



POLICE DEPARTMENT

January 4, 2024

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Patrick Gourlay : Case No. 2022-27682
Tax Registry No. 951780 :
Narcotics Borough Brooklyn South :

Police Officer Camil Jezewski : Case No. 2022-27683
Tax Registry No. 969133 :
123 Precinct :

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Deanna Everett-Johnson, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondents: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
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To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-27682

1. Police Officer Patrick Gourlay, on or about October 17, 2021, at approximately 1710 hours, while assigned to the 69 Precinct and on duty, in the vicinity of 2082 Rockaway Parkway, Kings County, abused his authority as a member of the New York City Police Department, in that Officer Gourlay threatened **Person A** with the use of force, by pointing a taser at him, without sufficient legal authority.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

P.G. 200.02

MISSION, VISION, AND
VALUES OF NYPD

2. Police Officer Patrick Gourlay, on or about October 17, 2021, at approximately 1710 hours, while assigned to the 69 Precinct and on duty, in the vicinity of 2082 Rockaway Parkway, Kings County, abused his authority as a member of the New York City Police Department, in that Officer Gourlay searched the vehicle in which **Person A** and **Person B** were occupants without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE ENCOUNTERS

P.G. 200.02

MISSION, VISION, AND
VALUES OF NYPD

Disciplinary Case No. 2022-27683

1. Police Officer Camil Jezewski, on or about October 17, 2021, at approximately 1710 hours, while assigned to the 69 Precinct and on duty, in the vicinity of 2082 Rockaway Parkway, Kings County, abused his authority as a member of the New York City Police Department, in that Officer Jezewski searched the vehicle in which **Person A** and **Person B** were occupants without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE ENCOUNTERS

P.G. 200.02

MISSION, VISION, AND
VALUES OF NYPD

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 9, 2023.

Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. The

CCRB-APU presented a hearsay case, entering body-worn camera footage into evidence, as well

as Complainant **Person A**'s statement to the CCRB. Both Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Gourlay and Respondent Jezewski Not Guilty of all charges and specifications.

ANALYSIS

The following is a summary of the evidence presented at trial. This incident stemmed from a car stop which ended in the arrest of **Person A** ("Complainant") who was later charged with Aggravated Unlicensed Operation of a Motor Vehicle. (CCRB Ex. 6) On October 17, 2021, Respondents were working together as traffic safety officers in the confines of the 69 Precinct. At approximately 1710 hours, at Rockaway Parkway and Seaview Avenue in Brooklyn, they observed a white Lexus automobile operated by Complainant make an illegal right hand turn. (Tr. 34-36, 93-94) Respondents were driving a marked police vehicle equipped with emergency lights that are on the front windshield, in the grill, and on the side and back of the vehicle. Respondent Gourlay, who was the operator, activated the lights in order to initiate a car stop. (Tr. 37; CCRB Ex. 1 at 00:28-00:30) Complainant drove the Lexus into the parking lot of a shopping center, parked the car facing away from the storefronts, opened the driver's door, and stepped out. The RMP pulled into the parking lot as Complainant was getting out of his car. (CCRB Ex. 3 at 00:57-01:09) Respondents got out of the RMP as Complainant was standing near the rear driver side of his vehicle, holding a brown paper bag in his hand. Upon seeing the officers, Complainant turned and began walking back towards the front of the vehicle, while simultaneously unzipping his jacket. Respondent Gourlay started approaching Complainant, at the same time instructing him to get back into his car. Complainant continued to move away from Respondent Gourlay, and was removing his jacket. Respondent Gourlay followed him and

repeatedly ordered Complainant to get back into his car. Complainant did not respond or comply, and persisted in walking around the front of the car towards the passenger side. (CCRB Ex. 1 00:59-01:06) Respondent Gourlay unholstered and pointed his Taser at Complainant's back for approximately two seconds while continually giving Complainant commands to get back in his vehicle. Respondent Gourlay then lowered his Taser to the "safe" position, and re-holstered it after getting close enough to take hold of Complainant. Respondent Gourlay directed Complainant to get back into his vehicle a total of six times.

Meanwhile, Respondent Jezewski had come around the back of the vehicle to the passenger side. Complainant's partner, **Person B** ("Complainant's Partner"), had exited the front passenger seat and began speaking to the officers, including yelling, in sum and substance, "Alright, my kids is here." (CCRB Ex. 1 at 01:09) Simultaneously, Complainant had taken off his jacket and then attempted to open the rear passenger door, which was locked. Complainant's Partner appeared to begin recording with her cell phone, as Complainant moved to the front passenger door, which was ajar, and placed his jacket on the seat and began to sit down. Respondent Gourlay was explaining, "I was trying to pull you over." (CCRB Ex. 1 at 01:19-01:20) Respondent Gourlay then grabbed Complainant, pulled him out of the car and began putting his hands behind his back. The children seated in the back seat were crying and yelling.

Respondents Gourlay and Jezewski pushed Complainant up against the vehicle to handcuff him. (Tr. 47, 97; CCRB Ex 1 at 01:20-01:35) Complainant's Partner was yelling while grabbing Complainant's arm to prevent him from being handcuffed, prompting Respondent Gourlay to say to her, "Ma'am, get off of him, Ma'am get off of him." (CCRB Ex. 1 at 01:35) Respondent Gourlay, Complainant, and Complainant's Partner were all speaking at once, while

Respondent Jezewski was making transmissions on his Department radio. Complainant exclaimed, “I was not driving!” and Respondent Gourlay responded, “You were driving, I watched you get out of the car” (CCRB Ex. 1 at 01:35-01:50) Complainant’s Partner made multiple requests for a “supervisor” and castigated Respondents, repeating over and over again, “You did not pull us over.” Complainant asserted loudly, “I know my rights,” and yelled repeatedly, “The blood of Jesus...the blood of Jesus...I’m not a bad guy... Canarsie is going crazy right now!” (CCRB Ex. 2 at 01:58-02:12) One of the children in the car reached through the open window, seizing Complainant’s shirt and trying to pull him free of Respondents. This continued for approximately two minutes until Complainant was successfully restrained.

Respondent Gourlay then instructed Respondent Jezewski to “check the jacket, he threw the jacket in the car.” (CCRB Ex. 1 at 04:16; CCRB Ex. 2 at 04:13) Complainant’s Partner quickly moved to the front passenger seat, sat down, grabbed the jacket and shoved it between the front seats of the vehicle towards the children and out of sight of the officers, screeching, “You doing everything you’re not supposed to do!” She reached between the seats, snatched up the jacket, and began moving it between her hands while exclaiming, “This is all his stuff...nothing.” Respondent Jezewski reached into the car to grab the jacket and Complainant’s Partner yanked it back, placing it behind her again, and manipulated it for a few seconds. When Respondent Gourlay again pointed to the jacket, she pulled the jacket into view again, and pushed Respondent Jezewski’s hands away from her as he reached into the car. She began yelling, “...you took it off of him...he took it off of him and put it in here.” Respondent Jezewski tried two more times to take it. An unidentified officer then reached into the car and pulled the jacket free from Complainant’s Partner while saying, “You’re not going to go through it.” (CCRB Ex. 2 at 04:11-05:10) Another officer assisted Respondent Gourlay in placing

Complainant into the back of a marked RMP. A few minutes later, a sergeant arrived and Respondent Gourlay obtained consent from Complainant's Partner to search the vehicle, finding neither weapons nor other contraband as a result.

Neither Complainant, nor Complainant's Partner, appeared to testify in this matter. Instead, CCRB entered the hearsay statement of Complainant from his CCRB interview into evidence. The interview, which occurred ten days after the incident, was conducted over the telephone and included some statements from Complainant's Partner. (CCRB Ex. 4 and 4A) Complainant stated that he pulled into the parking lot after buying soup and that as soon as he got out of the car, a police car pulled up and turned the lights on. (CCRB Ex. 4, p. 10) Complainant's Partner was in the front passenger seat, and their three children – an eight-year-old, a five-year-old, and a ten-month-old – were in the backseat. (CCRB Ex. 4, p. 16-19) He explained that Respondent Gourlay approached him and told him to get back in his car and that he asked Respondent Gourlay why he needed to get back into his car while putting his put his hands in the air. Complainant recalled that Respondent Gourlay pointed a Taser at him, then handcuffed him while asking, "Where's the gun?" Complainant stated that he took off his jacket. He told the CCRB investigator that his partner told Respondents, "There's nothing to hide, you know. You can take his jacket as well, there's not a problem." (CCRB Ex. 4, p. 11-12) Complainant said that Respondents did not explain to him what was happening and did not read him his rights, just "manhandled" him in front of his children. (CCRB Ex. 4, p. 12) Complainant stated that he sustained an injury to his arm as a result of this police encounter, but did not go to the hospital for it due to a recent death in his family. (CCRB Ex. 4, p. 57-58)

In order to keep the timeline of events clear, the specifications will be analyzed in the order the events occurred.

Disciplinary Case No. 2022-27682: Respondent Gourlay
Specification 1: Threatened Use of Force by Pointing a Taser

Respondent Gourlay is charged with abusing his authority by wrongfully threatening to use force against Complainant without police necessity. Respondent Gourlay took the stand and credibly recounted the events of October 17, 2021 in a calm and deliberate fashion. He testified that he has been assigned to the 69 Precinct in various assignments for the majority of his almost twelve years with the NYPD. On the date in question, he and Respondent Jezewski were working as traffic safety officers and their primary responsibility was issuing summonses. Respondent Gourlay detailed his extensive experience in this area, having issued “hundreds, if not thousands” of traffic summonses. (Tr. 33-35)

He described observing the traffic infraction and initiating the stop involving Complainant and Complainant’s Partner. He followed the Lexus into the parking lot and activated his body-worn camera as he got out of the RMP to approach Complainant. Respondent Gourlay recollected that when he stepped out of his vehicle, Complainant was “already out of the car and walking away.” (Tr. 37-40) He recalled that Complainant was walking towards the front of the vehicle, taking off his jacket, and he directed Complainant “numerous times” to get back in to the vehicle, explaining, “I wanted to initiate the traffic stop and speak to him...So I can have control of the stop.” (Tr. 42) Respondent Gourlay explained his concern regarding Complainant removing his jacket was that “...he was gonna fight us.” (Tr. 42-43) His basis for apprehension was: “My years of police work, just somebody take off their jacket, they're not listening to my commands, I felt like he was going to cause [a physical] altercation,” as well as the fear that “...he was trying to ditch a weapon or firearm inside the -- that concealed inside his coat inside the vehicle.” (Tr. 43) In response to those concerns, Respondent Gourlay explained that he unholstered his Taser and pointed it at Complainant’s back for “seconds.” (Tr. 45, 63) He

denied having his finger on the trigger of the Taser at any point during the interaction. (Tr. 44)

On cross-examination, Respondent Gourlay provided a more detailed explanation of his wariness: “I believe his turbulent behavior and him taking his jacket off was an aggressive stance that his next move was, possibly, to fight my partner because he was going towards him.” (Tr. 65)

Complainant and Complainant’s Partner contended, during the incident itself and in the interview with CCRB, that neither was aware that Respondents were attempting to pull their vehicle over. This was the cause of Complainant’s alleged confusion, and the reason he did not comply when Respondent Gourlay repeatedly ordered him to get back into his vehicle. The evidence does not support that version of events. Respondent Gourlay gave ample notice that he was attempting to pull the Lexus over. Respondent Gourlay can be seen in the buffer of CCRB Exhibit 1 activating the lights of the RMP, hitting the siren at least once while pursuing the car, as well as pushing the steering wheel horn with his thumb as he pulled into the parking lot. (CCRB Ex.1 at 00:23-00:56) Those actions coupled with Respondent Gourlay immediately ordering Complainant to get back in his car are telltale signs that a driver is being pulled over or otherwise subjected to police investigation. (CCRB Ex. 3 at 00:59-01:10) In addition, Complainant’s Partner, in essence, admitted to Respondent Gourlay that Complainant committed the traffic infraction when she stated to Respondents, in sum and substance, “a lot of people made those turns...it was a lot of people... why didn’t you stop the other people?” (CCRB Ex 1 at 02:30-3:00)

Respondent Gourlay admitted that he briefly pointed his Taser at Complainant while ordering him to “get back in the car.” The question left for the Tribunal is whether that action was reasonable in light of the surrounding circumstances. I find that it was. In *People v. Forbes*,

the Appellate Division, Second Department held “it is within the discretion of the police officers on the scene to decide whether it is safer to have the driver and passengers exit the vehicle or whether it is safer to maintain the status quo by requiring the driver and passengers to remain in the vehicle until the traffic stop is over.” *People v Forbes*, 283 A.D.2d 92, 95 (2d Dept. 2001). In the instant matter, Respondent Gourlay testified credibly that he wanted Complainant to return to his vehicle so that he could have “control” of the stop. In addition to ignoring Respondent Gourlay’s instructions, Complainant continued walking to the other side of the vehicle, where Respondent Gourlay’s view of him was partially obstructed. These concerns were compounded by Complainant’s unusual behavior of beginning to remove his jacket immediately upon observing Respondents. Respondent Gourlay’s description of events was consistent with the body-worn camera recordings. Respondent Gourlay recounted his belief that Complainant’s conduct constituted an “aggressive stance” and that there was a danger that he was going to engage in a physical altercation with Respondent Jezewski. Respondent Gourlay unholstered the Taser, used it to cover and approach Complainant who was moving out of Respondent Gourlay’s sight, and moments later, when he was close enough to take hold of Complainant, re-holstered the Taser. He never activated the thumb toggle switch to arm the Taser nor placed his finger on the trigger. Respondent Gourlay remained calm and professional throughout the interaction and his actions were reasonable in light of the circumstances. For the foregoing reasons I find Respondent Gourlay Not Guilty of Specification 1.

Disciplinary Case No. 2022-27683: Respondent Jezewski
Specification 1: Search of the Vehicle Without Legal Authority

Respondent Jezewski is charged with abusing his authority by searching Complainant’s vehicle without legal authority when he reached inside the car to try and retrieve the jacket Complainant placed there. Respondent Jezewski testified credibly, in a forthright and logical

manner, about the events of October 17, 2021. At the time of the incident, he had been a police officer for a little less than two years. Respondent Jezewski described the vehicle stop involving the Lexus and recalled that Complainant was already on the passenger side of the vehicle when he stepped out of the RMP and activated his body-worn camera. Respondent Jezewski went around the rear of the vehicle and observed Complainant removing his jacket and then trying to place it inside the car. He described being anxious that Complainant "...was trying to conceal either a weapon, contraband, anything of that nature." (Tr. 98) After restraining Complainant, Respondent Jezewski went to retrieve the jacket. He described Complainant's Partner as "further trying to conceal [it] by throwing it in the backseat, and she was fumbling with it, which raise[d] my concern from what I had before." (Tr. 101) He remembered attempting to grab the jacket from her three times by "leaning forward into the vehicle" and that it was eventually pulled free by another officer. (Tr. 102)

The New York Court of Appeals in *People v. Torres* held that "a police officer's entry into a citizen's automobile and his inspection of personal effects located within . . . must be both justified in their inception and reasonably related in scope and intensity to the circumstances which render their initiation permissible." *People v. Torres*, 74 N.Y.2d 224 (1989). Here, Respondent Jezewski was attempting to retrieve the jacket which Complainant had placed in the front passenger seat of his vehicle. (CCRB 1 at 01:19-01:21) This was done after repeated, lawful commands by Respondent Gourlay for Complainant to get back in his vehicle, as well as both Respondents' observations of his suspicious behavior in trying to quickly remove and conceal the jacket. (CCRB Ex. 1 at 00:59-01:09) Frustrating matters, and increasing Respondent Jezewski's worry about the existence of a weapon, Complainant's Partner took the jacket and threw it in the backseat, out of reach of Respondent Jezewski. (CCRB Ex. 2 at 04:19) She

continued to manipulate the jacket, stuffing it into the center console area while falsely accusing Respondents of having taken the jacket off of Complainant and placing it in the car themselves. (*Id.* at 04:36-04:48) Her behavior and statements concerning the jacket increased the suspicion that a weapon may now be inside of the vehicle, within reach of Complainant's Partner, and possibly the children. In *People v. Mundo*, the Court of Appeals affirmed that a limited search of the area where an individual was seen making movements that were consistent with concealing or retrieving a weapon was justified when "officers could reasonably have concluded that 'a weapon located within the vehicle present[ed] an actual and specific danger to their safety'" *See People v. Mundo*, 99 N.Y.2d 55 (2002). Respondent Jezewski had, at least, a founded suspicion that a weapon was present to support the limited actions he took in reaching into the Lexus to try and retrieve the jacket from the location where he observed the suspicious actions of both Complainant and Complainant's Partner. For the foregoing reasons, I find Respondent Jezewski Not Guilty of Specification 1.

Disciplinary Case No. 2022-27682: Respondent Gourlay
Specification 2: Search of the Vehicle Without Legal Authority

Respondent Gourlay is also charged with abusing his authority by searching Complainant and Complainant's Partner's vehicle without legal authority. Specifically, CCRB-APU has made the argument that Respondent Gourlay did not obtain voluntary consent to search the vehicle from Complainant's Partner. Respondent Gourlay acknowledged that after Complainant was placed under arrest for Obstructing Governmental Administration, he asked Complainant's Partner for consent to search the vehicle because: "[Complainant's] action, his furtive movements of throwing his jackets inside the vehicle, I lost sight of that jacket. I wanted to make sure there were no weapon inside there with the children being present." (Tr. 75) The following exchange occurred between Respondent Gourlay and Complainant's Partner:

Respondent Gourlay: When he threw that jacket back in there, was there a firearm or anything we should know about?

Complainant's Partner: I swear to you, with my kids? Hell no he doesn't own no gun, he never had a gun ever.

Respondent Gourlay: Ok, Do you mind if I check and make sure he didn't throw a gun in there?

Complainant's Partner: Go ahead.

Respondent Gourlay: You don't mind?

Complainant's Partner: Check! Check!

Respondent Gourlay: Ok, and it's your car, right?

Complainant's Partner: Yes...it's my husband's, it's my father's car but (unintelligible) none of that he never did none of that.

Respondent Gourlay: That's the only thing... I'm just concerned if that's what he did, cause you've got kids, I don't want anything like that.

Complainant's Partner: No.

Respondent Gourlay: [unintelligible] good?

Respondent Gourlay then searched the vehicle quickly without recovering any weapons or other contraband. Complainant's Partner remarked to Respondent Gourlay once the search was completed, "Found nothing right...find anything? Any firearms?" to which Respondent Gourlay replied, "No. Thank God." (CCRB Ex. 1 at 11:37- 13:38)

It is well established in New York that in order to request consent to search, an officer must possess at least a "founded suspicion of criminality." *See People v. Williams*, 300 A.D.2d 684 (2d Dept. 2002); *People v. Battaglia*, 86 N.Y.2d 755 (1995); *People v. Blanco*, 67 A.D.3d 923 (2d Dept. 2009) In addition, such consent must be given voluntarily. *See People v. Newson*, 155 A.D.3d 768 (2d Dept. 2017); *People v. Xochimitl*, 147 A.D.3d 793 (2d Dept. 2017); *People v. Quagliata*, 53 A.D.3d 670 (2d Dept. 2008) In summation, CCRB-APU did not argue that Respondent Gourlay lacked the legal authority to request consent to search the Lexus. However, it is quite clear from the questionable behavior of both Complainant and Complainant's Partner

with respect to the jacket, that Respondent Gourlay possessed, at a minimum, founded suspicion of criminality. Similarly, although the car was apparently registered to her father, CCRB-APU did not question Complainant's Partner's standing to give consent. She and Complainant had custody and control of the car on the day in question, and it was apparently their family vehicle.

The Tribunal is thus left with the question of whether the consent given by Complainant's Partner was voluntarily obtained. Complainant's Partner did not appear to testify and she did not make a statement to CCRB regarding the consent to search. However, Respondent Gourlay testified and his body-worn camera footage captured the conversation and the subsequent search in full. In order to make a determination about the sufficiency of the consent, the Tribunal is guided by case law. *People v. Gonzalez* sets forth the factors to be considered when analyzing whether a consent to search was given voluntarily. *People v. Gonzalez*, 39 N.Y.2d 122 (1976) The first consideration is the issue of whether the individual who is being asked to consent is in police custody. Upon review of the body-worn camera footage, it does not appear to the Tribunal Complainant's Partner was in police custody. Although there were multiple officers on the scene, she was not handcuffed, and she was walking around without restriction, speaking to the officers, as well as people passing by, and entering and exiting the vehicle several times. Second, with regard to familiarity with the police, Complainant's Partner appeared to have dealt with police before: she asked for a supervisor almost immediately, and criticized Respondents' handling of many aspects of the interaction in a manner that inferred a person who has had some exposure to law enforcement. The third factor is cooperation with the police. Complainant's Partner's conversation with Respondent Gourlay indicated her concurrence with the request for consent; she even seemed impatient for him to conduct the search when she stated, "Check! Check!" At no time during the search did Complainant's Partner object or attempt to revoke her consent.

Although not dispositive, the final factor to be considered is whether the individual was advised of their right to refuse to consent.¹ CCRB-APU argued that Complainant's Partner's consent was not voluntary because of Respondent Gourlay's alleged failure to explicitly inform her that the search would not occur absent her consent.² This argument is not supported by the evidence. Respondent Gourlay spoke clearly to Complainant's Partner when asking for her consent to search the vehicle. He paused after having gotten her initial authorization to ask, "You don't mind?" A reasonable interpretation of that question is that if Complainant's Partner "minded," the search would not take place. He followed up that question by explaining, again, the reasons why he wished to conduct the search and awaited her reaction before proceeding. Further confirming of the voluntary nature of her consent was Complainant's Partner's triumphant statement to Respondent Gourlay after the search: "Found nothing right...find anything? Any firearms?" Having carefully considered all of the facts and surrounding circumstances, I find that Complainant's Partner's consent to search the Lexus was knowingly, voluntarily, and intelligently obtained by Respondent Gourlay, and therefore I find him Not Guilty of the misconduct charged in Specification 2.

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials

¹ The Appellate Division, Second Department has found "The failure of the arresting officer to inform the defendant of his right to refuse consent and the presence of a number of police officers at the scene do not compel the conclusion that his consent was involuntary." *People v. Wright-Hale*, 180 AD3d 814 (2d Dept. 2020)

² CCRB-APU cited New York City Administrative Code § 14-173 which requires the Department to "develop and provide guidance" with respect to obtaining consent to search, including "explaining that such search will not be conducted if such person refuses to provide consent." As a result, the Department promulgated the guidance provided in Patrol Guide Procedure 212-11 (28).


EDWARD A. CABAN
POLICE COMMISSIONER