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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

DANIEL ODOH,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B236828

(Los Angeles County
Super. Ct. No. BS128645)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Silver, Hadden, Silver, Wexler & Levine and Richard A. Levine for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, and Brian I. Cheng, Deputy City Attorney, for Defendants and Respondents.

Officer Daniel Odoh appeals from the partial denial of his petition for writ of mandate, which sought relief from his 2010 termination by the Los Angeles Police Department (department). We affirm.

STATEMENT OF FACTS AND OF THE CASE

I. February 8, 2009 Arrest of Huizar and Moorner

On February 8, 2009, at approximately 3:00 a.m., Odoh and his partner, Officer Tony Alvarez, responded to a report of domestic violence at the home of Catalina Huizar and Mark Moorner. Odoh and Alvarez arrested Huizar and Moorner, leaving unsupervised in the family home Huizar's four children: Ariel (15 years), Jacob (12 years), Jasmine (seven years), and Adriana (six years). The children remained home alone until approximately 3:30 p.m. that afternoon, when a social worker from the Department of Children and Family Services (DCFS) arrived and placed the children with their aunt, Renee Reyes.

II. Huizar's Complaint

Huizar filed a complaint with the department, alleging that Odoh and Alvarez had not permitted her to contact a family member to arrange care for her children before they removed her and Moorner from the home. The department investigated and recommended that the allegation be sustained. On February 5, 2010, the Chief of Police directed that the matter be heard by a Board of Rights.

On February 6, 2010, the department served Odoh with a complaint alleging four counts of misconduct: (1) Odoh failed to arrange adult supervision for dependent children after the arrest of their mother and her boyfriend on February 8, 2009 (count 1); (2) Odoh failed to "cause a cursory search of a felony suspect at the scene of a criminal investigation" on February 8, 2009 (count 2); (3) Odoh failed to notify the communications division of "time and mileage" when transporting a female on

February 8, 2009 (count 3); and (4) Odoh made a false statement during a department administrative investigation (count 4).

III. Board of Rights

A Board of Rights hearing commenced on May 12, 2010.¹ The relevant testimony was as follows:

A. Catalina Huizar

Huizar testified that she got into a fight with Moorner on February 8, 2009; both were injured. Either she or her daughter Ariel called the police, and officers arrived at the home between 2:00 and 3:00 a.m. Officers interviewed and then arrested Huizar and Moorner. Huizar told the officers her four children were in the home and identified their ages and genders. One of the officers went to the back room where the children were.

Huizar asked the officers three or four times to allow her to make a phone call to a family member who could stay with her children while she was in custody. One of the officers said Ariel looked old enough to take care of her siblings. In the patrol car, Huizar repeated her request to call a family member; the officers closed the window and asked her to be quiet. Huizar was not allowed to make a phone call until after she arrived at the station and was fingerprinted. She could not reach her sister-in-law, Renee Reyes, but she left messages on Reyes's cell and work phones.

On prior occasions, Huizar had left the children with Ariel, but she usually took her son with her when she did so because he tends not to listen to Ariel. The longest she has ever left the children alone with Ariel is three or four hours, and never overnight. Huizar did not give either police officer a phone number of any relative or friend, and she did not see either officer make a phone call from her house.

¹ The department was represented by Sergeant Jay Mastick; Odoh was represented by Attorney Bill Seki; and the Board members were Deputy Chief Patrick Gannon, Captain Nancy Lauer, and Mr. Thurston Reese.

B. Mark Moorer

The police responded to Moorer's home at about 3:00 a.m. on February 8, 2009. Moorer was outside when the police arrived; he told them his fiancée and her children were in the house. He is not sure whether he or anyone else told the officers how many children were home.

Before Moorer was taken to the police station, one of the officers asked Huizar if Ariel was old enough to stay with the younger children. Huizar said, "My daughter's old enough to watch them." One of the officers asked to see the child who would be watching the younger ones, and he said, "Oh yeah. She's big enough to watch the younger ones." To Moorer's knowledge, no one made a phone call prior to his arrest to arrange adult supervision for the children.

Moorer believes Ariel is mature enough to watch the children. He has left her in charge of the other children, but never for more than four or five hours. Ariel might have babysat the children overnight in the past, but Moorer could not say for sure. He said that the night of the arrest, both he and Huizar were comfortable with Ariel staying with the younger children.

C. Renee Reyes

Renee Reyes is Huizar's sister-in-law. At the time of Huizar's arrest, Huizar, Moorer, and the four children lived in a small house with two bedrooms and one bathroom. The four children slept in one bedroom.

When Reyes arrived at work at about 10:00 a.m. on Sunday, February 8, 2009, she retrieved a phone message from Huizar saying that she and Moorer had had a fight and had been arrested. Huizar asked Reyes to check on the children and make sure they got to school because she likely would be in jail until Tuesday morning. After she heard the message, Reyes called Ariel and said that as soon as she could leave work, she would pick up Ariel and her siblings and bring them to her home.

While driving to Huizar's home, Reyes learned that a social worker from DCFS was with the children. Reyes arrived a few minutes later and told the social worker she

would care for the children until the hearing. The children lived with Reyes until November 2009.

Reyes was not contacted by the police or DCFS prior to 10:00 a.m. on February 8, 2009. She said that according to both Huizar and Ariel, all four children were home when Huizar was arrested. Reyes described Ariel as a mature, responsible girl. Ariel regularly cared for the other children in the household, but Reyes did not believe she had ever cared for them overnight.

D. Sergeant Rick Morales

Morales is the complaint supervisor who investigated Huizar's complaint against Odoh. During his investigation, Morales interviewed Huizar and Moorner and obtained documents, including the arrest report and suspected child abuse report. He did not interview Ariel because Huizar would not consent to an interview. He did not recall ever asking Huizar for her home or cell phone records.

When Morales interviewed her in 2009, Huizar never said she had complained to other officers that her children had been left home alone. Morales was not able to determine whether it violated department policy for officers to leave children alone after arresting their parents. He contacted DCFS, which said that in some circumstances it could be appropriate for children to be left alone for a short time.

E. Tony Alvarez

Alvarez graduated from the police academy in December 2008, and was in the field training program on February 8, 2009. Odoh was his training officer. Alvarez has since left the department.

Alvarez did not recall whether anyone attempted to arrange adult supervision for the children on February 8, 2009. He believed there were two children in the home when he arrested Huizar and Moorner because he saw them step out of the bedroom. He did not know whether anyone looked in the bedroom for additional children, but said he never was made aware that there were additional children at home. Alvarez recalled Huizar

saying the children could be left with Ariel because she was responsible and had cared for the children in the past. He did not recall Huizar asking to call her sister-in-law. He recalled Odoh holding a telephone, but he was not sure whether Odoh called to arrange adult supervision for the children. He believed it possible that Odoh made a phone call when he was out of Alvarez's sight.

After Alvarez took Huizar and Moorner to the police station, he contacted DCFS and advised them that there were four children in the home. He does not recall how he learned there were four children, not two. The DCFS report states: "Officer stated that he assumed that once the father and mother were taken to county jail, they would use their telephone to call or contact the children or another adult and arrange care for the children. And no care plan is in place."

Alvarez did not recall whether he provided "time and mileage" when he arrived at the police station.

F. Evelyn Crawford

Crawford is a DCFS caseworker. On February 8, 2009, she received a referral regarding Huizar's children. She went to Huizar's home, where she found Ariel taking good care of her three siblings. Reyes arrived about 15 minutes later. When Crawford left the family's home, she went to the jail, where she interviewed Huizar. Huizar felt Ariel could take care of the children and she was concerned that the children had been removed.

Crawford testified that leaving 12-, seven-, and six-year-old children in the care of a 15-year-old sibling may be appropriate, depending on the children. In the case of this family, it did not seem appropriate because the parents so recently had been arrested and Crawford was not sure what the children had observed. It could be appropriate to leave younger children with a responsible older sibling for four to six hours if an adult relative has been contacted and is responding.

G. *Daniel Odoh*

Odoh had been with the department for almost 22 years and had been a field training officer since 1994. He responded to Huizar's home on February 8, 2009. Moorer was outside, shirtless and bleeding, and he reported that Huizar had cut him with a glass. Huizar walked out from the apartment and told Moorer, "You are going to jail." She had scratches and a swollen lip. Two children followed her and she told them to go back to their room. Odoh asked if anyone else was in the home and Huizar said, "No." Odoh followed Huizar into the room where the children had gone and saw two children, a girl of about 15, and a boy, who appeared to be 10 to 13 years old. He asked them if anyone else was in the room with them and the girl said no.

Odoh radioed to ask for an additional unit but was unable to radio again because of an ongoing police pursuit. He asked to borrow a telephone, which he used to call the station. He spoke to his watch commander and said he needed the assistance of a female officer to search Huizar. The watch commander said there were no available female officers so Odoh should "do a visual inspection on [Huizar]" and bring her to the station.

Odoh asked Huizar if there was anyone he could call to take care of the children. Huizar called her sister-in-law and Odoh asked to speak to her. A woman who identified herself as Huizar's sister-in-law said she was babysitting two of Huizar's children that night and she would come over shortly. Odoh then went to talk to the children and tried to calm them down and find out what they had witnessed. The children said they had heard but not seen the fight. Odoh told the 15-year-old that her aunt would be over shortly, and asked if she would be okay waiting for her aunt. She said, "Yes." Huizar and Moorer said that they had left the children with the 15-year-old before and said, "[S]he is a big girl, she will be all right [*sic*]."

Odoh and Alvarez handcuffed Huizar and Moorer, searched Moorer, and walked Huizar and Moorer out to the police car. Once in the car, Odoh called out the mileage and told his partner to do the mileage. They then drove to the station. Odoh did not confirm that his partner had recorded time and mileage.

Odoh agreed that if he were in the same situation again, he would handle it differently. He would call the watch commander back and get someone to care for the children. He said, however, that he is certain only two children were in the home when he left.

H. Ariel Macias

Ariel was interviewed by telephone on May 17 and May 19, 2010. She said that on February 8, 2009, Huizar went out with friends at about 9:00 p.m. When Huizar left, Moorero also left, leaving Ariel home alone with the children. After Huizar returned home, Ariel heard Huizar and Moorero fighting. Huizar came into the children's bedroom and asked Ariel for her cell phone to call the police. Ariel did not know whether Huizar had a functioning cell phone at that time: "[W]ith them two, their cell phones are turned on; they're turned off; they're turned on because of bills." When Huizar turned on the light, Ariel saw that Huizar's face was bruised. Huizar said Moorero hit her. Huizar called the police and said she needed someone to come out because her boyfriend was hitting her. She told them she had a black eye, a swollen lip, and scratches.

The police arrived about 20 minutes later, at about 3:00 a.m. Ariel and her three siblings were home when the police arrived. Ariel and Jacob were awake in Huizar's bedroom and their younger sisters were asleep in the children's bedroom. One child was sleeping in the bottom bunk of a bunk bed and the other was in a queen-sized bed. It would not have been difficult to see either child.

The officers asked Ariel what she saw, and she said she had not seen the fight itself. She heard the fight and saw her mother crying and hurt. Huizar told Ariel the officers were going to take her and Moorero to the station. Huizar asked the officers, "What about my kids?" The officer spoke to Ariel and said, "You look like a very responsible girl, like you can — I can leave you here alone with the kids." However, "he didn't say anything about getting any other kind of supervision there. He just told me that I looked responsible enough to take care of the kids." Ariel did not recall which officer made that statement. She said Huizar asked, "Are they going to be okay? Am I

going to get in trouble?” The officer answered, “No, I talked to your daughter already. She’s going to watch them.” Ariel believed that one of the officers may have peeked into the second bedroom where her two younger siblings were sleeping, but he did not enter the room. Ariel does not know if the arresting officers knew there were four children in the house.

To Ariel’s knowledge, the police officers did not make any phone calls from the house, nor did they allow Huizar to make any phone calls. To the contrary, “[W]hen the incident was happening, Mark [Moorer] had disconnected the house phone. So it wasn’t even working.” Ariel was with her mother during all but about five minutes of the time that the police questioned her.

After the police left, Ariel and Jacob cleaned up the house. Ariel texted her father’s wife, her aunt (Reyes), and another aunt to let them know that she and her siblings were home alone. She and Jacob then went to bed. In the morning, Reyes called and said she was at work and would come get the four children as soon as she could. Ariel also spoke to her dad’s wife and her other aunt to let them know she and her siblings were home alone.

A social worker arrived at the family’s home at about 4:00 p.m., about 10 minutes before Reyes did. The social worker asked Reyes if she had spoken to anyone and she said she had spoken only to Ariel and the social worker.

I. Chris Dragan

Dragan is a supervising social worker with DCFS. When a law enforcement officer calls to report suspected child abuse, the social worker takes the information and then generates a “suspected child abuse report” (SCAR). The social worker also searches DCFS’s database to determine if the family has had any prior contacts with DCFS and, if so, attaches that history to the SCAR. The SCAR itself is likely just the information provided by the caller, unless the social worker has injected a note about something in the history he or she feels is important.

The narrative portion of the SCAR records the names of the children in the home. The children's names could come from the caller or from the search. If the worker finds additional children's names through a search, he or she "normally" will note, for example, that "a search revealed two other minors in the home." Once the SCAR is complete, it is reviewed and signed by a supervisor.

Dragan opined that it is not advisable to leave a 15-year-old and three siblings unattended in a home when the parents have been arrested and taken to jail. "I would take into consideration ages, length of time, who's around. But normally for us, I wouldn't recommend it. I mean that wouldn't be something that our department would . . . want to . . . happen."

J. Edward Perez

Perez was the watch commander on February 8, 2009. If either Huizar or Moorer had made a complaint when they arrived at the station, he would have noted it on an arrestee interview form; he made no such note. Neither Huizar nor Moorer said anything about the children and Perez was not aware that children had been left alone when Huizar and Moorer were arrested. Had he known, the direction he would have given Odoh would have depended on the ages and mental state of the children. Had Odoh called from the field, Perez probably would have asked him either to wait for a relative's arrival or to have another unit arrive and stand by and wait. He is not sure whether this was required by department policy.

IV. Board of Rights Findings and Penalty Rationale

On June 17, 2010, the Board of Rights announced the following findings:

"As to the first count that '[o]n or about February 8, 2009, you, while on duty, failed to arrange for adult supervision for dependent children after the arrest of their mother and her boyfriend,' the Board finds you guilty.

"The Board based its findings on the following testimony in evidence presented in this case. Witness arrestee, Catalina Huizar, testified that in spite of making several

requests to do so, she did not make any phone calls regarding adult supervision for her children while at her residence. Huizar testified that her first phone calls regarding adult supervision were not made until she reached the Van Nuys jail. Witness Ariel Macias, Catalina Huizar's daughter[,], testified that an officer told her . . . , 'You look like a responsible girl. We're going to take them into custody,' referring to Huizar and Moorero. 'We're going to leave you here[.]' . . . Ariel Macias stated the officers made no reference to any other adult responding to her home or any calls or notifications along those lines. Ariel also stated that her aunt, witness Renee Reyes, asked her the following day why Ariel had not immediately contacted her when the incident occurred, indicating she, wit[ness] Reyes, was not informed of the incident until later the same day. Renee Reyes, Huizar's sister-in-law, supported wit[ness] Ariel Macias' account of events. Reyes maintained she did not become aware of the incident until she arrived at work the morning of 2/8/09 and heard a message from Catalina Huizar regarding her arrest. Reyes stated she was never contacted by Officer Odoh or any other police officer to care for Huizar's children. Witness arrestee, Mark Moorero, testified that he was not aware of any phone calls made by Officers Odoh or Alvarez or any other party at the scene with regard to adult supervision. He did not observe the officers make phone calls to any family members. Moorero did hear one officer comment quote, 'Yes, she's fine. She looks old enough to care for the little ones,' end quote, in reference to Ariel Macias. Officer Odoh stated later that he believed he had spoken to Huizar's sister-in-law, Reyes, who indicated she was responding to the location. Both Huizar and Reyes denied that this conversation took place. Officer Odoh in fact could not provide the name of the individual he allegedly spoke to, nor did he document it in any report associated with the incident.

"Page two of the suspected child abuse report dated 2/8/09 contains two entries that the Board found particularly compelling in reaching a guilty finding on this count. The entries are as follows: Caller, referring to Officer Odoh's partner, former Officer Alvarez, reports that both mother and father were arrested and are awaiting arraignment, which should be held on Monday, 2/9/2009. Officer reported that all the younger

children were left in the care of 15-year-old Ariel as she appeared to be responsible and capable.

“And the second entry, officer stated that he assumed that once mother and father were taken to county jail they would use their telephone call to contact the children or another adult and arrange care for the children, but no clear plan is in place.

“Finally, both officers admitted at the time they left the location that no adult supervision was present to care for the children of Catalina Huizar. That concludes the findings for count 1.

“... As to count 2 that ‘[o]n February 8, 2009, Officer Odoh, while on duty, failed to cause a cursory search of a felony suspect at the scene of a criminal investigation,’ the Board finds Officer Odoh not guilty. . . .

“As to count 3 that ‘[o]n February 8, 2009, Officer Odoh failed to notify communications division of time and mileage when transporting a female,’ the Board finds Officer Odoh guilty. The Board finds this to be a minor infraction. It was the job of former Officer Alvarez, with Alvarez as the passenger officer, to advise communications division [of their] time and mileage from the location of the call on Benner Street to the Northeast Station; however, as the field training officer, it was Officer Odoh’s responsibility to ensure that this task was completed by young Officer Alvarez, who had been in the field only five or six weeks. Even though this task belongs to Alvarez, it was Odoh’s responsibility to ensure it is completed.

“As to Count 4, ‘[o]n or about February the 13th, 2010, . . . Officer Odoh, while on duty, made a false statement to Sergeant R. Morales during an official department administrative investigation,’ this Board finds Officer Odoh guilty. This count alleges that during the investigation of this domestic violence incident . . . Officer Odoh gave false information to Sergeant Morales when Morales was investigating the complaint. The court references that domestic violence incident on February the 8th, 2009, and whether Officer Odoh spoke with an adult that evening who agreed to take responsibility of the children who were living in the home.

“Testimony during the Board of Rights conflicted on the number of children who were in the house at the time of the incident. Testimony from Huizar, Moorero, Ariel Macias and Renee Reyes all indicated that four children had been in the residence at the time that Huizar and Moorero were arrested. Officer Odoh and former Officer Alvarez contend that there were only two children home at the time of the incident. Whether it was two or four children, Officer Odoh had the responsibility to ensure that these children were properly cared for. Officer Odoh has indicated that he spoke to a relative or responsible party, who indicated that they would care for the children. However, he never obtained the name of the individual he spoke to or waited until this person arrived at the residence. If a call had been made[,] the expectation would be that the person would have been identified [and] that info[rmation] would have been documented in the arrest report and then forwarded to the Department of Children and Family Services. There is no evidence in this case presented to corroborate the testimony of Officer Odoh. None of the parties involved in the incident, including Officer Odoh’s partner, former Officer Alvarez, could recall that a call was made . . . regarding the care of the children. However, to the contrary the most significant evidence regarding this count is the S.C.A.R. report that is also referenced in count 1, that was completed the following morning. We find this document to be very credible.

“According to the S.C.A.R. report[,] D.C.F.S. received a telephone call from former Officer Alvarez on the child abuse hotline to report this incident. According to the report[,] this call was made on February 8, 2009, at 10:32 p.m. The narrative of the report outlines the domestic violence that occurred in the home, and also identifies the children who live in the home. The narrative of the S.C.A.R. report indicates, one, that the person making the call to the child abuse hotline was Officer Tony Alvarez, and cited a serial number of 39026 from Northeast Division. Two, that Alvarez identified all four of Huizar’s children and their age[s]. Three, that Alvarez outlined a domestic violence incident involving Catalina Huizar and Mark Moorero, that all four children were home at the time of the incident but did not witness the altercation. That Catalina Huizar and Mark Moorero were arrested. Alvarez also indicated that the children were left in the care

of Ariel, who appeared to be responsible and capable. Alvarez indicated that he assumed that Huizar and Moorero would make arrangements for the children from jail As a result, the Board does not believe that Officer Odoh called a responsible party or relative to care for the children properly. We believe he made a false statement, and in fact did not make a telephone call to a responsible adult to care for these children.”

On July 14, 2010, the Board of Rights recommended that Odoh be terminated:

“ . . . The Board finds that the misconduct involved in this case was egregious in nature. Officer Odoh failed to properly care for minors that he had a responsibility to care for, and that he provided false statements regarding the incident to an investigator.

“Officer Odoh has steadfastly maintained that he handled this incident properly in spite of evidence to the contrary. He has attempted to direct blame towards others in this case rather than himself. Expectations of the conduct of members of this department were not created in a vacuum, but rather these expectations are the expectations of the community we serve. The public demand[s] that members of this department do the right thing for the right reasons at all times. It is the responsibility of this Board to carry out that mandate. Officer Odoh had the sole responsibility to handle this investigation . . . and to ensure the safety of the children who were involved in this domestic violence incident[.] In not doing so he jeopardized the safety of the children he abandoned and left himself, the police department and ultimately the City of Los Angeles open to tremendous liability had something happen[ed] to the children.

“Even though the Board agrees that the investigations in this incident should have been better, there is no doubt by this board of Officer Odoh’s guilt in this incident[.] [W]hen that is combined with his complaint history, which includes nine previous sustained complaints with a total of 66 previous suspension days[.] [t]he Board believes that Officer Odoh has caused irreparable damage to his credibility and his abilities to be a Los Angeles police officer.

“It appears through his testimony that Officer Odoh loves being a Los Angeles police officer. . . . [H]owever, based on the circumstances of this case coupled with his previous misconduct, which he’s not learned from, Officer Odoh must suffer the

consequences of his actions. As a result the Board is unanimous in its position to recommend to the Chief of Police that Officer Odoh be terminated and removed from his position as an employee with the Los Angeles Police Department.”

On July 21, 2010, Police Chief Beck issued an executive order removing Odoh from employment effective March 9, 2010.

V. Mandate Proceedings

Odoh filed a verified petition for writ of mandate on October 4, 2010. On August 29, 2011, the trial court granted the writ petition in part. It found that the weight of the evidence supported the Board of Rights findings that Odoh (1) failed to arrange adult supervision for the children after arresting Huizar and Moorero on February 8, 2009 (count 1); (2) made false statements to Sergeant Morales during an official department administrative investigation regarding Odoh’s alleged telephone call to Renee Reyes (count 4); and (3) failed to notify the communications division of “time and mileage when transporting a female” (count 3). However, the court found that the department failed to present any evidence that Odoh’s failure to arrange adult supervision for the children violated a department policy or standard. It therefore ordered the Board of Rights to (1) review any department standards regarding an officer’s duty to arrange care for minors after arresting their caregiver(s); (2) find Odoh not guilty of count 1 if his failure to arrange such care did *not* violate department policy; and (3) reconsider the penalty of termination if there was no finding of guilt as to count 1.

The court entered a peremptory writ of mandate on September 7, 2011. On September 28, 2011, the City filed a return to the writ of mandate, which stated that “Respondents have received and are in the process of complying with the Court’s orders. It is anticipated that the matter will be administratively resolved within the next 60 to 90 days.”

The court served notice of entry of judgment on the petition for writ of mandate on August 30, 2011. On October 21, 2011, Odoh filed a notice of appeal from the unfavorable portions of the judgment.

DISCUSSION

A “Board of Rights” “is an administrative tribunal charged under the Los Angeles City Charter (L.A. Charter) with the adjudication of charges of police officer misconduct. (L.A. Charter, § 1070(a).) At the conclusion of a Board of Rights hearing, the board is required to make a finding of ‘guilty’ or ‘not guilty’ on each charge and to prescribe, for any positive finding of misconduct, a penalty from a specified range of disciplinary options including reprimand, suspension, demotion, and dismissal. (*Id.*, § 1070(n).) The Los Angeles Chief of Police (Chief of Police) has the discretion to accept or reduce, but not to increase, any punishment recommended by the Board of Rights. (*Id.*, § 1070(p).)” (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 317.)

“‘The trial court applies its independent judgment to the department’s administrative decision, but with a strong presumption the department acted properly. (Code Civ. Proc., § 1094.5, subd. (c); *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812, 817.) We review the trial court’s factual findings for substantial evidence. [Citation.] We independently review the court’s legal findings.’ (*Chrisman v. City of Los Angeles* (2007) 155 Cal.App.4th 29, 33)” (*Crawford v. City of Los Angeles* (2009) 175 Cal.App.4th 249, 253.) We review appellant’s punishment for abuse of discretion. (*Chrisman v. City of Los Angeles, supra*, at p. 39.)

Odoh asserts that the Board’s adverse findings (that he failed to arrange adult supervision for the children, made false statements during a departmental investigation, and failed to notify the communications division of time and mileage) were not supported by substantial evidence. He also asserts that he was denied a fair hearing because relevant and material telephone records were not made available and the penalty of termination was excessive and an abuse of discretion. We consider these issues below.

I. Substantial Evidence Supports the Board's Findings

A. *Failure to Arrange Adult Supervision for the Children*

Odoh contends the Board's finding that he failed to arrange adult supervision for the children was not supported by substantial evidence. We do not agree. The evidence supporting the Board's finding included the following:

- Huizar testified that, prior to her arrest, Odoh and Alvarez did not permit her to contact a family member who could stay with her children. She said that she did not believe that either officer could have made such a call because she did not give either officer the phone number of any relative or friend and she did not see either officer make a phone call from her house.
- Moorer testified that to his knowledge, no one made a phone call to arrange adult supervision for the children prior to his arrest.
- Reyes testified that she was not contacted by the police or DCFS on the morning of February 8, 2009. She learned of Huizar's and Moorer's arrests from a phone message Huizar had left for her.
- Alvarez testified that he did not recall whether anyone attempted to arrange adult supervision for the children on February 8, 2009.
- The SCAR report, which DCFS generated after Alvarez contacted the agency, states that, "Officer stated that he assumed that once the father and mother were taken to county jail, they would use their telephone to call or contact the children or another adult and arrange care for the children. And no care plan is in place."
- Ariel testified that before Odoh and Alvarez took her mother from the home, she heard her mother ask, "What about my kids?" The officer spoke to Ariel and said, "You look like a very responsible girl, like you can — I can leave you here alone with the kids." The officer "didn't say anything about getting any other kind of supervision there." Ariel testified that to her knowledge, the police officers did not make any phone calls from the house, nor did they allow Huizar to make any phone calls. To the contrary, "[W]hen the incident was happening, Mark [Moorer] had disconnected the

house phone. So it wasn't even working." Ariel said she was with her mother during all but about five minutes of the time that the police questioned her.

Taken together, the evidence cited above is sufficient to support the Board's finding that Odoh failed to arrange adult supervision for the children.

Odoh contends that the Board's finding is not supported by substantial evidence because (1) he testified at the Board of Rights that before he arrested Huizar and Moorer, he spoke to Reyes on the telephone and confirmed that she would arrive shortly, and (2) there were several operative telephones in the Huizar residence. In so contending, Odoh misapprehends the nature of the substantial evidence rule. Review for substantial evidence "is not trial de novo. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) On review for substantial evidence, 'all of the evidence must be examined, but it is not weighed. All of the evidence most favorable to the respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity to be accepted by the trier of fact. If the evidence so viewed is sufficient as a matter of law, the judgment must be affirmed.' (*Estate of Teel* (1944) 25 Cal.2d 520, 527.)" (*OCM Principal Opportunities Fund L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 866.) Because in the present case substantial evidence supports the Board's conclusions, we must affirm them, notwithstanding the presence of some evidence to the contrary.

B. False Statements During the Departmental Investigation

Odoh contends that the Board's finding that he made false statements to Sergeant Morales during the departmental investigation of Huizar's complaint was not supported by substantial evidence. We do not agree. Again, Odoh's contention is based on the existence of some evidence favorable to him, rather than the absence of evidence unfavorable to him. Specifically, he notes that (1) he testified that while he was at Huizar's residence, attempts were made to arrange adult supervision for the children, and (2) the Board should not have given great weight to the SCAR because it was ambiguous and did not foreclose the possibility that a care plan had been made for the children. Although we agree with Odoh that the Board could have weighed the evidence

differently than it did, that is not the issue on the appeal. Instead, the *only* issue on appeal is whether substantial evidence supports the judgment. Because, as we have said, substantial evidence supports the Board’s conclusion that Odoh did not arrange adult supervision for the children—and because it is undisputed that Odoh told Sergeant Morales that he *did* arrange for such supervision—the Board’s conclusion regarding Odoh’s false statement is also supported by substantial evidence.

C. Time and Mileage

Odoh contends substantial evidence does not support the Board’s finding that he failed to notify the communications division of time and mileage when transporting Huizar to the police station. He says it was undisputed that he called out the time and mileage and told Alvarez to “do the mileage”; it further was undisputed that it was Alvarez’s responsibility to notify the communications division of time and mileage. He contends that it therefore was error to find him guilty of the charge.

We do not agree. It is undisputed that neither Odoh nor Alvarez reported “time and mileage” when they left Huizar’s home. Further, Odoh cites nothing to suggest that substantial evidence did not support the Board’s conclusion that while it was Alvarez’s job to advise the communications division of their time and mileage, “as the field training officer, it was Officer Odoh’s responsibility to ensure that this task was completed by young Officer Alvarez, who had been in the field only five or six weeks.” Accordingly we presume that the conclusion is supported by substantial evidence. (E.g., *Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 153 [“We presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise.”].)

II. Odoh Was Not Denied a Fair Hearing

Odoh claims he was denied a fair hearing because the department failed to produce Huizar’s telephone records at the Board of Rights hearing. Odoh says that these records would have confirmed that he spoke to Reyes on the telephone before leaving

Huizar's home on February 8, and he urges that the department's failure to obtain these records denied him due process and a fair hearing. For the following reasons, we do not agree.

"Generally, LAPD officers cannot be 'suspended, demoted in rank, suspended and demoted in rank, removed, or otherwise separated from the service of the department . . . except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges . . . after a full, fair, and impartial hearing' before a Board of Rights. (L.A. Charter, § 1070(a).) . . . If the Chief of Police decides that a suspension of more than 22 working days or termination is appropriate, the case automatically proceeds to a Board of Rights hearing. [¶] A Board of Rights hearing is considered a de novo hearing. (L.A. Charter, § 1070(f).) Comprised of two officers with the rank of captain or above and one civilian, a Board of Rights has the authority to examine witnesses under oath and compel the attendance of witnesses and the production of documents. (*Id.*, § 1070(h), (j).) In a Board of Rights proceeding, the LAPD has the burden of proving each charge by a preponderance of the evidence, and the accused officer has the right to appear in person (and by counsel or a representative, at the officer's expense) and defend against the charges, and may produce witnesses and cross-examine witnesses. (*Id.*, § 1070(l), (m).)" (*Mays, supra*, 43 Cal.4th at pp. 318-319, fn. 3.)

By contending that his due process rights were violated by the department's failure to introduce Huizar's phone records, Odoh assumes that such records were necessary to establish his guilt of the charges against him. They were not. Although the records were *relevant* to Odoh's guilt or innocence, they were not *essential* for the department to carry its burden of proof. Rather, it was permissible for the department to satisfy its burden of proof through witness testimony, as it did.

Further, even if it were the department's burden to introduce the phone records, Odoh makes no showing that its failure to do so amounts to a due process violation. "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. [Citations.]” (*Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 577.) Here, Odoh makes no showing that the department failed to accord him any of the fundamental elements of due process. Moreover, he has made no showing that *he* could not have obtained and introduced the telephone records. Therefore, he has failed to show a violation of his right to due process.

III. Odoh’s Penalty Contention Is Premature

Odoh contends that the penalty of termination was excessive and an abuse of discretion. We do not now reach that issue. The superior court directed the Board to “apply an existing Los Angeles Police Department standard to the conduct in Count 1,” to set aside its finding on count 1 if “such finding of guilt is not supported by policy or disciplinary standard,” and “to reconsider the penalty of termination if there is no finding of guilt of Count 1.” Until the Board complies with the writ, Odoh’s request for review of the penalty is premature. (See *Irvine Valley College Academic Senate v. South Orange County Community College Dist.* (2005) 129 Cal.App.4th 1482, 1492.)

DISPOSITION

The judgment granting, in part, and denying, in part, the petition for writ of mandate is affirmed. The department is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.