of being armed and dangerous. He explained that Complainant Two was on the phone when they approached the vehicle, and that he was uncooperative, hostile and

official has the right to record law enforcement activity," so long as that individual does not "engage in actions that physically interfere with law enforcement activity or otherwise constitute a crime defined in the penal law involving obstructing governmental administration."

agitated. He stated that the other two occupants exhibited a similar demeanor. In his statement to NCPD, Officer Nadel elaborated that the occupants were “yelling, cursing and filming the officers” when they exited the car. None of this behavior is indicative of being armed.

Regarding Complainant Two’s supposed delay in pulling over, we do not credit this fact, as NCPD did not document it in their contemporaneous internal investigation and Officer Nadel’s recounting to the OAG was hazy at best. Here, Officer Nadel stated, “We turned on the vehicle’s emergency lights. I think – it’s hard to remember, it was a while ago. I don’t think he pulled over immediately and we did sirens a few times and then he pulled over.” In other words, once the officers – who were driving an unmarked car – turned on their sirens to signal they were police officers and communicate that they wanted to pull over Complainant Two, he complied. Significantly, Officer Nadel stated that he drives an unmarked vehicle. He explained to the OAG during his interview that because his vehicle “doesn’t look like a cop car, . . . sometimes when we pull people over, they are a little apprehensive, they are a little unsure,” explaining that he understood why “someone maybe is delayed in pulling over or we walk up and they are a little confused” We therefore do not find Complainant Two’s delay in pulling over – if there was a delay – to be suggestive of criminal activity.⁵

Finally, the movements from inside the vehicle that Officer Nadel described, including that people were “reaching down,” – which NCPD’s internal investigation did not document – were innocuous, not indicative of criminality or possession of a weapon. “A passenger who bends down to the floor of a vehicle is not engaged in ‘furtive’ movements. There is nothing presumptively clandestine or sneaky about such activity and it is certainly susceptible of innocent interpretation.” *People v. Guzman*, 153 A.D.2d 320, 323 (4th Dept. 1990); *see also People v. Newman*, 96 A.D.3d 43 (1st Dept. 2012) (“the movements observed by the officers as they approached the car suggested that defendants could have been searching for something underneath their seats Such movements may have simply reflected nervousness on the part of the individuals in the car – something that is not at all uncommon even when the most law-abiding individual encounters a police officer”); *People v. Rosetti*, 148 A.D.2d 357, 358 (1st Dept. 1989) (“The actions of the driver in looking over his shoulder, and the actions of defendant in twice ‘ducking down’ in the back seat, were innocuous.”); *contrast People v. Diaz*, 146 A.D.3d 803, 805 (2d Dept. 2017) (“[G]iven the police officer’s observations of the defendant’s furtive behavior while still seated in the vehicle, which included bending down and making movements toward the ground near his feet, *as well as the police officer’s observation of a large bulge in the defendant’s right leg pant*, the police officer had a sufficient and reasonable basis to conduct a pat down search of the defendant and to remove the gun found on him) (emphasis added); *People v. Allen*, 42 A.D.3d 331, 332 (1st Dept. 2007), *aff’d*, 9 N.Y.3d 1013 (2008) (officer, who observed “defendant, who was the passenger, and the other occupant of the car bend over and appear to pass something between them” and then “quickly put his hands in his pockets” had founded suspicion to frisk); *People v. Anderson*, 17 A.D.3d 166, 167 (1st Dept. 2005) (same, where front passenger was “‘turning’ and ‘bending’ his body toward defendant, as

⁵ While the manner in which an individual drives may contribute to a finding of reasonable suspicion to support a frisk, the operation of the car must be “unusual” enough to “suggest[] the possibility of criminal activity.” *People v. Crespo*, 292 A.D.2d 177 (1st Dept. 2002) (driving backwards at high rate of speed); *see also People v. Anderson*, 17 A.D.3d 166 (1st Dept. 2005) (upon seeing police checkpoint, defendant made illegal U-turn and proceeded away in opposite direction).

well as trying to adjust something in the center console before slamming it shut”) (internal quotations omitted).

Therefore, Officer Nadel’s frisk of one of the passengers was unlawful. While not the subject of this report, we note that Officer Schuerlein’s frisk of Complainant Two was unlawful for the same reason.

The search of the vehicle violated the New York State Constitution and NCPD Rules.

Under the New York State Constitution, a search of a vehicle for weapons may be justified incident to a lawful arrest (*People v. Belton*, 55 N.Y.2d 49, 55 [1982])⁶ or pursuant to the “automobile exception” (*People v. Johnson*, 159 A.D.3d 1382 [4th Dept. 2018]),⁷ which also requires a lawful arrest (*id.*). Otherwise, generally “it is unlawful for a police officer to invade the interior of a stopped vehicle once the suspects have been removed and patted down without incident, as any immediate threat to the officers’ safety has consequently been eliminated.” *People v. Mundo*, 99 N.Y.2d 55, 59 (2002).

Absent the above circumstances, a limited search of the vehicle is permissible only when “the officers could reasonably have concluded that a weapon located within the vehicle present[s] an actual and specific danger to their safety.” *People v. Mundo*, 99 N.Y.2d 55, 59 (2002); *People v. Carvey*, 89 N.Y.2d 707, 711-712 (1997); *People v. Torres*, 74 N.Y.2d 224, 227-31 (1989). An “actual and specific danger” requires more than “[m]ere hunch or gut reaction Consequently, conclusory assertions by police officers that a car’s occupants have engaged in ‘furtive’ behavior or caused them apprehension cannot validate further intrusions into the interior of a vehicle.” *People v. Newman*, 96 A.D.3d 34, 42 (1st Dept. 2012) (internal citations and quotation marks omitted); *see also People v. Johnson*, 183 A.D.3d 1273, 1275 (4th Dept. 2020); *People v. Griffin*, 42 Misc.3d 1210(A) (Crim. Ct. Richmond Cnty 2013).

Here, the search of the vehicle was unlawful because none of the above exceptions are applicable. First, there was no lawful arrest to justify the search as incident to arrest or pursuant to the automobile exception. Additionally, there was no articulable reason to suspect that there was a weapon in the vehicle, and any immediate threat to the officers – which we do not find – was dissipated once the occupants were removed and patted down without incident. *See Torres*, 74 N.Y.2d at 230. The search likewise violated NCPD Standards of Conduct, Rule 2, which prohibits officers from engaging in unlawful conduct.

⁶ “A valid arrest for a crime authorizes a warrantless search -- for a reasonable time and to a reasonable extent -- of a vehicle and of a closed container visible in the passenger compartment of the vehicle which the arrested person is driving or in which he is a passenger when the circumstances give reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made (as possibly containing contraband or as having been used in the commission of the crime) or there is reason to believe that a weapon may be discovered or access to means of escape thwarted.” *Belton*, 55 N.Y.2d at 54-55.

⁷ “The [automobile] exception requires both probable cause to search the automobile generally and a nexus between the probable cause to search and the crime for which the arrest is being made.” *Johnson*, 159 A.D.3d at 1383.

Officer Nadel abused his discretion and authority when he excessively and retaliatorily ticketed Complainant Two.

Officer Nadel told the OAG that during training he was instructed to “be mindful” about the number of tickets he issued and that he was not trained or advised to write a separate ticket for each tinted window on a vehicle. He “very rarely” would do that if someone was pulled over for tinted windows. However, here Officer Nadel explained to the OAG that he decided to write a ticket for each tinted window on Complainant Two’s vehicle “based upon [Complainant Two] and his passengers’ behavior and demeanor.” While there is no specific NCPD policy on ticketing, the Department procedures “presume that police officers will exercise sound judgment and reasonable discretion when applying procedures to the circumstances at hand.” Dept. Manual, Introduction. NCPD policy recognizes that an abuse of discretion “can cause deep cynicism about fairness and the legitimacy of law enforcement and the judicial system.” NCPD Department Policy 4103.

Excessive ticketing can lead to community distrust of police officers and can have serious negative consequences for individuals and communities, including license suspensions, incarceration, and the requirement to choose between paying those fines or putting food on the table.⁸

In this instance, Officer Nadel’s decision to issue eleven tickets to Complainant Two for a non-public safety reason and instead allow retaliation to motivate his decision contravenes the department’s training and constitutes an abuse of discretion and authority.

This is not the only time that Officer Nadel may have abused his discretion in this way. On January 4, 2020, Officer Nadel issued six tickets, including three for excessive window tints, in a separate incident. He told the OAG that he did not have a reason for issuing three versus six tickets, but explained that he issued that complainant multiple tickets for tinted windows “because of her attitude.”

D. Complaint 3

1. Factual Background

The narrative that follows is based on OAG interviews with the Complainant and Officer Nadel, Officer McCartney’s body-worn camera (BWC) footage of the incident, and NCPD materials in connection with incident. Where accounts diverge, we describe the different statements and our assessment of the evidence.

On January 22, 2022 at 9:30 p.m., Officer McCartney and Officer Nadel drove into an alleyway. They had allegedly observed Complainant Three urinate in public in violation of Town of Hempstead Code § 77-9, Disorderly Conduct, a violation. Officer McCartney activated his BWC as the officers pulled into the alley.

⁸ See, e.g., *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications*, U.S. COMMISSION ON CIVIL RIGHTS, available at https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf.

The video footage shows Complainant Three standing next to his bicycle when the two officers approached him. At 9:31:24 p.m., Officer Nadel asked Complainant Three for identification. Complainant Three asked Officer Nadel for his “delegation and authority.” Two seconds later, at 9:31:26 p.m., while Officer McCartney was responding to Complainant Three’s question and without waiting for Complainant Three to provide his identification, Officer Nadel placed his hand inside Complainant Three’s left front jacket pocket and searched it, removing the contents of the pocket. Officer Nadel described to the OAG that Complainant Three was “uncooperative, didn’t want to tell us his name or give ID.” He stated that after he asked Complainant Three for identification he was “immediately met with resistance.” However, Officer McCartney’s body-worn camera footage shows that Officer Nadel reached into Complainant Three’s jacket pocket two seconds after requesting identification, without providing Complainant Three with an opportunity to comply.

Next, the video footage depicts Officer Nadel frisking Complainant Three’s right front jacket pocket, directing him across the alleyway and ordering him to place his hands on a metal bar. Officer Nadel searched all of Complainant Three’s pockets in his jacket and pants, emptied them, patted down his legs, and unzipped his jacket.

Officer Nadel explained to the OAG that he searched Complainant Three because he was under arrest and because he thought Complainant Three had a weapon in his pocket. No contraband was recovered from Complainant Three’s person.

Officer Nadel then searched Complainant Three’s backpack, which was on the handlebars of his bicycle. Complainant Three asked, “Why are you in my bag?” and stated, “Going through my personal property without my consent.” Officer Nadel explained to the OAG that he searched Complainant Three’s backpack because he was under arrest.

Officer Nadel recovered no contraband from Complainant Three’s backpack. Complainant Three told the OAG that his bag had groceries inside.

Officer McCartney and Officer Nadel then discussed whether to write Complainant Three a ticket for urinating in public, and Officer McCartney stated, “may as well.” Officer Nadel issued a summons to Complainant Three for urinating in public.

2. Agency Investigation

Complainant Three filed a complaint with the Nassau County District Attorney’s Office (NCDA) on February 25, 2022 that he was improperly stopped, detained and searched. He was interviewed by the NCDA on March 2, 2022, and the NCDA referred the complaint to NCPD on March 16, 2022. The complaint was referred to be investigated internally by Sgt. Soto from COPE. Officer Nadel told the OAG that his supervisor looked at the BWC and “said everything was fine.” According to NCPD documentation, Sgt. Soto determined that the officers had a legal right to stop, search and detain Complainant Three and that the complaint was Unfounded.

3. OAG's Conclusions Regarding Complainant Three

Officer Nadel searched Complainant Three in violation of the Fourth Amendment and NCPD Rules.

Warrantless searches “are per se unreasonable under the Fourth Amendment,” unless an exception to the warrant requirement applies. *Katz v. United States*, 389 U.S. 347, 357 (1967). In his interview with the OAG, Officer Nadel provided two justifications for his search of Complainant Three: that it was a search incident to arrest and that it was a search for weapons.

First, Officer Nadel told the OAG that he searched Complainant Three as a search incident to arrest. To invoke this exception, there must be “an actual arrest, not just probable cause that might have led to an arrest, but did not.” *People v. Reid*, 24 N.Y.3d 615, 619 (2014). “This necessarily requires that, at the time the search is undertaken, an arrest has either been made or the officer has already formulated the intent to effectuate an arrest.” *People v. Mangum*, 125 A.D.3d 401, 403 (2015). As such, a search may not be conducted pursuant to the issuance of a summons or appearance ticket. *People v. Kalikow*, 90 A.D.3d 1558, 1558-59 (4th Dept 2011) (holding that where “the police officer merely issued an appearance ticket to defendant for violating a municipal open container ordinance and had no intention of performing a custodial arrest,” the officer’s search of the defendant was unlawful).

Here, Complainant Three was not under arrest and Officer Nadel did not intend to arrest him. Officer Nadel explained to the OAG that Complainant Three was “de facto under arrest” because he did not provide identification. Setting aside the fact that Officer Nadel did not provide Complainant Three with an opportunity to present his identification, Officer Nadel himself conceded that he did not intend to arrest Complainant Three at the time he searched him – he explained to the OAG that Complainant Three only would have been arrested if the officers had not been able to identify him. Because Officer Nadel never actually arrested Complainant Three and instead issued him a summons, that exception to the warrant requirement does not apply.

Next, Officer Nadel told the OAG that he also searched Complainant Three because he was “immediately concerned he might have a weapon in his pocket.” This justification fails because if Officer Nadel was concerned about a weapon, he was only permitted to conduct a frisk, not the full-blown search that occurred here. In any event, such a frisk is permitted only when an officer has reasonable suspicion that an individual is armed and dangerous. *U.S. v. Weaver*, 9 F.4th 129, 147 (2d Cir. 2021); *Michigan v. Long*, 463 U.S. 1032, 1047-48 (1983). Here, Officer Nadel did not identify, and the video footage does not show, any objective indicia sufficient to establish reasonable suspicion that Complainant Three was armed and dangerous as required by law.

Officer Nadel’s search of Complainant Three violated the Fourth Amendment and NCPD rules because there was no legal justification for the search.

Officer Nadel searched Complainant Three's backpack in violation of the Fourth Amendment and NCPD Rules.

Although Officer Nadel justified the search of Complainant Three's backpack as a search incident to arrest, a police officer is not authorized to search an individual's bag without an actual arrest or the formulation of an intent to arrest. *People v. Mangum*, 125 A.D.3d 401, 403 (1st Dept. 2015). Under the New York State Constitution, there are two requirements before a police officer may search a closed container incident to arrest. First, the search must be contemporaneous with the arrest. Second, there must be exigency to justify the search. *People v. Gokey*, 60 N.Y.2d 309, 312-313 (1983). Thus Officer Nadel violated the Fourth Amendment and NCPD rules when he searched Complainant Three's backpack because Complainant Three was not being arrested, nor did the circumstances of the encounter meet the requirements of *Gokey*.

CONCLUSIONS AND RECOMMENDATIONS

Officer Nadel's Fourth Amendment violations during vehicle and pedestrian stops involving minor offenses constitute a pattern of misconduct under Executive Law § 75(5)(b). Officer Nadel repeatedly violated the constitutional rights of individuals to be free from unreasonable searches and seizures.

In each of these incidents, supervisors reviewed the conduct and either condoned or did not recognize the constitutional violations. Patrol officers should not bear the sole responsibility to recognize and correct unconstitutional conduct when that misconduct is not recognized or corrected by their superiors.

To ensure Fourth Amendment compliance, we recommend that NCPD develop a plan for addressing this conduct that includes monitoring and in-service scenario-based training to Officer Nadel on search and seizure law.

NCPD should also consider updating its Arrest Procedures to include guidance on searching bags and other closed containers. For example, the New York City Police Department's Patrol Guide Procedure Number 212-11 instructs officers on when it is permissible to "frisk" a bag and when a bag may be searched.

We are not recommending specific disciplinary action because each of these incidents is past the 18-month statute of limitations for discipline under Civil Service Law 75.

We request pursuant to Executive Law § 75(5)(c) that NCPD inform the OAG within 90 days of the actions it is taking in response to this letter, including training and monitoring.

Thank you,

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