



POLICE DEPARTMENT

August 31, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Nelson Acevedo  
Tax Registry No. 937937  
43 Precinct  
Disciplinary Case No. 2010-2149

The above-named member of the Department appeared before the Court on June 15, 2012, charged with the following:

1. Said Police Officer Nelson Acevedo, assigned to the 48th Precinct, on or about July 24, 2010, failed and neglected to properly safeguard his firearm resulting in the loss of said firearm.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS GENERAL REGULATIONS

2. Said Police Officer Nelson Acevedo, assigned to the 48th Precinct, on or about July 24, 2010, failed to immediately notify the Department that he lost his service weapon, canister of O.C. spray, Department radio, and two magazines.

P.G. 206-03, Page 1, Paragraph 9 – VIOLATIONS

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

3. Said Police Officer Nelson Acevedo, assigned to the 48th Precinct, on or about July 24, 2010, failed and neglected to safeguard Department property in that said Officer lost his canister of O.C. spray, Department radio, and two magazines.

P.G. 206-03, Page 1, Paragraph 9 – VIOLATIONS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office.  
Respondent was represented by John Tynan, Esq., Worth, Longworth & London LLP.

Respondent, through his counsel, pleaded Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent, having pleaded Guilty, is found Guilty.

### SUMMARY OF EVIDENCE IN MITIGATION

Respondent had been a member of the Department since July 2005. He was assigned to the 48 Precinct. On Saturday, July 24, 2010, he was working the midnight tour when his Glock 19, his on-duty firearm, went missing. At the end of his tour, he had placed his firearm in his locker, located in the locker room of the 48 Precinct station house. On that day, he secured his gun in his locker as he usually did, with a combination lock.

After his tour on July 24, 2010, Respondent had three days off. During those three days, he did not have any need for his firearm. When he returned to work, his firearm and entire gun belt were missing from his locker.

Upon discovering that his firearm was missing, Respondent asked his delegate if anything had been turned in to him, telling the delegate that his firearm was missing. The delegate told Respondent that he was "pretty sure someone is fucking around and it will turn up." Respondent thought, based on what the delegate said, that someone was playing a prank on him. So Respondent waited and asked around. Although Respondent could not give an exact headcount of how many officers he approached during what would come to be a three-day period before reporting his firearm missing, it was a lot. But his firearm never turned up.

Respondent did not go on patrol when his firearm was missing. Instead, he was assigned to be the telephone switchboard operator (TS). He did not notify any of his supervisors that his gun was missing. Although he worked for three days after returning from his days off, Respondent waited to report that his gun was missing because he wanted to wait to see if someone would turn it in.

Additionally, Respondent contended, no one told him that he should inform his supervisor earlier than he did. He claimed that he was advised not to inform a supervisor the entire time. "Everyone felt like . . . someone is fucking around with me and it will turn up and they didn't want to draw any attention to the precinct." Respondent indicated that the 48 Precinct station house was the same building where Patrol Borough Bronx was located, and agreed that it was "where all these high ranking Bronx officers were located."

Respondent confirmed that prior to this incident he had heard of other people's personal property, including firearms, being taken from locker rooms at his precinct.

Respondent testified that the price of his police belt alone was around \$40 to \$50. The other items on the belt were owned by and given to him by the Department. Respondent estimated that the magazines, which he had to purchase, and the firearm were worth around \$500 all together.

On cross examination, Respondent confirmed that prior to leaving the precinct on July 24, 2010, he was in the locker room. He recalled placing his duty belt in his locker, closing the locker, and securing it with a lock.

Respondent stated that when he began his tour after his days off, he went to his locker to get dressed. His boots and uniform were in his locker, but he did not see his gun belt. He searched the locker to see if it had fallen off a hook onto the floor of the locker. Respondent

testified that when he noticed the firearm was missing, he did not think to himself that he might have left it at home. He confirmed that he immediately thought it was "lost." Nevertheless, after his tour, he went home and searched for his firearm there. The firearm was not at home.

On his first day back, Respondent worked his entire tour. He admitted that he asked a supervisor if he could be assigned to TS without telling him that he wanted the assignment because he could not find his firearm. Instead, Respondent told him that he did not feel well.

Respondent confirmed that when he went to work the next day, he inquired of fellow Police Officers along the lines of "are you fucking with me, you got my stuff." Respondent asserted that someone mentioned he had seen a gun belt on a table near Respondent's locker. Respondent could not remember the name of the officer who told him this but he knew what the officer looked like. Although Respondent admitted telling a supervisor that he might have left his gun belt on the table in the locker room, Respondent contended that he had not worded correctly what he meant to the supervisor and that the supervisor misinterpreted what he said.

Respondent agreed that when he came to work on July 30, 2010, he continued to search for his firearm and gun belt, saying, "[W]hat has it [sic], please, someone give it up." His tour that day was 2315x0750. At 0800 hours, after Respondent completed his tour, he notified a sergeant that his gun was missing.

Respondent denied having the opportunity on June 28, 29, and 30, 2010, to notify someone of his missing firearm.

Respondent confirmed that once he reported the firearm missing, his locker was investigated and there was no evidence that his lock had been broken or tampered with.



PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to the loss of his firearm, pepper spray and other supplies, and the failure to report the loss immediately to appropriate authority. He was assigned to the 48 Precinct and worked a tour on Saturday, July 24, 2010. He placed his service weapon in his locker at the locker room there. He locked the locker with a combination lock. He then went home and had three days off (he was on a duty chart).

When Respondent returned to work, he testified, the items from his locker were missing. He did a quick search of the area and did not find them. He did not report the loss to a supervisor, however. Instead, certain that someone was playing a joke on him, he asked several Police Officers, including his delegate, if that were the case. His delegate told him that it probably was the case.

That day, Respondent asked to be assigned as the TS operator, saying that he was not feeling well. This request was approved. For the next two to three days, Respondent continued to ask other Police Officers if anyone was "messaging" or "fucking" with him. No one apparently admitted anything. It was only on Friday, July 30, 2010, that Respondent informed a supervisor that his weapon was missing.

The Department recommended a penalty of the forfeiture of the 31 days already served by Respondent on suspension, plus an additional 10 vacation days. Respondent argued that at the very least, he had been punished enough with the period of suspension, and that a penalty of

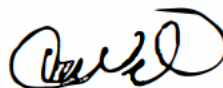
30 days or less was warranted. See, e.g., Case No. 2009-1058 (July 22, 2011) (four-and-a-half-year Police Officer with no prior disciplinary record penalized 20 vacation days for failure to safeguard his service firearm, when he locked it in a vehicle's trunk, then, when later confronted by a violent group, broke a window in an unsuccessful attempt to get the weapon, then left the scene); Case No. 2010-0454 (June 15, 2011) (30 vacation days for three-year Police Officer with no record who left his firearm in center console of his personal vehicle and went to the movies; when he returned, the gun was missing).

The Court finds that the instant case merits a more serious penalty. Respondent did not simply lose his firearm. Rather, Respondent waited to inform a supervisor because he thought that someone was playing a trick on him and wanted the perpetrator or perpetrators to be revealed before he did what the Patrol Guide calls for – reasonably prompt notification of a supervisor. Respondent continued to do this for three days, even telling a supervisor on the first day that he wished to be assigned as the TS operator because he was not feeling well. That kept him in the 48 Precinct station house without the necessity of a firearm, even though it was not, apparently, a true statement. Respondent asserted that he was trying to avoid bringing unwanted attention to the precinct, whose home also housed Patrol Borough Bronx.

This was a mitigation hearing, yet nothing in Respondent's testimony was mitigating. A desire to prevent the discovery of misconduct, one's own or someone else's, does not excuse the failure to report misconduct. If there was a theft of a firearm from any Department facility, or even a prank removal from someone's locker, the Department must know about it immediately. That is the only way such things will stop. Respondent's supposedly altruistic motive could only lead to more harm to the Department. Thus, the instant matter is not one in which circumstances related to the misconduct call for mitigation of the penalty.

Accordingly, the Court recommends that Respondent forfeit the 31 days previously served on suspension, plus an additional 10 vacation days, for a total of 41 days, as a penalty. See Case No. 2010-1244 (June 14, 2011) (five-and-a-half-year police officer with no record forfeited 40 vacation days for off-duty failure to safeguard loaded firearm, failure to carry shield while armed, and displaying Department parking plaque while parked in a no-standing-anytime zone).

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner – Trials


**APPROVED**  
DEC 10 2012  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER NELSON ACEVEDO  
TAX REGISTRY NO. 937937  
DISCIPLINARY CASE NO. 2010-2149

In his last three annual evaluations, Respondent received an overall rating of 4.0 "Highly Competent" in 2011, a 3.5 "Competent/Highly Competent" in 2010, and a 3.0 "Competent" in 2009. He has been awarded two medals for Excellent Police Duty, six medals for Meritorious Police Duty, one medal for Commendation and one medal for Meritorious Police Duty – Integrity [REDACTED]

For your consideration.

  
David S. Weisel  
Assistant Deputy Commissioner – Trials