



## STATE OF NEW JERSEY

In the Matter of Esteban Rodriguez,  
Weehawken, Police Department

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-1705  
OAL Docket No. CSR 01333-22

ISSUED: NOVEMBER 1, 2023

The appeal of Esteban Rodriguez, Police Officer, Weehawken, Police Department, removal, effective January 12, 2022, on charges, was heard by Administrative Law Judge John P. Scollo (ALJ), who rendered his initial decision on October 5, 2023. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on November 1, 2023, adopted the ALJ's Findings of Facts and Conclusions and his recommendation to uphold the removal.

Upon its *de novo* review of the ALJ's painstakingly thorough and well-reasoned 95-page initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on his assessment of the credibility of the testimony of the witnesses, as well as other documentary and video evidence. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission

has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c); Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. In this regard, the ALJ made numerous, detailed credibility determinations and corresponding findings based on those determinations as well as the other supporting evidence in the record. Upon its review, the Commission finds nothing in the record or the appellant's exceptions to question those determinations or the findings and conclusions made therefrom.

Similar to its assessment of the charges, the Commission's review of the penalty is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also, *In re Phillips*, 117 *N.J.* 567 (1990).

Clearly, the appellant's egregious misconduct in this matter warrants removal from employment. As indicated by the ALJ:

On the issue of whether progressive discipline should be utilized in this matter, . . . the argument has been made that because the WPD saw fit not to suspend Rodriguez immediately, but rather allowed him to keep working as non-road officer, doing administrative tasks, that there is reason to believe that Rodriguez's violations were not egregious enough to warrant removal. I disagree. The Township's forbearance in suspending Rodriguez immediately might have been afforded for any number of reasons, and it certainly does not necessarily encompass the issue of the severity of the charges or of the ultimate evaluation of

whether the violations were or were not egregious. It must be recalled that at the time of the issuance of the original PNDA dated December 29, 2020 which started Rodriguez's suspension without pay, the November 1, 2020 False Report incident was a matter being handled by the NBPD and subsequently by the HCPO, not the WPD. In my judgment, there is no logical connection between the argument as presented and the desired result . . . The theory of progressive discipline has as its goal the correction of misbehavior. The question is whether punishment will be proportionate to the offense. In the matter at bar, many of the infractions alleged, taken either individually or taken as a group, are serious enough on their own to warrant removal. I **CONCLUDE** that progressive discipline is not warranted in this matter.

The Commission wholeheartedly agrees that the appellant's actions in this matter fall well short of what is expected of a law enforcement employee and are more than deserving of removal from employment. As such, the Commission finds the penalty of removal neither disproportionate to the offenses nor shocking to the conscious.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeals of Esteban Rodriguez.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF NOVEMBER, 2023

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSR 01333-22

**IN THE MATTER OF ESTEBAN RODRIGUEZ,  
TOWNSHIP OF WEEHAWKEN  
POLICE DEPARTMENT.**

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**Frank C. Cloffi, Esq.**, for petitioner, Esteban Rodriguez (Sciarra & Catrambone, attorneys)

**David F. Corrigan, Esq.**, for respondent, Township of Weehawken (Corrigan Law Firm, attorneys)

Record Closed: April 30, 2023

Decided: October 5, 2023

BEFORE **JOHN P. SCOLLO, ALJ**:

**STATEMENT OF THE CASE**

Esteban Rodriguez appeals the Weehawken Police Department's (WPD's) decision to remove him from the position police patrolman. He seeks reinstatement as a police patrolman, back pay and benefits, and restoration of seniority.

### PROCEDURAL HISTORY

On the evening of October 9, 2020, an alleged domestic violence incident occurred in the North Bergen apartment of [REDACTED] ([REDACTED] is designated as "Victim Number 2"), where she and Rodriguez were involved in a romantic, live-in relationship. [REDACTED] maintains that a video she took of the incident shows Rodriguez blocking a doorway preventing her from leaving the bedroom while he tells her that he will have her arrested and that her two daughters would thereby be placed in foster care. As a result of this October 9, 2020 incident, [REDACTED] feared for her and her daughters' safety. On October 31, 2020 [REDACTED] found that her car had been vandalized and, suspecting that Rodriguez had caused the damage and again becoming fearful for her safety, she applied for and obtained a Temporary Restraining Order (TRO) against Rodriguez. The TRO was served on Rodriguez later that evening at his home. Upon issuance of the TRO, the WPD, per prescribed procedures (T-11), ordered Rodriguez to surrender his weapons, making him ineligible to perform police patrol duties, and placed him on paid modified duty (i.e., "desk" work or police administrative duties).

Another alleged domestic violence incident (involving [REDACTED], designated as "Victim Number 3"), occurred in the Weehawken residence of Rodriguez's parents (where he also resided) on the evening of December 25-26, 2020. Due to this domestic violence allegation, the WPD issued a Preliminary Notice of Disciplinary Action (PNDA) on December 29, 2020 suspending him without pay pending investigation and thus ending his modified duties. Per prescribed procedures (T-1), the matter was turned over to the Hudson County Prosecutor's Office (HCPO), which conducted a criminal investigation of Rodriguez's conduct. The HCPO ended its investigation on or about August 24, 2021 deciding that it would not press criminal charges against Rodriguez; but it remanded the matter to the WPD for administrative review and proceedings. The WPD's Internal Affairs Unit conducted its own investigation and on October 29, 2021 the WPD issued its First Amended PNDA. The First Amended PNDA notified Rodriguez that he was immediately suspended without pay and that the WPD was seeking the penalty of removal.

Rodriguez requested a Departmental Hearing, which was held on January 5, 6, and 12, 2022 before retired Judge Edward J. DeFazio. It resulted in the sustaining of all charges except the Harassment charge (N.J.S.A. 2C:33-4a) pertaining to [REDACTED] ("Victim Number 1").

The January 13, 2022, Final Notice of Disciplinary Action (FNDA) (P-2) notified Rodriguez that all the charges set forth in the First Amended PNDA except for the charge of Harassment (N.J.S.A. 2C:33-4a) of [REDACTED] ("Victim No.1") were sustained; and it removed Rodriguez from his position of police patrolman effective January 12, 2022.

Rodriguez's counsel filed a defective appeal with the Civil Service Commission on January 25, 2022, which was timely perfected on February 16, 2022. On February 17, 2022, the Civil Service Commission referred the matter to the Office of Administrative Law, where, on that same date, it was filed in the Clerk's Office as a contested case under OAL Docket Number CSR 01333-22 pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to 13. The matter was thereupon referred to Judge John P. Scollo, ALJ on February 24, 2022. On February 28 and March 2, 2022, Judge Scollo held the Initial Telephone Conference with both counsel and issued a Pre-Hearing Order on March 2, 2022.

The parties engaged in discovery. Several telephone conferences took place during the period leading up to the trial of the matter. The matter was heard on fourteen dates: April 21; May 2; May 4; May 5; May 11; May 12; May 13; May 16; May 19; May 27; May 31; June 1; June 27; and July 20, 2022. The attorneys obtained transcripts of the hearing and submitted closing arguments. Due to unforeseen delays, including illness of counsel, the attorneys' replies to each other's closing arguments were delayed and the record closed on April 30, 2023. The Tribunal obtained several extensions of time to write this voluminous matter. The Judge contracted the Covid virus, which further delayed the completion of this Initial Decision. This Initial Decision was completed and sent to the CSC and the parties on October 5, 2023.

**THE CHARGES AND SPECIFICATIONS**

**SUSTAINED CHARGES**

**Administrative Code Violations and Statutory References**

N.J.A.C. 4A:2-2.3(a)

- (1) Incompetency, inefficiency or failure to perform duties;
- (3) Inability to perform duties;
- (6) Conduct unbecoming a public employee;
- (12) Other sufficient cause: repeated acts of domestic violence; violation of Weehawken Police Department Rules and Regulations

N.J.S.A. 2C:28-4(a) (2<sup>nd</sup> degree): False Reports to Law Enforcement

N.J.S.A. 2C:29-9 (4<sup>th</sup> degree): Violation of Temporary Restraining Order

N.J.S.A. 2C:33-4(a) (disorderly persons): Harassment

N.J.S.A. 2C:17-3 (4<sup>th</sup> degree): Criminal Mischief

N.J.S.A. 2C:13-3 (disorderly persons): False Imprisonment

N.J.S.A. 2C: 12-1(a) (disorderly persons): Assault

N.J.S.A. 2C: 12-1(b)(13) (3<sup>rd</sup> degree): Aggravated Assault

**Weehawken Police Department Rules and Regulations**

3.1.6 Conduct themselves in accordance with high ethical standards, on and

off-duty.

- 3.1.7 Strive to improve their skills and techniques through study and training.
- 4.1.2 Action Off Duty. While off duty, police officers shall take appropriate action as needed in any police matter that comes to their attention within their jurisdiction as authorized by New Jersey law and department policy.
- 4.1.3 Obedience to Laws and Rules. Employees shall obey all laws, ordinances, rules, policies, and procedures directives of the department.
- 4.1.4 Withholding Information. Employees shall report any information concerning suspected criminal activity of others.
- 4.12.6 Truthfulness. Employees are required to be truthful at all times whether under oath or not.
- 5.1.6 Abuse of Sick Leave. Employees who take sick leave in violation of department policy shall be subject to disciplinary action.
- 6.1.1 Disciplinary Action. Employees, regardless of rank, shall be subject to disciplinary action, according to the nature or aggravation of the offense , for:
  - (a) Committing an offense punishable by the laws or statutes of the United States, the State of New Jersey, or Municipal Ordinances;
  - (b) Failure, either willfully or through negligence or incompetence, to perform the duties of their rank or assignment;
  - (c) Violation of any rule, policy, procedure, or directive of the department;
  - (d) Failure to obey any order instruction, order or command of a supervisor.



6.1.2 Repeated Violations. Repeated violations of the rules of conduct shall be indicative of employees' disregard for their duty and may be cause for their dismissal. This shall apply regardless of the type or severity of the offenses.

SPECIFICATIONS: INCIDENTS GIVING RISE TO THE CHARGES

COUNT ONE

Note: The charges arising out of matters relating to [REDACTED] (Victim #1) were not a direct part of this matter, having been dismissed by the Hearing Officer at the Departmental Hearing.

COUNT TWO

On October 9, 2020, you committed a domestic abuse offense when you, among other things, blocked Victim No.2 from leaving her apartment. You then threatened the victim, who has two children, and abused your authority by stating that you were going to have her arrested and her daughters would be placed in foster care. You later attempted to carry out your threat when you filed a false police report. See Count Four. Victim No. 2 eventually evaded you and left the apartment with her children, ages 12, 10 who had been sleeping.

COUNT THREE

On October 31, 2020, Municipal Court Judge Karen Boylan, J.M.C. issued a domestic violence Temporary Restraining Order was served upon you pertaining to Victim No. 2. On the same day, said Temporary Restraining Order was served upon you at which time you surrendered all weapons in your possession pursuant to the Order. You violated the Order when you appeared at the same restaurant as Victim No. 2 on November 1, 2020, at approximately 1:15 a.m. and did not immediately leave.

COUNT FOUR

On November 1, 2020, at 4:15 a.m., you made false police reports with the North Bergen Police Department from your cell phone concerning Victim No. 2. In your report to the police, you:

1. Lied about not knowing Victim No 2's name;
2. Lied about not knowing the names of her children;
3. Lied about being her neighbor in the same building and that she lives upstairs from you in Apt. 10;
4. Lied about seeing Victim No. 2 stumbling up the stairs that evening intoxicated and falsely advising the police that "[this] happens every weekend".

You made this false report to retaliate against Victim No. 2 because she had just obtained the temporary restraining order referred to in Count No. Three. As a result of your false report, North Bergen Police went to Victim No. 2's home to do a "welfare check". The children were not present, and Victim No. 2 was not intoxicated.

COUNT FIVE

You called out sick from work on November 4, 5, 6, and 7, 2020. While out on sick leave, you went to the gym on each of the days that you called out "sick". You later admitted that you called out sick from November 4<sup>th</sup> through the 12<sup>th</sup>, 2020 and that you went to the gym every day during that period. You did not receive permission to leave home while on sick leave. Said actions violate the Weehawken Police Department's Rules and Regulations and General Order on Sick / Injury Leave Policy.

COUNT SIX (AS AMENDED)

On December 25, 2020, you committed domestic abuse / violence against Victim No. 3. You physically pulled her back into the residence. Video evidence shows you striking the victim with the door to the residence. You admit to physically pushing the victim three times. You also admit that you threw the victim's cellphone on the ground causing

damage. Further, you choked the victim leaving abrasions on her neck. That choking constitutes aggravated assault.

#### COUNT SEVEN

The Attorney General Guidelines provide that "Officers who are involved in any domestic violence incident involving police response, regardless of jurisdiction, must immediately notify the on-duty supervisor and provide notice of the court dates, times, appearances, and proceedings. Failure to do so may result in Departmental discipline in accordance with Departmental Policy and Procedures."

You violated this regulation when you did not report domestic violence incidents that (1) occurred in Aruba with Victim No. 3, and (2) that occurred in March 22, 2021 with Victim No. 2 (in North Bergen, NJ).

#### COUNT EIGHT

You have had your weapons confiscated by direction of the Hudson County Prosecutor's officers. Accordingly, you are not fit for duty and are unable to perform the duties of a Weehawken Police Officer.

### **THE TRIBUNAL'S REVIEW OF THE AUDIO AND AUDIOVISUAL EVIDENCE**

Both sides relied upon audio and audiovisual (videos) evidence, using them to support their interpretation of the facts and to support their respective arguments.

What follows is the Tribunal's review and impressions of what the audio and audiovisual evidence depicts and means. The Tribunal evaluates words, tone and voice inflections; the actions and body language of the people; the physical state of people and things and their location; and events depicted (the sights and sounds) recorded.

Video Taken by [REDACTED] on October 9, 2020 in the Bedroom

[REDACTED] testified that she awakened Rodriguez to tell him that she was leaving the home with her daughters. She testified that for about ten minutes she and Rodriguez talked and then she started to record. The video is 6 minutes and 51 seconds in length.

In the video Mr. Rodriguez is seen standing shirtless with his back to the bedroom doorway with his arms folded across his chest looking directly at the camera with which [REDACTED] is recording him. It is clear from the context that the recording begins with a conversation that has already started. It's clear that Rodriguez can see that he is being recorded. The video shows that the musculature of Rodriguez's upper body is well-developed and he gives the appearance of being very strong. His facial expression is intense, and he appears resolved not to move from the doorway to let [REDACTED] pass him.

[REDACTED] tells Rodriguez multiple times that he is blocking her from exiting the room and she clearly makes her intention known to him that she wants to leave the room. She says, "You are preventing me from leaving. I don't want to argue with you. Just leave me alone." Although it is clear that Rodriguez knew he was being recorded, Rodriguez replied several times that he was not preventing her from leaving. Although [REDACTED] initially sounds resolute that she intends to leave the room, the video shows that she made no attempt to physically move past Rodriguez. For several minutes, Rodriguez did not comply with [REDACTED] requests to get out of her way and enable her to exit the bedroom. The video depicts Rodriguez preventing [REDACTED] from leaving the room.

While blocking the doorway, Rodriguez told [REDACTED] that he will "guarantee" that she will be arrested and that her two daughters will be placed into foster care. The recording itself does not state his reason for why she can be arrested. The tone of Rodriguez's voice is stern and his words are conveying threats against [REDACTED] and her children. While speaking to Rodriguez about her desire to leave the bedroom,

██████████ voice changes from being imperative (telling him to "move") to being more like she is scared or pleading.

Rodriguez tells ██████████, in a condescending manner, "Nice. Keep recording". ██████████ curiously asks, "Who's recording?", even though it is clear that she has been recording Rodriguez. Rodriguez responds to her question by saying, "You (are), Stupid", in a louder voice and an angry tone, and he is clearly intending to berate ██████████. After ██████████ repeats, "You are preventing me from leaving", Rodriguez moves enough to enable ██████████ to leave the bedroom and she leaves. She then immediately speaks with her daughters.

The video goes black, but the audio portion continues to record ██████████ urging her children to gather their belongings and trying to hasten their exit from their home. Rodriguez continues to speak in the background to ██████████ in an annoyed or angry manner. The video ends with ██████████ and her children exiting the condo.

The North Bergen Police Department's Audio Recording of a Telephone Call Made by Esteban Rodriguez on November 1, 2020 at 3:51 a.m. regarding ██████████

Rodriguez, using his own cell phone, made an anonymous telephone call (T-14) to the North Bergen Police Department on November 1, 2020 at 3:51 a.m. The essential points of the phone call were recorded and are set forth as follows.

At 3:51:08 on November 1, 2020, the North Bergen Police Department answers Rodriguez's phone call. Rodriguez begins his call by identifying himself as a resident of (number) Smith Avenue. He states that he wants to remain anonymous. He states that his upstairs neighbor in Apartment 10, is named ██████████, but he does not know her last name. He states that ██████████ has two female children ages 10 and 12, but he does not know their names. He states that the children have been home alone all night. He states that ██████████ gets home every night at odd hours. He tells the North Bergen Police that ██████████ is extremely intoxicated, that she just arrived home, and that she was stumbling

up the steps. He stated that [REDACTED] does this every weekend. The police respond by agreeing to go to Apartment 10 to do a welfare check.

Security Camera Audiovisual Recordings at [REDACTED]

While each video contains at least some information about what happened on Christmas night (December 25 - 26, 2020) at [REDACTED], New Jersey (the Fulcher residence), some videos contain more significant information regarding the charges than others. The Tribunal will herein concentrate on the videos that demonstrate Esteban Rodriguez's words and actions on the night in question.

The Tribunal is aware that Esteban Rodriguez and others claim that [REDACTED] assaulted Blanca Fulcher and that such an act may have further affected Esteban Rodriguez's behavior. However, while her credibility is an issue in this matter (like all witnesses), [REDACTED] is not on trial.

The Tribunal's focus in its review of the security videos will be on whether or not Esteban Rodriguez's words and actions, as depicted therein, warrant the affirmance or reversal of the disciplinary actions stated in the FNDA.

One video, at 9:38 p.m., shows Rodriguez, [REDACTED] and Blanca Fulcher (Rodriguez's mother) talking calmly in the Kitchen.

Another video, at 9:50 p.m., shows Blanca Fulcher, Esteban Rodriguez and [REDACTED] in the kitchen. Then Rodriguez says goodnight to Blanca and he and [REDACTED] go through a door onto an interior set of stairs to go down to the basement.

Another video, at 9:52 p.m., shows [REDACTED] exiting a door and stepping up onto the back yard of [REDACTED]. She is immediately grabbed by Esteban Rodriguez, who says the words, "Watch out. Relax", as he forcibly pulls her back

into the house. The camera recorded an audible grunt from [REDACTED] as Rodriguez forcefully pulled her back into the house.

Another video, at 11:34 -11:35 p.m., shows Esteban Rodriguez with [REDACTED] cell phone. At one point, [REDACTED] says something that is not especially audible, but to which Rodriguez responds, "Your phone is in 200 pieces because you threw mine over the fence, Stupid!"

Another video, at 11:36 p.m., shows Esteban Rodriguez throwing [REDACTED] belongings including clothing, etcetera out the same back door into the back yard area while repeatedly shouting in a very loud voice (and using expletives) for her to "leave" or using other words to tell her to get out. He tells [REDACTED] "Get out of my fucking house!" (The videos show that there are neighboring houses in close proximity to [REDACTED].) [REDACTED] responds, "I'm half naked!", to which Rodriguez replies, "I don't care."

Another video, at 11:38 p.m., shows [REDACTED] ascending a set of outside (exterior) stairs and re-entering the house after she has been previously told to leave. [REDACTED] walks through the main level kitchen and walks down a set of interior stairs to the basement where Blanca Fulcher and Esteban Rodriguez are located. Rodriguez screams at [REDACTED] "Get the fuck out!"

In another video, Rodriguez is seen throwing [REDACTED] belongings into the back yard and yelling for her to take her clothes and leave. He continues to tell [REDACTED] to "Get the fuck out!" Rodriguez re-emerges from the back door while [REDACTED] is gathering her clothes and things together. As he opens the door to come out, the door hits [REDACTED] hard enough to cause her to cry out in pain. There is no apology from Rodriguez. He continues to yell at her, telling her to leave.

Another video, at 11:40 p.m. shows the arrival (by car) of Brandon Fontanez and Gabrielle Melillo. [REDACTED] is in the house. Rodriguez is outside shouting (despite the

fact that is very late on Christmas night and there are neighboring houses in close proximity) to Fontanez and Melillo that he wants her ( [REDACTED] ) to leave his house. Fontanez goes inside to the basement to try to get [REDACTED] to leave.

Another video, at 11:47 p.m., shows [REDACTED] and Fontanez outside the house approaching Fontanez's car.

Videos taken inside the house before and around midnight show Jeffrey Fulcher, Blanca Fulcher, Brandon Fontanez, Gabrielle Melillo and Esteban Rodriguez talking about what to do about getting [REDACTED] to leave the premises. Melillo leaves, but she returns with the news that she has learned from [REDACTED] that she wants to call the police and that Rodriguez broke her cell phone. In one video, Melillo explains to those gathered that she and Brandon Fontanez were trying to "buy time". There is a discussion between Rodriguez and his stepfather, Jeffrey Fulcher, wherein Rodriguez points-out scratch marks allegedly inflicted on him by [REDACTED]. Fulcher counsels him to stay calm. Fulcher and Rodriguez discuss calling the Weehawken Police Department, but Rodriguez has some reservations about doing so. There is talk about Brandon Fontanez taking [REDACTED] home. Another video depicts a confrontation inside the house where [REDACTED] states that she is going to "put him in jail." Rodriguez and Jeffrey Fulcher discuss calling the police. Afterwards, Melillo announces that [REDACTED] is at the EMT building and is going to call the police, which prompts Rodriguez to do likewise.

The April 21, 2021 Interview of [REDACTED] at the Orlando, Florida Police Department

This interview includes information regarding incidents in Aruba during the month of November, 2020 (Thanksgiving time) and on the evening of December 25-26, 2020 (Christmas Night).

The interview continued with [REDACTED] recalling that she and Rodriguez had an argument about two days before Christmas, 2020. However, on Christmas morning, after



leaving work, she called Blanca Fulcher and asked if she could come over and wake her son up for Christmas. Mrs. Fulcher invited her to come to [REDACTED]. After arriving, she and Blanca Fulcher wished each other a merry Christmas and chatted. Then [REDACTED] went downstairs. She awakened Rodriguez and laid in bed with him for a while. Then they got up and went to her father's house to exchange presents. They left her father's house. As they were driving back to [REDACTED], [REDACTED] received an Instagram message from a girl named "Lindita", who asked her if she was dating Rodriguez. [REDACTED] became upset because it was apparent to her that Rodriguez was cheating on her. [REDACTED] said that she wanted to meet with this girl to learn more of the truth. She argued with Rodriguez about Lindita and he told her not to make a scene in front of his mother. They continued to bicker after arriving back at [REDACTED]. Afterwards, [REDACTED] and Rodriguez continued to argue. During the course of Christmas Day, [REDACTED] continued to exchange texts with Lindita. There was a Christmas party at the Fulcher residence, attended by several guests including [REDACTED] mother. [REDACTED] did not go home with her mother.

[REDACTED] stated that during the course of the Christmas festivities she and Rodriguez drank "Kettle Clubs", an alcoholic beverage. She continued texting with friends and with Lindita. At some point in the evening she was tired and went downstairs to the basement to Rodriguez's apartment and took a nap. She recalled that Rodriguez came into the bedroom and ripped the blanket off her awakening her from a deep sleep. She recalled that she was wearing only a sweater and that she said something to Rodriguez that made him mad. He told her to leave the house. She refused to leave because she was tired, had been drinking, and wanted to discuss things in the morning.

While telling her story to the interviewers, [REDACTED] began to cry. She stated that Rodriguez became very angry with her and then made sexual advances towards her on the inside steps that led from the basement up to the main floor of the house. She resisted his advances and he started to choke her. Her head hit the steps and a nearby washer machine. While resisting him she scratched him with her nails and she broke free and went outside. She recalled finding her cell phone outside and that it was broken. She

recalled being back inside the house, she saw Rodriguez, Blanca Fulcher (Rodriguez's mother), Jeffrey Fulcher (Rodriguez's stepfather), Brandon Fontanez (Rodriguez's cousin) and Gabrielle Melillo (Fontanez's girlfriend). She went to the basement bedroom to change clothes and felt mortified because no one would leave the room while she changed her clothes. She said that she could hardly talk because of how hard Rodriguez had choked her. She recalled that Blanca Fulcher was clapping her hands while accusing her of "nagging" her son. Fontanez offered her a ride and she claimed that after she sat in his car he tried to convince her not to file a police report of the night's incidents by bribing her with an offer of paying for a new cell phone.

After she left the Fulcher residence, [REDACTED] eventually went to the Weehawken First Aid Squad (EMT Building). She later went to the police station and said that Rodriguez also went there. She recalled that Rodriguez spoke with a police officer whose nickname was "Goose". She remembered Goose from an incident during her earlier break-up with her ex-husband (who had abused her). She heard Goose tell Rodriguez to "Watch out for this one (referring to [REDACTED]). She's crazy."

After speaking with the police, she decided not to file criminal charges against Rodriguez because he had scratches. She feared that he could file charges against her. She filed for and obtained a Temporary Restraining Order against Rodriguez, which she later dropped because Rodriguez filed for a TRO due to the allegation that she had slapped his mother.

[REDACTED] stated that sometime after Christmas she and Rodriguez had a meeting at a diner. She stated that Rodriguez wanted to persuade her to retract the statements she had made about Christmas, 2020. She said that Rodriguez also had Lindita contact her to try to persuade her to retract the statements. She described Rodriguez as a "smooth talker" and a "manipulator".

During the interview, [REDACTED] also described her trip to Aruba in November, 2020 with Rodriguez and other friends, during which she and Rodriguez argued over his

accusation that she was overly-friendly with one or more men. She claimed that Rodriguez did not allow her to socialize with other men. Moreover, she claimed that Rodriguez felt it was all right for him to "hook up" with other women while he was still in a relationship with her. During one of their arguments in Aruba, ██████████ claimed that Rodriguez forcefully grabbed her arm, so she slapped him. He then slammed her against a wall and walked away. She stated that before the Aruba trip they only had verbal arguments.

Interview of Esteban Rodriguez at Hudson County Prosecutor's Office on August 17, 2021

The Investigators at HCPO initiated their interview of Rodriguez, after he had been granted use immunity, by questioning him about ██████████. He stated that he neither damaged her car, nor did he ask anyone to damage it for him. In regard to disputes with ██████████, he recalled that the North Bergen Police had come to the condo they shared on several occasions in March, 2020 and in September, 2020, but these were only verbal disputes and did not involve domestic violence. When questioned about why he did not report these incidents, Rodriguez responded that he felt he was the victim and that it was not a big deal because they were only verbal disputes.

In regard to the incident of October 9, 2020, Rodriguez stated that he was concerned that Ms. ██████████ might drive drunk with the children in the car. The HCPO investigators recounted the events shown in the video of October 9, 2020, noting that Rodriguez effectively blocked ██████████ from leaving the room. Rodriguez maintained that he did not stop ██████████ from leaving the room. Rodriguez explained that he stated to ██████████ that she could be arrested if she drove while drunk and he was concerned about the children's welfare and so brought up the possibility of the children going into foster care. The investigators also discussed the TRO being issued after ██████████ car was found damaged, but he maintained his innocence.

When asked if he believed that it is normal for a policeman to be involved in so many domestic violence calls in such a short time, Rodriguez responded, "Sir, I make my own mistakes." The investigator outlined the clear commonalities in all the reported incidents: such as his anger and him repeatedly getting in the way of a female he is dating to block her movement. The investigators underscored that they are meeting because this type of conduct is improper. Rodriguez responded, "I've never put my hands on a woman. Never in my life have I put my hands on a woman." In reply to this assertion, the investigators played the video of Rodriguez forcefully pulling [REDACTED] back into [REDACTED]. Rodriguez could not deny that he laid hands on [REDACTED], but defended his action by saying that he did it because he was concerned that she was not suitably dressed for the cold weather outside.

The investigators discussed the higher standard that is required for law enforcement personnel and that Rodriguez's conduct as shown in the videos was improper.

In regard to the November 1, 2020 middle-of-the-night anonymous call to the North Bergen Police Department to make false accusations against Ms. [REDACTED] Rodriguez stated that he could not recall the time of the call. Rodriguez admitted that he did not identify himself and did not state that he was a police officer, for which the investigators questioned his decision not to do so. They pointed out that he lied about practically every aspect of the call and that it was a false report. He had no knowledge that the girls were home alone when he made the call. He did in fact know their ages and their names as well as [REDACTED] last name. Rodriguez defended his action saying that he made the call out of a loving concern for the girls and his desire to protect them.

Questioning shifted to [REDACTED] and the damages to her car when it was parked at the LA Fitness gym on October 31, 2020. Rodriguez denied that he was the person who contacted [REDACTED] at various times from different phone numbers after encountering each other at the gym. He denied that he had told other officers that he damaged the car.

Rodriguez went to the gym every day that he called out sick, November 4 to 7, 2020, but he denied being present at the gym when [REDACTED] car was damaged.

The inquiry shifted back to [REDACTED]. Rodriguez recounted being upset with her when, during sex, she said, "Fuck me like you fucked that bitch." He says that her comment prompted him to end the sex act. He maintained that the sex was consensual, happened on the bed and not on the stairs, and that [REDACTED] never told him to stop. Rodriguez stated that he never struck [REDACTED], but that in trying to get away from her he flailed his arm and may have come into contact with her. He categorically denied ever choking [REDACTED], but he did push her away from him. At that time she punched him in the face. He stated that he did push her a second time. Rodriguez stated that he saw blood on [REDACTED] lip, but he does not know why the blood was there.

Rodriguez stated that [REDACTED] was uncooperative, accusatory and verbally aggressive on December 25, 2020 after he told her several times that she could not sleep at the house and that she must leave. Rodriguez recounted that his aunt (Brandon Fontanez's mother) received a call from his cell phone and she overheard him telling [REDACTED] that she must leave the house and overheard [REDACTED] refusing to leave. Rodriguez explained that that is how Brandon Fontanez learned of the commotion at [REDACTED] which prompted him to go there.

### THE TESTIMONY OF THE WITNESSES

The following is not a verbatim recitation of each witness's testimony. Rather, it is a summary of testimony, which I have found to be important in deciding the fact issues and legal issues presented in this matter. The Tribunal's focus is on the issue of ascertaining whether or not Esteban Rodriguez violated the laws of New Jersey and / or the Rules and Regulations of the West New York Police Department (WPD). The

summarizing and analysis of the testimony given by all witnesses is also included herein for the purpose of assessing their credibility.

**Testimony of Deputy Chief James White - May 2&3, 2022**

On direct examination, WPD Deputy Chief James White (hereinafter "White") testified that he was hired by the WPD on July 19, 2001. He rose through the ranks and also served in the WPD's Internal Affairs Unit. In 2016, he was a captain and was appointed as the commanding officer of the Internal Affairs Unit. In October of 2021, he was promoted to the position of Deputy Chief. In the WPD's Internal Affairs Unit, he has participated in hundreds, close to a thousand internal affairs investigations. He stated that the duties of the Internal Affairs Unit are to investigate allegations of misconduct from citizens and from within the WPD when officers have been alleged to have committed some form of misconduct. He noted that when the County Prosecutor investigates criminal allegations against police personnel, the WPD's administrative investigation would be suspended pending the disposition of the County Prosecutor's investigation.

White testified that he has been involved in several investigations regarding Esteban Rodriguez's conduct, including those related to [REDACTED], [REDACTED], and [REDACTED], each of whom is a former girlfriend or live-in partner of Rodriguez. During this matter, these women were referred to respectively as "Victim No. 1", "Victim No.2" and "Victim No. 3". White testified that a police officer has an affirmative obligation to report any domestic violence incidents in which he / she is involved to his immediate supervisor. White testified about T-6, which is a report concerning Rodriguez's conduct in regard to his break-up with [REDACTED]. The report contained allegations that after [REDACTED] left their residence, Rodriguez showed up at [REDACTED] mother's residence where [REDACTED] was staying. He did so to argue with her, and while doing so, put his foot into the doorway preventing her from closing it. Rodriguez stated to investigators that he did not report this conduct to the WPD because he felt embarrassed. While not directly relevant for proving the current charges, this document demonstrates

that Rodriguez, not only received standard WPD training regarding domestic violence, but also received counselling from his superiors about his personal conduct.

Throughout his testimony, White identified and relied on many documents, including videos and T-4 (his report dated November 10, 2020) and T-5 (his report dated December 27, 2020, which was drafted while the HCPO's investigation was still ongoing) for his testimony about IA Case number 20-00023 (pertaining to Esteban Rodriguez and [REDACTED]) and IA Case Number 20-00026 (pertaining to Esteban Rodriguez and [REDACTED]).

The following is about [REDACTED]. On October 31, 2020, [REDACTED] reported to WPD that she found that her car had been vandalized that day and she suspected that Rodriguez damaged the car. She explained that she and Rodriguez separated due to [REDACTED] discovery of text messages on October 9, 2020 that indicated that Rodriguez was dating [REDACTED] while he was living with [REDACTED]. She also reported that an incident occurred on October 9, 2020 at the condo where she, her daughters and Rodriguez resided. She reported that Rodriguez detained her against her will in the bedroom by blocking the doorway with his body and she reported that Rodriguez threatened to have her arrested and that her daughters would go into foster care. To verify her account, [REDACTED] showed an October 9, 2020 video (T-9) to the WPD which depicted Rodriguez preventing her from leaving their bedroom and making threats against her and her children (i.e., that he would "guarantee" that she would be arrested and that her children would be placed in foster care).

On October 31, 2020 at 10:04 p.m. Municipal Court Judge Karen Boylan issued the TRO which provided that Rodriguez was prohibited from going to [REDACTED] home or place of employment; that he was prohibited from having oral, written, personal, electronic, or other forms of contact or communication with her or her daughters; and that he was prohibited from making or causing anyone else to make harassing communications to [REDACTED] or her daughters. The TRO also ordered Rodriguez to surrender all his personal and WPD-issued firearms.

On November 10, 2020, White wrote T-4, the report of his investigation into Rodriguez arising out of allegations made by his former live-in girlfriend, [REDACTED] on October 31, 2020. On October 31, 2020, [REDACTED] went to the WPD to procure a Temporary Restraining Order (TRO) against Rodriguez following her discovery, hours earlier, of damage to her car at the Secaucus LA Fitness gym where both she and Rodriguez had memberships. [REDACTED] stated that she received a call from a person she knew at the BMW dealership, informing her that Rodriguez said that the car would be damaged. She suspected that Rodriguez had caused the damage and was fearful that if he would damage her car, he might harm her or her daughters, I.C., age 12, and S.C., age 8. White subsequently investigated the car damage incident, but he concluded that there was insufficient evidence to reach the conclusion that Rodriguez was responsible for the damage.

On the evening of October 31, 2020, the WPD went to [REDACTED] in Weehawken, NJ, where Rodriguez lived with his mother Blanca Fulcher and her husband, Jeffrey Fulcher (Rodriguez's stepfather). Jeffrey Fulcher is employed by the Township of Weehawken as the Director of Public Safety. Once there, Captain Mitolo, Lieutenant Saldarriaga and Lieutenant Glakin of the WPD served the TRO upon Rodriguez at 11:45 p.m. Rodriguez complied with the order to surrender his firearms and brought same to the WPD immediately after being served with the TRO.

White testified, as stated in his report dated November 10, 2020 (T-4), that on October 31, 2020 at 5:47 p.m. he was contacted by Captain Ignazio Mitolo who informed him that [REDACTED] was at WPD seeking to get a TRO against Rodriguez. Again, referring to T-4, White testified that when he reported for his shift on November 1, 2020, he learned from Lieutenant Rollings that [REDACTED] had called WPD to report that on the previous evening (early November 1, 2020) she was at Pier 115 in Edgewater when she saw Rodriguez arrive at that location. She stated that she called the Edgewater Police Department to report that a TRO had been entered against Rodriguez and that Rodriguez was present at Pier 115. T-4 contains confirmation that [REDACTED] did indeed call



Edgewater Police Department at 1:14 a.m. on November 1, 2020. White testified from T-4 stating that at 1:14 a.m. [REDACTED] spoke with Edgewater Police Department Dispatcher Jose Ampudia. She told him that she was at Pier 115; that Rodriguez had been served with a TRO; that Rodriguez arrived at Pier 115; and that she and Rodriguez saw each other at that location. At 1:14 a.m., [REDACTED] told Ampudia that she was leaving Pier 115 and that Rodriguez was still there.

White testified, using T-10, that when WPD coordinated with NBPD, WPD learned that NBPD had responded on three occasions to the Rodriguez [REDACTED] residence in March and September, 2020 due to verbal disputes. He noted that Rodriguez had not reported any of these incidents.

White testified that a police officer has an obligation to report any incidents of domestic violence that he or she is directly involved in to his or her immediate supervisor. He testified that Rodriguez failed to abide by this regulation when he did not report the two incidents in March, 2020 and September, 2020 involving [REDACTED] and when he failed to report the November, 2020 (Aruba) incident involving [REDACTED]. White explained that the rationale behind this regulation is to take non-punitive measures to rectify the officer's behavior and thus avoid future incidents.

White testified that [REDACTED] reported to the WPD that she made a report telling the NBPD that she was awakened at home by members of the North Bergen Police Department (NBPD) who had gone to her residence at approximately 4:00 a.m. to perform a welfare check. White testified that [REDACTED] told WPD that NBPD officers told her that the reason for the welfare check was the NBPD's receipt of an anonymous phone call from a man identifying himself only as a "neighbor" in her building. The caller reported to NBPD that an upstairs neighbor, a woman named [REDACTED], who occupied Apartment Ten, was intoxicated, had just returned home and had stumbled up the stairs to her apartment. The caller reported that [REDACTED] had left her two daughters alone, whose names he did not know. The caller also stated that [REDACTED] does this every night and he was concerned for the children's safety. White testified that when the audiotape of the anonymous phone

call was played for her, [REDACTED] identified the voice as that of Rodriguez. White added that he too was familiar with Rodriguez's voice and he identified the caller as Rodriguez. White testified that it was determined that the allegations made by the caller against [REDACTED] were all false.

White testified that, after receiving use immunity, Rodriguez admitted (T-14) to the investigators at the Hudson County Prosecutor's Office on August 17, 2021 that he was the caller whose voice was on the audiotape. White commented that Rodriguez's call to the NBPD was a violation of the TRO's prohibition against making or causing anyone else to make any harassing communications to [REDACTED]. He added that the charges against Rodriguez come under the umbrella of domestic violence (T-12), which refers to N.J.S.A. 2C:25-17 et seq., the Prevention of Domestic Violence Act of 1991. White also commented that in addition to harassing [REDACTED] in the middle of the night, the making of a false report wasted police resources.

White testified about sick leave policy and referred to the applicable section of the WPD's Rules and Regulations. (T-15) He noted that when an officer is out on sick leave he is to remain in his residence unless he receives permission to go out for medical treatment. He is also required to provide contact information to verify his whereabouts while out of his home. Upon his return from medical treatment, he is required to call the WPD and report that he is home. White testified that Rodriguez called-out sick on November 4, 5, 6, and 7, 2020. Referring to T-4 and the WPD's CAD Reports (Computer Aided Dispatch Reports) he testified that Rodriguez did not call in to WPD to obtain permission to leave his house and did not provide information about his whereabouts. White testified that his investigation revealed that log-in data received from LA Fitness showed that Rodriguez was at the gym on November 4, 5, 6, and 7, 2020.

Referring to T-4, White noted that [REDACTED] reported to the WPD on November 6, 2020 that she saw Rodriguez at the LA Fitness gym on November 6, 2020 while she was there and that she saw him working out. [REDACTED] reported to WPD that shortly

after seeing Rodriguez at the LA Fitness gym she received various anonymous calls from various numbers after she left the gym.

At the end of T-4, White lists the crimes, disorderly persons offenses, and violations of the rules and regulations that he sustained. They are set forth as follows:

- (1) False Reports to Law Enforcement, N.J.S.A.2C:28-4a. White noted that Rodriguez called the NBPD and made a false report of [REDACTED] endangering the welfare of her children (accusing her of violating N.J.S.A. 2C:24-4) which he knew to be false. Rodriguez told NBPD that [REDACTED] left her children alone all day and stated that she was intoxicated when she arrived home.
- (2) Violation of a Temporary Restraining Order (N.J.S.A. 2C:29-9). White noted that he did not have enough evidence to find that Rodriguez violated the TRO by being at Pier 115, but he did find that Rodriguez violated the TRO by a false report to NBPD and thereby used the NBPD to harass [REDACTED]
- (3) Harassment (N.J.S.A. 2C:33-4a). White noted that Rodriguez's false report to NBPD caused them to conduct a welfare check at 3:52 a.m. waking [REDACTED] from her sleep and causing her annoyance and alarm.
- (4) Violation of WPD Sick Leave Policy (R&R 5.1.6, Abuse of Sick Leave). White noted that Rodriguez took sick leave when he was not sick; that he failed to give proper notice and receive permission to leave his house for medical care; and that when he left his house he went to the gym.
- (5) Officers to Conduct themselves in accordance with high ethical standards (R&R 3.1.6). White noted that violations of the above four Rules, also violated this Rule.
- (6) Action Off Duty (R&R 4.1.2) White noted that Rodriguez was required to enforce the law, not break it.
- (7) Obedience to all Laws and Rules (R&R 4.1.3). White noted that Rodriguez violated numerous laws of New Jersey and R&R of the WPD.

- (8) Withholding Information (R&R 4.1.4). White noted that Rodriguez was obligated, under the Attorney General's General Guidelines, to notify the WPD that he was involved in numerous domestic violence incidents in North Bergen.
- (9) Truthfulness (R&R 4.12.6). White noted that Rodriguez was not truthful when he reported a crime to which he had no direct knowledge, i.e., making a false report on October 9, 2020.
- (10) Officers subject to Disciplinary Action for violations of laws and Rules. (R&R 6.1.1). White noted that Rodriguez committed numerous crimes and offenses for which he is subject to discipline.
- (11) Repeated Violations (R&R 6.1.2) White noted that Rodriguez committed numerous crimes and offenses in violation of the laws of New Jersey and the R&R of the WPD. During his testimony he noted that Rodriguez violated the Sick Leave Policy on four workdays in a row.

The following is White's testimony concerning [REDACTED]. White testified that [REDACTED] moved to Orlando, Florida sometime after the end of her relationship with Rodriguez. Sergeant Lenczuk, an investigator from the HCPO, arranged for [REDACTED] to be interviewed (T-23) by the Orlando Police Department on April 21, 2021 and he provided WPD's Internal Affairs Unit with a copy of the videotape of her interview. This interview was played during the Direct Examination of White. White basically let [REDACTED] recorded testimony speak for itself.

White's testimony about the events of December 25-26, 2020 (Christmas Night at [REDACTED]) consisted of his identification of T-4, T-11, T-12, T-17, which, among other things, contains a summary of the August 17, 2021 Interview of Rodriguez at the HCPO (T-22). It also consists of his review of the videos (T-24) taken by the security camera system at that location. (White noted that during the investigation the HCPO went to [REDACTED] and retrieved 100 to 120 security camera videos.) Regarding the security camera videos, he spent time detailing the footage depicting Rodriguez throwing a bag containing [REDACTED] clothing (stating that he did not merely

place the bag onto the surface of the back yard); footage depicting Rodriguez throwing [REDACTED] cell phone to the ground; footage of Rodriguez coming out of the basement door during which the door struck [REDACTED] causing her to cry out; Rodriguez forcefully grabbing [REDACTED] and pulling her back into the house, during which [REDACTED] makes an audible grunt; Rodriguez loudly yelling (and using expletives) at [REDACTED] to "Get out!", "Get the fuck out!" and "Leave!" the premises; and Rodriguez loudly telling Brandon Fontanez and Gabrielle Melillo to get [REDACTED] out of the house. Several other videos depict conversations and events that occurred inside the residence.

White testified that when the TRO was issued against Rodriguez by Judge Boylan, he had to surrender his weapons and thus could not perform the road duties of a police officer. He was therefore placed on modified duty and given administrative duties. White testified that after the events of December 25, 2020, a second TRO was issued and the HCPO launched an investigation of allegations (one of which was for Aggravated Assault). At this point in time, according to White, Jeffrey Wells, the Director of Public Safety for Weehawken Township determined that he had no choice but to suspend Esteban Rodriguez from employment with the WPD. See T-17, PNDA dated December 29, 2020. White testified that both TROs (the one filed by [REDACTED] on December 26, 2020 and the one filed by Rodriguez on December 26, 2020) were eventually dismissed, but this had "relatively no impact" on his investigation, because it is required that investigations continue to proceed.

White made other points during his testimony. Among these were the following. Before Judge Boylan, Rodriguez claimed that he inadvertently dialed his aunt's telephone number and that the phone recorded an argument in progress at Columbia Terrace. The aunt told Brandon Fontanez about the phone message prompting Fontanez to go to [REDACTED]. White expressed skepticism about how Rodriguez could inadvertently dial his aunt's telephone number without actually dialing it. White questioned the connection between this inadvertent dialing and the arrival of Fontanez at [REDACTED]. White noted that Melillo stated that Rodriguez called Fontanez *directly* before she and Fontanez drove to [REDACTED]. Also, White testified that when

Rodriguez was asked to provide information about his location during the Pier 115 event, Rodriguez provided an Instagram conversation that he had with a bouncer at the Pier 115 bar where he had made reservations. When damage was done to [REDACTED] car at LA Fitness, Rodriguez submitted a 3:52 p.m. text message with Brandon Fontanez showing his location in Rochelle Park. White obtained log-in records from LA Fitness that indicated that Rodriguez was at LA Fitness at 2:00 p.m., which was apparently before the car was damaged, However, the 2:00 p.m. time reference was in Pacific Time, meaning that Rodriguez was actually at the gym at 5:00 p.m. Eastern time.

T-5 is White's Internal Affairs Investigation Report dated December 27, 2021. In it, he summarizes events and his investigation arising out of the December 25, 2020 incidents at [REDACTED] and the ensuing TRO's issued at the behest of [REDACTED] and of Rodriguez. In regard to December 25-26, 2020, White testified that during his investigation he viewed 100 to 110 videos from [REDACTED] to determine what charges could or could not be sustained. T-5 also contains summaries of previous events arising out of events surrounding the Rodriguez-[REDACTED] incidents. At the end of T-5, White lists the crimes, disorderly persons offenses, and violations of the rules and regulations that he sustained. They are set forth as follows:

- (1) Criminal Mischief, N.J.S.A. 2C:17-3, a crime of the 4<sup>th</sup> degree or a disorderly person's offense depending on the value of [REDACTED] phone. White noted that Rodriguez admitted during his Internal Affairs Interview that he threw [REDACTED] phone causing damage.
- (2) Simple Assault, N.J.S.A. 2C:12-1a, where the people are in a domestic (dating) relationship. White noted that Rodriguez admitted that he pushed [REDACTED] several times with increasing force.
- (3) R&R 5.3.1: Police personnel are to conduct themselves with high ethical standards, on and off-duty. White noted that the above two sustained charges violate this provision of the WPD's Rules and Regulations.
- (4) R&R 4.1.2: Action Off Duty: While off-duty police officers shall take appropriate action as needed in any police matter that comes to their attention within their jurisdiction as authorized by New Jersey law and department policy. White

noted that Rodriguez clearly violated several laws and Rules and Regulations of the WPD.

- (5) R&R 4.1.4: Withholding Information: Employees shall report any information concerning suspected criminal activity of others. White notes that Rodriguez was involved in one or more domestic violence situations and should have notified the WPD.
- (6) R&R 4.12.6: Truthfulness: Employees are required to be truthful at all times whether under oath or not. White noted that Rodriguez was not truthful when he spoke to Judge Boylan and changed his story several times. Rodriguez also stated during his HCPO Interview that he never put his hands on a woman. However, the video evidence clearly contradicts his statement.
- (7) R&R 6.1.1: Disciplinary Action: Employees, regardless of rank, shall be subject to disciplinary action, according to the nature or aggravation of the offense, for: (a) committing an offense punishable under the laws or statutes of the United States, the State of New Jersey, or Municipal Ordinances. White noted that his investigation revealed that Rodriguez had broken several laws during the aforesaid incidents.
- (8) R&R 6.1.2: Repeated Violations: Repeated violations of the Rules of Conduct shall be indicative of the employee's disregard for their duty and may be cause for dismissal. White wrote that the incidents under consideration showed a third incident of domestic violence and the second incident involved violations of numerous crimes and violations of the WPD's Rules and Regulations.

White testified that when the FNDA was issued on January 13, 2022, Rodriguez's weapons were still confiscated. He concluded that an officer who is not approved to carry a weapon is thereby unable to perform his duties as a police officer pursuant to N.J.A.C. 4A:2-2.3(a)(3).

Attorney Cioffi Cross-Examined Deputy Chief White on many matters, the most significant of which are as follows.

Under Cross-Examination, Deputy Chief White, admitted that he did not think he had enough evidence to establish that Rodriguez was responsible for the damage to [REDACTED] car on October 31, 2020.

Under questioning pertaining to the why the December 29, 2020 PNDA (T-17) was amended, White responded that the October 29, 2021 PNDA (P-1) simply provided more details about the charges. Questioning continued about the fact that there were two sets of charges (one pertaining to those involving allegations brought by [REDACTED] and the other pertaining to those involving allegations brought by [REDACTED]). White was able to separate and account for why he sustained charges in each set of allegations.

In regard to the October 9, 2020 bedroom incident between Rodriguez and [REDACTED], Attorney Cioffi examined Rodriguez's position in the room relative to [REDACTED] and the doorway seeking to cast doubt upon [REDACTED] and White's conclusion that Rodriguez was trying to block the doorway and thus prevent [REDACTED] from leaving the room. White's response was that the video speaks for itself and that in his judgment Rodriguez placed himself in a position that effectively prevented [REDACTED] from leaving, thus unlawfully imprisoning her. White stated that in his perception of the event as recorded on the video, [REDACTED] left the room only after she managed to "squeeze past" Rodriguez. Cioffi tried to demonstrate that the video did not show that [REDACTED] "squeezed past" Rodriguez. However, the Tribunal notes that what the video does show is that after [REDACTED] asked Rodriguez many times to move out of the way and after repeating (while recording) her statement, "You are preventing me from leaving", Rodriguez moved aside slightly and [REDACTED] took that opportunity to leave the room. White also admitted under cross-examination that he saw no physical contact between Rodriguez and [REDACTED] in the October 9, 2020 video. In answer to questions put to him about whether Rodriguez was threatening [REDACTED] or warning her not to drive drunk, White responded that the recording only contained a "guaranteed" threat of arrest and the placement of the children into foster care, which threat was carried-out on November 1, 2020 when Rodriguez called NBPD.



In regard to his testimony about both Rodriguez and Fontanez being at Pier 115 on the evening of October 31, 2020 after Rodriguez was served with the TRO, White pointed out several differences in the statements of the various witnesses. He admitted under cross-examination that he did not think he had enough evidence to find that Rodriguez knew in advance that [REDACTED] would be at Pier 115 that evening and he did not think he had enough evidence that Rodriguez, by being present at Pier 115, did anything at that particular location that violated Judge Boylan's 10/15/20 TRO. However, White reiterated that he did in fact find that Rodriguez violated the TRO later that night when he made a phone call to NBPD to make a false report about [REDACTED], which was meant to use the NBPD to harass her.

In regard to White's testimony about Rodriguez abusing sick leave, Attorney Cioffi pointed-out and White agreed that Rodriguez made it clear to Captain Mitolo when he was served with the TRO on October 31<sup>st</sup> that he would be out sick for his next tour of duty on November 4<sup>th</sup>. There was some discussion of the definitions of sick leave and RFD time. In his cross-examination, Cioffi was attempting to establish that when Rodriguez told Mitolo that he would be taking sick leave for personal reasons (i.e., to consult with his lawyer), the WPD, through Mitolo, was tacitly approving Rodriguez's use of sick leave. White responded that sick leave is only to be used when an employee is sick; that Rodriguez was not sick; and therefore, Rodriguez took sick leave when he was not entitled to take sick leave. White added that the proper course for Rodriguez to take would have been to request vacation time when he needed time off for personal reasons.

White testified that the various videos showed Rodriguez throwing [REDACTED] personal property out the back door and into the back yard of [REDACTED]. Using one video where it appears that Rodriguez placed a bag outside the door, Attorney Cioffi attempted to make White back off from his assertion that Rodriguez threw the items. However, White re-affirmed that what appears on several videos clearly shows that Rodriguez did not simply place the items into the back yard, but actually tossed or threw them. White admitted that in one other video where a bag is seen flying out the back door, the video does not show who threw it.

On cross-examination White conceded that both [REDACTED] TRO and [REDACTED] TRO against Rodriguez were both eventually dismissed. White saw this as insignificant because, in his experience, most TROs are not followed by Permanent Restraining Orders.

The only other cross-examination of significance was Attorney Cioffi's questioning of White about the fact that the WPD placed Rodriguez on modified duty instead of suspending him without pay from the time of the first PNDA. White basically responded that although the making of a false report was an egregious offense, it was in the WPD's discretion to allow Rodriguez to work on administrative tasks while the investigation was ongoing. Cioffi also questioned White about the fact that the WPD placed Rodriguez on modified duty because the TRO disarmed him. Why then, if the WPD thought Rodriguez was unable to perform his duties as a police officer, has the WPD not yet ordered Rodriguez to undergo a Fitness for Duty Exam? (Note: Both sides agree that this would only be relevant if Rodriguez wins this appeal.) White basically responded that the Fitness for Duty Exam was a moot point. He stated that the real question was why Rodriguez has not yet initiated the process for him to be re-armed. White noted that a Fitness for Duty Exam was irrelevant because even if Rodriguez passed a Fitness for Duty Exam, he could not be re-armed and returned to road duty until the specific re-arming process was undertaken, completed, and approved. White added that although the guns were returned to Rodriguez, he could possess them, but he could not carry a gun until he was officially re-armed.

White was also questioned about whether he did or did not actually counsel Rodriguez about his involvement in domestic violence (at the time of the incidents with [REDACTED]) and about the resources available to officers who become involved in such matters. White admitted that his report does not go into much detail. He recalled that he discussed domestic violence with Rodriguez. (This part of the cross-examination was not significant because it is clear that all WPD officers receive periodic training on the topic of domestic violence.)

Re-Direct and Re-Cross did not produce any significant development of White's testimony.

Testimony of [REDACTED] – May 5, 2022

[REDACTED] in-court testimony was generally consistent with the testimony she gave to the interviewers in Orlando, Florida.

On the topic of the Aruba trip in November, 2020, [REDACTED] confirmed that she and Rodriguez argued during the trip. She stated that at one point he grabbed and twisted her arm; that she responded by slapping his face; and that he responded by pushing her up against a wall. She recalled that Rodriguez told one of the other people in their travelling party, a man named Gabe, that he "could beat the shit out of her, and get away with it, because they were in another country".

On the topic of October 31, 2020, she testified that she and Rodriguez went to LA Fitness at around 11:30 a.m. or Noon. They left the gym at 12:30 p.m. or 1:00 p.m. and went to her father's house in Rochelle Park arriving around 1:30 p.m. or 2:00 p.m. [REDACTED] testified that they left her father's house at around 2:30 p.m. and went to [REDACTED] where Rodriguez's mother (Blanca Fulcher) and stepfather (Jeffrey Fulcher) lived and where Rodriguez occupied the basement apartment. Later, they went to a bar at around 10:00 p.m. While there, Rodriguez received a phone call from his mother telling him to come home because the WPD was coming to the house to serve him with a TRO relating to [REDACTED]. [REDACTED] said that Rodriguez became angry, cursing [REDACTED] for filing for the TRO. Blanca Fulcher was present when the WPD officers served the TRO. [REDACTED] commented that Blanca Fulcher disliked [REDACTED], but that she was always sweet to her and was glad that [REDACTED] had come into her son's life.

After the TRO was served, [REDACTED] recalled Rodriguez saying that [REDACTED] allegations were untrue. She testified that Rodriguez had previously made plans to go to a bar called Pier 115 in Edgewater, NJ to celebrate Halloween with his cousin, Brandon Fontanez, his girlfriend, and Mr. and Mrs. Fontanez. [REDACTED] stated that at around 11:00 p.m., Rodriguez drove her and her friend Victoria to Pier 115. [REDACTED] testified that while they were on their way to Pier 115, Rodriguez received a phone call from Brandon Fontanez telling him that [REDACTED] was at Pier 115. [REDACTED] testified that despite the issuance of the TRO, they decided to go to Pier 15 anyway. [REDACTED] testified that a bouncer approached Rodriguez about [REDACTED] presence and stated "as long as you don't talk to her or bother her, then we (Pier 115) don't have any issues." [REDACTED] testified that Brandon Fontanez stated that [REDACTED] had walked past their table before Rodriguez's arrival. [REDACTED] testified that while the Rodriguez party was there [REDACTED] walked past their table two to three times. [REDACTED] stated that she did not see [REDACTED] leave. [REDACTED] testified that her party left Pier 115 sometime between 1:30 and 2:00 a.m. and then went to Mr. and Mrs. Fontanez's residence to continue socializing. She, Victoria and Rodriguez left the Fontanez residence and arrived at [REDACTED] at after 3:00 a.m. Victoria immediately went home and [REDACTED] went to sleep twenty minutes later. She knew nothing about Rodriguez's phone call to the NBPD.

[REDACTED] testified about Christmas (December 25 into 26, 2020). [REDACTED] testified that the relationship between herself and Rodriguez had turned "toxic" since their November Aruba trip. They were bickering and she noted that they had not had sex since three or four days before Christmas. When she left work at the end of her shift on the morning of December 25<sup>th</sup>, she called Blanca Fulcher seeking to come over and awaken Rodriguez.

Blanca had invited both [REDACTED] and her mother to the Fulchers' Christmas party a day or two before. [REDACTED] arrived, chatted with Blanca, and then went downstairs to awaken Rodriguez. They lay in bed and then arose to begin the day. Rodriguez gave [REDACTED] a bracelet for Christmas. They then went to [REDACTED] father's house to

exchange presents. Afterwards, they were returning to [REDACTED], when [REDACTED] received an Instagram message from a woman named Lindita, who asked [REDACTED] if she were dating Rodriguez. According to [REDACTED], as they continued their messaging, she and Lindita realized that Rodriguez was dating both of them, which upset [REDACTED]. When she showed Lindita's messages to Rodriguez, and knowing his reputation for cheating, [REDACTED] confronted Rodriguez about Lindita. Rodriguez said that she was just a girl he had met and he denied that he was having an affair with her. Applegate continued to exchange messages with Lindita throughout Christmas Day and wanted to work things out with Rodriguez. [REDACTED] testified that Rodriguez was annoyed that [REDACTED] was accusing him about Lindita and he did not want her to make a scene in front of his relatives. As the party ended, [REDACTED] said she did not go home with her mother. Blanca offered to drive her home. Rodriguez told her that she could not stay overnight. [REDACTED] testified that she took a nap; arose and spoke with Blanca and Rodriguez and then retired for the night. [REDACTED] recounted how Rodriguez awakened her by "ripping" the blankets off her and insisting that [REDACTED] leave the premises. She testified that she explained to him that she could not leave because she had been drinking, she was tired, and she wanted to discuss their relationship in the morning. She testified that she walked away from Rodriguez to give him time to calm down, but as she was on the carpeted steps between the basement and the main floor, Rodriguez grabbed her and sexually assaulted her. She testified that he penetrated her, but did not ejaculate. She testified that he was rough with her and banged her head on a nearby washer machine and choked her. She testified that she suffered bruises and scratches on her neck, back, and side as well as scratches and a cut on her lip as depicted in photographs (T-25). She broke free and went outside wearing only a sweater. [REDACTED] testified that thereafter Rodriguez went outside into the backyard and started to scream loudly at her "Get the fuck out of my house!" and to otherwise leave the premises. He also threw her clothes and other possessions into the backyard. Somewhere, during this commotion, [REDACTED] said Rodriguez threw and smashed her cell phone and she threw his cell phone over the neighbor's fence. [REDACTED] testified that she had been able to re-enter the house to get her clothing. While in the house, Rodriguez screamed at her and his family members became involved. During the commotion, Brandon Fontanez and his girlfriend

Gabrielle Melillo arrived. She testified that Fontanez offered to take her home. She left the premises in Fontanez's car, but decided to go instead to the EMT Squad building where she sought aid from fellow Squad members before reporting Rodriguez's actions to the WPD. She testified that she thereafter went to Christ Hospital for evaluation and treatment for assault, including use of a rape kit.

During Cross-Examination, Attorney Cioffi began by questioning [REDACTED] about her relationship with Rodriguez. She testified that she knew about his relationship with [REDACTED], the break-up of same, and the development of their own relationship. She answered questions about the Aruba trip. None of this provided significant material for the Tribunal to consider.

The cross-examination then shifted to the events of December 25-26, 2020. [REDACTED] repeated information she supplied during the Orlando interview and during her direct testimony. Attorney Cioffi probed for inconsistencies in [REDACTED] testimony asking her why she didn't call a taxicab if she were feeling too tired or drunk to drive. Her responses were basically that she wanted to work things out with Rodriguez in the morning. Attorney Cioffi tried to downplay the 9:52 p.m. video, in which Rodriguez grabbed and pulled [REDACTED] back into the house, by insinuating that if she had truly been roughly treated she would have left the premises at that time. This line of questioning did nothing to advance Rodriguez's position that the act of pulling [REDACTED] back into the house was some kind of innocent "horseplay" (as asserted later by Rodriguez and by Jeffrey Fulcher). Other questions seemed to focus on the fact that [REDACTED] chose to overstay her welcome at the Fulcher residence, even when Rodriguez made it clear that she should leave. [REDACTED] did not have a direct answer to this line of questioning. Instead, she recounted how she went to sleep because she was tired, she had been drinking, and she desired to work things out with Rodriguez in the morning.

[REDACTED] was cross-examined about the details of the alleged sexual assault. Attorney Cioffi sought to establish that the sex act took place on Rodriguez's bed and was consensual. [REDACTED] responded that she was on the stairs, not the bed, when

Rodriguez forced himself upon her. [REDACTED] denied that the sex act was consensual, and denied that Rodriguez stopped it because [REDACTED] said, "Fuck me like you fucked that bitch."

Other questions on cross-examination explored what [REDACTED] remembered from the period after the alleged sexual assault. Using the videos as a time reference, Attorney Cioffi established through questioning that if the sexual assault occurred, it would have to have taken place sometime after the 9:52 video (showing Rodriguez pulling [REDACTED] back into the house) but before the 11:38 p.m. video (showing [REDACTED] trying to re-enter the house from the back yard after being told to leave by Rodriguez). When questioned about what she was doing during that 106-minute span of time, [REDACTED] seemed confused and was not able to give detailed answers.

Testimony of [REDACTED] – May 11, 2022

[REDACTED] in-court testimony was generally consistent with the testimony she gave to the investigators at the WPD as shown in T-4.

On the topic of the relationship between [REDACTED] and Rodriguez, [REDACTED] acknowledged that when she started dating Rodriguez she knew that he was in a relationship with [REDACTED]. After Rodriguez and [REDACTED] ended their relationship, he moved into [REDACTED] condominium (referred to as the apartment), where she lived with her two daughters. After she learned that Rodriguez was seeing [REDACTED], [REDACTED] testified that she and Rodriguez started arguing about his cheating. [REDACTED] admitted on cross-examination that although Rodriguez did not physically strike her, he did break glass and punched the walls making a hole in the wall on one occasion. However, she added that on at least one occasion he grabbed her and squeezed her so that she could not leave.

Police officers (North Bergen Police Department) responded to the apartment on at least three occasions, twice in March, 2020 and once in September, 2020, when one

of the daughters went to a neighbor resulting in a call to the NBPD. [REDACTED] testified that when they argued, Rodriguez physically blocked her from leaving the apartment. On one occasion, she tried to open the door to the cage of Rodriguez's dog and in the process accidentally scratched Rodriguez. [REDACTED] testified that during this argument Rodriguez pushed her, but when the NBPD arrived, they told her that although she claimed she was pushed, the scratch indicated that she was the aggressor and so she could be arrested as the aggressor. All three police calls were reported by NBPD as verbal disputes, not as domestic violence.

[REDACTED] testified that on the night of October 9, 2020 Rodriguez was out late and returned to the apartment at 1:30 a.m. After he was asleep, about 2:00 a.m., [REDACTED] discovered messages on his Apple Watch which showed that he was socializing that evening with [REDACTED]. She testified that she thereupon calmly awakened Rodriguez to tell him that she found the messages and wanted to end their relationship peacefully. (On cross-examination she admitted that she and Rodriguez spoke for 5 to 10 minutes before she started recording their conversation with her cell phone. The recording runs 6:51 in length and was marked as T-9.) She testified on direct examination that she told him that she was leaving with her daughters and did not want them to hear any more arguments or abuse. [REDACTED] testified that Rodriguez's response was to block her from leaving the bedroom, a tactic he had employed on prior occasions, and that he threatened to have her arrested and to have her children placed in foster care. [REDACTED] testified that she felt scared because he was preventing her from leaving with her children.

[REDACTED] testified that she and Rodriguez leased two BMW automobiles and that after they ended their relationship, they agreed on a plan for paying for the cars that they respectively drove. However, [REDACTED] testified that Rodriguez reneged on the agreement and did not pay for the BMW-M3. Rodriguez agreed to leave the car for [REDACTED] at the WPD. With the assistance of the WPD, [REDACTED] picked-up the BMW-M3 on the evening of October 30, 2020. It showed no damage. She planned to return the other car, a BMW SUV, to the dealer. [REDACTED] testified that on October 31, 2020



she drove the BMW-M3 to the LA Fitness gym in Secaucus. Between the time that she parked the car (3:00 p.m.) and the time when she left the gym (3:45 p.m.), someone caused body damage to the car by kicking the doors. (See T-8) She reported the incident to the Secaucus Police Department and she also filed a report with the WPD. She suspected that Rodriguez caused the damage because of their break-up and because she knew that Rodriguez could, using an app, track the location of the car. [REDACTED] testified that on October 31, 2020, after the incident, she learned from a friend, who was a BMW sales representative, that the BMW service department had received a call from Rodriguez during which he stated that the car would be coming in with damage.

[REDACTED] testified that because of the damage to the car and knowing from past incidents that Rodriguez broke things when he was angry, she became fearful for her safety and the safety of her daughters. She therefore decided to seek a Temporary Restraining Order against Rodriguez. She went to the WPD to file for the TRO. Judge Boylan issued it on October 31<sup>st</sup>. It was served a few minutes before midnight on October 31<sup>st</sup>. She testified that Lieutenant Saldarriaga called her on her phone close to midnight on October 31, after she arrived with one of her friends at Pier 115, a bar in Edgewater, NJ.

[REDACTED] testified that she arrived at Pier 115 at between 11:30 p.m. and midnight on October 31, 2020. As she was at the bar at 12:30 a.m. on November 1, 2020, she noticed Rodriguez [REDACTED] and other family members arrive at Pier 115. She testified that she and Rodriguez made direct eye contact as he walked to his table. She testified that about fifteen minutes later, around 12:45 a.m., she spoke to a bouncer and informed him that the TRO had just been served on Rodriguez and he was now at Pier 115. She stated that the bouncer returned to her after he spoke with Rodriguez and told her that Rodriguez told him that he was not going to do anything and that he was not going to leave Pier 115. [REDACTED] testified that based on her conversation with the bouncer, she decided to go home and she left Pier 115 at 1:00 a.m. She arrived home at 1:15 a.m. and went to sleep.

██████████ testified that she was awakened from her sleep at approximately 4:30 a.m. by the NBPD. The officers told her that they were at her apartment to do a welfare check because there had been an anonymous phone call advising NBPD that she was intoxicated and that she had left her children home alone. ██████████ testified that she showed the police officers that her children were not home and were with their father, and that they could see that she was not intoxicated. She testified that in the course of her conversation with the police officers she stated that she suspected that the call was made by Rodriguez and they then told her that it was Rodriguez who made the call. ██████████ testified that a few hours later she went to the NBPD to make a report. NBPD played the audiotape of the call and she confirmed that it was Rodriguez's voice. She then filed a Harassment charge against Rodriguez.

On cross-examination by Attorney Cioffi, ██████████ stated that on October 9, 2020 she and Rodriguez spoke for 5 to 10 minutes before she started recording with her phone. She admitted that Rodriguez did not actually state that she could not leave, but she also said that he was blocking the doorway as he had done in the past. She also admitted that there came a time when he moved out of the way so that she was able to leave the bedroom.

Turning to the TRO, ██████████ agreed with Attorney Cioffi that the TRO did not contain a provision prohibiting Rodriguez from coming within a specified distance of her.

Turning to Pier 115, ██████████ acknowledged on cross-examination that she had no knowledge that Rodriguez would be there on the evening of October 31 – November 1, 2020. She also acknowledged that at the Departmental Hearing she did not mention having a conversation with a bouncer at Pier 115.

Turning to the November 9, 2020 hearing before Judge D'Elia, ██████████ acknowledged on cross-examination that although she played the October 9, 2020 video in court, she did not present any photos of the damage to her car, nor did she play the audio of Rodriguez's call to the NBPD.

Re-Direct and Re-Cross did not produce any significant development of [REDACTED] testimony.

**Testimony of Brandon Fontanez, May 12 and 13, 2022**

At the outset of this summary of Brandon Fontanez's direct testimony, it is worth stating something that was established during the course of cross-examination. Mr. Corrigan asked Fontanez if he met with Attorney Cioffi and Esteban Rodriguez in preparation for his testimony. Fontanez responded in the affirmative stating that he met with them on May 10, 2020 to discuss the questions he would be asked at the hearing about two incidents: the events of the evening of October 31 into November 1, 2020 at Pier 115 in Edgewater and the events of the evening of December 25 into 26, 2020 at [REDACTED] in Weehawken.

On direct examination, Brandon Fontanez described his relationship with his cousin, Esteban Rodriguez, as being very close and akin to brotherhood. He testified that they spoke almost daily. His testimony revealed that he knew Rodriguez's girlfriends and was always aware of Rodriguez's overlapping romantic involvements with Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and Ms. Lindita. He testified that he met [REDACTED] when she was dating and later living with Rodriguez and that he would socialize with them once or twice per week during that time period.

Much of what Fontanez testified about was irrelevant to the charges pending against Rodriguez. He spent a great deal of time testifying about the faults of the women referred to herein as Victim #2 and Victim #3. Fontanez did confirm that there were several verbal arguments between Rodriguez and [REDACTED] which occurred in 2019 (an argument about Rodriguez's dog), and three incidents when the NBPD came to the apartment (twice in March, 2020 and once in September, 2020). Fontanez testified that Rodriguez was not an angry person and generally was calm, cool and collected for the most part. He described Rodriguez as being not prone to angry outbursts any more than

"the average bear". Interestingly, he was not asked any questions that would challenge [REDACTED] earlier assertions that when Rodriguez became angry he would often yell, punch walls, or block her movements. Although he knew [REDACTED] daughters, and asserted that he was concerned with their welfare, he offered no testimony about the fact that they were exposed to arguments between Rodriguez and [REDACTED]. He was not asked any questions to rebut [REDACTED] testimony that one of her daughters, while Rodriguez was angry and yelling, ran to ask neighbors to call the police.

Fontanez testified, without presenting details, that [REDACTED] told him on several occasions that she was leaving the girls (ages 12 and 8) home alone. Fontanez testified that he, at times, on his own initiative picked the girls up at their home because he was concerned that they were too young to be left alone. He stated that he did not see any babysitters or relatives stay with the girls. He testified that several times, as he left the apartment with [REDACTED] and Rodriguez to go to dinner, he asked them if the girls were going to be left alone and was told that the girls would remain home alone. When asked if he ever expressed any concern to Rodriguez himself about such young children being left alone, Fontanez gave vague, evasive answers. This Judge, in order to get the witness's cooperation interceded, noting that Rodriguez, as a police officer, would be tasked with the general welfare of people, especially children. Fontanez agreed that this was so. This Judge then asked Fontanez if Rodriguez ever took affirmative steps to make sure that the girls would not be left alone. Fontanez responded simply that Rodriguez told him that he made a phone call to the Town. At this point in the testimony, this Judge told Fontanez to tell the Tribunal everything he knew about this phone call. Fontanez responded by testifying that he recalled that on one occasion in late 2019 or early 2020 Rodriguez told him that he called the Town or the Police Department about [REDACTED] leaving the girls alone, but Fontanez was completely unable to provide the Tribunal with any information about who Rodriguez spoke to, when he spoke to them, or what action the Town or Police Department ever took in response to Rodriguez's telephone call. This Judge pressed Fontanez for more information by asking whether he ever learned if the Town ever did anything about the fact that the [REDACTED] girls were being left alone. His response was that he did not know the answer and, upon further questioning by the

Tribunal, he testified that he did not make any further inquiry with Rodriguez about the subject. When asked why he, on the one hand was concerned enough to ask Rodriguez and [REDACTED] about leaving the girls alone, and then, on the other hand was not concerned enough to inquire about whether anyone was doing anything on the girls' behalf, Fontanez responded that he was "comfortable" with the fact that Rodriguez had made a phone call.

Turning to the topic of the evening of October 31 – November 1, 2020, Fontanez testified that he, his girlfriend and his parents arrived at Pier 115 at about 11:30 p.m. At some point in time, he called Rodriguez just to find out where he was and when he would arrive at Pier 115.

Fontanez testified that Rodriguez, [REDACTED] and her friend Victoria arrived thirty to forty minutes after he called Rodriguez. [Tribunal's Note: It was established in T-4 that Rodriguez was served with the TRO at Columbia Terrace at 11:45 p.m. and that afterwards he had to surrender his weapons at the WPD and only then could he proceed to Pier 115.] Fontanez testified on direct examination that, while waiting for Rodriguez to arrive at Pier 115, he learned about the TRO from Rodriguez when Rodriguez called him while driving to Pier 115. He recalled that there was not much discussion about the TRO at Pier 115 or afterwards at the Fontanez residence. Fontanez testified that as their entire party sat at the table, he saw [REDACTED] pass by at a distance of five to ten feet away. He was not sure if Rodriguez saw her, so he immediately told Rodriguez that he had just seen [REDACTED]. Rodriguez reacted by saying to Fontanez that he had to leave and Rodriguez immediately tried to summon a waitress to get his bill. Fontanez testified that between the time that he first saw [REDACTED] and the second time that he saw [REDACTED], a bouncer came over to their table (at 12:30 to 12:45 a.m.) to say that [REDACTED] was at Pier 115 and he asked if there was going to be a problem. Fontanez testified that Rodriguez told the bouncer, "No, we're leaving anyway."

When asked about the issue of how long it took their party to leave Pier 115 after seeing [REDACTED], Fontanez first stated that it took about 30 minutes for them to get their

two bills. He then said it took only 15 minutes. And he then stated that it took only 5 to 10 minutes. Fontanez stated that in the interim, [REDACTED] passed their table two or three more times. Once the bills were paid the entire party left Pier 115 and went to the Fontanez residence in West New York to continue their socializing. According to Fontanez, the seven of them arrived at the Fontanez residence after 1:00 a.m., closer to 2:00 a.m. Fontanez testified that Rodriguez, [REDACTED] and Victoria stayed at the Fontanez residence for two hours and left between 3:00 and 4:00 a.m., closer to 4:00 a.m.

Turning to the topic of the evening of December 25 – 26, 2020, Fontanez testified that he was not invited to the Fulcher's Christmas party. He testified that the reason why he went to [REDACTED] was because his mother received a phone message from Rodriguez's cell phone with a recording of people yelling. Fontanez recognized the voices and reasoned that Rodriguez likely "butt dialed" (i.e., accidentally dialed) his mother's telephone number. Fontanez testified that he called Rodriguez, who told him that he wanted to get [REDACTED] out of the house. Fontanez could not recall if Rodriguez asked him to come to [REDACTED] or whether Fontanez decided on his own initiative to go there. (In T-4, on page 11, White noted that Gabriella Melilo said that when Mrs. Fontanez informed Brandon Fontanez about the phone message she received from Esteban Rodriguez, Brandon called Rodriguez and Rodriguez asked his cousin to come to [REDACTED].) Fontanez drove with his girlfriend (Gabrielle Melilo) to [REDACTED], arriving at 11:39 or 11:40 p.m. Upon arrival at [REDACTED], Fontanez found Rodriguez, shirtless, in the backyard. Rodriguez was upset and was trying to get [REDACTED] belongings and [REDACTED] herself out of the house. Rodriguez told Fontanez to go to the basement to get [REDACTED] out of the house. Fontanez testified that he went into the basement apartment and found his aunt, Blanca Fulcher there. He stated that [REDACTED] had locked herself in Rodriguez's bedroom and would not come out. A video taken at 11:47:36 shows [REDACTED] (wearing a sweatshirt and shorts) and Fontanez (wearing a white shirt and baseball cap) on the patio. A video taken at 11:50:31 shows Fontanez, Melilo, and [REDACTED] (and later Blanca Fulcher) on the patio-driveway area with Melilo and [REDACTED] walking towards Fontanez's car so he can drive her home

to Rochelle Park. He testified that she decided to get out of the car at the First Aide Squad building. He also testified that when he arrived back at [REDACTED] the police arrived and he took photos of red marks on Rodriguez's face. Subsequently, he accompanied Rodriguez to the WPD, where more photos were taken of Rodriguez and Rodriguez made a report of the night's incidents.

On cross-examination, Mr. Corrigan inquired further with Fontanez as to whether Rodriguez's call to the Town about the [REDACTED] children being left alone yielded any results. Fontanez had nothing to report.

In answer to a question about Rodriguez's November 1, 2020 call to the NBPD, Fontanez had no information because he did not discuss it with Rodriguez.

In regard to the videos played during Fontanez's direct testimony, Fontanez stated that [REDACTED] looked and sounded calm. He also admitted that Rodriguez looked and sounded angry and screamed.

Fontanez denied seeing any bruises or cuts on [REDACTED] and did not recall seeing blood on [REDACTED] lip.

On re-direct examination, Fontanez stated that he did not attempt to convince [REDACTED] not to report the events of the evening of December 25-26, 2020 in exchange for a new cell phone.

On re-cross-examination, Fontanez stated that he assumes that neighbors would have heard the commotion in the area outside Columbia on Christmas night.

Fontanez stated that Jeffrey and Blanca Fulchers' efforts to calm the situation did not take place outside, but only inside the house, particularly in the basement.

**Testimony of Blanca Fulcher - May 16 & 19, 2022**

For the sake of convenience, Blanca Fulcher will be referred to herein as "Blanca".

On direct examination, Blanca testified that she did not approve of her son's relationship with [REDACTED] because [REDACTED] is six years older than him and because she blamed [REDACTED] for causing her son to break his engagement with [REDACTED]. Blanca stated that her son's relationship with [REDACTED] lasted about a year and a half and that during that relationship he started to date [REDACTED]. She did not state much during her direct testimony about how the Rodriguez [REDACTED] relationship ended.

Turning to the evening of October 31, 2020, the only significant testimony Blanca had was to say that her son was surprised by the service of the TRO. She had no testimony to give about Pier 115 or about the anonymous phone call.

Turning to the events of December 25-26, 2020, Blanca stated that on December 23, 2020 she invited both [REDACTED] and her mother to her Christmas party. On December 24, 2020, she learned from her son that he did not want [REDACTED] at the house for Christmas because he wanted to break up with her. On December 25<sup>th</sup>, about 9:00 a.m. [REDACTED] showed up at her home seeking to wake up and spend time with her son. [REDACTED] went down to the basement at 9:00 a.m. and they did not come upstairs until 2:00 p.m. at which time they went to [REDACTED] father's house in Rochelle Park. They returned at 3:30 p.m. Blanca spent the day preparing for the Christmas party and the guests started arriving at about 3:30 p.m.

Blanca noted that [REDACTED] was upset and learned that she had received a text from a girl named Lindita. [REDACTED] suspected that Rodriguez was cheating on her with Lindita. Blanca testified that [REDACTED] was giving "dirty looks" to her son throughout the day and that they argued. At 9:00 p.m., [REDACTED] mother left the party to go home. [REDACTED] did not leave with her mother. Blanca learned that her son did not want



██████████ to stay with him at ██████████ overnight. She offered to drive ██████████ home, but ██████████ did not want to leave. Eventually, Blanca changed into her night clothes. By around 10:30 p.m. she figured that ██████████ was not going to go home. A short time later she heard commotion, an argument between ██████████ and her son. ██████████ accused Rodriguez of being a cheater and her son was trying to get ██████████ to leave the house. Rodriguez was putting ██████████ belongings outside and was screaming at ██████████ to get out of the house. A video shows that after she had left the house ██████████ re-admitted herself through the kitchen doorway and went downstairs to Rodriguez's apartment where Blanca was present with her son. Commotion continued and Blanca testified that she tried to get both ██████████ and her son to calm down. Blanca testified that her husband, Jeffrey, also tried to calm the situation. Blanca stated that her son then left the room to get away from ██████████. Sometime later, while she was alone with ██████████, ██████████ slapped her face. A few minutes later, her nephew Brandon Fontanez arrived and half an hour later he was able to get ██████████ to leave the house and he drove away with her. During the direct testimony, Attorney Cioffi showed several security camera videos (T-29) to Blanca. Using these videos, she identified people and locations depicted therein as she explained the evening's events.

During cross-examination, Attorney Corrigan asked Blanca Fulcher about whether and when she learned about her son's anonymous call to the NBPD on November 1, 2020. Blanca responded that she only learned about it after her son left North Bergen and moved back to ██████████. Blanca gratuitously added that she learned from her sister that ██████████ frequently left her young daughters alone. Corrigan seized upon this gratuitous testimony and asked more questions about this subject. Blanca testified during cross-examination that she did not like ██████████ because she manipulated her son while he was engaged to ██████████. She also indicated that while ██████████ and Rodriguez lived together, she had less contact with her son. ██████████ spoke more about learning from her sister about how ██████████ frequently left her very young daughters home alone. Blanca stated that it was not right for a mother to leave her children alone. Blanca testified that she thought about calling DYFS to report

██████████ but did not do so. Blanca made it clear that ██████████ and her son went out to dinner or to socialize, leaving the girls alone. However, she only placed fault on ██████████. She did not place any fault on her son for leaving the girls alone. Blanca testified that she did not discuss with her son that he and ██████████ were leaving the girls alone.

During his cross-examination of Blanca Fulcher, Attorney Corrigan used the security camera videos extensively.

Upon viewing the 9:52 p.m. video of Rodriguez pulling ██████████ back into the house, Blanca agreed that he was forcefully pulling her, but defended her son's action by saying that ██████████ was drunk and he did not want her to go outside. Blanca testified that between 9:52 p.m. and 10:20 p.m., she changed her clothes (i.e., took off her tights and red sweater and put on her pajamas and a robe.) She testified that from 10:20 to 11:30 p.m. she went to her living room, her porch, and went upstairs i.e., to her bedroom, and just "roamed the house". At 11:34, Blanca heard her son yelling in the back yard. She looked out her dining room window and saw her son and heard him tell ██████████ to "Get out" and that he said that ██████████ "phone was in 200 pieces". Blanca testified that she immediately went downstairs to the basement and came out on the patio. At that time she did not see ██████████ and assumed that she had left. Her son then told Blanca that ██████████ "just went crazy", had hit him, and had thrown his phone. Blanca testified that she told her son to calm down. Rodriguez went inside the house and Blanca spent one or two minutes looking for ██████████. She did not find ██████████ and Blanca went back inside. Blanca testified that at 11:36 p.m., she heard her son yelling at ██████████ outside the house saying, "Get out of my fucking house!" She heard ██████████ respond, "I'm half naked!" and heard her son say, "I don't care." Blanca testified that ██████████ was wearing "tiny shorts" and a long tee-shirt, but that it was not a cold night. She said the weather that Christmas was "very nice".

Blanca testified that in the 11:37 p.m. video, ██████████ was walking around in circles trying to get back into the house. Blanca testified that the video of 11:38 p.m.

shows only her outside the house in the back yard. Her son was in the house. At that time, as she was walking into the basement, she heard her son say, "Fuck her!", "Stupid Bitch!", and heard him say "I hope she dies!" to which Blanca responded, "Calm down." Blanca agreed on cross-examination that none of the videos show [REDACTED] raising her voice or striking anyone. When viewing the 11:38 p.m. video, she identified [REDACTED], who re-entered the house from the outside steps, walked through the kitchen, and walked down the interior stairs to the basement where Blanca and her son were located. Blanca identified the male voice on the video as her son's voice as he was screaming at [REDACTED] to "Get the fuck out!". She also testified that at this time [REDACTED] complained that Rodriguez "broke my phone in a million pieces", and Blanca told them both to "Calm down."

Although Blanca did not explicitly state that her son left the basement, a video at 11:40 p.m. shows him outside in the backyard talking to Fontanez. Blanca stated that [REDACTED] told her that she was going to put Rodriguez in jail to which Blanca responded by telling [REDACTED] to leave the house. Blanca testified that [REDACTED] replied by smacking her in the face. Blanca testified that she was in the basement when Brandon Fontanez and his girlfriend arrived at 11:40 p.m. When Blanca viewed the 11:40 p.m. video, she testified that her son was now outside and yelling to Brandon Fontanez to get [REDACTED] out of the house. When viewing the 11:47 p.m. video, Blanca identified [REDACTED] and Fontanez outside together and stated that Fontanez was going to drive [REDACTED] home to her father's house in Rochelle Park.

When viewing the 11:59 p.m. video, Blanca identified her husband, Jeffrey Fulcher, and her son, Estaban Rodriguez, talking in the kitchen, but she did not hear what they said. However, Blanca testified that she heard Melilo say that [REDACTED] phone was shattered.

During cross-examination, Blanca testified that [REDACTED] did not suffer a split lip on Christmas Day. She stated that [REDACTED] had a canker sore, which pre-existed the Christmas holidays. Blanca also identified P-21, which are photos showing the redness

of her face after [REDACTED] slapped her. She also testified that her son did not want to call the WPD to report the injuries inflicted on him by [REDACTED] because he would have been embarrassed to admit that he had been beaten up by a woman. However, once he learned that [REDACTED] went to the EMT building, he decided to call the WPD to give his side of the incident.

During his re-direct examination of Blanca, Attorney Cioffi asked her about [REDACTED] reasons for threatening to put Rodriguez in jail. He asked Blanca if [REDACTED] stated any reasons beyond his breaking of her cell phone. Blanca responded that [REDACTED] only complained about the phone and the fact that Rodriguez cheated on her. In response to further questioning, Blanca reiterated that on December 24th, her son told her that he was going to break-up with [REDACTED], but she didn't know when this would take place. She had already extended invitations to [REDACTED] and her mother on December 23<sup>rd</sup>. In response to questions about her son being sick in November, 2020, Blanca stated that he had a sinus infection and that he would use the steam room at LA Fitness to treat it.

Obviously, the reason why Attorney Cioffi asked Blanca if [REDACTED] had any reasons besides the broken cell phone for putting Rodriguez in jail was to emphasize that [REDACTED] did not complain about being sexually assaulted by her son that evening.

On re-cross examination, Blanca could not recall specifically when her son called out sick from work in November, 2020.

### **Testimony of Jeffrey Fulcher, May 27, 2022**

For the sake of convenience, Jeffrey Fulcher will be referred to herein as "Jeffrey".

Jeffrey Fulcher was employed for 31 years as a police officer in the Township of Weehawken. His highest rank was that of Deputy Chief from which he retired in 2013. Presently he serves as Weehawken's Director of Public Safety. He is the stepfather of

Esteban Rodriguez having married Blanca Fulcher in 2010. Jeffrey Fulcher has known Esteban Rodriguez since Esteban was three years old.

When the disciplinary charges were brought against Rodriguez, Jeffrey became aware of them and at his stepson's request, reviewed them. Jeffrey was not involved in the investigation of the charges and was not involved in the WPD's decision-making process with respect to the charges.

Jeffrey never met [REDACTED]. He was present when Judge Boylan's TRO was served on his stepson on October 31, 2020. He knew that [REDACTED] was a member of the First Aid Squad in Weehawken and first became acquainted with her when she dated his stepson.

Jeffrey testified that after the Christmas party was over, he and Blanca were upstairs on the second level of the house (the kitchen and dining room being the first or main level) watching television about 11:30 p.m. They heard voices coming from the back yard. Blanca went downstairs to the basement, and he was one minute behind her. As he walked down to the basement he heard a lot of yelling and voices overlapping. His stepson was upset because he wanted [REDACTED] to leave the house and [REDACTED] was refusing to leave. Blanca told Jeffrey that [REDACTED] had slapped her face. [REDACTED] then locked herself in Esteban's bedroom. Fontanez arrived and was trying to find out what was going on. Jeffrey thought it best to separate everyone. Esteban had already gone upstairs to the dining room. Then Gabrielle Melilo arrived and went upstairs with him and Blanca. Fontanez stayed in the basement and later was able to get [REDACTED] to leave the house in his car. [REDACTED] went to the First Aid Squad.

Besides his description of the commotion in the basement, Jeffrey testified about his review of a number of videos taken late (after 11:30 p.m.) on the evening of December 25<sup>th</sup>. The focus was on videos that recorded his conversation with his stepson during which Jeffrey was trying to get information about what caused the commotion and what

happened between [REDACTED] and Blanca and what happened between Rodriguez and [REDACTED].

Jeffrey testified that he saw a small red mark on his wife's cheek and believed that she had been smacked. Jeffrey did not know if Blanca and [REDACTED] were alone when the slap took place or if it occurred in Esteban's presence. He did not know if Esteban came to Blanca's defense. He did not know for certain where Esteban was when Blanca was slapped. The videos showed Jeffrey speaking with Esteban about what happened, including that Esteban claimed that [REDACTED] had scratched him. Jeffrey commented that scratches inflicted during a dating relationship would constitute domestic violence.

Jeffrey testified that he wanted to calm his stepson down so that he could think clearly about the ramifications of the evening in question. They discussed calling the WPD, but Jeffrey wanted his stepson to be calm when he made the call. Jeffrey stated that in domestic violence situations involving a police officer, the average person had an advantage over a police officer because of the requirement that the police officer is obligated to report a domestic violence incident to his superiors. Jeffrey's testimony implied that if it was a verbal argument that resolved quickly then it would not be considered as domestic violence and there would be no obligation to report it to the WPD. Jeffrey emphasized to his stepson that decisions had to be made in regard to calling the WPD. Videos show that Jeffrey specifically noted that Esteban had scratches due to [REDACTED] scratching him. Jeffrey stated that such scratches on Esteban would be considered domestic violence and he would have to report it as such. Jeffrey then asked Esteban if [REDACTED] had any marks and Esteban responded that he did not know if she had any marks and didn't care. However, Esteban admitted that he had pushed [REDACTED].

On cross-examination, Mr. Corrigan played several video clips of Rodriguez repeatedly telling [REDACTED] (and using foul language) to "Get the fuck out of my house !" In one, [REDACTED] responds that she's "half naked" to which Rodriguez replies. "I don't care." In another, Rodriguez tells [REDACTED] why her phone is broken and calls her

"Stupid". When asked if the videos accurately depict that Rodriguez is angry, Jeffrey disagrees and characterizes Esteban as only being "frustrated". In another video wherein Rodriguez says that he hopes [REDACTED] dies, Corrigan asked if Esteban appears angry. Again, Jeffrey characterizes him as "extremely frustrated". Corrigan asked Jeffrey whether it would have been easy for his stepson to remove [REDACTED] by simply calling the WPD for assistance. Jeffrey responds evasively, not directly responding to the question, by saying that he did not know what was in Esteban's mind at that time. Using the 9:52 p.m. video of Rodriguez pulling [REDACTED] back into the house, Corrigan asked Jeffrey if the video depicted an assault. Jeffrey responded that he did not know if it constituted an assault because he was unaware of the context and because he could not discern all of the words spoken in the video.

On re-direct examination, in response to Attorney Cioffi's question, Jeffrey testified that on the evening in question he did not hear [REDACTED] state that Esteban sexually assaulted her.

On re-cross examination, Attorney Corrigan asked Jeffrey if he heard [REDACTED] tell Rodriguez, "You're going to go to jail for what you did to me!" Jeffrey responded that he did not hear [REDACTED] say this, but his wife heard her say it.

### **Testimony of Esteban Rodriguez – May 31, June 1 & 27 and July 20, 2022**

#### **Direct Testimony of Esteban Rodriguez**

Esteban Rodriguez testified over the course of four days. Insofar as the resolution of factual questions related to the disciplinary charges he is facing, they were, for the most part, resolved when Rodriguez gave video-recorded testimony with his attorney present, after being granted use immunity, before the investigators (Sgt. Michael Signoreli, Chief Assistant Prosecutor Karyn M. Darish and Deputy Chief [then Captain] James D. White of the WPD) at the Hudson County Prosecutor's Office on August 17,

2021. During his OAL courtroom testimony, Rodriguez offered certain refinements and explanations of his August 17, 2021 statements to the HCPO.

The parts of the August 17, 2021, HCPO interview concerning the disciplinary charges as they are related to Rodriguez's interactions with [REDACTED] are summarized as follows. He and [REDACTED] lived together with her two children, but there were several incidents where the NBPD was called to their residence due to verbal disputes. He did not report the incidents to his superiors. He stated that he did not think the unreported incidents were a big deal.

In regard to the October 9, 2020 bedroom incident recorded by [REDACTED], Rodriguez, by way of background information, explained that when he came home from his evening out, he found several empty cans of hard seltzer (an alcoholic beverage) on the kitchen counter. He assumed that [REDACTED] had consumed them and that she was therefore intoxicated. He explained that when [REDACTED] awakened him they had a five to ten minute discussion before she started to record their conversation. He intimated that her alleged use of alcohol was part of that off-camera discussion. Rodriguez admitted that he told [REDACTED] that he would have her arrested and that the children would be placed in foster care, but that he would do so if she left the house with the children and drove her car while intoxicated. He also stated that before [REDACTED] left with her daughters, he judged that [REDACTED] was not intoxicated. Rodriguez maintained that he did not block [REDACTED] from exiting the bedroom.

In regard to the October 31, 2020 damage to [REDACTED] car, Rodriguez denied that he damaged it and offered his cousin, Brandon Fontanez, to vouch for him. Rodriguez claimed that the cell phone's location feature demonstrated that he was in Rochelle Park, NJ at 3:52 p.m., and so he could not have been at LA Fitness in Secaucus between 3:00 and 3:45 p.m. when the damage was supposed to have been done.

According to T-4, White made an entry on September 7, 2021 stating that he received a five-page email from Rodriguez, which he put into the case file. White's



9/7/2021 entry in T-4 states that Rodriguez supplied copies of his dinner reservation at Pier 115 for the evening of 10/31/2020 and a text exchange between Rodriguez and Fontanez which confirms that Rodriguez was in Rochelle Park at 3:52 p.m. on 10/31/2020. Rodriguez noted that the log-in at LA Fitness was at 2:00 p.m. Pacific Time on 10/31/2020, which corresponds to 5:00 p.m. Eastern Time. Rodriguez also noted to White that he has three people who can verify his location. They are Brandon Fontanez, Gabrielle Melilo, and [REDACTED] ([REDACTED] father). [REDACTED] was not called as a witness at the hearing.

There is evidence from which inferences can be drawn that Rodriguez did damage [REDACTED] BMW-M3 on October 31, 2020 in the LA Fitness parking lot. This evidence includes his past history of damaging objects when he gets angry; his anger over being caught cheating by [REDACTED] and her consequent decision to end their relationship; his reneging on his agreement to continue to make payments on the car; the ability of Rodriguez to use an app to trace and locate the subject vehicle; the fact that the damage occurred between 3:00 p.m. and 3:45 p.m. (according to [REDACTED] arrival and departure from the gym); the fact (established by Rodriguez's and Fontanez's email exchange) that Rodriguez was in nearby Rochelle Park at 3:52 p.m. on 10/31/2020; the judicially-noticed fact that the distance between the [REDACTED] residence in Rochelle Park and the LA Fitness gym in Secaucus could easily be traversed by car in about fifteen minutes; the fact that [REDACTED] car was the only one damaged in the parking lot; and the, albeit hearsay, statement of the BMW sales representative that about Rodriguez advising the dealership that the car would be damaged. However, what is lacking in the evidence is video footage of the LA Fitness parking lot from 10/31/2020. T-4 indicates that the WPD was able to obtain video footage of the parking lot for November 4, 5, 6, and 7, 2020, but apparently did not obtain video footage for 10/31/2020.

Following the damage to the car, [REDACTED] obtained a TRO against Rodriguez at 10:00 p.m. on October 31, 2020, which was served on him at 11:45 p.m. at [REDACTED] [REDACTED] in Weehawken, NJ. Rodriguez stated that he and six others had reservations for a Halloween party at Pier 115 in Edgewater and that he went there after being served

with the TRO. He stated that he did not know that [REDACTED] would be at Pier 115 that evening. He stated to the investigators at the HCPO on August 17, 2021, that [REDACTED] walked past his party's table two to three times and when he saw that she was there, he immediately obtained his bill and his party immediately left Pier 115.

Rodriguez admitted that his voice is on the NBPB's 3:51 a.m. recording of a telephone call from his cell phone in which he, the anonymous caller, falsely reported that [REDACTED] had left her children alone, came home drunk and was stumbling up the stairs. Rodriguez admitted that he made the call; he admitted that the call was a false report; he admitted that he lied when he stated that the woman's name was [REDACTED], but he did not know her last name; he admitted that he lied when he said that he was a "neighbor" in the building; he admitted that he lied when he said that [REDACTED] did this every weekend; he admitted that he lied when he said that [REDACTED] left the children home alone.

On the issue of abuse of sick leave, Rodriguez admitted that he violated WPD Sick Leave Policy when he called out sick on November 4, 5, 6, and 7, 2020 when he was not sick; that he violated the policy when he failed to notify the police desk when he left his residence on those days; and that he violated the policy when he went to the gym while on sick leave.

The parts of the August 17, 2021 HCPO interview concerning the disciplinary charges as they are related to Rodriguez's interactions with [REDACTED] are summarized as follows.

Starting with the November, 2020 trip to Aruba, Rodriguez admitted that he was involved in a domestic violence incident in Aruba and failed to report it to his superiors. In his in-court testimony, Rodriguez stated that "very soon" after the Aruba trip he was "standoffish" with [REDACTED] and he made up his mind to end his relationship with her.

During the HCPO interview, Rodriguez stated, "Never in my life have I put my hands on a woman." When the investigators played the December 25, 2020 video taken

at 9:52 p.m., showing Rodriguez roughly pulling ██████ back into the residence. Rodriguez admitted that he pulled ██████ back inside the residence and, realizing that the video contradicted his statement, Rodriguez admitted that the video makes him look bad.

During his in-court testimony, Rodriguez testified that he told his mother that he wanted to end his relationship with ██████ and he was not pleased that his mother had already invited ██████ and her mother to their home for the Christmas party. He testified that he told ██████ on December 24<sup>th</sup> not to come to ██████ for the December 25<sup>th</sup> party. He also testified that he told ██████ that she could come to the party, but that she must leave with her mother, and that she could not spend the night at ██████. (Rodriguez later testified that ██████ mother left the premises about 9:00 p.m., but ██████ refused to leave.) Rodriguez also testified that he went with ██████ to her father's home to exchange Christmas presents and that he gave her a bracelet as a Christmas present. Rodriguez testified that after visiting ██████ father and exchanging presents, but before arriving at ██████, ██████ received messages on her phone from a woman named Lindita, who asked ██████ about her relationship with Rodriguez. Following this, ██████ accused him of cheating on her. Rodriguez testified that ██████, throughout the party angrily persisted in her accusations of cheating, which caused him to tell her to go home around 6:00 p.m. She refused to go home, angrily stating that they needed to work-out the problem posed by Lindita's message. Rodriguez testified that ██████ remained at the party.

When discussing the evening of December 25, 2020 with the HCPO investigators, he stated that in the 9:52 p.m. video, he pulled her back into the house because ██████ was only wearing a romper, had no pants on, and it was "freezing" outside. In his in-court testimony, Rodriguez explained his pulling of ██████ as "horseplay".

In his in-court testimony, Rodriguez testified that he and ██████ thereafter decided to engage in consensual sex in his bed at around 10:15 or 10:30 p.m., but that,

although he penetrated her, he stopped because [REDACTED] told him, "Fuck me like you fucked that bitch!" Rodriguez's in-court testimony was that following this, he was leaving the bedroom when [REDACTED] forcefully inflicted scratches to his back, hit him on the back of the head, and then threw herself onto the stairs telling him again, "Fuck me like you fucked that bitch!" Rodriguez testified that he went upstairs to calm down.

The issue of whether or not there was actual consent to sexual intercourse is essential to determining whether there was a sexual assault or not. During the interview at the HCPO, Rodriguez denied that he sexually assaulted [REDACTED] on the interior stairs, or that he was on top of her, or that he choked her.

During his in-court testimony, Rodriguez stated that [REDACTED] threw herself on the stairs and screamed at him, "Fuck me like you fucked that bitch!". [REDACTED] did not deny that she said these words to Rodriguez. If [REDACTED] said these words, they could reasonably be construed as indicating her consent to sexual intercourse. Rodriguez's account is that he and [REDACTED] did not engage in sex on the stairs, but rather they earlier had engaged in consensual sex in bed. [REDACTED] version of the facts, which she described in detail, is that as she sat on the stairs waiting for Rodriguez to calm down, he approached her and sexually assaulted her (including penetration), throttled her causing her head to hit a nearby washer machine, and choked her, causing her to defend herself by scratching him with her nails until she was able to get away and go outside.

#### Cross-Examination of Esteban Rodriguez

On cross-examination, Rodriguez admitted to Attorney Corrigan that, like all police officers, he completed Domestic Violence training periodically, but not every year.

When cross-examined by Corrigan about the October 9, 2020 bedroom incident and the recording thereof by [REDACTED], Rodriguez stated that when he arrived home, he saw empty cans of hard seltzer in the apartment's kitchen and presumed that [REDACTED] had consumed them and may therefore have become intoxicated. He admitted that he

did not see [REDACTED] drink any of the hard seltzer and he admitted that he did not call the police.

Upon questioning, Rodriguez admitted that [REDACTED] video recorded that she stated to him nine times that he was blocking her from exiting the bedroom or that she asked him to move out of her way.

Rodriguez answered a question by saying that when he was served with the TRO on October 31, 2020, he was surprised, but did not become angry with [REDACTED].

In answer to Corrigan's question, Rodriguez answered that his cousin, Brandon Fontanez, did not tell him, while Rodriguez was driving to Pier 115, that [REDACTED] was at Pier 115.

Upon Corrigan's questioning, Rodriguez testified in court that he did not see [REDACTED] at Pier 115. When confronted with the statement that he made earlier to the HCPO in which he stated that he did indeed see [REDACTED] at Pier 115, Rodriguez replied that when speaking to the HCPO, he spoke inaccurately and that his recollection of events at trial in mid-2023 were more accurate than his August 17, 2021 statement to the HCPO on the issue of whether or not he saw [REDACTED] at Pier 115. He explained that with the advent of the trial, he had more time to recall events accurately.

In answer to questions about the 11/1/2020 telephone call in which he admitted making a false report to the NBPD, Rodriguez stated that he did not have retaliatory intentions against [REDACTED] when he made the call; that he had no direct knowledge of whether [REDACTED] was sober or not; and that he does not know why he did not tell the truth that night while making the call.

On cross-examination, utilizing the HCPO video, Rodriguez admitted that he clearly told Captain Mitolo that he would be out "sick" versus generally stating that he

would miss his next tour of duty. Rodriguez admitted that he violated the WPD's Sick Leave policy.

Corrigan utilized the 12/25/2020 video at 9:52 p.m. to demonstrate that when Rodriguez pulled [REDACTED] into the house it was done in an aggressive manner. Rodriguez replied that they might have been playing around. In regard to the video that shows the door opening and striking [REDACTED], Rodriguez explained that this door is sometimes hard to open and that may account for the striking of [REDACTED].

In answer to a question about whether [REDACTED] threatened to have Rodriguez put into jail for what he had done, he replied that she was referring to the damage to her phone.

### **FACTUAL DISCUSSION AND FINDINGS OF FACT**

Having had the opportunity to review the testimony of the various witnesses and having had the opportunity to assess their credibility and having had the opportunity to review the documents in evidence, including videos, I herein make my analysis of pertinent facts and make the following findings of fact.

#### **Findings Regarding Allegations Made by [REDACTED]**

I **FIND** that Rodriguez's pulling of [REDACTED], as shown on the 9:52 p.m. video, was not playful (i.e., "horseplay"), but rather, it was rough.

Having considered that Blanca Fulcher credibly testified that the weather on the evening of December 25, 2020 was "not cold" and actually was "very nice", I **FIND** that when Rodriguez pulled [REDACTED] back into the house at 9:52 p.m., it was not because he was concerned that it was "freezing" outside and she was not dressed well for the weather conditions.

I **FIND** that when Rodriguez pulled [REDACTED] back into the house at 9:52 p.m., it was a rude and unprivileged touching of [REDACTED].

I **FIND** that [REDACTED] actually grunted when Rodriguez pulled her back into the house at 9:52 p.m., indicating that being pulled was uncomfortable, even painful to her.

I **FIND** that [REDACTED] alleged assault / domestic violence allegations made by [REDACTED] against Rodriguez, arising out of their difficulties in Aruba, did not involve a police response.

I **FIND** that when Rodriguez told [REDACTED] that her phone was in 200 pieces because she threw his over the fence, he was admitting that he broke her phone in retaliation for breaking his phone.

Knowing that both [REDACTED] and Rodriguez bickered and argued throughout the day about Rodriguez's simultaneous relationship with Lindita (a relationship which he does not deny), I **FIND** that they both demonstrated unrestrained passion and a lack of dignified self-control (clearly demonstrated by their engaging in sexual intercourse in bed at around 10:15 to 10:30 p.m., and again on the stairs); and I **FIND** that they both indulged in unrestrained, uncivil conduct on the evening of December 25, 2020 (clearly demonstrated by their 11:30 p.m. conduct which included his screaming; his hostile physical contact; his throwing of her clothing; his throwing and damaging her phone; his putting her out of the house; her leaving the house; her returning to the house; his continued screaming; and her leaving the house again). I **FIND** that Rodriguez's loss of self-control indicates that he failed to abide by the WPD's R&R 3.1.6 (Requirement to Uphold High Ethical Standards) and R&R 4.1.3 (Obedience to Law and Rules), as well as to the prevailing case law's interpretation of a policeman's duty to maintain the "image of personal integrity and dependability in the eyes of the public". See, Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div., 1965).

Rodriguez's in-court testimony was that he told ██████████ during the afternoon of December 25th that she should leave the premises when her mother leaves; that after her mother left ██████████ (at 9:00 p.m.), he kept telling ██████████ that she should leave; and that he kept telling ██████████ throughout the evening that she would not be welcome to spend the night at ██████████. To a neutral observer, this looks to be inconsistent with his actual conduct at 10:15 p.m. that evening when he admittedly engaged in sexual intercourse (an inherently intimate activity), with a woman he had (purportedly) already decided to put out of his life. **I FIND** that Rodriguez's account to be contradictory and **I FIND** that this diminished his credibility.

**I FIND** that ██████████ account of what occurred on the stairs is generally more believable than Rodriguez's account because ██████████ testimony was that before the sex-on-the-stairs incident, their last sexual encounter was three or four days before Christmas, rather than in bed; and because the bruises, scratches and cuts on ██████████ torso, particularly her back, are not consistent with contact with a mattress and more consistent with contact with carpeting. **I FIND** that the bruises, scratches, and cuts on ██████████ body, particularly her back, occurred due to contact with the carpeting on the stairs and occurred because of Rodriguez's rough physical contact with her.

**I FIND** that the issue of consent to the sex act is essential to whether there was a sexual assault or not, but the questions posed to ██████████ during cross-examination did not clearly establish that she gave consent. **I FIND** that whether or not ██████████ said, "Fuck me like you fucked that bitch" to Rodriguez before or during a sex act does not conclusively establish that she was giving or had given consent to engage in sexual intercourse. Rodriguez's testimony is that ██████████ threw herself on the stairs, spread her legs and invited him to engage in sexual intercourse. Given the mutual allegations of outrageous conduct, I cannot completely discount this testimony. **I DO NOT FIND** that Rodriguez's penetration of ██████████ on the stairs was non-consensual.



Although, Rodriguez testified categorically that [REDACTED] had no marks on her body and he did not choke her, I **FIND** that the marks (bruises and abrasions) shown in the photographs of [REDACTED] (T-25), particularly her neck, are consistent with those inflicted by choking. I **FIND** that Rodriguez inflicted wounds to [REDACTED] neck, chest, and back by throttling her and choking her as indicated by the photos in T-25. I **FIND** that in the later videos, [REDACTED] voice sounds hoarse when compared with her earlier videos. I **FIND** that [REDACTED] hoarseness was due to being choked by Rodriguez. I **FIND** that, while on the stairs, Rodriguez throttled and choked [REDACTED].

I **FIND** that [REDACTED] inability on cross-examination to give a direct answer to the 106-minute time span does not necessarily cast doubt upon her assertion that she was assaulted (whether sexually or otherwise assaulted) on the stairs. I **FIND** that she was assaulted (both Simple Assault and Aggravated Assault) by Rodriguez, and these traumas would likely interfere with her exact recollection of some facts and details.

I **FIND** that the points raised during Attorney Cioffi's cross-examination of [REDACTED] regarding her conduct were mostly beside-the-point because the matter before the Tribunal is the conduct of Rodriguez, not [REDACTED].

I **FIND** that [REDACTED] testimony that she was assaulted and that she needed to gather clothes to be credible because she would likely be traumatized after being assaulted and it would thus take some time for her to gather her things. I **FIND** that in the videos taken around 11:30 she has changed clothes and is dressed in shorts and a tee shirt.

I **FIND** that not long after 11:30 p.m. [REDACTED] is seen outside the house gathering her belongings (including her cellphone) and Rodriguez continues to scream at her, telling her to leave, all of which indicates that Rodriguez was still angry and [REDACTED] was trying to leave the premises. I **FIND** that her re-entry into the premises at 11:38 p.m. indicates that she continued to seek the remainder of her belongings, including warmer clothing.

I **FIND** that Rodriguez was not truthful on several occasions throughout the case. Some of these occasions included when he claimed that he did not prevent [REDACTED] from leaving their apartment on 10/9/2020; when he claimed before the HCPO that he "never put his hands on a woman"; and that he immediately left Pier 115 after learning that [REDACTED] was present at that location on 11/1/2020. I **FIND** that failing to tell the truth is a violation of a police officer's duty. See, WPD's R&R 4.12.6.

I **FIND** that Rodriguez violated the WPD's Rules and Regulations when he violated the Sick Leave Policy. See, WPD's R&R 5.1.6.

I **FIND** that Rodriguez's violations of the State's criminal statutes, some repeatedly, demonstrates his indifference to and disobedience of the laws he has been sworn to uphold and demonstrates his failures to abide by the high ethical standards to which a police officer is bound.

I **FIND** that Rodriguez failed to report his conduct when he punched holes in the walls of [REDACTED] apartment and his failure to report his false imprisonment of [REDACTED] on 10/9/2020.

I **FIND** that Rodriguez failed to report his simple assaults and his aggravated assault upon [REDACTED] on 12/25-26/2020.

I **FIND** that White's testimony went unrefuted that Rodriguez failed to report any of the March, 2020 incidents and that September, 2020 incidents even though Rodriguez claimed that [REDACTED] had scratched him (a reportable act of domestic violence) and even though he knew that [REDACTED] claimed that he pushed her.

Findings Regarding the Dismissal of the TRO's

I **FIND** that the evidence regarding why [REDACTED] or [REDACTED] TROs were dismissed is inconclusive. I **FIND** that the fact that the TROs were dismissed is of no consequence to the issue of whether Rodriguez violated the laws of New Jersey and violated the WPD's Rules and Regulations for which the WPD seeks to discipline him.

Findings Regarding Sick Leave

I **FIND** that inasmuch as Rodriguez told Captain Mitolo that he was going to take sick leave, there is no evidence that supports the idea that Mitolo, on behalf of the WPD, approved the use of those sick days by Rodriguez.

I **FIND** that there was no communication from Mitolo to Rodriguez that he had the authority to grant sick leave or that he did in fact approve the use of sick leave by Rodriguez.

I **FIND** that in the course of the hearing, Rodriguez did not produce any proof that he sought medical treatment during the period November 4 through 7, 2020.

I **FIND** that Rodriguez was not sick during the period November 4 through 7, 2020. In light of Rodriguez's admission regarding his violations of the WPD's Sick Leave Policy, I **FIND** the substance of these admissions as fact.

Findings Regarding Allegations Made by [REDACTED]

[REDACTED] and Rodriguez's Accounts of the October 9, 2020 Bedroom Incident

I **FIND** that [REDACTED] video demonstrates that Rodriguez blocked [REDACTED] ability to exit the bedroom despite her numerous requests for him to step aside and let

her leave. I **FIND** that after [REDACTED] asked Rodriguez many times to move out of the way and after repeating (while recording) her statement, "You are preventing me from leaving", Rodriguez moved aside slightly and [REDACTED] took that opportunity to leave the room. I **FIND** that the video also demonstrates that Rodriguez threatened to have [REDACTED] arrested and threatened to put her children into foster care. I **FIND** that Rodriguez, against [REDACTED] will, restrained [REDACTED] ability to leave the room and substantially interfered with her liberty. I **FIND** that while interfering with [REDACTED] ability to move about freely, Rodriguez made statements of his intention to have her arrested and to have her children put into foster care, which placed [REDACTED] in fear for her and her children's emotional and physical well-being.

In court, on May 31, 2022, Rodriguez testified that he told [REDACTED] on October 9, 2020 that she had obviously been drinking and he therefore was not going to allow her drive with the girls in her car. However, the video shows that [REDACTED] did indeed leave with the girls and Rodriguez did nothing further to prevent her from driving with the children in the car. Moreover, Rodriguez later admitted that the only evidence he had to support his belief that [REDACTED] was intoxicated at the time of the video and of her leaving with the girls was that there were several empty cans of hard seltzer on the kitchen counter. In viewing the video, I did not see or hear any indicia of [REDACTED] being under the influence of alcohol such as slurred speech, incoherence of speech, loss of the control of her emotions, or physical imbalance (swaying or staggering). I, therefore, **FIND** that there is nothing on the video that would lead a reasonable viewer to conclude that [REDACTED] was under the influence of alcohol when [REDACTED] made the video recording. [REDACTED] testified that she saw Rodriguez stagger when he came in at 1:30 a.m. and that she smelled alcohol on his breath when she awakened him at or shortly after 2:00 a.m. In viewing the video, I did not see or hear any indicia of Rodriguez being under the influence of alcohol such as slurred speech, incoherence of speech, loss of control of his emotions, or physical imbalance (swaying or staggering).

I, therefore, **FIND** that there is not enough evidence to support the proposition that Rodriguez was under the influence of alcohol when [REDACTED] made the video recording.

Having reviewed the bedroom video taken by [REDACTED], I **FIND** that Rodriguez blocked [REDACTED] means of exiting the bedroom for several minutes and thus deprived her of her liberty.

I **FIND** that Fontanez's testimony about his concern for the [REDACTED] children was not sincere because his actions were not consistent with those which a genuinely concerned person would have undertaken. It appeared to me that Fontanez's desire was to portray [REDACTED] as irresponsible for leaving her young children alone, but he did not realize that Rodriguez would look just as irresponsible for doing so. His story about Rodriguez deciding to call "the Town" or "the Police" made no sense because by doing so, Rodriguez would be admitting that he too allowed the children to be left alone. Moreover, Fontanez's lack of any knowledge or of any curiosity about whether Rodriguez was successful in obtaining any official action to protect the children was completely inconsistent with his asserted desire to look after the welfare of the little girls.

I **FIND** that Fontanez fabricated the entire tale in an effort to portray [REDACTED] as an unfit mother, but because his story made no sense, he resorted to concocting a more intricate and more unbelievable tale of Rodriguez's supposed efforts to take action to safeguard the girls' welfare.

I **FIND** Fontanez's testimony on the subject of his and Rodriguez's efforts to safeguard the girls is implausible and untrustworthy. I **FIND** that Fontanez's testimony, for the most part, was not credible.

The testimony of [REDACTED] is that she became aware of Rodriguez's presence at Pier 115 at approximately 12:30 a.m. as he was walking into Pier 115 towards his table. I **FIND** that her testimony on this point is believable and accurate. I **FIND** that [REDACTED] informed the bouncer at 12:45 a.m. that she had a TRO against Rodriguez. I **FIND** that the testimony of Brandon Fontanez indicates that the bouncer came to their

table at approximately 12:45 a.m. I **FIND** that Fontanez's testimony about the bouncer coming to his party's table is believable and accurate.

I **FIND** that [REDACTED] and Brandon Fontanez both testified that [REDACTED] walked past their table several times (i.e., 2 to 3 times) while Rodriguez was present. I **FIND** that Rodriguez's testimony that he never saw Fontanez at Pier 115 is not believable because Fontanez, who was sitting near enough to Rodriguez to talk to him, testified that [REDACTED] passed their table several times at only a distance of 5 to 10 feet.

I **FIND** that the testimony of Rodriguez is in conflict with the testimony of his cousin, Brandon Fontanez and with the testimony of [REDACTED] on the issues of whether [REDACTED] walked past their table and whether he saw [REDACTED] at Pier 115. I **FIND** that Rodriguez's testimony about not seeing [REDACTED] at Pier 115 is not believable because the testimony of a friendly witness, Brandon Fontanez, who saw [REDACTED] walk by the table only a few feet away (i.e., 5 to 10 feet away, according to Fontanez) directly conflicts with Rodriguez's testimony. Moreover, I **FIND** that Rodriguez's statement that he did not see [REDACTED] at Pier 115 is belied by his own statement at the 8/17/21 HCPO interview, when Rodriguez admitted to seeing [REDACTED] walk past his table two to three times. I **FIND** Rodriguez's explanation that his memory at the mid-2023 hearing was more accurate than it was on August 17, 2021 is implausible.

I **FIND** that [REDACTED] testified that she did not know what time [REDACTED] left Pier 115. I **FIND** that [REDACTED] testimony that she contacted the Edgewater Police Department and left Pier 115 at 1:14 a.m. is credible and is verified by T-4.

I **FIND** that [REDACTED] testimony that the Rodriguez party remained at Pier 115 until 1:30 or close to 2:00 a.m. is believable. I **FIND** that the Rodriguez party left Pier 115 around 1:30 a.m. or closer to 2:00 a.m.

I **FIND** that [REDACTED] testimony regarding what time the Rodriguez party left Pier 115 contradicts the testimony given by Rodriguez and Fontanez stating that Rodriguez

immediately summoned a waitress, immediately paid their bill, and left Pier 115 shortly after telling the bouncer (at 12:45 a.m.) that they were leaving.

I **FIND** that the testimony of both Fontanez and Rodriguez agree that after leaving Pier 115, they went to the Fontanez's parent's residence in West New York arriving between 1:00 a.m. and 2:00 a.m. where they continued to socialize for about another two hours. I **FIND** that the Rodriguez party arrived at the Fontanez residence closer to 2:00 a.m.

I **FIND** that Fontanez's and [REDACTED] testimony about [REDACTED] walking past their table several times and their testimony about when they left Pier 115 (close to 2:00 a.m.) and arrived at the Fontanez home close to 2:00 a.m. demonstrates that a significant amount of time passed between when Rodriguez first became aware of [REDACTED] presence and the time when Rodriguez left Pier 115. I **FIND** this testimony of Fontanez and [REDACTED] believable.

I **FIND** that Rodriguez saw [REDACTED] at Pier 115, did not leave immediately; and stayed at Pier 115 until around 1:30 a.m. or closer to 2:00 a.m.

I **FIND** that after Rodriguez and [REDACTED] left the Fontanez residence they arrived at [REDACTED] sometime around 3:30 a.m., but before 3:50 a.m. I **FIND** that [REDACTED] testified that she went to bed 20 minutes after arriving at [REDACTED]. I **FIND** that Rodriguez testified that he stayed up to place the phone call to NBPD, which took place at 3:51:08 a.m. according to the records of the NBPD. I **FIND** that Rodriguez admitted that he made a false report to the NBPD about [REDACTED] in several respects, mainly that she often left her minor children unattended, that she often returned home drunk and staggering, and that he was a mere concerned neighbor, who did not want to be identified. I **FIND** that by making the telephone call to the NBPD, Rodriguez's intent was to annoy, interfere with, or otherwise subject [REDACTED] to undue scrutiny by the NBPD. I **FIND** that Rodriguez's intent was to use the NBPD to harass [REDACTED]. I **FIND**

that the telephone call to the NBPD was inconsistent with the provisions of Judge Boylan's 10/31/2020 TRO.

I **FIND** that although the TRO did not prohibit Rodriguez from coming within any specified distance of [REDACTED] or her daughters, the TRO did contain a provision prohibiting him from having any other form of contact or communication with [REDACTED], and prohibiting him from making or causing anyone else to make harassing communications to [REDACTED]. I **FIND** that the preponderance of evidence elicited from the various witnesses, notably that the Rodriguez party arrived at the Fontanez residence at 2:00 a.m., establishes that Rodriguez left Pier 115 closer to 2:00 a.m., and thus did not immediately leave Pier 115 after becoming aware at approximately 12:30 a.m. of [REDACTED] presence at that location. I **FIND** that Rodriguez's conduct (i.e., remaining at Pier 115 until close to 2:00 a.m.) was inconsistent with Judge Boylan's 10/31/2020 TRO.

Damage to [REDACTED] BMW-M3

I **FIND** that there is a significant amount of credible evidence indicating that Rodriguez reneged on his promise to continue paying for the car, had a motive to annoy [REDACTED] by damaging the car, had the ability to damage the BMW-M3, had the ability by use of an app to trace and locate the car, had the time to go to LA Fitness on 10/31/2020, and that there is admissible hearsay testimony from the BMW dealership indicating that Rodriguez was aware that the car would be returned in a damaged condition. However, I **FIND** that the lack of video footage for 10/31/2020 convinces me that the evidence is insufficient to support the proposition by a preponderance of the credible evidence that Rodriguez damaged [REDACTED] car on 10/31/2020.

Blanca Fulcher's Testimony

Blanca Fulcher's gratuitous testimony alleging that [REDACTED] often leaves her children home alone is not relevant to the issue of whether Esteban Rodriguez



violated the laws of New Jersey laws and / or the Rules and Regulations of the WPD. Blanca rightly stated that a parent should not leave a young child home alone. It is self-evident that to do so would be to increase the risk of any hazards that could befall unattended children. What is notable about her testimony was that the household consisted of [REDACTED], the two young daughters, and her son, Esteban Rodriguez. Although Rodriguez was not married to [REDACTED], it cannot be said that he had no responsibility for the children in the household. As [REDACTED] live-in partner, even if it can be argued that he had no affirmative duties to the children such as feeding or clothing them, he nonetheless had a duty not to neglect them. It is fair to say that as [REDACTED] live-in partner, he had the duty not to endanger the children by leaving them alone without adult supervision. If [REDACTED], as their mother, had the obligation not to leave her children alone at home, then Rodriguez, as a live-in partner and as a police officer would have a duty not to leave young children alone without adult supervision.

I **FIND** that Blanca Fulcher's failure to find any fault with her son for leaving the girls unattended, while at the same time finding fault with [REDACTED] for leaving the girls unattended, demonstrates an excess bias favoring her son. For this reason, I **FIND** Blanca Fulcher's testimony to be unduly biased and untrustworthy.

When Blanca Fulcher testified about the 9:52 p.m. video of her son, Esteban, pulling [REDACTED] into the house, she conceded that he was "forcefully pulling her back". She testified further that [REDACTED] was drunk and her son "wasn't going to let her out of the house drunk". I **FIND** that in this testimony Blanca Fulcher was trying to justify or excuse Rodriguez's forceful conduct. I **FIND** her testimony to be unduly biased.

I **FIND** that although Rodriguez, when testifying about pulling [REDACTED] back into the house at 9:52 p.m., said it was "freezing" outside, his own mother's testimony contradicts him, in that when she testified, she said that it was not a cold night and that the Christmas weather was "very nice".

I **FIND** that both Blanca Fulcher's and Esteban Rodriguez's testimonies about being assaulted by [REDACTED] are substantively irrelevant on the issue of whether Esteban Rodriguez violated the laws of New Jersey or the Rules and Regulations of the WPD. I **FIND** that said testimonies can, however, be helpful to the Tribunal for evaluating the credibility of the various witnesses.

#### Jeffrey Fulcher's Testimony

I **FIND** that at times Jeffrey Fulcher was evasive and, aside from his statement that his stepson admitted that he pushed [REDACTED], there was nothing in Jeffrey Fulcher's testimony that directly impacts the question of whether Esteban Rodriguez did or did not violate the laws of New Jersey or the Rules and Regulations of the WPD.

### **APPLICABLE LAW**

#### **Employee Discipline**

The Civil Service Act and the implementing regulations govern the rights and duties of public employees. N.J.S.A. 11A:1-1 to 12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. The Act is an important inducement to attract qualified personnel to public service. It is to be liberally constructed toward attainment of merit appointments and broad tenure protection. See Essex Council No.1 N.J. Civil Serv. Ass'n. v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that that the public policy of New Jersey is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2 (b). To carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; and N.J.A.C. 4A:2-2.3. Major discipline involves removal, suspension, or fine for more than five working days.

An appointing authority may discipline an employee on various grounds, including inability to perform duties, conduct unbecoming a public employee, insubordination, and other sufficient cause. N.J.A.C. 4A:2-2.3(a). Such action is subject to review by the Civil Service Commission, which after a de novo hearing makes an independent determination as to both guilt and the "propriety of the penalty imposed below." West New York v. Bock, 38 N.J. 500, 519 (1962); In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987); Ennslin v. Twsp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994) certif. den., 142 N.J. 446 (1995).

### **Burden of Proof in Disciplinary Matters**

In a civil-service disciplinary case, the employer bears the burden of providing sufficient, competent and credible evidence of facts essential to the charge. N.J.S.A. 4A:2-1.4. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). Put another way, in an administrative proceeding concerning a major disciplinary action, the appointing authority must prove its case by a "fair preponderance of the believable evidence." N.J.A.C. 4A:2-1.4(a); Polk, supra, 90 N.J. at 560; Atkinson, supra, 37 N.J. at 149. The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Greater weight of credible evidence in the case - a preponderance - depends not only on the number of witnesses, but "greater convincing power to our minds." State v. Lewis, 67 N.J. 47, 49 (1975) (citation omitted). Similarly, credible testimony "must not only proceed from the mouth of a credible witness, but it must be credible in itself." In re Estate of Perrone, 5 N.J. 514, 522 (1950). The judge must "decide

in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Delaware, Lackawanna and Western Railroad, 111 N.J.L. 487, 490 (E.&A. 1933). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9<sup>th</sup> Cir. 1963).

A trier of fact "is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted ... when it contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997) citing In re Perrone's Estate, 5 N.J. 514, 521-522 (1950). A trier of fact may reject testimony as inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). The choice of accepting or rejecting the testimony of witnesses rests with the trier of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960).

### **The Necessity for Maintaining Discipline**

Maintenance of strict discipline is important in quasi-military settings such as police departments and correctional facilities. Rivell v. Civil Serv. Comm'n., 115 N.J. Super. 64, 72 (App. Div. 1995), certif. den. 142 N.J. 446 (1995). City of Newark v. Massey. 93 N.J. Super. 317 (App. Div. 1967). In such settings, the primary duty of the officers and supervisors is the safety and security of the facility. Police (and correction) officers are held to a higher standard of conduct than ordinary public employees. In Re Phillips, 117 N.J. 567, 576-577 (1990). The aforementioned "high standard" of conduct expected of police officers was expressed and expounded by the Appellate Division in a case in which charges filed and sustained against a police officer included, among other things, domestic violence, a threat to abandon home and job, threats involving firearms to commit suicide and to shoot the Chief of Police. There, the Appellate Division stated:

It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public....Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965).

### **Applicable Regulations, Rules and Orders**

The list of General Causes of action for Civil Service employee discipline are set forth in N.J.A.C. 4A:2-2.3 (a), which provides:

- (a) An employee may be subject to discipline for:
1. Incompetency, inefficiency or failure to perform duties;
  2. Insubordination;
  3. Inability to perform duties;
  4. Chronic or excessive absenteeism or lateness;
  5. Conviction of a crime;
  6. Conduct unbecoming a public employee;
  7. Neglect of duty;
  8. Misuse of public property, including motor vehicles;
  9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment;
  10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder;
  11. Violation of New Jersey residency requirements as set forth in P.L. 2011, c. 70; and

12. Other sufficient cause.

Conduct Unbecoming a Public Employee, Incompetency/Inefficiency, Inability to Perform Duties, Neglect of Duty, and Other Sufficient Cause are four of the above-listed types of charges that are frequently litigated. A brief analysis of each of these four types of charges follows.

**N.J.A.C. 4A:2-2.3(a)(6), Conduct Unbecoming a Public Employee**

Under N.J.A.C. 4A:2-2.3(a)(6), an employee may be subject to major discipline for conduct unbecoming a public employee. Although not strictly defined by the Administrative Code, "conduct unbecoming" has been described as that conduct "which affects the morale or efficiency of the [governmental unit] [or] which adversely affects the morale or efficiency" of the public entity or tends "to destroy public respect for . . . [public] employees and confidence in the operation of . . . [public] services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960); see Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (citation omitted). The conduct need not be "predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't. of Ridgewood, 258 N.J. Super 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't. of Civil Serv., 17 N.J. 419, 429 (1955)). Unbecoming conduct may include behavior that is not in accord with propriety, modesty, good taste or good manners, or behavior that is otherwise unsuitable, indecorous, or improper under the circumstances. Conduct unbecoming a public employee may be less serious than a violation of the law, but it is inappropriate to on the part of the public employee. Ferrogine v. State Dep't. of Human Servs., Trenton Psychiatric Hosp., CSV 2441-98, Initial Decision (April 17, 1998), modified MSB (July 6, 1998), <http://njlaw.rutgers.edu/collections/oal/>. It is a fact-sensitive determination rather than one based on a legal formula.

**N.J.A.C. 4A:2-2.3(a)(1), Incompetence, Inefficiency or Failure to Perform Duties**

Incompetence means that an individual lacks the willingness, the ability, or the qualifications to perform the duties required of him or her. John Steinel v. City of Jersey City, 7 N.J.A.R. 91, modified at 193 N.J. Super.629 (App. Div. 1984), aff'd. at 99 N.J. 2 (1985). This section also covers an employee's breach of duty by simple non-performance of assigned duties.

This section also covers instances where an employee attempts to perform his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is sub-standard. See, Lynda Clark v. New Jersey Dept. of Agriculture, 1 N.J.A.R. 315.

**N.J.A.C.4A:2-2.3(a)(3), Inability to Perform Duties**

Unlike N.J.A.C.4A:2-2.3(1)'s definition of "Incompetence" (the employee's inability to execute his job responsibilities due to lack of training or lack of ability), see Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 App. Div. 2006), "Inability to Perform Duties" under N.J.A.C. 4A:2-2.3(3) refers to the employee's lack of physical or psychological means or resources to perform or even to attempt to perform his jobs duties. See IMO David Harrington, City of Jersey City, Department of Public Safety, CSV 02847-20 decided June 7, 2021, adopted July 2, 2020.

**N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty**

The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was

negligent in its discharge.” In re Glenn, CSV 5072-07, Initial (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing, Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

#### **N.J.A.C. 4A:2-2.3 (a) (12), Other Sufficient Cause**

Charges of Other Sufficient Cause pertain to violations of the appointing authority’s regulations, rules, general orders or policies.

#### **Penalties and Progressive Discipline**

In determining the appropriateness of a penalty, several factors must be considered including, but not limited to: the nature of the offense, the previous use of progressive discipline, the employee’s prior record, and the seriousness or severity of the offense under consideration.

The theory of progressive discipline is based on the following principles:

(1) that discipline should be designed to be corrective and to further the development of the employee; (2) that the penalty should be proportionate to the severity of the offense; and (3) that where there is a pattern of violations, progressively more severe penalties should be imposed for each occurrence. The disciplinary process in New Jersey’s Civil Service incorporates the concept of progressive discipline. It is well-settled that an employee’s past disciplinary record may be used as guidance in determining what an appropriate penalty should be in a given case. See West New York v. Bock, 38 N.J. 523 (1962). However, the theory of progressive discipline is not a fixed and immutable rule to be followed



without question. Some disciplinary infractions are so serious that removal is appropriate notwithstanding an unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007).

Theft is considered a serious offense. A police officer who commits a theft is subject to removal. In re Cohen, 56 N.J. Super. 502 (App. Div. 1959) (upholding the removal of a police officer in the theft of parking meter funds; In re Hall, 335 N.J. Super. 45, 51 (App. Div. 2000) (sustaining the removal of a police officer for attempted theft).

### **Other Statutes and WPD Rules and Regulations Applicable to the Matter at Bar**

#### **N.J.S.A. 2C:28-4, False Reports to Law Enforcement**

Section (a) prohibits a person from giving false information to law enforcement personnel in order to implicate another in a crime. Generally, it is a Second Degree Crime.

Section (b) (1) prohibits a person from knowingly reporting an offense or incident that actually did not occur, or (b) (2) pretending to furnish information to law enforcement when he actually has no such information. These are fourth degree offenses.

#### **N.J.S.A. 2C:29-9, Contempt; Violation of a Temporary Restraining Order**

This statute has several parts. They all provide that a person is prohibited from knowingly disobeying a judicial order or protective order, but Section (b) in particular applies to orders issued pursuant to domestic violence situations under N.J.S.A. 2C:25-17. This is a Fourth Degree Crime.

#### **N.J.S.A. 2C:17-3, Criminal Mischief**

This statute prohibits a person from knowingly causing damage to the property of another.

Depending upon the dollar value of the loss, it can be a Fourth, Third or Second degree Crime.

N.J.S.A. 2C:13-3, False Imprisonment

This statute prohibits a person from unlawfully restraining another person so as to substantially interfere with his or her liberty. This is a Disorderly Persons offense.

N.J.S.A. 2C: 12-1(a), Simple Assault

Generally, this statute prohibits a person from purposely, knowingly or recklessly causing bodily injury to another person, or, negligently causes bodily injury to another person with a deadly weapon. It is a Disorderly Persons offense.

N.J.S.A. 2C: 12-1(b), Aggravated Assault

This section has many sub-parts. Generally, a person commits an aggravated assault if he, purposely, knowingly, or under circumstances manifesting extreme indifference to the value of human life recklessly causes serious bodily injury to another person, or, causes bodily injury with a deadly weapon. Depending upon the circumstances, Aggravated Assault can be a Crime of the Second, Third, or Fourth degree. Under N.J.S.A. 2C:12-1(b)(13), a person, who knowingly or, under circumstances manifesting extreme indifference to the value of human life, recklessly obstructs the breathing or blood circulation of a person who, with respect to the actor, meets the definition of victim of domestic violence, as defined in [N.J.S.A. 2C:25-19], by applying pressure on the throat or neck or blocking the nose or mouth of such person, thereby causing or attempting to cause bodily injury commits a Second Degree Aggravated Assault.

Weehawken Police Department (WPD) Rules and Regulations

3.1.6, Requirement of High Ethical Conduct, on or off-duty

Police

This regulation provides that Police Officers are to Conduct Themselves in accordance with high ethical standards at all times.

4.1.2, Action(s) While Off-Duty

This regulation provides that a police officer must take appropriate action, as needed, in any police matter that comes to his attention within his jurisdiction as authorized by law.

4.1.3, Obedience to Laws and Rules

Generally, police officers must observe all laws and ordinances and must obey the rules, policies and procedures of the WPD.

4.1.4, Prohibition on Withholding of Information

This regulation provides that a police officer must report any information he obtains concerning suspected criminal activity of others.

4.12.6, Truthfulness

This regulation provides that a police officer is obligated to be truthful at all times, whether he is under oath or not.

5.1.6, Sick Leave

There are two versions of the WPD's Comprehensive Sick Leave Policy (the Policy).

P-17 is the Policy as revised on November 23, 2021, consisting of 23 pages. P-18 is the Policy as it existed on January 14, 2008. The Policy is in the WPD's General Orders. Basically, in Section 3.1(b), it requires police personnel (employees) who desire to use sick time (generally, an absence from post or duty because of illness) to follow the WPD's prescribed procedures (set forth in Section Three of the Policy). The Policy requires on-duty personnel to inform their immediate supervisor of an illness or injury that may require the granting of sick leave; and requires off-duty personnel to inform the Desk Officer. Section 4.1(c) mandates that an employee who is out on sick leave to remain in his/her residence on his/her duty day. If it is necessary for the employee to leave his/her residence, it is required that the Desk Officer be so advised and that the employee provides the address and a phone number where he can be reached, and the employee must notify the Desk Officer upon his return home. Leaving the residence is only allowed for medical treatment. Failure to notify the Desk Officer of one's absence from the home or providing the desk Officer with false information will subject the employee to discipline. The Policy further provides in Section 4.1(h) that when sick leave lasts for more than two consecutive days due to illness, the employee must supply the WPD with a signed certificate from his/her physician. In regard to the P-17 and P-18 versions, the Sections cited above [3.1(b), 4.1(c), and 4.1(h)] are identical, except that the newer version (P-17) now allows employees to leave cell phone numbers as their contact numbers.

#### 6.1.1, Disciplinary Action

This regulation provides that all police department employees are subject to disciplinary action for offenses they commit, be they violations of federal or state laws, municipal ordinances, duties of their rank or assignment, violations of departmental rules, regulations, policies, procedures, or directives.

#### 6.1.2, Repeated Violations

This regulation provides that when a police officer commits repeated violations of the department's rules and regulations, it will be seen as indicating his disregard of his duties

and may be cause for dismissal. This applies to any offense without regard to the type or severity of the offense.

The New Jersey "Prevention of Domestic Violence Act of 1991" (N.J.S.A. 2C:25-17, et als.

The New Jersey Prevention of Domestic Violence Act of 1991 defines any of the acts (crimes and offenses) set forth in N.J.S.A. 2C:25-19(a)(1 through 19) as acts of domestic violence when, in accordance with N.J.S.A. 2C:25-19(d) the acts occur in the context of a household and are perpetrated by a spouse, former spouse, or any other person who is a present household member or was at any time a household member upon a victim. Under N.J.S.A. 2C:25-19(d) a victim is any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. The term "victim" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

Among the acts (crimes and offenses) set forth in N.J.S.A 2C:25-19(a) are:

- Assault, N.J.S.A 2C:12-1;
- Criminal Restraint, N.J.S.A. 2C:13-2;
- False Imprisonment, N.J.S.A. 2C:13-3;
- Sexual Assault, N.J.S.A. 2C:14-2;
- Criminal Mischief, N.J.S.A. 2C:17-3;
- Harassment, N.J.S.A. 2C:33-4;
- Stalking, N.J.S.A. 2C:12-10;

Contempt of a domestic violence order pursuant to subsection b. of N.J.S.A. 2C:29-9 that constitutes a crime or disorderly persons offense; and any other crime involving risk of death or serious bodily injury to a person protected under the Prevention of Domestic Violence Act of 1991.

As demonstrated by the definitions of the various above-listed crimes and/or offenses, for purposes of establishing the existence of an act of domestic violence there is no requirement that it be proved that the perpetrator has committed a rude or unprivileged touching of a victim.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Having found that Rodriguez restrained [REDACTED] against her will and interfered with her liberty to move about freely, I **CONCLUDE** that Rodriguez violated N.J.S.A. 2C:13-3, False Imprisonment, a Disorderly Persons offense. I **CONCLUDE** that by falsely imprisoning [REDACTED], Rodriguez committed an act of Domestic Violence under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-19(a)(6).

I **CONCLUDE** that Rodriguez's discovery of [REDACTED] presence at Pier 115 on the evening of October 31 to November 1, 2020, became a prohibited contact when he failed to immediately depart from said premises and therefore violated the TRO.

Having found that there is sufficient evidence to support the conclusion that Rodriguez, after learning of [REDACTED] presence at Pier 115 at 12:30 to 12:45 a.m., failed to immediately leave the premises until around 1:30 a.m., closer to 2:00 a.m., I **CONCLUDE** that Rodriguez violated the provision in Judge Boylan's October 31, 2020 Temporary Restraining Order (a Crime of the Fourth Degree) which prohibited him from being in contact with [REDACTED]. I **CONCLUDE** that by violating the TRO, Rodriguez committed an act of Domestic Violence under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-19(a)(17).

I found that Rodriguez admitted to the HCPO that he made a False Report to the NBPD regarding [REDACTED] on November 1, 2020. Having found that Rodriguez made a false report about [REDACTED] by telephone to the NBPD (violating N.J.S.A. 2C:28-4a, a Crime of the Second Degree), prompting NBPD to conduct a welfare check at approximately 4:00 a.m. and disturbing [REDACTED] sleep, I **CONCLUDE** that Rodriguez

violated the provision in Judge Boylan's October 31, 2020 Temporary Restraining Order, which prohibited him from making or causing anyone else to make harassing communications to [REDACTED], and thereby violated N.J.S.A. 2C:29-9 (a Crime of the Fourth Degree). I **CONCLUDE** that by violating the TRO, Rodriguez committed an act of Domestic Violence under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-19(a)(17).

I **CONCLUDE** that by harassing [REDACTED], Rodriguez violated N.J.S.A. 2C:33-4 Harassment, a Disorderly Persons offense), committed an act of Domestic Violence under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-19(a)(13).

Having found that there is insufficient evidence to support the proposition that Rodriguez damaged [REDACTED] car on 10/31/2020, I **CONCLUDE** that the charge of Criminal Mischief cannot be sustained.

Having found that Fontanez's testimony about his and Rodriguez's efforts to safeguard the girls was fabricated, I **CONCLUDE** that this fabrication calls his entire credibility into question under the maxim "False in one is false in all." I **CONCLUDE** that Fontanez's testimony is tainted by the above-mentioned fabrication and that he diminished his own credibility.

Having found that Rodriguez's action against [REDACTED] as recorded on the 9:52 p.m. video was rough, rude, unprivileged, and painful, as well as other instances (pushing [REDACTED]), I **CONCLUDE** that Rodriguez violated N.J.A.C. 2C:12-1a (Simple Assault), a Disorderly Persons offense. I **CONCLUDE** that by perpetrating a Simple Assault upon [REDACTED], Rodriguez committed an act of Domestic Violence under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-19(a)(2).

Having found that the evidence weighs in favor of [REDACTED] account of the events in question, I **CONCLUDE** that Rodriguez choked [REDACTED] and thus violated N.J.S.A. 2C: 12-1b (13), (Aggravated Assault), a crime of the Third Degree.

I **CONCLUDE** that by perpetrating an Aggravated Assault upon [REDACTED], Rodriguez committed an act of Domestic Violence under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-19(a)(2).

I also **CONCLUDE** that the evidence supporting the proposition that Rodriguez sexually assaulted [REDACTED] on the stairs is insufficient inasmuch as that particular sex act may have been consensual. I **CONCLUDE** that the evidence presented in this matter is insufficient to sustain a violation of N.J.S.A. 2C:14-2 (Sexual Assault).

Having found that Rodriguez was not sick from November 4 through 7, 2020, I **CONCLUDE** that Rodriguez's use of sick leave was inappropriate and violated the WPD's Rules and Regulations 5.1.6. Having found that the WPD did not explicitly or implicitly approve Rodriguez's use of sick leave on November 4 through 7, 2020, I **CONCLUDE** that Rodriguez's use of sick leave during that time period was inappropriate and violated the WPD's Rules and Regulations 5.1.6.

I **CONCLUDE** from the evidence presented, that Rodriguez did indeed violate the WPD's Sick Leave Policy. Having admitted that he violated the Sick Leave Policy, I **CONCLUDE** that Rodriguez violated WPD R&R 5.1.6 (Abuse of Sick Leave).

I **CONCLUDE** that Rodriguez's admission that he broke [REDACTED] phone violated N.J.S.A. 2C: 17-3 (Malicious Mischief). I **CONCLUDE** that by maliciously breaking [REDACTED] phone, Rodriguez committed an act of Domestic Violence under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-19(a)(10).



**RULINGS ON THE INDIVIDUAL CHARGES**

**Incompetency and Inefficiency [N.J.A.C. 4A:2-2.3(a)(1)] and Incompetency to Perform Duties [N.J.A.C. 4A:2-2.3(a)(3)]**

In regard to Count Four and the charges of Incompetency (N.J.A.C. 4A:2-2.3(a)(1)) and Inability (N.J.A.C.4AAA:2-2.3(a)(3)), the Respondent WPD has argued its case mainly in terms of how the disarming of Rodriguez makes him unable to do the road work of a police officer because a road officer is required to carry firearms legally under N.J.A.C. 4A:2-2.3(a)(3). However, the WPD's argument is also supportive of the charge of Incompetency under N.J.A.C. 4A:2-2.3(a)(1). This is because the definition of "Incompetency" includes the officer's lack of willingness, ability, or *qualifications* to perform the duties required of him. While Rodriguez is willing to resume his road duties, he cannot do so because he has been disarmed. The authorization to carry a weapon is a qualification to perform the duties of a road officer. Rodriguez lacks that qualification, at least until he successfully completes the re-arming process and receives approval to be re-armed from his superiors. The authorization to legally carry a weapon is also an ability which a police officer must have in order to perform the duties of a road officer. It follows, that when a police officer cannot legally carry a weapon, he is unable to perform the duties of a road officer. I **CONCLUDE** that the disarming of Rodriguez rendered him incompetent (i.e., lack of qualification, namely, the legal ability to carry a weapon) and I **CONCLUDE** it also rendered him unable (i.e., not fulfilling a requirement of one of his duties, namely, the legal carrying of a gun while on duty) to perform the duties of a road officer. I conclude that until Rodriguez successfully completes the re-arming process and receives approval from his superiors to be re-armed, his will remain incompetent (under N.J.A.C. 4A:2-2.3(a)(1)) and will remain unable (under N.J.A.C. 4A:2-2.3(a)(3)) to perform the duties required of a police officer.

I **CONCLUDE** that the sustained charge of Incompetency and Inefficiency against Rodriguez under N.J.A.C. 4A:2-2.3(a)(1) must be, and hereby is **AFFIRMED**.

I **CONCLUDE** that the sustained charge of Inability to Perform Duties against Rodriguez under N.J.A.C. 4A:2-2.3(a)(3) must be, and hereby is **AFFIRMED**.

#### Conduct Unbecoming

Specifically, with regard to the Charge of Conduct Unbecoming under N.J.A.C. 4A:34-4.1(6), I make the following analysis and conclusions. As noted above in the Applicable Law section, Conduct Unbecoming is not strictly defined by the Administrative Code, but it has been described as pertaining to the employee's personal or on-duty behavior pertaining to his / her status as a public employee. The regulation obligates all public employees to regulate their behavior so that they present themselves before the public as persons of modesty, good taste or good manners, and to avoid behavior that is unsuitable to a person who holds the public's trust, to avoid indecorous or improper conduct, and to conduct themselves in accordance with high standards of propriety. Thus, the purpose of the regulation against conduct unbecoming is to warn public employees to avoid conduct that would tend to destroy public respect for the employee or his unit. Likewise, the penalties imposed for unbecoming conduct serve the purpose of deterring conduct that would adversely affect the morale and efficiency of the employee or his governmental unit. I have found that Rodriguez has violated multiple Statutes and WPD Rules and Regulations. I therefore **CONCLUDE** that the sustained charge of Unbecoming Conduct against Rodriguez must be and hereby is **AFFIRMED**.

#### Other Sufficient Cause

Turning to the charge of Other Sufficient Cause (which arises under N.J.A.C. 4A:2-2.3(a)(12)), this is a catch-all category covering in a general way any violation of the appointing authority's regulations, rules, general orders, or policies.

I **CONCLUDE** that Rodriguez was in violation of the WPD's Rules, Regulations, and Policies. Therefore, the sustained charge against Rodriguez of Other Sufficient Cause must be, and hereby is, **AFFIRMED**.

On the due process issue of whether the charges against Rodriguez were improperly amended during the course of the trial *de novo* in the OAL, I see that the amendments to the charges took place between the issuance of the original PNDA, which is dated December 29, 2020 and the issuance of the First Amended PNDA, which was issued on October 29, 2021. The FNDA was issued on January 13, 2022. The appeal pertains to the FNDA and since there were no amendments of the charges in the FNDA, I see no support for the proposition that the charges were improperly amended in the FNDA or during the pendency of the OAL hearing. I **CONCLUDE** that there was no denial of due process of law.

On the issue of whether progressive discipline should be utilized in this matter, Appellant argues primarily that the Respondent-WPD has not met its burden of proof on any of the charges. That argument has been rejected, as noted above in the Tribunal's Findings and Conclusions. Secondly, the argument has been made that because the WPD saw fit not to suspend Rodriguez immediately, but rather allowed him to keep working as non-road officer, doing administrative tasks, that there is reason to believe that Rodriguez's violations were not egregious enough to warrant removal. I disagree. The Township's forbearance in suspending Rodriguez immediately might have been afforded for any number of reasons, and it certainly does not necessarily encompass the issue of the severity of the charges or of the ultimate evaluation of whether the violations were or were not egregious. It must be recalled that at the time of the issuance of the original PNDA dated December 29, 2020 which started Rodriguez's suspension without pay, the November 1, 2020 False Report incident was a matter being handled by the NBPD and subsequently by the HCPO, not the WPD. In my judgment, there is no logical connection between the argument as presented and the desired result. The issue of whether progressive discipline should be utilized in this matter is controlled by the following principle set forth by our Supreme Court,

Some disciplinary infractions are so serious that removal is appropriate notwithstanding an unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007).

The theory of progressive discipline has as its goal the correction of misbehavior. The question is whether punishment will be proportionate to the offense. In the matter at bar, many of the infractions alleged, taken either individually or taken as a group, are serious enough on their own to warrant removal. I **CONCLUDE** that progressive discipline is not warranted in this matter.

### **ORDER**

Based upon the foregoing, it is **ORDERED** that the determination set forth in the FNDA dated January 13, 2022 that Esteban Rodriguez engaged in Unbecoming Conduct pursuant to N.J.A.C. 4A:2-2.3(a)(6) is hereby **AFFIRMED**; and it is further

**ORDERED** that the determination set forth in the FNDA dated January 13, 2022 demonstrating that Esteban Rodriguez has been rendered Incompetent, Inefficient, and not able to perform his duties pursuant to N.J.A.C. 4A:2-2.3(a)(1) and that it has been demonstrated that Esteban Rodriguez has been rendered unable to perform his duties pursuant to N.J.A.C. 4A:2-2.3(a)(3) are hereby **AFFIRMED**; and it is further

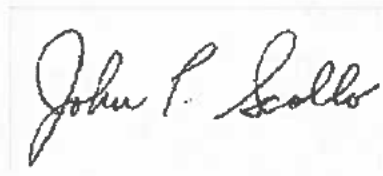
**ORDERED** that the determination set forth in the FNDA dated January 13, 2022 that Esteban Rodriguez violated the appointing authority's Rules, Regulations, General Orders and Policies, categorized as Other Sufficient Cause for discipline pursuant to N.J.A.C. 4A:2-2.3(a)(12) is hereby **AFFIRMED**; and it is further

**ORDERED** that the termination of Esteban Rodriguez's employment with the WPD set forth in the FNDA dated January 13, 2022 is hereby **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



October 5, 2023

DATE

\_\_\_\_\_  
JOHN P. SCOLLO, ALJ

Date Received at Agency:

October 5, 2023

Date Mailed to Parties:

October 5, 2023

Db

**APPENDIX**

**List of Witnesses**

For Petitioner:

Brandon Fontanez  
Blanca Fulcher  
Jeffrey Fulcher  
Esteban Rodriguez

For Respondent:

Deputy Chief James White, WPD  
[REDACTED]  
[REDACTED]

**List of Exhibits**

Petitioner's Exhibits:

- P-1: Amended PNDA dated 10/29/2021
- P-2 FNDA dated 1/13/2022
- P-3 WPD Internal Affairs Investigation Report dated 10/31/2020
- P-4 WPD Internal Affairs Investigation Report dated 12/27/2020
- P-5 Order of Dismissal of TRO dated 12/26/2020
- P-6 TRO dated 12/26/2020
- P-7 Order of Dismissal dated 12/27/2020
- P-8 HCPO Evidence Receipt dated 3/24/2022
- P-9 Admitted; not in evidence
- P-10 Admitted; not in evidence
- P-11 Admitted; not in evidence

- P-12 Transcript of Departmental Hearing conducted on 1/6/2022
- P-13 Review & Determinations from HCPO dated 8/24/2021
- P-14 Internal Affairs Index of Appellant
- P-15 Admitted; not in evidence
- P-16 Admitted; not in evidence
- P-17 WPD's General Orders regarding Sick Leave Policy revised 11/23/2021
- P-18 WPD's General Orders regarding Sick Leave Policy effective 1/14/2008
- P-19 WPD's Internal Affairs Policy
- P-20 Attorney General's Internal Affairs Policy and Procedure 2020
- P-21 Photographs of Esteban Rodriguez and Blanca Fulcher
- P-22 Full Transcript of Departmental Hearing, January, 2022

Respondent's (Township's) Exhibits:

- T-1: Attorney General's Internal Affairs Policy and Procedure
- T-2: WPD's Rules and Regulations
- T-3: Admitted; not in evidence
- T-4: White's Investigation Report regarding [REDACTED] dated 11/10/2020
- T-5: White's Investigation Report regarding [REDACTED] dated 12/27/2020
- T-6 Admitted; not in evidence
- T-7: Lt. Saldarriaga's 10/31/2020 report regarding [REDACTED] request for a TRO
- T-8: Photos of damage to [REDACTED] BMW-M3
- T-9: [REDACTED] Bedroom Incident video taken on 10/9/2020
- T-10: [REDACTED] 10/31/2020 Application for a TRO against Rodriguez
- T-11: A.G.'s Domestic Violence-Directive re: Procedures for seizure of weapons
- T-12: WPD's Policy for Handling D. V. Incidents involving Police Personnel
- T-13: WPD Documents re: seizure of Rodriguez's weapons dated 10/31/2020
- T-14: Audio from NBPD of Rodriguez's 11/1/2020 phone call at 3:51 a.m.
- T-15: WPD's Sick Leave Policy (as amended)
- T-16: Judge D'Elia's Order dated 11/9/2020 dismissing TRO
- T-17: (Original) PNDA dated 12/29/2020
- T-18: TRO issued by Judge Acosta dated 12/26/2020

- T-19: Judge Baber's 12/27/2020 Order Dismissing Jdg. Acosta's 12/26/2020 TRO
- T-20: HCPO's Remand Notice dated 8/24/2021
- T-21: HCPO's Remand Notice re: Sexual Assault dated 8/24/2021
- T-22: Video of Rodriguez's Interview at HCPO n 8/17/2021
- T-23: Video of [REDACTED] Interview in Orlando, Florida
- T-24: Video of Christmas Night by [REDACTED] security cameras
- T-25: Photos of Applegate's injuries taken 12/25-26/2020
- T-26: Rodriguez's Responses to WPD's Requests for Admissions dated 4/8/2022
- T-27: WPD record of Rodriguez's prior discipline for abuse of sick leave (8/2017)
- T-28: WPD record of Rodriguez's prior discipline for mishandling evidence (10/18)
- T-29: Ring Doorbell videos from [REDACTED] (See Court-3 for details.)
- T-30: Rodriguez's LA Fitness Log-In
- T-31: VINE Form and Report

Joint Exhibit:

- J-1: The January 13, 2022 FNDA

Court Exhibits:

Court-1: Four CAD records dated 11/ 4, 5, 6, and 7/ 2020

Court-2: Three Photographs: 2a (Rodriguez); 2b (cell phone); and 2c (Rodriguez).

Court-3: Videos Shown at OAL hearing. They are labelled #1 through # 20 (Part 1) and 20b (Part 2). Numbers 3 through 18 are all from security cameras at [REDACTED]. All videos are listed below with their Exhibit Numbers; a "four-digit identification number"; the date and time of their creation; and the video's length.

Video Labelled:

#1 [REDACTED] 10/9/2020 Bedroom Incident Video; (T-9); (6:51 in length)

#2 Audio from NBPD of Rodriguez's 11/1/2020 phone call at 3:51 a.m.; (1:05 in length)



- #3 Security camera video; (T-29);(7536);12/25/20 at 21:49:56 p.m.; (1:02 in length)
- #4 Security camera video; (T-24);(1306);12/25/20 at 21:52:39 p.m.; (30 seconds)
- #5 Security camera video; (T-29); (2176); 12/25/20 at 22:50:35 p.m.; (1:07 in length)
- #6 Security camera video; (T-24); (labelled as 4b); 12/25/20 at 23:34:49 p.m.; (30 seconds)
- #7 Security camera video; (T-24); (4128); 12/25/20 at 23:35:52 p.m.; (14 seconds)
- #8 Security camera video; (T-24); (0000); 12/25/20 at 23:36:49 p.m.; (31 seconds)
- #9 Security camera video; (T-29); (9088-Exterior); 12/25/20 at 23:38:07 p.m.; (29 seconds)
- #10 Security camera video; (T-29); (3168-Interior); 12/25/20 at 23:38:07 p.m.; (1:06 in length)
- #11 Security camera video; (T-29); (4912); 12/25/20 at 23:39:41 p.m.; (30 seconds)
- #12 Security camera video; (T-?); (2160); 12/25/20 at 23:40:19 p.m.; (30 seconds)
- #13 Security camera video; (T-29); (0512); 12/25/20 at 23:47:36 p.m.; (30 seconds)
- #14 Security camera video; (T-29); (7312); 12/25/20 at 23:50:31 p.m.; (30 seconds)
- #15 Security camera video; (T-29); (3520); 12/25/20 at 23:57:54 p.m.; (1:00 in length)
- #16 Security camera video; (T-29); (5872); 12/25/20 at 23:58:56 p.m.; (1:00 in length)
- #17 Security camera video; (T-29); (0928); 12/25/20 at 23:59:57 p.m.; (1:00 in length)
- #18 Security camera video; (T-29); (3280); 12/26/20 at 00:00:59 a.m.; (1:02 in length)

#19 Video of [REDACTED] April 21, 2021 Interview in Orlando, Florida;  
(T-23); (1:09:19 in length)

#20 (Part One); Video of Rodriguez's 8/17/21 Interview at HCPO; (T-22);  
(1:00:01 in length)

#20b (Part Two); Video of Rodriguez's 8/17/21 Interview at HCPO; (T-22);  
(38:35 in length)