

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ARMANDO LOUREIRO,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

Respondent;

LOS ANGELES COUNTY
SHERIFF'S DEPARTMENT, et al.,

Real Parties in Interest and
Respondent.

B289364

(Los Angeles County
Super. Ct. No. BS160894)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary Strobel, Judge. Affirmed.

Jacob Kalinski and Amanda J. Waters for Plaintiff and Appellant.

No appearance for Respondent Los Angeles County Civil Service Commission.

Law Offices of William Balderrama and William Balderrama for Real Party in Interest and Respondent Los Angeles County Sheriff's Department.

Appellant Armando Loureiro was suspended for 20 days without pay from his position as a deputy sheriff at respondent Los Angeles County Sheriff's Department ("the Department"). A hearing officer with respondent Los Angeles County Civil Service Commission ("the Commission") held a three-day hearing on the matter and recommended that the suspension be sustained. A majority of the Commission agreed. Loureiro then filed a petition for a writ of mandate in the superior court, seeking an order directing the Commission to set aside the suspension and award him back pay. The superior court denied the petition.

Loureiro now contends that his suspension was procedurally improper because the Department violated his due process rights as well as his rights under the Public Safety Officers' Procedural Bill of Rights Act (POBRA) (Gov. Code, § 3300 et seq.). He also contends that it was substantively improper because his actions conformed to Department policy. Finally, Loureiro contends that even if the suspension was proper, its duration was excessive in light of mitigating actions he took during the incident in question. We reject his contentions and affirm the judgment of the trial court.

FACTUAL BACKGROUND

At his hearing before the Civil Service Commission hearing officer, Loureiro testified to the following. He graduated from the Sheriff's academy in 2002. He initially worked in a jail and a courthouse before being assigned to various patrol assignments beginning in late 2006. Loureiro transferred to the Gateway Station of the Transit Service Bureau in April 2012.

On May 13, 2012, Loureiro was assigned to work the 3:00 p.m. to 11:00 p.m. shift on the Gold Line light rail with a partner he had never met before, Deputy Brandon Squirrell. Squirrell had been a deputy for a total of four years to Loureiro's roughly ten. Loureiro "sensed," from Squirrell's "young" appearance, that Squirrell had less patrol experience than he did, but viewed him as an equal because they were both deputies. Squirrell was assigned to drive their patrol car, and Loureiro was the passenger or "book man," with responsibility for the computer and radio.

Early in their shift, Loureiro and Squirrell observed a 17-year-old minor ride his bicycle through a red traffic light. Squirrell drove alongside the minor and ordered him to stop by yelling out the patrol car window. The minor dismounted his bicycle and leaned it against a nearby fence or wall. Squirrell and Loureiro exited the patrol car, and Squirrell yelled at the minor. Squirrell ordered the minor to step to the back of the patrol car after he said he did not have any identification. The minor began to comply, but then ran away, leaving his bicycle behind. Loureiro and Squirrell did not chase him.

Before getting back into the patrol car, Squirrell said, "Fuck this kid for running from us. I'm going to move his bike." Over Loureiro's verbal objection, Squirrell placed the bicycle on

the push bar at the front of the patrol car. Squirrell then drove to a nearby Gold Line station, where he placed the bicycle behind a dumpster. Loureiro did not actively assist Squirrell. However, he also did not contact a supervisor or otherwise prevent Squirrell from confiscating or abandoning the bicycle. Loureiro “considered” contacting a supervisor, but decided he “had to think about how I was going to intervene” because Squirrell was “acting so irrational.”

After leaving the bicycle behind the dumpster, Squirrell got back in the car and started driving toward the deputies’ assigned patrol area in Pasadena. Approximately 20 minutes later, Loureiro heard a call over the radio: the dispatcher asked any deputies who had stopped a “kid with a bike” to identify themselves.¹ Loureiro “was going to get on the radio,” but Squirrell said, “We’re not going to answer,” and “We’re going to pretend we were never there.” A similar radio broadcast went out four or five more times, and the deputies did not answer. Loureiro knew he “had to contact a supervisor as soon as possible,” but Squirrell was behaving irrationally and Loureiro “did not think it was a best officer safety [practice] to jump out of the car” in “a heavily gang-infested area.”

At some point, Loureiro and Squirrell stopped for dinner in Pasadena. Under the pretext of using the restroom, Loureiro returned to the patrol car and attempted to send a message to his field sergeant, Sergeant William Mattison, from the car’s

¹Lieutenant Sergio Aloma, the watch commander on the day of the incident, testified that he received a phone call from a minor who reported that two deputies had stopped him and taken his bicycle. Aloma subsequently ordered the dispatchers to make the call Loureiro heard over the radio.

computer. Mattison was on a motorcycle at the time and was unable to receive the message, which stated “Can u call me” and included Loureiro’s name and cell phone number. The message came back to Loureiro as “undeliverable,” but he did not attempt to contact Mattison or any other superior by any other means because he did not want Squirrell to hear the transmission.

Mattison deduced that Loureiro and Squirrell likely were the deputies who had encountered the bicyclist and sent out a dispatch specifically directing them to call him. Squirrell called Mattison and told him that they had interacted with the minor but did not take his bicycle. Squirrell told Mattison that he and Loureiro would go look for the bicycle. Squirrell then drove himself and Loureiro back to the Gold Line station and recovered the bicycle, which was still behind the dumpster. They brought the bicycle back to Gateway Station, and it ultimately was returned to the minor and his father.

At the station, Mattison instructed Squirrell to write a “found property” report for the bicycle. While Squirrell prepared the report, Loureiro went to tell Mattison about the incident. According to Loureiro, he told Mattison “exactly what happened, the whole incident” and he did not apologize. According to Mattison, “Loureiro came in and indicated that he didn’t agree with what Deputy Squirrell had done and basically they were sorry.” “You know, he tried to convince [Squirrell] to do the right thing but it didn’t happen.” Sergeant Darryl Chevalier, who was present for the conversation, testified that he could not “comment on specifics” but recalled Loureiro “to be objecting to whatever his partner’s actions were.” Chevalier further testified that Loureiro’s conversation with Mattison lasted “two to three minutes tops”; he did not hear Loureiro discuss specific details or

state that he had tried to contact supervisors during the incident.

The following day, Mattison prepared a “Supervisory Inquiry” memorandum for the Transit Services Bureau captain. In that memorandum, he stated that he believed “several Sheriff’s Department Manual Policy and Procedure violations may have occurred” and recommended further investigation of the bicycle incident. Mattison’s supervisor, Lieutenant Sergio Aloma, reviewed the memorandum, prepared a request for investigation, and referred the request for further investigation.

Division Chief Eric Parra, the Department’s decisionmaker in this case, testified that he reviewed the results of the investigation and concluded that Loureiro “had a responsibility to prevent” Squirrell’s misconduct. He opined that “deputies share equal responsibility with respect to property that they come across in the field,” the responsibility “to do the correct thing” attaches at the time of the misconduct, and “[r]eporting it after the fact” does not absolve a deputy of his obligation to “do[] the right thing at the beginning.” Parra further testified that these responsibilities are heightened when a deputy’s partner is behaving irrationally, “because then the supervisor is going to have the ability to determine the appropriateness of the conduct” and the Department can deploy resources to assist the aberrantly behaving deputy. Parra explained that “sometimes this job requires you to be uncomfortable, and that’s the obligation you have as a deputy sheriff, preventing misconduct in the street but certainly among the department.”

PROCEDURAL HISTORY

On August 22, 2012, approximately two months after the incident, Loureiro received an “Administrative Rights” form advising him that he was “about to be questioned as part of an

official Los Angeles County Sheriff's Department investigation." The form contained advisements regarding various POBRA rights. It also listed the Department policy provisions relevant to the investigation: "General Behavior: 3-01/030.05 MPP, Performance To Standards: 3-01/030.05^[2] [*sic*], False Information in Records: 3-01/100.35[,] Safeguarding Money, Property, and Evidence: 3-01/040.45, False Statements: 3-01/040.70."

Loureiro's interrogation took place the same day. At the outset of the interrogation, his representative, identified in the record only as Deborah W, clarified the nature of the allegations with Sergeant Mike Estrada, one of the questioners. Estrada told Deborah that Loureiro's "behavior in the field, on that particular day, would lead somebody maybe to believe that some general behavior and performance to standards issues came up." Deborah further clarified, "specifically that he could have conducted additional police action?" and Estrada agreed. Estrada also confirmed that the false information allegation related to Squirrell's police report, and that the minor's bicycle was the property that Loureiro allegedly failed to safeguard. Estrada told Deborah that she could cross the false statement allegation off the administrative rights form, which she did, but cautioned, "if something comes up during the interviews, then obviously we'll put it back on."

On May 22, 2013, nine months after Loureiro's interview, the Department sent him a letter stating that it intended to suspend him without pay for 20 days.³ The letter stated that the Department's investigation "has established the following:

² An attachment to the form identified the correct policy number, 3-01/050.10.

³Squirrell was terminated as a result of this incident.

1. That in violation of Manual of Policy and Procedures Section(s) 3-01/050.10, Performance to Standards; and/or 3-01/040.45, Safeguarding Money, Property, and Evidence; and/or 3-01/030.10, Obedience to Laws, Regulations, and Orders (as it pertains to Section 5-04/000.00 Property and Evidence; and/or Field Directive 00-04, Deputy Daily Work Sheet and Logging Public Contacts); and/or 3-01/040.90, Reporting Information; and/or 3-01/000.010, Professional Conduct; and/or 3-01/030.05, General Behavior on or about May 13, 2012, you failed to conform to the work standards established for your rank and/or failed to take appropriate action on the occasion of a crime when you and Deputy Brandon Squirrell contacted [the minor] who continued to ride his bicycle through a red signal, violation 21453(a) C.V.C., and/or delayed a peace officer in the lawful exercise of his duties, 148 P.C. You failed to make a timely entry on your Deputy Daily Worksheet regarding your contact with [the minor]. You failed to safeguard [the minor]'s property after confiscating his bicycle and/or place it into evidence and property as directed by Department protocol. You failed to maintain your responsibilities for safekeeping [the minor]'s bicycle when you transported the bicycle to a Metropolitan Transportation Authority train station where Deputy Squirrell placed it in an unsecured area behind a trash dumpster. You failed to notify your immediate supervisor in a timely manner of Deputy Squirrell's behavior which you termed as 'irrational and/or inappropriate.' Your conduct was not in conformance with the Department's Core Values as you did not perform honorably, exercise integrity, or use common sense and fairness when you failed to safeguard [the minor]'s bicycle and/or immediately notify a superior during the course of this incident. Your conduct

eroded the public's confidence in the Department and brought discredit to yourself and/or the Department.”

Loureiro filed a grievance concerning the disciplinary action. The Department ultimately concluded that the 20-day suspension was warranted and sent Loureiro a letter of suspension dated December 19, 2013. The letter of suspension contained a recitation of the investigative findings and policy violations identical to those set forth in the letter of intent to suspend.

Loureiro appealed to the Commission. A hearing officer heard the matter, including the testimony described above, over three non-consecutive days in February and April 2015, and accepted closing briefs from the parties. In a written ruling, the hearing officer determined that the allegations contained in the letter of suspension were true.

The hearing officer concluded that Loureiro violated five Department policies. First, she found that he violated the “Performance to Standards” policy “by failing to assume the responsibilities of his position as a deputy sheriff. He failed to take appropriate action when, in his presence and with his acquiescence, he allowed Deputy Squirrell to confiscate the bicycle of [the minor] on the occasion of a crime deserving of police attention.” Second, the officer found that Loureiro violated the “Safeguarding Money, Property, and Evidence” policy “by failing to place in safekeeping [the minor]’s bicycle while it was in his and Deputy Squirrell’s possession.” Third, she found that Loureiro violated the “Obedience to Laws, Regulations, and Orders” policy “by violating the laws and policies that prohibit the wrongful confiscation of public property.” Fourth, she concluded that Loureiro violated the “Professional Conduct”

policy, damaged the Department's reputation, and "eroded the public's confidence in the Department" by confiscating the minor's bicycle. Finally, the hearing officer found that Loureiro violated the "General Behavior" policy by behaving in a manner that brought discredit to himself and the Department while acting in an official capacity. The hearing officer recommended that the Commission uphold Loureiro's suspension.

Loureiro objected to the hearing officer's findings and conclusions. The Commission overruled his objections on December 16, 2015 and adopted the hearing officer's findings and recommendation as its final decision on December 23, 2015.

On March 15, 2016, Loureiro filed a verified petition for a writ of administrative mandate in the superior court. He alleged he did not violate any policies "as articulated in the . . . December 19, 2013 letter of charge," the Commission's findings were not supported by substantial evidence, the suspension was not supported by the findings, and the suspension was disproportionately harsh and excessive.

The trial court heard the petition on January 9, 2018 and denied writ relief. The trial court rejected as "conclusory" Loureiro's contentions that the Commission's findings were unsupported by the evidence and did not support the decision. It further concluded that Loureiro received the notice of the allegations against him required by POBRA, Government Code section 3303, subdivision (c), and that any technical POBRA violation was harmless. The court, "exercising its independent judgment," also found that the "weight of the evidence" supported the Commission's findings that Loureiro violated several Department policies, including "Performance to Standards", "Safeguarding Money, Property, and Evidence", and the

requirement to obey laws, regulations and orders as it pertains to “Property and Evidence.” The court concluded that the Commission did not abuse its discretion or violate the Department’s progressive discipline policy in imposing the 20-day suspension, even though “a lesser penalty was possible.”

Loureiro timely appealed.

DISCUSSION

Loureiro contends that the trial court’s order (and his suspension) should be reversed for several reasons. He argues that the suspension is procedurally defective because the Department violated his POBRA rights by failing to notify him of the nature of the investigation prior to his interrogation, and violated his due process rights by depriving him of the opportunity to respond to allegations concerning Squirrell’s “found property” report. Loureiro also contends that the suspension is substantively defective, because the facts do not support the findings that he violated Department policies, and that the Department and Commission abused their discretion in imposing such a lengthy penalty in light of his efforts to stop Squirrell’s behavior. We address these contentions in turn.

I. Standard of Review

A trial court considering a petition for a writ of administrative mandamus may consider only “whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code Civ. Proc., § 1094.5, subd. (b).)

When a trial court reviews an administrative determination by a board with fact-finding powers, like the Commission here, “the court must ‘exercise its independent judgment on the facts, as well as on the law. . . .’” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811 (*Fukuda*)). “In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” (*Id.* at p. 817.)

When the trial court has exercised its independent judgment, we review the record to determine whether its findings are supported by substantial evidence. (*Fukuda, supra*, 20 Cal.4th at p. 824.) In doing so, we draw all reasonable inferences and resolve all evidentiary conflicts in favor of the court’s decision. (*Cassidy v. California Board of Accountancy* (2013) 220 Cal.App.4th 620, 627.) We review the trial court’s rulings of law under a de novo standard. (*Ibid.*)

With respect to the degree of punishment imposed, neither we nor the trial court may substitute our discretion for that of the administrative agency. (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 54.) We review that decision directly for abuse of discretion, and do not disturb the Commission’s choice of penalty unless it is arbitrary, capricious, or patently abusive. (*Ibid.*; *Cassidy v. California Board of Accountancy, supra*, 220 Cal.App.4th at pp. 627-628.) If reasonable minds may differ as to the propriety of the disciplinary penalty, no abuse of discretion has occurred. (*County of Los Angeles v. Civil Service Commission* (1995) 39 Cal.App.4th 620, 634.)

II. Procedural Issues

A. POBRA

“When a law enforcement agency investigates alleged misconduct by an officer employee, the procedural protections in [POBRA] balance the public interest in maintaining the efficiency and integrity of the police force with the police officer’s interest in receiving fair treatment.” (*Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 909.) The POBRA procedural protection at issue is set forth in Government Code section 3303, subdivision (c) (“section 3303(c)”), which states, “The public safety officer under investigation shall be informed of the nature of the investigation prior to any investigation.” This provision “allows the officer and his or her representative to be ‘well-positioned to aid in a full and cogent presentation of the [officer’s] view of the matter, bringing to light justifications, extenuating circumstances, and other mitigating factors’ and removes the incentive for ‘uninformed representatives . . . to obstruct the interrogation “as a precautionary means of protecting employees from unknown possibilities.” [Citation.]’ [Citation.]” (*Ellins v. City of Sierra Madre* (2016) 244 Cal.App.4th 445, 454.)

Loureiro acknowledges that prior to his interrogation, he received an administrative rights form listing several Department policies at issue in the investigation. However, the letter of intent he received after the interrogation included additional policies not stated on the administrative rights form. Loureiro contends that the “policies of which [he] had been notified prior to the start of the investigation” on the administrative rights form “did not place him on notice that he was under investigation for” the policy violations alleged in the letter of intent and ultimately sustained in the letter of

suspension. He argues that he therefore “was denied the opportunity to meaningfully consult with counsel regarding all additional allegations.” He also argues that the Department could not “properly charge” him with additional policy violations after the interrogation, because the administrative rights form alleged specific policy violations rather than a description of the “general nature of the investigation.”

The interrogation here was not, as Loureiro suggests, a bait-and-switch. The administrative rights form enumerated policies entitled “General Behavior,” “Performance to Standards,” “False Information in Records,” and “Safeguarding Money, Property and Evidence.” At the outset of the interrogation, Loureiro’s counsel expressly elicited confirmation that the investigation concerned Loureiro’s “behavior in the field” on the day of the incident, including his failure to safeguard the bicycle; “general behavior and performance standards”; the possibility that Loureiro “could have conducted additional police action”; and “a police report, authored by Deputy Squirrel.” Loureiro and his counsel thus were apprised of the general “nature of the investigation,” as required by section 3303(c). There is no indication that Loureiro was denied the opportunity to consult with his counsel on any of these general topics, which plainly provided the basis for the policy violations added to the letter of intent to suspend issued nearly a year after the interrogation—“Obedience to Laws, Regulations and Orders (as it pertains to . . . Property and Evidence; and/or . . . Deputy Daily Worksheet and Logging Public Contacts),” “Reporting Information,” and “Professional Conduct.”

Loureiro relies on *Hinrichs v. County of Orange* (2004) 125 Cal.App.4th 921 (*Hinrichs*) to support his contention that the

Department could not add additional allegations after his interrogation. Hinrichs, an Orange County sheriff's deputy, was charged with violating the department's alcohol use policy after a supervisor smelled alcohol on her breath at the start of her overnight work shift. (*Hinrichs, supra*, 125 Cal.App.4th at pp. 924-925.) The sole written notice of the charge she received identified the only allegation against her as "Use of Alcohol," an explicit, stand-alone department policy under which "[t]he odor of an alcoholic beverage on the breath will be considered presumptive evidence of a violation." (*Id.* at pp. 931, 933.) However, the letter of reprimand she ultimately received stated that she had violated two policies: "Use of Alcohol" and "Standard of Conduct," which required deputies to "conduct their private and professional lives in such a manner as to avoid bringing discredit upon themselves or the Department." (*Id.* at p. 925.)

The appellate court agreed with Hinrichs that the department's conclusion that she violated the "Use of Alcohol" policy was lacking in evidentiary support, as it was predicated on the policy's presumption and there was no indication that Hinrichs had an opportunity to rebut the presumption. (*Id.* at pp. 932, 934.) The department contended that the discipline nevertheless should be upheld because the evidentiary basis for the "Standard of Conduct" policy was sound. (*Hinrichs, supra*, 125 Cal.App.4th at p. 933.) The court rejected this argument, explaining, "Hinrichs was never notified that she had been charged with any violation of the general standard-of-conduct regulation. She was given only one written notice of the charges against her, in a memorandum informing her of the commencement of the formal internal affairs investigation. That

notice specified that the allegation against her was “Use of Alcohol,” which is the exact title of regulation 31.35.0. And it was written just that way, like a title, with initial capitalizing. Under those circumstances, it is difficult, if not impossible, to interpret the notice as merely reciting a general description of her alleged misconduct, or as giving her a fair warning that she was accused of violating any other regulation. To the contrary, it appears to specifically limit the charge to a violation of regulation 31.35.0. [¶] We do not necessarily disagree with the Department’s contention that it was not obligated to give Hinrichs more than a general description of the allegations against her. Section 3303 provides only that she is entitled to be ‘informed of the nature of the investigation prior to any interrogation.’ [Citation.] Under that standard, it would be difficult to argue Hinrichs was entitled to a detailed specification of the exact charges leveled. However, in our view, if the Department does choose to specify a particular regulation that the officer is alleged to have violated, and provides *no other description of the alleged wrongful conduct*, the Department cannot thereafter impose discipline based upon a different regulation.” (*Ibid.*, emphasis in original.)

Hinrichs is distinguishable. Unlike the specific notice of a single violation in *Hinrichs*, here Loureiro was provided with other descriptions of the alleged wrongful conduct. In addition to the administrative rights form, he and his counsel received oral information about the investigation at the outset of the interrogation. Loureiro also received multiple written communications detailing the allegations against him before discipline was imposed. The notice of intent to suspend was sent to him nearly a year after his interrogation and seven months before the Department ultimately suspended him. There is no

indication that Loureiro was unable to consult with his counsel during that time, in which he sought further Departmental review of the allegations. In contrast, Hinrichs was disciplined a mere two months after she received written notice of the charge, and was never given “fair warning that she was accused of violating any other regulation” in addition to the use of alcohol policy. (*Hinrichs, supra*, 125 Cal.App.4th at p. 933.)

Taken to its logical conclusion, Loureiro’s position would require a department to allege every possible policy violation before interrogating an officer. This is not a defensible position. Not only would the notice be rendered little more than a laundry list of policies, but the department would be unable to discipline an officer in connection with—or even investigate—any new information that might arise during the interrogation. We are not persuaded that is required by POBRA.

Moreover, “procedural due process violations, even if proved, are subject to a harmless error analysis.” (*Hinrichs, supra*, 125 Cal.App.4th at p. 928.) Loureiro has not shown that any error prejudiced him. He suggests that he was not able to consult with his counsel about the additional policy provisions prior to the interrogation, but it is clear from the record that he had ample notice of the additional allegations and an opportunity to contest them before discipline was imposed.

B. Due Process

Loureiro also contends that his due process rights were violated because the Department “fail[ed] to notify him of all facts upon which it relied” in imposing discipline. He argues that the letter of suspension did not provide adequate notice that the Department believed that he made false statements and failed to ensure the accuracy of Squirrell’s “found property” report. He

also argues that the Commission violated his due process rights and Los Angeles County Civil Service Rule 18.01(C) by considering information and allegations that were not part of the charges against him. We reject these contentions.

Due process “is the opportunity to be heard at a meaningful time and in a meaningful manner.” (*Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 576.) “It is a flexible concept requiring accommodation of the competing interests involved, and its procedural requisites necessarily vary depending on the importance of the interests involved and the nature of the controversy.” (*Ibid.*) “At a minimum, an individual entitled to procedural due process should be accorded: written notice of the grounds for the disciplinary measures; disclosure of the evidence supporting the disciplinary grounds; the right to present witnesses and to confront adverse witnesses; the right to be represented by counsel; a fair and impartial decisionmaker; and a written statement from the fact finder listing the evidence relied upon and the reasons for the determination made.” (*Id.* at p. 577.) Loureiro received this process here.

Prior to his suspension, Loureiro received written notice of the charges and evidence against him. Loureiro claims the letter of suspension “contains no allegations that Deputy Loureiro failed to ensure that Deputy Squirrell’s report regarding this incident was accurate.” He is correct as to the letter itself, though the Investigative Summary it incorporates notes that Squirrell wrote the report without assistance and that Loureiro did not read the report. It is unclear how any such omission is relevant, however, as the letter’s recitation of policies and findings does not mention Loureiro’s lack of involvement with the report as a basis for disciplining him. The hearing officer and

Commission likewise drew no conclusions of law regarding the report. The hearing officer's findings of fact that Loureiro "did not write a supplemental report or read Deputy Squirrell's account of the incident," and "did not write a truthful account of the incident or tell his supervisor that Deputy Squirrell's account was inaccurate"—which were based on testimony at the hearing in which Loureiro fully participated—do not implicate his due process rights. Loureiro has identified no due process right limiting a factfinder's ability to find background facts from evidence presented to it during a procedurally adequate hearing, particularly where those facts are not directly used to support the legal conclusions drawn.

Loureiro does identify a civil service rule that he contends prevents such factfinding. Los Angeles County Civil Service Rule 18.01(C) provides that "An employee who is suspended *for up to five (5) days* may appeal such suspension to the Director of Personnel. . . . The Director of Personnel may not consider any information or charges made by the appointing power unless they are contained in the letter of suspension, . . . unless such information or charges were not known and could not have reasonably been expected to be known by the appointing power or employee. The Director of Personnel shall determine whether or not to consider the appeal, or whether or not the suspension is justified." (Emphasis added.) It is unclear from the text of this rule whether it is applicable to Loureiro, who was suspended for more than five days. Assuming that it is, we are not persuaded that the Commission violated it here. Loureiro personally testified before the hearing officer that he did not read Squirrell's report or prepare his own. The same information was also incorporated by reference into the letter of suspension, which

placed it at issue under any reading of the rule. Furthermore, there is no dispute that Loureiro properly was charged with failing to perform to standards by acquiescing to Squirrell's actions; as the trial court pointed out, Loureiro's "decision not to prepare his own report seems to be relevant circumstantial evidence to that charge."

III. Substantive Issues

A. Policy Violations

Loureiro also challenges his suspension as substantively unsupported by the evidence. He urges us to review the trial court's rulings on this subject *de novo*. However, we agree with the Department that the substantial evidence standard is appropriate because the trial court exercised its independent judgment and examined whether the weight of the evidence supported the Commission's decision. (See *Fukuda, supra*, 20 Cal.4th at p. 824.)

Loureiro first argues that the facts fail to establish that he violated the policy entitled "Obedience to Laws, Regulations, and Orders Policy[,] as it Pertained to Deputy Daily Worksheets [*sic*] and Logging Public Contacts." However, neither the hearing officer, Commission, nor trial court found that Loureiro violated the policy by failing to prepare a worksheet or log his contact with the minor. Instead, the hearing officer found (and the Commission agreed) that Loureiro violated the policy "by violating the laws and policies that prohibit the wrongful confiscation of public property." The trial court concluded that this finding was supported by the weight of the evidence. It did not, as Loureiro states, find that he violated any policies concerning the deputy daily work sheet or public contacts. We accordingly cannot and do not grant his request that we "find

that there is no substantial evidence in the record to support the trial court's finding that Deputy Loureiro violated Obedience to Laws, Regulations, and Orders as it pertains to Field Directive 00-04, Deputy Daily Work Sheet and Logging Public Contacts."

Loureiro next contends that the evidence does not support the Department's and Commission's findings that he violated the "Performance to Standards" policy by failing to timely notify his supervisor of Squirrell's inappropriate behavior. He argues that none of the policies invoked imposed an affirmative duty to prevent misconduct, and that any delay in his reporting was justified because he "did not believe it safe to inform a supervisor of Deputy Squirrell's conduct in front of him." Loureiro further asserts that "common sense dictates that there could not in fact be a blanket requirement that a deputy report another deputy's misconduct as it is occurring as doing so could result in danger to the reporter, depending on the circumstances."

The "Performance to Standards" policy⁴ provides, in relevant part, "Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the functions and objectives of the Department. Incompetence may be demonstrated by: . . . an unwillingness or inability to perform assigned tasks; failure to

⁴The record contains a version of the policy that was "revised 12/12/13," well after the May 13, 2012 incident.

Neither side has indicated how the policy was revised or addressed any potential retroactivity problems. We therefore assume for purposes of this appeal that the version contained in the record is applicable to this case.

conform to work standards established for the member's rank or position; failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention. . . .”

The Commission concluded that Loureiro violated the “Performance to Standards” policy “by failing to assume the responsibilities of his position as a deputy sheriff. He failed to take appropriate action when, in his presence and with his acquiescence, he allowed Deputy Squirrell to confiscate the bicycle of [the minor] on the occasion of a crime deserving of police attention.” The trial court concluded that the weight of the evidence supported the Commission’s finding that Loureiro violated the policy “when he failed to take appropriate action to report Squirrell’s misconduct.” It found that Loureiro had a duty to promptly report Squirrell’s misconduct, and also found that Loureiro had a duty to respond to the dispatch queries about the incident.

The trial court rejected Loureiro’s contentions that he had no duty to report the misconduct as it was occurring and that he informed his supervisors as soon as possible. It found that Loureiro’s “oral report to Sgt. Mattison at the station, several hours after the incident, cannot be viewed as ‘prompt,’” and was unpersuaded “that the circumstances excused [Loureiro] from responding to four radio calls about the bicycle incident, or making his own radio call to a supervisor.” The trial court credited Chief Eric Parra’s testimony that “sometimes this job requires you to be uncomfortable, and that’s an obligation you have as a deputy sheriff.” The court also observed that Loureiro “has not cited evidence that Squirrell had threatened [him] or created legitimate safety concerns.” This evidence is substantial and supports the court’s conclusions that Loureiro violated the

Performance to Standards policy. The court was not required to credit Loureiro's testimony or other contrary evidence; on substantial evidence review, "it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion." (*Bowers v. Bernard* (1984) 150 Cal.App.3d 870, 874.)

Loureiro also argues that the Commission erred in finding that he "acquiesced" in Squirrell's actions and by conflating the actions of the two deputies. He asserts that "it was clear that Deputy Loureiro did not condone Deputy Squirrell's conduct, and in fact attempted to stop him repeatedly during the incident." In support of this contention, he points to the hearing officer's observation that he "repeatedly voiced his opposition to this [*sic*] partner's conduct."

Loureiro again ignores the import of the substantial evidence standard, which looks to whether the record contains evidence, contradicted or uncontradicted, that supports the trial court's conclusion. That standard was easily met here. Loureiro's actions spoke much louder than any comments he made to Squirrell: he left the bicycle on the push bar and then behind the dumpster; ignored repeated radio calls from his superiors about the bicycle; failed to follow up on his undelivered message to Mattison, which said nothing of substance in any event; remained silent when Squirrell returned Mattison's dispatch and lied about the incident; and declined to use the radio himself or simply remove himself from the situation due to a purported fear of gang activity. Loureiro acquiesced to the misconduct by, as he testified, "going along for [the] ride." Loureiro repeatedly asserts that Squirrell was acting "agitated" and behaving "irrationally", but the trial court was entitled to

infer that a sheriff's deputy with 10 years of training and experience could and should have done more to de-escalate the situation, particularly where he had radio access to a superior officer at all times.

B. Degree of Penalty

Loureiro's final contention is that the penalty imposed—a 20-day suspension without pay—is a “manifest abuse of discretion given Deputy Loureiro's repeated attempts to stop Deputy Squirrell's misconduct and his attempt to report this incident to a supervisor.” He notes that the penalty imposed “resulted in an inability to promote to a coveted position or a supervisor's position for five years,” and intimates that this is an inappropriately harsh consequence despite being within the Department's guidelines.

We cannot substitute our discretion for that of the Department and Commission on the degree of punishment to be imposed; we may consider only whether the discipline was an abuse of an administrative agency's discretion. (*Kazensky v. City of Merced*, *supra*, 65 Cal.App.4th at p. 54.) The “overriding consideration” is “the extent to which the employee's conduct resulted in, or if repeated is likely to result in, ‘[h]arm to the public service.’ [Citations.]” (*Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 218.) “Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.” (*Ibid.*) These factors do not convince us that the penalty imposed here was an abuse of discretion.

“A deputy sheriff is held to the highest standards of behavior.” (*Paulino v. Civil Service Commission* (1985) 175 Cal.App.3d 962, 972.) He or she occupies a position of “great public trust and high public visibility” (*Gilbert v. Homar* (1997)

520 U.S. 924, 932), and “acts of a police officer that tend to impair the public’s trust in its police department can be harmful to the department’s efficiency and morale. . . . Nothing can more swiftly destroy the community’s confidence in its police force than its perceptions that concerns raised about an officer’s honesty or integrity will go unheeded. . . .” (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 568.)

Loureiro did not meet these high standards when he went “along for the ride” rather than promptly alerting supervisors to his partner’s ongoing misconduct that directly affected a member of the community and impugned the Department’s integrity. Despite his greater experience, access to and responsibility for the radio, and specific entreaties from his supervisors over dispatch, Loureiro allowed the situation to unfold for several hours before advising his supervisors of Squirrell’s misdeeds. His inaction undoubtedly undermined the confidence of the minor, who was sufficiently incensed by the incident to complain to the watch commander.

Loureiro maintains that this situation is not likely to be repeated, because Squirrell was “the primary actor,” and Loureiro “undertook actions that would have discouraged the average deputy sheriff from engaging in such behavior.” It was not an abuse of discretion for the Department and Commission to conclude otherwise. It is reasonable to infer that a deputy unwilling to intervene in or report bicycle theft by a less-experienced peer is unlikely to speak out against more serious misconduct or transgressions committed by those who outrank him or her. If repeated in a higher-stakes situation, Loureiro’s

behavior of standing by in the face of blatant misconduct could have dire consequences.

DISPOSITION

The judgment is affirmed. Respondent Department is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.