POLICE DEPARTMENT

February 5, 2020

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2017-17191
Police Officer Marc Aurelus	:	
Tax Registry No. 948632	:	
67th Precinct	:	

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

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jordan Farnham, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Marc Aurelus, while off-duty and assigned to the Building Maintenance Section, on or about and between February 8, 2016 and February 11, 2016, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Aurelus engaged in a physical altercation with Person A.

   P.G. 203-10, Page 1, paragraph 5 PUBLIC CONTACT- PROHIBITED CONDUCT

2. Said Police Officer Marc Aurelus, while off-duty and assigned to the Building Maintenance Section, on or about and between May 28, 2016 and May 29, 2016, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Aurelus engaged in a physical altercation with Person A by placing his hands around her neck, and breaking her cellular telephone.
   P.G .203-10, Page 1, paragraph 5 PUBLIC CONTACT- PROHIBITED CONDUCT

3. Said Police Officer Marc Aurelus, while off-duty and assigned to the Building Maintenance Section, on or about or between July 1, 2016, and August 31, 2016, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Aurelus menaced Person A by tapping his firearm on his other hand and stating to her, "If I were you, I would stop talking."
   P.G. 203-10, Page 1, paragraph 5 PUBLIC CONTACT- PROHIBITED CONDUCT

4. Said Police Officer Marc Aurelus, while off-duty and assigned to the Building Maintenance Section, on or about or between November 1, 2016, and November 30, 2016 wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Aurelus engaged in a physical altercation with Person A.

   P.G. 203-10, Page 1, paragraph 5 PUBLIC CONTACT- PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 13 and 14, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Person A, Tolani Isaac and Marckenzie Samedi as witnesses. Respondent called Olriche Geffrard and Randy Charter as witnesses and 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, I find Respondent Not Guilty of the charged misconduct.

ANALYSIS

It is undisputed that Respondent and Person A [redacted] Respondent engaged in physical altercations with her and also menaced her while holding a gun. Four incidents have been charged in the Specifications. Respondent denies all of the charges.

Person A testified that Respondent is [redacted]. She initially met him in July 2013 when he was on-duty, and she was sitting in her vehicle, on the phone with a friend. He asked for her phone number, which she gave him "to avoid getting a ticket." [redacted] (Tr. 15-18)

In her initial testimony, Person A described a history of [redacted] between her and Respondent. She testified that prior to the incidents specified in the charges, Respondent was jealous and had been verbally and physically abusive towards her. (Tr. 18-21)

With regard to the first specific incident charged in this case, Person A testified that during the week of February 8, 2016, she and Respondent were in [redacted], to attend the carnival festival. Respondent became upset when he saw that she had been exchanging messages with Damian, her friend's brother. Respondent told her that he did not want her talking to Damian. (Tr. 21-25, 153)

Later that day, after attending a parade, Respondent and Person A became separated while waiting for her brother to pick them up. Person A testified that when Respondent found her, he "grabbed me on my [upper arm], like, really hard in front of everyone...so hard that he... picked me up." When they returned to the villa where they were staying, Respondent again admonished her for talking to Damian. She pointed out that Respondent had female friends and had gone to his ex girlfriend's wedding, adding, "Why can I not have male friends?" She claimed that at that point, Respondent started punching her in the face on her upper left cheek. When she fell, he picked her up by her clothing and punched her again "all over" her chest, shoulder, and face. Respondent then called Damian and cursed at him. Damian heard Person A crying and asked Respondent, "You love [redacted] so much and you're beating on her?" Respondent tried to force Person A to tell Damian that she loved him. (Tr. 23-27)

Person A alleged that Respondent proceeded to strip her naked and took a picture, saying that he would send it to "every single guy" in Person A's phone. A naked photograph of Person A was introduced as Department's Exhibit 2. Person A described that in the picture, she is "sitting down crying on the bed." Person A was unsure whether Respondent in fact sent the picture to her contacts. Another photograph of Person A and Respondent dressed in carnival costumes was introduced as Department's Exhibit 3. Person A testified that the photo depicts the costume that Respondent tore off of her. She explained that Respondent tore the outfit off of her beginning with the bra area in the front. She felt "hurt, numb [and] angry" and "couldn't believe it was happening." (Tr. 27-28, 37-45)

Person A testified that after this incident, she was bruised all over with black and blue marks on her hands, legs and face. She further testified that she took photographs with her phone to document the injuries caused by Respondent. These photographs were introduced into

evidence as Department's Exhibits 1A-D, and Person A contended that they show bruises on her left cheek, her left hand and both her arms. (Tr. 28-33)

After the incident, Person A did not call the police because she did not know the phone number in [redacted] and because she did not want to "get [Respondent] in trouble." However, she told a friend and that friend's mother, who were also visiting [redacted] about what had happened. When she returned to New York, her work colleague, Marckenzie Samedi saw the bruises. Samedi asked who caused the bruises, and Person A eventually told her that it was Respondent, initially feeling embarrassed to make him look bad. Person A had not told Samedi about any similar incidents previously because Respondent did not want people to know his personal business. (Tr. 45-49)

In describing the May 2016 incident, Person A testified that she and Respondent had a verbal dispute over disciplining [redacted], the previous week. Respondent said he wanted nothing to do with [redacted] and returned his keys to her house. On May 28, 2016, Person A and her friend Tolani Isaac went to a party. Respondent arrived at the party and had an "attitude." After Person A confronted Respondent about this, he left. Person A later left the party and went on a boat ride, eventually arriving home around 5:30 am. Several hours later, according to Person A, Respondent called her and demanded to be let into the house. Person A left the door open and went back to sleep. She recounted that she woke up to Respondent standing over her and choking her with both his hands around her neck. She found it hard to breathe, but was able to grab his hands and kick him to make him stop. (Tr. 50-54)

Person A went downstairs, holding her neck. Her friend, Isaac, who had slept over, came upstairs from the basement and laughed when she saw Person A holding her neck, asking if she slept uncomfortably on it. Respondent then began to come downstairs so Person A told Isaac to

just text her. Isaac went back downstairs and Person A texted her that Respondent had choked her. Person A testified that Respondent, who was sitting nearby, began to turn his attention to her texting, so she went back upstairs to the bedroom. While there, she sent Isaac the pictures from [redacted], which she had not done earlier because Respondent "didn't want anyone to know his business and he said I need to be loyal to him." However, she finally told Isaac because, "I was just tired and I just felt like somebody needed to know what's going on." She alleged that Respondent then walked into the room, grabbed the phone, saw the pictures and asked, "Yo, you telling people my business?" He then slammed the phone against the wall, breaking it, and threw it onto the bed toward Person A. (Tr. 54-60)

Person A testified that Respondent, who had his gun on his waist in a holster, next yelled for Isaac to come upstairs. After Isaac arrived in the bedroom, Respondent locked the door and stood in front of it, refusing to let Person A or Isaac leave the room. Isaac told Respondent that Person A needed an ambulance to be called for her neck and Respondent became "mad." Person A rejected the ambulance because in the past, Respondent had threatened to kill police and himself if Person A were to call the police. She was "very fearful" that he might kill her. After about two hours of being trapped in the room by Respondent, Person A feigned [redacted] in order to free herself and Isaac from the room. (Tr. 59-64)

On the same day the phone was broken, Person A bought a new one and took a picture of the phone that Respondent broke. A picture of the broken device was introduced into evidence as Department's Exhibit 4. She did not report this incident to the police as she "didn't want to get him in trouble with his job." Additionally, neither she nor Isaac called the police after Respondent left due to her fears that he would kill himself, responding officers or their neighbors. (Tr. 65-67, 100, 169-170)

Person A next testified about another incident in late July or early August 2016, where she and Respondent argued over whether to give [redacted] passport to Respondent's [redacted]. Respondent was "very, very angry" and he left the house after "a big argument" ensued. When Respondent returned to the house, Person A was speaking on the phone to a family friend, [redacted] Respondent took the phone, spoke to [redacted] then returned it and said, "You know what, I'm leaving." Respondent then tried to grab the phone again and she tried to prevent him. He stepped on her feet to stop her from moving, which she described as "very, very painful." He then took her phone and left the residence. (Tr. 67-70)

When Respondent returned to the house, he and Person A argued over a text that he saw on her phone in which she wrote that she needed to have a drink. During this argument, Respondent took his gun out of a drawer and began hitting his head with it. He also hit the gun against his hands, and although the gun was not aimed directly at Person A, she felt threatened and worried that "the gun could go off at any time." This was the first time that Respondent had taken out his gun during an argument and Person A was "very scared." She was also conflicted both because she was afraid of what he would do if she called the cops and because she loved Respondent. (Tr. 70-72, 170-171)

Two days after this incident, Person A was getting a pedicure and discovered that her toe, which Respondent had stepped on, had a broken nail. Person A took an undated photograph of her cracked toenail, which was introduced as Department's Exhibit 5. Roughly a month later, her toenail fell off. Person A took a photograph of the detached toenail, which was introduced as Department's Exhibit 6. (Tr. 73-77)

Next, Person A testified that there was an incident with Respondent in November 2016. Person A, who was mopping with a bucket at the time, argued with Respondent about which

weekend Respondent's [redacted]. Respondent then kicked the bucket of water and punched Person A in the face. Isaac, who had been staying in the basement, came upstairs to ask what happened. Person A told her that Respondent kicked the bucket and punched her. Isaac asked, "How much more of this are you going to deal with?" Person A answered that she "was done," noting that there were many additional incidents that occurred between the ones that she testified about before this tribunal. (Tr. 77-80, 173)

Person A began heading upstairs to shower as Respondent walked by. Person A tried to move out of his way, but Respondent grabbed her clothing near her chest. Isaac got in between them and told Respondent to stop. Person A eventually got to the bathroom and showered while Isaac stood in the hallway "so nothing can happen." When Person A returned to the bedroom to get dressed, Respondent started videotaping her and she tried to grab his phone to stop him. She testified, "At that point, when I grabbed his phone, he punched me, like, in the upper area, like, pushing me back." She subsequently clarified that she was punched in the shoulder area. He grabbed her hair and put her in a headlock. Respondent also punched Person A in her chest and side. Person A grabbed Respondent's neck and squeezed hard so he would let her go, with Isaac helping pull him off of her. Isaac was punched in the eye during the scuffle and Person A was unsure by whom. She testified that during the altercation she said, "If I have to die today, I'm going to die fighting." (Tr. 80-83)

As they were fighting, Respondent's friend Olriche[1] called. Isaac managed to tell him, "Marc is fighting Person A" and Olriche said, "Marc, you're fighting with your [redacted]...get the fuck out of the house." Respondent then left the room and went into the bathroom and Isaac waited in the hallway for Person A to get dressed. Person A heard Respondent complain that his

[1] Olriche Geffrard is erroneously referred to as "Aldridge" in the transcript for the first day of trial testimony.

neck was burning. He said, "My neck is scratched; I'm going to get in trouble with my job, because they are going to ask me how I got the scratches on my neck." Person A then heard Isaac telling Marc to just go downstairs, take a drive or go to the basement. (Tr. 83-85)

Person A subsequently heard Respondent trying to open the bedroom door with his keys, and tried to hold the door shut, testifying that she was scared for her life. Eventually, Respondent's keys broke and he kicked the door in. Person A ran to avoid him, but he caught her, pulled her onto the bed and got on top of her. She tried to fight him off but, he put his hands over her head and got on top of her, straddling her. He said, "I'm going to cave your face in." Isaac helped her free herself, but he grabbed her again by her hair and face, with his feet tangled around hers, twisting her; she was in pain and could not move. She alleged that Respondent threatened, "I'm going to cut your neck." Her relative Randy came upstairs, got between them and told Respondent repeatedly to let go, and finally Respondent did so. (Tr. 84-89, 174-175)

As a result of this incident, Person A suffered "a lot of pain" in her back, [redacted] and was bruised. She also had "a big cut" on her left hand. She felt that he had something sharp in his pocket when he was on top of her and, although she was not sure what it was, she believed it somehow cut her hand during the altercation. She took an undated photograph of the injury on her hand at the time, which was introduced as Department's Exhibit 7. Additionally, she took a photograph of the door that Respondent kicked in; that photograph was introduced into evidence as Department's Exhibits 8A-C. Exhibit 8A shows the lock with the broken key, while Exhibits 8B and 8C show the door was broken on the side. The video that Respondent filmed of Person A naked, which she testified he sent her later that week, was introduced into evidence as Department's Exhibit 9. According to Person A, the video was "cropped" to include only the portion where she is wearing a towel and trying to take the phone

from Respondent. She testified that when Respondent recorded it, she was trying to grab the phone and he punched her, which was not included in the "cropped" version that he sent her. (Tr. 90-98)

Person A further testified that she went to family court on December 13, 2016, and was granted an order of protection against Respondent [redacted] Before the court return date, members of the Department arrived at her house and inquired as to why she had sought an order of protection. When additional investigators came to her home, she would not open the door because she "was so scared and nervous." She testified, "I didn't want to get him in trouble. I just wanted him to stay away from me." On December 16, 2016, she told the court that she did not in fact want the order of protection. She did so because Respondent's friend Olriche begged her to, because she did not want Respondent to lose his job, and because she feared that the order would not protect her and might simply provoke Respondent into killing her. (Tr. 99-105, 113-116)

Eventually, Person A decided to [redacted] Respondent because she wanted Respondent to tell the truth and because her sister urged her to "speak out for all the victims that cannot speak." Respondent spoke to Sergeant Gonzalez from [redacted] Investigations, and encouraged Gonzalez to help Respondent [redacted] Respondent [redacted] She confirmed that there were no further threats in between the canceled order of protection and [redacted] After Respondent [redacted] Person A was given another order of protection against him, which he violated two days later, but Person A was unsure [redacted] violating the order. (Tr. 105-06)

Person A testified that her relative Randy became aware of the order of protection when Respondent called him and told him. [redacted]. Person A stopped speaking to him in February, 2017, two weeks before he entered the Coast Guard, due to disputes about his taking others' belongings. She and Randy had had an argument when Randy was "yelling in [her] face" and "being very disrespectful," so she had him stay with [redacted]. Person A denied ever physically abusing Randy but did acknowledge using "corporal punishment." She admitted that she rarely communicates with him, but acknowledged that she sent him a text message after she found out that he would be testifying on behalf of Respondent where she told him to "tell the truth." (Tr. 106-109, 176-179)

On cross-examination, Person A denied that she remembered sign ing a Domestic Incident Report stating that the incident in [redacted] had instead happened in [redacted]. Instead, she said, "They just gave me a paper to fill out a statement and then they said, 'Oh, I have something for you to sign, sign this paper.' I didn't read any of those things. I don't even know what is on there." In sum, she claimed that she signed a blank page and that in writing her statement about the incident, she did not specify that it happened in [redacted] because she did not think that she needed to. She acknowledged that on the form she signed, she wrote the place of occurrence as her home address in [redacted], although the incident had in fact occurred in [redacted]. She stated at trial that she did not remember telling Sergeant Silverstein of [redacted] Investigations that her children were home during the November 2016 incident; before this tribunal, she testified that only her friend Tolani Isaac was in the home at the time. She suggested that there was probably a mix-up with another incident. (Tr. 149-153, 158-168)

The Department called two civilian witnesses in an effort to corroborate some of Person A's claims. Tolani Isaac testified that she has known Person A for over 19 years. On

May 28, 2016, she was sleeping at Person A's house following a barbeque. When she came upstairs the next morning, she saw Person A in the living room holding her neck and "kind of leaning her head where it hurt." She asked Person A what happened; Person A indicated that she would text her and subsequently texted that Respondent choked her and that there had been an incident in [redacted]. Soon, she heard Respondent calling for her to bring her phone for Person A to use. When she came upstairs to the bedroom, she saw Person A lying in bed still holding her neck, so she asked whether she needed an ambulance, but Person A told her not to call and she heeded that request. Isaac alleged that she and Person A were stuck in the room for approximately two hours, during which Isaac pleaded with Respondent to let them out, but she did not recall getting a reply from him. Eventually, Respondent left to go to work and the two women left the residence. They did not go to the hospital. Isaac recalled Person A telling her that she did not want her to call 911 because "Marc told me if anyone ever called 911...he will shoot everyone." (Tr. 181-189)

Isaac further testified that in early November 2016, she was again staying with Person A and remembered hearing a "big bang" and running upstairs, where Person A told her that Respondent had kicked a bucket down the stairs and punched her. Isaac observed the bucket and water on the floor. Respondent left the home and Isaac asked Person A how much longer she intended to put up with Respondent. Person A said, "I'm done." Person A began showering in the bathroom and Isaac sat outside the bathroom in the hallway in case Respondent returned. Respondent returned and followed Person A into the bedroom. Isaac then heard Person A tell him to stop recording her. She entered the room and saw that both yelling and Person A "practically naked," having just gotten out of the shower. (Tr. 189-192)

Isaac recounted that Respondent then grabbed Person A and put her in a headlock, "kind of choking her," as she tried to push him off. Respondent was pressing her into the bed and Person A was screaming for him to get off her. Isaac also yelled for him to get off. Person A "actually got to his neck and she kind of like choked him," and Isaac subsequently observed the scratch on his neck. (Tr. 192-194)

Isaac further detailed that Respondent left the room and Person A locked the door. However, he came back yelling that his neck was scratched and then broke the key in the door and kicked the door in. Isaac heard him say, "I'm going to cave your face in." When he managed to enter, Person A ran to the other side of the room and Isaac yelled for Respondent to stop. He placed her in another headlock and was "kind of like punching her." Isaac knew he had something in his pocket, although she could not see what it was specifically. She knew that Respondent had his gun on him, which scared her and prevented her from going to grab him. Isaac was sure that at some point, Respondent was on the phone with Olriche on speaker, and Isaac yelled out to Olriche that Respondent and Person A were fighting. Olriche replied, "You're fighting with your [redacted]...get out." (Tr. 194-198, 207)

Isaac testified that eventually Randy came home and into the room, called his uncle and then started telling Respondent, "Get off [redacted] Simultaneously, Isaac saw Respondent punching Person A in the upper body, near her breasts. After Randy's intervention, Respondent released Person A. After the incident, she and Person A decided not to call the police because they were afraid of what Respondent might do. Isaac acknowledged that although she was trained to report incidents of domestic violence that she suspected in her role at [redacted], she did not report the abuse that she witnessed involving her friend, Person A. She denied discussing the incidents with Person A since they occurred. (Tr. 198-201, 202-204, 206)

A third Department witness, Marckenzie Samedi testified that she works with Person A and has known her for over ten years. She testified that in February 2016, she saw Person A at work after her trip to [redacted] with her [redacted]. Samedi hugged Person A, who complained that her arm was hurting because it was bruised. Person A said that "it was hurting and in pain" when Samedi hugged her and Samedi saw a bruise on Person A's arm. At first, Person A just said that "she got hurt," but would not specify how. Later, she told Samedi that " she had an argument with [redacted] and they...had a rough situation" where "he roughed her up." Samedi was surprised to hear the allegation because she had never heard of anything similar involving the [redacted] previously. She denied being given instructions by Person A about how to testify. Additionally, she agreed that her job as a dental assistant requires her to report her suspicions of domestic violence, but stated she did not report what she heard from Person A because "I assumed that she would probably handle it on her own." (Tr. 210-214, 217-219)[2]

Respondent called two witnesses before he himself testified. Olriche Geffrard testified that he has been friends with Respondent for approximately 20 years. He also became close with Person A after Respondent [redacted]. After some time, Geffrard became aware that they were having [redacted] problems. Specifically, Person A would call him and tell him that she was jealous of Respondent's [redacted] or that she wanted Respondent to come home. In December 2016, he learned that Person A had gone to family court to obtain an order of protection. Geffrard testified that before he heard about the order of protection, Person A never told him that Respondent had hit or threatened her. He also did not recall any incidents where he was on the phone and being told Respondent was beating up Person A and never directly witnessed any abuse between Respondent

[2] I note that while both Isaac and Samedi agreed on cross that they were obligated in their jobs to report suspected domestic violence, no New York law expressly requires this with respect to adults. They did not provide any further information about their employers' policies.

and Person A. He confirmed that on December 13, 2016, he texted Person A to tell her that hopefully she was not trying to mess Respondent up. On December 16, 2016, Person A texted Geffrard to inform him she dropped the order of protection and Geffrard told her it was a heroic act. Person A then responded that Respondent was really abusive and had a short temper. (Tr. 247-249, 251-257)

Person A's [redacted], Randy Charter, testified that he grew up living with Person A and [redacted]. Randy stated that his relationship with Person A was not good because she had anger issues and was physically abusive. He specified that the abuse occurred, "...maybe with a belt, a spoon, might be an iron thrown at me, or I used to get beat with an umbrella." He estimated that Person A beat him with an umbrella on six occasions, and that Respondent witnessed at least one incident and "tried to stop the bleeding and stuff." Randy stated that Person A was also abusive towards [redacted]. (Tr. 258-261, 271-272)

Randy characterized his relationship with Respondent as good and noted that Respondent "did all the right things...pick[ed] me up from school...helped me out with homework." He testified that he still maintained a relationship with Respondent and came all the way from [redacted] where he now resides, to testify before this tribunal because he wanted to "get Marc on the right terms and make sure everything was correct for his part." He denied ever fighting with Respondent or hearing that Respondent wanted him to leave [redacted]. However, Person A told him to leave when he decided to [redacted]. Randy denied ever seeing or hearing Respondent behave violently or abusively towards Person A. (Tr. 262-264)

Specifically, Randy recalled a November 2016 incident that began when he was in the basement and heard arguing upstairs. When he went upstairs, he saw Isaac sitting on the staircase, and inside the bedroom, he saw Person A scratching and attacking Respondent, who was "just trying to leave the room and get out." Randy told her "to chill out and take it easy." He did not see Respondent harm Person A at that time, nor did she tell him that he had hurt her in any way. After the incident, Respondent "packed his stuff and left;" he returned two weeks later before leaving again. Randy explained that [redacted], Person A would ask Randy to contact Respondent to "tell him to come back. (Tr. 265-266, 270)

Regarding the alleged hostage incident, Randy recounted that on May 29, 2016, he allowed Respondent, whose keys had been taken away by Person A, to enter the home. He stated that there was no altercation at that time, nor did Person A tell him about Respondent taking her and Isaac hostage. (Tr. 265-269)

Respondent also recalled Respondent telling him in December 2016 that Person A had filed an order of protection against Respondent. Randy never saw the document, nor did he ever hear about the specific allegations, such as Person A's s bruises in [redacted] or her broken phone, from either Respondent or Person A. (Tr. 273-276)

Finally, Randy testified that after he became aware of this trial proceeding, Person A sent him a long text message in which "[i]t seemed like she was just kind of like trying to prep me in a way like, 'Okay, this is what happened. And this is what I need you to kind of say and just be on my side in a way.'" He did not respond after reading it. (Tr. 269 270)

Respondent denied all Person A's claims, providing a different account of what happened during [redacted] and what transpired after he decided to [redacted] from Person A. He testified

[redacted]

A. He testified that he met Person A while he was on-duty and she was parked in her car, but denied that she gave him her phone number so he would not give her a ticket. In the year and a half that he [redacted] to Person A, the relationship grew problematic. Respondent explained that Person A was "very jealous" of his ex-wife and suspected that Respondent was continuing a relationship with her. Respondent testified, "I thought that was going to change once [redacted] to show her that there was nothing going on between me and her, but...it only got worse once we [redacted] Additionally, [redacted] was not allowed to basically call [redacted] to talk to her." (Tr. 279-282)

He recounted that eventually, the arguments bordered on physical with Person A getting in Respondent's face and g rabbing his shirt. He stated that when this happened, he would leave the house, sitting in his car or going for a drive, and often spent a day or more out of the house. Person A would eventually call him and his friends, especially Olriche, asking for Respondent to come home because [redacted]" Respondent detailed that he had a "very good" relationship with Person A's [redacted] Olriche convinced Respondent to go home. (Tr. 283-285)

Regarding the specific alleged incidents, Respondent testified that in November 2016, he received a call from [redacted] to switch weekends for her visit with [redacted]. Person A became "very upset" when she heard about the changed plans and an argument ensued. Respondent, feeling "tired of it," began packing to leave and had clothes on the bed, which Person A threw to the floor. Respondent began recording the incident to show what Person A had done. He told her, "Pick it up," and she punched him in the face, causing the phone to fall. He testified that he could not remember why Person A was wearing only a towel at the time, but

surmised that she had been in the bathroom or showering shortly before. He denied kicking a bucket, trying to film Person A naked, or recording longer than the brief video. (Tr. 286-290)

The argument continued after the phone fell and Randy entered as Person A started punching Respondent, who tried to block her. He denied ever punching or striking Person A, straddling her on the bed, or threatening her. Randy told his mother to stop and Respondent left the home with his clothes and with [redacted], noticing the scratches on his neck after he left. He remained away from the home for about two weeks, deciding then that he did not want to remain [redacted] However, Olriche and his [redacted] reached out to him, asking him to return, and he did. Respondent admitted that he did not disclose that Person A punched him to his colleagues at the time or during his Department interview. He was "embarrassed" and did not want Person A arrested because of the potential impact on her children. (Tr. 290 292, 310-312)

Respondent was home for over two weeks when another argument with Person A ensued; he moved out permanently in early December 2016. On December 13, he received a phone call at his precinct and was advised that Person A had filed for an order of protection. As a result, he was placed on modified duty. He appeared in court three days later and [redacted] dropped the charges. Respondent testified that the charges of abuse in the order of protection were the first time that Person A alleged abuse. At some time thereafter, Person A texted him, asking to "work things out" but Respondent told her, "No, it's not going to happen." (Tr. 293-296)

On March 13, 2017, Respondent learned [redacted] Respondent [redacted] order of protection was

issued for the duration of one year, mandating that he stay away from Person Aand allowing him to have a gun only for work. That order has since expired. (Tr. 297-298)

Respondent denied that any of the alleged misconduct in [redacted] had occurred. He denied becoming upset about a person called Damian, ripping Person A's costume, punching her, taking naked photographs of her or threatening to distribute such images to her friends. He said that he saw the picture of Person A naked for the first time when preparing for this case. He denied knowing when or where it was taken. (Tr. 298-301)

Regarding the May 2016 incident where Person A claimed she was held hostage, Respondent testified that he spent the whole night sleeping in his car because he had previously given his key to Person A as she had demanded the key after another argument about his ex-wife. He had since been relying on others to let him into the home. After leaving to eat breakfast, he eventually returned and Randy let him into the house. He denied that he choked Person A, broke her phone, or held her and Isaac hostage after being let inside. In fact, he denied that there were any altercations at all on that date. (Tr. 301-307)

Finally, Respondent confirmed that in July or August, 2016, he and Person A argued about whether to give [redacted] However, he denied ever knocking his gun against his own head or moving it back and forth. (Tr. 307-308)

In this case, Respondent has been charged with three separate instances of engaging in physical altercations with Person A and one instance of menacing her. There is no doubt that these allegations are deeply troubling. They are also hotly contested as Respondent emphatically denied Person A's allegations as to all four incidents at trial. It is therefore necessary for the factfinder to carefully evaluate the testimony and documentary evidence to discern whether one version of the facts is more credible than the other. Often the resolution of disputed facts hinges

on the tribunal's assessment of witness credibility. There is no more fundamental nor often more challenging task for a trier of fact than the resolution of a controversy between two parties based primarily on an assessment of their respective credibility. This particularly true in a case such as this one that involves sensitive issues surrounding a [redacted], where the record is devoid of objective evidence that either proves or disproves the claims.

"No magic formula exists by which a trier of fact may separate with certainty truth from fiction in a witness' account. At best, the task remains an exercise of carefully reasoned judgment, aided by the consideration of such factors as witness demeanor; consistency of a witness' testimony; supporting or corroborating evidence; witness motivation, bias or prejudice; and the degree to which a witness' testimony comports with common sense and human experience." *Dep't of Education v. Brust,* OATH Index No. 2280/07 (Sept. 29, 2008), *see also Disciplinary Case No. 2016-15447* (April 17, 2018). Having carefully considered the testimony of each witness and the documentary evidence proffered by the Department, I find that the record does not sufficiently support a finding of guilt on any of these specifications.

Trying to deconstruct the truth of this matter proves quite difficult given the disturbing nature of the allegations, the relationships the supporting witnesses have with the primary principals and the acrimonious ending to Person A and Respondent's relationship. Ultimately, though, I found Person A's testimony to be incredible and largely fabricated. She repeatedly inserted additional self-serving commentary into her testimony in what appeared to be a dubious effort to portray Respondent in the most negative light possible. Another indication of Person A's lack of credibility was her contrived recitations of detailed minutiae from incidents that occurred over three years ago. While it is certainly understandable that any incident of violence experienced by someone may long remain vividly in their memory, it gives the tribunal pause

that Person A was able to so precisely recall each incident, providing overstated and seemingly practiced narratives concerning each one. She never appeared to struggle to recall even one detail, which strains credulity given the chaotic nature of these incidents that spanned several months. As a result, her account felt overly embellished. Just by way of one example, Person A testified as to the specific details of several phone calls made over three years ago, which took place with various people during the times Person A claimed she was being attacked. Another aspect of her testimony that was troubling was when Person A asked the tribunal to believe that she didn't call the police in [redacted] not because she feared reporting Respondent or wanted to keep the matter private, but because she claimed she did not know the number. Person A clearly is a capable woman who holds a job and, in addition, is also someone who lived in [redacted] and has relatives there. It is simply not believable that Person A did not know how to get in touch with the police in [redacted], but saying she did not conveniently fit the narrative she was trying to put forward.

With questions about the veracity of Person A's account, the tribunal next looked to the corroborating evidence and notes that there are photographs depicting physical injuries and eyewitness testimony that do provide some support for Person A's claims. Ultimately, though, this corroboration is lacking in reliability. The two other witnesses presented by the Department, Isaac and Samedi, are both friends of Person A for over ten years and over 19 years respectively. Each one presented testimony that did corroborate Person A's claims about an incident, but for both women, the testimony was almost word for word the same as that presented by Person A. Given the passage of time and the upsetting nature of the events, one would expect at least slight variances as to details and specific statements that were made years ago, but these witnesses echoed their friend's claims nearly verbatim. It is particularly apparent in Isaac's testimony

where she remembers the exact same words testified to by Person A from conversations that took place over three years ago. While they denied being coached by Person A and do corroborate their friend's claims, that corroboration is quite questionable given the understandable bias that would naturally be expected from women who had such long-term friendships with Person A and given the troubling testimony from Person A's relative about receiving a text message where his Person A attempted to give direction about the substance of his testimony.

With the complainant's witnesses not providing sufficiently reliable corroboration, the tribunal turned to the documentary evidence presented by the Department- the photographs in evidence. While these photos align generally with Person A's claims—a naked photo of her, an injured toenail (with no face in the picture), a broken door and a broken cellphone screen, I do not find any of it to be conclusive evidence or even compelling corroboration supporting her claims. Though Person A provided a narrative as to what the pictures represented, I have found her testimony to be lacking in credibility. As to the photos themselves, there is absolutely nothing in the way of time or date stamps to authenticate the photos or even indicate when or where they were taken. Such authentication is not required, but would prove quite helpful in a case like this one. Moreover, pictures of the broken door or the lock or the phone or Person A's toe could have been placed into time contexts by being supplemented by receipts for repairs or services, but no such evidence was provided. Therefore, while the photos may prove that at some time Person A's phone and door were broken, they do not prove by themselves that the items were broken when, or how, Person A testified they were broken.

Similarly, the photos of Person A's injuries may prove that at one time Person A was injured, but they do not by themselves prove that Person A was injured at the times and in the manner she testified to. Moreover, the majority of the injury photos are of low resolution and depict only the

injured body part without a face; thus they are of extremely limited probative value. Though not required, I note that the record is also devoid of any medical documents, which could have helped contextualize some of these photos.

While Respondent does not have to prove anything in this case, in contrast to Person A, Isaac's and Samedi's testimony, I found his testimony regarding the material events of this case far more credible than the factual assertions made by Person A, even given his status as an interested witness. In particular, I note that Respondent's stated care and concern for Person A's children seemed a genuine and credible explanation for why his involvement with Person A continued for several months despite being fraught with problems and altercations.

The most compelling witness, however, was Person A's relative, Randy, who traveled from [redacted] where he attends school and [redacted] to testify for Respondent. He did not corroborate any of Person A's testimony concerning the allegations of abuse she made against Respondent. This is particularly notable as [redacted] they both named him as a witness to a portion of one of their altercations. Regarding that altercation, Randy alleged that Person A was attacking Respondent, who he recalled was just trying to leave the room.

Randy described Person A as having "anger issues" that frequently led to her resorting to physical abuse, beating him with blunt instruments like umbrellas, irons and belts. He stated that he joined the military to "get away" from the situation. Conversely, Randy described Respondent as a good [redacted], who was not in his life for that long, but did "all the right things." (Tr. 259-62) He acknowledged that there were conflicts between Person A and Respondent but contended that he never saw him physically abuse her and that the main source of their issues was jealousy over Respondent's ex-wife, corroborating Respondent's

claim that this was a major point of contention between them. He further corroborated Respondent's testimony that when Respondent left Person A, she had Randy reach out to him an attempt to get him to return. (Tr. 263-70)

Also concerning was the fact that Randy claimed that Person A, with whom he had very little or no contact after February 2017, sent him a long text message prior to trial in which he felt she was trying to prep him to be on her side and say certain things about what had transpired. While the actual message is not in evidence, the claim is troubling in and of itself and Person A

confirmed reaching out to Randy, with whom she had not been in touch, by text prior to trial.

While the Advocate correctly pointed out that Randy has a strained relationship with his relative Person A and was not present with her and Respondent at all times, I nevertheless find that Randy's forthright testimony severely undercuts the credibility of Person A The tribunal can assign no motive for why this young man would leave his school and [redacted] responsibilities and travel thousands of miles to testify in this hearing about deeply personal family issues, other than that he was disturbed by the claims levied against Respondent and wanted to share what he knew to be true.[3] Randy acknowledged that Respondent was only in his life a few years and felt he had been a good [redacted], but there was no indication that they had the type of close relationship that might motivate him to lie for Respondent. His statements this Person A did not handle anger well and often resorted to physical violence and that her issues with Respondent stemmed from extreme jealousy had the

[3] Though Respondent paid for Randy's travel expenses associated with coming to New York City to appear before the tribunal, I do not find this to be the kind of pecuniary benefit that would motivate him to lie. The fact still remains that this young man traveled a significant distance and took time away from his school and work responsibilities.

ring of truth and provided partial, but very significant, corroboration of Respondent's characterization of his relationship with Person A.

In sum, with the testimony of Person A's relative, Respondent was able to raise serious questions about the genuineness and accuracy of Person A's claims. Ultimately, in all cases, even close ones with serious allegations, the burden lies with the Department to prove each specification by a preponderance of the credible evidence. In a disciplinary proceeding, the Department, "has the burden of proving its case by a fair preponderance of the credible evidence, which has been defined as a showing that the incident in issue was 'more likely than not' to have occurred as credibly described." *Dep't of Correction v. Holston,* OATH Index No. 592/04, at 11 (Sept 29, 2004) citing *Bazemore v. Friday,* 478 U.S. 385, 400-01 (1986). Having carefully considered the record in its entirety, serious concerns remain about the credibility of Person A's account. While some corroboration was offered for her claims, it was not found to be sufficiently reliable. Accordingly, based on the failure of the Department to prove the charges by a preponderance of the credible evidence, I find Respondent Not Guilty of the charged misconduct.

Respectfully submitted,

Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

MAY 19 2020

DERMOT SHEA
POLICE COMMISSIONER