



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

May 20, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Benjamin Roman**
Tax Registry No. 955410
33 Precinct
Disciplinary Case No. 2018-18638

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on January 4, 2022, and was charged with the following:

DISCIPLINARY CASE NO. 2018-18638

1. Said Police Officer Benjamin Roman, on or about January 31, 2018, while assigned to the 44th Precinct, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer Roman sent a threatening text message to Police Officer [redacted]

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Said Police Officer Benjamin Roman, on or about and between December 1, 2017 and December 31, 2017, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer Roman engaged in a physical altercation with Police Officer [redacted] and slapped her in the face.

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


**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated February 1, 2022, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Roman guilty of both Specifications in Disciplinary Case No. 2018-18638. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty for Police Officer Roman.

I have considered the totality of the issues and circumstances in this matter, and deem that a lesser penalty is warranted. Having taken into account all of the considerations for domestic violence incidents delineated in the Department's Disciplinary System Penalty Guidelines, and noting particularly the extended length of time since the misconduct occurred, during which no subsequent allegations between the complainant and Officer Roman have been reported, it can be concluded that there is a low likelihood that the misconduct would be repeated. Therefore, in light of the application of all of these considerations, neither suspension days nor dismissal probation is appropriate in this case.

In conclusion, based on the above, I direct that an *immediate* post-trial settlement agreement be implemented with Police Officer Roman in which he shall forfeit thirty (30) vacation days and cooperate with counseling through the 24-week OASAS program, as a disciplinary penalty.

If Police Officer Benjamin Roman does not agree to the terms of this post-trial negotiated settlement as noted, this Office is to be notified without delay.



Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

February 1, 2022

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2018-18638
Police Officer Benjamin Roman	:	
Tax Registry No. 955410	:	
33 Precinct	:	

-----X

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

To:

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

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CHARGES AND SPECIFICATIONS

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

PUBLIC CONTACT –
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REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 4, 2022.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The complainant, a UMOS who is married to Respondent, and has been on restricted duty status due to medical issues, was not called as a witness by either side. Instead, the Department Advocate called Lieutenant James Moore as a witness, and introduced several documents into evidence, including a hearsay interview of the complainant. 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, I find Respondent Guilty of the charged misconduct, and recommend that Respondent be suspended without pay for 30 days, forfeit 30 vacation days, be placed on one-year dismissal probation, and be required to cooperate with counseling through the 24-week OASAS program.

ANALYSIS

In January 2018, Respondent was involved in a relationship with a colleague at the 44 Precinct, Police Officer [redacted]¹ (“the complainant”); at the time, they lived together and had a child in common. It is alleged that on January 31, 2018, Respondent sent threatening text messages to the complainant. Additionally, Respondent is charged with having slapped the complainant in the face a month earlier, in December 2017.

Lieutenant James Moore testified that he was assigned to investigate this matter on January 31, 2018, along with his partner, Sergeant Carlos Alvarez. The matter was brought to the Department’s attention when the complainant informed her delegate that she had just received threatening text messages from Respondent and was afraid to go home. The delegate notified a supervisor, and the investigation commenced. (Tr. 33-37)

Moore conducted an official Department interview with the complainant at the 44 Precinct in the early morning hours of February 1, 2018. According to Moore, the complainant appeared afraid and shaken up. A transcript of the interview was introduced into evidence as Department Ex. 4. (Tr. 18-19, 39, 41)

In the interview, the complainant stated that Respondent sent her threatening texts after he observed her talking with a male colleague at approximately 1700 hours that day. The complainant tried to minimize the situation, but Respondent accused her of lying, and reminded her that she needs to follow his rules and not talk to male officers. When Respondent also stated that she was going to learn not to lie to him that night, the complainant became afraid that “he was gonna hit me when we get home.” The complainant went on to explain that she was afraid

¹ Subsequent to this incident, [redacted] the complainant changed her name to [redacted]

because one month earlier, Respondent had similarly been mad at her for talking with another male; she stated that on that occasion, he had “swung at me and hit me on my left eye.” The complainant did not report that earlier incident because she was “scared of him.” (Dept. Ex. 4 at 3-7)

The complainant provided a screen shot from her phone of the texts sent by Respondent on January 31, 2018 (Dept. Ex. 1). There are three consecutive texts from Respondent to the complainant; the exact time each text was sent is not noted. The texts appear as follows:

“cause i’m stick of this shit we are going to have a looong night”

“and u can thank yoself for those actions”

“u will not break another rule again I will make sure of it”

Moore testified that the complainant explained that Respondent had set rules for her, whereby she was expected to respond within two minutes anytime Respondent texted her. On this occasion, she took three minutes to reply. (Tr. 30-33, 54-55)

Even though the complainant was at the precinct reporting the incident on February 1, 2018, a Domestic Incident Report (“DIR”) was not prepared at that time. Moore testified that it was an oversight, which he realized several days later. Moore and Alvarez then revisited the complainant for the purpose of preparing the report. (Tr. 19-20, 42-46)

The DIR (Dept. Ex. 3), which was prepared by Alvarez on February 5, states that the first thing the complainant had said to the responding officers following the incident was that she was scared of Respondent and in fear for her safety. The more extensive narrative summary, based on the complainant’s initial account, states that Respondent was jealous because he saw the complainant speaking with a male co-worker. Respondent then sent the complainant multiple texts that made her fear that he was going to physically assault her. The complainant was afraid

because in December 2017, Respondent had seen her speaking with another male co-worker; when they arrived home, Respondent slapped the complainant with his hand. However, in the victim statement portion of the DIR, which the complainant wrote and signed on February 5, she states that she initially felt scared after receiving the text messages, but after speaking with Respondent, she realizes it was all a “misunderstanding,” and she does not wish to pursue the matter.

Moore testified that he consulted with the district attorney’s office about this matter. The assistant district attorney with whom he spoke chose not to prosecute the case. Moore did not conduct any further investigation into this matter. (Tr. 46-47, 52)

Respondent testified that he and the complainant grew up together. In December 2017, they both were assigned to the 44 Precinct. [REDACTED]

[REDACTED] Respondent denied that he slapped the complainant, and stated that he “never put [his] hands on her.” (Tr. 61-62, 69-70)

Regarding the text messages, Respondent admitted that he sent them to the complainant on January 31, 2018, but denied that they were meant to be threatening. Respondent testified that he merely “was trying to help her, guide her,” regarding some personal, [REDACTED] issues she was having, since the complainant “suffers from [REDACTED].” According to Respondent, on that particular day, the complainant was overly nervous because her father, a taxi driver, had been pulled over by police. Respondent tried to convince her that it was not a big deal, and reminded her of the “rules and goals” she set for herself to help deal with her stress. Nevertheless, the complainant remained nervous, leading Respondent to anticipate that it would

be “a long night.” Respondent maintained that in none of the texts was he threatening the complainant with violence. (Tr. 63-67, 70, 76-77, 82, 93-94)

However, on cross-examination, Respondent conceded that when asked about the text messages during his official Department interview on January 31, 2018, he did not mention anything about trying to “help or guide” the complainant. Instead, Respondent had stated that he and the complainant were dealing with their daughter being sick, and were considering taking her to the hospital, hence the prospect of a “long night.” Later in the interview, Respondent also stated it was going to be a long evening because he and the complainant both worked 4 x 12 tours, and would not get much sleep. When asked about these discrepancies at trial, Respondent testified that there were several reasons for the text messages he sent, and he again maintained that there was no intent to threaten. (Tr. 79-81, 83, 86-87, 92-93)

Respondent testified that later in the day on February 1, 2018, a sergeant from the 34 Precinct came to the home in order to have the complainant write a statement for the DIR. According to Respondent, the complainant refused to do so, because the sergeant was trying to dictate to her, word-for-word, what to write. The DIR was not completed until February 5, at the 44 Precinct; Respondent was not present when the complainant wrote her statement. (Tr. 72-75)

Specification 1 charges Respondent with sending a threatening text message to the complainant. It is undisputed that Respondent did send the texts in evidence (Dept. Ex. 1) to the complainant on January 31, 2018. At issue is whether the texts were threatening. After carefully considering the credible evidence, I find that the texts were, indeed, threatening.

In making such an assessment, the texts cannot simply be viewed in isolation. Rather, they need to be considered holistically, in the context of the relevant background information. Since the complainant did not testify at trial, that context was provided through the testimony of

Lieutenant Moore, and the prior statements of the complainant that were introduced into evidence. It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross examine, and the court can observe the witness's demeanor. In the absence of live testimony from the complainant here, this tribunal carefully considered her multiple prior statements, which were made immediately after the incident, without time to reflect and fabricate, and included an official Department interview.

Lieutenant Moore provided detailed, credible testimony of the statements made by the complainant in the early morning hours of February 1, soon after she had reached out to her delegate because she was afraid to go home. The complainant stated that Respondent was jealous because he had seen her speaking with a male co-worker. Respondent then sent the complainant the series of texts, where he reiterated that she needed to follow his rules, about not speaking with other male officers, and responding to his texts in a timely manner. She explained to investigators that the texts frightened her, because one month earlier, Respondent had similarly become jealous, and slapped her in the face when they got home.

When viewed in this context, it becomes clear that the collective text messages were threatening. The first one expresses Respondent's anger at the complainant for speaking to a male officer, as he states that he is "sick of this shit," and he warns her of a long night ahead. In the second text, he blames the complainant for what will happen, telling her that she "can thank herself." The ominous third text makes the threatening nature of the communication even more

apparent, as Respondent insists that the complainant will not break another rule again, and that he “will make sure of it.”

Counsel for Respondent notes that the complainant essentially recanted her initial statements several days later, on February 5. In the DIR report, she wrote that she had worked things out with Respondent and it was all “just a misunderstanding.” However, in light of the complainant’s initial, consistent statements, to her delegate, to Moore, and to Alvarez, including in an official Department interview, I am not persuaded that there is any validity to the complainant’s subsequent recantation five days later. Rather, I find it more likely than not that she was genuinely frightened by the texts, for the reasons she initially provided.

Similarly, I do not find Respondent’s self-serving explanation for the text messages to be credible. At trial, Respondent claimed that he was merely trying to provide help and guidance to the complainant, who was dealing with personal issues. However, Respondent was inconsistent in his account, offering multiple versions as to the details of why he sent the texts. Not only did these discrepancies undercut the reliability of Respondent’s story, the threatening tone of the texts themselves is inconsistent with Respondent’s innocuous explanation.

Moreover, there was no credible evidence presented that the complainant would have had a motive to fabricate her initial account. Moore credibly described how when he first spoke with the complainant in the early morning hours of February 1, she appeared visibly shaken and frightened, which is consistent with her original statements of how she felt the texts were threatening. The statements she initially provided, that the texts frightened her because of her recent history with Respondent, were consistent and logical, and I credit them as the truth of what occurred here. The record has established, by a preponderance of the credible evidence,

that Respondent sent a threatening text message to the complainant, and I find him Guilty of Specification 1.

Specification 2 charges Respondent with wrongfully engaging in a physical altercation with the complainant, during which he slapped her in the face. Respondent denies that he ever struck the complainant, while the Department Advocate relies upon the hearsay statements of the complainant.

On the one hand, counsel for Respondent is correct in pointing out that the alleged physical altercation was not initially reported, that there is no evidence of injury to the complainant, and no corroboration for her hearsay account. Nevertheless, the totality of the circumstances in which the complainant initially made her statements about how she was struck by Respondent lend credibility to her account.

The complainant explained that she did not originally report the slap when it happened because she was afraid of Respondent. However, when he again became jealous that she was talking with another male officer and sent her the threatening text messages, the complainant became fearful that he would physically strike her again. The complainant promptly reached out to her delegate for help, and then repeated her complaint to Moore and Alvarez that same day. As discussed above, Moore described the complainant as appearing genuinely afraid that Respondent was going to physically harm her; it is logical that the reason the complainant was so afraid was because Respondent had, indeed, hit her in the recent past.

Further, in an official Department interview with her delegate present, the complainant, herself a police officer, again specifically described the physical altercation. She stated that Respondent got mad at her for talking with another male, and, when they were home together, he swung at her and hit her in her left eye. As such, not only did the complainant not have a reason

to fabricate the accusation on February 1, she had a specific reason to report it accurately: she was afraid that Respondent was going to strike her again. The credible evidence has established that Respondent wrongfully slapped the complainant in her face, and I find Respondent Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 9, 2013, has been found guilty of both charges. The Department has recommended that Respondent be suspended for 30 days without pay, forfeit 30 vacation days, be placed on one-year dismissal probation, and cooperate with 24-week counseling. For the reasons set forth below, I agree that the presumptive penalties are appropriate here.

Respondent has been found guilty of wrongfully engaging in a physical altercation with the complainant; at the time of the incident, they were living together, and had a child in common. The presumptive penalty for a physical act of domestic violence -- 30 suspension days, dismissal probation, and counseling -- is warranted here. Respondent, who was upset with the complainant for speaking with another male officer, reacted violently by slapping her in the

face. Even without any evidence of a physical injury, Respondent's actions were dangerous and unacceptable, and there must be appropriate accountability.

Additionally, Respondent has been found guilty of sending threatening text messages to the complainant. The presumptive penalty for a non-physical act of domestic violence, such as this, is the forfeiture of 30 penalty days. That penalty is warranted here, in order to address Respondent's threatening conduct. Based on the account of Lieutenant Moore, the complainant was visibly "scared" and "shaken up" when she recounted what had occurred on January 31, 2018. As discussed above, given the context in which they were written, the texts were plainly threatening in nature.

Police officers are entrusted with the responsibility of protecting the public. With his actions here, Respondent did just the opposite. Respondent twice failed to control his emotions, and so in addition to the forfeiture of days, a period of monitoring is warranted. Additionally, Respondent would benefit from appropriate counseling. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent be suspended for thirty (30) days without pay, forfeit thirty (30) vacation days, be required to cooperate with counseling through the 24-week OASAS program, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.



Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Adler".

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER BENJAMIN ROMAN
TAX REGISTRY NO. 955410
DISCIPLINARY CASE NO. 2018-18638

Respondent was appointed to the Department on July 9, 2013. On his three most recent annual performance evaluations, he received overall ratings of “Exceptional” for 2018, 2019, and 2020. He has been awarded three medals for Excellent Police Duty.

Respondent has no disciplinary history. In connection with the instant matter, he was placed on Level 1 Discipline Monitoring on February 22, 2018; that monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials