



POLICE DEPARTMENT CITY OF NEW YORK

July 31, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Glen Barker
Tax Registry No. 954520
Patrol Borough Manhattan North
Disciplinary Case No. 2016-15656

Sergeant Jeffrey Pfeiffer
Tax Registry No. 940577
Critical Response Command
Disciplinary Case No. 2016-15653

Charges and Specifications:

Disciplinary Case No. 2016-15656

1. Said Police Officer Glen Barker, while assigned to the 25th Precinct, on or about July 24, 2015, failed to ensure that the cell door containing Person D was secured, resulting in said prisoner's escape. (*As amended*)
P.G. 210-01, Page 4, Paragraph 31 - PRISONERS GENERAL PROCEDURE
P.G. 206-03, Page 2, Paragraph 2 - DISCIPLINARY MATTERS
2. Said Police Officer Glen Barker, while assigned to the 25th Precinct, on or about July 24, 2015, failed to notify the Desk Officer about the removal of a disorderly prisoner from the cell. (*As amended*)
P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

Disciplinary Case No. 2016-15653

1. Said Sergeant Jeffrey Pfeiffer, while assigned to the 25th Precinct, on or about July 24, 2015, failed to ensure that the cell door containing Person D was secured, resulting in said prisoner's escape. (*As amended*)
P.G. 210-01, Page 4, Paragraphs 35-39 - PRISONERS GENERAL PROCEDURE
P.G. 206-03, Page 2, Paragraph 2 - DISCIPLINARY MATTERS

2. Said Sergeant Jeffrey Pfeiffer, while assigned to the 25th Precinct, on or about July 24, 2015, failed to notify the Desk Officer about the removal of a disorderly prisoner from the cell. (*As amended*)

P.G. 210-08, Page 2 ADDITIONAL DATA - GUIDELINES FOR PRISONER
HOLDING CELLS

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

Appearances:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondent Barker: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

For Respondent Pfeiffer: John D'Alessandro, Jr., Esq.
The Quinn Law Firm
Crosswest Office Center
399 Knollwood Road, Suite 220
White Plains, NY 10603

Hearing Dates:

June 7, 8, & 22, 2017

Decision:

Not Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on June 7, 8, and 22, 2017. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. Department Advocate's Office called Police Officer Daniel Blanchfield, Sergeant Sarcanda Symister, and Sergeant Michael Black-Larkins as witnesses, and introduced the hearsay statements of Police Officer Person A and Sergeant Person B. Each

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 Respondents not guilty.

FINDINGS AND ANALYSIS

On the afternoon of July 24, 2015, Respondent Barker, who was the operator for Respondent Pfeiffer, arrested Person C for forcible touching and public lewdness, and brought him to the 25th Precinct in Manhattan for processing. At about 1515 hours, Respondent Barker placed Person C in a holding cell that was already occupied by Person D, who earlier had been arrested by Officer Person E for an unrelated burglary. Within minutes of being placed in the cell, Person C began masturbating, angering his cell-mate Person D, who shouted threats at Person C. Respondent Barker, with the help of Respondent Pfeiffer and other officers, removed Person C from the holding cell and placed him in another cell across the hall normally used for narcotics prisoners. Person D remained in the original holding cell. A few hours later, somewhere between 1830 and 1900 hours, it was discovered that Person D had escaped: apparently, he walked out of his cell, then climbed out a window and fled from the precinct. At issue is whether Respondents failed to secure Person D's cell door after removing Person C, leading to the escape, and whether Respondents committed misconduct by failing to notify the desk officer that they had removed a disorderly prisoner from a cell.

Officer Daniel Blanchfield testified that he was present in the 25th precinct when the disturbance arose between Person C and Person D. He and at least three other officers assisted

Respondent Barker in removing Person C from the holding cell and bringing him to another cell across the hall in the narcotics hub. Officer Blanchfield could not recall how precisely Person D's cell door was first opened and whether anyone had the key to the cell. He also could not recall who closed the cell door after Person C was removed. However, Officer Blanchfield did hear the door to Person D's cell close shut after Person C was taken out. The officer explained that the cell door locked automatically without a key, and he was about three feet away when he heard the door click shut. (Tr. 16-17, 20-23)

Sergeant Sarcanda Symister of the Manhattan North Investigations Unit testified that she was assigned to investigate Person D's escape. She spoke with many of the officers who were present at the precinct that afternoon, and reviewed the command records from that day. One of the officers she interviewed was Officer Person E, who arrested Person D. Officer Person E told her that when he went to check on his prisoner, he noticed that the cell door was ajar, and that Person D was missing. Officer Person E asked around to see if anyone in the precinct had any explanation, but no one did. [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] (Tr. 36-39, 66)

According to Sergeant Symister, each Respondent committed misconduct by failing to notify the desk officer that a prisoner had been removed from a cell. However, after initialing citing section 210-08 of the Patrol Guide as the relevant authority, she acknowledged that nothing in that section actually required either Respondent to notify the desk officer about the prisoner move. Sergeant Symister then suggested that general practice and procedure required them to notify the desk officer. (Tr. 43-45) She also testified that Person D turned himself in to the squad three days after his escape. (Tr. 37)

Sergeant Michael Black-Larkins testified that on the day of the incident a lieutenant was running late, so Sergeant Black-Larkins was reassigned as the desk officer. He took the desk at about 1515 hours, and conducted an initial survey of the cell areas. The door to the holding cell where Person D remained was closed at the time of his first inspection. After that, Sergeant Black-Larkins checked on the cells through monitors at the desk every half hour beginning at 1530. Each time he checked to make sure the prisoners were in their cells, he made note of it in the prisoner roster (Resp. Ex. B). (Tr. 101-103, 108, 117, 127, 142-143)

According to Sergeant Black Larkins, when he first took the desk Person D and Person C already were in separate cells. Nobody informed him until after the escape that Person C had earlier been removed from Person D's cell. Through the monitor at his desk, Sergeant Black-Larkins observed Person D in his cell every half hour, up to and including 1830 hours, and noted these observations on the prisoner roster. He testified that at about 1820 hours, Officer Person A came in with a new prisoner, Person F. Person F was belligerent and had to be carried into the precinct. Officer Person A spent 15 to 20 minutes processing Person F by the front desk, then went to lodge him in the same cell where Person D had been placed. The arrest information for Person F, as well as the other prisoners, was entered into the precinct's command log for that day (Resp. Ex. A). (Tr. 103-105, 109, 111, 113, 118-119, 144)

Sergeant Black-Larkins testified that at about 1900 hours, Sergeant Person B informed him that Person D had escaped from his cell. Sergeant Black-Larkins ran to the cell area, and observed Officer Person A fingerprinting his prisoner. He also saw Officer Person E and asked him where his prisoner was, but Officer Person E said, "I don't know. I stepped away to go use the bathroom." (Tr. 104-107, 116)

According to the Sergeant Black-Larkins, officers regularly walk in and out of the holding cell area for various reasons, including to debrief prisoners. If the key to the cell isn't at the front desk, it generally is kept in the arrest processing room, inside a filing cabinet or on the desk. He assumed that was where the key to Person D's cell was that day, though he did not see it for himself. (Tr. 129, 132, 135) Sergeant Black-Larkins received charges for his failure to supervise that day, and pled guilty. (Tr. 114)

Neither Officer Person A nor Sergeant Person B were available to testify. Instead, a recording of their Department interviews (Dept. Ex. 1) and the accompanying transcripts (Dept. 1A and 1B, respectively), were admitted into evidence.

In his interview on July 25, 2015, Officer Person A stated that on the day of the incident, he made an arrest and brought his prisoner, Person F, to the station house at about 1817 hours. The prisoner, who was somewhat incapacitated from smoking PCP, was brought to the desk for processing at about 1820 hours. Approximately 10 or 15 minutes later, Officer Person A escorted his prisoner to the holding cell. According to Officer Person A, the cell door was ajar, and there was no one inside. He placed his prisoner inside the cell and shut the door. About 15 to 20 minutes later, Sergeant Black-Larkins came to the cell area and asked him where the other prisoner was, and Officer Person A told him the only other prisoner he was aware of was the one in the narcotics holding cell. (Dept. Ex. 1A at 4-6, 8) Officer Person A also stated that when he went to retrieve the key to the cell door in order to fingerprint his prisoner, the key was not in an abnormal, obscure place; rather, it was either on top of the cabinet, by the computer, or on the desk. (Dept. Ex. 1A at 6)

In his interview on July 24, 2015, Sergeant Person B stated that at about 1900 hours he was alerted that a prisoner was missing. The sergeant checked with the arresting officer,

Officer Person E, who appeared to be "like a deer in the headlights." Officer Person E said he had checked on his prisoner a little while earlier, and didn't know what happened to him after that. (Dept. Ex. 1B at 4-5) Sergeant Person B observed Officer Person A processing his arrest with his prisoner inside the holding cell. He asked Officer Person A where the other prisoner was, but Officer Person A said he knew nothing about another prisoner. (Dept. Ex. 1B at 8-9)

Sergeant Person B also stated that earlier in the afternoon, he had gone to the cell area to try to debrief Person D. He asked Person D, who was inside the holding cell, whether they could talk, but Person D responded with gibberish. As a result, Sergeant Person B walked away without having removed him from the cell. (Dept. Ex. 1B at 9-11)

Respondent Barker testified that as he prepared to begin his arrest paperwork at about 1515 hours, he observed Person C masturbating in the holding cell, and Person D, his cell-mate, threatening to kill him. Respondent Barker stepped out of the arrest processing room and yelled to Respondent Pfeiffer, who was standing next to the desk officer, that they needed to take Person C out of the cell. Respondent Barker could not recall who the desk officer was at that point in time. The cell door was opened and Respondent Barker, with Respondent Pfeiffer and Officer Blanchfield by his side, instructed Person C to step out, which he did. Respondent Barker shut the cell door behind him, and Person C was placed in one of the narcotics cells across the hall. (Tr. 182-183, 204, 207-209, 213, 216) Respondent Barker could not recall where he retrieved the key to open the holding cell door, or where the key was placed afterward. (Tr. 207, 210, 219) He explained that the cell door locks automatically when closed, and introduced a short video he made of the 25th Precinct holding cell, demonstrating how one can hear the sound of the door clicking shut (Resp. Ex. C).

According to Respondent Barker, after moving Person C to a separate cell in the narcotics hub, he spent the next hour doing Person C's arrest paperwork. He could see Person D inside his cell the entire time. Respondent Barker testified that during a portion of that period, he observed Person D shaking the bars of the cell door in a way that would have caused the door to open if it had been unlocked, but it did not open. (Tr. 185-186) After completing his paperwork, Respondent Barker left the cell area to check on Person C in the narcotics hub, and then went to the muster room where he spent the next two hours awaiting contact from the District Attorney's Office regarding his arrest. (Tr. 188, 212)

Respondent Barker testified that he saw Person D's arresting officer, Officer Person E, come and go throughout that time period. At about 1900 hours, a "very nervous" Officer Person E approached Respondent Barker asking if he knew the whereabouts of Person D, which he didn't. A search of the precinct commenced in an effort to locate Person D, who apparently had escaped. Respondent Barker was not interviewed that evening. (Tr. 189-191, 194, 212)

Respondent Pfeiffer testified that because much of what preceded the escape was routine and unremarkable, he did not recall many of the details of what occurred. He did remember entering the arrest of prisoner Person C into the command log upon their arrival at the precinct. He also recalled being told that the arrestee was causing a disturbance in the cell and needed to be removed, which was done. Several hours later, Respondent Pfeiffer was informed that Person D had escaped. Respondent Pfeiffer was not interviewed that night; his Department interview did not occur until December of 2015. (Tr. 222-223, 231)

Respondent Pfeiffer testified that normally he would inform the desk officer if there was a prisoner disturbance, though he could not recall whether he did so on this particular day. He was not sure whether Sergeant Black-Larkins had even begun his assignment as desk

officer when the disturbance occurred, or whether there was a different desk officer still on duty because it was around the time of a tour change. (Tr. 235) Respondent Pfeiffer also testified that normally the key to the holding cell was kept in the top drawer of a filing cabinet in the corridor, or at the desk, both out of reach of the cell. (Tr. 239-240)

Specification 1 charges each Respondent with failing to ensure that Person D's cell door was secured, thereby facilitating Person D's escape. Specifically, it is alleged that Respondents were careless when they removed Person C from Person D's cell, though it is unclear from the record what exactly Respondents did wrong. There was some suggestion that perhaps Respondents failed to lock the cell door behind them when they removed Person C. The Department Advocate also raised the possibility that because neither Respondent could account for where exactly the key to the cell was located that day, the key "could have been left in the cell" by Respondents, allowing Person D to escape. (Tr. 269)

These allegations against Respondents are purely speculative in nature. The record has failed to establish that Person D's ultimate escape, which apparently occurred between 1830 and 1900 hours, was in any way connected to the removal of Person C from the cell *more than three hours earlier*. Respondents removed Person C at approximately 1515 hours, and the cell door was locked behind them. Sergeant Black-Larkins testified that Person D was still in his cell as late as 1830 hours, which was corroborated by his notation in the prisoner roster (Resp. Ex. B). During the three-hour period that followed Person C's removal, other officers had interactions in that busy cell area. Sergeant Person B tried to debrief Person D, though he claimed he never removed Person D from the cell. Officer Person E, who arrested Person D and was responsible for watching his own prisoner, apparently walked off to the bathroom just prior to the escape. Additionally, Officer Person A came into the precinct with a belligerent

prisoner around the time of the escape. After the escape, Officer Person E, who has since left the Department, was like "a deer in the headlights," and provided no insight into how the escape occurred. As such, any allegation that the removal of Person C at 1515 hours led to Person D's escape more than three hours later is speculative and unpersuasive.

Although there was some suggestion that Respondents may have neglected to lock the cell door when they removed Person C, the record fails to support such a claim. To the contrary, Respondent Barker credibly testified that after removing Person C from Person D's cell, he shut the cell door behind him. Respondent Pfeiffer could not recall the details of the prisoner removal, and therefore could not confirm or deny Respondent Barker's account. However, credible corroboration came from Officer Blanchfield, a disinterested witness who happened to be on his lunch break at the time. Officer Blanchfield testified that he assisted in the prisoner removal, and from a distance of about three feet, he specifically heard the cell door click shut after Person C was removed. Based on the credible evidence, this tribunal finds it more likely than not that Respondent Barker did, indeed, lock the cell door behind him.

The Department Advocate correctly points out that neither Respondent could recall what they did with the key to the cell door after Person C was removed. However, their inability to recall what they did with the key does not constitute proof that they actually left the key inside the cell. No evidence was presented that the key was ever missing or observed inside or within reach of the cell. Indeed, there was only one key to the cell, and Officer Person A stated that when he went to fingerprint his prisoner, Person F, the key was in one of the places where it normally was kept, either on top of the cabinet, by the computer, or on the desk. As a result, the credible evidence has failed to establish that Respondents allowed Person D to escape by leaving the key inside the cell when they removed Person C.

This tribunal is mindful of how important it is that prisoners not be permitted to escape from police custody, and the need for accountability when an escape occurs. In this case, it is understandable that Officer Person E, the arresting officer, and Sergeant Black-Larkins, the desk officer, received charges in connection with Person D's escape. However, with this record there is insufficient evidence to extend blame for the escape to either Respondent. The record has failed to establish, by a preponderance of the credible evidence, that either Respondent was responsible for the escape of Person D, and I find both Respondents not guilty of Specification 1.

Specification 2 alleges that each Respondent committed misconduct by failing to notify the desk officer that Person C had been removed from the cell. Although section 210-08 of the Patrol Guide, "Guidelines For Prisoner Holding Pens," does not require Respondents to have made such a notification, Sergeant Symister explained that Respondents should have notified the desk officer as a matter of "general practice and procedure." She noted concerns about prisoner safety and the possibility of an escape. Also, Respondent Pfeiffer, himself, acknowledged that it is important for the desk officer to be aware of a prisoner removal.

However, the credible evidence did not support the Department Advocate's claim that Respondents neglected to notify the relevant desk officer. Sergeant Black-Larkins testified that he was not informed of the prisoner move, but he also testified that by the time he took over the desk, the prisoners already had been separated. It would, therefore, have been more relevant to hear from the desk officer actually on duty at the time Person C was removed from the cell. However, that officer was never identified during the course of the trial, and no evidence was presented that he wasn't notified of Person C's removal.

Meanwhile, Respondent Barker testified that when he yelled to Respondent Pfeiffer that they needed to move Person C to a different cell, Respondent Pfeiffer was standing at the front desk next to the desk officer, so presumably the desk officer was aware of the move. As discussed above, Respondent Pfeiffer could not specifically recall whether he notified the desk officer of the prisoner move, but credibly testified that it was his normal practice to do so, and it "would be extremely out of the ordinary for me not to tell the desk officer that I removed a prisoner." (Tr. 235) As such, the record has failed to establish by a preponderance of the credible evidence that Respondents neglected to notify the desk officer, and I find both Respondents not guilty of Specification 2.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

NOV 09 2017

JAMES P. O'NEILL
POLICE COMMISSIONER