



POLICE DEPARTMENT

May 27, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-23206
Detective Alhagi Joof	:	
Tax Registry No. 947783	:	
█ Precinct Detective Squad	:	

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

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For the Respondent: Marissa Gillespie, Esq.
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To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Detective Alhagi Joof, while assigned to the [REDACTED] Precinct Detective Squad, on or about June 29, 2020, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by making a sexually inappropriate remark to Police Cadet AZ.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

P.G. 205-36

EMPLOYMENT DISCRIMINATION
PERSONNEL MATTERS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 27, 2022. Respondent entered a plea of Not Guilty to the charged misconduct. The Department called Probationary Police Officer AZ,¹ Police Officer Edwin Florez, Sergeants Anlu Rodriguez, and Brian Koo, as witnesses. The Respondent called Police Officer Edwin Ortiz and Sergeant (then Detective) Jermaine Miller 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 that the Department has failed to prove the sole specification charged by a preponderance of the evidence. Accordingly, Respondent is found Not Guilty of the charged misconduct.

ANALYSIS

Summary of Hearing Record

Probationary Police Officer AZ worked at the [REDACTED] Precinct as a Police Cadet while she attended college. She did this to build credits in order to qualify for entry to the Police Academy.

¹ Complainant AZ's identity is known the Department. Her name has been anonymized in this decision.

AZ testified to wanting to work in the [REDACTED] Precinct after finishing the academy. Her duties as a Cadet consisted of answering phones, taking reports, completing complaint reports, and issuing complaint numbers. She would typically sit in the complaint room (also referred to as the “124 room”) located on the first floor. (Tr. 20-23)

While working at the [REDACTED] Precinct, AZ was friendly with another cadet who worked upstairs in the Detective Squad. It is her testimony that she would only go upstairs to the Detective Squad if the other cadet was with her. Respondent was one of the detectives assigned to the precinct’s Detective Squad. (Tr. 23-24)

On June 29, 2020, AZ stated that she was busy at work and had not yet had lunch. Respondent happened to be going out to get sandwiches, so AZ asked if he would pick her up one.² Respondent obliged. AZ proceeded to hand him her card, but he said “That’s fine.”³ Then AZ heard Respondent state, “When are you going to fuck me already?” AZ said she was shocked.⁴ After hearing the statement, she told Respondent to forget the sandwich. Respondent left to go to the store, but he bought her the sandwich anyway. (Tr. 26-27)

AZ said she never heard Respondent say anything like that before. AZ explained that prior to the June 29, 2020 incident, her interactions with Respondent were minimal. They had a working relationship for the most part. If she needed help with a report and he was available, she would ask him about it. They had friendly conversations at work about “working, and family life, or food or anything. It wasn’t anything specific.” (Tr. 24-27)

² In her EEO interview, she explained that she asked Respondent to pick up a sandwich for her because “I didn’t want to go outside in my uniform, ‘cause I didn’t have a sweater or anything.” Dept. Ex. 1B at 3.

³ At her EEO interview, she claimed that she gave Respondent the money for her sandwich and “[h]e didn’t even have to pay for it.” Dept. Ex. 1B at 3

⁴ At her EEO interview, she further described the interaction as follows: “He was laughing though, so I kind of took it as a joke . . . So I did kind of laugh, and I said stop and to get out of my face.” Dept. Ex. 1B at 3.

While Respondent was out getting the sandwiches, AZ immediately called her mother.⁵ After she finished the call with her mother, Police Officer Edwin Florez came downstairs and saw that she was upset. He asked her what was wrong and she told him what Respondent said. Officer Florez told her she could either speak to a supervisor or he could accompany her and they could address Respondent directly. (Tr. 27-29)

AZ opted to engage a supervisor, Sergeant Anlu Rodriguez, who was acting as the Desk Officer that day. She did not know Sergeant Rodriguez had a mandatory duty to report to the Equal Employment Opportunity Division (EEO). AZ first sent a text message to Sergeant Rodriguez, informing her she needed to speak with her about something personal. After a few minutes, she met Sergeant Rodriguez by the Desk and told her what happened. She informed Sergeant Rodriguez that she wanted to tell her what happened because she was a female, and she did not think it would escalate any further. She hoped that the sergeant would just make Respondent aware that she was uncomfortable with the statement. Instead, Sergeant Rodriguez gave AZ the number to contact EEO and explained that EEO would contact her. AZ was adamant that she did not want to report Respondent. (Tr. 29-32)

The following day, AZ was contacted by EEO to be interviewed. After arriving, AZ completed paperwork, including a complaint report with her statement. In the complaint report (Dept. Ex. 2), AZ wrote that Respondent had said to her, "When are you going to let me fuck you already?" She further detailed, "He has never made me feel uncomfortable and has always kept it professional, so that is why I felt very uncomfortable around him after that statement was made."

⁵ No testimony or interviews of AZ's mother were presented at trial.

At her interview, AZ stated that she was shocked by the inappropriate remark Respondent had made and she did not believe it at first. She stated that Respondent had never made her feel uncomfortable or flirted with her in the past.⁶ She also identified Police Officer Florez as a potential witness because “he looked at me like, what did he say” and noted that Police Officer Edwin Ortiz was nearby at the time manning the telephone switchboard, though she was not sure if they heard the comment. (Dept. Ex. 1B at 10, 15-18)

At trial, AZ was asked why she had failed to mention to anyone until the day before trial that Sergeant Jermaine Miller (then detective), another member of the [REDACTED] Precinct Detective Squad, was standing with Respondent at the time he made the purported inappropriate comment to her. She replied, “I didn’t want him to get involved. I just wanted to get the person.” She further testified that she did not completely understand the meaning of “witnesses” when she was initially asked and did not think to mention Miller.⁷ (Tr. 64)

Police Officer Edwin Florez, of the [REDACTED] Precinct, testified that he has known AZ since they were kids and noted that they are neighbors. On the incident date, he was in the stationhouse uploading Body Worn Cameras videos when AZ approached asking to speak with him. He noticed that she was nervous. Officer Florez indicated that he did not want to talk to AZ as he was preoccupied at that moment. He then noticed she was teary eyed and her demeanor was different than usual, so he decided to hear her out. He informed her that if it was a criminal

⁶ AZ further stated at her interview that she is connected with Respondent on Facebook and has his phone number, but the only time he contacted her outside work was to send his condolences when her grandfather died. (Dept. Ex. 1B at 10, 14)

⁷ At her EEO interview, the following exchange occurred:

SGT KOO: And you said there were no witnesses during this time?

AZ: That heard the statement?

SGT KOO: Mm-hmm.

AZ: No. They were standing around, but-- they didn’t look. The only one that I told that I considered a witness was Florez ‘cause he looked at me like, what did he say?

(Dept. Ex. 1B at 15)

matter he would have to report it. She then informed him that she was uncomfortable because Respondent had said something inappropriate to her. Officer Florez did not remember the exact words AZ stated Respondent had spoken, but remembered that, in sum or substance, it was "Let's fuck." He further recalled her stating that Respondent always made comments to her when she is alone. She did not provide any further detail concerning these other statements. Officer Florez told AZ that she could either make an official report or he could accompany her to speak to Respondent. Shortly, thereafter, Respondent walked in with his partner and brought over "a drink or food." After a "little while," Officer Florez left. (Tr. 88-94, 98)

Sergeant Rodriguez testified that she is a training sergeant, assigned to the Training Bureau, but her office is at the [REDACTED] Precinct. On June 29, 2020, Sergeant Rodriguez recalled covering the Desk. Prior to that day, she only knew AZ in passing. While working the Desk, AZ approached her, asking to speak in private. AZ explained that Respondent had approached her and said "When are you going to fuck me?" Sergeant Rodriguez remembered that AZ said she did not want anyone to get into trouble and that she did not want the incident to affect her becoming a police officer. Sergeant Rodriguez informed AZ that she was a mandated reporter and would need to report the incident to EEO. She recalled AZ being afraid and only wanting her to speak to Respondent. Sergeant Rodriguez further testified that AZ had indicated to her that this was not the first time Respondent was inappropriate towards her and that he had made her feel uncomfortable in the past. (Tr. 111-15, 121-22)

After making the proper notifications, Sergeant Rodriguez spoke with Respondent. She informed him to stay away from the cadets, as he may have said something to make one of them feel uncomfortable. She indicated that Respondent seemed shocked by her statement and wanted to know what was going on. Sergeant Rodriguez notified EEO and completed a UF 49 (Dept. Ex.

3). The UF 49 indicated that AZ had made an allegation that Respondent had stated to AZ, “When are you going to fuck me?,” and noted that AZ had stated that “this isn’t the first time Det. Joof said something to her that made her feel uncomfortable.” The UF 49 also noted that AZ had emphasized that she did not want this to affect her future career with the Department. (*Id.*; Tr. 115-22)

Sergeant Brian Koo, the EEO investigator assigned to handle AZ’s case against Respondent, testified that he did not make an effort to secure video footage of the stationhouse from the date and time of the allegation. Sergeant Koo admitted that Respondent’s Exhibits A and C indicate that there are multiple cameras affixed to the wall and ceiling of the first floor of the [REDACTED] precinct. Koo conceded, based on what he learned from the interview, that the cameras would have been “within a few feet” from where the alleged incident occurred. It was not until Sergeant Koo interviewed Respondent for the first time, nearly three months after the incident date, that he learned of the possible presence of Sergeant Jermaine Miller, then Detective Miller, who Respondent claimed was present with him during the duration of his interaction with AZ. Sergeant Koo conceded that he did not follow up with Miller after learning he was a possible witness. (Tr. 145-48, 155-56)

Police Officer Edwin Ortiz, assigned to the telephone switchboard at the time of the incident, testified that he did not remember hearing any comments made by Respondent while he was present. It was established at trial that the telephone switchboard was nearby to where Respondent claimed the incident had occurred. (Tr. 65, 162-66)

Sergeant Miller testified that AZ would frequently eat lunch upstairs in the Detective Squad. On the date in question, Sergeant Miller and Respondent went to get lunch from a deli across the street. When they went downstairs, AZ was there and asked if they could bring her

back a sandwich. Sergeant Miller recalled that AZ could not decide what she wanted, so Respondent indicated she should just text Sergeant Miller her order. Thereafter, they left and he received a text message from her with the order. He showed the message to Respondent, who paid for her sandwich. (Tr.181-85)

Sergeant Miller recalled the interaction with AZ lasted approximately two minutes. For the duration of the conversation, he was standing next to Respondent and AZ was directly in front of him. The only statement Miller recalled Respondent saying to AZ was "Text it to Miller and I'll get it." Miller stated that after returning with the food, they dropped off the sandwich to her and returned to the Detective Squad. Sergeant Miller was adamant that he did not hear Respondent make any inappropriate statements to AZ. (Tr. 186, 195-99)

Respondent denied AZ's claim that he had made an inappropriate remark. He testified that he has worked in the [REDACTED] precinct Detective Squad for six years. Respondent remembered that he would help AZ with any questions she would ask him regarding work. He described her as often hanging out upstairs in the Detective Squad and eating her lunch there. They did not interact outside of work. (Tr. 223-28)

On the date in question, Respondent testified to getting lunch with Sergeant Miller. He stated that as they were passing AZ's desk to exit the building, she stopped them to ask if they were getting food. According to Respondent, she was indecisive about what to get so he stated, "Text Miller." AZ then said she would text Respondent, but he informed her he did not have his phone so she would have to text Miller what she wanted. Respondent recalled AZ trying to give him money for the sandwich, but he ultimately ended up paying for it. He conceded to possibly joking with AZ about the money, recalling a possible exchange such as "oh, lunch is on you," but he did not end up taking money from her. He and Miller left after the brief encounter. When

they returned, he dropped off the sandwich to her and he and Miller went back upstairs. It did not appear to him that there was anything wrong or different in AZ's demeanor. (Tr. 228-31, 240)

Later the same day, Respondent recalled Sergeant Miller informing him that Sergeant Rodriguez wanted to speak with him. Sergeant Rodriguez did not inform him of the content of the inappropriate statement he was accused of making, just that there was an allegation against him about a report made by a cadet. Respondent testified that he was confused, had no clue what Rodriguez was referring to, and said he "didn't say anything." It was not until Respondent was interviewed by Sergeant Koo, months later, that he was made aware of the content of the alleged statement. (Tr. 233-37)

Findings

The adjudication of the instant charge rests upon a credibility determination. Assessments of witness credibility generally rely on the plausibility and consistency of witness statements in connection with the totality of the evidence presented. Where a witness testifies at trial, the witness's demeanor and candor while testifying also informs a credibility determination (*See, e.g., Black v Pritzker*, 121 F Supp 3d 63, 90 [DDC 2015]). While Police Officer AZ largely testified in a credible manner and was consistent as to the content of the inappropriate remark she heard Respondent say to her, including making the statement known to two outcry witnesses and memorializing the statement in a complaint and recorded interview the next day, several significant inconsistencies remained.

First, the Tribunal credits the testimonies of Police Officer Florez and Sergeant Rodriguez that AZ told them the day of the incident that this was not the first time Respondent had said something that made her feel uncomfortable. The next day, however, AZ wrote that Respondent had "never made me feel uncomfortable" before the incident date, which she

maintained through trial. When asked on cross-examination if she had told either Police Officer Florez or Sergeant Rodriguez that Respondent had made other statements that made her feel uncomfortable, she answered “I don’t recall” (Tr. 54, 58). Accordingly, it is likely that AZ embellished her account of what had occurred to the two outcry witnesses.

Second, AZ failed to tell anyone, including Department investigators, that Sergeant Miller was standing next to Respondent when he issued the inappropriate remark. The effect of such an intentional omission is far-reaching. The Department, including Sergeant Rodriguez on the day of the incident and Department investigators thereafter, were denied an opportunity to verify and memorialize an eyewitness statement close in time to the incident date.⁸ And the Department Advocate’s Office, who claimed that AZ only made them aware of Sergeant Miller’s presence the day before trial, was denied an opportunity to properly assess the merits of the case. Her explanation that she did not know what was meant when she was asked if there were any “witnesses” was especially dubious given that she did identify two other officers “standing around.”

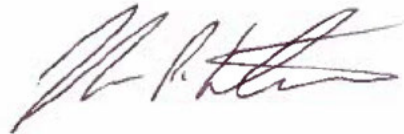
Finally, there is little reason to discredit the testimony of Sergeant Miller,⁹ who was standing directly in front of AZ during Respondent’s interaction with her. AZ did not testify that Respondent made the inappropriate comment to her in a manner that Sergeant Miller was unlikely to have heard it. Accordingly, it is likely that Sergeant Miller would have heard any words spoken between Respondent and AZ, and the Tribunal credits his adamant testimony that no inappropriate remarks were made.

⁸ At her EEO interview, AZ noted that she saw Florez later that day in the parking lot and he told her that Sergeant Rodriguez had confirmed with him that AZ had spoken to him after the incident. (Dept. Ex. 1B at 27)

⁹ The Department attempted to discredit the testimony of Sergeant Miller by proving that he and Respondent were friends and faulting Sergeant Miller for not coming forward when he learned that AZ had made an allegation against Respondent. (Tr. 268-69) The Tribunal is not persuaded that these inferences render Sergeant Miller’s testimony untrustworthy.

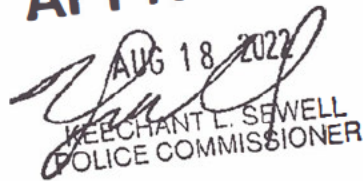
Based upon the inconsistencies noted above and the preponderate weight of the eyewitness testimony, I find that the Department has failed to prove that Respondent made a sexually inappropriate remark to a police cadet on June 29, 2020. Accordingly, Respondent is found Not Guilty of the sole specification with which he is charged.

Respectfully submitted,



Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED



AUG 18 2022
WEECHANT L. SEWELL
POLICE COMMISSIONER