



POLICE DEPARTMENT

April 16, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-24597
Police Officer Joshua Navarro	:	
Tax Registry No. 957891	:	
Warrant Section	:	

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

Before: Honorable Vanessa Facio-Lince  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Amanda Rodriguez, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

For the Respondent: John Tynan, Esq.  
Worth London & Martinez, LLP  
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New York, NY 10038

To:

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

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## CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-24597

1. Police Officer Joshua Navarro, on or about January 7, 2020, at approximately 2235 hours, while assigned to the 75 precinct and on duty, in the vicinity of [REDACTED], [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he stopped **Complainant** without sufficient legal authority.

P.G. 212-11, Page 6, Paragraph 20

INVESTIGATIVE  
ENCOUNTERS

2. Police Officer Joshua Navarro, on or about January 7, 2020, at approximately 2235 hours, while assigned to the 75 precinct and on duty, in the vicinity of [REDACTED], [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he frisked **Complainant** without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 36

INVESTIGATIVE  
ENCOUNTERS

3. Police Officer Joshua Navarro, on or about January 7, 2020, at approximately 2235 hours, while assigned to the 75 precinct and on duty, in the vicinity of [REDACTED], [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he searched **Complainant** without sufficient legal authority.

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

INVESTIGATIVE  
ENCOUNTERS

4. Police Officer Joshua Navarro, on or about January 7, 2020, at approximately 2235 hours, while assigned the 75 precinct and on duty, in the vicinity of [REDACTED], [REDACTED] Kings County, wrongfully used force, in that he punched **Complainant** twice about the head without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

5. Police Officer Joshua Navarro, on or about January 7, 2020, at approximately 2235 hours, while assigned the 75 precinct and on duty, in the vicinity of [REDACTED], [REDACTED] Kings County, wrongfully used force, in that he forcibly slammed **Complainant** to the ground without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 5, 2024.<sup>1</sup> Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. Neither [REDACTED], the complainant, nor the two eyewitnesses, [REDACTED], [REDACTED], appeared to testify at the hearing despite the Civilian Complaint Review Board's attempts via phone and email to secure their attendance. Instead, CCRB offered the hearsay statements of the above-mentioned witnesses, as well as security camera footage from [REDACTED]. 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, the Tribunal finds Respondent Guilty of Specifications 1-5 and recommends the forfeiture of ten (10) vacation days.

## ANALYSIS

The following is a summary of the relevant facts that are undisputed. On the night of January 7, 2020, Respondent, while assigned to the 75 precinct, was assigned to be Lieutenant Willabus' operator. At approximately 2235 hours, Respondent was traveling in a marked car in the vicinity of Fulton Street and Miller Avenue in the East New York section of Brooklyn. Respondent observed a male (later identified as **Complainant**) with what appeared to be large bulge in his chest area, standing outside [REDACTED]. After making this observation, he decided to take police action. Upon exiting the vehicle, Respondent approached **Complainant** pointed at the bulge and inquired about its content. Respondent then touched the

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<sup>1</sup> This is the first of three matters in which Respondent appeared before me in March 2024. The matters were adjudicated separately and will be addressed in separate decisions, but all were prosecuted by the Civilian Complaint Review Board and involved somewhat similar allegations of abuse of authority (stop, frisk and search) and the use of force.

bulge and reached into Complainant's pocket, which revealed that the bulge was comprised of tissues packed together.

As Respondent was searching Complainant Person A who was Complainant's girlfriend at the time, and Person A's cousin, Person B, exited the deli and started yelling at Respondent. A second police vehicle arrived on scene and Officers Andrade and Dill proceeded to interact with Person A and Person B as they exited the store. Soon thereafter, Person A and Officer Andrade began arguing, and eventually Person A was arrested. As Person A was being placed in handcuffs, Respondent tried to detain Complainant after he tried to intervene and a physical struggle ensued between Respondent and Complainant. Respondent punched Complainant and took him down to the ground before placing him under arrest.

*Security Footage (CCRB Ex. 1):*

CCRB's Exhibit 1 is a cellphone video taken of a surveillance camera at . The video is approximately two minutes long and there is no sound. The footage is grainy and the lighting is dim, making it difficult to identify individuals. It was deemed of limited probative value.

On the top left of the screen, there is a group consisting of three individuals and what appears to be three uniformed officers.

- |              |   |
|--------------|---|
| 00:01-00:09: | The officer (possibly Respondent, though it cannot be discerned definitively) closest to the middle of the frame is touching the right side of a male's (presumably Complainant) winter jacket. The same officer appears to be frisking him with his left hand. |
| 00:14-00:33: | The same officer turns the male to face the wall. It appears as though there is contact being made by the officer with the individual.  |

00:35-00:37: The group appears to be engaging in a struggle. The aforementioned officer seems to be motioning towards the upper body of the individual in the winter coat.

00:38-00:41: The officer bends and grabs the individual and immediately turns and tosses him onto the ground.

**Complainant's** CCRB Interview:

**Complainant** was interviewed by the CCRB on February 3, 2020. In his interview, he described the events that took place on January 7, 2020. At approximately 2230 hours, **Complainant** was leaving his girlfriend's house with her and two other people. The group walked to a store located near Fulton Street and Miller Street. **Complainant** was outside with his girlfriend when he witnessed two marked RMPs drive by the store and come back around, parking in front. (CCRB Ex. 2A at 11-12) According to **Complainant** two uniformed officers approached him, asked if everything was ok, and then one of the officers (later identified as Respondent), began feeling his person. (*Id.* at 3-4). Respondent was pointing and touching **Complainant's** left chest area on the outside of his jacket, where there is a pocket. **Complainant** explained there was nothing in his pocket and attempted to show Respondent. Respondent then began searching **Complainant** (*Id.* at 29-35)

According to **Complainant's** interview, shortly thereafter, **Person A** came out of the store and was off to the side with a female officer. **Complainant** recalled **Person B** exiting the deli once **Person A** was being placed in handcuffs. (*Id.* at 35-37) When asked if he let Respondent search him, **Complainant** replied: "I mean, [I] couldn't really do nothing about it." (*Id.* at 40)

**Complainant** recalled his girlfriend "getting crazy" with the female cop. He said he was attempting to calm her down at the same time Respondent was ordering him not to move, causing the situation to escalate. (CCRB Ex. 2A at 41) According to **Complainant** "once the girl cop started getting rough with my girlfriend—that's when [Respondent] felt like because that

was happening, that he should do something.” (*Id.* at 53). He recalled being punched about three to four times by Respondent. Complainant also remembered Respondent remarking after, “[t]hat’s why he punched me because I touched his partner.” Complainant contended he did not touch the female officer and further insisted that he was not resisting arrest at any point. (*Id.* at 65, 71) Complainant indicated that he felt the punch on the side of his head, by his ear, which caused him to experience a headache and dizziness (*Id.* at 73-74).<sup>2</sup>

Following being punched, Complainant recalled being “suplexed,” which he described as being grabbed from his back, lifted in the air, and having his body flung onto the floor, causing him to scrape his hand on the floor. (*Id.* at 19, 79-81) Complainant recalled Respondent handcuffed him while he was on the ground. He was subsequently transported to the precinct. (*Id.* at 89-90) Person A’s CCRB Interview (CCRB Exs. 3 and 3a)

Person A was interviewed by CCRB on February 7, 2020. Her version of the events that transpired on the date in question were mostly consistent with Complainant’s statement. Her story diverges, however, in that according to her, she was not inside the store when the police arrived and initially interacted with her boyfriend.

Person A stated that on January 7, 2020 at approximately 2230 hours, in the vicinity of Fulton Street and Miller Street, she was leaving her house to go to a friend’s house. She was walking with her boyfriend, Complainant when they stopped at a store to get snacks. Person A and her boyfriend stayed outside of the store while her cousin and friend went inside. (CCRB Ex. 3A at 2-3)

After about ten minutes, Person A recalled two cop cars pulling up. Complainant began “playing around” saying, “oh, they about to take me.” As the officers approached, they began

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<sup>2</sup> CCRB offered Complainant’s medical records as CCRB’s Exhibit 5 in evidence to corroborate his version of the injuries he sustained as a result of this incident.

asking her and her boyfriend what they were doing and why they were standing there. Person A

stated that she did not have time to answer before the officers started patting them down.

(*Id.* at 4)

When Respondent approached Complainant Person A overheard him ask what was in his pocket while pointing at Complainant's chest pocket on his jacket. She then witnessed Respondent begin to pat him down. While being patted down, she recalled her boyfriend asking if “this [was] even legal.” She described the time that elapsed from when Respondent exited the car to when he began touching Complainant's jacket pocket as “pretty quick.” (*Id.* at 22-23).

According to Person A she also asked the female officer who was patting her down, why she was doing this. Person A recounted that the officer kept telling her to “chill” and was getting loud. The officer, she asserted, began “using force,” preventing her from moving. Once Person A was handcuffed, she witnessed Complainant get punched by the officer who frisked him. She and Complainant were both transported to the precinct in a police vehicle. (*Id.* at 5-6, 30-32, 43, 59)

Person B's CCRB Interview (CCRB Exs. 4 & 4a):

Person B was also interviewed by CCRB on February 7, 2020 regarding his observations on the night in question. During his CCRB interview, Person B stated he was heading outside of the deli when he witnessed officers approach Complainant and Person A (CCRB Ex. 4A at 16). According to Person B, there was a female officer talking to Person A and a “tall” officer (later identified as Respondent) talking to Complainant. While they were speaking, a third officer approached Person B. The officer patted Person B down and he believed it was because a knife fell out of his pocket. Person B believed the knife likely fell out when he ran to see what was happening with Complainant (*Id.* at 23, 35). The officers began

placing the group under arrest. **Person B** asked the officer what they were being arrested for, but did not receive an answer. Based on his recollection, **Complainant** did not reach out and touch his girlfriend, nor did he touch the female officer that was arresting his girlfriend. **Person B** recalled **Complainant** trying to calm **Person A** down, but contended that he did not make any sudden movements. Shortly after **Complainant** told his girlfriend to calm down, he was hit by Respondent (*Id.* at 28, 38-40). **Person B** stated that he heard three punches before turning and seeing **Complainant** being thrown on the floor (*Id.* at 42).

*Respondent's Case:*

Respondent's account was largely consistent regarding the underlying facts. Respondent testified that on the night in question, he was on patrol in a marked police vehicle in the vicinity of [REDACTED] with Lieutenant Willabus. He observed **Complainant** standing outside a deli with what he perceived to be a large bulge on his left chest area. At trial, he explained that he has had past experiences when he observed similar bulges on people that led to arrests and based upon this prior experience, he decided to take police action. (Tr. 17-18)

Respondent recalled that he exited the RMP, approached **Complainant** while pointing at the bulge and inquired, "What is that?" (Tr. 19) As Respondent got closer to **Complainant** he observed that the bulge was "protruding." At this point, believing that it was a weapon, Respondent touched it and felt that the protruding bulge was soft. He further detailed, "After I felt that it was soft, I kind of was like okay, I wasn't as concerned now, but then he's like, look man, you know, just do what you got to do, check me, I don't have anything, so I did." Respondent proceeded to search **Complainant's** pocket and discovered that the "bulge" was actually just tissues packed together. (Tr. 20) It is worth noting that on cross examination, Respondent admitted that he could not initially define the shape of the bulge in **Complainant's** jacket, which is why he got out of his



car to get a closer look at it. He further admitted that when he initially got out of his car, he was not yet at a Level 2 encounter, but at a Level 1. (Tr. 35)

As Respondent was searching Complainant he recalled that people exited the deli and another RMP approached the scene. Respondent recalled that a female exited the store and started yelling because she seemed “not happy” about what was transpiring with her boyfriend. Respondent testified that his focus remained on Complainant who was standing in front of him, but he heard Person A “yelling and carrying on.” He then observed “out of the corner of his eye” that she was being placed in handcuffs. (Tr. 21-22)

Respondent testified that as Person A was being arrested, he was talking to Complainant and advising him not to interfere because he could see that Complainant was starting to get agitated and “trying to get to the situation.” When asked to elaborate on what he physically saw Complainant do, Respondent replied: “While his girlfriend was getting handcuffed by Officer Andrade, he goes to reach over and grab Officer Andrade's hands while she's actually trying to handcuff the female.” At this point, Respondent grabbed Complainant's hand, spun him around and pushed him up against the wall “because . . . he [was] trying to interfere with the arrest. . . .” (Tr. 23)

While Respondent was pushing Complainant against the wall, he again advised him to “chill” and “take it easy,” but according to Respondent, Complainant was not complying and he began to “wiggle” his body. This caused Respondent to feel as though he was losing control of Complainant because he was pushing himself off the wall and shoving Respondent. Concerned that Complainant might try to get away or hurt one of the officers, Respondent “tried” to strike him twice. Respondent testified that the reason he punched Complainant twice was to get him under control and “disorient him” so that he could place handcuffs on him. (Tr. 24-26)

According to Respondent's testimony, the punches did not make contact with [Complainant] head, but rather landed on his upper shoulder. Seeing that the punches were "ineffective," Respondent "switched [his] tactic," grabbing [Complainant] by his waist and effectuating a "forcible takedown to the ground." (Tr. 27) Respondent described this takedown maneuver as follows:

My hands around his waist and I start to pivot my body and, like, look over my right shoulder, because that's what you do when you're trying to take somebody down. I start to look over and I'm successful in the takedown. I bring him down to the ground, and as soon as we hit the ground, my hands are actually underneath him still because I had what's called a gable grip, my hands were clasped around his waist. So when we hit the ground, I actually landed on my hands, so I kind of removed my hand, but I'm on top of him now. I'm, like, sitting on his legs, I guess. (Tr. 27)

Respondent testified that after he successfully took [Complainant] to the ground, he was able to handcuff him with Lieutenant Willabus' assistance. He then transported [Complainant] back to the precinct to process his arrest. Respondent further testified that at the precinct [Complainant] did not complain of any injuries and to the best of his recollection, did not require medical attention. (Tr. 28)

Respondent testified that upon approaching [Complainant] he did not attempt to run nor was he making furtive movements which would have raised Respondent's suspicion. However, Respondent immediately asked [Complainant] about the bulge because as he was getting closer to him, Respondent thought that the item in [Complainant's] jacket could be a weapon, "maybe a billy club or pipe or something like that." (Tr. 36) Believing that he was now at a "Level 2," Respondent proceeded to grab the bulge and felt that it was soft. (Tr. 37-38)

According to Respondent, after he grabbed the bulge in his jacket, [Complainant] "consented" to Respondent searching him. Respondent testified that at this point he did not expressly inform [Complainant] that he was free to go nor did he fill out a Consent to Search form or

a Stop Report. (Tr. 43-44) Respondent further added that during most of his interaction with [Complainant] [REDACTED] “he was relatively compliant until he saw his girlfriend being placed into handcuffs.” (Tr. 45)

Respondent testified that at the point at which he believed [Complainant] was going to interfere with his girlfriend’s arrest, he was no longer free to go. (Tr. 46-47)

At issue is whether Respondent stopped, frisked and searched [Complainant] without sufficient legal authority and whether the force used to strike the [Complainant] and bring him to the ground was necessary or excessive.

*Specifications 1, 2 and 3: Stop, Frisk and Search of [REDACTED]*

It is alleged that Respondent abused his authority as a member of the NYPD by stopping [Complainant] without sufficient legal authority, in violation of Patrol Guide section 212-11. The Patrol Guide places officers on notice as to their responsibilities during a street encounter with an individual. It provides guidance regarding the level of knowledge required for each type of encounter, the scope of a police officer’s authority for each type of encounter, the measures that are permissible to protect uniformed members of the service from injury while engaged in such encounters.

It is well settled that a police officer may stop a person to search for weapons where the officer “reasonably suspects that such person is committing, has committed or is about to commit” a crime (N.Y. Crim. Proc. Law § 140.50 [1]; Patrol Guide 212-11), and the officer “reasonably suspects that he [or she] is in danger of physical injury.” N.Y. Crim. Proc. Law § 140.50 [1], [3]; *see also* P.G. 212-11. “A stop based on reasonable suspicion will be upheld so long as the intruding officer can point to ‘specific and articulable facts which, along with any

logical deductions, reasonably prompted th[e] intrusion.”” *People v. Brannon*, 16 N.Y.3d 596 (2011), quoting *People v. Cantor*, 36 N.Y.2d 106, 113 (1975)

Ultimately, the touchstone in any evaluation of a street encounter between police and an individual is reasonableness. The question to be answered here is whether a reasonable officer would have acted as Respondent did, in light of the established standards of conduct, and the circumstances actually confronted by the officer in this case. I find that Respondent did not have the requisite level of suspicion to justify a stop and that he lacked sufficient legal authority to frisk and search **Complainant**

During his interview with CCRB one month after the incident, **Complainant** denied doing anything that would have justified the police in stopping him. **Complainant's** statement to CCRB, while not of the same probative value as live testimony subject to cross-examination, is essentially corroborated by Respondent's testimony in many key ways. Respondent testified that he observed **Complainant** standing next to a deli and he noted that he had a bulge in his chest pocket. Respondent did not observe **Complainant** make furtive movements or adjust the bulge in a way that was indicative of a person possessing a weapon. Respondent also did not indicate that the bulge had the outline of a gun or that he even believed it was a firearm. In fact, he was unable to describe the bulge in any further detail other than to say it was “cylindrical” in shape, so he believed it could be a “billy club” or “baton.” Respondent had no information that a crime had occurred or was about to take place, he had not seen **Complainant** do anything criminal, and his observations were readily susceptible to innocent behavior. Respondent's observation of an undefinable bulge in **Complainant's** pocket is insufficient as a basis for a stop and frisk and cannot justify the search that followed.

Respondent viewing a non-descript bulge in Complainant's jacket pocket, "absent any indication of a weapon such as the visible outline of a gun or the audible click of the magazine of a weapon, does not establish the requisite reasonable suspicion that defendant had committed or was about to commit a crime." *People v. Ingram*, 114 A.D.3d 1290, 1293 (4th Dept. 2014), citing *People v. Cady*, 103 A.D.3d 1155, 1156 (4th Dept. 2013), quoting *People v. Riddick*, 70 A.D.3d 1422, 1422-23 (4th Dept. 2010). Moreover, "the mere fact that defendant was located in an alleged high crime area does not supply that requisite reasonable suspicion, in the absence of other objective indicia of criminality." *Riddick*, 70 A.D.3d at 1423. Accordingly, in the absence of any testimony which would indicate that Respondent was in fear for his safety or had other information indicative of criminality, the stop and subsequent frisk of Complainant was not justified.

Respondent, without adequate justification, grabbed the bulge in Complainant's pocket. According to Respondent's testimony, after he did this, he dispelled his belief that Complainant had a weapon. The encounter between Respondent and Complainant should have ceased at this point as any further search was not only unnecessary but unwarranted. Although, Complainant told Respondent he could "check him," there was no justifiable reason to conduct a more thorough search of his person.

Even if Respondent realistically believed that Complainant consented to being searched, once he grabbed the bulge and felt that it was "soft," there was no need for further intrusion. While this Tribunal is sensitive to the need for, and recognizes the difficulties attendant upon, vigilant law enforcement efforts, it is also important to assure that such considerations do not overwhelm the constitutional safeguards which have historically insured a civilian's right to be secure against unreasonable and unjustifiable governmental intrusions. Respondent's actions in

this case constituted precisely such an unwarranted and unjustifiable intrusion upon a person's privacy and security. Accordingly, he is found Guilty of Specifications 1, 2 and 3.

*Specifications 4 and 5: Use of Force*

Respondent is charged with wrongfully using force against **Complainant** by punching him (Specification 4) and subsequently slamming him to the ground (Specification 5) without police necessity. Upon review of the record, this Tribunal finds that CCRB proved by a preponderance of the evidence that Respondent engaged in actionable misconduct with respect to both force specifications.

At the center of this dispute is whether the force was precipitated by **Complainant** interfering in his girlfriend's arrest and posing a physical threat to Respondent's partner. According to Respondent's testimony when **Person A** was being placed in handcuffs by Officer Andrade, **Complainant** tried to grab Officer Andrade's hand in what he perceived to be an act of interference with **Person A** arrest. Respondent then attempted to restrain **Complainant** by "pushing him against the wall." However, Respondent felt as though he was losing control of **Complainant** stating:

While I'm pushing him, he's trying to wiggle out. And based on the fact that he had already reached over to grab Officer Andrade's hand to remove it from his girlfriend, who was being placed into handcuffs, in my head I'm like, if this kid gets out, he's going to start fighting us because I already told him don't interfere with the arrest and then he did it and then when I have him against the wall, facing away from me, I'm still telling him, I'm like, yo, chill, take it easy, and that's when he's like starting to do, like, a wiggle on me. (Tr. 24)

Respondent further rationalized that he punched **Complainant** because he could no longer restrain him and was concerned that he might attack the officers based upon the way in which the situation was escalating. (Tr. 26)

With regard to “slamming” Complainant to the ground, Respondent testified that after he punched Complainant and saw that the punches were ineffective, he decided to “switch tactics” and grab his around the waist to conduct a “forcible takedown.” (Tr. 27) He described the take down of Complainant as follows:

My hands around his waist and I start to pivot my body and, like, look over my right shoulder, because that's what you do when you're trying to take somebody down. I start to look over and I'm successful in the takedown. I bring him down to the ground, and as soon as we hit the ground, my hands are actually underneath him still because I had what's called a gable grip, my hands were clasped around his waist. So when we hit the ground, I actually landed on my hands, so I kind of removed my hand, but I'm on top of him now. I'm, like, sitting on his legs, I guess. (Tr. 28)

Respondent concluded his testimony about the forcible takedown by stating that Complainant was placed in handcuffs immediately thereafter and transported to the precinct. He did not recall Complainant sustaining any visible injury, complaining of pain or requesting medical attention.

The question presented is whether the punches and forcible takedown constituted excessive force under the specific circumstances presented here. The Tribunal finds that this question must be answered in the affirmative. Patrol Guide Section 221-01 delineates the parameters for the use of force by uniformed members of service at the time of this incident. To that effect, the Patrol Guide states as follows:

The primary duty of all members of the service is to preserve human life. Force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody. In all circumstances, any application or use of force must be reasonable under the circumstances.

The use of force is excessive only if it is not objectively reasonable under the particular circumstances presented to the uniformed member of service at that time. The reasonableness of the officer's actions must be viewed from the perspective of a member with similar training and experience. Here, as in any excessive force case, the threshold question is whether there was cause for force to be used. If there was not, any force used was unjustified. If there was cause,

then the inquiry focuses on whether the amount of force exercised by Respondent was reasonable.

Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1 st Dept. 1991); *In re. 125 Bar Corp v. State Liquor Auth. of N.Y.*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal viewed the video evidence submitted and listened carefully to the prior recorded statements of Complainant, Person A and Person B and reviewed the accompanying transcript for each.

By all accounts, Complainant was compliant with Respondent at the inception of the encounter. Complainant asserted that he cooperated with Respondent immediately upon being stopped and Respondent corroborated this in his testimony. In fact, Respondent testified that it was not until Complainant's girlfriend was being arrested that the situation intensified. Complainant claimed that he was trying to “calm his girlfriend down” and urge her to cooperate with police while also telling the female officer to “chill out because she was doing too much.” (CCRB Ex. 2A at 56) He also recalled Respondent stating in sum and substance to “stop touching his partner,” however, Complainant denied that he touched the female officer. Respondent did not testify that Complainant actually touched his partner, but rather that he was trying to release himself from Respondent’s grip to interfere with his girlfriend’s arrest and that he believed Complainant would attack them (himself and Officer Andrade). While that may have been Respondent’s subjective belief at the time, there was no evidence to support the contention that



either he or his partner were in danger at that time. It is also worth noting that neither Officer Andrade nor the other two members of service on scene testified at this hearing, so Respondent's testimony on this point is uncorroborated.

As previously mentioned, the stop, frisk and search of Complainant was commenced and effected unlawfully. This Tribunal further opines that Respondent's intrusive actions set forth a chain of events that could have been avoided, but instead created a rapidly escalated situation. Had Respondent exercised better judgement, the police interaction between Complainant his girlfriend and his girlfriend's cousin would not have deteriorated the way that it did. Complainant exhibited compliance with Respondent from the initial encounter through the frisk and search to which he was subjected. I find that there was also no credible evidence presented to show that Complainant gave any verbal indication or physical manifestation that he would hurt or endanger the officers. Moreover, Respondent took no measures to de-escalate the situation before resorting to the use of force. Given the totality of evidence presented at trial, I find that the punches and forcible takedown were not only avoidable, but objectively unreasonable at the moment they were executed.

For the reasons stated above, I find Respondent Guilty of Specifications 4 and 5.

### PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 7, 2015, has been found Guilty of all specifications with which he was charged—an unlawful stop, frisk and search of **Complainant** and excessive force in punching and forcibly taking down **Complainant**. This tribunal recognizes that in almost ten years of service, he has received positive performance evaluations, has been awarded many medals and has not had any prior formal discipline. CCRB recommended the presumptive penalty of three (3) vacation days for Specifications 1-3 and the presumptive penalty of ten (10) vacation days (non-deadly force resulting in no injury) for Specifications 4-5 to run concurrently for a total forfeiture of 10 vacation days. Having found Respondent guilty of all specifications and in the absence of mitigating or aggravating factors, I concur with CCRB's recommendation. I find that the concurrent application of penalties for this misconduct that arose out of this singular encounter is reasonable and that the forfeiture of ten (10) vacation days is a fair and appropriate penalty when taking into account the totality of the facts and circumstances in this matter.

In addition, this Tribunal strongly recommends that Respondent receive additional training on investigative encounters. This Tribunal opines that this penalty recommendation strikes a balance between Respondent's employment record, the misconduct he engaged in and the Department's interest in ensuring that officers who are actively involved in patrol are adequately trained to appropriately handle investigative encounters with members of the public. Accordingly, it is recommended that Respondent forfeit ten (10) vacation days and be directed to undergo any training the Police Commissioner deems appropriate.

Respectfully submitted,

**APPROVED**  
JUN 11 2024  
*Edward A. Caban*  
**EDWARD A. CABAN**  
POLICE COMMISSIONER

*Vanessa Facio-Lince*  
Vanessa Facio-Lince  
Assistant Deputy Commissioner Trials



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER JOSHUA NAVARRO  
TAX REGISTRY NO. 957891  
DISCIPLINARY CASE NO. 2022-24597

Respondent was appointed to the Department on January 7, 2015. On his three most recent performance evaluations, he received 4.0 overall ratings of “Highly Competent” in 2022 and 2023, and was rated “Exceptional” for 2020. Respondent has been awarded 13 medals for Meritorious Police Duty and 15 medals for Excellent Police Duty

Respondent has no formal disciplinary history. He was placed on Level 1 Force Monitoring in March 2024 for having received six or more CCRB complaints over a five-year period.

For your consideration.

Vanessa Facio-Lince  
Assistant Deputy Commissioner Trials