The City of New York

POLICE DEPARTMENT

March 13, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Carvel Alexander
Tax Registry No. 939773
Transit Borough Homeless Outreach Unit
Disciplinary Case No. 2010-0388 (86338/10)

The above-named member of the Department appeared before the Court on November 9, 2011, charged with the following:

1. Said Police Officer Carvel Alexander, assigned to the Transit Bureau Homeless Outreach Unit, while off-duty, on or about September 5, 2009, at approximately 0025 hours, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer was involved in a physical altercation with Mrs. Person A Person A *(As amended)*

P.G. 201-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

2. Said Police Officer Carvel Alexander, assigned as indicated in Specification # 1, while off-duty, on or about the date indicated in Specification # 1, having been involved in an unusual police incident, did thereafter fail and neglect to report said incident to her Commanding Officer, as required.

P.G. 212-32, Page 1, Paragraph 1 & 2 – FAILURE TO REPORT A POLICE INCIDENT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office. Respondent was represented by Michael Martinez, Esq., Worth Longworth & London LLP.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Person APerson A and Sergeant Alexander Crouch as witnesses.

Person APerson A

Person APerson A was born in Grenada and had lived in the United States for eight years. She was not related to Respondent but they were acquainted. Person A had an estranged younger sister named Person B Both sisters lived in New York. Person A knew Respondent as a friend of her sister. She had seen Respondent at Person B house in 2003 when Person A had just arrived from Grenada and was living with her sister. Part of the dispute between Person A and Person B was that Person B Person B had previously dated or "had an affair with" Person CPerson C Person A husband. Nevertheless, Person A did not have any problems with Respondent.

Person A had two children, both girls. At the time of trial, one was 15 years old and the other was two. She indicated in her allocution that she resided in [redacted].

On September 5, 2009, the Saturday of Labor Day weekend, Person A was on a Circle Line boat ride. This cruise, which actually began the Friday before, was arranged by a member

of the Grenadian community in conjunction with the West Indian Day Parade. Also present were her husband, her sister-in law [redacted], and her father-in-law (Person A was currently separated from Person C as a result of domestic violence and abuse, and he was required to stay away from her). Her baby was approximately two months old at the time, but her relatives volunteered to babysit. This time of year was one of her favorite times to go out, which she was unable to do during her pregnancy.

Person A boarded the boat on the West Side of Manhattan and had a fun time. She was wearing a white dress. She did not recall food being served, but there was alcohol. She did not drink while on the boat because she "was like nursing the baby." Water was also available.

There was dancing on the boat. Person A husband and in-laws were with her. They were on the uppermost deck, and it was crowded. Person A saw Person B Person B with Respondent and Person B husband. She had "[n]ot really" seen Respondent since 2003.

At approximately 0100 hours, there was an announcement that the boat ride was ending. The security personnel that had been present on the uppermost deck went down to help dock the boat, as requested by another announcement. Person A kept dancing, but the boat made a sharp turn and her in-laws bumped into her, causing her to "overbalance going into the other crowd on the other side." She then felt "a sharp push" and made eye contact with Respondent. Respondent was angry with Person A for bumping into her. Person A apologized but asked Respondent why she pushed her so hard. Respondent "didn't wait for me to ask another question." Instead, "She made me have it, pushing me and kicking me." Respondent kicked her in her side. Person A tried to defend herself by putting her hands up. She testified, "I am not a fighter," but stated that people had to hold her and Respondent back.

When Person A was pushed, she "went flying" and landed on her knees with her hands on the deck. Her husband and in-laws came to help her "and then they all start scuffling together."

Once Person A and Respondent were separated, Person A family made sure she was alright because she was "very shaken up." When asked whether she sought out "security personnel on that upper most deck," Person A answered, "They wanted to just get out of there." She did not recall seeing security personnel there because she was embarrassed and "overwhelmed at what happened." She saw that she had injured her knee because it "started to burn because of maybe the sweat." It was grated and bruised. She also injured her foot.

Person A did not call for help or the police before leaving the boat because she was embarrassed and "just wanted to get out of there." She never spoke to anyone from the crew about it. As Person A disembarked, she saw Respondent, who threatened her, saying "that this wasn't over yet." After that, Person A and her family went home, although she added that they first stopped in Brooklyn to get something to eat. Then they went home. She arrived home at 0230 or 0300 hours, and went upstairs and cried. Person A did not notice any damage to her dress until she took it off. Person A sister-in-law lived with her and Person C

It was not until "a couple hours in the morning" that Person A body began to ache and she could not the hold the baby. In response, she went to Brooklyn Hospital. She was not allowed to take "strong medication" because she was nursing, and was given only Tylenol.[1]

After leaving the hospital, Person A went to the 67 Precinct to make a report about what happened. She only knew Respondent's first name and did not yet know that she was a police officer. Person A knew that Respondent also was originally from Grenada; she was acquainted with Respondent's older sister. When police personnel tried to find out more information,

[1] The Advocate indicated that although Person A signed a release and medical records were requested from the hospital, the only document provided was a form noting that Person A had been treated there.

"through family let me know, extended family knew that she was somewhere involved like a cop I didn't know." That same evening, Person A learned Respondent's last name and contacted the Internal Affairs Bureau (IAB).

Officers then came to Person A house. She and her sister-in-law had already taken photographs of her knee. Person A gave these and the dress to a sergeant (Sergeant Alexander Crouch) that arrived at the home. Crouch also took photographs of the dress. There were footprints on it; these had not been present before the night in question. Person A noted that her sister-in-law had taken photographs of her in the dress before they left for the boat ride.

Person A testified that Department's Exhibits (DX) 1a and 1b, photographs of her bloody knee taken by her sister-in-law, were taken "the same day" they got off the boat. She was unsure whether they were taken before or after the family got something to eat, or before or after she went to the emergency room. When asked, "After you got home or before you got home?," she said, "It was taken before. . . . It was taken in the house I know that." When asked, "So if it was taken in the house it had to be after you got home, right?," she answered, "Most likely. . . Yes." It was at or after sunrise. She was still wearing the dress when the pictures of the injury were taken.

On cross examination, Person A testified that when she bumped into Respondent, she fell to the floor but her arm or side hit Respondent. She was face down and Respondent was to her side. Person A got up, then she was kicked, at least once, on the side of her pelvic area. Person A sister, Person B was "rejoicing" with Respondent about this. She admitted telling the investigator that Person B Person B was "ready to join in as well," but conceded that Person B Person B did not strike her.

Person A asserted that her sister-in-law and husband were trying to help her by pulling her away from Respondent. She denied that anyone told her while onboard that Respondent was a

police officer. Person A insisted that there were no security personnel where she was standing. She claimed that she was unsure whether she had been injured when she was on the boat.

Person A stated that her party got their food to go after the boat ride, but she did get out of the car to go to the bathroom. She ate when they arrived home.

Person A testified that she did not know where the pre-ride dress photographs were. She never saw them and never tried to obtain them.

No X-rays were taken at the hospital and Person A did not receive stitches. Person A told the personnel what happened on the boat, including that she had been kicked. She mentioned that she had pain in her arms and leg. She was at the hospital for an hour and a half at most. When asked if she had to go back to the hospital "the next day or two days later," she answered that she "went back for a checkup." She later clarified that this was perhaps two weeks later, to her private physician. The doctor did not do any radiology on that visit. She did not recall if she mentioned this follow-up visit to investigators.

Person A asserted that she told IAB that Respondent had threatened her. She told Crouch that either Respondent or her husband threatened to shoot her or "do something regarding a gun." Her husband said, "I'm going to get you . . . remember I got the gun."

Person A agreed that she had alleged to investigators that Respondent was using her job with the Department to investigate her via computer. She testified that Person B told her things about Person A husband, Person C and his criminal history. Person B told Person A that she had found out about this from Respondent's use of Department resources. It actually was Person C that brought the matter up to investigators. Person A also believed that Respondent had found out personal information about her because the two had nothing to do with each other but Respondent still attacked her on the boat.

Person A denied that Crouch only arrived at her home "weeks" after the incident. She admitted, however, that the date could have been September 25, 2009. Crouch and another officer recorded an interview with Person A She contended that her knee had not healed completely by that time. She was not sure if Crouch received the injury photographs that day or if he received them when her sister-in-law e-mailed them. Person A definitely was able to show him pictures from a camera when he was at the residence.

Person A did not recall telling the investigator that Respondent's supervisor, a lieutenant, was on the boat. She did not know whether that lieutenant was present.

On re-direct examination, Person A testified that after the boat incident, her husband told her that he and Respondent "always had little quarrel. . . . With her husband, you know, arguing over stuff." This happened in Grenada and in New York, "the job and I guess where they hangout."

On re-cross examination, Person A denied knowing whether Respondent's husband had bought her husband a drink on the boat. Person A did not know whether Person C had been in prison for two, three, five or ten years before the incident. They had been married for five years. His prison stint was before they were married.

Sergeant Alexander Crouch

Crouch was assigned to the Transit Bureau Investigations Unit. He investigated the allegations against Respondent and interviewed Person APerson A on September 25, 2009. He went to her residence with another sergeant, Sergeant Julie Martin. Person A father-in-law, Person D was also present. Person D said that he observed an individual kick Person A and

she fell to the ground, but he was unable to identify the individual as Respondent in a photo array.

Crouch did not observe any injuries on Person A Photographs were provided to him; Person A indicated that these were taken in close proximity to when she was injured. Person A also showed Crouch a white dress with a footprint on the front of the dress, indicating where she was kicked (see DX 2a-d). On a later date, the actual dress was vouchered under invoice number R062890 and displayed to the Court. There appeared to be smudging on the lower to mid-right side of the dress.

Crouch testified that Person A and Person C alleged that Respondent obtained Person C "personal information." A Management Information Systems Division audit revealed that there was "no credibility" to the assertion.

Crouch stated that until Respondent's official Department interview was scheduled, she did not report the incident to the Department.

On cross examination, Crouch agreed that in the original call-out to IAB, there was no mention of any threat to shoot someone, or any allegation about running computer information.

Crouch testified that the reason certain photographs were e-mailed to him on a date subsequent to the interview was that they were on the phone Person A sister-in-law, who was not present.

Crouch did not compare the imprint on the dress to Respondent's or anyone else's foot.

Crouch interviewed Person B Person A sister. Person B Person B said that after bumping into Respondent, Person A fell. Person B Person B then observed Person A "turnaround and take a swing at" Respondent. Person A then ran off. Person B Person B told Person A afterward, on the ship, that Respondent was a police officer. Person A became very upset.

Person B Person B told Crouch that it seemed like her sister was "acting up" and spoiling for a fight. Person B denied that there was animosity between herself and Person A saying that she loved her sister, and was friends with both Person A and Respondent. Person B Person B asked Crouch to excuse Person A actions because she did not mean what she did.

Crouch also interviewed Person C Person A husband. Crouch's worksheet read that Person C observed Person A on the floor trying to defend herself. Crouch agreed, however, to the accuracy of the portion of Person C interview reading that he said "basically my wife was on the ground as she jumped back and trying to defend herself with the woman." After agreeing with counsel that Person A had indicated she was kicked by Respondent while standing up, Crouch agreed that Person C would have been in a position to see any kick. He did not state that Respondent kicked Person A

Crouch also interviewed Person E Person B boyfriend or husband. Person E indicated that he observed a woman on the floor. She got up and tried to hit someone. He did not see any kick.

Crouch determined that there were between 300 to 600 people on the vessel. He interviewed Person F either Circle Line's head of security or the ship's captain. Person F had an employee look at the "event files" for the date in question; these revealed that there were no reported incidents. Person F also indicated that the vessel had one security supervisor and three guards, plus four additional crew members.

On re-direct examination, Crouch testified that Respondent's father-in-law, Person D stated that he was standing right next to Person A at the time of the incident. The rest of the family was unable to state their proximity.

Respondent

Respondent had been a member of the Department for five and a half years. She was assigned to the Homeless Outreach Unit (part of the Transit Bureau), in which her duties were to provide care and shelter to the homeless and to help those with alcohol and chemical dependency.

Respondent testified that she was very good friends with Person B and knew Person A through her. Respondent was never friends with Person A but did not have any "history of problems with her."

On September 5, 2009, Respondent's tour was scheduled to end at 2335 hours. She took lost time to attend the boat ride with her husband, Person G There were 400 to 500 people on the boat. She knew attendees from the Grenadian community. Respondent was born in Grenada and came to the United States when she was 14 years old.

On the boat, Respondent said, there was music and dancing. There was no food but drinks were available for purchase. She denied having anything to drink.

Respondent testified that she first saw Person A when they were on line to board the vessel. They did not speak to each other. Toward the end of the ride, Respondent was dancing with Person G when Person A bumped into her. The deck was very crowded. Respondent fell backward onto Person G who caught her. She observed Person A face down. Person A got up, turned around, took a "quick swing at me and then move my face backwards." Person A then ran away. "When she hit me in the left side of my face it wasn't like a hard something that I had to touch my face or anything." She described this as Person A having "grazed" her face. She was not injured and felt no pain.

Respondent denied pushing Person A from behind, kicking her or stomping on her. When asked, "Did any part of your body touch Person APerson A on that day," Respondent said no. No one held her back from striking Respondent.

Both Respondent and Person B who was standing next to Respondent, thought Person A was drunk. Respondent had never "really had a conversation" with Person A before. Person B told Respondent two or three days later that after the incident, she said to Person A "[W]hy did you do that to her, she's a police officer do you know that."

Respondent did not report anything to the Department because "I did not really get any you know, hard smack or anything you know, that alleged it was an incident." She did not believe Person A was going to make an allegation against her.

On cross examination, Respondent testified that she had seen Person A one time before the boat ride, at Person B house. Person A had just arrived in the United States and was living with Person B Respondent "never really go and hangout" at Person B house but did go approximately three times in 2003 to get her hair done. This was around the time Person A arrived. Respondent said hello to Person A when she saw her at Person B residence.

Respondent was aware that Person A and Person B were estranged, but asserted that she did not know the reason.

Respondent testified that Person G and Person CPerson C also knew each other. Person C had come by Respondent's house "at least three times." She was present on two of those occasions, when Person C came with a friend to drink and socialize with Person G She was there for the majority of the time Person C and the friend were over. She never saw any arguments or anything "negative" occur. On the night of the boat ride, Respondent went to the bar with

Person G so he could get a drink. Person G bought Person C a drink. But the men had unfriendly words with each other after Person A bumped into her.

Respondent denied pushing Person A back after she bumped into her. Respondent contended that the force of the bump was not hard, but it was enough to propel Person A to the floor. Respondent stated that the contact by Person A on Respondent's face was "just a little touch." When she and Person G saw Person C coming toward them, they went in the other direction. People were disembarking anyway.

Respondent did not alert security because she did not feel it rose to that level. She denied finding it unusual for someone to try and strike her like that.

FINDINGS AND ANALYSIS

Specification No. 1

Respondent is charged with becoming "involved in a physical altercation with Mrs. Person APerson A The parties did not dispute that some kind of physical incident occurred. On a Labor Day weekend evening in 2009, Person A and Respondent attended a Circle Line cruise that was sponsored for the local Grenadian community. Several other family members and friends were present. This included Person B the estranged sister Person A but a good friend of Respondent. It also included Person CPerson C Person A husband and a former romantic interest of Person B

Person A testified that while dancing on the boat, she lost her balance and bumped into someone. She was then pushed from behind, falling to the ground and injuring her knees. When she got up, she saw Respondent, who kicked her in the side of her body.

Respondent agreed that Person A bumped into her while dancing. She denied pushing her or kicking her, however. Respondent stated that Person A fell down, and when she got back up, swung a punch or tried to slap her. She made contact, then ran off.

Person A and Respondent were the only two persons from the boat to testify. The investigator, Crouch, spoke to several individuals, but only one could say that there was an altercation between Respondent and Person A. This was Person C Person A husband. Person C stated that he saw Person A on the floor, trying to defend herself – or she was on the floor, got up, and tried to defend herself. He never mentioned any kick. Person E Person B husband or boyfriend, saw essentially the same thing but could not identify the parties. He did not see a kick. Person A's father-in-law, Person D said that an individual kicked Person A and she fell to the ground, but he could not identify Respondent as that individual. Thus, the only person that actually identified the parties involved in the altercation was the complainant's husband, and he did not see a kick.

Person A failed to make an immediate complaint of this incident. There were several Circle Line staff members on the boat, including four tasked specifically to security. Although she claimed that Respondent pushed and kicked her, grating and bruising her knee when she fell to the ground, Person A did not seek out any of these personnel. She did not call the police when she disembarked. Instead, she left with her family and returned to Brooklyn, where they first stopped at a restaurant to pick up something to eat, then went home, arriving around 0230 or 0300. Yet, according to her testimony, she was upset enough to go upstairs and cry. If the incident was so upsetting, it begs the question of why she did not call the police or even report it to ship security. The late timing Person A report bolsters Respondent's argument that after

getting into an altercation, Person A found out that Respondent was a police officer and preemptively claimed that Respondent hit her first.

Sometime later on Sunday morning, Person A felt pain in her body and could not hold her child. She went to the hospital. She testified that Respondent had "made me have it, pushing me and kicking me." She was sure, however, of only one kick. The dress Person A said she was wearing (DX 2a-d, photographs) had a dirty or muddy imprint of what could be a heeled shoe on the front right side. The imprint is crisp. It indicates a hard stomp and suggests that Person A was kicked forcefully and with the sole of the shoe, not the tip. She was injured enough that she felt the need to go to the emergency room. Yet, the only medical intervention, according to the Department's evidence, was Tylenol. Person A claimed, unconvincingly, that she could not take anything stronger because she was breastfeeding. More importantly, there is no evidence that hospital personnel even felt the need to perform any radiological examinations. The photographs in evidence were obtained by Crouch several weeks after the incident.

Person A also asserted that she did not notice any damage to her dress until she took it off. She also testified, however, that after the boat ride, her group stopped at a restaurant and she went to the bathroom. The Court fails to see how she would not have noticed a huge footprint on the front of her dress at that point.

The Department placed in evidence photographs of what it alleged was Person A injured knee. They appear to show fresh blood. But Person A was unable to state with any clarity when the photographs were taken. She said they were taken the same day they got off the boat. But she was unsure whether they were taken before or after the family got something to eat, before or after she went to the emergency room, or before or after she got home. This was far from the only confounding part Person A testimony. She was unable to answer simple questions

about how many times she was kicked, when Crouch came to her home, when and with whom her follow-up medical appointment occurred, or whether her husband had been incarcerated for anywhere from two to ten years before they got married.

Person A was a dramatic witness, sobbing on the stand while recounting the alleged attack. She displayed an excess of emotion for an incident of this nature. It appeared to the Court to be concocted for the purposes of trial.

The Department argued that Respondent had a motive to attack Person A because of the enmity between sisters Person A and Person B Respondent's good friend. Under that line of reasoning, however, Person A would have had the same motive to go after Respondent due to Respondent's good friendship with Person A estranged sister.

The Department pointed to Respondent's statement that it was the force of Person A bumping against her that made Person A fall. The Department argued that Person A was propelled forward because it was undisputed that she was face down on the floor. The "lines of momentum and gravitational pull" dictated, the Department said, that Person A should have kept falling backward. This, however, discounts several, just as likely possibilities. The boat was moving both vertically and horizontally on the water, making the Department's physics argument speculative. Moreover, Person A could have turned her body to brace herself with her arms.

As a party to the action, Respondent was an interested witness. See People v. Agosto, 73 N.Y.2d 963, 967 (1989) (defendant is interested witness as a matter of law); Coleman v. New York City Transit Auth., 37 N.Y.2d 137, 142 (1975) (an actor in the transaction, having motive to shield self from blame, is an interested witness, even if not a party). Unlike Person A however, Respondent's testimony was straightforward, detailed, and fully explanatory of her

actions. Standing against Person A confusing and equivocal account, Respondent's version of events is far more credible.

In sum, the Department failed to prove that Respondent "wrongfully engage[d] in conduct prejudicial to the good order, efficiency and discipline of the Department" by becoming "involved in a physical altercation with" Person A There was insufficient evidence that Respondent kicked Person A but there was credible evidence that Person A struck Respondent in the face. Thus, there was an altercation but the Department failed to show that this was through any fault of Respondent. See *Case No. 79713/04*, pp. 9-10, July 25, 2005 (where officer was struck by another individual and extended his hands to ward off further physical contact, it would be unreasonable to fault him for doing so).

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

In Specification No. 2, Respondent is charged with, "having been involved in an unusual police incident," failing to report the incident to her commanding officer. The Court has found, with regard to Specification No. 1, that the Department failed to prove that Respondent was wrongfully involved in a physical altercation. Respondent, however, admitted that Person A hit her in the face after bumping into Respondent and falling down. Respondent contended that her testimony did not establish an unusual police incident. Her counsel likened what occurred to a situation where "you are out one night walking through let[']s say you are out to dinner and walking through a block party or a feast or something like that and a person who might be drunk bumps into you and says a quick thing a second and a half and runs away into the crowd." In

Respondent's case, according to counsel, she would have been required to report, "A woman took a quick swing, didn't hit me made minimal contact and ran off into the crowd."

A close reading of counsel's rendition of the facts, however, points to the fact that Respondent did not testify that a drunk Person A merely took a swing at her then ran off. Rather, Respondent testified that Person A took a "quick swing at me and then move my face backwards." She noted, "When she hit me in the left side of my face it wasn't like a hard something that I had to touch my face or anything." She described this as Person A having "grazed" her face.

Respondent's testimony establishes that Person A hit her in the face. She made light contact but it was still a situation in which Person A struck her in the face. This distinguishes the instant situation from a scenario in which a random drunk person throws a punch or slap and misses, then runs away. Respondent's case may be characterized as a minor physical altercation but it was a physical altercation nonetheless. See *Case No. 86193/10*, p. 14, June 9, 2011 (spitting back at husband after he spit at her was unjustified physical altercation). She was required to report this to the Department, although to the patrol supervisor or desk officer in the precinct of occurrence, or the Operations Unit, not her commanding officer as alleged in the specification. See *Patrol Guide* § 212-32, ¶¶ 1-2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 9, 2006. Information from her personnel folder that

was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of failing to report a physical altercation with her friend's sister, Person APerson A Respondent was friends with Person A sister, Person B but Person B Person B and Person A did not get along. During a Labor Day weekend Circle Line cruise that the three and many others from the local Grenadian community attended, Person A bumped into Respondent. Respondent testified that Person A swung at her, hit her in the face, and ran off. While she is not at fault for engaging in a physical altercation, she should have reported it to the Department so that it could have been promptly investigated. Instead, it was Person A that claimed, later the same day, that Respondent had attacked her.

The failure to report here is minor misconduct and on the facts it was a close question of whether Respondent even was required to do so. Respondent essentially was forced into a physical altercation by Person A By this, and through no fault of Respondent, Person A placed her in a position of having to report that altercation. The Court notes that Respondent has received very high evaluations for the past three years and otherwise maintains an excellent work record. Accordingly, the Court recommends that Respondent be warned and admonished for her misconduct.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED
AUG 16 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CARVEL ALEXANDER
TAX REGISTRY NO. 939773
DISCIPLINARY CASE NO. 2010-0388 (86338/10)

Respondent was rated 4.5 "Extremely Competent/Highly Competent" on her last three annual performance evaluations. [redacted] She has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials