



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

June 28, 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 Detective Green
OAG Matter No. 1-793788177

Dear Commissioner Ryder,

We have reviewed your agency's referral of Detective Jason Green 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 Detective Green.

However, we do find that with respect to IAU 72-2020, Detective Green made a warrantless entry and arrest in the Complainant's home on October 18, 2020 and used excessive force to effectuate the arrest in violation of the Fourth Amendment. Our findings and recommendations regarding this incident are described below. We request a written response within 90 days as to NCPD's actions regarding our recommendations.

1. Facts

At 12:30am on October 18, 2020, Detective Green and Detective Jason Williams went to the Complainant's home to arrest him on a charge of misdemeanor coercion, which the Complainant was alleged to have committed over one year earlier on October 5, 2019. The coercion charge stemmed from an incident involving an alleged telephonic threat. The detectives did not have an arrest warrant. Both detectives were in plain clothes.

The Complainant had been sleeping when he heard a knock at his door. He cracked the door open to see who was there. When the Complainant attempted to close the door in response to the detectives informing him he was under arrest, Detective Green placed his foot inside, preventing the Complainant from closing his door.

The incident escalated as the Complainant refused to leave his home or allow the detectives inside. Video surveillance from a motion-activated camera inside the Complainant's home depicts the Complainant stating to the detectives, "you can't be in my house, I'm telling you not to go into my f--ing house," "back out of my house," "I've got a dog here, back out of my house," and "back your foot out of my house." Video surveillance also shows the Complainant picking up his phone, a wireless landline, and bringing it over to the door to call 911. At this time, Detective Green threatened the Complainant with another "charge." According to the detectives but not depicted on video, which did not record the final moments of the encounter, the Complainant threatened to punch them in their face and sick his dog on them. Also according to the detectives but not depicted on video, the Complainant picked up a small wooden block that was next to him, waived it at the detectives, and threatened to hit them with it.

At this time, the detectives used physical force to place the Complainant in custody. Video surveillance from the hallway outside the Complainant's home depicts Detective Green reaching into the Complainant's home, forcibly pulling the Complainant out, throwing him against the wall, taking him to the ground, and punching him approximately eight times in the torso or head area while he and Detective Williams are on top of him. Video surveillance shows that the Complainant did not have a wooden block in his hand when he was pulled out of his home.

After Detective Green handcuffed the Complainant in the hallway, hallway video surveillance depicts Detective Green reaching into the Complainant's home and retrieving a small wooden block from what appears to be the top of a grandfather clock positioned next to the door. The Complainant told OAG personnel that he used the block as a door stopper, an explanation that is consistent with the block's size and shape.

The Complainant lodged the complaint on October 18, 2020 while he was in custody. NCPD appears to have finalized its internal investigation in March or April 2023 (the final report is undated). NCPD concluded that the use of force was justified, but did not analyze whether Detective Green's decision to use his foot to block the door and then to cross the threshold of Complainant's home to make the arrest was permissible. The Nassau County District Attorney's Office concluded that the allegations against Detective Green did not warrant a criminal prosecution, but informed NCPD that "the District Attorney's Office finds it concerning that the detectives involved in this matter took more than a year [after the alleged criminal conduct] to arrest [the Complainant]" and that the "delay and time of arrest [at 12:35 A.M.] may have been contributing factors to the incident."

2. Conclusions

- a. Detective Green's warrantless entry and arrest of the Complainant inside his home violated the Fourth Amendment and NCPD Procedures.

NCPD Arrest Procedures, Rule 1, prohibits a person from being "arrested [] or detained except as provided by law."

The Fourth Amendment has “drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *People v. Levan*, 62 N.Y.2d 139, 145 (1984). Accordingly, “seizures inside a home without a warrant are presumptively unreasonable.” *Payton v. New York*, 445 U.S. 573, 586 (1980).

When Detective Green placed his foot inside the Complainant’s apartment and then arrested him by pulling him into the hallway, he violated the Fourth Amendment by crossing the threshold of the home without a warrant or the presence of exigent circumstances.¹ See *United States v. Allen*, 813 F.3d 76 (2d Cir. 2016); *People v. Riffas*, 120 A.D.3d 1438, 1438-39 (2d Dept. 2014); *People v. Gonzales*, 111 A.D.3d 147 (2d Dept. 2013); *People v. Parris*, 64 Misc.3d 1229(A), at *2-3 (Sup. Ct. Suffolk Cnty 2019); see also *People v. Garvin*, 30 N.Y.3d 174, 187 (2017).

After the Complainant refused to cooperate with the request to come out of his home so that he could be placed under arrest, the detectives were “required to withdraw and return another time with a warrant.” *Garvin*, 30 N.Y.3d at 187. Where the detectives had over one year to obtain an arrest warrant, there appears to have been no excuse for proceeding without a warrant. *People v. Knapp*, 52 N.Y.2d 689, 697 (1981); see *People v. Lott*, 102 A.D.2d 506 (1984).

- b. Detective Green violated the Fourth Amendment and NCPD Procedures when he used unauthorized and excessive force against the Complainant.

NCPD Arrest Procedures, Rule 2, permits a police officer to only “use such force as is legally justifiable to effect an arrest.” Similarly, NCPD Standards of Conduct, Rule 16, states that “Members of the Department will not use force except as provided by law.” NCPD’s Use of Force Procedure states that force is authorized when “reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one’s self or another.”

As to excessive force, NCPD’s Use of Force Procedure explains that the “totality of circumstances should be considered when deciding the force necessary,” which include “the severity of the crime, whether an individual poses an immediate threat to the safety of a police officer or others, and whether an individual is actively resisting arrest or attempting to evade arrest by flight.” These factors parallel those established by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989) and subsequent rulings.

We assess two instances of Detective Green’s use of force: the force he used when he pulled the Complainant into the hallway, and the force he used after he pulled him out.

¹ The warrantless arrest cannot be justified by exigent circumstances related to the Complainant’s alleged threat because “the police themselves cannot by their own conduct create an appearance of exigency.” *People v. Levan*, 62 N.Y.2d 139, 146 (1984); see also *Kentucky v. King*, 563 U.S. 452, 462 (2011). Nor was there exigency justifying Detective Green’s initial intrusion into the home, given the misdemeanor offense, the length of time (more than one year) that had passed since the alleged offense, and no indication that the Complainant would escape.

First, pulling the Complainant out of his home was not authorized because the warrantless arrest was unlawful as described above, and the force was not otherwise legally justifiable.

Second, Detective Green's use of force when he punched the Complainant at least eight times while he and the other detective were on top of the Complainant was excessive and thus unauthorized by NCPD policy. The hallway video appears to show that the detectives gained substantial control over the Complainant after they pulled him out of his home. Despite this, Detective Green punched the Complainant at least eight times in the head or torso area in quick succession after the Complainant had been taken the floor, providing the Complainant with no reasonable opportunity to comply with any verbal commands between the individual strikes. For these reasons, Detective Green's delivery of repeated punches in quick succession was not proportional under the circumstances and therefore excessive.

We disagree with the NCPD's conclusion that the use of force was appropriate here. While punches are an authorized technique under NCPD's use of force policy under certain circumstances, in this case, the initial warrantless seizure of the Complainant from inside his home was not justified by law (a factor that the NCPD investigation did not consider), the Complainant did not have a weapon when he was pulled from his apartment (video later shows the detectives retrieving the wooden block from a shelf in the apartment), and the punches were delivered while the Complainant was face down on the floor of the apartment hallway with both detectives on top of him.

- c. The NCPD internal investigation exceeded the 18-month limitations period and did not address the warrantless entry into Complainant's home

NCPD's Civilian Complaint Investigations Procedure requires that NCPD "promptly and thoroughly investigate complaints and allegations of misconduct made against Members of the Department." The Complainant filed a civilian complaint with NCPD on October 18, 2020. The investigation took nearly two and a half years to complete, exceeding the 18-month period for bringing administrative charges under Civil Service Law 75(4), despite involving a relatively straightforward complaint with video surveillance and a near-contemporaneous sworn statement from the Complainant.

In addition, the investigation did not consider whether the warrantless arrest in the Complainant's home was permissible.

Beyond the importance of finishing an investigation prior to the expiration of the 18-month limitation for initiating disciplinary proceedings, there are many benefits to a timely civilian complaint investigation, including ensuring the availability of witnesses and evidence, respecting the concerns of employees who await disposition of their case, developing and maintaining the trust of the communities the department serves, and taking prompt corrective action to help avoid future misconduct.²

² See *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*, U.S. DEPT. OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, available at <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>; *Investigation of Employee Misconduct* at 2,

3. Recommendations

Given the findings described above, we recommend the following remedial actions:³

- a. provide training to Detectives Green and Williams on laws of warrantless entries, searches, and seizures inside the home, and the use of force;
- b. review and update NCPD rules, policies, and procedures to ensure they accurately describe governing law on warrantless entries, searches, and seizures inside the home; and
- c. ensure that internal investigations are completed in a timely manner and within the 18-month statute of limitations period.

We ask that you inform the Office of the Attorney General within 90 days of the actions regarding your response to these remedial actions 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

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, *available* at https://www.theiacp.org/sites/default/files/2019-04/Employee%20Misconduct%20Paper%20-%202019_0.pdf.

³ Because more than 18 months have passed since the date of the incident, we are not recommending specific disciplinary action per Civil Service Law § 75(4).