



POLICE DEPARTMENT

January 28, 2013

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Christopher Dixon
Tax Registry No. 928206
62 Precinct
Disciplinary Case No. 2011-5646

The above-named member of the Department appeared before me on October 3, 2012, charged with the following:

1. Said Sergeant Christopher Dixon, assigned to Police Service Area #9, while off-duty, on or about August 25, 2011, within the confines of the 69th Precinct, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant was involved in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5 –GENERAL REGULATIONS

2. Said Sergeant Christopher Dixon, assigned to Police Service Area #9, while off-duty, on or about and between February 1, 2011 through March 31, 2011, within the confines of the 69th Precinct, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant restrained Person B and touched and kissed her without her consent.

P.G. 203-10, Page 1, Paragraph 5 –GENERAL REGULATIONS

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, and Respondent was represented by John D'Allesandro, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 1. It is recommended that Specification No. 2 be dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Daryl Miller as its sole witness.

Lieutenant Daryl Miller

Miller is a member of the Department for 30 years. Miller is the Executive Officer and Supervising Investigator of the Housing Bureau Investigations Unit (HBIU). According to Miller, the HBIU was tasked with investigating allegations of misconduct against members of the service who were assigned to the Housing Bureau. Miller's role as a supervisor in the HBIU was to supervise the sergeants and detectives in the unit. There came a point in time when Miller became involved in an investigation that concerned an incident that occurred on August 25, 2011 [REDACTED]

[REDACTED] The investigation was the result of two 911 calls. One call was made by [REDACTED] Person A, and a second call was later made by [REDACTED] Person B. During the first 911 call, it was alleged that Respondent and

Person A had a domestic dispute which became a physical altercation. It was also alleged that Respondent choked Person A during the physical altercation.

As a result of the investigation, Miller learned that on August 25, 2011, Person A was in the kitchen of her home, where she was using a laptop computer and was in possession of a cellular phone. At some point, Respondent approached Person A and asked her to give him the cellular phone. Respondent repeated his request for the cellular phone numerous times, and Person A repeatedly refused the request. Respondent tried to take the cellular phone from Person A. Person A reacted by cradling the cellular phone against her body, and a physical altercation ensued as Respondent tried to remove the phone from her. During the physical altercation, Person A alleged that Respondent pushed her to the floor and choked her in the back of the neck. After the struggle in the kitchen concluded, Person A called 911, and went into the living room.

Person D arrived at the residence, and a verbal altercation took place between Respondent's [REDACTED] and Person A. Person A further alleged that Respondent told her to stop being rude and belligerent to Person D and slapped her. Sometime later, [REDACTED] Person B, arrived home and a second call was made to 911.

The calls prompted a police response from the 69 Precinct, and all parties were removed to the 69 Precinct where the [REDACTED] Duty Captain and the Patrol Borough [REDACTED] Investigations Unit (PBBSIU) conducted an initial investigation into the incident. According to Miller, "there was a physical altercation, a physical struggle between [Respondent] and [REDACTED] Person A." Miller also indicated that medical treatment was not needed by any of the parties involved in the incident.

Miller admitted that he reviewed the initial interviews and stated,

... Person A reported that during their struggle, she was pushed to the floor, that [Respondent] grabbed the back of her neck, and during a second incident - - because I'm actually going by the first incident being what takes place in the kitchen; the second incident being what takes place in the living room, and during that second incident in the living room, [Respondent] slaps her in the face, and then, also, I was able to review interviews of [REDACTED] Person C, and interviews of the 69th Precinct Patrol Sergeant that responded to the scene. Person C gave statements consistent with Person A, so they almost say the same thing of where during the struggle, he apparently grabs - - Person C is saying that [Respondent] grabs Person A by the back of the neck, and in the living room, that [Respondent] slaps Person A, and during that time, Person C also apparently tried to call 9-1-1 but she winds up just calling Person B, and the 69th Precinct Sergeant did confirm that the furniture that was in the kitchen wasn't in disarray - - that might be a strong word, but it was definitely knocked over.

There was like a stool that was in the kitchen which is what Person A is saying during her interview that while they were struggling, there was furniture that was moved, and at some point while she falls to the ground, the stool also falls to the ground.

During his interview with Respondent, Miller learned that Respondent had previously taken at least two cellular phones from Person A for disciplinary reasons due to improper postings on Facebook, a social media website. Respondent was not certain why Person A was in possession of a cellular phone when he had already removed two cellular phones from her. Person A informed Respondent that [REDACTED] Person B, gave her the cellular phone. Respondent asked Person A for the cellular phone numerous times, and

Person A refused to give Respondent the cellular phone. After being refused, Respondent attempted to physically remove the cellular phone from Person A. Person A responded to Respondent's attempts to remove the cellular phone by cradling the cellular phone against her body. During the struggle for the cellular phone, Respondent grabbed Person A

by the shoulder and spun her around. According to Miller, Respondent indicated in the interview that the stool in the kitchen was not knocked down, but that it was simply moved. Miller also indicated that during the interview of Respondent, Respondent denied slapping Person A during the incident in the living room and characterized the incident in the living room as being verbal only. With regard to the incident on August 25, 2011, Miller concluded after reviewing all of the witness interviews, as well as the Respondent's interview, that Respondent was involved in a physical altercation with [REDACTED] Person A.

During cross-examination, Miller clarified that the term "choked" was used only during the 911 call to describe Respondent's actions towards Person A. Miller acknowledged that during her interview, Person A never claimed that Respondent "choked" her. Miller confirmed that Person A admitted during her interview that Respondent forbade her from using the cellular phone. Miller could not recall if the reason why Respondent forbade Person A from having a cellular phone was due to her posting provocative pictures of herself on Facebook, but he did recall that it was because of language. Miller acknowledged that Person A admitted that Respondent asked her for the cellular phone several times, and that each time she refused his request. Miller agreed that as soon as Respondent attempted to physically remove the cellular phone from Person A, she told her [REDACTED] Person C, to call 911. Although he was aware that the Administration for Children's Services (ACS) had been notified and conducted a full and complete investigation into the incident, Miller admitted that he was not aware of the results of the ACS investigation.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent has been a member of the Department for eleven years. It was brought to Respondent's attention on August 23, 2011 that [REDACTED] Person A, had posted inappropriate photographs of herself on Facebook, a social media website. Respondent confronted Person A about the inappropriate photographs and language that she had posted. Person A failed to grasp the seriousness of her actions and brushed Respondent off. Respondent noted that he and Person A had previously spoken about this behavior before. On August 23, 2011, Respondent removed two cellular phones, and a laptop computer from Person A as punishment for her activities on Facebook. The two cellular phones and the laptop were removed with the intention of being returned when Person A had earned the right to have them returned to her.

On August 25, 2011, Respondent [REDACTED] [REDACTED] did not reside with Person B and three children. Respondent arrived at the home of Person B and three children at approximately 12:00 p.m. on August 25, 2011 with the plan of taking his three children to the movies. Upon arrival at the home, Respondent learned that Person A was still sleeping so he only took his other two children.

After the trip to the movies, Respondent returned to the home and observed Person A using both a computer and a cellular phone. The computer was not the computer that was previously removed from her. Respondent asked Person A where she had received the cellular phone from and she replied that Person B gave it to her. Respondent informed Person A that he would discuss that with Person B, and he requested that she

give the cellular phone to him because she was not allowed to have a phone. Respondent turned the computer off and made numerous and repeated requests for Person A to hand over the phone. Person A refused every request to hand the cellular phone to Respondent.

After his repeated requests for the cellular phone were refused by Person A, Respondent made an attempt to grab the cellular phone from her hand. Person A responded by turning her back and clutching the cellular phone against her stomach. Respondent tried to reach around her to grab the cellular phone. Respondent grabbed Person A, and tried to turn her around so that he could grab the cellular phone from her hand. According to Respondent, Person A brought herself down to the floor and was pretty much laying on the cellular phone. During the struggle, Person A asked [REDACTED] Person C, to call 911. Respondent ended the struggle at some point, and Person A got up and went into the living room where she herself called 911.

When Person A ended her call with 911, Respondent called Person D [REDACTED] [REDACTED] and asked her to come over to the house. Respondent stated that he knew it would be a long day once Person A called 911, and he wanted Person D to come over and watch the two other children. Person D arrived at the home and began to address Person A about her behavior. Person A became rude and disrespectful towards Person D. Respondent tried to talk to Person A about the disrespectful manner in which she had spoken to Person D.

[REDACTED] Person B, arrived at the home and there was screaming that took place between Person A and Person B called 911. The two 911 calls prompted the response of the 69 Precinct patrol sergeant. The patrol sergeant

directed that Person A, Person B, Respondent, and the two other children all go to the 69 Precinct so that an investigation into the incident could be initiated.

Respondent denied ever choking and slapping Person A during the incident. Respondent affirmed that ACS conducted an investigation into the matter. Respondent acknowledged that he met with the ACS investigator on one occasion. Respondent testified that during his last conversation with the ACS investigator, he was informed that the results of the ACS investigation were "unfounded."

During cross-examination, Respondent agreed that he physically attempted to remove the cellular phone from Person A's hand when she refused his request for her to hand the phone to him. When it became apparent that Person A was not going to relinquish the cellular phone, Respondent did not contact Person B because he did not think that Person A would listen to her. Respondent explained,

Well, I did stop when I realized I wasn't getting the cell phone from [Person A], that's when [Person A] did call 9-1-1. In terms of contacting [Person B], [Person B] knew I took her cell phone away for a reason and [Person B] chose to give [Person A] another cell phone, so I don't think [Person A] would listen to [Person B]. Under this kind of circumstances of the situation between [Person B] and myself, I had to be [REDACTED] [Person B] was pretty much letting [Respondent's kids] get away with pretty much anything

Respondent acknowledged that he and Person B were still [REDACTED] at the time of the incident even though they were going through [REDACTED]. Respondent agreed that there was a great deal of acrimony between himself and Person B at the time of the incident.

One of the initial two cellular phones that Respondent removed from Person A on August 23, 2011, was purchased for Person A by Respondent, and the service for the phone was provided under Respondent's [REDACTED] plan. Respondent also removed an inactive

cellular phone from Person A to prevent her from transferring the subscriber identity module (SIM) card to activate the phone. Respondent admitted that he and Person B had restricted Person A's cell phone and computer usage numerous times in the past in an effort to address Person A's conduct on the internet. Respondent stated,

Well, on [August] 23, [2011], when I took [Person A's] cell phone, I tried to have a conversation with her about her behavior on Facebook and her cell phone behavior. She pretty much brushed me off that day and that led me to take her cell phones and computer away on that day. I would say she wasn't conducive to listening.

According to Respondent, if Person A sustained a scratch during the struggle for the cellular phone, it was not as a result of any actions of Respondent. Respondent suggested that the scratch could have been sustained by Person A when she brought herself down to the floor or perhaps by her own fingernails when she was holding onto the phone. Respondent explained,

[Person A] refused to give me the cell phone, and [REDACTED], I had a right to ask for it. She - - I tried to take it by grabbing the cell phone out of her hand. She didn't end up the floor because I pushed her to the floor or dragged her down to the floor. She ended up on the floor because she was trying to prevent me from getting the cell phone from her hand. The best way for her to do that was to fall to the floor and lay on the cell phone basically.

During questioning by the Court, Respondent testified that he never received a written report from ACS. Respondent said that prior [REDACTED], he and Person B were in agreement concerning how to discipline their children. According to Respondent, [REDACTED], Respondent continued [REDACTED], but Person B seemed to be more of a friend to their children by letting them get away with things in an effort to keep them on her side.

Respondent and Person B were living in separate parts of the same house when the [REDACTED] was filed. Although Respondent conceded that Person B did not agree with the removal of Person A's phones and computer on August 23, 2011, he did indicate that Person B had taken away Person A's computer privileges in the past based upon Person A's behavior. Respondent denied ever being told by Person B that Person A was given a new phone, and that he only became aware that Person A had a new phone when he saw it in her possession on August 25, 2011. Respondent acknowledged that at no point did he actually take the cellular phone from Person A on August 25, 2011. Respondent explained that he "...realized it would take it would go beyond the point of discipline if [Respondent] had to use anymore force to get the phone from her."

During redirect examination, Respondent affirmed that he was never admonished by anyone at ACS regarding the way that he handled the situation. Respondent testified that it was never recommended that he take parenting classes. Respondent said that ACS did not take any action as a result of their investigation, and added that even "...after I moved out of the location, I still have -- the kids still come over and visit; the younger kids. The older one doesn't come because she's away at school."

FINDINGS AND ANALYSIS

Specification No. 2

Respondent stands charged herein in that while off-duty, on or about and between February 1, 2011 through March 31, 2011, within the confines of the 69 Precinct, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant restrained Person B and touched and kissed

her without her consent. This Specification was dismissed at a pretrial conference held on May 7, 2012, and thus was not the subject of these proceedings.

Accordingly, it is recommended that Specification No. 2 be dismissed.

Specification No. 1

Respondent stands charged herein in that within the confines of the 69 Precinct, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant was involved in a physical altercation with his Person A. To prove this Charge, the Department offered the hearsay testimony of Lieutenant Daryl Miller. Miller was the Executive Officer and Supervising Investigator of the Housing Bureau Investigations Unit. His role was to supervise investigations handled in his unit and to supervise sergeants and detectives who are part of his team.

In this instance, Miller reviewed interviews conducted of [REDACTED]
15- [REDACTED] Person A, [REDACTED] Person C and conducted the interview of Respondent. Miller testified that he learned in his investigation that Person A alleged that on August 25, 2011, she was in the kitchen on a laptop looking for recipes and she was also in possession of a cell phone. Respondent came to her and requested the cell phone numerous times and she refused him numerous times. As Respondent attempted to take the cell phone, she cradled it with her body and a physical struggle ensued with her being pushed to the floor and choked in the back of the neck. Miller says Person A then says she went to the living room area and called 911. Person B at some point comes over and a verbal exchange between Person A

and Person D results. Person A alleged that Respondent told her to stop being rude to Person D and he in turn slapped her in the face. A second 911 call was placed and officers from the 69 Precinct responded. All parties were taken to the 69 Precinct where [REDACTED] Investigations and the [REDACTED] Duty Captain conducted an initial investigation.

Miller testified that Person A did not seek medical attention. Miller also reviewed the statement of Person C, who recounted the events essentially the same as Person A. Miller acknowledged during cross-examination that Person A never stated that she was "choked in the neck," but that she was "grabbed" at the back of the neck by Respondent. He also acknowledged that Person C made the same statement about Person A being grabbed at the back of the neck.

The court takes judicial notice of the fact that accompanying the Charges and Specifications in this matter is a suspension memorandum prepared by the Duty Captain of Patrol Borough [REDACTED]. He notes in his summary of Person C's account that when the struggle ensued between Person A and [REDACTED], Respondent did not slap Person A in the face, but slapped her on the arm, which caused a scratch and a small cut on Person A's arm.

Miller stated that he had the opportunity to interview Respondent. Respondent said that two days prior to August 25, 2011, he had taken two cell phones from Person A for disciplinary reasons based on inappropriate postings she made on Facebook. While in the house, Respondent observed Person A with a cell phone and knows that he had already removed two from her days earlier. He repeatedly asked her for the cell phone and she refused. When he asked her where she obtained the cell phone, she advised Respondent

that Person B gave it to her. Respondent described a struggle where he grabbed Person A by the shoulder and spun her around in an effort to grab the cell phone. He noted that furniture in the kitchen was not thrown to the floor, but it moved position as they struggled. He denied ever slapping Person A.

Respondent testified before this Court that Person A had posted provocative pictures and made profane statements on Facebook which resulted in his taking her cell phones away from her two days prior to the incident date. He was surprised to come home and see that she was again in possession of a cell phone. He noted that [REDACTED] since that time, Person B has taken on the role of befriending the children rather than disciplining them jointly as they both did prior [REDACTED]. He stated that he asked Person A numerous times for the cell phone but she refused. He stated that he attempted to grab it from her. He also attempted to spin her around and grab the cell phone, but Person A proceeded to lay on the floor and place the cell phone under her body. Respondent stated that he stopped attempting to retrieve the cell phone at that time and a call was made to 911.

Respondent noted that he had two other small children in the house and if he left following the police response to the residence, no adult would be with the children. He called Person D and asked her to come over and watch the children. When she arrived a verbal altercation ensued between Person D and Person A. Respondent denies slapping Person A, but admits to telling her about her rudeness to Person D. Eventually [REDACTED] Person B arrived. Person A screamed out about what happened and Person B called 911. Eventually all parties except Person D were removed to the 69 Precinct.

It must be noted that all parties agree that a struggle ensued but what differs is the extent of the struggle. While Person A says she was slapped in the face, Person C said Respondent slapped Person A on the arm during the struggle. While Person A said she was pushed to the floor, Person C said in her statement to the duty captain that she observed Person A on the floor while Respondent was attempting to get the cell phone.

Surely this is an instance where Respondent [REDACTED] [REDACTED] is attempting to instill discipline. It is also evident that while he tries to discipline Person A by taking her cell phone, Person B counteracts his actions and provides Person A with a cell phone, to the point where the 15-year-old had access to three cell phones. The struggle was unfortunate, and perhaps not the best approach Respondent should have used with Person A. It is evident from this case that Person A is in need of discipline (i.e., defiant to his requests to turn over the cell phone and engaging in a rude, verbal altercation with Person D) and may be using the fact [REDACTED] [REDACTED] to tug them one against the other for her own benefit. But to engage in a physical altercation in an effort to retrieve a cell phone was not wise. By the time Respondent realized that this was not working and he retreated, 911 had been called twice.

Accordingly, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 2, 2001. Information from his personnel record

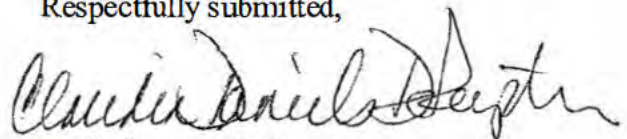
that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of engaging in a physical altercation with Person A. The Assistant Department Advocate asked for a penalty of the forfeiture of 30 suspension days time already served. The Court agrees. This case can be distinguished from an instance where a parent readily sought to discipline his disrespectful child by striking his son "hard" with a belt about "seven" times. In Disciplinary Case No. 79750/04 (May 9, 2006), an eight-year detective was found Not Guilty after trial for intending to cause physical injury to another person by means of a dangerous instrument, to wit: a belt. Respondent in that instance, testified that he adhered to the biblical admonition, "Spare the rod, spoil the child" when he disciplined his [REDACTED] after learning from his [REDACTED]'s teacher that he was disrespectful at school. The Court held that the defense of justification was applicable in that instance but that justification need not be established where the allegation of Assault in the Second Degree was presented with insufficient evidence by the Department.

In this instance, rather than discipline Person a, Respondent resorted to a physical altercation with Person A which this Court found to be misconduct.

Accordingly, it is recommended that Respondent forfeit 30 days time previously served on suspension.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED

FEB 12 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT CHRISTOPHER DIXON
TAX REGISTRY NO. 928206
DISCIPLINARY CASE NO. 2011-5646

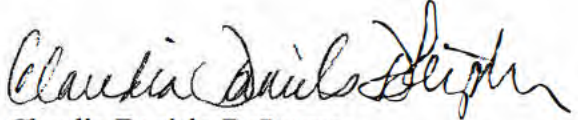
In 2011, Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. In 2010 and 2009, he received a rating of 4.5 "Above Highly Competent." Respondent has received 19 Excellent Police Duty Medals and four Meritorious Police Duty Medals in his career to date.

[REDACTED]

On October 2, 2008, Respondent received Charges and Specifications for: 1) consumption of an intoxicant to the extent that he was found unfit for duty; 2) armed while unfit for duty; 3) while involved in an unusual police occurrence, failed to promptly identify himself as a member of the service; 4) failure to safeguard his weapon by giving it to another member of the service who was also unfit for duty; 5) impeding an investigation. Specification No. 2 was dismissed, but Respondent pleaded Guilty in this matter. Respondent forfeited 29 days time served on suspension and was to participate in any counseling program recommended by the Department.

On December 2, 2010, Respondent received a Schedule "B" Command Discipline for being off post at a location not within his assigned area between 5/30/10 and 12/2/10. Respondent forfeited two vacations days.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials