



POLICE DEPARTMENT

September 17, 2024

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In the Matter of the Charges and Specifications :

- against - :

Detective Frank Gagnon :

Tax Registry No. 958610 :

113 Precinct :

Case No.

2022-26640

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

Before: Honorable Jeff S. Adler  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Dwayne Bentley, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

For the Respondent:

James Moschella, Esq.  
Karasyk & Moschella, LLP  
233 Broadway, Suite 2340  
New York, NY 10279

To:

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

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## CHARGES AND SPECIFICATIONS

1. Detective Frank Gagnon, on or about February 28, 2021, at approximately 2200 hours, while assigned to the 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] Queens County, spoke discourteously to [the complainant] by stating to [the complainant], in sum and substance, “You’re gonna kiss me?” without police necessity. *(As amended)*

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT

P.G. 200-02

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## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 15, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB introduced into evidence the Body-Worn Camera footage from Respondent and his partner. Respondent testified on his 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 Not Guilty.

## ANALYSIS

On the evening of February 28, 2021, Respondent, who was in the rank of Police Officer at the time, was on patrol with his partner, Police Officer [REDACTED], in the vicinity of [REDACTED] Queens County. They observed a vehicle double-parked with the engine running, and exited their marked RMP to investigate. As they walked to the vehicle, an individual (“the complainant”), who turned out to be the car owner, approached the officers on foot. The ensuing 15-minute encounter was captured by the officers’ Body-Worn Cameras (“BWC”). It is alleged that Respondent spoke discourteously to the complainant during the course of that encounter.

The complainant did not appear to testify. Instead, the CCRB offered into evidence the BWC footage of Respondent and Officer [REDACTED] (CCRB Exs. 1 & 2, respectively). In that footage, the complainant asks why the officers are trying to open his car door. They try to explain that since the car is double parked with the engine running, they need to see if the door is locked; if it is locked, the officers would be on their way. The complainant tells them he is not consenting to having them check the door. The officers ask for his name and driver's license in order to verify who he is and if he is the rightful owner of the vehicle, but he tells them he does not have his license with him since he just came from his nearby house and stopped in the store. He also states that he does not have to give them his information. After some additional back-and-forth, during which the visibly agitated complainant continues to insist that the officers have no right to open his car door, he finally provides his full name, and Officer [REDACTED] attempts to check it with his Department phone.

At the 3:35 mark of Officer [REDACTED]'s video (CCRB Ex. 2), he explains to the complainant that as a police officer, he has the right to check the car door. The complainant tells Officer [REDACTED] that he is lying, and he starts to walk away from the officers. Respondent stops the complainant and tells him he needs to stay there, and steers him back to the area near the driver's door of the vehicle. Respondent advises the complainant he will be arrested if he tries to leave, and explains to him that he is being stopped and detained until they complete their investigation. The complainant, who is smoking a cigarette, leans forward and positions himself face-to-face with Respondent, with just a few inches separating them. At 3:59, the complainant puckers his lips and exhales smoke into the face of Respondent. Respondent can be heard asking, "You gonna kiss me?" The complainant responds, "Are you gonna fucken' kiss me?" and then turns his face away from Respondent's.

Respondent testified that at the time of the incident, he and his partner were assigned to a crime reduction post, with an emphasis on combatting a recent increase in grand larcenies of automobiles ("GLA"). Specifically, the officers were told to focus on unlocked vehicles where the keys were left in the ignition with the engine running, since those cars were particularly vulnerable to being stolen. There were numerous such GLA's in the vicinity of [REDACTED], where Respondent and his partner observed the complainant's vehicle double-parked with the engine running, even though there was an open parking spot right next to the car. The windows of the vehicle were tinted, so the officers approached on foot to see if the vehicle was unlocked and unattended, in which case they would issue a summons. (Tr. 27-30, 51-51, 60)

Before they could check the door of the vehicle, the complainant walked up to them and asked why they were searching his car. Respondent testified that the officers attempted to verify the complainant's identity and whether he was the owner of the vehicle, but he was "aggressive," reluctant to answer questions, and "combative." The complainant did not have his driver's license, but the officers gave him the opportunity to provide his information verbally. As Officer [REDACTED] was attempting to check the information on his Department phone, the complainant began walking away. Respondent guided the complainant back to the side of the car and explained that he was being detained, since they still were attempting to verify his information. (Tr. 31-38, 46-47, 57-58, 62)

As the complainant was standing directly in front of Respondent, he moved within two-to-three inches of Respondent's face. Respondent testified that the complainant leaned closer and puckered his lips. The complainant had been behaving unpredictably, and Respondent was not sure what his intention was. He thought the complainant might try to kiss him, which was a

particular concern because of COVID. Rather than resort to force by physically pushing the complainant away, Respondent attempted to de-escalate the situation with words, and asked, “You gonna kiss me?” Respondent testified that he was not intending to be discourteous, nor was the question meant to be sexual in nature. (Tr. 38-44, 58-59)

A supervisor arrived on the scene, and the complainant eventually provided proper information, which the officers were able to verify. The complainant was issued summonses for having double-parked his vehicle, and for leaving it unattended with the engine running. (Tr. 48-50, 61-63)

Respondent faces one charge, alleging that he spoke discourteously toward the complainant during their encounter. The Disciplinary Guidelines note, “Discourtesy may include foul language, acting in a rude or unprofessional manner (such as demeanor or tone)...that is unjustified or unwarranted with no legitimate law enforcement purpose.” It is not disputed that Respondent asked the complainant, “You gonna kiss me?” At issue is whether those words, when considered in the context in which they were said, constituted misconduct. I find that they did not.

In assessing whether a particular statement is discourteous, it is important to consider the surrounding circumstances that existed at the time the words were spoken. Here, counsel for the CCRB suggested that Respondent’s intention was to belittle the complainant, but that contention is not supported by the credible evidence. Respondent and his partner were standing in the roadway, on a rainy night, dealing with an uncooperative individual, whose behavior, as Respondent noted, was unpredictable and erratic. The complainant was arguing with the officers in a raised voice, waving his arms, holding a bottle in one hand and a lit cigarette in the other. Although the officers were patiently trying to explain to him their concern regarding his vehicle,

the complainant was reluctant to provide his information, and at one point attempted to walk away from the officers. When Respondent observed the complainant pucker his lips, he was uncertain what to expect. Respondent focused less on the cigarette smoke and more on the puckered lips, and wondered whether the complainant might actually try to kiss him, in the middle of the COVID pandemic.

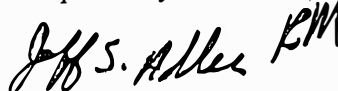
With the complainant just inches from his face, Respondent was faced with trying to figure out what the complainant was intending to do. I credit Respondent's testimony that he was attempting to de-escalate the heated situation. He did not shove the complainant away in order to create separation, which likely would have led to a significant escalation. Instead, Respondent used words, and asked the complainant if he was going to kiss him. The question was not discourteous; it was reasonable in that moment, in response to his seeing the complainant pucker his lips. Indeed, by handling the situation in the manner he did, Respondent managed to avert further tensions, and the matter was ultimately resolved without incident approximately 10 minutes later after a supervisor arrived on the scene.

When spoken in this context, the words uttered by Respondent were not designed to belittle the complainant, nor were they discourteous. To be sure, as a general rule UMOS have the responsibility to act with courtesy and professionalism toward individuals with whom they interact. However, in this particular case, the record has failed to establish that Respondent acted discourteously toward the complainant. Accordingly, I find Respondent Not Guilty.

**APPROVED**

ACT 2 2, 2024  
  
THOMAS G. DONLON  
POLICE COMMISSIONER

Respectfully submitted,

 RM

Jeff S. Adler  
Assistant Deputy Commissioner Trials