CHAN

March 4, 2015

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Arthur Roldan**
Tax Registry No. 942466
Military & Extended Leave Desk
Disciplinary Case No. 2012-7914

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on November 18, 2013, November 19, 2013, January 30, 2014, April 28, 2014, June 27, 2014, July 14, 2014, and August 5, 2014 and was charged with the following:

DISCIPLINARY CASE NO. 2012-7914

1. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer engaged in sexual intercourse with an individual known to the Department, without the consent of said individual. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **GENERAL REGULATIONS**

2. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer, without police necessity, did threaten an individual known to the Department with a firearm. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **GENERAL REGULATIONS**

3. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer engaged in a physical altercation with an individual known to the Department. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **GENERAL REGULATIONS**

4. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer engaged in oral sex with an individual known to the Department, without the consent of said individual. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **GENERAL REGULATIONS**

5. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted] [] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer, without police necessity, did threaten an individual known to the Department with a knife. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **GENERAL REGULATIONS**

6. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted] [] having been involved in an un[u]sual police occurrence, did thereafter fail to request the response of patrol supervisor, precinct of occurrence, as required. *(As amended)*

P.G. 212-32, Page 1, Paragraph 2 **OFF DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE**

7. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about and between January 1, 2012 and July 31, 2012, [] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer, on his 2011 Federal Income Tax Returns, falsely claimed an individual known to the Department as a depend[e]nt. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **GENERAL REGULATIONS**

8. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about May 7, 2012, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer photographed himself or allowed himself to be photographed while pointing a firearm at an individual and then stored said image in said officer's cellular phone. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 **GENERAL REGULATIONS**

In a Memorandum dated January 28, 2015, Assistant Deputy Commissioner David S. Weisel found the Respondent Guilty of Specification Nos. 3, 6, 7 and 8 and Not Guilty of Specification Nos. 1, 2, 4 and 5 in Disciplinary Case No. 2012-7914. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In consideration of the totality of the circumstances and issues in the various acts of misconduct for which the Respondent has been found Guilty of, I deem that a greater penalty is warranted. Therefore, the Respondent is to forfeit thirty (30) suspension days (already served), thirty (30) vacation days and one (1) year dismissal probation, as a disciplinary penalty.

William J. Bratton
Police Commissioner

The City of New York

POLICE DEPARTMENT

January 28, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Arthur Roldan
Tax Registry No. 942466
Military & Extended Leave Desk
Disciplinary Case No. 2012-7914

The above-named member of the Department appeared before the Court on November 18, 2013, November 19, 2013, January 30, 2014, April 28, 2014, June 27, 2014, July 14, 2014, and August 5, 2014. The record was kept open until September 12, 2014, for written summations. Respondent was charged with the following:

1 Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted], [redacted] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer engaged in sexual intercourse with an individual known to the Department, without the consent of said individual. *(As Amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Arthur Roldan, assigned to the 78th Precinct, while off-duty, on or about July 31, 2012, within the confines of the [redacted] did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer, without police necessity, did threaten an individual known to the Department with a firearm. *(As Amended)*

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

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P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

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P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Beth T. Douglas and Marissa Gillespie, Esqs., Department Advocate's Office. Respondent was represented by Roger S. Blank, Esq.

Respondent, through his 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.

RECOMMENDATION

Respondent is found Guilty of Specification Nos. 3 and 6-8. He is found Not Guilty of Specification Nos. 1-2 and 4-5.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PENALTY

I. Specification Nos. 1-2 & 4-5

A. Overview

Respondent is charged with having oral and vaginal intercourse with Person A, without her consent and while threatening her with a gun and a knife, and engaging in a physical altercation by hitting her afterward. The basic facts of the case are as follows. Around the summer of 2010, Respondent and Person A started a relationship (Tr. 20-21).[1] [2] The exact nature of their relationship was unclear and imprecise. Even whether their relationship had ended on July 31, 2012, the night of the incident, was in dispute (Tr. 22, 587). Up to that evening, however, Respondent and Person A communicated with each other, including via text message (Tr. 26-27, 36-37, 169; Department's Exhibit [DX] 7; Respondent's Exhibit [RX] E).

On the evening of the incident, Person A entered a car with Respondent (Tr. 171). While [redacted] that evening, Respondent and Person A had sexual intercourse inside the car (Tr. 47-67, 609-16). Respondent claimed that it was consensual (Tr. 609-16), while Person A alleged that

[redacted]

[2] Person A testified in Spanish through the use of an interpreter.

Respondent coerced her into performing oral sex and having vaginal intercourse at gun- and knifepoint (Tr. 47-67). Person A said that she scratched Respondent on one side of his face, neck and chest during the alleged rape, which Respondent denied (Tr. 64, 213).

Afterward, while driving Person A back to her apartment [redacted], Respondent said that Person A demanded money and formal possession of the car he was driving, a 2007 Nissan Altima. Person A said that the vehicle belonged to her because she had provided the money for it, but title, registration and insurance were in Respondent's name. Respondent said that he denied Person A's demands and she became upset (Tr. 27-30, 616-17).

Respondent and Person A both said that, while approaching Person A's home, they fought over the keys to the car, while Respondent was driving. Respondent claimed that, during the struggle over the keys, Person A cut his hand with a knife he had in his pocket. Then, while the car was at a light and more or less stopped, Person A scratched him on both sides of his face and neck (Tr. 68, 618-23, 710-13; DX 4a-d, photographs of Respondent taken by Internal Affairs Bureau (IAB).

Person A asserted that, during the struggle over the knife during the rape, she came intocontact with Respondent's knife and the cut on Respondent's hand was unintentional (Tr. 280). In addition, Person A said that Respondent slapped her on her left cheek, causing her pain and redness. Respondent denied this (Tr. 69-70; DX 1-2, photographs of Person A taken by IAB). Both agreed that Person A then ran out of the car (Tr. 70, 624).

After returning to her apartment, Person A told Person B what had happened with Respondent in the car, and then Person B called 911 (Tr. 70-71). Person A also spoke with the 911 operator (Tr. 72; DX 3, recording). Officers arrived at the scene and took Person A to the hospital (Tr. 72-73). Respondent was arrested shortly after Person A reported the incident (Tr. 589).

Respondent admitted that he did not report Person A cutting him but said it was because he did not want to get Person A in trouble (Tr. 631).

B. Background

1. Respondent's Relationship with Person A

Although both Respondent and Person A described their relationship as boyfriend-girlfriend, it was not so simple. Respondent financially supported Person A and her young daughter Person C by giving Person A large sums of cash, about $15,750, so that Person A could pay her rent (Tr. 21-22, 586, 632-37; RX F, bank statement showing large cash withdrawals in December 2010, shortly after their relationship began). Respondent claimed that he contributed $500 for the purchase of the 2007 Altima so that Person A could purchase the car for her own use, although he claimed that he owned the car. Respondent bought Person A her cell phone, paid her phone bill, and paid for the upgrade on her phone (Tr. 639-40, 651-52.

Further, using the time periods testified to at trial, Person A's relationship with Police Officer Harold Avalos overlapped somewhat with that of her relationship with Respondent. From their testimonies, it appears that Respondent and Avalos did not know (Tr. 512, 516-17). Avalos, who had been in a relationship with Person A for about two years (Tr. 496-97), said that it ended because they grew distant.

Person A was an undocumented immigrant. She persuaded both Respondent and Avalos to assume title and obtain registration and insurance for the Altima, which she drove without a license (Tr. 29-30, 512-17, 523-25).

In the months leading to July 31, 2012, Respondent described his relationship with Person A as "up and down, on and off" but sexual in nature (Tr. 590). He said that the relationship continued until that month, but Person A disputed this and said that it was over about a year earlier (Tr. 25, 587). Regardless of whether they were still in a relationship, they continued communicating, having sex at least once and spending time together (Tr. 26-36, DX 7 & RX E,

text messages from Person A's & Resp't's accounts, respectively, translated from Spanish to English where necessary).

Person A described Respondent as friendly in the beginning of the relationship but then became "very obsessive," by looking at her telephone and following her (Tr. 21). They had a normal sexual relationship but after a year he constantly wanted to have sex (Tr. 23).

Person A conceded that even after she said the relationship ended, she and Respondent continued to go out because they "were trying to see if [they] could go back into the relationship." She agreed that she had consensual sexual intercourse with Respondent in May 2012 and attended an engagement party with him in June (Tr. 26-36). By the end of July, however, Person A had another boyfriend.

With respect to the child Person C, she was about five to six years old at the time of Person A's relationship with Respondent (Tr. 19). Although Person A testified that Respondent's relationship with Person C was minimal and that he did not support her, Respondent said that he thought of Person C as a stepdaughter. He took her to and picked her up from school, clothed her, fed her, and took her to the movies and parks (Tr. 586-87, 600).

Respondent's testimony as to the relationship was made more credible by a series of photographs. These photographs (RX A1-17) showed an affectionate relationship between Respondent and Person C and a more substantial one than what Person A testified. For example, RX A7 showed Respondent standing with his arms around Person C near the Verrazano-Narrows Bridge. RX A10 showed Person C leaning into Respondent with a smile on her face. Person A also appeared in the photo. RX A1 showed Person C sitting in front of several Christmas presents. Person A in fact admitted that Respondent bought some of those presents for Person C. RX A3 showed Person C smiling at the arcade of a movie theater, to which Person A admitted Respondent had taken them. RX A4 showed Person C sitting next to Santa Claus in 2010. Person A admitted that Respondent had taken Person C to see Santa that year.

RX A5 showed Person C lying between Person A and Respondent, and Person A admitted that Person C looked "rather comfortable" in Respondent's presence. RX A8 showed Person A at a playground with Person C, and Person A admitted that Respondent took the photo. RX A11 and 13 showed Person A and Person C at outings with Respondent. RX A12 showed Person C clutching a doll inside Respondent's car. RX A14 showed Person C posing at a "Miss [redacted]" event with the eponymous titleholder. Person A admitted that Respondent invited them to the event even though he was not her boyfriend anymore. RX A16 showed Person C playing in the sand at a [redacted] beach, which Person A and Person C visited with Respondent. RX A1 7 showed Person C with her cousin at a movie, to which Respondent had taken them (Tr. 105-08, 110, 112, 114-16).

Thus the evidence showed that at least from Respondent's perspective, he was more of a traditional boyfriend and indeed a father figure to Person C.

2. 2007 Altima

The white 2007 Nissan Altima was important to the case because Respondent claimed that the struggle in the car that led to the cut on his right hand and the scratches on his face was over the keys to that car (Tr. 618). In her text messages and her testimony, Person A made clear that she wanted the vehicle returned to her, which served as her primary motivation in continuing to communicate with Respondent around the summer of 2012 (Tr. 36-37; DX 7 & RX E).

Person A testified that Avalos, whom she described as "[a] friend of the family," owed her and her sisters about $9,000 from a prior loan. Person A said that when they asked him to pay them back, he said that he did not have the money and instead gave the Altima, which he owned. When Avalos gave Person A the car, she told Respondent that someone wanted "to give us a car" but because she was an undocumented immigrant and did not have a driver's license, she could not obtain title or insurance. According to Person A, even though she and Respondent no longer were in

a relationship, Respondent offered to register the 2007 Altima in his name and to obtain insurance, which in fact he did. Person A denied that Respondent paid her money for the car (Tr. 27-30).

Avalos said that around June 2011, he and Person A were dating and she told him she needed a car. Person A asked Avalos for help because she did not have a license or credit. So, Person A and Avalos went to a Nissan dealership and bought a car for around $21,000. Person A made a $10,000 cash down payment and the rest was financed. Avalos said that he obtained the financing, as well as title, registration and insurance, even though the car was not intended for him. Person A made the loan payments and it remained with her most of the time. Around the summer of 2012, Avalos's relationship with Person A ended and he transferred title to her. Avalos did not know who the "new owner was going to be" and Person A did not pay him for the title (Tr. 512-17, 524).

Respondent also contradicted Person A. According to Respondent, Person A told him that a friend had a car to sell and asked Respondent to buy it. Respondent testified that he gave her $500 toward purchasing this Altima. He claimed that his intention was for Person A to use the car, but he was the true owner. He did not consider the Altima to be a gift to her (Tr. 651-56, 659).

Respondent also testified that he was driving the Altima around the time of the incident in question because his other car was in the shop. He pointed to the text messages on Person A's phone to show that she wanted the Altima returned to her on the date of the incident (Tr. 665-66).

Why is all this important? Because Avalos testified credibly that when his relationship with Person A ended, he returned title of the Altima to her. Person A, an undocumented immigrant who did not have a driver's license, was unable to obtain title, registration or insurance, so she asked Respondent for help and he provided it. The evidence, including Person A's concessions, showed

that she wanted the Altima returned to her on the night of the incident and that when Respondent failed to give her the keys, she became very upset.

The Altima also is important because, Avalos testified, after the sexual encounter in question between Respondent and Person A, on that night, Person A called Avalos from the hospital and said that she had been raped by a police officer. But she was "a little upset" that the Altima had been taken as evidence by the Department and asked Avalos about the process of getting her car back (Tr. 497-99, 528). At the time, Avalos and Person A had ended their relationship. The Department's assertion in its summation that Avalos was a "trusted friend" is a little overblown. In fact, Avalos said that he did not remain friends with Person A and implied that the relationship ended poorly (Tr. 497).

Victims of sex crimes do not have to act in a "certain way" after an assault to be believed. To imply otherwise would do a great disservice to all complainants. The fact that Person A called Avalos from the hospital and inquired about the car does not by itself mean she was not raped. It does nevertheless show that the car was central in her mind on the night of the incident.

3. Text Messages

From May 21 to July 31, 2012, Person A and Respondent communicated, inter alia, by text message. Person A testified that the purpose of her text messages was to ask Respondent to return the Altima. It also was to ask him for the money he promised in exchange for her giving him Person C's social security number (SSN) so that he could claim her as a dependent on his tax return (Tr. 36-37).

Respondent wavered in the texts between being apparently enamored of Person A and demanding sex from her. From May 21 to May 30, 2012, Respondent consistently addressed her as "my love" and told her that he loved her. This "love," however, was unrequited. Then, from

July 23 to August 1, 2012, while Person A remained focused on the return of the Altima and the SSN money, Respondent refused to meet unless she promised to have sex with him.

In the two months leading to the incident, Person A texted Respondent several times stating that she wanted to see him, go to the movies with him, or say goodbye before moving out of state. She testified, however, that it always was with the motive of getting the car back and receiving money from Respondent. In May 2012, Respondent replied to Person A's texts with affection and "love," although he rebuffed her questions about the car and whether he had obtained insurance for it. Respondent also met with Person A without demanding sex.

For example, on May 24, 2012, Person A texted Respondent and asked if they were going to a movie that evening. When Respondent replied that the movie was not playing [redacted] Person A suggested a different film, and asked Respondent, "Or do you want to do something else?" Respondent answered, "Like what?" Person A wrote, "I don't know" but immediately followed up with, "And did you call the insurance company so they can give you the car?" Respondent texted that he had worked almost 24 hours straight and was unable to do so. Person A pleaded, "Please do it please because I want my car to go to school." Respondent replied, "Ok my princess."

On May 30, 2012, when Respondent sent Person A a series of photographs, Person A angrily texted, "Always the same shit," "So you already did the car stuff," and "I'm not going to forgive you if you come with the same shit again." Respondent answered, "I think you don't love me," and Person A texted, "That doesn't have anything to do with anything I need my car" (RX E).

The second set of texts between Person A and Respondent occurred between July 23 and August 1, 2012. By that point, Respondent's tone had changed. Instead of affection, there was confusion and rage. Person A still demanded her car and money (DX 7)

Person A initiated a text message on July 23, 2012, asking Respondent when they could talk. Respondent did not reply. A week later, on July 30, 2012, Person A texted Respondent again that she needed to talk to him about the car and "about other things." She added that she was re-locating to Minnesota in two days, which was what she testified to at trial (Tr. 33-34). She told another individual the next day, however, that she was leaving for Miami for two weeks.

Upon reading of Person A's move, Respondent wrote, "Ok, good luck to you over there." Person A insisted that she wanted to talk to him. Respondent responded, "What is there to talk about, you no longer want anything with me." Person A texted that there was something she had to tell him before she left. Respondent answered, "Excuse me?," "About what?," and finally, "Tell me then." Person A said she "just" wanted to say goodbye and asked, "Do you want to or not?"

Respondent replied, "Want what? Why am I going to say goodbye when you don't want anything with me, you do not love me, you do not want me, and you never have time for me, now you want." Person A followed up, "Are you thinking of keeping my car or what," "You should give me at least around a thousand dollars from what you were given for Person C's Social Security number," and, "Or are you going to be so mean that you are going to keep all of it." Person A reiterated that she was not "asking for millions," that Respondent should give her what he had because she did not have any money, that she "truly" needed it, and that what she wanted was for Respondent "to support me some since you are keeping my car." When Respondent asked what support, Person A answered, "At least with 500."

Respondent replied, "What for" and, "You have not given me sex for months and months." When Person A again asked to see him, Respondent said that, "I am not going over there for just a hug." Respondent added, "If we're going to do something more then." Person A answered, "As you wish" (DX 7).

July 31, 2012, is the day charged in the specifications. Starting that day at 12:27:45, the following colloquy occurred:

Respondent:	So u giving me goodbye pussy
Person A.:	You want to see me
Respondent:	To have sex
Person A.:	It's a surprise
Respondent:	Yes or no
Person A.:	You tell me you want to say goodbye or no
Respondent:	If it is goodbye money
Person A.:	Yes or no
Respondent:	Are we having sex?
Respondent:	Im not going over to [redacted] if im not getting pussy
Person A.:	I am leaving tomorrow let me know today
Respondent:	If we are going to make love yes, I'm not going there for a hug
Person A.:	Ok
Respondent:	Ok what?
Person A.:	If I give you
Respondent:	When
Person A.:	Whenever you can
Respondent:	I am free then let me know
Person A.:	Today in the evening

It is reasonable to conclude that Person A was agreeing to have sex with Respondent when they met up later that night. It also is reasonable to conclude that Person A expected the return of the car or money from Respondent that evening.

B. Differing Accounts

The issue here is whether on the night of the incident, Respondent and Person A had consensual sex, as Respondent contended, or whether Respondent forced her to have oral and vaginal intercourse with him at knifepoint and gunpoint, as she asserted.

According to Person A, on July 31, 2012, Respondent drove her to two different parking lots by a beach [redacted] and forced her to have sex at both locations. She stated that she and Respondent exchanged the text messages discussed supra on the evening of July 31, 2012. At about 1900 hours, Respondent arrived outside her home, driving the 2007 Altima. Person A entered the car and they drove [redacted] Person A said that she saw Respondent drinking from a cup that smelled like beer. They stopped at Respondent's friend's house for about half an hour and then left. At about 2100 hours or later, they arrived at a beach [redacted] and Respondent parked the car. Person A demanded that he tell her "when he was going to be able to return the car" to her. Respondent said that it would be when she "started acting nice again" (Tr. 38-44).

1. Inconsistencies

Inconsistencies always are to be expected in litigation. Here, however, there were two major inconsistencies between Person A's trial testimony and prior statements that negatively impacted on her credibility.

First, at trial, Person A testified that Respondent said he had to urinate and left the car to do so. Respondent returned and, displaying his erect penis through an open zipper, told Person A that he wanted her to perform oral sex (Tr. 45, 47). In her first statement to police, however, Person A said that Respondent forced her to perform oral sex and then Respondent left the car to urinate. In addition, Person A admitted that when Respondent left the car, she did not lock the doors or flee the scene. This is important not because, as noted supra, rape victims are supposed to behave a certain way. Rather, it suggests that Person A tailored her trial testimony to make for a more credible scenario.

On direct examination, Person A testified that she refused to perform oral sex and told Respondent she wanted to leave. Respondent said no. He started pulling her head down with

one hand and pulled out a knife with his left hand. Person A testified that Respondent told her he wanted oral sex and that if she did not perform, he would cut her face. She complied.

Person A described Respondent as removing the knife from his pocket. It had a black handle and a silver blade. She tried to push it away from her, but Respondent interfered and his hand was cut. DX 4c showed a superficial cut across Respondent's right hand.

Person A testified that afterward, Respondent said "he wanted me to get on top of him." Person A was crying and told Respondent that she "didn't want to be with him anymore." Person A, who was wearing a skirt, said that Respondent put the driver's seat back and started pulling her underwear to one side. The knife still was displayed. Respondent pulled Person A on top of him and she got on top of him, but not consensually. Respondent placed his penis inside her vagina without her consent. A car came upon the scene, people "started coming by," and Respondent told Person A to get off and sit back, which she did. He drove her away to a second parking lot (Tr. 47-48, 50- 54).

The second major inconsistency is that Person A did not testify on direct examination that Respondent pointed a gun at her during that first encounter at that first parking lot. On cross examination, however, Person A was confronted with a prior statement to the police in which she said that at the first parking lot, Respondent had held a gun to her temple while pushing her head on his penis. Person A then testified that at the first parking lot, Respondent "showed me his gun when he told me to get on top of him" (Tr. 211-12). In the context of the mostly narrative answer she gave on direct examination (Tr. 51-52), a reasonable person would have expected her to mention the gun at that point. Again, it suggests that Person A was tailoring her testimony on cross examination to explain away an inconsistency from direct.

Person A testified on direct examination that Respondent, with his pants pulled down and his penis out, drove away from the first parking lot to another parking lot, which was almost

deserted, by the beach. She asked him to take her home but he refused. Person A said that Respondent told her to "grab it and get on top of him and to make him finish." When she refused, Respondent "grabbed and pulled out a gun" (Tr. 54-56).

Person A testified on direct examination that Respondent pointed the gun to her head and told her that if she did not "get up on him that he would shoot and that he would throw me into the ocean and nobody would ever find me." She got on top of him and he told her to start moving, but then said that he was not comfortable that way, so he got into the backseat (Tr. 59-60).

Person A testified that while in the backseat, Respondent completely removed his pants, and while holding the gun in one hand, motioned with the other for her to get into the backseat. Person A said that she climbed over the front seats to get to the back and got on top of him. Person A said that she did not want to move, so Respondent placed the palm of his hand by her waist and moved her strongly. They were facing each other. Person A testified that she grabbed Respondent and scratched the right side of his face. She also scratched his neck and chest (no photographs of Respondent's chest were placed in evidence) (Tr. 61-64, 213, 217-18).

Person A testified that after she scratched Respondent, he pushed her and told her to switch positions. She complied. She did not want to move, so Respondent moved her up and down. After Respondent ejaculated, he cleaned himself off with some beach towels that he had in the car. He then drove Person A home [redacted] (Tr. 64-67).

Approaching her house, Person A testified that there was a moment before they got to Third Avenue in which they crossed a bridge. She saw the key fob for the Altima in the center console. The Altima operated not by ignition key, but by the proximity of this device. Person A and Respondent struggled over the fob. As they did so, Respondent slapped her intensely on her left cheek, causing a large red mark (Tr. 68-69; DX 1-2, photographs).

As they approached a red traffic light, Person A opened the car door and ran home. When she arrived home with a red face, she saw Person B and told her what had happened. Person B called 911 and Person A spoke with the 911 operator. After the police arrived, she was taken to the hospital (Tr. 70-73).

Respondent denied that the sex that night with Person A was coerced or forced. He stated that it was consensual. Respondent conceded that he wanted to go to a hotel to have sex, but that Person A wanted to go to the beach [redacted] and walk on the boardwalk "for a little bit."

Respondent said that once he parked his car, Person A started rubbing his penis, but he had to urinate first. He left to do so and when he returned Person A began performing oral sex on him. Then, a group of people walked into the parking lot from the boardwalk, so Respondent alerted Person A and they stopped. Respondent asked Person A to go to a hotel but she said that she had to put her daughter to bed and could not "stay out too late." Person A suggested just going somewhere else, so they drove to another beach (Tr. 606, 609-11).

At the second location, Respondent said, he parked the car and Person A performed oral sex on him. After a few minutes, Respondent asked that they move to the back seat and have intercourse. Person A agreed and they did so, in multiple positions (Tr. 612-15).

According to Respondent, after they finished having sex and cleaning themselves, he drove Person A back [redacted]. After about 15 minutes, she asked him about the thousand dollars she had requested from him for her move. Respondent told her that he could not get that kind of money from an ATM and that the next day was a payday anyway. She then asked for "at least $500," and Respondent said that they could discuss it the following day. Person A then stated that she wanted to sell the Altima. He refused, as he was using it (Tr. 617-18).

Person A became very upset. She reached into Respondent's pocket to remove the key fob and hid it. She also removed his pocket knife. Respondent contended that she was playing with

the knife, twisting and looking at it and holding the blade. Respondent told Person A that it was not a toy and tried to grab it from her, but the knife closed and "pinched" the back of his hand. As Respondent continued driving, Person A sliced the back of his hand, this time perhaps on purpose. Respondent told her, "You cut me, stupid," and Person A became upset. While the vehicle was approaching a traffic light, Person A jumped across the center console and scratched his face with her fingernails. Although Respondent "got the keys back," Person A kept scratching him, telling him that he was the stupid one and that she had a boyfriend. Respondent tried to stop Person A from scratching him by putting up his hands, but he denied striking or punching her. Person A then ran out of the car (Tr. 618-24, 710-13).

The photographs of Respondent's body are more consistent with Respondent's version than Person A's. Both witnesses indicated that Person A scratched Respondent with her fingernails, but Person A stated that she only scratched him on the right side. There were several large scratches on Respondent's left cheek and several scratches on the left side of his neck below his left ear. There were other red marks visible on Respondent's left cheek (DX 4a). There were faint scratches and redness on Respondent's right cheek, as well as a large, red scratch behind his right ear at approximately the same height as the ear lobe (DX 4b). There was a scratch across his right hand (DX 4c) and a minor scratch across the inner part of apparently his left forearm (DX 4d).

C. Conclusion

Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event on the basis of conflicting testimonial accounts. While the law creates the framework within which such a task is accomplished, the ultimate determination of which account to accept in such cases depends

almost solely on an assessment of witness credibility. That assessment remains the exclusive province of the fact-finder.

In making such an assessment, the trier of fact should consider a wide range of factors, including but not limited to: witness demeanor, corroborating evidence, the consistency of a witness's account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, but perhaps most basically of all, the degree to which the witness's account is logical and comports with common sense and general human experience.

Here, only Person A and Respondent know for sure what happened in the Altima that night. There were inconsistencies from both Respondent and Person A The testimony of Person A, however, at times suggested that she was altering her account consciously to explain something that otherwise would have appeared to favor Respondent. The physical marks on Respondent are inconsistent with Person A's testimony and more consistent with Respondent's. Most centrally, the communications between Person A and Respondent, read in context of their entire relationship, suggested that she was willing to have sex with him and at that time would seek the return of the vehicle and other funds to which she believed she was entitled.

In sum, the Department failed to prove that Respondent engaged in sexual conduct with Person A without her consent (Specification Nos. 1 & 4), or that he threatened her with a firearm or knife during the encounter (Specification Nos. 2 & 5). As such, he is found Not Guilty.

II. Specification Nos. 3 & 6

The third specification charges Respondent with engaging in a physical altercation with Person A The Department proved by a preponderance of the credible evidence that Respondent had such an altercation with Person A during the struggle over the key device to the Altima that occurred

after the sexual encounter. Respondent's denial of striking Person A was not credible. The photographs of B.C. (DX 1-2) confirm her account that Respondent slapped her painfully on her left cheek, causing redness. Respondent's attack appears to have been gratuitous and not in defense of her scratching him. As such, Respondent is found Guilty of Specification No. 3.

Respondent conceded that he did not report the incident to the Department (Tr. 631). Thus, the Department proved Specification No. 6, that Respondent was involved in an unusual occurrence that night, and that he failed to request the response of the patrol supervisor within the precinct of occurrence. As such, he is found Guilty.

III. Specification No. 7

The seventh specification charges Respondent with falsely claiming Person C as a dependent on his 2011 federal income tax return. It was undisputed that Respondent listed Person C as a dependent and that this allowed him an additional exemption, reducing his eventual tax. Person C was neither Respondent's biological or adopted daughter. Respondent said that he supported Person C by buying her clothes, school supplies and presents for her birthday and holidays (Tr. 632). Additionally, the evidence showed that Respondent had more than the minimal relationship with Person C that Person A alleged.

Most importantly, however, Respondent indicated that he did not live with Person A and that at most he stayed over frequently. He brought over a change of clothes from his own "legal residence" [redacted]. To be a "qualifying child" for tax purposes under federal law and Internal Revenue Service rules and regulations, the child must have the same principal residence as the taxpayer for more than half the year in question. See 25 U.S.C. § 152 (c)(1)(B). Respondent's testimony demonstrated that was not the case.

Respondent claimed that a certified public accountant prepared his 2011 tax return, and that when he told the CPA about Person C, he said that "it would be okay" for Respondent to claim her as a dependent (Tr. 600-01). Respondent did not identify this accountant, did not produce his tax return, and could not say what relation he listed Person C as on the return. Thus, his testimony with respect to the tax return was not credible. In any event, if Respondent's conversation with his CPA was the same as his testimony at trial, no legitimate CPA could have authorized such a return. The lack of an audit (Tr. 650) is meaningless. Therefore, Respondent is found Guilty.

IV. Specification No. 8

Respondent is found Guilty of the eighth specification, which charges him with photographing himself pointing a firearm at Person A and storing the picture on his phone (see DX 5, photograph). Respondent admitted that one time, after having sex with Person A, as "something funny to do," he photographed himself pointing his off-duty weapon at Person A's nude buttocks. He claimed that Person A suggested doing it. Respondent asserted that he unloaded the weapon and made it safe before taking the photograph with his phone. He admitted that it was a stupid thing to do but complained that it never would have been discovered if not for the search of the phone pursuant to Person A's rape complaint (Tr. 647-49).

V. Penalty

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 10, 2006. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent also submitted several letters from friends of the family attesting to his good character.

Respondent has been found Guilty of several serious infractions and thus a period of monitoring is necessary. Therefore, the Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit the 30 days he served on suspension without pay. See *Case No. 2010-3025* (Nov. 15, 2011) (10 days for appearing in photograph holding service firearm and pointing it at an individual); *Case No. 84177/08* (Dec. 29, 2010) (15 days for claiming fake dependent on tax return); *Case No. 82951/07*, p. 18 (Aug. 13, 2008) (5 days for failure to notify); *Case No. 79915/04*, pp. 4-5 (Feb. 14, 2005) (10 days: slapping [redacted] in the face, causing her to suffer redness in her eye, during "heat of the moment" to inflict pain on her as she was yelling and cursing at officer).

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

DISAPPROVED
MAR 04 2013
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ARTHUR ROLDAN
TAX REGISTRY NO. 942466
DISCIPLINARY CASE NO. 2012-7914

Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his last annual performance evaluation. He was rated 4.0 "Highly Competent" in 2009 and 3.5 "Highly Competent/Competent" in 2010. He has been awarded 11 medals for Excellent Police Duty. [redacted]
Respondent has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials