The City of New York

POLICE DEPARTMENT

April 23, 2019

In the Matter of the Charges and Specifications	:	Case No. 2016-16043
- against -	:	
Police Officer Shamar Powell	:	
Tax Registry No. 944906 Housing Borough Manhattan	:	

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

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Rachel Grinspan & Daniel Rabaev, Esqs.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Roger S. Blank, Esq.
387 Park Avenue South, 5th Floor
New York, NY 10016

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

PD 158-151 (Rev. 10-07)

CHARGES AND SPECIFICATIONS

1. Said Police Officer Shamar Powell, on or about and between June 3, 2015 and September 7, 2015, while assigned to the 75th Precinct, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer, while acting as the Domestic Violence Officer for the 75th Precinct, initiated and engaged in an inappropriate relationship with a victim of domestic violence in a pending criminal matter.

   P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT – PROHIBITED CONDUCT

2. Said Police Officer Shamar Powell, on or about June 3, 2015, while on-duty and assigned to the 75th Precinct, failed to make proper Activity Log entries, to wit: Said Police Officer wrongfully failed to make proper entries in his Activity Log with respect to a home visit made to a victim of domestic violence.

   P.G. 212-08 — ACTIVITY LOGS
   P.G. 202-29, Page 2, Paragraph 9 — DOMESTIC VIOLENCE PREVENTION OFFICER

3. Said Police Officer Shamar Powell, on or about and between June 3, 2015 and September 7, 2015, while assigned to the 75th Precinct, wrongfully utilized a Departmental vehicle while on duty to conduct non-Departmental business and allowed an unauthorized person to sit in a Department vehicle. *(As amended)*

   P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT – PROHIBITED CONDUCT
   P.G. 203-06, Page 1, Paragraph 15 — PERFORMANCE ON DUTY – PROHIBITED CONDUCT
   P.G. 206-03 — VIOLATIONS SUBJECT TO COMMAND DISCIPLINE

4. Said Police Officer Shamar Powell, on or about and between June 3, 2015 and September 7, 2015, while assigned to the 75th Precinct, failed to remain on post while on-duty, to wit: Said Police Officer wrongfully was off-post on multiple occasions when he visited a civilian known to the Department for purposes unrelated to official Department business.

   P.G. 203-05, Page 1, Paragraph 2 — PERFORMANCE ON DUTY – GENERAL

5. Said Police Officer Shamar Powell, on or about September 7, 2015, while assigned to the 75th Precinct, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer wrongfully engaged in a physical altercation with a civilian known to the Department.

   P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT – PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on January 30 and 31, 2019. Respondent, through his counsel, entered a plea of Guilty to Specification Nos. 1 through 3, and a plea of Not Guilty to Specification Nos. 4 and 5. The Department called Police Officers Jose Martell and John Zielin and Lieutenants Robert D'Andrea and William Gough as witnesses. 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 reviewed all of the evidence in this matter, the Court finds Respondent **Guilty** of Specification Nos. 1 through 3 and **Not Guilty** of Specification Nos. 4 and 5. The Court recommends that Respondent forfeit 30 vacation days, 10 suspension days, and be placed on one year of dismissal probation.

ANALYSIS

Introduction

It is undisputed that on June 3, 2015, Respondent, a domestic violence officer assigned to the 75 Precinct, visited the home of Individual 1, an approximately 19-year- old woman within the confines of the 75 Precinct. Individual 1 was a domestic violence complainant in a case against her ex-boyfriend, Individual 4. Individual 4 had been arrested on [redacted] for assault and was re-arrested in [redacted] for criminal contempt, i.e., violating the order of protection. Respondent was not the arresting officer but was notified of the arrest as Individual 1 lived within the confines of his precinct. The visit was a routine home visit conducted as part of his regular duties (Tr. 80-86; Dept. Ex. 2, Individual 4 eJustice report [rap sheet]).

During the home visit, Respondent exchanged contact information with Individual 1, in order to give her a copy of the order of protection arising from her domestic violence case. The pair remained in contact via text message and eventually developed a romantic relationship. Respondent did not note in his Activity Log that he had obtained Individual 1's telephone number. On one occasion, Respondent visited Individual 1 while on-duty, to give her a job application, and allowed her to sit in his patrol vehicle. The pair ended their relationship on September 7, 2015, in a verbal and physical confrontation, to which uniformed officers responded. Respondent's relationship with Individual 1 became known to the Department as a result of the altercation. Individual 4 pleaded guilty and was convicted of [redacted] charges on [redacted] (Tr. 17-19, 29-31, 37-39, 74-76, 86-91, 94, 110; Ex. 2).

The disputed issues in the case include whether Respondent travelled to the [redacted] household while on-duty for purposes unrelated to police work, and whether Respondent wrongfully used physical force against Individual 1 when he removed her from his vehicle. Additionally, although Respondent acknowledges having the relationship with Individual 1, at issue is the degree of impropriety, and whether it merits dismissal from the Department.

POLICE OFFICER JOSE MARTELL of the 75 Precinct testified that on September 7, 2015, the day of the altercation between Respondent and Individual 1, he was responding to a radio run for assault with Police Officer John Zielin. Martell was approached by a male, who informed him that he had called the police. The man told Martell that "[t]his guy was trying to get this girl" out of a vehicle. The man pointed toward the incident and Martell noticed the individual, whom he recognized from the command as Respondent. Because Respondent was in plain clothes, Martell assumed that he was off duty. Martell overheard

the woman saying that if Respondent would give her the $100 that he owed her, she would leave (Tr. 17-18, 20, 23-24).

According to Martell, he asked Respondent what happened. Respondent said "she wouldn't get out of the car, and to notify my supervisor and do what I have to do." Martell notified the patrol supervisor, then-Sergeant D'Andrea, who instructed him to transport the woman to the precinct. Martell acknowledged that Respondent was respectful, cooperative and calm throughout the incident. The woman was not visibly injured, and no arrests were made at the scene (Tr. 18-21, 24).

POLICE OFFICER JOHN ZIELIN testified that on September 7, 2015, he and his partner responded to a call for a possible assault. When he arrived, he saw someone whom he recognized from the precinct standing in the street near the sidewalk. When Zielin approached him, the man told Zielin to call the supervisor and that "it was an off-duty incident." Zielin saw a female waving him down. He asked if she was hurt and she said no. She also refused an ambulance. The woman told Zielin that she would have "made this all go away" if she had been given $100. Zielin acknowledged that Respondent was respectful, calm and cooperative with him (Tr. 29-32).

LIEUTENANT ROBERT D'ANDREA testified that on September 7, 2015, he was a sergeant and the patrol supervisor at the 75 Precinct. He was told to respond to a location regarding a possible off-duty incident of assault involving a member of the Department. When he arrived at the location, D'Andrea saw several people standing nearby. He initially interviewed a witness who was employed at a tire repair shop. The witness heard a commotion and arguing and saw a man pulling a woman from a vehicle. However, the witness said "there was no assault." D'Andrea spoke to a second witness, who lived in front

of the location. The witness also heard a commotion and saw the man pulling the woman from the car, although the witness told D'Andrea that the man had been "very patient" with the woman as the dispute unfolded (Tr. 37-39, 42-43).

Next, D'Andrea interviewed the female complainant, Individual 1, at the location. She said that the argument began when Respondent got upset about seeing information referencing him on her Facebook page. The argument then transitioned to a dispute about money, at which point the argument escalated. Individual 1 said that Respondent would give her money for items such as school books. She did not articulate any specific legal obligation for Respondent to do so, but did mention wanting to take him to small claims court. Additionally, Individual 1 told D' Andrea that she was trying to end the relationship with Respondent while the two were sitting in the car, but that he asked her not to leave him. Individual 1 did not appear to be injured (Tr. 39-40, 45-49).

D'Andrea then spoke with Respondent, who told him that he had been "hanging out with" Individual 1 for "a couple months." Respondent also told D'Andrea that he had finished his tour at 0900 hours and began hanging out with Individual 1. The couple argued about money. Respondent told D'Andrea that he told her to exit the vehicle, she refused, and he "ended up having to pull her" from his car. D'Andrea acknowledged that Respondent was calm, respectful and cooperative during their conversation (Tr. 39-42).

LIEUTENANT WILLIAM GOUGH of the Brooklyn North Investigation Unit testified that he and Sergeant Raymond Hawkins visited the [redacted] residence to interview Individual 1's [redacted] Individual 2 and Individual 3. Both told Gough that Individual 1 and Respondent were "carrying on a relationship." Individual 3 also said that Respondent would come to the residence to visit Individual 1 and that Respondent would give Individual 1 money.

Gough acknowledged that Individual 2 told him that Respondent was "a nice guy" and that [redacted] perpetually caused trouble for people whom she dated. Additionally, Individual 2 told Gough that during the September 7, 2015, incident, she heard Individual 1tell Respondent, "I'm going to get you in trouble, you're a police officer." However, she had not seen the whole incident. Gough testified that Individual 2 told him Individual 1 said Respondent was "trying to pul " her from the vehicle (Tr. 62-71).

Gough further testified that Individual 3 told investigators that Respondent visited the home in a police vehicle. She confirmed that the car had lights on top of it (Tr. 71-72).

RESPONDENT testified that he began working in the domestic violence unit at the 75 Precinct in 2013. On June 3, 2015, Respondent visited the [redacted] residence because of a domestic incident report, which was generated when Individual 1 listed her address as being within the confines of the 75 Precinct, although the underlying domestic violence incident had occurred outside the precinct. Respondent testified that when such a report was generated, he also typically received a copy of the order of protection. He would not, however, automatically receive the defendant's criminal history. Respondent testified that he visited the [redacted] residence with his supervisor, Sergeant Grigoriy Bardash, because he would "always usually" be accompanied by a partner on such visits (Tr. 79-86, 142).

Individual 1 told Respondent about the incident with her ex-boyfriend, and told him that the man had been arrested, that the situation was "resolved," and that she was issued an order of protection. Respondent did not check later to see that the criminal issue had been resolved because he felt that he had no reason to disbelieve Individual 1 did not, however, have a copy of the order of protection, and asked Respondent to obtain a copy for her. He asked for her telephone number, in order to "follow up with her with a copy of the

order of protection." Later that day, Respondent returned, alone, to the [redacted] residence with the order of protection (Tr. 86-88, 108-09, 131).

Respondent acknowledged that "it may have been an oversight" that he considered the matter resolved based on Individual 1's beliefs, rather than checking the status: "I figured that he was arrested, he's not a threat to her, and she said it herself that it's resolved.... I assumed that this was kind of like an open and shut scenario. It's just over and done" (. 146-47).

After Respondent gave Individual 1 the order of protection, they "started talking about life goals. I advised her of a couple of programs that domestic violence provides. She was looking for housing for herself." Respondent testified that Individual 1 asked him "if she could use my number personally." She also "mentioned things in her house that wasn't [*sic*] accessible to her, like [redacted] milk, groceries." Respondent told her that she could use his number, "and if you need anything, maybe there's a programs [*sic*] I could help you with or anything like that." On August 28, 2015, Individual 1 Respondent photographs via text message of the inside of her refrigerator. Respondent testified that the photographs showed that "the fridge is pretty bare. There is a [*sic*] em milk carton, empty Juicy Juice carton, a bag of potatoes, and there's also a picture of a freezer which just has a package of meat." Respondent added that Individual 1 "didn't have money or milk to feed her son and asked if there was anyway [*sic*] I can help out" (Tr. 89
92-93).

Respondent made a note on his home visit card that he had obtained Individual 1's phone number, but he conceded he did not do so in his Activity Log. According to Respondent, after that conversation, he and Individual 1 "continued to text each other" on his personal cell

phone. Eventually, "it was pretty clear that she wasn't having any domestic issue with anybody else," and just wanted to stay in contact with him. It took Respondent the two home visits on the first day and two weeks of texting with Individual 1 to determine this.

As a result of their staying in contact, a romantic relationship began. Respondent testified, "I don't recall who initiated like, oh, let's, like maybe hangout after work." [redacted] During the relationship, Respondent would help supply Individual 1 with things like milk and [redacted] as well as cash if he had it on hand. Respondent estimated that he gave Individual 1 $600 over time. He visited the [redacted] residence twice in his patrol vehicle: first, to deliver the order of protection, and second, to hand Individual 1 a job application, while on-duty. During the latter visit, he allowed Individual 1 to sit inside the vehicle. He continued to advise Individual 1 about applying for jobs, and she would periodically request money for food (Tr. 89-94, 109-13, 144-46, 150-51).

Respondent testified that on the morning of September 7, 2015, he sought to end his relationship with Individual 1. The pair texted in the early hours of that day, and Respondent told Individual 1 that he wanted to separate from her because he felt that "she [was] talking to multiple guys in the area." She responded that she wanted him to come to her house. Although he did not promise Individual 1 any money on that day, he had told her approximately two weeks earlier that he would give her $100 for her hair, for her return to school (Tr. 90-96)

Respondent arrived in his personal vehicle. He testified that Individual 1 came outside and sat in the car. He asked her why she had wanted him to come. She told him that the "only reason I want you to come is to give me my $100 and you can leave." Respondent refused and said, "You can exit my vehicle and I can go home." The couple continued to

bicker, and Individual 1's mother, Individual 2, walked by and asked whether everything was alright. Individual 1 answered yes. Respondent told Individual 1 that he would tell Individual 2 that she was refusing to exit the car, because he believed that Individual 2 was fond of him, due to his helping **Individual** 1 (Tr. 97-98).

As Individual 2 continued walking down the block, Respondent decided to drive to meet her. As Respondent was driving, Individual 1 was "grabbing at the steering wheel and pulling it left and right, causing the vehicle to swerve different ways." Respondent pulled the car over and told Individual 1, "You're acting irrational. You should really leave my vehicle."
According to Respondent, he proceeded to "help her get out of the vehicle. . . . No different than you would help a perpetrator" or elderly person "exit from a vehicle in the back seat and ease them out the car." He acknowledged that Individual 1 was thin and much smaller than him (Tr. 98-99, 123-25, 149).

Individual 1 "jumps back into my vehicle in the back seat." She threatened, "I'm going to call 911. I'm going to get you in trouble." She remained there while Respondent stood outside. Respondent acknowledged that he did not call out to Individual 2 for help or call a supervisor himself. During the altercation, while Individual 1 was threatening to call the police, a stranger approached the pair and told Respondent to leave her alone.
Respondent
decided to wait for the police to arrive so he could "sort this out" (Tr. 99, 120-23, 127-28, 149).

Analysis

Specification Nos. 1-3

Respondent is charged with initiating and engaging in an inappropriate relationship with a victim of domestic violence, Individual 1, in a pending criminal matter while

assigned as the domestic violence officer; failing to record his exchange of contact information with Individual 1 in his Activity Log; and allowing Individual 1 to sit in his patrol vehicle. Respondent has pleaded Guilty to these three specifications and the tribunal finds him Guilty.

Specification No. 4

Respondent is charged with visiting Individual 1 on multiple occasions while on duty but off post and for non-Departmental reasons. Other than the first day they met, Respondent acknowledged visiting Individual 1 in his patrol vehicle while on duty only on one subsequent occasion, when he allowed her to sit in his patrol vehicle and gave her a job application.

The Department offered hearsay statements from Individual 1's [redacted] who, Gough, the investigator, testified, told him that Individual 1 had been in a relationship with Respondent and would visit her at home.

The Department failed to prove that this subsequent visit, or any of the visits to the [redacted] household, were off-post or for non-Departmental reasons. The hearsay statements of the [redacted] were too vague to be reliable proof of when he visited and in what capacity. Gough testified that Individual 1's [redacted] told him that Respondent visited the home often, and that he used both a police car and his personal vehicle. This is very

vague because it is uncontested that Respondent also visited the home two to three times while conducting official business. To find Respondent Guilty would require a logical leap this tribunal cannot make in the absence of more specific witness testimony. Moreover, while Respondent admitted that he allowed Individual 1 to sit in the police car while he gave her a job application, that statement alone is insufficient to find that he was off post or not

there for a Departmental reason. Accordingly, this tribunal finds Respondent Not Guilty of Specification No. 4.[1]

Specification No. 5

Respondent is charged with wrongfully engaging in a physical altercation with Individual 1 by pulling her from his car. Respondent testified that Individual 1 refused to leave his car after she grabbed the steering wheel and interfered with his driving. He did not deny removing her from the car, but characterized his actions as "help[ing] her" out the vehic e the way one would guide the elderly or an arrestee.

Even crediting the Department's case, there was insufficient evidence that this encounter constituted misconduct. Respondent testified without contradiction that [redacted] refused to leave the vehicle after grabbing the steering wheel while he drove. She did not describe a physical altercation with Respondent during her follow-up interview with D'Andrea and it is undisputed she suffered no injury. There were no arrests. Although the Penal Law on justification does not directly speak to vehicle scenarios like this one, Penal Law § 35.20 (2) allows an owner of premises to use reasonable force to eject a trespasser. Cf. *Case No. 2013-9278*, pp. 12-13 (June 11, 2014) (officer working without permission as supermarket security guard nevertheless used reasonable physical force, under Penal Law and Patrol Guide to eject individual). Respondent certainly minimized the force with which he removed Individual 1, but the Department failed to establish that it was wrongful.

Hearsay is admissible in this forum if it is sufficiently relevant and probative. See People ex rel. Vega v. Smith, 66 N.Y.2d 130, 139 (1985); Matter of Grossman v. Kralik, 217

[1] The Court rejects as immaterial Respondent's testimony that Individual 1's [redacted] (Tr. 134). There was no showing that this would have rendered her unable to give accurate o statements t the investigator.

A.D.2d 625, 626 (2d Dept. 1995); cf. Matter of Andruszkiewicz v. Doherty, 84 A.D.3d 595 (1st Dept. 2011) (hearsay testimony of Sanitation Department investigator, who obtained statement from woman that tipped employee for accepting trade waste, was sufficiently relevant and probative to demonstrate that employee accepted the gratuity).

D'Andrea, the patrol supervisor, interviewed two independent witnesses. One of the first officers on the scene, Martell, interviewed a 911 caller. But it was not stated at trial whether this was a separate individual from those interviewed by D'Andrea.

One of the witnesses spoken to by D'Andrea, identified at trial only as being employed at a tire repair shop, heard a commotion and arguing, and saw a man pulling a woman from a vehicle. This witness said, however, "there was no assault." The second witness, identified at trial solely as "Mr. Flagg," lived in front of the location. Mr. Flagg also heard a commotion and saw the man pulling the woman from the car. But Mr. Flagg told D'Andrea that the man had been "very patient" with the woman as the dispute unfolded. D'Andrea testified that Respondent said he had to "pull" Individual 1 from the car. Separately, Gough, the investigator, testified that Individual 2 told him Individual 1 said Respondent was "trying to pull" her from the vehicle (this constitutes multiple layers of hearsay).

Individual 1 told D'Andrea that she was trying to end the relationship with Respondent while the two were sitting in the car, but that he asked her not to leave him. Individual 1 did not appear to be injured, according to the officers that responded to the scene. D'Andrea did not testify that Individual 1 said anything about being pulled from the car.

The Court rejects Respondent's testimony about how he removed Individual 1. It is not credible that someone would have called 911 if they merely saw Respondent helping Individual 1 out of the car. In that sense, the witness statements about Respondent "pulling"

Individual 1 from the car are reliable. This is especially true with regard to D'Andrea's testimony about Respondent's admission of having to "pull" her out, as party admissions are a hearsay exception. See People v. Chico, 90 N.Y2d 585, 589 (1997).

Nevertheless, Respondent's statements and testimony on the whole line up with the on-scene witnesses. According to the witnesses, he was "very patient" and did not commit an assault. The credible and reliable evidence on record does not support the conclusion that the "pulling" of Individual 1 was wrongful. Therefore, Respondent is found Not Guilty.

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 9, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent also submitted eight letters of recommendation from uniformed members of service with whom he worked or by whom he was supervised, at the 75 Precinct or the Manhattan VIPER Command.

The Advocate recommended that Respondent be dismissed from the Department, while Respondent's counsel advocated for a lesser penalty. Respondent claimed that he was merely careless in not realizing that the criminal matter was ongoing. He testified that the relationship started innocently, as he exchanged contact information with Individual 1 o y to provide her with the order of protection. He added that he could not remember who initiated the romantic and sexual relationship. He attempted to depict the relationship as something that just happened.

Respondent's misconduct is serious. A similarly situated member of the service, acting reasonably, should have known that complainants in domestic violence cases can be particularly inappropriate targets for romantic advances, and that if the order of protection was active –something Respondent checked after the first home visit –the case against Individual 1's boyfriend may still have been active as well. In sum, it was unreasonable for him to rely on her alleged assurance that the matter was "resolved." A similarly situated member of the service, acting reasonably, should have known that laypersons are not always going to be completely familiar with the legal process.

There is no question that Respondent's actions were inappropriate. The cases cited by both sides, however, support a penalty of dismissal probation. In closing, the Advocate argued that Respondent was in a "unique position" with respect to Individual 1, in that he gave her his phone number and rendered financial assistance to her, and essentially re-victimized her by his misconduct (Tr. 166, 169-70). While there is some merit to that statement, standing alone it is insufficient to support termination. A careful review of the record reveals that the Advocate did not put in direct evidence of undue influence or any information concerning the training or responsibilities of a domestic violence officer.

Moreover, prior cases, including those cited by the Advocate (see Ex. 3), involve either an arresting officer, special victims division officer, or non-arresting precinct domestic violence officer, engaging in sexual or other romantic relationships with complainants, and in all cases the penalty was dismissal probation plus vacation or suspension days. See *Case* [redacted] (30 vacation days and one year dismissal probation for member that began inappropriate and sexual relationship with a domestic incident complainant, where he had arrested complainant's husband and then

maintained communications with her); *Case No.* [redacted] (30 vacation days, 10 suspension days and dismissal probation for drinking alcoholic beverages with complainant in a rape case that officer was investigating; he kissed the complainant in the officer's hotel room while he was out of town to interview her regarding the allegations and then maintained contact with her by phone and text for three weeks for non-Departmental reasons); *Case No.* [redacted] (30 vacation days and probation for precinct domestic violence officer who maintained two inappropriate sexual relationships with domestic violence victims and for failing to prepare complaint reports on two separate occasions in connection with domestic violence incidents).

The Department's hearsay case left many questions unanswered and failed to justify an upward departure from prior penalties imposed in similar cases. Respondent met Individual 1 in the course of his role as a domestic violence officer. The Court can infer that there was an imbalance of power in the relationship. But that same imbalance was present in the precedential cases as well. The record here fails to support the Department's claim that Respondent actually abused his position of power over Individual 1. Financial assistance is not uncommon in relationships and is not by itself inappropriate. There is no evidence that Respondent failed to give Individual 1 any of the services to which domestic violence victims are entitled. He testified, without contradiction, that he provided her with a copy of the order of protection and gave her information about supportive services as well as a job application. Nor is there evidence he threatened to withhold any of that assistance unless she continued the relationship.

Had Individual 1 appeared at trial, or even if complete recorded or written statements from her had been admitted into evidence, the Court would have been aided in examining

whether Respondent pressured her, based on his position, to commence or continue a relationship. That being said, however, the hearsay accounts of the relationship that are on the record tend to mitigate in favor of Respondent. For example, Individual 1's [redacted] stated that Individual 1 caused trouble for the men she dated. Her mother nevertheless considered them to be in a "relationship" and Respondent to be "a nice guy."

Ultimately, each case before this tribunal presents a unique situation, and an independent determination needs to be made based on the particular facts presented. After assessing the totality of circumstances in this matter, the tribunal recommends that Respondent be ***DISMISSED*** from the 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 10 suspension days ***to be served***, as well as an additional 30 vacation days, for a total of 40 penalty days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

AUG 02 2019

JAMES P. O'NEILL
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SHAMAR POWELL
TAX REGISTRY NO. 944906
DISCIPLINARY CASE NO. 2016-16043

Respondent was appointed to the Department on July 9, 2007. For his last three annual performance evaluations, he received a 4.0 rating of "Highly Competent" for 2017 and a 3.5 rating of "Highly Competent/Competent for 2015 and 2016. [redacted]

Respondent has no prior discipline. On October 13, 2016, Respondent was placed on Level 1 Disciplinary Monitoring in connection with the instant case. On November 3, 2016, he was placed on Level 2 Disciplinary Monitoring in connection with the instant case.

For your consideration.

David Weisel KM

David S. Weisel
Assistant Deputy Commissioner Trials