

Lexington- Fayette Urban County Government Special Council Meeting

Lexington, Kentucky February 18, 2021

*Due to the COVID-19 pandemic and State of Emergency, this meeting is being held via live video teleconference pursuant to 2020 Senate Bill 150, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting.*

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on February 18, 2021 at 1:00 p.m. Present were Mayor Gorton in the chair presiding, and the following members of the Council: Plomin, Reynolds, Sheehan, Baxter, Bledsoe, F. Brown, J. Brown, Ellinger, Kay, Kloiber, Lamb, LeGris, McCurn, and Moloney. Absent was Worley.

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TRIAL OF POLICE OFFICER JERVIS MIDDLETON

(Charges)

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
STATEMENT OF FORMAL CHARGES  
PURSUANT TO KRS 15.520  
(To be filed with the Clerk of the  
Lexington-Fayette Urban County Council)

**CHARGES**

Division of Police Officer Jervis Middleton is hereby charged with misconduct in violation of KRS 15.520 and with the following in violation of the below-listed General Order of the Division of Police of the Lexington-Fayette Urban County Government:

**FACTS**

On diverse occasions, occurring from on or about May 31, 2020 through June 12, 2020, Officer Middleton communicated via an electronic social media communication application, "Facebook Messenger," with "S.W.," an adult female, who was an active participant in ongoing protests/demonstrations occurring in Lexington, Kentucky, during the aforementioned time period. During the course of these electronic communications, Officer Middleton: (1) on two occasions shared non-public information concerning official

Division of Police operations and activities; and (2) on more than one occasion encouraged SW to verbally confront officers assigned to protect persons and property during said ongoing demonstrations/protests. During a Division of Police Public Integrity Unit Investigation into the aforementioned conduct Officer Middleton was dishonest during an interview with a Division of Police investigator.

### **COUNT I**

Misconduct, within the meaning of KRS 15.520 and General Order 1973-02K, Operational Rules Section 1.02, in that:

General Order 1973-02K, Operational Rules Section 1.02 (Misconduct), which was in effect on or before the dates of the incidents involved herein, provides:

Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Misconduct of an officer shall include that which tends to bring the department into disrepute or reflects discredit upon the officer as an employee of the department, or that which tends to impair the operation and efficiency of the department or officer.

### **SOLE SPECIFICATION**

Officer Middleton on diverse occasions between May 31, 2020, and June 12, 2020, encouraged SW to verbally confront on-duty Division of Police officers during active, ongoing demonstrations and protests, and provided SW with suggestions on statements to verbally confront said officers. This conduct constitutes misconduct in violation of KRS 15.520 and violates General Order 1973-02K, Operational Rules Section 1.02, in that such conduct reflects discredit upon Officer Middleton and is of a nature that could reasonably tend to impair the operation and efficiency of the department.

### **COUNT II**

Misconduct, within the meaning of KRS 15.520 and General Order 1973-02K, Operational Rules Section 1.115, in that:

General Order 1973-02K, Operational Rules Section 1.15 (Dissemination of or Interference with Written or Electronic Information), which was in effect on or before the dates of the incidents involved herein, provides:

Officers shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended. Officers will only access, use, remove or copy department information and public records or reports from a department facility or electronic device to accomplish a justified law enforcement purpose.

### **SOLE SPECIFICATION**

On or about May 31, 2020, Officer Middleton: (1) sent a screenshot photograph of an official Division of Police Emergency Response Unit activation notification to SW; and (2) sent a screenshot photograph of an internal Division of Police email concerning overtime-availability for a potential protest to SW. Officer Middleton's conduct constitutes misconduct in violation of KRS 15.520 and violates General Order 1973-02K, Operational Rules Section 1.15, in that Officer Middleton disseminated official internal Division of Police communications to a member of the public without authorization or a justified law enforcement purpose.

### **COUNT III**

Misconduct, within the meaning of KRS 15.520 and General Order 1973-02K, Operational Rules Section 1.18, in that:

General Order 1973-02K, Operational Rules Section 1.18 (General Conduct), which was in effect on or before the dates of the incidents involved herein, provides:

Officers shall be truthful in all matters and shall not lie, falsify, conceal, purposely distort, diminish, embellish, or fail to fully disclose facts associated with any law enforcement business.

### **SOLE SPECIFICATION**

On or about September 1, 2020, Officer Middleton was untruthful in an interview conducted by Division of Police Public Integrity Unit investigator Lieutenant David Biroshik to wit: when asked a question to the effect of whether he ever turned on his portable radio while off-duty to monitor police activity Officer Middleton responded to the effect of "absolutely not." Officer's Middleton's response was not truthful because Division of Police records reflect that his portable radio was turned on while he was off duty on or

about June 1, 2020, at or near the time Officer Middleton stated in an electronic communication with SW words to the effect" "I'm about to monitor our radio traffic." This conduct constitutes misconduct in violation of KRS 15.520 and violates General Order 1973-02K, Operational Rules Section 1.118 in that Officer Middleton was untruthful with a Division of Police investigator while being questioned on a matter associated with an official Division of Police Public Integrity Unit investigation.

**RECOMMENDATION**

For the above-stated reasons, the LFUCG Division of Police recommends that Officer Jervis Middleton be dismissed from employment with the Division.

Signed  
Lawrence Weathers, Chief  
Division of Police

COMMONWEALTH OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing was subscribed, sworn to and acknowledged before me by Lawrence Weathers, Chief, Division of Police, this the 10<sup>th</sup> day of December 2020.

My commission expires 9-18-2022.

Signed  
Abigail Allan #609044  
Notary Public, Kentucky, State-at-Large

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NOTICE

To: OFFICER JERVIS MIDDLETON

YOU ARE HEREBY notified that the attached charges were filed on December 10, 2020 with the Clerk of the Urban County Council and that the hearing before the Lexington-Fayette Urban County Council will be held on this matter on the 18th day of February 2021 at 1:00 p.m. in the Council Chamber at 200 East Main Street, Lexington, KY.

DATE: December 10, 2020

Signed  
Abigail Allan  
Clerk of the Urban County Council

CERTIFICATE

The foregoing charges and notices were served by delivering a true copy of same to Officer Jervis Middleton on this 10th day of December at 14:57.

Signed  
Chad Bacon  
Serving Official

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LEGAL NOTICE

BY ORDER OF THE URBAN COUNTY COUNCIL

NOTICE is hereby given that a SPECIAL MEETING of the Lexington-Fayette Urban County Council will be held on Thursday, February 18, 2021 at 1:00 p.m. via virtual teleconference for a police discipline hearing. These documents may be viewed at <https://lexington.legistar.com/Legislation.aspx>. The legal notice may be found at [https://drive.google.com/file/d/1Bv3Lawhsr7IDKCL9jeqFj\\_HW\\_tfqFNe\\_/view?usp=sharing](https://drive.google.com/file/d/1Bv3Lawhsr7IDKCL9jeqFj_HW_tfqFNe_/view?usp=sharing) in the Council Clerk's Office at 200 E. Main St. Lexington, Ky 40507. 859-258-3240, View all LFUCG legal notices at <https://www.lexingtonky.gov/public-notices>

Abigail Allan  
Council Clerk

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The Mayor read a statement explaining the procedures and schedule of the trial hearing, including procedures and specifications related to the virtual teleconference format. Upon request of the defendant, the hearing was declared to be an open hearing conducted via Zoom teleconference and livestreamed. In order to comply with COVID-19 occupancy restrictions, only the following persons were present in the Council Chambers: Officer Jervis Middleton and his Counsel, Mr. Keith Sparks and Mr. Jarrod Bentley; Chief Lawrence Weathers and his Counsel, Mr. Keith Horn and Mr. Roger Wright, Dept. of Law.; Mayor Linda Gorton and her outside Counsel, Charles Cole. The public was not permitted to attend in the Council Chambers. The witness seat was arranged with a video teleconference screen for the witnesses to view the Council as they testified one-at-a-time, and all persons were required to wear masks at all times unless speaking. The Mayor stated that both parties had agreed to several stipulations, including that opening statements would be limited to fifteen minutes each and that each side would be allowed three hours to present their case.

The Mayor opened the hearing at 1:10 p.m.

Mr. Horn made his opening statement.

Mr. Sparks made his opening statement.

The Government proceeded to introduce testimony to substantiate the charges made.

The Council Clerk swore in Detective Zakary Ridener.

Evidence for the Government was given by Detective Ridener.

The Mayor clarified that both parties had previously agreed that the time spent during cross-examinations would be counted toward the time allotment of the counsel conducting the cross-examination.

Mr. Sparks cross-examined the witness.

Detective Ridener was released as a witness and permitted to leave the hearing.

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At 1:41 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference.

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At 1:43 p.m., Mr. J. Brown departed the meeting.

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At 1:45 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. J. Brown rejoined the meeting.

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Mayor Gorton notified the Council Clerk that sidebar conferences would not count against either party's time.

Mr. Horn asked a format question about handing exhibits to witnesses to view during questioning and if a mask should be worn while doing so. Mayor Gorton responded a mask should be worn if they were in such close proximity.

The Council Clerk swore in Sergeant Daniel Burnett.

Evidence for the Government was given by Sergeant Burnett.

Mr. Wright filed the following Government Exhibits: (1) Cellphone Screenshots on or about May 30, 2020 from Sarah William's phone; and, (2) Selected excerpts from Facebook Business Record(s) reflecting communication exchanges between Officer

Middleton and Sarah Williams. He asked questions of Sergeant Burnett regarding the screenshots and excerpts provided by Facebook Record(s).

Mr. Sparks informed the Mayor and LFUCG counsel that the Defense had not yet received the government's exhibits. Mr. Horn responded.

Mr. Sparks cross-examined the witness.

Sergeant Burnett was released as a witness and permitted to leave the hearing.

The Council Clerk swore in Lieutenant Jeremy Tuttle.

Evidence for the Government was given by Lieutenant Tuttle.

Mr. Wright filed Government Exhibit (3) Copy of Lexington Police Department Formal Complaint 111 dated August 5, 2020. He asked Lieutenant Tuttle to describe the form and the associated filing process.

Mr. Wright filed Government Exhibit (4) Copy of Email dated May 31, 2020, from Lieutenant Tuttle. He asked questions of Lieutenant Tuttle regarding the email.

Mr. Wright continued to direct questions to the witness.

Mr. Wright directed Lieutenant Tuttle to review Government Exhibit (2-C). He asked questions of Lieutenant Tuttle regarding the Facebook Record excerpt and the email presented in Government Exhibit (4).

Mr. Sparks asked Lieutenant Tuttle to read aloud the title of the form in Government Exhibit (3) and asked questions regarding the form.

Mr. Sparks continued to cross-examine the witness.

Mr. Wright re-directed questions to the witness.

Mr. Sparks re-examined the witness.

Lieutenant Tuttle was released as a witness and permitted to leave the hearing.

The Council Clerk swore in Assistant Chief Roger Holland.

Evidence for the Government was given by Assistant Chief Holland. Mr. Wright asked Assistant Chief Holland to clarify his position with the Lexington Police Department. Assistant Chief Holland responded that he was promoted from the position of Commander of Emergency Response Unit (ERU) in January 2021.

Mr. Wright referred Assistant Chief Holland to Government Exhibit (2-A). He asked questions of Assistant Chief Holland regarding the screenshot.

Mr. Wright continued to direct questions to the witness.

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At 2:17 p.m., the Council Clerk departed the meeting.

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Mayor Gorton paused the meeting to allow for the Council Clerk’s technical issues to be resolved.

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At 2:20 p.m., the Council Clerk rejoined the meeting.

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Mr. Sparks cross-examined Assistant Chief Holland.

Mr. Wright re-directed questions to the witness.

Assistant Chief Holland was released as a witness and permitted to leave the hearing.

The Council Clerk swore in Rick Montgomery.

Evidence for the Government was given by Mr. Montgomery. Mr. Wright filed Government Exhibit (5) Copies of Officer Middleton’s Radio Logs for on or about June 1, 2020, and asked questions of Mr. Montgomery regarding the radio logs. He directed Mr. Montgomery to review Government Exhibit (2-D) and asked questions regarding the Facebook Record excerpt.

Mr. Sparks cross-examined the witness.

Mr. Montgomery was released as a witness and permitted to leave the hearing.

The Council Clerk swore in Lieutenant David Biroshchik.

Evidence for the Government was given by Lieutenant Biroshchik.

Mr. Wright filed Government Exhibit (8) Transcript of Public Integrity Unit Interview with Officer Middleton conducted on September 1, 2020. He asked questions of Lieutenant Biroshchik regarding the Transcript, and Government Exhibits (2-A), (2-B) and (2-C).

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At 2:53 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference. Mr. J. Brown departed the meeting.

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At 2:54 p.m., Ms. LeGris and Mr. Kloiber departed the meeting.



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At 2:55 p.m., Ms. LeGris and Mr. Kloiber rejoined the meeting.

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At 2:56 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. J. Brown rejoined the meeting.

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Mr. Wright resumed directing questions to Lieutenant Biroschik.

Mr. Wright asked Lieutenant Biroschik to review Government Exhibits (2-D), (2-E), (2-F), and (2-G). Mr. Wright asked Lieutenant Biroschik questions regarding the Facebook Record excerpts.

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At 3:05 p.m., the meeting stood at recess.

At 3:20 p.m., the meeting reconvened with the same persons present.

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Mr. Wright resumed directing questions to Lieutenant Biroschik.

Mr. Wright asked Lieutenant Biroschik to review Government Exhibits (2-H), (2-I), (2-K), (2-L), and (2-M). Mr. Wright asked Lieutenant Biroschik questions regarding the Facebook Record excerpts.

Mr. Wright filed Government Exhibit (6) Compact Disc containing three video clips, referred to as Government Video Exhibits (1), (2), and (3).

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The meeting was paused for ten minutes to resolve technical difficulties in the video playback.

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Mr. Wright asked Lieutenant Biroschik questions regarding the Government Video Exhibits. He asked Lieutenant Biroschik to review Government Exhibit (1) and asked questions regarding the screenshot.

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Mayor Gorton paused the meeting, noting that the witness was not visible on her video teleconference screen in the Council Chambers.

Ms. Lamb and Vice Mayor Kay commented that he was visible to external video teleconference participants.

LexTV Staff resolved the screen issue and the meeting resumed.

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Mr. Wright resumed directing questions to Lieutenant Biroshchik.

Mr. Sparks cross-examined Lieutenant Biroshchik.

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At 3:57 p.m., Ms. Plomin departed the meeting.

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At 4:03 p.m., Ms. Plomin rejoined the meeting.

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Mr. Sparks filed Defendant Exhibit 4 Selected pages from the PIU Summary Memorandum dated September 28, 2020 and asked Lieutenant Biroshchik to read aloud the first paragraph on page 2, which read, "Throughout this time period it appears that Officer Jervis Middleton advised Ms. Williams that certain officers and command staff were 'racists' and directed her to call them out during the protest. He also provided her copies of sensitive 'law enforcement only' communications, including emails and text messages which outlined staffing, operational, and deployment plans." Mr. Sparks asked questions of Lieutenant Biroshchik regarding "'law enforcement only' communications". Lieutenant Biroshchik responded.

Mr. Sparks continued to cross-examine the witness.

Mr. Sparks asked Lieutenant Biroshchik to read the first paragraph at the top of page 7 of the PIU Summary Memorandum, which was, "During the interview with Officer Middleton he was asked specifically if he had ever turned his radio on while he was off-duty to monitor police activity. His response was an immediate 'absolutely not'."

Mr. Sparks requested Lieutenant Biroshchik to read aloud a portion of dialogue from the Government Exhibit (8) Transcript of Public Integrity Unit Interview (page 71). Mr. Sparks asked Lieutenant Biroshchik to read aloud Lieutenant Brotherton's remarks and Mr. Sparks volunteered to read aloud Officer Middleton's responses. The following exchange occurred: Lieutenant Biroshchik read, "Did... did you use your portable radio at all, to monitor police activity?" Mr. Sparks read, "Absolutely" and asked Lieutenant

Biroschik to read the next line. Mr. Biroschik read, “while she was”, and Mr. Sparks read, “Absolutely not.” Mr. Sparks asked questions of Lieutenant Biroschik regarding the PIU Transcript and Summary Memorandum.

Mr. Sparks continued cross-examining the witness.

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At 4:32 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference.

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At 4:33 p.m., Mr. J. Brown departed the meeting.

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At 4:41 p.m., Mr. Moloney departed the meeting.

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At 4:46 p.m., Ms. Baxter, Vice Mayor Kay, Ms. Reynolds, Mr. McCurn, Ms. LeGris, and Ms. Baxter departed the meeting.

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At 4:48 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. J. Brown, Mr. Moloney, Ms. Baxter, Vice Mayor Kay, Ms. Reynolds, Mr. McCurn, Ms. LeGris and Ms. Baxter rejoined the meeting.

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Mr. Sparks resumed his cross-examination of Lieutenant Biroschik. He filed Defendant Exhibit (48) Cellphone video of Interview between Kristen Pflum and Sarah Williams and Defendant Exhibit (3) Photograph of racially insensitive “meme” shared by officers. He asked questions of Lieutenant Biroschik regarding the cellphone video and “meme”.

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At 5:08 p.m., the meeting stood at recess.

At 5:27 p.m., the meeting reconvened with the same persons present.

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The Mayor stated that the counsel for LFUCG had 1 hour and 38 minutes, and the counsel for the Defense had 1 hour and 51 minutes left for arguments and provided a brief summary of the remaining schedule.

Mr. Wright asked Lieutenant Biroshchik to clarify for the record, that the previous witness to offer testimony, Assistant Chief Holland, was a different person than Officer Holland. Lieutenant Biroshchik confirmed, stating they were brothers. Mr. Wright asked Lieutenant Biroshchik if he had understood Mr. Sparks' questioning to pertain to Officer Ryan Holland, as opposed to Assistant Chief Roger Holland. Lieutenant Biroshchik confirmed.

Mr. Wright re-directed questions to Lieutenant Biroshchik, asking him about the "meme" introduced by the Defense.

Mr. Sparks re-examined the witness.

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At 5:35 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference. Mr. J. Brown, and Mr. F. Brown departed the meeting.

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At 5:36 p.m., Vice Mayor Kay, Mr. McCurn, Mr. Kloiber, Ms. Plomin and Ms. LeGris departed the meeting.

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At 5:38 p.m. Ms. Bledsoe departed the meeting and Ms. Plomin rejoined the meeting.

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At 5:40 p.m., Ms. LeGris rejoined the meeting and Mr. McCurn departed the meeting.

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At 5:43 p.m., Ms. Baxter departed the meeting.

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At 5:46 p.m., Ms. Baxter rejoined the meeting.

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At 5:49 p.m., Ms. Bledsoe rejoined the meeting.

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At 5:53 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. J. Brown, Mr. F. Brown, Vice Mayor Kay, Mr. McCurn, and Mr. Kloiber rejoined the meeting.

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Mr. Sparks asked to reserve the right to recall Lieutenant Biroshchik. The Mayor excused Lieutenant Biroshchik to return to the waiting area.

The Council Clerk swore in Commander Brad Ingram.

Evidence for the Government was given by Commander Ingram.

Mr. Wright filed Government Exhibit (7) Lexington Police Department General Order 1973-02K – Disciplinary Procedures of Sworn Officers.

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At 5:58 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference. Mr. McCurn, Mr. J. Brown and Mr. F. Brown departed the meeting.

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At 5:58 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. McCurn, Mr. J. Brown, and Mr. F. Brown rejoined the meeting.

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Mr. Wright asked Commander Ingram to review the standard regarding officer misconduct in the General Order 1973-02K. Commander Ingram read aloud the following excerpt from Appendix B, Operational Rules, Section 1.02 Misconduct: “Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department and to not cast doubt on the officer's integrity, honesty, judgment, or character. Misconduct of an officer shall include that which tends to bring the department into disrepute or reflects discredit upon the officer as an employee of the department, or that which tends to impair the operation and efficiency of the department or officer.”

Mr. Wright asked Commander Ingram to review the standard regarding dissemination of information in the General Order 1973-02K. Commander Ingram read aloud the following excerpt from Appendix B, Operational Rules, Section 1.15 Dissemination of or Interference with Written or Electronic Information: “Officers shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended. Officers will only access, use, remove or copy department information and public records or reports from

a department facility or electronic device to accomplish a justified law enforcement purpose.”

Mr. Wright asked Commander Ingram to review the standard and section in the General Order 1973-02K that was associated with Charge III. Commander Ingram read aloud the following excerpt from Appendix B, Operational Rules, Section 1.18 General Conduct: “Officers shall be truthful in all matters and shall not lie, falsify, conceal, purposely distort, diminish, embellish, or fail to fully disclose facts associated with any law enforcement business.” Mr. Wright asked questions of Commander Ingram regarding the policy standards.

Mr. Sparks cross-examined the witness.

Commander Ingram was released as a witness and permitted to leave the hearing.

The Council Clerk swore in Chief Lawrence Weathers.

Evidence for the Government was given by Chief Weathers.

Mr. Horn filed Government Exhibit (10) Certified Copy of an Agreement of Conformity Officer Middleton’s prior disciplinary action (demotion). Mr. Horn asked questions of Chief Weathers regarding the prior Agreement of Conformity.

Mr. Horn continued to direct questions to the witness.

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At 6:30 p.m., the meeting stood at recess.

At 7:30 p.m., the meeting reconvened with the same persons present.

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Mr. Sparks cross-examined Chief Weathers.

Mr. Sparks talked about Defendant Exhibit (36) Fraternal Order of Police Grievance Form filed on behalf of Officer Middleton from May 2019. He asked questions of Chief Weathers regarding Government Exhibit (10) and the Grievance form.

Mr. Sparks continued to cross-examine Chief Weathers. He asked questions regarding the Disciplinary Options as written in Defendant Exhibit (35) Changes to General Order 1973-02K from 1973-02J. Mr. Sparks asked Chief Weathers to read aloud the line on page 3, Section IV (D). “A suspension is a serious disciplinary option involving a reduction in the officer’s regularly scheduled compensated hours or workweek(s) for

misconduct considered to be serious or part of a continuing pattern of behavior involving repeated instances of misconduct.”

Mr. Sparks continued to cross-examine the witness.

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At 7:55 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference. Mr. J. Brown and Mr. F. Brown departed the meeting.

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At 7:56 p.m., Ms. Plomin departed the meeting.

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At 7:57 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. J. Brown, Mr. F. Brown, and Ms. Plomin rejoined the meeting.

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Mr. Sparks resumed cross-examining Chief Weathers.

Mr. Sparks referenced Defendant Exhibit (27) Coaching and Counseling Form for Officer Ryan Holland. He asked questions of Chief Weathers regarding the form.

Mr. Sparks asked Chief Weathers to read aloud a text message from Defendant Exhibit (1) – Selected text messages from the Facebook Warrant Transcript.

Mr. Horn pointed out that Defendant Exhibit (35) was marked as a draft version. He requested that Government Exhibit (7) be used for any further reference to the General Order. Mr. Sparks commented that he had no issues with Mr. Horn’s request. Mayor Gorton concurred.

Mr. Horn re-directed questions to Chief Weathers. He read an excerpt from Defendant Exhibit (27).

Mr. Horn introduced Government Exhibit (14) Fraternal Order of Police Grievance Form filed on behalf of Officer Middleton. He referenced page 5, and asked Chief Weathers about the process to remove grievances, as listed in CBA Article 15. Mr. Horn asked Chief Weathers to read aloud the third line from the bottom on page 5. Chief Weathers read the following, “Sgt. Middleton believes LDP’s actions, including the severity of the discipline in contrast of prior disciplinary outcomes involving other officers, were discriminatory and based upon Sgt. Middleton’s race.”

Mr. Horn introduced Government Exhibit (13) Discipline Resolution Agreement of Officer Middleton dated October 24, 2019. Mr. Horn asked questions of Chief Weathers regarding the grievance and prior discipline resolution.

Mr. Sparks continued to cross-examine the witness.

Mr. Sparks asked to reserve the right to recall Chief Weathers. Chief Weathers was released as a witness and permitted to return to his seat.

Mayor Gorton asked Mr. Horn if he had any witnesses remaining. Mr. Horn responded he did not. Mayor Gorton asked Mr. Horn if he had completed his case on behalf of Chief Weathers. Mr. Horn confirmed his case was complete.

The Mayor stated the Defense had 55 minutes left for arguments.

Mr. Sparks moved for a directive verdict on the grounds that the Government had not met its burden.

The Mayor denied the motion, stating that the matter would move to the Council for deliberation.

The Council Clerk swore in Officer Jervis Middleton.

Evidence for the Defense was given by Officer Jervis Middleton.

Mr. Sparks asked the witness to read an excerpt from Defendant Exhibit (37) Distinguished Service Award presented to Officer Middleton June 19, 2018.

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At 8:25 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference. Mr. F. Brown, Mr. Moloney, Ms. Plomin, Mr. J. Brown, Mr. McCurn, and Ms. Bledsoe departed the meeting.

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At 8:29 p.m., Ms. Plomin rejoined the meeting and Ms. Baxter departed the meeting.

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At 8:31 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. F. Brown, Mr. Moloney, Ms. Plomin, Mr. J. Brown, Mr. McCurn, Ms. Bledsoe and Ms. Baxter rejoined the meeting.

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Mr. Sparks continued directing questions to Officer Middleton.



Mr. Sparks filed Defendant Exhibit (47) Video clip from Officer Middleton's Body Worn Camera talking to protestors. Mr. Sparks asked questions of the witness regarding the footage.

Mr. Sparks continued to direct questions to the witness.

Mr. Horn inquired as to how many minutes remained for arguments. Mayor Gorton responded that the Defense had 13 minutes remaining.

Mr. Horn cross-examined Officer Middleton.

Mr. Horn filed Government Exhibit (12) Email to LFUCG Div. of Human Resources from Mr. Sparks in reference to an Investigative Interview and asked questions of the witness regarding the email.

Mr. Horn directed Officer Middleton to review Government Exhibit (8) and asked questions in reference to statements he made on pages 12, 54, 67 and 77. Officer Middleton responded.

Officer Middleton was released as a witness and permitted to return to his seat.

Mayor Gorton announced 15 minutes remaining for the Defense. Mr. Sparks inquired about a possible discrepancy in the time and wondered if the previous sidebar may have been deducted from his time. Mayor Gorton asked the Council Clerk for an update on the Defense's time left for arguments. The Council Clerk responded that the Defense had 25 minutes and 29 seconds left.

Mr. J. Brown requested the Council take a fifteen-minute break. Mayor Gorton clarified that this would be the last break until deliberations and asked Mr. Sparks and Mr. Horn if they had any objections. They responded with no objections.

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At 9:07 p.m., the meeting stood at recess.

At 9:23 p.m., the meeting reconvened with the same persons present.

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The Council Clerk swore in Sarah Williams.

Evidence for the Defense was given by Ms. Williams.

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At 9:28 p.m., Mayor Gorton and counsel for all parties departed to the Caucus Room for a sidebar conference. Mr. J. Brown, Mr. F. Brown, Mr. Moloney, Ms. Plomin, and Ms. Bledsoe departed the meeting.

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At 9:33 p.m., Mayor Gorton and counsel for all parties returned to the Council Chambers. Mr. J. Brown, Mr. F. Brown, Mr. Moloney, Ms. Plomin, and Ms. Bledsoe rejoined the meeting.

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Mr. Bentley resumed directing questions to Ms. Williams.

Ms. Williams was released as a witness and permitted to leave the hearing.

The Council Clerk swore in Kristi Middleton.

Evidence for the Defense was given by Ms. Middleton.

The Mayor asked for an update on the time remaining for the Defense's arguments. The Council Clerk responded that 7 minutes and 34 seconds remained.

Mr. Sparks continued to direct questions to the witness.

Mr. Horn cross-examined the witness.

Ms. Middleton was released as a witness and permitted to leave the hearing.

Mayor Gorton asked Mr. Sparks if he had any witnesses remaining. Mr. Sparks responded he did not. Mayor Gorton asked Mr. Sparks if he had completed his case on behalf of Officer Middleton. Mr. Sparks confirmed his case was complete.

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Mayor Gorton stated that the proof was now closed and that prior discipline of Officer Middleton should not be considered in the Council's deliberations and determination of guilty or not guilty in regards to Counts I, II, and III of the Disciplinary Charges but could be considered for purposes of determining the discipline to be imposed by the Council in the event in the finding of guilt in Disciplinary Charges I, II, and/or III.

Mayor Gorton determined that she would not rule upon the pending Motion to Dismiss, and that the Disciplinary Charges would proceed to the hearing authority, the City Council, for consideration.

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The Mayor instructed the attorneys to make their closing statements, with each side having fifteen-minutes in which to give their statement.

Mr. Sparks and Mr. Horn made their closing statements.

The Mayor announced that it was time for deliberations.

Upon motion by Vice Mayor Kay, seconded by Ms. Reynolds, and approved by unanimous vote, the Council went into closed session for purposes of deliberation pursuant to KRS 61.810(1)(f) and (j) at 10:22 p.m., with a ten minute buffer included to allow LexTV to set up a private channel via virtual teleconference.

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Upon motion by Mr. Ellinger, seconded by Mr. McCurn, and approved by unanimous vote, the Council returned to open session at 12:51 a.m. on February 19, 2021, with the same members present.

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The Mayor read the Findings, Determination and Holdings.

Mr. McCurn noted that the date in the introduction of the Findings, Determination and Holdings was read as “December 10, 2021” and clarified that it should be “December 10, 2020”. Mayor Gorton acknowledged that “December 10, 2020” was the correct date.

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Vice Mayor Kay made a motion, seconded by Mr. Ellinger, that Officer Middleton is found guilty of violation of Operational Rules Section 1.02 as to the Sole Specification contained in Count I of the disciplinary charges. The motion was approved by the following vote:

Aye: Plomin, Reynolds, Sheehan, Baxter, -----14  
Bledsoe, F. Brown, J. Brown, Ellinger,  
Kay, Kloiber, Lamb, LeGris, McCurn,  
Moloney

Nay: -----0

\* \* \*

Vice Mayor Kay made a motion, seconded by Ms. Plomin, that Officer Middleton is found guilty of violation of Operational Rules Section 1.115 as to the Sole Specification contained in Count II of the disciplinary charges. The motion was approved by the following vote:

Aye: Plomin, Reynolds, Sheehan, Baxter, -----14  
Bledsoe, F. Brown, J. Brown, Ellinger,  
Kay, Kloiber, Lamb, LeGris, McCurn,  
Moloney

Nay: -----0

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Vice Mayor Kay made a motion, seconded by Mr. Ellinger, that Officer Middleton is found not guilty of violation of Operational Rules Section 1.18 as to the Sole Specification contained in Count III of the disciplinary charges. The motion was approved by the following vote:

Aye: Plomin, Reynolds, Sheehan, Baxter, -----14  
Bledsoe, F. Brown, J. Brown, Ellinger,  
Kay, Kloiber, Lamb, LeGris, McCurn,  
Moloney

Nay: -----0

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Vice Mayor Kay made a motion, seconded by Mr. F. Brown, that Officer Jervis Middleton is guilty on one or more of the charges above holding. The motion passed by the following vote:

Aye: Plomin, Reynolds, Sheehan, Baxter, -----14  
Bledsoe, F. Brown, J. Brown, Ellinger,  
Kay, Kloiber, Lamb, LeGris, McCurn,  
Moloney

Nay: -----0

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Vice Mayor Kay made a motion, seconded by Mr. Ellinger, that Officer Middleton has been found guilty of violation of Operational Rules as to one of more of the three (3) Sole Specifications contained in Counts I, II and/or III of the disciplinary charges, therefore, it is decided and held the discipline to be imposed upon Officer Middleton is as follows: Termination. The motion passed by the following vote:

Aye: Plomin, Reynolds, Sheehan, Baxter, -----14  
Bledsoe, F. Brown, J. Brown, Ellinger,  
Kay, Kloiber, Lamb, LeGris, McCurn,  
Moloney

Nay: -----0

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Upon motion by Vice Mayor Kay, seconded by Ms. Plomin, and approved by unanimous vote, Resolution 75-2021, a Resolution adopting Findings, Determination and Holding concerning Formal Disciplinary Charges filed against Officer Jervis Middleton by Chief Lawrence Weathers dated and filed with the Clerk of the Urban County Council on December 10, 2020 was placed on the docket and given first reading.

Upon motion by Vice Mayor Kay, seconded by Mr. Ellinger, and approved by unanimous vote, the rules were suspended and the resolution received second reading.

Upon motion by Vice Mayor Kay, and seconded by Mr. Ellinger, the resolution was approved by the following vote:

Aye: Plomin, Reynolds, Sheehan, Baxter, -----14  
Bledsoe, F. Brown, J. Brown, Ellinger,  
Kay, Kloiber, Lamb, LeGris, McCurn,  
Moloney

Nay: -----0

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Upon motion by Ms. Plomin, seconded by Vice Mayor Kay, and approved by unanimous vote, the meeting adjourned at 1:05 a.m.

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Deputy Clerk of the Urban County Council