



POLICE DEPARTMENT

June 15, 2022

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In the Matter of the Charges and Specifications :

- against - :

Sergeant Joel Silverman :

Tax Registry No. 937541 :

Det. Boro Manhattan North :

Case No.

2016-16172

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

For the Respondent: Jacob Weinstein, Esq.
Weinstein & Weinstein LLP
499 Chestnut Street, Suite 213
Cedarhurst, NY 11516

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

CHARGES AND SPECIFICATIONS

1. Said Sergeant Joel Silverman, while off-duty and assigned to 26th Detective Squad, on or about July 12, 2016, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Sergeant Silverman violated a valid order of protection issued by the Rockland County Family Court under Complaint No. 2016-066-3192.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Sergeant Joel Silverman, while off-duty and assigned to 26th Detective Squad, on or about December 27, 2015, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Sergeant Silverman engaged in a physical altercation with his wife, EV.¹

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 March 31, April 4, May 2, and May 3, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Daniel Lynch of the Ramapo Police Department, Sergeant Kensington Cunningham, and Detective Todd Farmer of the Rockland County Sheriff's Office, as witnesses. Respondent called Rivka Starik, Rabbi Selmyn Kaufman, Yisroel Elek, Richard Malool, Deputy Chief Brian McGee, and [REDACTED] 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 by a preponderance of the credible

¹ Complainant's name has been anonymized. Her identity is known to the Department.

evidence that Respondent violated a valid Order of Protection issued by the Rockland County Family Court or engaged in a physical altercation with his wife.

ANALYSIS

Six and a half years ago, on December 28, 2015, at 2:44 pm, complainant, EV, accompanied by her “aunt,” visited Good Samaritan Hospital, complaining of pain after being punched in the stomach by her husband, Respondent, the day before. She was five months pregnant at the time.² No injuries or complications, for mother or baby, were noted in the medical records (Dept. Ex. 3).³ The doctor advised EV to meet with a social worker; she declined, stating she would speak to her therapist. (*Id.*). On February 17, 2016, EV filed a family court petition (Dept. Ex. 5) in Rockland County alleging multiple prior violent acts and threats, including the December 27th incident reported to hospital staff. An order of protection was issued by the family court,⁴ after which Respondent’s firearms were removed and he was placed on modified duty. In April 2016, she amended the family court petition repeating this claim and adding that her husband had punched her “because I didn’t want to come with him to get a *GET* (Jewish Divorce) that very morning (*Id.*).”

On July 12, 2016, at 10:45 pm, EV filed a Domestic Incident Report at the 72nd Precinct (Resp. Ex. T), alleging that earlier that day, from approximately 2:30 pm to approximately 2:50 pm, Respondent violated an order of protection by following EV in his vehicle for nearly 20

² EV gave birth to the child in May 2016 (Tr. 458-61).

³ The medical examination report noted that EV’s abdomen was “nontender, no focal tenderness, no rebound tenderness” and no bruising or decreased fetal heartbeat was noted. The only injury noted was “a scar from previous cesarean section.”

⁴ Another order of protection was issued by the Rockland County Family Court on May 26, 2016 (Dept. Ex. 6; Tr. 173) and was in effect on the incident date described in Specification 1.

blocks. The Complaint Report Worksheet accompanying the DIR notes that EV was “walking on [the] street.” No other vehicles other than Respondent’s were noted. EV did not indicate that Respondent was a member of the service and did not mention the presence of any children. On July 27, 2016, after the report was reviewed by IAB, [REDACTED]

[REDACTED]

[REDACTED]

On July 26, 2016, EV filed a Domestic Incident Report (Dept. Ex. 1) with the Ramapo Police Department reporting the December 27, 2015 incident, wherein she alleged that Respondent punched her in the stomach when she was five months pregnant. [REDACTED]

[REDACTED]

In a narrative statement written by Police Officer Lynch of the Ramapo Police Department, accompanying the July 26, 2016 domestic incident report, the officer noted that EV told him that after being punched, she visited the hospital “later that evening” when she did not feel the baby moving in her stomach (Dept. Ex. 1; Tr. 138-39). EV further detailed and the officer memorialized that while she was at the hospital, she learned that the baby’s heart rate had decreased. The Department stipulated at trial that there is no medical record finding that the fetus was in distress (Tr. 278). EV also told the Ramapo Police Officer Lynch that after giving birth to

the child in May 2016, she learned of some congenital problems with the child that her doctor advised had occurred while the baby was inside the womb (Dept. Ex. 1). No evidence of this was produced.

On November 30, 2016, members of the Internal Affairs Bureau conducted a recorded interview with EV (Dept. Ex. 2). Her sister was present with her during the interview and interjected at times (Tr. 242-43). In the interview, EV insinuated that Respondent was involved in a multitude of nefarious and criminal activities.⁵ EV was not interviewed in detail about the December 27, 2015 incident. Nevertheless, she related to the investigators during two portions of the interview that upon responding to the hospital, the doctor “stabilized” the fetus and the nurse observed “bruising” and a “mark” on her stomach (Dept. Ex. 2A, Part 1 at 37; Part 2 at 36). The July 12, 2016, incident is not mentioned in the interview.⁶

A follow-up interview of EV was conducted by the case investigator on March 28, 2022 (Resp. Ex. M). The interview was not recorded. The Department asserted at trial that the interview was conducted for purposes of “trial preparation” (Tr. 256-62). The interview was conducted by the case investigator, resulting in a worksheet generated by the investigator titled “Witness Interview,” which makes no mention of the presence or involvement of Department attorneys on the call. The worksheet notes that EV explained: (1) that prior to the morning of December 27, 2015, Respondent had not returned home for “several days without letting her

⁵ The great majority of the content of the interview was unrelated to the charges before the Tribunal, involving a litany of unorganized and superficially explored claims (Dept. Ex 2A, Part 1, at 9, 17-19, 64-67, 74, 85-89). At trial, Sergeant Cunningham testified that six additional logs were generated based on the additional allegations made by EV at the interview. All six were subsequently unsubstantiated (Tr. 252).

⁶ Sergeant Kensington Cunningham, the case investigator, testified that he was advised by [REDACTED] not to ask questions at the November 30, 2016, interview about the July 12 incident (Tr. 243-50).

know where he was;" (2) at approximately 6:00 am⁷ on December 27 she questioned him about his absence, which led to an argument about having children, during which Respondent punched her in the stomach;⁸ (3) at some later time she remembered being contacted by a Rabbi who informed her that if she did not meet with him "it would be difficult for her;" (4) upon meeting with the Rabbi, EV attempted to obtain a *Get* (a divorce) claiming she had been "mistreated;" and (5) she claimed that Respondent refused to give her a *Get* for four years (Resp. Ex. M). At trial, Sergeant Cunningham, the case investigator, further stated that during the March 22, 2018 interview EV told him that she was walking on July 12, 2016, when Respondent followed her (Tr. 279-80).

EV refused to testify at trial.⁹ The Department stipulated that EV "verbalized [] to multiple individuals [that] she was not interested in a divorce from the Respondent" (Tr. 21).

Richard Malool, a friend of both EV and Respondent, testified that on the night of December 26, 2015, EV called him to ask if he could pick her up from a bus stop. She was coming home from her parents' house in Brooklyn. He picked her up and drove her home. He went inside with her and began mediating a discussion between her and Respondent about

⁷ This was the first time that "6 am" is mentioned as an approximate incident time. According to the July 26, 2016 DIR, the incident occurred between 9 am and 12pm. Officer Lynch, who prepared the document, however, testified that he had no recollection of EV giving him a time, but suggested that if she told him "morning," he could have entered those hours (Tr. 80-81). On July 29, 2016, EV signed a misdemeanor information, affirming under the penalty of perjury, that the attempted assault occurred "at about 9:00 in the forenoon" (Resp. Ex. X). On July 26, 2016, Respondent worked from 0800 hours until 1630 hours, as documented by entries made in the 26th Precinct Command Log (Resp. Ex. K). E-ZPass records indicate that Respondent crossed the George Washington Bridge, in the direction of Manhattan and his command, at approximately 7:25 am that morning (Dept. Ex. 4; Tr. 170-71).

⁸ Sergeant Cunningham testified that he spoke to EV the same week as the trial, during which she repeated numbered allegations 1, 2, and 3 in this paragraph. This conversation was not recorded. (Tr. 200-02, 219)

⁹ EV appeared outside the courtroom on the second trial day, April 4, 2022, but communicated to Department attorneys that she would not testify without her attorney present. At the next trial date, the Department informed the Tribunal that EV was refusing to testify. Sergeant Cunningham testified that EV had told him prior to the start of the trial that "she's [] afraid of the subject, she's afraid of the litigations that he's filing against her, and that she doesn't have the money to secure an attorney in regards to the numerous litigations that the Respondent has put against her." (Tr. 202-03, 334-35)

marriage. He stated that he was aware of marital issues stemming from EV living with her parents and having to travel back and forth between her parents' home in Brooklyn and her marital home in Rockland County. He characterized the conversation as calm (Tr. 405-10).

One of the issues discussed regarded whether Respondent and EV would speak with a rabbi about seeking a *get*. Malool remembered EV telling him in the past how she did not want to be given a *get*. Mr. Malool was not aware of the specific reasons why the couple was seeking a divorce (Tr. 413, 417-18). He left their home around 11:00pm that evening. The next morning, "I would say around 11 o'clock, but I'm not sure exactly," he remembered speaking to EV on the phone. At no point during the call did she mention that Respondent had hit her that morning (Tr. 412, 415).

██████████ a ██████████ at the ██████████ who was formally a Captain in the NYPD, testified that he is a longtime colleague and friend of Respondent's and knew EV throughout the period she dated and was married to Respondent. He stated that he was friendly with her as well and would occasionally interact with her independent of Respondent. On several occasions, he spoke with her about her relationship with Respondent. ██████████ testified at trial that on one such occasion, in early 2016, EV "begged" him to convince Respondent not to divorce her and told him that "if he were to try to divorce her, she would make him pay" (Tr. 538-39, 548).

Rabbi Selmyn Kaufman testified at trial that he is a rabbinical court judge, specializing in officiating marriages and divorces. EV and Respondent sought out Rabbi Kaufman to possibly obtain a *get*. Prior to their coming in that day,¹⁰ Rabbi Kaufman did not know the couple. He

¹⁰ He did not remember the date that EV and Respondent "walked in" and stated that he did not create a file for them because they did not return to him after the initial meeting (Tr. 364-65).

remembered that EV was present with her aunt and Respondent wanted to give the *get*. Initially, both agreed to pursue a religious divorce, but at some point EV started to waver. When he asked whether they had a consent agreement, she expressed that because she was expecting a child, she was not ready to accept a *get*. He stated to the couple that he wanted to resolve outstanding issues such as division of assets, a home, investments, and child custody, before proceeding with giving the *get*. He also detailed that his first steps would have been to see if there was a way to “make peace” and “get the two parties to work together.” At some point, EV walked out, followed by Respondent. Rabbi Kaufman testified that EV was able to walk up and down a large flight of stairs unassisted and did not appear to be physically injured based on his brief observations of her. When asked if he pressured EV to accept a *get* or to continue with the process, he answered that he would “never, ever” force a *get* because a *get* must be given “unconditionally” “under their own free will.”¹¹ (Tr. 361-77)

Respondent testified that he married EV in 2009. Two years later, Respondent attempted to file for a divorce, but did not continue with the proceedings. He recalled receiving multiple phone calls from rabbis urging him to stop the divorce (Tr. 428-29). In 2015, the couple ceased to live together. Respondent explained that one of the reasons they stopped living together was that EV did not want to hire a babysitter for their son. Instead, EV would take their son to her parent’s house in Brooklyn. She did so frequently and the time periods became longer each time (Tr. 430-31). Respondent did not feel a marriage consisted of two people living apart. EV was also rarely at the marital home around the time she became pregnant with their second child,

¹¹ Rabbi Kaufman described a *get* as follows: “A divorce in secular court, the judge would make the parties divorced. In religious law, it’s the husband giving the wife a bill of divorce into the hands of the wife. The husband putting it into the hands of the wife that effectuates a religious divorce. Obviously, there’s a need for a rabbi to do it in the proper way, action. We need to have the scribe to write the bill of divorce, witnesses to sign it, and the rabbinical court generally present to giving over of the *get* and the accepting of the *get*” (Tr. 362-63)

leading Respondent to insist upon a paternity test. The test confirmed that he was the child's father. (Tr. 489-90).

On December 25, 2015, Respondent called EV, who was in Brooklyn, to tell her that he wanted a divorce. She became irate and yelled at him, "There's nothing wrong here" (Tr. 433). EV informed him that if he went through with the divorce, "she was going to have a mental breakdown and be disowned" (Tr. 504). On the evening of December 26, EV came home with Mr. Malool and his wife, to discuss the divorce. Respondent described the conversation as EV "trying to coerce me to drop the divorce" (Tr. 435). The following day, Respondent had to work a 0800 tour and he went to bed once Mr. Malool left.

On December 27, 2015, Respondent recalled waking up at approximately 0545 hours to pray before his 0800 tour. He drove to work via the Palisades Parkway and arrived at approximately 0730 hours (Tr. 437-38; Resp. Exs. A, K). At 0900 hours, he was at his desk in the 26 precinct Detective Squad (Tr. 486). He stated that EV informed him, later in the day, that she did not feel well. She told him that she did not want his help. He did not see her again until the following day when they went to see Rabbi Kaufman (Tr. 440-42). During their conversation with the Rabbi, EV told Respondent that "she was going to make my life miserable if I continue pursuing a *ger*" (Tr. 442).

On January 21, 2016, Respondent filed for a divorce. Following this act, he was served with a family offense petition and ordered to leave his home (Tr. 444-46). Due to the order, he was unable to be present for the birth of his second son. He recalled reviewing medical records from EV's birth, stating that she did not have a complicated pregnancy.¹² According to

¹² On June 7, 2016, EV's attorney represented to a Rockland County judge that EV was "bedridden," "unable to travel for several weeks," due to "a difficult emergency C-section" (Resp. Ex. G at 3). On July 7, 2016, EV appeared telephonically, representing to the Rockland County judge that she was not able to travel (Resp. Ex. C at 5).

Respondent, the family offense petition filed by EV was eventually withdrawn with prejudice (Tr. 456-62, 507).

The court permitted EV to keep her new residential address confidential. Since then, including on July 12, 2016, Respondent testified that he was unaware where EV and his children were living (Tr. 468, 487). Respondent contended that EV falsely alleged that he “crushed in the head” of their son during a supervised visit, leaving him unconscious. On July 12, 2016, he had traveled to Maimonides Hospital (48th Street & Fort Hamilton Parkway) to obtain medical records for his son, to show that he had never injured his son’s head. Respondent also went to his son’s doctor’s office [REDACTED] in Brooklyn (Tr. 467, 515).

On July 29, 2016, Respondent was granted the first unsupervised visitation between himself and his son. [REDACTED]

[REDACTED] He felt “victimized” and did not believe he was taken seriously (Tr. 491).

FINDINGS

The resolution of the instant matter requires the Tribunal to assess the credibility of EV’s hearsay statements in connection with the totality of the evidence in the record. Due to her unavailability at trial, the Tribunal was unable to assess EV’s credibility on the witness stand, which would have permitted the Tribunal and the parties to observe her demeanor, explore any biases, and confront any inconsistencies.

Although hearsay is admissible in administrative proceedings and a disciplinary finding may rest upon hearsay alone, where the credibility of the declarant is reasonably at issue, the Tribunal typically looks to evidence corroborative of the declarant’s version of events in order to assess its probative value. For instance, the Tribunal might consider whether the declarant

promptly reported information to a witness who did testify, the specificity of the information imparted, evidence of a motive to lie, and any other evidence corroborative of the declarant's statements.

Initially, the Tribunal notes that EV's hearsay allegations were promptly reported. EV related the allegation that Respondent punched her in the stomach to hospital staff the day after its alleged occurrence and she reported that Respondent had followed her, in violation of an order of protection, the day of its alleged occurrence. Such prompt reports would typically lend credence to her allegations.

Nevertheless, EV's credibility was reasonably put at issue due to many significant and unresolved inconsistencies in the record. Concerning the July 12, 2016, incident, EV indicated during a Department interview that she was walking when Respondent followed her in his car, but [REDACTED] she claimed that she was in a car with her child when Respondent followed her in another vehicle.

As to the December 27, 2015, incident, EV claimed that: (1) Respondent had not returned home prior to the morning of the incident; (2) their argument was about her husband not having returned and Respondent not wanting any more children; (3) her baby stopped moving after the alleged assault, suffering a decreased fetal heart beat and congenital problems; and (4) the nurse treating her noticed a bruise and mark on her abdomen from the assault. These critical details were either inconsistent with other statements made by EV or with other credible evidence in the record. Notably, the medical records did not support EV's statements concerning injuries to her and the fetus. And her statement concerning Respondent's absence prior to the morning of the incident conflicted with the testimony of Mr. Malool, who testified that he was present with Respondent and EV at their home the night before the alleged assault. Furthermore, EV stated in

a sworn statement that their argument concerned her refusal to “get a *get*.”

Furthermore, whether the alleged assault occurred at 6 am, as EV indicated during an unrecorded telephone interview on March 28, 2022, or “at about 9 in the forenoon” as indicated in a July 29, 2016, document signed by EV [REDACTED] remained an inconsistency that was either exonerative of Respondent (since he was at work by 7:30 am) or possibly supported EV’s version of events (since Respondent would likely have been home at 6 am). The Department provided the Tribunal with no compelling reason to credit her unrecorded statement over a statement she made in a document signed and affirmed by her.

Finally, the Tribunal found the substantial amount of time that has passed between the incidents in 2015 and 2016 and this administrative trial in 2022 to be another troubling aspect of this case, especially given the significant reliance upon hearsay statements. Also of concern is that the only recorded interview of EV, on November 30, 2016, was largely unrelated to the charges.

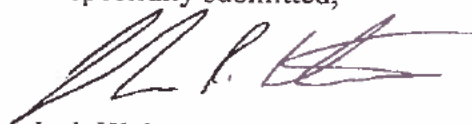
Based on the totality of the evidence presented to the Tribunal, the Department has failed to prove by a preponderance of the credible evidence that Respondent is guilty of either of the allegations with which he is charged. Accordingly, Respondent is found Not Guilty of the charged misconduct and it is recommend that he be restored the time, pay, and benefits he forfeited while he was suspended without pay.

APPROVED

JUL 14 2022

 KERCHANT L. SEWELL
 POLICE COMMISSIONER

Respectfully submitted,



Josh Kleiman
 Assistant Deputy Commissioner Trials