

**NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL  
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE**

**REPORT AND FINDINGS PURSUANT TO EXECUTIVE LAW § 75(3) REGARDING  
MAY 11, 2022 INCIDENT AND THE NIAGARA FALLS POLICE DEPARTMENT**

**October 13, 2023**

## **I. EXECUTIVE SUMMARY**

New York Executive Law § 75 established the Law Enforcement Misconduct Investigative Office within the Office of the Attorney General (“OAG”). Executive Law § 75(3) authorizes the OAG to “receive and investigate complaints from any source” concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse in any covered agency.” At the conclusion of such an investigation, the OAG may determine “whether disciplinary action, civil or criminal prosecution . . . is warranted” and prepare and release a public report detailing its findings and recommendations. Executive Law § 75(3)(c)-(d).

On May 12, 2022, the Complainant, a 47-year-old Black woman, filed a complaint with the OAG regarding an encounter with Officer Travis Maggard and Officer Anisa Mahmood of the Niagara Falls Police Department (“NFPD”) on May 11, 2022. The Complainant alleged that after a verbal exchange with the officers, they used excessive force to arrest her for disorderly conduct outside of her home in Niagara Falls.

This report sets forth the OAG’s findings.<sup>1</sup> Based on our review of documentary evidence, video footage, and our interviews of the Complainant, Officer Maggard and Officer Mahmood, we conclude that:

- (1) Officer Maggard arrested the Complainant without probable cause and in retaliation for her protected speech;
- (2) Officer Maggard used excessive force in effecting the arrest; and
- (3) Officer Maggard and Officer Mahmood did not complete Use of Force Reports documenting the incident as required by the NFPD’s Use of Force Policy, and their supervisor, who reviewed video footage of the incident, did not ensure a report was completed.

Section II of this report briefly summarizes the OAG’s prior consent decree with the NFPD. Section III provides an overview of the OAG’s investigation of this incident. Section IV describes the OAG’s findings. Section V sets forth recommendations to the agency.

## **II. THE OAG’S 2010 CONSENT DECREE WITH THE NFPD**

In 2010, the OAG entered into a Stipulated Order on Consent (the “Consent Decree”) with the NFPD.<sup>2</sup> This Consent Decree was the result of an OAG investigation into the NFPD’s failure to investigate and prevent excessive use of force against Black residents. From 2011 to 2015, the NFPD was monitored by the OAG and an Independent Auditor. During this time, the NFPD implemented several agreed upon departmental changes, including amending its Use of

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<sup>1</sup> During the investigation, this office was advised that Officer Mahmood resigned from the NFPD in March 2023 and currently works for the Town of Niagara Police Department.

<sup>2</sup> Exhibit 1, Stipulated Order on Consent, *People of the State of New York v. The City of Niagara Falls, et al.* (Nov. 30, 2010).

Force Policy, mandating use of force reporting, supervisory and internal review of use of force, and amending its internal investigation process. During the OAG investigation, the City of Niagara Falls “indicated its desire to continue to reform its police policies and procedures to ensure appropriate use of force in all instances; respectful and effective policing; and fair and equal treatment of all citizens, regardless of race, color, and/or national origin.”<sup>3</sup> The required reforms were intended to achieve these goals, to prevent excessive force against Niagara Falls residents, and to ensure that if excessive force was used by officers, it was promptly identified and thoroughly investigated.

The incident that is the subject of this report involves the type of conduct that the reforms required by the Consent Decree were intended to prevent.

### **III. OVERVIEW OF INVESTIGATION**

To assess the Complainant’s allegations, OAG personnel interviewed her and Officers Maggard and Mahmood and reviewed video footage from the Complainant’s home security camera, NFPD documentation of the incident, and relevant NFPD policies.

The OAG requested body worn camera (“BWC”) footage of this incident, but none was available. Officer Mahmood, who had been a patrol officer for five months at this time, had not been provided a BWC.<sup>4</sup> Officer Maggard could not recall if he activated his BWC.<sup>5</sup> Because NFPD transitioned to new BWCs shortly after this incident, NFPD was not able to determine whether Officer Maggard’s BWC was activated.

### **IV. FINDINGS**

#### **A. Factual Findings**

These findings of fact are based on an evaluation of the evidentiary record using a preponderance of the evidence standard.

On May 11, 2022, at approximately 9:15 p.m., the Complainant observed NFPD officers taking an individual into custody near her home. According to the Complainant, she had called the NFPD to report incidents of domestic violence on several occasions prior to May 11, 2022, and the NFPD had failed to appropriately respond. The Complainant approached the officers and began criticizing them.<sup>6</sup>

Video footage from the Complainant’s security camera shows her leaving her porch to approach the officers at 9:15:58 p.m., and she began speaking to them at 9:16:11 p.m. Beginning at 9:16:24 p.m., the Complainant is heard on the video footage stating, “You guys never put nobody out of my place for that,” and “I’m just checking it out, documenting it for my

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<sup>3</sup> Exhibit 1, Consent Decree, at 2.

<sup>4</sup> Exhibit 2, Mahmood Transcript, at 18:21-19:11.

<sup>5</sup> Exhibit 3, Maggard Transcript, at 23:13-22.

<sup>6</sup> Exhibit 4, Maggard Incident Report.

records, making sure that you guys of course are not doing your motherf--cking job as usual. Goodnight.”<sup>7</sup> The footage does not show any individuals, other than the Complainant, the officers (four or five patrol vehicles according to Officer Maggard), and the individual being taken into custody, in that area.<sup>8</sup>

At 9:16:39 p.m.—approximately 40 seconds after she left her porch, and less than 30 seconds after she began speaking—the video footage shows that the Complainant turned around and walked away from the officers, back toward her home. As she got closer to her door, Officer Maggard began following her and yelled, “Hey, Hey.” The Complainant stopped and responded, “What?” and Officer Maggard responded back, “Come here.” The Complainant then turned to face Officer Maggard and said, “For what? What are you about to do, take me to jail for speaking my mind?” The following still image of the Complainant’s video footage shows where Officer Maggard and the Complainant were standing during this exchange:



Officer Maggard replied, “Yeah, you wanna play stupid games?” pulled out his handcuffs, and reached to grab the Complainant’s left arm. He did not inform her that she was under arrest. The Complainant stated: “Oh really? Don’t touch me!” and started to move toward her door. Officer Maggard grabbed her left arm while ordering her to “put your hands behind your back.” Moments later, Officer Mahmood, who had run over to assist, ordered the Complainant to “get on the ground” while Officer Maggard continued to hold her left arm.

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<sup>7</sup> Exhibit 5, Ring Video Footage.

<sup>8</sup> Exhibit 3, Maggard Transcript, at 26:19-21.

The still image below depicts Officer Maggard extending his arms to take the Complainant to the ground where she landed stomach-down:



Officer Maggard then held the Complainant's left arm to the ground while Officer Mahmood knelt and used her right arm to hold the Complainant's right arm to the ground and repeated her command to "get on the ground." The following still image shows that, as Officer Mahmood restrained the Complainant's right arm with her right hand, Officer Mahmood's left hand was pushing on the Complainant's head:



While the Complainant's hands were restrained by the officers, the Complainant informed them that the camera outside her home was recording the incident. In response, Officer Maggard stated: "That's fine," and Officer Mahmood stated: "That's okay, that's okay, just put your hands behind your back and you'll be fine." While continuing to push the Complainant's head into the ground, Officer Mahmood shouted at high volume, "Put your hands behind your back!" The Complainant was then handcuffed and pulled up from the ground by the officers. When she was pulled up from the ground, the video footage shows that her shirt had been pulled down during the arrest, exposing her breasts. While the Complainant was standing, Officer Mahmood pulled her shirt up.<sup>9</sup>

During a conversation between the Complainant and Officer Maggard about the arrest on the way to the patrol car, he can be heard saying, "you approached us about a situation you weren't even involved in and then you began swearing out in public," and that "you should have minded your own business."<sup>10</sup>

Officer Maggard and Officer Mahmood transported the Complainant to the NFPD Headquarters for booking and processing and placed her in a holding cell.<sup>11</sup> While in the holding cell, the Complainant requested emergency medical attention and was transported to Niagara Falls Memorial Medical Center. Before being transported to the hospital, she was issued an appearance ticket charging her with disorderly conduct under Penal Law § 240.20(3), a non-criminal violation.

The Complainant left Niagara Falls Memorial Medical Center and went to Mount St. Mary's Hospital. There, the Complainant reported that she has been sexually abused by an NFPD officer, and a Lieutenant responded to the hospital to investigate. The Complainant made this allegation based on the confrontation between her and the officers, including her breasts being exposed during the arrest. The Complainant reported what occurred and showed the Lieutenant video footage from her security camera on her cell phone screen.<sup>12</sup> The Lieutenant informed the Complainant that in his opinion, the video footage was that "of an officer arresting a subject who was resisting."<sup>13</sup> In his narrative report, the Lieutenant wrote that he advised the Complainant that she could file a complaint against the officer if she wished, but that she declined to do so because she believed the process was biased.<sup>14</sup> A Detective also responded to take photographs of the Complainant and to collect the video footage from her security camera. The Complainant told the Detective that she was uneasy about speaking to the police and that she did not want to supply the video before she spoke to her attorney. The Detective took photographs of the Complainant's injuries, which included bruising to her wrists and left arm.<sup>15</sup> Neither the Lieutenant nor the NFPD's Office of Professional Standards followed up with the Complainant, and no further investigation was conducted.

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<sup>9</sup> Exhibit 5, Ring Video Footage.

<sup>10</sup> Exhibit 5, Ring Video Footage.

<sup>11</sup> See Exhibit 4, Maggard Incident Report; Exhibit 6, Arrest Report.

<sup>12</sup> Exhibit 7, Narrative Report #3.

<sup>13</sup> Exhibit 7, Narrative Report #3.

<sup>14</sup> Exhibit 7, Narrative Report #3.

<sup>15</sup> Exhibit 8, Detective Narrative Report.

The disorderly conduct charge was dismissed at the first court appearance.

B. Unlawful and Retaliatory Arrest

Officer Maggard unlawfully arrested the Complainant in violation of the Fourth Amendment of the United States Constitution and Article I, § 12 of the New York State Constitution because he lacked probable cause that the Complainant committed the offense of disorderly conduct. Additionally, Officer Maggard's retaliatory arrest of the Complainant based on her protected speech violated the First Amendment of the United States Constitution.

Penal Law § 240.20(3) provides: "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof in a public place, he uses abusive or obscene language, or makes an obscene gesture." This charge requires "proof of an intent to threaten public safety, peace or order (or the reckless creation of such a risk)." *People v. Baker*, 20 N.Y.3d 354, 359 (2013). Specifically, "a person may be guilty of disorderly conduct only when the situation extends beyond the exchange between the individual disputants to a point where it becomes a potential or immediate public problem." *Id.* at 359-60 (quoting *People v. Weaver*, 16 N.Y.3d 123, 128 (2011)).<sup>16</sup> In the context of interactions with police officers, "isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the 'public harm' mens rea necessary to support a disorderly conduct charge." *Id.* at 363.

The Complainant had a brief exchange with officers using isolated obscenities. She did not raise her voice to the officers, threaten the officers, or cause a public disturbance. The video footage does not show any visible bystanders in the vicinity other than the individual being arrested, and there is no indication that the Complainant's statements interfered with that arrest. Most significantly, within 30 seconds of starting to speak with the officers, she walked away from the officers and back toward her home. Under the circumstances, there is no indication of an intent by the Complainant to threaten public safety, peace, or order. After observing the Complainant walk away, no reasonable officer would have believed that she had such an intent and followed her to effectuate an arrest. Thus, Officer Maggard's arrest of the Complainant was not supported by probable cause. *See People v. Gonzalez*, 25 N.Y.3d 1100, 1101 (2015) (holding that there was no probable cause for disorderly conduct charge based on defendant's "rant against police officers"); *Baker*, 20 N.Y.3d at 362 (holding that there was no probable cause when defendant, while stepping away from the police officer's patrol vehicle, made "two abusive statements" to the officer during a brief outburst "lasting about 15 seconds").

In addition, Officer Maggard's arrest of the Complainant violated the First Amendment of the United States Constitution. The Complainant's statements, which amounted to "verbal criticism and challenge directed at police officers," were protected by the First Amendment and

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<sup>16</sup> To assess whether there is proof of an intent to threaten public safety, peace or order, courts consider "many factors, including the time and place of the episode under scrutiny; the nature and character of the conduct; the number of people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances." *Baker*, 20 N.Y.3d at 360 (internal quotation marks omitted).

cannot be the basis of a lawful arrest. *See City of Houston v. Hill*, 482 U.S. 451, 461 (1987); *Case v. City of New York*, 233 F. Supp. 3d 372, 390 (S.D.N.Y. 2017); *Garafalo v. City of Saratoga Springs*, No. 11-CV-0087 (MAD/RFT), 2013 WL 1180835, at \*5 (N.D.N.Y. Mar. 20, 2013). The Complainant’s arrest was retaliatory because Officer Maggard arrested the Complainant based on her protected speech, and there was no probable cause for the arrest. *See Garafalo*, 2013 WL 1180835, at \*4-5.

### C. Excessive Force

Officer Maggard used excessive force against the Complainant in violation of the Fourth Amendment of the United States Constitution and Article I, § 12 of the New York State Constitution. The force applied by Officer Maggard was also inconsistent with the NFPD’s Use of Force Order.<sup>17</sup>

To evaluate an officer’s use of force and determine whether the force was excessive, courts consider the objective reasonableness of the force based on the “facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). The inquiry is “whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Id.* at 397 (internal quotation marks omitted).

The NFPD’s Use of Force Order provides that “[w]hen deciding whether to use force, officers shall act within the boundaries of the United States and New York State constitutions and laws,” and instructs officers to consider the *Graham* factors before applying non-deadly force.<sup>18</sup> It further states that the use of force is only lawful if it is the “minimum amount of force necessary to affect an arrest or protect the officer or other person.”<sup>19</sup> Finally, the Order includes a Use of Force Continuum which outlines the options available to officers at each level of resistance.<sup>20</sup>

Under the circumstances, the force used by Officer Maggard — specifically, taking the Complainant to the ground — was unnecessary, excessive, and a violation of the NFPD’s Use of Force Order.

The video footage shows that after the Complainant walked away from the officers, Officer Maggard pursued her, and she complied with his directive to stop. Officer Maggard confronted the Complainant and asked, “You wanna play stupid games?” Then, without advising her that she was under arrest, he pulled out his handcuffs and reached out to grab her left arm. He did not make use of “command presence, tactical communication, or verbal commands,” the first step in the NFPD Force Continuum, nor did he issue the “advisements,

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<sup>17</sup> Exhibit 9, NFPD General Order, Use of Force.

<sup>18</sup> Exhibit 9, NFPD General Order, Use of Force, at 1, 6.

<sup>19</sup> Exhibit 9, NFPD General Order, Use of Force, at 3.

<sup>20</sup> Exhibit 9, NFPD General Order, Use of Force, at 11-12. The Order specifies that the Continuum is a guideline.

warnings, [or] verbal persuasion” described in the department’s de-escalation policy.<sup>21</sup> Instead, he resorted to force immediately. Further, he did not ask the Complainant for identification or otherwise attempt to issue an appearance ticket to the Complainant at the scene as authorized by Criminal Procedure Law § 150.20, which could have prevented the use of force.

The *Graham* factors—which are expressly incorporated into the NFPD’s Use of Force Order—also do not support the force used against the Complainant because (1) the severity of the purported offense was minor (a non-criminal violation), (2) there was no indication that the Complainant was an immediate threat to the safety of Officer Maggard or any other individual, and (3) the Complainant was not actively resisting arrest or attempting to evade arrest, particularly in light of the fact that Officer Maggard did not inform her that she was under arrest.<sup>22</sup> Taking the Complainant to the ground was an escalation of force that was excessive and unnecessary given these circumstances.<sup>23</sup>

#### D. Failure to Report the Use of Force

As part of the Consent Decree described above, the City of Niagara Falls and the NFPD agreed to enhance the use of force reporting procedures.<sup>24</sup> Currently, the NFPD’s Use of Force Order requires that “[o]fficers who use force as described in this policy must immediately report the circumstances to a command or supervisory officer and submit, without delay, a Use of Force Report.”<sup>25</sup> A reportable use of force is defined as: “All force used above non-resistant compliant handcuffing with the exception of drawing a firearm at low ready position.”<sup>26</sup>

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<sup>21</sup> Exhibit 9, NFPD General Order, Use of Force, at 11-12. *See Brown v. City of New York*, 798 F.3d 94, 102 (2d Cir. 2015) (commenting that during arrest for disorderly conduct, “no reason appears why, with [Plaintiff] standing, each officer could not have simply held one of her arms, brought it behind her, and put handcuffs on her wrists. Or they could have simply surrounded her, at least for a few moments, making it clear that she could not leave until she submitted to handcuffing”).

<sup>22</sup> Under Criminal Procedure Law § 140.15(2), “[t]he arresting police officer must inform such person of his authority and purpose and of the reason for such arrest unless he encounters physical resistance, flight or other factors rendering such procedure impractical.”

<sup>23</sup> Officer Maggard’s Incident Report states that the officers “placed [the Complainant] in handcuffs where she pulled away falling to the ground.” Exhibit 4, Maggard Incident Report. He further stated that they all “stumbled onto the ground” during his interview. Exhibit 3, Maggard Transcript, at 35:5-7. This is not consistent with the OAG’s analysis of the video, *see supra* p. 4, or the officers’ numerous directives to “get on the ground.”

<sup>24</sup> Exhibit 1, Consent Decree, at 5-6.

<sup>25</sup> Exhibit 9, NFPD General Order, Use of Force, at 13. The NFPD’s Use of Force Order defines force as: “To compel by physical means; physical contact or action beyond mere restraint. Any physical strike or instrumental contact with a person, any intentional attempted physical strike or instrumental contact that does not take effect, or any significant physical contact that restricts the movement of a person, including: acquiring a target with a firearm, discharging a firearm, use of chemical agents, use of impact weapons, use of an electronic controlled weapon, acquiring a target with an electronic controlled weapon, the taking of a subject to the ground, and any physical contact that includes control techniques.” *Id.* at 3.

<sup>26</sup> Exhibit 9, NFPD General Order, Use of Force, at 4.

Here, Officer Maggard and Officer Mahmood violated the NFPD's Use of Force Order by failing to complete a Use of Force Report regarding the Complainant's arrest. Officer Maggard testified that he reported the incident to a Lieutenant, and the Lieutenant (the same Lieutenant who reviewed the video footage at the hospital) did not instruct him to complete a Use of Force Report.<sup>27</sup> Officer Mahmood testified that she did not complete a Use of Force Report because she did not "believe [she] used excessive force and a lieutenant was advised of the situation."<sup>28</sup>

We are troubled that in addition to the officers who used the force, *their supervisor* also did not recognize the officers' actions as reportable force. When the Lieutenant viewed the video footage depicting the force used by the officers, he told the Complainant that the footage showed "an officer arresting a subject who was resisting," but he did not ensure that a Use of Force Report was completed and forwarded to the NFPD's Office of Professional Standards and the Superintendent of Police, as required by the NFPD's Use of Force Order.<sup>29</sup>

Compliance with the NFPD's reporting and investigating mandates—and ensuring accountability when those mandates are not followed—is essential to building and maintaining trust with the community and preventing inappropriate uses of force. Because the use of force was not recognized, it was not reported, reviewed, or addressed.

## V. RECOMMENDATIONS

As detailed above, the OAG concludes that: (1) Officer Maggard arrested the Complainant without probable cause and in retaliation for her protected speech; (2) Officer Maggard used excessive force in effecting the arrest; and (3) Officer Maggard and Officer Mahmood did not complete Use of Force Reports documenting the incident as required by the NFPD Use of Force Policy, and their supervisor, who reviewed video footage of the incident, did not ensure a report was completed.

We recommend the following remedial actions under Executive Law § 75(3)(c) and (f):

### 1) Internal Investigation and Disciplinary Action

We recommend that the NFPD impose appropriate discipline for the policy violations and unlawful conduct described above.<sup>30</sup>

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<sup>27</sup> Exhibit 3, Maggard Transcript, at 53:9-16. He further testified that he did not "deem [his] interaction with [the Complainant] at the level that use of force should have been completed." Maggard Transcript, at 53:6-8.

<sup>28</sup> Exhibit 2, Mahmood Transcript, at 37:23-38:14.

<sup>29</sup> Exhibit 7, Narrative Report #3; Exhibit 9, NFPD General Order, Use of Force, at 14.

<sup>30</sup> The NFPD was required to draft and implement a discipline matrix as part of the resolution of the previous OAG investigation. *See* Exhibit 1, Consent Decree, at 7. Although the NFPD appears to have utilized that matrix for some period of time, we understand it no longer uses a discipline matrix to determine the penalties for misconduct.

## **2) Disorderly Conduct Policy**

We recommend that, in consultation with the OAG, the NFPD draft and implement a disorderly conduct policy that provides guidance to its officers regarding: (1) the elements of disorderly conduct pursuant to Penal Law § 240.20 and its subsections, (2) and under what circumstances officers are authorized to charge individuals with disorderly conduct.

## **3) Appearance Ticket Policy**

Both officers were asked in their interviews about the criteria that guide NFPD officers when determining whether to serve an appearance ticket on an individual at the scene rather than arresting and transporting the individual to the NFPD Headquarters to be held and processed. Officer Maggard testified that the determination is made based on geographic proximity to the NFPD Headquarters.<sup>31</sup> Officer Mahmood testified that the decision is left to the officer's discretion and that she would not consider geographic proximity to the NFPD Headquarters.<sup>32</sup>

We recommend that, in consultation with the OAG, the NFPD draft and implement an appearance ticket policy consistent with Criminal Procedure Law § 150.20 to provide guidance to officers regarding the issuance of appearance tickets, when officers should issue appearance tickets at the scene, and what factors should be considered when making that decision. The policy should encourage officers to issue appearance tickets at the scene for eligible offenses and avoid the use of force when possible.

## **4) Additional Training**

We recommend that the NFPD provide additional training to officers, including Officer Maggard, on de-escalation, appropriate use of force tactics, the NFPD's Use of Force Order, and the law regarding disorderly conduct and appearance tickets. Additionally, we recommend that the NFPD provide additional training to all supervisors regarding their responsibilities under the NFPD's Use of Force Order.

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Pursuant to Executive Law §§ 75(4)(f) and 75(5)(c), the NFPD shall advise the OAG within 90 days as to the steps that the NFPD has taken with respect to these recommendations. The response should include a summary of the NFPD's findings and any discipline imposed.

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<sup>31</sup> Exhibit 3, Maggard Transcript, at 41:1-14.

<sup>32</sup> Exhibit 2, Mahmood Transcript, at 31:25-32:5; 34:20-35:6.