



POLICE DEPARTMENT

March 31, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Adrian Ashby
Tax Registry No. 921934
77 Detective Squad
Disciplinary Case No. 2012-8456

Lieutenant Haaziq Reid
Tax Registry No. 914264
Transit Bureau District 32
Disciplinary Case No. 2012-8457

The above-named members of the Department appeared before the Court on October 7 and December 8, 2014, charged with the following:

Disciplinary Case No. 2012-8456

1. Said Lieutenant Adrian Ashby, while assigned to the 78th Detective Squad, on or about May 16, 2011 through October 26, 2011, did fail and neglect to properly supervise a BRAM Sergeant assigned to his squad to wit: Lieutenant Ashby failed to give the BRAM Sergeant directives to ensure that an investigation was conducted properly. *(As amended)*

P.G. 202-13, Page 2, Paragraphs 15 & 15(a) – LIEUTENANT –
PLATOON COMMANDER
DUTIES AND RESPONSIBILITIES

2. Said Lieutenant Adrian Ashby, while assigned to the 78th Detective Squad, on or about May 16, 2011 through October 26, 2011, did fail and neglect to ensure that a thorough investigation was conducted of a robbery committed within the precinct.

Interim Order 13[-05], Pages 3-4, Additional Data – REVISION TO PATROL GUIDE
PROCEDURE 212-61,
ROBBERY APPREHENSION MODULE

Disciplinary Case No. 2013-8457

1. Said Lieutenant Haaziq Ref[i]d, while assigned to the 78th Detective Squad on or about May 16, 2011 through October 26, 2011, did wrongfully and without just cause fail to supervise other members of the service under his supervision to wit: Lieutenant Haaziq failed to give directives to the Detectives assigned to a robbery investigation and as a result numerous investigative errors were made by said Detectives.

P.G. 202-17, Page 1, Paragraphs 1 & 24 – PATROL SUPERVISOR
DUTIES AND RESPONSIBILITIES

2. Said Lieutenant Haaziq Ref[i]d, while assigned to the 78th Detective Squad on or about May 16, 2011 through October 26, 2011, failed to ensure that a thorough investigation of a robbery was conducted.

Interim Order 13[-05], Page 4, Additional Data, Paragraph G
REVISION TO PATROL GUIDE
PROCEDURE 212-61,
ROBBERY APPREHENSION MODULE

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office.

Respondent Ashby was represented by James Moschella, Karasyk & Moschella LLP.

Respondent Reid was represented by Bruce Wenger, Esq., Wenger & Arlia LLP.

Respondents pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

RECOMMENDATION

Respondents are found Not Guilty.

FINDINGS AND ANALYSIS

This matter arose from a robbery. On May 16, 2011, the complainant, Person A, who ran an ATM-supply business, withdrew approximately \$150,000 from a bank within the confines of the 78 Precinct. He was robbed of that money shortly thereafter. 911 was called and

officers responded. Detective Jose Dejesus of the 78 Precinct Detective Squad was assigned the case. It later was turned over to Detective Julio Franco. Respondent Ashby was the commanding officer of the squad and Respondent Reid was the supervisor of its Burglary/Robbery Apprehension Module (BRAM). Both Respondents were sergeants at the time.

According to Respondents, the complainant indicated that there were two perpetrators who escaped in a getaway car. He got either a complete or partial license plate number. This was traced back to Person B. The detectives located the vehicle and waited to see who would return to it. Person B did so, and he was arrested. The complainant positively identified him as one of the robbers in a lineup but that was the only perpetrator he got a look at. The cash was not in the vehicle, though, and Person B requested counsel before speaking.

Then the case became a little complicated. Inspector Gregory Antonsen, then a deputy inspector, was the commanding officer of the Financial Crimes Task Force (FCTF). He testified that his unit was running a long-term investigation into an identity theft ring involving credit card fraud. The case, run in conjunction with the Queens District Attorney's Office, involved a large number of wiretaps.

One of those wires recorded "chatter" about the robbery of Person A. One of the central targets of Antonsen's investigation, Person C, was heard talking about the robbery. In fact, it was indicated that Person C was the second perpetrator and that there was a third person, Person D, involved as well. Antonsen was concerned that if Person C were arrested on the robbery, it could compromise the credit card investigation. He contacted Respondent Ashby by telephone the day after the Person A robbery.

The description of the conversation between Antonsen and Respondent Ashby was different as recounted by each. Antonsen testified that he contacted Respondent Ashby to find out the status of the investigation. Antonsen testified that he told Respondent Ashby that FCTF was involved in a "confidential long term investigation" and expected him to understand this meant wiretaps were involved. Because of the legal confidentiality of the wiretap, Antonsen could not tell Respondent Ashby exactly what he knew or how he knew it. Antonsen thus could not give Respondent Ashby Person C's name. He nevertheless wanted to know if the 78 Squad had identified other subjects, what the arrestee was saying, and "what was their plan for the future." Antonsen testified that Respondent Ashby told him that they might hold a proffer session with the arrested subject. He asked Respondent Ashby not to do the proffer without letting him know first.

Antonsen testified at trial, though he did not make it explicit during the phone call, that he did not want the 78 Squad to arrest Person C. He asked Respondent Ashby to contact him first if they were going to arrest the remaining perpetrators. Antonsen testified that if Respondent Ashby had said they were about to make an arrest, he would have asked him not to do so and contacted Respondent Ashby's superiors in an effort to stop it. In sum, Antonsen indicated he made it clear for Respondent Ashby that if they were going to arrest the second perpetrator, Respondent Ashby should call Antonsen first. Antonsen reassured Respondent Ashby that when the time came, he would let the 78 Squad know the identities of the outstanding perpetrators.

Respondent Ashby's testimony about the phone call was slightly different. He verified most of what Antonsen said. Respondent Ashby described Antonsen as that "he didn't want us doing too much." When Respondent Ashby mentioned interviewing someone, Antonsen asked him to let FCTF know first, saying, "We don't want to kind of turn so many stones over, because

we have something going.” Respondent Ashby “basically read between the lines” and “understood what he was saying;” that there was a federal investigation involving wiretaps. He took Antonsen to mean continue processing the case with what they already had, but “back off the case.”

Respondent Ashby did not want to interfere with the FCTF’s investigation because his own cases had been harmed by other units’ interference. He took Antonsen’s statement that FCTF would give him more information later to mean that they were investigating the same case, and Respondent Ashby did not want to duplicate efforts.

Respondent Ashby testified that he viewed the case in the Enterprise Case Management System, the Department computer database, after speaking to Antonsen. He saw all that had been done already and was satisfied the case was being handled properly.

Respondent Ashby did not necessarily tell Respondent Reid all that he had learned from Antonsen. He relayed that he had received a call from an inspector, and the 78 Squad should not “dig too deep” and should “pretty much back off the case.”

Respondent Reid testified that he reviewed the case folder at the outset of the case. Respondent Ashby, however, told him that an inspector from FCTF had called and said not to “get in too deep.” FCTF already had an investigation running that was “much bigger” than the 78 Squad’s robbery. Respondent Ashby said “to lay off for a while.” Respondent Reid took this to mean continue processing what already was in motion, but not to go any further trying to find more perpetrators. Respondent Ashby told him, “Just keep doing your regular checks that we started already, but don’t go into further detail.” He and Respondent Ashby relayed the directive not to dig too deep to Dejesus and Franco.

The initial thing that got the Internal Affairs Bureau involved on the FCTF investigation was that in June 2010, a member of Narcotics Borough Brooklyn South was overheard speaking on the wire to one of the FCTF targets. This conversation was not per se of a criminal nature but it did indicate that the member could have been associating with a criminal. Sometime later, Police Officer Person E of the 72 Precinct [REDACTED], was overheard on the wire offering the targets information about police cases, specifically the robbery of Person A. He was offering to go into the property clerk's office, steal video evidence, and send it to Person C, for a price. Even further, there were indications that the detective originally assigned the 78 Precinct robbery investigation might have been related to a female bank employee that might have helped set up the robbery. Approximately 10 Department members were made subjects of the IAB investigation.

A large number of arrests were made in the credit-card ring investigation and it made national news. Up to 125 people were indicted. Person B was convicted of the Person A robbery and sent to state prison. There was, however, the outstanding matter of the IAB investigation. Everything was covered, including whether the assigned detectives did a proper investigation and whether their supervisors, Respondents, did a proper job in that regard.

The Advocate and the IAB investigator outlined a broad series of alleged failures by the detectives that Respondents allegedly should have noticed by examining the case folder (DX 1). These included, inter alia, failing to execute warrants, to request all the warrants that should have been requested, to return warrants, to follow up on a court order demanding GPS information on Person B's cell phone, to search that phone, to follow up with the cell service provider on missing information requested through a subpoena, to interview an eyewitness, and to canvass for

surveillance video. The investigator stated that Respondents' access to the case folder began in May and ended in October 2011. The FCTF investigation still was ongoing as of October 2011.

The investigator testified that there was a communication (DX 2) in August 2011 regarding a complaint by Person A's sister about the assigned detectives' investigation. Respondent Ashby investigated the matter and found that the investigation was going properly. He wrote that subpoenas had been "submitted and are being waited on to move forward."

The investigator noted several alarming problems with the detectives' investigation. One was that Person B's phone eventually was found, unvouchered, in Dejesus's desk. Several "items" or "calls" had been deleted from the phone. And, in fact, one of the bank tellers at the Chase branch that day was related to either Dejesus or Franco.

The investigator agreed that IAB would not have had an interest in the details of what kind of paperwork was documented in the case file were it not for the underlying allegation of corruption. Normally such a "paperwork" case would be handled by inspections or at the borough level. Here, there was a fear that members of the 78 Squad did not investigate the Person A robbery fully because of some connection with the perpetrators.

The missing parts of the investigation are not questioned. The argument is whether, in the context of this particular case, Respondents erred by not following the case closely enough.

The Court credits Respondent Ashby's account and, more importantly, understanding of the conversation with Antonsen. It was not that different from Antonsen's understanding in any event. Both agreed that Antonsen wanted the 78 Detective Squad to lay off the robbery investigation for fear of blowing up the larger credit-card investigation. It was suggested at trial that the detectives could have further investigated only Person B's involvement in the robbery and strengthened the case against him.

The Court is not going to parse the investigation in that way. Even the slightest further gathering of evidence against Person B might well have complicated things beyond repair. For example, any surveillance video might have revealed Person B's accomplice or accomplices. One of these apparently was Person C. The Brooklyn ADA on the Person A robbery—likely someone unaware of the FCTF investigation—and Person B's counsel would have wanted to know why the second perpetrator was not being investigated. Ironically, according to the IAB investigator, KCDA as an office was aware of the wiretap and that there were two outstanding perpetrators, but Respondents had no way of knowing that. Further, Antonsen never indicated at trial that if he had known about an eyewitness or that Person B's phone was in custody, he would have been fine with the 78 Squad proffering Person B or making further arrests.

The first specification against each Respondent essentially charges that he failed to supervise his subordinates properly. Although Respondents were of the same rank, as squad commander Respondent Ashby was the de facto supervisor of Respondent Reid, the BRAM sergeant. The specifications are that Respondents failed to give their subordinates proper directives on the investigation.

This tribunal has found, however, that Respondent Ashby's decision to put the robbery investigation on the back burner was done for a proper police reason. Thus, it cannot be said that Respondent Ashby failed to give proper directives concerning the investigation to Respondent Reid, or that Respondent Reid failed to give similar proper directives to the assigned detectives. Therefore, each Respondent is found Not Guilty of Specification No. 1 against him.

In Specification No. 2, each Respondent is charged generally with failing to ensure that a thorough investigation of the robbery was conducted. The responsibility of squad supervisors to

oversee their detectives' investigations is paramount and goes beyond the facts of any particular case.

It would be one thing, therefore, if Respondents ignored the case entirely. But in fact, the IAB investigator testified that both Respondents first accessed the case file by computer on or about the date of the robbery. They last accessed the file on or about the date the case was re-closed when DNA testing turned up inconclusive. Thus, Respondents were not ignoring the case. In fact it appears they were monitoring it the whole time.

This was important because of the very reason IAB looked at their work: to see if the investigation was corrupted in any way due to the relation of a Department member to a possible suspect. There were suspicions, allusions, suggested inferences, layers of hearsay, etc., made at trial for this Court purportedly to conclude that the reason the phone was not vouchered or messages were deleted was because the detectives did so corruptly and their supervisors – Respondents – either did not notice or purposefully ignored it. There was no actual proof, however, in this regard. Therefore Respondents are found Not Guilty of Specification No. 2.

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

APPROVED

JUN 19 2015

WILLIAM J. BAXTON
POLICE COMMISSIONER