



POLICE DEPARTMENT

March 31, 2021

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In the Matter of the Charges and Specifications :

- against - :

Detective Nela Gomez :

Tax Registry No. 938586 :

Detective Bureau :

Case No.

2018-19545

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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:

Lauren Silverstein, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent:

Hugo Ortega, Esq.
Tanner & Ortega, LLP
299 Broadway, Suite 1700
New York, NY 10007

To:

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

CHARGES AND SPECIFICATION

1. Said Detective Nela Gomez, while temporarily assigned to the Hate Crime Task Force, while on-duty, on or about August 31, 2018, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective was discourteous toward Lieutenant Robert Delaney, Tax #895089.

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 January 25 and 26, 2021. Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. The Department called Lieutenant Robert Delaney and Deputy Inspector Mark Molinari. Respondent called Detective John Vrlc and Senior Police Administrative Aide Donna Nicholas as its witness, and Respondent testified on her 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, and recommend a penalty of the forfeiture of ten (10) vacation days.

ANALYSIS

It is uncontested that on August 31, 2018, at approximately 1300 hours, two officers in the Hate Crime Task Force, Respondent and her supervisor, Lieutenant Robert Delaney, were involved in a verbal dispute. It is alleged by the Department that during this verbal dispute Respondent was discourteous towards Lieutenant Delaney, specifically: (1) she screamed and shouted at him; (2) she cursed at him several times, including stating "I was going to fucking tell you where I was going," and "[I was] going to do the fucking subpoena/get the fucking subpoena done," and telling him that she knew she was "not one of his fucking favorites;" and (3) she

threw keys to a Department vehicle against a dry erase board in Lieutenant Delaney's office and when he asked her to retrieve them she stated, "I'm not picking up shit" (see Dept. Bill of Particulars). Respondent denies engaging in any of the alleged acts of discourtesy and, instead, claims that Lieutenant Delaney initiated and maintained the dispute and had also physically assaulted her. She further claims that Lieutenant Delaney and the Department fabricated the discourteous acts with which she is charged in order to "cover up" an "assault" inflicted upon her by Lieutenant Delaney. Resolution of this disciplinary matter turns largely upon an assessment witness credibility. After considering the consistency and plausibility of the respective testimonies of Respondent and Lieutenant Delaney in connection with the totality of the record evidence, I find that the preponderance of the evidence supports the version of events established by Lieutenant Delaney in connection with the charged misconduct.

Factual Record

Lieutenant Robert Delaney testified that on August 31, 2018, he worked an 1100 x 1945 tour of duty as supervisor of the Hate Crime Task Force. Prior to the start of his tour that morning, he spoke with Deputy Inspector (DI) Mark Molinari regarding an ongoing high profile case that had garnered a great deal of media attention. The case involved an individual spray painting anti-Semitic and homophobic statements on FDNY property. DI Molinari informed Lieutenant Delaney that he had ordered Respondent to come in to work on her day off to prepare a subpoena in the case. He instructed Lieutenant Delaney to inform him as soon as the subpoena was completed and to ensure the investigative reports in the case were up-to-date. (Tr. 38-41)

Shortly after Respondent had arrived, at approximately 1300 hours, Lieutenant Delaney was in his office typing the requested reports when Respondent came into the room, retrieved keys, and left his office. Lieutenant Delaney overheard Detective John Vrltic, who was in the

detectives' office,¹ located next door to his office,² state, "Are you going to take that thing uptown?" Lieutenant Delaney walked into the detectives' office to inquire about the context of the conversation when he observed Respondent in the process of leaving the office. He asked Respondent if she was completing the subpoena since DI Molinari told him that she was coming in to prepare a subpoena. Respondent told him that she was not doing the subpoena and that she was, instead, going to the scene of the incident. Lieutenant Delaney informed Respondent that four detectives were already at the scene and that she needed to remain at the office to prepare the subpoena. Respondent repeatedly told him that she was not doing the subpoena and that she was leaving to go uptown. (Tr. 42-46, 52, 84-85)

Lieutenant Delaney testified that, in the presence of Respondent, he called DI Molinari to ask if he knew that Respondent was leaving to go uptown. DI Molinari immediately cut him off and said, "Absolutely not. She's there to do the subpoena. I want the subpoena done immediately." After he completed the call, Lieutenant Delaney reiterated the instructions to Respondent to prepare the subpoena. Respondent again told Lieutenant Delaney that she was not doing the subpoena and stated that the DI Molinari knew that she was leaving. Lieutenant Delaney estimated that the conversation between himself and Respondent in the detective's office lasted one to one and a half minutes. (Tr. 46-47, 51-53, 88)

Since the interaction was becoming argumentative and occurring in front of another detective, John Vrltic, and a civilian Member of the Service, Senior Police Administrative Aide (SPAA) [REDACTED] Nicholas, Lieutenant Delaney asked Respondent to accompany him into the hallway area between the detectives' office door and his office door. They moved into the

¹ A photograph of the detectives' office was admitted into evidence as Dept. Ex. 1.

² A photograph depicting the hallway area where the detectives' office door and Lieutenant Delaney's office door were located next to one another was admitted into evidence as Dept. Ex. 3 (Tr. 50-51)

hallway and Lieutenant Delaney closed the detectives' office door behind them, which had been propped open. (Tr. 53-54, 85)

As they were standing approximately one to two feet away from one another, Lieutenant Delaney again instructed Respondent that she was not to go uptown and that she was to prepare the subpoena, and he told her that she could not just sign out in the book and leave without letting anyone know. He explained that "almost like flicking a switch, she went from telling me 'No, I'm not doing the subpoena' to - she started screaming at me that, I was going to effing tell you where I was going.'" Respondent's tone went from a "one to ten" as she repeated over and over again that she was "going to effing tell [him] where [she] was going." Lieutenant Delaney stated that she was screaming with her fist behind her, and that she was "very loud and [her behavior was] extremely uncalled for." (Tr. 55-57)

Lieutenant Delaney testified that he attempted to get Respondent to stop yelling by instructing her to lower her voice, but it had no effect. He tried to snap her out of the screaming by using a louder tone of voice and saying, "I can raise my voice loud. I can yell louder than you;" this also had no effect on Respondent. He acknowledged that raising his voice could have been interpreted as yelling. (Tr. 57-59, 93)

Lieutenant Delaney stated that he attempted to move the conversation to his office and resolve the issue since Respondent's screaming was loud and had "lapsed into a tirade." He instructed Respondent again to "hang up the keys and go do the subpoena." Lieutenant Delaney stated that Respondent continued to be argumentative, yelling and using profanity throughout the conversation. Respondent said, "There's your fucking keys!", before throwing the keys overhand across the room towards the dry erase board where the keys are stored.³ When he instructed

³ A photograph of Lieutenant Delaney's office was admitted into evidence as Dept. Ex. 4, which showed Lieutenant Delaney's desk and the office dry erase board. (Tr. 64)

Respondent to pick up the keys, she said, "I'm not picking up shit or something to that effect."

Lieutenant Delaney closed the door to his office, picked up the keys from the floor, and hung them up on the board. Lieutenant Delaney then closed the door to his office because he was intending to have a conversation with Respondent about possibly calling a Duty Captain or about suspension. Respondent was standing approximately a foot away from the door when he closed it. After closing the door, Lieutenant Delaney went to pick up the keys and was at the side of his desk when Respondent proceeded to open the door and leave his office. He stated that he never cursed or screamed at Respondent at any point during the incident. (Tr. 60-68, 93, 102-06)

On cross-examination, Lieutenant Delaney testified that, prior to the incident, his relationship with Respondent was professional and he never had any negative interactions with her. Lieutenant Delaney denied that either he or DI Molinari did not want Respondent at his command because she had filed a prior EEO complaint as a cadet. He was not aware of any conversation between Respondent and DI Molinari where she told him that she had a very good lead on the case at a Dunkin' Donuts and that she was going to that location to retrieve a receipt. Lieutenant Delaney is aware that Respondent made discourtesy complaints towards him and alleged that he slammed a door causing her to be injured. He denied these allegations and stated that he had "never experienced anything like this in 20 years as a supervisor, ever." (Tr. 76, 78-83, 94)

Lieutenant Delaney denied that he slammed his office door causing the door to bounce back and hit Respondent as she was attempting to leave his office. He denied that Respondent fell to the floor and hit her head on the shoe shining machine behind the door. Lieutenant Delaney testified that these accusations were a "complete fabrication." He stated that he had no idea as to why Respondent would go to this length to fabricate an "assault," and believed that she may have been afraid that she was going to get suspended as a result of her discourtesy. While

Lieutenant Delaney initially described the door as being ajar as depicted in Department's Exhibit 3, on cross-examination he described the door as "wide open." (Tr. 61, 66, 103-06, 120)

Lieutenant Delaney testified that when Respondent moved into the hallway area she yelled, "You hit me with the fucking door." He described her demeanor as "very upset, yelling, and pointing her finger" at him and crying. Lieutenant Delaney called DI Molinari and told him that Respondent had made an allegation against him and that he was "calling Internal Affairs immediately." He instructed Respondent to go down to the desk and tell them that she wanted to make a report to the Internal Affairs Bureau (IAB). (Tr. 107-11, 126)

After the incident, Lieutenant Delaney stated that he went downstairs to use the unisex restroom. As he was walking out, Respondent threw the door open and entered the bathroom. Lieutenant Delaney testified that he did not notice if Respondent was crying as he wanted no part in talking to her. He stated that the short interaction in the bathroom was the last time he saw Respondent, as she was transferred back to where she had been assigned previously in the Special Victims Division. (Tr. 109-11, 121-22)

Deputy Inspector (DI) Molinari, currently assigned to the Detective Bureau, testified that during the period that Respondent was assigned to the Hate Crime Task Force, between May 2018 and August 2018, he was the commanding officer of the unit. He also knew Respondent previously when he was assigned to the Special Victims Division. He stated that, prior to August 2018, his relationship with Respondent was "fine" and without issue. DI Molinari had previously worked a few cases with Respondent while assigned to Special Victims and he thought that she did an excellent job. He recalled that she had taken a lengthy leave of absence, and, upon her return, he perceived that her demeanor had changed towards him. She would not speak directly to him when they would cross paths in a narrow hallway inside the Special Victims office, and she would look straight past him and not acknowledge him when he spoke to her. He was

unaware of anything that would have caused this behavior. When Respondent was assigned to the Hate Crime Task Force, he was concerned about this behavior and mentioned it to Retired Deputy Chief (DC) Michael Osgood, who was responsible for the assignment. DI Molinari stated that DC Osgood responded, "What the fuck are you talking about? Where did you get that stupid bullshit from? Who's telling you that shit?" DI Molinari did not press the matter and noted that since he had openings in Hate Crimes he "probably" would have taken her if it was his decision. When she arrived at the command, he had a "very nice conversation" with Respondent about being a detective in the unit. He recalled that she seemed excited about working together. (Tr. 133-38, 150-53)

On August 30, 2018, DI Molinari testified that he had a conversation with Respondent concerning a high profile case, in which she related that, using video evidence, she had traced the perpetrator to a Dunkin' Donuts where he had used his credit card. He stated that they spoke about her preparing a subpoena to get the credit card records from the Dunkin' Donuts. Respondent told him that she was going to call the District Attorney's office and prepare the subpoena from home. Respondent contacted him again on August 31, 2018, to inform him that the perpetrator had "hit again" and she was now planning to go into work to prepare the subpoena and continue the casework from there. She also told him, "In addition to getting the subpoena, I'm going to the scene to get the video." He asked her about her overtime since it was "a little high," and said, "You have to go in for the subpoena. Go in for it, but keep it to eight hours. I can't afford more than that for the budget." (Tr. 139-42, 158)

DI Molinari received a text message on August 31, 2018, at 9:03 a.m., from Respondent confirming their phone conversation:

Respondent:	I spoke to da shes going to need me and i need to go the scene to dunkin
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DI Molinari: Ok. Go in. Try to keep it to 8.

Respondent: Ok

(Tr. 161-62, 166; Resp. Ex. A)

Although he did not affirmatively tell Respondent to prepare the subpoena before going to the "scene," DI Molinari assumed that his directive to prepare the subpoena first was understood. He stated that he repeatedly told her that "The guy on the credit card is our guy. Who cares what video we have. Who cares what additional hits happens. The guy who used that credit card is the guy who did this. So...whose name is on the credit card is Priority 1." Respondent told him, "I'm going in because I have to go to the scene because they only speak Spanish." DI Molinari relayed to Respondent that the subpoena was the number one priority and that she could do whatever she had to do after the subpoena was completed. He testified that he contacted Lieutenant Delaney, the on-duty supervisor, to tell him that Respondent was coming into the office to work on the subpoena. There was no conversation at that time with Lieutenant Delaney about Respondent leaving the office to work on the subpoena. (Tr. 142-45, 158, 161-62, 169)

DI Molinari testified that, at approximately 1:00 p.m., he received a phone call from Lieutenant Delaney to verify that "Mission Number 1 was the subpoena." He explained that he was tired and flustered after working a double shift, and responded, "Yeah. What are you not getting? Why are you questioning this? This is the third time you brought this up. Yeah, the subpoena is Mission Number 1." DI Molinari was confused as to why he was calling him since he had made it abundantly clear to Respondent and Lieutenant Delaney about the primacy of the subpoena. (Tr. 145-47)

DI Molinari testified he received another phone call from Lieutenant Delaney in which Lieutenant Delaney announced a problem in the office. During this call, he heard Respondent

screaming and cursing at Lieutenant Delaney in the background. He did not remember the exact words she was saying, but he heard a few screamed expletives. Lieutenant Delaney stated, "Do you hear this? Do you hear what's going on in the office right now?" DI Molinari replied, "What the hell is that?" He also heard Respondent say, "You hit me with the fucking door. I'm calling IAB." DI Molinari acknowledged that he replied to Lieutenant Delaney, "Get off the phone with me. Tell her [] to go out of the office and if she's saying she's calling IAB, you call IAB." DI Molinari also acknowledged that at the same time he was speaking with Lieutenant Delaney, Respondent was calling him. He ignored her calls because "I knew she was standing there." He did not call Respondent after his call with Lieutenant Delaney. He explained that he believed that IAB would be assuming the investigation and he did not want to interfere with their investigation. DI Molinari described Lieutenant Delaney's demeanor as "calm" throughout the exchange. (Tr. 171-75, 199-200)

DI Molinari never spoke to Respondent about the incident nor did he engage in any conversation with her. He did not respond to the two text messages Respondent sent to him on August 31, 2018, which stated:

- 1:57 p.m.: I didnt do anything wrong i was going as per our discussion. He slammed the door on me it hit me and i feel. All because i did my job.
- 2:28 p.m.: I did nothing but work for you. If you didnt want me here i wish you would just told me.

(Resp. Ex. A; Tr. 178, 181) The text messages were the last communications he received from Respondent. DI Molinari testified that he had "no idea" as to what Respondent was talking about in her text message when she said, "If you didnt want me here i wish you would just told me." He denied that he did not want Respondent in the command because of their history at Special Victims or because she had filed an EEO complaint as a cadet. DI Molinari testified that he did

not have anything to do with Respondent no longer working in the Hate Crimes Task Force after this incident. (Tr. 182-83, 192-93)

Detective John Vrlc testified that on August 31, 2018, he was working an administrative assignment in the detectives' office at the Hate Crime Task Force when Lieutenant Delaney entered the office to speak to Respondent about "a subpoena." He recalled that their conversation appeared to have been a disagreement that lasted approximately two or three minutes before they exited the detectives' office and continued their conversation in the hallway. (Tr. 210-12, 216-17, 219-20)

Detective Vrlc stated that he was sitting on the other side of the room, approximately 15 feet away from the closed detectives' office door, and he could hear Lieutenant Delaney and Respondent's voices getting louder in the hallway. He testified that he heard their voices in the hallway for approximately two to three minutes, but he could not hear what was said or discern any of the words that were spoken. Lieutenant Delaney's voice and Respondent's voice eventually became extremely loud until he stopped hearing their voices from the hallway and heard a door close "abruptly." Detective Vrlc did not know who shut the door. He did not leave his desk at the time or open the door to the detectives' office. Detective Vrlc testified that he never heard Respondent again that day, and denied hearing a female in the hallway crying and screaming. Lieutenant Delaney returned to the detectives' office a few minutes after everything had quieted down, and Detective Vrlc recalled that he appeared "upset" but also "calm" and "pretty normal." (Tr. 220-27, 229, 234-36)

Senior Police Administrative Aide (SPAA) Donna Nicholas testified that she worked as the timekeeper while assigned to the Hate Crime Task Force. Her desk was located within the detectives' office, approximately four feet away from the metal door that was used to enter and exit the detectives' office. SPAA Nicholas stated that, on August 31, 2018, she observed

Respondent enter the detectives' office, although she did not recall what she was doing while she was in there. She also observed Lieutenant Delaney enter the office. Since her computer and desk face the wall, she did not see Lieutenant Delaney have any conversations with Respondent while they were both in the detectives' office, nor did she hear them having a conversation. (Tr. 241-46)

SPAA Nicholas testified that the detectives' office door opened twice, and she heard screaming in the hall. She stated that she could not decipher who was screaming or whether the person was male or female. She never heard Respondent use profanity when speaking to Lieutenant Delaney. She recalled that the yelling continued for approximately ten minutes before she heard a door slam shut. SPAA Nicholas stated that, after the door was closed and Respondent was outside in the hallway, she did not see Respondent again that day. Lieutenant Delaney returned to the detectives' office right before she ended her tour at 1600 hours, but she did not remember him speaking to anyone while he was there. (Tr. 246-48, 253-56)

At her official Department interview on September 10, 2018, SPAA Nicholas stated that she heard Respondent scream about something related to work before walking out of the room with Lieutenant Delaney. When asked if she heard one person or two people screaming, she stated she only heard Respondent scream. Once the detective's door closed, she could still hear screaming, but she was not sure if it was "male or female." While on re-direct examination, SPAA Nicholas stated that the conversation inside the detectives' office lasted approximately 15 minutes before they left. At her official Department interview, she estimated that the interaction between Respondent and Lieutenant Delaney inside the detectives' office was "maybe a minute," and then "five or ten minutes" outside the detectives' office, then she heard a door slam, and then "maybe five minutes" of "more yelling" after that. (Dept. Ex. 7, at 6-8, 10-11; Tr. 248, 259-60, 264-66)

Respondent testified that she was transferred from the Special Victims Division to the Hate Crime Task Force three months prior to the incident date. She explained that she was initially excited to work at the Hate Crime Task Force, but did not feel welcomed. Shortly after arriving at the command she was informed by Detective Eric Pena that DI Molinari and Lieutenant Delaney announced to the office that they did not want her at the command because she had filed an EEO complaint when she was in the Police Academy.⁴ She further stated that she was told, "I better not be a bitch when I'm on my period," but did not state who told her this. Nevertheless, she did not have any difficulties with DI Molinari or Lieutenant Delaney prior to the incident date. She would often communicate with DI Molinari via text message to update him on the status of the cases she worked on. Respondent did not speak or interact with Lieutenant Delaney often, but admitted that he did assist her when needed. (Tr. 278, 281-82, 284-86, 372-77, 500)

While investigating a high-profile case, Respondent, using video evidence, found the perpetrator entering a Dunkin' Donuts and paying for a cup of coffee with a credit card. She informed DI Molinari of this break in the case. Before Respondent left the office on August 30, 2018, she sent DI Molinari a text message to update him on the status of the case and to let him know the next steps that she planned to take, which included arranging to meet with the store manager to retrieve the perpetrator's credit card information. Respondent also asked him if it was okay to go to the scene, and DI Molinari approved the request. (Tr. 286-92)

The morning of August 31, 2018, Respondent was notified that the perpetrator struck again, vandalizing more property. She called DI Molinari, relayed the new information, and reiterated that it was a matter of getting the store manager to retrieve the credit card information. After their conversation, Respondent sent DI Molinari a text message confirming that she was to

⁴ Detective Eric Pena did not testify at trial, and no further evidence was provided to support this alleged statement.

go into the office on her RDO since her accumulated overtime hours were high. She also sent DI Molinari a follow-up text message, wherein she told him that she was going to go to the Dunkin' Donuts to retrieve the subpoena information. He responded, "OK. Go in. Try to keep to 8." Respondent stated that she never received a phone call from DI Molinari where he told her that she was not to go to the Dunkin' Donuts. She believed the conversation she had with DI Molinari indicated that preparing the subpoena and going out to the field were the same priority since she had to go to Dunkin' Donuts to get information for the subpoena. (Tr. 292-98, 385-86; Resp. Ex. A)

Respondent testified that she "rushed" into the command between approximately 12:30 p.m. and 12:40 p.m. to collect investigative tools to take with her to the scene. She claimed that she had no recollection of how she came into possession of the keys to a Department vehicle she planned to use, but explained that the keys are typically stored in the supervisor's office. Respondent remembered that "I was in a rush, and I had been working very, very – I had been working very long hours...on very little sleep, but it was just a matter of getting everything I needed to fly out of there." (Tr. 300, 303-305)

Respondent stated that, as she was in the detectives' office getting ready to leave, Lieutenant Delaney "barges" in, asking, "Where do you think you're going?" When she responded that she was going to the "scene," Lieutenant Delaney stated, "You're not," and "starts going on, like, a rant." Respondent explained that she was confused because she thought that they were all on the same page. She stated that Lieutenant Delaney told her that she was not going anywhere and that she was going to do her overtime at the command. Respondent described Lieutenant Delaney's voice as being at a level five or six on a scale of one to ten. She claimed that she maintained a "normal tone of voice" the entire time she was in the detectives' office, and denied raising her voice, yelling, or being argumentative. (Tr. 306, 388-90, 394-95)

Respondent testified that she asked Lieutenant Delaney for permission to clarify why she was going out as she could see that he was upset. Respondent admitted that even though she tried to explain to him what she planned to do, Lieutenant Delaney, as her supervisor, gave her a different instruction. While Detective Vrdic and SPAA Nicholas were present, Lieutenant Delaney did not let her finish her explanation before he said, "Get in my fucking office now," and pointed to the door. Respondent claimed that she did not use profanity or yell at Lieutenant Delaney. Lieutenant Delaney left the detectives' office first and Respondent followed him out. (Tr. 307-08, 390-91, 394-96)

In the hallway, Respondent explained that Lieutenant Delaney stood in the doorframe leading into his office while she stood near him by the flag that was positioned in the corner between the detectives' office and Lieutenant Delaney's office (*see* Dept. Ex. 3). Respondent testified that when they left the detectives' office Lieutenant Delaney "skyrocketed," yelling at her in an angry manner and not letting her speak. He cursed several times and said, "That's it. This is over. This case is over. I'm done with you." She denied that Lieutenant Delaney said that he could scream just as loud as her. Respondent asked him if she had done something wrong, but he could not explain to her what happened to make him so upset. (Tr. 310-12, 397-98)

Respondent testified that she and Lieutenant Delaney walked fully into his office where she asked him if she did something wrong. She claimed that he became "so upset" when she asked him that question and said, "That's it. I'm fucking done. Get the fuck out of my office." Respondent stated that he was standing very close to her and that his spit landed on her face. She testified that she was "just terrified" and "wanted to leave so badly." Respondent recalled that she needed to return RMP keys to let him know that she was not leaving, and she did not feel comfortable touching anything in his office or giving him the keys because he was "enraged." She testified that she "gently tossed" the keys underhanded to the area where the keys are kept in

Lieutenant Delaney's office. Respondent explained that she did not place the keys on his desk because she could not think straight due to her confusion as to why Lieutenant Delaney was so angry. She denied saying to Lieutenant Delaney, "There's your fucking keys." Respondent also denied throwing the keys overhanded. She testified that the keys did not hit the wall or board; rather, they landed on a flat surface. (Tr. 313-19, 398-400)

As she turned around to slip through door, which was slightly ajar,⁵ Lieutenant Delaney questioned where she was going and approached her by the door. He then placed his arm to the left of her body and slammed the door with a large degree of force that caused the door to hit the back of her left shoulder. She testified, "It's a flimsy metal door. So, it slammed shut, and it kicks back, and hits me a second time, and I end up flying across the door to the floor where the hinges are of the door." Respondent claimed that the second time the door hit her, she recalled feeling a "sharp pain" on her "left big toe" before "flying to the opposite side of the door." She testified that she fell to the ground and landed on the left side of her body behind the door in the corner by the shoe shine machine, facing the door's hinges. Respondent stated that she felt a sharp pain on the left side of her lower back around her "kidneys." (Tr. 320-24, 326-29, 401-16)

After she landed on the floor, Respondent testified that she realized Lieutenant Delaney was behind her, and she "went into a full state of panic" and "shock." She started yelling because she could not believe what he had done. Respondent turned around and observed Lieutenant Delaney standing up behind her speaking with DI Molinari and saying, "She's crying and saying I hit her with the door. You know how that is." She denied ever cursing at Lieutenant Delaney. (Tr. 328-331)

⁵ A photograph of Lieutenant Delaney's office depicting the area behind the door, including the location of the shredder and the shoe shine machine, was admitted into evidence as Dept. Ex. 5.

While Lieutenant Delaney was on the phone, Respondent explained that she started yelling louder, "as loud as [she] could yell with [her] lungs," and repeatedly said, "You hit me with the door. You hit me with the door...Put him on the phone. Put him on the phone." When Lieutenant Delaney did not give her the phone to speak to DI Molinari, Respondent turned around, opened the office door, limped out into the hallway with her left knee in pain, and said aloud that she was going to call IAB. Lieutenant Delaney did not ask if she was okay or offer her assistance. (Tr. 331-333)

Respondent testified that she was shaking, crying hysterically, and attempted to call DI Molinari, but he did not answer his phone. Approximately one minute after she left Lieutenant Delaney's office, she stated that he "aggressively" exited his office, entered the detectives' office, slammed the door, yelled at them, and then left their office. Respondent realized that she wanted to be "out of sight, out of mind" so she left the area to go to the restroom on the second floor. As she opened the door to enter the restroom, Lieutenant Delaney exited the restroom and she locked the door. (Tr. 333-34, 336-38)

Respondent called IAB from the restroom, and they had a sergeant retrieve her and bring her to another room in the building where EMS evaluated her. Respondent declined further medical attention and returned to the second floor restroom because she did not feel well and tried to stay there, but the IAB sergeant would not let her. The 7th Precinct delegate arrived and took her to the detective squad where Inspections conducted an interview for the allegation of a verbal dispute. Respondent stated that she told a "captain from Inspections" that she wanted to press charges and have Lieutenant Delaney arrested, but that the Captain replied, "We're not talking about that and if you continue to talk, it's going to get worse for you." Respondent understood this to mean that she would be suspended if she continued to press the matter. (Tr. 338-46, 472)

Respondent submitted several photographs she claimed that she and her husband had taken documenting the injuries she had suffered as a result of Lieutenant Delaney slamming the door on her (Resp. Exs. B-D), including: (1) photographs depicting bruising on Respondent's knee, which Respondent took herself in her bedroom on September 1, 2018, at approximately 8:13 p.m. and 8:18 p.m. (Resp. Ex. B); (2) photographs of bruising on Respondent's left shoulder that were captured by Respondent and her husband on September 2, 2018, at approximately 9:14 a.m. and 12:42 p.m. (Resp. Ex. C); and (3) photographs of the bruising on Respondent's upper back and lower back that were captured by her husband on September 2, 2018, at approximately 7:29 p.m., at her home (Resp. Ex. D). (Tr. 348-56)

Respondent also testified to receiving treatment at Saint Francis Hospital the night of the incident, at approximately 5:00 a.m., on September 1, 2018. She stated the doctor checked her left knee and discovered a bump on her head before she was treated and released (Resp. Ex. E; Tr. 359-60). Respondent testified that she also visited CityMD on October 12, 2018, due to continuous pain from the incident that would not subside. (Resp. Ex. F; Tr. 361-62)

On cross-examination, Respondent denied that Lieutenant Delaney had called DI Molinari to clarify what he had told her, stating that the first time Lieutenant Delaney had called DI Molinari in her presence was after she was "assaulted." Despite claiming on direct examination that the door had hit her "left big toe," Respondent admitted that at her August 31, 2018 Department interview, she told investigators that when the door was slammed it first hit her "left small toe," which got "jammed in the door," and then the door bounced back and hit the front of her body. At trial, however, she clarified that what actually happened was that the door hit her toe when it kicked back. Respondent stated that her mistake at the hearing was due to her "crying hysterically and shaking, and [being] traumatized." (Tr. 391, 408, 419, 422)

When asked if she fell to the left after the door hit her, Respondent replied, "A fall to me is, like, when you trip and just, like, fall. I was almost, like, flying midair that caused me to land that way. So, it wasn't, like, just a trip and a fall." Respondent admitted that at her August 31, 2018, interview, when she was asked if she wanted medical attention, she responded, "No, I will go on my own," and when asked if she was sure, she responded, "I swear. I'm going to sue this job and everyone under it. I'm going to the news," prompting her attorney to state, "They're just trying to investigate this matter." (Tr. 414, 425-26)

Respondent admitted that despite claiming that she received a head injury and a bump on her head due to being hit by the door, the Saint Francis medical records, detailing an inspection of Respondent's head, noted "no obvious abnormality," "no lacerations," and "no palpable swelling in the area." Respondent further admitted that the Saint Francis records noted that the "Patient's left leg has a full range of motion involving the knee and ankle" and the "Patient is able to ambulate without difficulty." Respondent further admitted that the medical records from her visit to CityMD on October 12, 2018, indicated that Respondent did not have any limits to her range of motion, no weight bearing restrictions, and no extremity numbness or weakness in her knee. The medical records also state that Respondent did not have tenderness or soft tissue swelling in her left shoulder or her musculoskeletal. When confronted with this at trial, she responded, "It shouldn't have said that." (Resp. Exs. E & F; Tr. 428-29, 435-37)

Respondent testified that she did not review her medical records after she received them since her "life was falling apart." When asked about a portion of her medical records that noted "no tenderness" in her back, Respondent replied, "That's what that says. I don't know if there's doctors' notes attached to these medical records...you have to specifically have to ask them for their medical notes, because they're separate to this. He saw that I had tenderness in my back, and he specifically documented the bruising 110 percent." When asked again if she had reviewed

her medical records, Respondent answered, "My primary focus was not to review my medical records after I sought treatment. I was emotionally distraught, struggling, and even went to the Department to get help, and counseling for what happened, and they turned me away."

Respondent admitted that in a Line of Duty injury statement she completed on October 8, 2018, she claimed "limited mobility" as a result of the incident. (Tr. 430-31, 443-44, 484)

Respondent granted a video interview to ABC News on September 11, 2018, and was interviewed by the New York City Daily News on September 14, 2018. Respondent admitted that during a portion of the ABC News segment she is depicted walking down a street and does not appear to be limping. Respondent stated that she went to the media because "no matter how much evidence I was submitting . . . they did not arrest him." (Tr. 382, 448-50)

Respondent filed a complaint with the NYPD's EEO office on September 4, 2018. Although the EEO office made multiple attempts to contact her regarding her claim, she did not meet with them again. Respondent claimed that she did not feel comfortable following up with EEO because a detective she spoke to at EEO had told her that her claim did not constitute a "hostile environment." When asked about failing to respond to a voicemail from an EEO investigator, Respondent stated, "I remember thinking to myself, when he called me, like, why is he calling me if it's not a hostile environment? Like, what's the point?" Respondent claimed that she did not remember that an investigator did get through to her and she had arranged to appear in person for a meeting at a specific date and time, but she did not show up. Respondent then explained, "I wanted nothing to do with them, because I – I didn't feel comfortable." Respondent admitted that, in October 2018, EEO sent a "10 Day Uncooperative Letter" because she had not appeared for an interview. (Tr. 448, 461-62, 471)

She also filed a CCRB complaint on September 26, 2018, and filed a lawsuit against the Department on November 8, 2019. Respondent admitted that prior to her testimony at trial, and

despite multiple interviews, no record had been previously made that a captain had threatened her at her Department interview that “it’s going to get worse” for her if she sought to have Lieutenant Delaney charged with a crime. Respondent further admitted that despite claiming in a CCRB complaint that she had requested a female supervisor to investigate her case at her Department interview and none was assigned, that, in fact, there were female investigators, a Lieutenant and a Sergeant, at her initial Department interview and the female lieutenant was assigned to investigate the incident. (Tr. 345-47, 383, 472-73, 481-83, 498-99)

Findings

Determinations 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 inform a credibility determination. *See, e.g., Black v Pritzker*, 121 F Supp 3d 63, 90 [DDC 2015] [*quoting* ALJ’s findings] [“To make credibility determinations at issue, I considered the totality of the circumstances, including: 1) my observations of each witness’ demeanor, candor, and responsiveness; 2) the plausibility of a particular witness’ account; 3) the consistency between any of the witness’ written accounts (and the timing of such accounts) and oral statements; 4) the internal consistency of each such statement; 5) the consistency of such statements with any other record evidence; and 6) any demonstrated inaccuracies in such statements.”].

Based on the credibility of the witness testimony in connection with the totality of the record evidence, I credit the testimony of Lieutenant Delaney and find that a preponderance of the evidence has established that, in response to Lieutenant Delaney’s repeated instructions that Respondent was to remain at her command and prepare a subpoena, Respondent engaged in the following discourteous behavior, as testified to by Lieutenant Delaney: (1) screaming and shouting; (2) cursing, including stating “I was going to fucking tell you where I was going,” and

"I'm not picking up shit;" and (3) throwing keys to a Department vehicle against a dry erase board in Lieutenant Delaney's office. The Department alleged further discourteous statements ("[I was going to] do the fucking subpoena," [I was going to] get the fucking subpoena done" and [I know I'm not] "not one of his fucking favorites") that were not proven in the record. However, the Department need not prove every act detailed in their Bill of Particulars; rather, it must prove a sufficient quantum of the acts detailed in their Bill of Particulars to establish the charge. In the instance matter, the Department has satisfied its burden.

Lieutenant Delaney's version of events finds corroboration in the record. Lieutenant Delaney testified that Respondent screamed and shouted at him. Respondent, however, claimed that she never raised her voice and was not being argumentative with Lieutenant Delaney in the detectives' office. Both Detective Vrlc and SPAA Nicholas testified to hearing both Respondent and Lieutenant Delaney using raised voices. Furthermore, SPAA Nicholas told Department investigators that the only voice she heard "scream" in the detectives' office was Respondent's voice. Furthermore, Respondent claimed that, while in the detectives' office, Lieutenant Delaney told her to "Get in my fucking office now." However, neither of the witnesses called by Respondent (Detective Vrlc and SPAA Nicholas), who were the only two other individuals in the detectives' office at the time, corroborated that Lieutenant Delaney made this statement.

While there may have been confusion among Respondent and her supervisors as to what information was needed to prepare the subpoena, all of them were in agreement as to Lieutenant Delaney's position on the matter: he wanted Respondent to remain at the command and prepare the subpoena, as Inspector Molinari had instructed him. Lieutenant Delaney and Inspector Molinari testified consistently as to these instructions; and Respondent admitted that these were the instructions she received from Lieutenant Delaney. Respondent's response to these instructions was to engage in a heated and protracted argument with Lieutenant Delaney as to the

merits of the instructions. It is also not in dispute that the argument continued in the hallway and in Lieutenant Delaney's office and that Respondent threw a set of keys across the room in Lieutenant Delaney's office.

Respondent's defense that the charged discourtesy constituted a "cover up" to protect Lieutenant Delaney from having to answer for an "assault" inflicted upon Respondent is unsupported in the record. Respondent produced no evidence to corroborate her allegation of a "cover up." Respondent claimed that the Department attempted to ignore her assault claims and downplay what she claims happened to her. The record, however, does not support this assertion. To the contrary, the evidence indicates that the Department sought to provide Respondent with medical attention, sought to investigate the incident, accommodated Respondent's request for a female investigator, sought to follow-up with Respondent in connection with an EEO complaint filed by her, and initially investigated and charged Lieutenant Delaney with misconduct based on Respondent's allegations. Respondent, on the other hand, impeded the Department's efforts, and the efforts of others, to assist her, including: (1) declining medical attention at the scene; (2) threatening investigators at her Department interview that she would "go to the media" if they did not arrest Lieutenant Delaney, prompting her union attorney to explain to her that "They're just trying to investigate this matter;" (3) failing to respond to and meet with EEO investigators that were attempting to contact her to investigate her EEO complaint; (4) claiming in a CCRB complaint that she had asked for a female to investigate her case and that none was assigned despite the fact that a female investigator had been assigned to investigate her case and was present at her official Department interview on the night of the incident; (5) filing Line of Duty injury paperwork on October 8, 2018, claiming to have "limited mobility" that was unsupported in the medical records Respondent submitted to the Tribunal; and (6) claiming at trial that an NYPD captain threatened her with suspension if she pursued charges against Lieutenant Delaney

and making no documented efforts to report this allegation to the Department, including failing to mention it in any of the formal accusatory instruments she filed (an EEO complaint, a CCRB complaint, and a summons and complaint initiating a formal civil action against the Department).

Furthermore, based upon the description of the alleged "assault" proffered by Respondent and the evidence submitted by Respondent, it is unlikely that if the door did, in fact, hit her, that it did so in the manner described by Respondent. The version relayed by Respondent describes a significant and extreme assault in which a door was closed so forcibly on her that she went "flying in the air" and received multiple injuries. Respondent claimed multiple bruises, a sustained limp, and long-term pain as a result of the purported assault. Putting aside some inconsistencies between Respondent's description of what parts of her body the door hit first and in what order, the medical records noting the findings from an external head-to-toe examination of Respondent the morning after the incident date (records of the St. Francis Hospital) do not corroborate the numerous injuries Respondent claimed to have received as a result of the door striking her, including documenting no head injury, no limping, no back injury, no injuries to toes, and no forearm injury. The only injury observed by a doctor and reported in the Saint Francis Hospital records is bruising on the front of Respondent's left shin ("Bruising and ecchymosis is noted to the anterior aspect of the patient's lower left leg overlaying the tibial area"). Respondent, however, did not detail any injury to her lower left shin during her description of her purported injuries caused by the slamming of the door. Rather, she stated that when the door was forcibly closed it first hit her rear left shoulder, then bounced back and hit one of her left toes, whereupon she "flew" to the ground landing on her left hip with her back hitting the shoe shine machine and her right forearm striking her gun. Thus, the Saint Francis Hospital records do not corroborate Respondent's description of the "assault."

Accordingly, I find that the preponderance of the credible evidence establishes that Respondent acted in a discourteous manner towards Lieutenant Delaney. I, therefore, find Respondent Guilty of the sole specification charged.

PENALTY

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

The Department, at trial, recommended a penalty of five vacation days. In justifying its penalty recommendation, the Department cited two case precedents: (1) *Disciplinary Case No. 2018-18758* [October 4, 2018]; and (2) *Disciplinary Case No. 2016-15737* [February 20, 2020]. In *Disciplinary Case No. 2018-18758*, a police officer negotiated a penalty of the forfeiture of ten (10) vacation days for responding to a request by a fellow officer to drive more carefully by stating "shut the fuck up" and slapping an Activity Log out of an officer's hand. In *Disciplinary Case No. 2016-15737*, a police officer negotiated a penalty of the forfeiture of five (5) vacation days for stating to a nurse concerning an emotionally disturbed person (EDP) that he was handling, "Get something for this fuck's mouth," and when the nurses did not react quickly enough, he referred to the nurses as "bitches" and elbowed one of the nurses in the stomach, which the nurse initially perceived as accidental but he then told her it was because she had refused to give him something to cover the EDP's mouth. I find neither precedent applicable to the misconduct herein as neither involved an act of discourtesy directed to a supervisor.

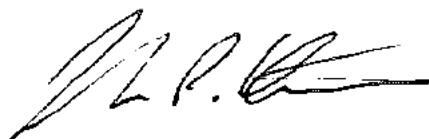
In order to maintain the good order, efficiency, and discipline of its uniformed members of service, the Department relies on a quasi-military structure, wherein "members of the service must always address ranking officers with respect and courtesy even when there is a difference of opinion" (see Police Commissioner Memorandum in *Disciplinary Case No. 77247 01* [October 8, 2002]). While the Disciplinary Guidelines do not establish a presumptive penalty for an act of discourtesy toward a supervisor, Department precedent has established a penalty range of 10 to 20 vacation days for such an act (see, e.g., *Disciplinary Case No. 2013-10026* [February 17, 2016] [A 15-year police officer with no prior formal disciplinary record forfeited 20 vacation days for speaking "loud and verbally aggressive towards [a] lieutenant," including stating "Let me do my fucking job," and continuing to speak to the lieutenant in this manner even after the lieutenant ordered him to stop. The Trial Commissioner noted that "Respondent's actions were inappropriate within the structure of a paramilitary organization. Members of the service must always address ranking officers with respect and courtesy."]; *Disciplinary Case No. 2014-12605* [November 19, 2015] [An 11-year police officer with no prior formal disciplinary record forfeited 10 vacation days for being discourteous toward a supervisor in that she continued to argue loudly, curse, and use abusive language toward the sergeant, in an open area of the precinct. Her supervisor gave her repeated opportunities to calm down, but Respondent persisted with her abusive language. Respondent's behavior was so bad that another sergeant had to take her to a different room in order to quell the disturbance. The hearing officer noted that "[e]ven if Respondent had some basis for the frustration she was feeling, she still had a responsibility to behave professionally and responsibly."].

Respondent's employment record reveals no prior formal disciplinary history and high performance evaluations. Indeed, at trial, Deputy Inspector Molinari admitted that Respondent is an "excellent detective." Based on Respondent's employment record and the record evidence

presented to the Tribunal at trial, Respondent's actions evidence a lapse in judgment in connection with the instant disciplinary matter, rather than a repeated or chronic problem over the course of her career. I find, therefore, that Respondent's positive employment record constitutes a mitigating factor warranting a penalty at the lower end of the penalty range.

Accordingly, consistent with Department precedent, I recommend a penalty of the loss of ten (10) vacation days.

Respectfully submitted,



Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED
JUL 08 2021

DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE NELA GOMEZ
TAX REGISTRY NO. 938586
DISCIPLINARY CASE NO. 2018-19545

Respondent was appointed to the Department on July 11, 2005. On her last three annual performance evaluations, she received 4.5 overall ratings of “Extremely Competent/Highly Competent” in 2014, 2015 and 2018.

Respondent has no formal disciplinary record.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials