



POLICE DEPARTMENT CITY OF NEW YORK

June 14, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Irwin Luperon
Tax Registry No. 941061
75 Precinct
Disciplinary Case No. 2016-15894

Charges and Specifications:

1. Said Police Officer Irwin Luperon, on or about January 27, 2016, while on duty and assigned to the 75th Precinct, failed to properly voucher and secure a cellular phone recovered from an arrestee known to the Department.
P.G. 218-01 - INVOICING PROPERTY - GENERAL PROCEDURE
P.G. 218-50 - PRISONER CELL PHONES

Appearances:

For the Department: Rachel Grinspan, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Date:

May 2, 2017

Decision:

Guilty

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 2, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Digna Lind and Police Officer Manuel Velasquez as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that Respondent was on duty, assigned to the 75 precinct, on January 27, 2016. During his tour of duty he arrested an individual for a domestic violence related incident, and took the individual back to the 75 precinct for processing. The individual had a cell phone, which Respondent took and placed on his desk in the domestic violence office at the precinct. While the phone was on the desk, Officer Manuel Velazquez, who worked with Respondent, took the phone, without Respondent's knowledge, and used it to take pictures of five other members of service. A sergeant was present while this was happening and did not stop it. The photos included one of the sergeant raising his middle finger. Other pictures were of officers making faces and fooling around. Officer Velasquez received a Schedule B Command Discipline and the loss of one vacation day for his actions. The sergeant and other officers in the photos received a letter of instruction for their involvement in the incident.

When the prisoner's mother arrived at the precinct, Respondent, still unaware that the phone had been used by Officer Velasquez, authorized another officer to give the phone to the prisoner's mother, without vouchering the phone.

The Department presented two witnesses at trial. The first witness was Sergeant Digna Lind, the officer who investigated the case. She concluded, based on her investigation, that the prisoner's phone was used by Officer Velasquez to take pictures and that it was not vouchered by Respondent. (Tr. 11-14) On cross-examination she acknowledged that during the course of her career she had made hundreds of arrests and in some of those arrests she retrieved property, including cell phones, from a prisoner and gave it to their family member or friend without vouchering it. (Tr. 15-16) She never received any discipline for doing so, and was never ordered by a sergeant not to do it again. (Tr. 16-17) She agreed with defense counsel that based on her experience property is routinely given to either family members or friends at the request of an arrestee. (Tr. 17-18) She also agreed that the practice occurs with property which is more valuable than a cellphone, such as cars. (Tr. 18)

Sergeant Digna was also cross-examined on her procedures when she processed arrests. She agreed with defense counsel that in every one of her arrests, she would process the prisoner first and save the vouchering that needed to be done until after the prisoner had been processed. (Tr. 19-20)

Officer Velazquez testified that he took the camera from Respondent's desk believing that it was Respondent's cellphone. He took the pictures and then placed the phone back on Respondent's desk. (Tr. 32) On cross-examination he agreed with defense counsel that civilians were only allowed into the domestic violence office at the 75 precinct, where he saw the phone, if accompanied by a police officer. (Tr. 36) He

reviewed a diagram of the layout of the precinct, (Resp. Ex. A), and also agreed that the entire area where the domestic violence office is located is on the opposite side of the precinct from the entrance and is off limits to the public unless they are escorted by a police officer. (Tr. 39)

Officer Velazquez also acknowledged on cross-examination that there were times when he made arrests and left property on his desk in the domestic violence office at the 75 precinct prior to vouchering it. He testified that he did this in view of his supervisor and was never disciplined for it. (Tr. 41) He agreed that it was common practice for officers in the domestic violence office to put prisoner property on their desks prior to vouchering it. (Tr. 42)

Respondent testified that after he placed the prisoner in his cell he allowed him to use his cellphone to make a call to his mother and then he put the phone on his desk in the domestic violence office. He has placed prisoner property on his desk in the past and has observed other officers do the same. Neither he, nor any other officer he knew of, had been disciplined by his supervisor for doing so. After he placed the phone on his desk he finished processing the prisoner for arrest. (Tr. 53-54) Respondent testified that while he did have drawers in his desk, there was no locker provided in which to place the property. (Tr. 54, 60) He admitted that when the prisoner's mother arrived at the precinct to pick up the prisoner's property, he instructed another officer to give her the phone. (Tr. 55-56) Respondent testified that he had previously turned over prisoner property to their family members or friends and that he learned to do this from his superiors. He took these actions with the knowledge of his superiors, and sometimes even at the direction of his superiors, and has never been disciplined for doing so. (Tr. 56-57)

Respondent has been charged with failing to properly voucher and secure the prisoner's cell phone. Patrol Guide Section 218-01 provides that members of service, upon taking property into custody, in addition to any other special procedures must, among other activities, prepare a Property Clerk Invoice Worksheet (PD521-141A) and comply with instructions in the Property and Evidence Tracking System. Patrol Guide Section 218-50 emphasizes the requirement of vouchering cell phones by stating that when a prisoner is in possession of one or more cellular telephones at the time of arrest, in addition to Department arrest and invoicing procedures, the arresting officer will, if a prisoner is not eligible for a Desk Appearance Ticket and it is necessary to safeguard personal property, invoice the cellular telephone for "Safekeeping," unless the circumstances regarding the arrest indicate the cellular telephone should be invoiced as "Investigatory Evidence" or "Arrest Evidence."

In this particular case I do not find unreasonable that the Respondent would leave a cell phone in a secured office area while he was conducting the arguably more time sensitive matters involving securing the prisoner and processing the arrest. A cell phone is not the type of property which is capable of being used as a weapon. In addition, there was no evidence presented to indicate that a locker had been provided at the precinct for the property. Also, the testimony adduced at trial was that was common practice, done with a supervisor's knowledge, to leave such items on desks in this particular secure office area.

However, Respondent did not just temporarily leave the phone on his desk and then voucher it when he was done processing the prisoner. Respondent never vouchered the phone and instead authorized its release to the mother. While the court acknowledges that there was testimony that this practice is not unheard of, it is still a violation of the

Patrol Guide procedure. That procedure is in place to record and process all property coming into the possession of the police. As stated in the Patrol Guide this includes even property which is merely being safeguarded. Not only does this procedure benefit the arrestee to insure that their property is maintained, but it also serves to protect officers from any allegations of mishandling or misappropriation of property they have taken from the arrestee. I reject the argument that because others, including the Department witness, have failed to voucher personal property on occasion that it authorizes a disregard for the Patrol Guide. I therefore find Respondent Guilty of Specification 1.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 31, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

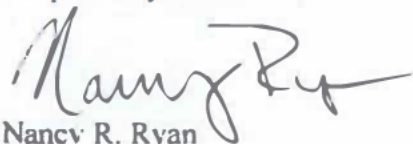
The Department has asked that a penalty of the forfeiture of ten vacation days be imposed. They have cited to the recent precedent in failing to secure property cases. In one case, an eight-year police officer, with no prior formal disciplinary history, negotiated a penalty of ten (10) vacation days for (i) failing to safeguard a gravity knife after confiscating it from owner during a car stop; (ii) failing to notify a supervisor that he lost said knife and (iii) failing to make Activity Log entries about what led to the car stop. Disciplinary Case No. 2015-14098, signed April 7, 2016 In another case, a five-year police officer with no prior formal disciplinary history negotiated a penalty of 10 vacation days for (i) failing to take abandoned property into police custody and voucher it, and (ii) failing and neglecting to make required entries in his Activity Log. In that

case Respondent failed an integrity test by not vouchering property that an undercover MOS, posing as a taxi driver, stated was abandoned in his vehicle. Respondent left the property on the street rather than bringing it to the stationhouse for vouchering and failed to make required Activity Log entries regarding the incident. Disciplinary Case No. 2016-15060. signed July 19, 2016

In the case at hand, the property was not a weapon such as the gravity knife involved in Case 2015-14098, nor did it involve the failure of an integrity test in just abandoning property as in Case 2016-15060. Respondent gave a phone, which was not arrest evidence, to a prisoner's mother

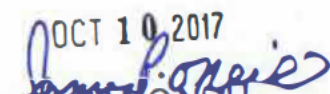
While these distinctions between the present case and the precedent would indicate that a lower penalty be imposed, Respondent's record must also be taken into consideration. Respondent, as indicated in the attached Confidential Memo, does have a record of prior discipline, including perhaps most significantly in considering a penalty to be imposed in this case, prior discipline for failing to properly voucher property. While it can't be determined what penalty was previously imposed for that misconduct alone, since it was combined with other cases, I recommend that since this is the second time Respondent has failed to properly voucher property a penalty of the loss of eight vacation days be imposed.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

OCT 10 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER IRWIN LUPERON
TAX REGISTRY NO. 941061
DISCIPLINARY CASE NO. 2016-15894

Respondent was appointed to the department on January 31, 2006. On his last three annual performance evaluations, beginning with the most recent, Respondent received an overall rating of 4.0 "Highly Competent," a 4.5 "Extremely Competent/Highly Competent," and a 4.0 "Highly Competent. He received four medals for Excellent Police Duty.

Respondent has been the subject of a number of disciplinary proceedings. In 2011, he failed to timely prepare a property clerks invoice worksheet for the property he removed from an arrestee. In 2012, He prevented the adjudication of two summonses. Also in 2012, he failed to notify the radio dispatcher of a pick-up assignment; failed to request the services of a tow truck; failed to transmit a final disposition of the assignment; failed to make proper entries in his activity log; allowed an improper tow truck to tow a vehicle; failed to prepare a report for an improper tow truck on the scene of an accident; and improperly used his personal cellphone to call an unauthorized tow truck company.

In 2014, Respondent associated with an individual who was believed to have engaged in criminal activity and failed to follow an order by an IAB supervisor to refrain from associating with said individual.

For all of the above noted misconduct, Respondent was suspended without pay for 15 days, forfeited 45 vacation days, and placed on one-year dismissal probation.

Between November 12, 2010 and June 11, 2012, he was placed on Level 1 Force Monitoring for accumulating three or more CCRB complaints during a one-year period. On June 11, 2012, this monitoring was upgraded to Level 2 Disciplinary Monitoring and ended on November 7, 2014. On November 17, 2014, he was suspended from duty and then reinstated on December 3, 2014. From November 7, 2014 to November 28, 2015, he remained on Dismissal Probation. [REDACTED]

Nancy R. Ryan
Assistant Deputy Commissioner Trials