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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ROBERT EBE, Plaintiff and Appellant, v. LOS ANGELES COUNTY CIVIL SERVICE COMMISSION et al., Defendants and Respondents.	B281324 (Los Angeles County Super. Ct. No. BS160402)

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

Rains Lucia Stern St. Phalle & Silver, Jacob A. Kalinski and Brian P. Ross for Plaintiff and Appellant.

William Balderrama and Daniel C. Carmichael for Defendants and Respondents.

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A deputy sheriff was fired after his superiors learned that he knew or should have known he was living with a convicted felon. The sheriff filed a petition for a writ of mandate to overturn his discharge, and the trial court denied the petition. The sheriff appeals. Because the trial court's ruling was correct, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *Robert Ebe and His Relationship with Cyril Osuchukwu*

Plaintiff Robert Ebe (Ebe) became a deputy with defendant Los Angeles County Sheriff's Department (the Department) in 1999.

In 2011, Ebe and his wife divorced, and Ebe moved out of the family home. At first, Ebe was living in the bunk room of the Department's West Hollywood substation. In mid-2011, however, Ebe began renting a room from Cyril Osuchukwu (Cyril),[1] who owned a house on Arcos Drive in Woodland Hills, California. Ebe would stay in the room whenever he had his teenage son with him, which was about 30 percent of the time.

Ebe and Cyril had been friends since the late 1980's, when they had worked together as taxi drivers. In 2004, Cyril was convicted in federal court of felony conspiracy against the United States. Ebe knew that Cyril had a prior felony conviction while he was living in Cyril's house.

While Ebe lived with Cyril, Ebe rented Cyril a hotel room using Ebe's own credit card; invited Cyril's son to join him and

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1 For ease of reference, we use Osuchukwu's first name. We mean no disrespect.

his son on activities; and on at least one occasion gave Cyril a ride.

B. *Execution of Search Warrant at Cyril's Home*

In 2013, a task force comprised of several federal law enforcement agencies, including the United States Postal Inspection Service and the Secret Service, was investigating Cyril for bank fraud and identity theft; see also AR 521-547 [search warrant affidavit]). The Department was not part of this task force and had nothing to do with the investigation.

On May 23, 2013, federal agents executed a search warrant at Cyril's home. Prior to executing the warrant, the Postal Inspection Service had asked the Department for assistance in surveilling Ebe to ensure that he was not home when the warrant was executed. Inside Ebe's bedroom, federal law enforcement officers recovered (1) six profiles of individuals (including their names, social security numbers, mother's middle names, credit card numbers, zip codes, and three-digit credit card security codes) typically used to commit identity theft, (2) credit reports on various individuals, and (3) a counterfeit California driver's license. These items were located inside the drawers of a nightstand beside the bed. Atop the nightstand were two hotel receipts related to Ebe, his tax returns and back account statements, mail addressed to Ebe, and Ebe's divorce papers. A piece of paper containing the access code to a storage unit rented by Ebe was inside one of the drawers.

After the warrant was executed, Ebe's supervisor called him and asked him to report to the Department's West Hollywood substation to be interviewed by a Postal Inspector. The interview was conducted by a Postal Inspector, although a Secret Service agent was present and took notes. The Postal Inspector advised

Ebe that the interview had nothing to do with the Department. During the interview, Ebe admitted that (1) he knew Cyril was a felon but did not know which crime he had committed; (2) he had "made sure" Cyril was not on parole or probation before he moved in with him; (3) Cyril's houseguests knew Ebe was in law enforcement and avoided saying anything in front of him; and (4) Ebe considered opening a security business with Cyril and, in response to a question by the Postal Inspector, explained that Cyril would work in the business's office because he was a felon. Ebe denied ever seeing any of the fraud documents in his bedroom.

Ebe was not charged with any crimes arising from the search.

C. *The Department's Internal Affairs Investigation*

1. *The investigation*

The Department's Internal Affairs Bureau began investigating Ebe for violating the Department's Fraternization and Prohibited Associations policy. That policy prohibits a deputy from "knowingly maintain[ing] a business or personal relationship or association with persons who have an open and notorious reputation for criminal activity," which includes persons a deputy "know[s] or reasonably should know are . . . adjudged guilty of a felony offense." (Department Manual of Policy & Procedures § 3-01/050.85.)

The lead Internal Affairs investigator interviewed Ebe in October 2013. During that interview, Ebe stated that Cyril was "on the up and up", although Ebe said he meant that Cyril was successful in real estate and owned a home.

2. *The discharge*

In February 2014, the Department discharged Ebe for "knowingly maintain[ing] a personal relationship or association with and/or [doing] favors for Cyril . . . a convicted felon . . . ." The Department alleged that this conduct violated the Department's fraternization policy as well as four other related policies—Performance to Standards (Department Manual of Policy & Procedures § 3-01/050.10), Obedience to Laws, Regulations, and Orders (*id.*, § 3-01/030.10), Professional Conduct (*id.*, § 3-01/000.10), and General Behavior (*id.*, § 3-01/030.05). As illustrative (but not exhaustive) support of these allegations, the Department cited (1) "the statements of three cooperative sources . . . that [Ebe] . . . [was] associating with people involved in the commission of fraud," (2) "the recovery of six credit profiles and internet protocols from [Ebe's] bedroom," (3) Ebe's "admi[ssion that] [he] ha[d] known Cyril . . . for twenty years," and (4) Cyril's reputation "as a high-ranking fraud ring leader" "in the Nigerian community."

3. *Trial before the Hearing Officer*

Ebe appealed the discharge, and the Los Angeles County Civil Service Commission (Commission) convened a five-day evidentiary hearing before a Hearing Officer.

During the hearing, the Department called several witnesses, including the Postal Inspector and Detective Duane Decker (Detective Decker). The Postal Inspector testified: (1) to what was found in Ebe's room during the search; (2) to what Ebe said during his May 23, 2013 interview (including that the interview was accurately memorialized in a memo authored by the Secret Service agent who sat in on the interview); (3) to how Ebe was a "person of interest" to her at the time of the search

based on the reports of three confidential sources reporting Ebe's prior (and possibly present) involvement in fraud; and (4) that Cyril was a "known fraudster[] in the Nigerian community." Detective Decker testified that he has been investigating fraud committed by Nigerian immigrants for several years, that he has known of Cyril for approximately four years, and that Cyril has a reputation "[i]n the west African world" for being at "the top of the food chain" in terms of being "a very, very, very big crook."

Ebe testified. He (1) denied knowing anything about Cyril's criminal past until he got a call from Cyril's brother while the 2013 search was happening, (2) denied telling the Postal Inspector that he knew about Cyril's prior conviction, (3) denied telling the Postal Inspector about opening a security business with Cyril, and (4) denied knowing anything about Cyril's reputation for being a fraudster. Ebe called several other witnesses, including five character witnesses to say that Ebe was a "great guy" who would never knowingly associate with a criminal, and three persons of Nigerian descent who said that they did not know Ebe or Cyril.

In a 21-page report, the Hearing Officer recommended that the Department's decision to discharge Ebe be upheld. The Hearing Officer first found that Ebe knew of Cyril's felony conviction, finding the Postal Inspector's testimony that Ebe so admitted more credible than Ebe's denial. The Hearing Officer also found that Ebe knew or should have known about Cyril's prior felony conviction or his ongoing fraudulent activities in light of the "comingling" of Ebe's personal documents with the documents used to commit identity theft and bank fraud in Ebe's bedroom and in light of the way Cyril's guests would not talk in

front of Ebe. The Hearing Officer also ruled that discharge was an appropriate penalty.

4. *The Commission's ruling*

Soon thereafter, the Commission adopted the Hearing Officer's report and recommendation.

II. Procedural Background

In January 2016, Ebe filed a petition for a writ of mandate seeking to overturn the Commission's ruling on the grounds that (1) the contents of his May 2013 interview are subject to suppression for noncompliance with the Public Safety Officers Procedural Bill of Rights Act (POBRA) (Gov. Code, § 3300 et seq.),[2] (2) the Hearing Officer's findings were not supported by the weight of the evidence, and (3) the penalty of discharge was excessive.

Following briefing, the trial court issued a 26-page order denying the petition. Applying its independent judgment, the trial court made three rulings. First, the court held that the Department had not violated POBRA because the provisions governing interviews only apply to interviews conducted by the officer's agency and here, there was no "evidence . . . that [the Postal Service's] criminal investigation was a sham, or that [its agents] were investigating administrative charges on behalf of the Department." Second, the court found that the Hearing Officer's factual findings that Ebe knew or should have known of Cyril's criminal past or current criminal activity were supported by the weight of the evidence, and more specifically, by (1) Ebe's admission that he knew of Cyril's prior conviction during the May

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2 All further statutory references are to the Government Code unless otherwise indicated.

2013 interview, on which point the court credited the Postal Inspector's testimony over Ebe's, (2) Ebe's admission during the May 2013 interview of his plans to operate a security business that operated *around* Cyril's status as a felon, (3) the commingling of Ebe's personal papers with several tools used to commit fraud, (4) the reticence of Cyril's houseguests to talk around Ebe, (5) Detective Decker's testimony about Cyril's reputation, and (6) the personal relationship between Ebe and Cyril. Lastly, the court concluded that the penalty of discharge was not excessive.

After the judgment was entered, Ebe timely filed this appeal.

DISCUSSION

Ebe raises two broad categories of challenges to the trial court's ruling. First, he urges that the trial court's ruling upholding the Hearing Officer's findings that he engaged in fraternization must be overturned because (1) the statements Ebe made during his May 23, 2013 interview were obtained in violation of POBRA and must be suppressed, (2) the proceedings before the Hearing Officer denied him due process, and (3) the findings are not supported by the evidence. Second, Ebe argues that the penalty of discharge is excessive. Because the trial court correctly determined that Ebe had a fundamental, vested right in his employment with the Department and accordingly applied its independent judgment to its review of the administrative record, we review the trial court's factual findings with respect to the first broad category for substantial evidence. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143-144; *Wences v. City of Los Angeles* (2009) 177 Cal.App.4th 305, 316 [employment as a peace officer is a "vested and fundamental" right].) We nevertheless

independently construe the statutory provisions of POBRA (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 234), and independently assess whether the administrative proceedings complied with due process (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169). We independently review whether the Department abused its discretion in selecting the penalty of discharge. (*Cassidy v. California Board of Accountancy* (2013) 220 Cal.App.4th 620, 627-628; *County of Santa Clara v. Willis* (1986) 179 Cal.App.3d 1240, 1250-1251.)

I. Merits of Fraternization Finding

A. *Alleged POBRA Violation*

POBRA is "primarily a labor relations statute" that "provides a catalog of basic rights and protections that must be afforded all peace officers by the public entities which employ them." (*California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294, 304 (*CCPOA*); § 3300 et seq.)

As pertinent here, POBRA dictates the conditions under which any "interrogation" of a peace officer must occur. (§ 3303.) Such an interrogation must: (1) be conducted "at a reasonable hour, preferably at a time when the public safety officer is on duty" (*id.*, subd. (a)); (2) start with "the interrogating officers" and "all other persons . . . present during the interrogation" notifying the officer of their "name" and "rank" (*id.*, subd (b)); (3) start with "inform[ing]" the officer "of the nature of the investigation" (*id.*, subd. (c)); (4) last no longer than "a reasonable period" of time "taking into consideration [the] gravity and complexity of the issue being investigated" (*id.*, subd. (d)); (5) be conducted without use of any "offensive language or threat[s of] punitive action" (*id.*, subd. (e)); and (6) be recorded, and those

recordings must generally be given to the officer (*id.*, subd. (g); *Santa Ana Police Officers Assn. v. City of Santa Ana* (2017) 13 Cal.App.5th 317, 327-328 [requiring disclosure of records and reports of interviews prior to subsequent interviews]). Critically, however, these rights only attach "[w]hen a[] public safety officer is under investigation and subjected to interrogation *by his or her commanding officer, or any other member of the employing public safety department*, that could lead to punitive action . . . ." (§ 3303, italics added.)

The trial court did not err in determining that POBRA's interrogation provisions did not apply to Ebe's May 23, 2013 interview because that interview was conducted by the Postal Inspection Service (along with the Secret Service)—and *not* by Ebe's "commanding officer" or "any other member" of the Department. (Accord, *People v. Velez* (1983) 144 Cal.App.3d 558, 564 [section 3303 did not apply when officer was interrogated by sheriff's department, not the police department for which he worked].)

Ebe makes two arguments in response.

First, he asserts that the federal criminal investigation of Cyril and the Department's administrative investigation of Ebe were intertwined, such that the Postal Inspector's interview was a stalking horse for the Department's investigation. This is a factual issue, and thus one we review for substantial evidence. (Accord, *Van Winkle v. County of Ventura* (2007) 158 Cal.App.4th 492, 498 (*Van Winkle*) [whether a criminal investigation is a "sham" is a "factual issue"].) Substantial evidence supports the conclusion that neither the federal criminal investigation nor the May 23, 2013 interview were intertwined with the Department's administrative investigation: The affidavit supporting the May

2013 search warrant did not mention Ebe; Ebe's interview, by virtue of occurring just hours after the search, was related to the federal criminal investigation; and e-mails between Department supervisors indicate that the Department did not consider undertaking its administrative investigation until three weeks *after* the search, when the Postal Inspector notified these supervisors that federal charges would not be filed against Ebe.

Ebe urges that this case is factually similar to *CCPOA*, *supra*, 82 Cal.App.4th 294, where the court determined that POBRA's interrogation protocols applied to interviews by an agency other than the one that employed the officers. *CCPOA* so held because the criminal investigation of prison guards by the California Department of Justice (DOJ) in that case was "intertwined" with an administrative investigation by the guards' employing agency, the California Department of Corrections. (*Id.* at pp. 306-307.) *CCPOA* is distinguishable. The finding of an intertwined investigation in *CCPOA* was based upon the facts that (1) the employing agency "delivered interviewees to DOJ investigators"; (2) the agency "threatened [the officers] with arrest and/or discipline if they asserted their rights during interrogation by DOJ agents"; (3) the agency "guarded" "[h]allway exits and interrogation rooms" and "prevented" the officers "from leaving prison grounds"; (4) the "interviews took place during work hours or immediately thereafter"; (5) the interviews occurred "on work premises"; and (6) the agency "threatened the officers with criminal and disciplinary sanctions" if they were "not providing satisfactory responses" to the DOJ agents' questions. (*Id.* at p. 307.) By contrast, the cooperation between the federal investigators and the Department in this case consisted of (1) ordering Ebe to report to the station to be

questioned by the Postal Inspector and Secret Service agent during work hours, and (2) conducting surveillance on Ebe before the search to ensure that he was not present when the search was executed for "officer safety" reasons. As both *CCPOA* and POBRA itself acknowledge, ordering an officer to cooperate with an investigation is specifically contemplated by POBRA and is therefore entirely permissible. (*CCPOA*, at p. 312, fn. 8; § 3304, subd. (a).) What is more, conducting an interrogation during work hours and at a work locale is what POBRA *encourages*. (§ 3303, subd. (a).) And trying to ensure that Ebe was *not* present when the search warrant was executed would seem to be geared at keeping Ebe *separate* from the criminal investigation, not intertwined with it.

Ebe points to two further facts that, in his view, support a finding that the federal investigators and the Department were "acting in concert." He claims that two Department officials were present at the Arcos residence while the search warrant was being executed. Not only is this fact unsupported by Ebe's citation to the record, but it is squarely refuted by the Postal Inspector's testimony that the Department was in no way involved with the federal investigation. Ebe also asserts that he felt that he should have talked to his union representative after the May 2013 interview, but this assertion has nothing to do with the degree of coordination between the federal investigation and the Department.

Second, Ebe contends that the trial court erred in invoking the statutory exception to POBRA's interrogation requirements applicable when "an investigation [is] concerned solely and directly with alleged criminal activities." (§ 3303, subd. (i); *Van Winkle*, *supra*, 158 Cal.App.4th at pp. 497-498.) To be sure, the

courts are currently divided over whether this exception applies only to criminal investigations "conducted primarily by outside agencies without significant active involvement or assistance by the employ[ing agency]" (*CCPOA*, *supra*, 82 Cal.App.4th at pp. 308-309) or applies to criminal investigations conducted by the employing agency (*Van Winkle*, at pp. 494, 498-500; *Telish v. State Personnel Bd.* (2015) 234 Cal.App.4th 1479, 1495 & fn. 9; *Department of Corrections & Rehabilitation v. State Personnel Bd.* (2013) 215 Cal.App.4th 1101, 1107-1109). However, we need not examine this split—or how it applies in this case—because it pertains to an *exception* to section 3303 and, as we conclude above, section 3303 does not apply to Ebe's May 2013 interrogation in the first place.

B. *Alleged Due Process Violation*

At its most fundamental level, due process secures "an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." (*Anderson Nat. Bank v. Luckett* (1944) 321 U.S. 233, 246.) What process is due is "flexible." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 334.) In assessing what process is due in administrative proceedings, courts are to consider "three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Id.* at pp. 334-335; *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 228-231.)

Before being discharged, the Department gave Ebe written notice of the basis for his discharge, provided him a multi-day evidentiary hearing before a neutral hearing officer, allowed for legal representation, granted him the power to cross-examine the Department's witnesses and to subpoena and present his own witnesses during that hearing, allowed him to submit oral and written argument in support of his position during and after that hearing, required the hearing officer to issue a written recommendation analyzing the evidence and the law, and granted Ebe the right to file objections to the recommendation prior to the Commission taking action. As a general matter, such procedures comply with due process. (See *Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 577 [noting how the above stated requirements typically satisfy due process].)

Ebe nonetheless argues that he was denied due process because (1) three witnesses who might have provided helpful testimony did not testify at the evidentiary hearing, and (2) Detective Decker was not required to disclose the identities of the persons who provided the basis for his testimony that Cyril had a reputation in the Nigerian community for being a fraudster. These arguments lack merit, both individually and collectively.

Individually, Ebe's due process rights were not violated by the absence of testimony from three witness. The first witness was the Secret Service agent, whom defendant never subpoenaed because he was outside of California. Due process does not require an administrative agency to confer a subpoena power upon litigants *at all*. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 303 (*Mohilef*); *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 437-439.) From this, it follows that due process does not require an administrative agency that grants litigants a

subpoena power must do so on a nationwide basis. Moreover, the subpoena power available in the California state courts stops at the State's borders. (Code Civ. Proc., § 1989; Pen. Code, § 1326.) We see no reason why litigants in an administrative forum should have (or, for that matter, *can* have) greater subpoena rights than litigants in a judicial forum. The other two witnesses were Department employees whom Ebe subpoenaed but who did not appear to testify. When they did not appear, however, Ebe did nothing. He did not ask for a continuance or ask the Hearing Officer to sanction them. (See *Jensen v. Superior Court* (2008) 160 Cal.App.4th 266, 271 [witness's failure to appear is good cause for a continuance]; *In re Garcia* (1974) 41 Cal.App.3d 997, 999 [noting contempt power for a witness's failure to appear].) Ebe cites no authority for the proposition that due process invalidates an entire hearing if a litigant faced with an absent witness makes no effort to ask the court or administrative tribunal for assistance or accommodation in securing the absent witness's testimony. Indeed, if this were the rule, due process would *incentivize* litigants to do nothing at the very time when their efforts would be most likely to secure a witness's testimony.

Individually, Ebe's due process rights were not violated by Detective Decker's invocation of the informant's identity privilege in response to Ebe's request for the identities of the confidential sources underlying Detective Decker's testimony that Cyril had a reputation in the Nigerian community for fraud. To begin, "'[t]here is no basic constitutional right to pretrial discovery in administrative proceedings.'" (*Mohilef*, *supra*, 51 Cal.App.4th at p. 302.) Further, evidence of one's "general reputation . . . in the community" is admissible as long as it is provided by someone with familiarity with that community. (Evid. Code, § 1324.)

Detective Decker had that familiarity. Nothing in the California Evidence Code conditions admission of reputation evidence on disclosure of the persons in the community who relayed that reputation. Nor would it, as such persons are unlikely to be "material witnesses" to the charged incident, and the informant's identity privilege precludes disclosure of identities of everyone *except* "material witnesses." (Evid. Code, § 1041; *People v. Bradley* (2017) 7 Cal.App.5th 607, 623-624.) At oral argument, Ebe suggested that Detective Decker was also required to disclose who he spoke to, and what they said, in forming his further opinion that Cyril only associated with people aware of his criminal reputation, but that argument fails for the reasons outlined above and because the disclosure of the statements themselves would violate the rule, announced in *People v. Sanchez* (2016) b, that experts may not relay hearsay forming the basis of their opinions. Because an evidentiary ruling that complies with the rules of evidence complies with due process (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103), we decline Ebe's invitation to impose requirements on the admission of evidence over and above those set forth in the Evidence Code.

Collectively, the evidence Ebe labels as wrongly excluded was speculative. Ebe's contention that the Secret Service agent would have reported that Ebe said something different during the May 2013 interview is speculative in light of the memo *prepared by that agent*, and the Postal Inspector's credible testimony that the memo accurately reported what Ebe said. Ebe's contention that Sergeant Jason Schreinder was present in his bedroom at the Arcos residence is speculative in light of the absence of any evidence to support such a fact as well as the Postal Inspector's testimony that no one from the Department was involved in the

criminal investigation. Ebe's contention that Lieutenant Teresa Gunnels would have provided additional information about the coordination between the Department and the federal investigation is speculative because nothing else indicates she had anything further to say on that topic. And Ebe's contention that knowing the identities of the persons in the Nigerian community who had heard that Cyril had a reputation as a fraudster would lead to contrary evidence is speculative in light of Detective Decker's testimony as well as the Postal Inspector's testimony to Cyril's reputation. Because "[a] defendant's rights to due process and to present a defense do not include a right to present . . . a speculative, factually unfounded inference" (*People v. Mincey* (1992) 2 Cal.4th 408, 442), the absence of the evidence that Ebe complains of here did not violate his rights to due process.

C. *Substantial Evidence*

The Postal Inspector testified that Ebe told her that he knew Cyril was a felon prior to May 2013, and thus while they lived together and while he did favors for Cyril. Both the Hearing Officer and the trial court found the Postal Inspector's testimony to be credible. Because the testimony of a single witness is sufficient to constitute substantial evidence (e.g., *People v. Fuiava* (2012) 53 Cal.4th 622, 711), and because "knowingly maintain[ing] a business or personal relationship with persons . . . adjudged guilty of a felony crime" violates the Department's fraternization policy, substantial evidence supports the trial court's finding that Ebe violated that policy.

Ebe raises five categories of arguments to the contrary.

First, he contends that the trial court erred in crediting the Postal Inspector's testimony regarding what Ebe said during the

May 2013 interview because (1) the Postal Inspector reported that Ebe said he "made sure" Cyril was not on parole or probation, but the evidence at the hearing showed that Ebe never used his own accounts to search the Department's databases regarding Cyril's criminal history; (2) the Postal Inspector reported that Ebe said he would put Cyril in an office job if they opened a security business together, but (a) the Postal Inspector "would have no reason to either recall this particular conversation or take note of it" because it was not the focus of the interview and (b) Ebe was just answering hypothetical questions about possible future businesses. When we review a finding for substantial evidence, we may not reweigh credibility unless the testimony is physically impossible or inherently improbable. (*People v. Prunty* (2015) 62 Cal.4th 59, 89.) The Postal Inspector's testimony does not fall within either of these very narrow exceptions. It is not "physically impossible or inherently improbable" that Ebe "made sure" about Cyril's parole or probation status through means other than using his own account to access the Department's database; as several witnesses noted, Ebe could have just asked Cyril. Nor are the Postal Inspector's statements regarding what Ebe told her about the business "physically impossible or inherently improbable." Ebe makes the argument that he is not attacking the Postal Inspector's credibility in urging that she could not credibly remember what was said to her two years earlier, but an argument that a witness should not be believed is—contrary to what Ebe seems to suggest—an attack on that witness's credibility.

Second, Ebe argues that the trial court was wrong to rely on the fraud-related documents found in his bedroom as evidence

that Ebe knew or should have known about Cyril's involvement in fraud schemes because (1) the Postal Inspector only said she "believed" some of Ebe's personal items were inside the drawers with the fraud documents (and "belief," in Ebe's view, connotes a lack of certainty), (2) the Postal Inspector did not test the fraud documents for fingerprints, and (3) the fact that the fraud documents were in the bedroom where Ebe slept and kept his personal papers is not dispositive because (a) the room had no lock, (b) there was no proof as to *when* the fraud documents were placed in the room vis-à-vis when Ebe last slept in the room, (c) other people's property was also in the bedroom, and (d) the comingling of Ebe's personal papers with fraud documents does not in any event compel a finding that Ebe *knew* about those documents. These arguments overlook that a deputy may violate the fraternization policy either by associating with a person whom he knows *or* has reason to know is a felon or is engaged in crime. If, as we must on substantial evidence review, we view this evidence in the light most favorable to the trial court's findings and draw all reasonable inferences to support those findings (*San Diegans for Open Government v. City of San Diego* (2016) 245 Cal.App.4th 736, 740; *People v. Mendez* (2010) 188 Cal.App.4th 47, 56 (*Mendez*)), this evidence is sufficient to support the finding that Ebe should have known of the fraudulent activity going on at the Arcos residence. Although it is *possible* that someone else put the fraud documents in Ebe's bedroom after Ebe was last there, and although it is *possible* that Ebe lived in that bedroom on and off for two years without touching or even noticing any of the fraudulent documents strewn about the room (including in the nightstand drawers that Ebe admitted he opened, it is equally if not more reasonable that

Ebe knew that these documents were there all along and that this knowledge put him or should have put him on notice of Cyril's criminal activities.

Third, Ebe argues that the trial court was wrong to rely on Ebe's statements during the May 2013 interview that Cyril's houseguests knew Ebe was in law enforcement and would not talk in front of him. Ebe says that it is possible that the houseguests may not have been discussing anything illegal. However, it is equally if not more reasonable that they were avoiding Ebe because they did not want to hatch their criminal plans in front of him. As between these two reasonable inferences, we must draw the one that supports the trial court's finding. (*Mendez*, *supra*, 188 Cal.App.4th at p. 56.)

Fourth, Ebe contends that the trial court was wrong to give any weight to Detective Decker's testimony about Cyril's reputation as a fraudster in the Nigerian community because (1) Ebe introduced conflicting evidence that there was no Nigerian community and many people of Nigerian descent had not heard of Cyril, and (2) it is improper to impute Decker's knowledge to Ebe. In assessing the substantiality of the evidence, however, we disregard conflicting evidence. (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1119.) Further, we must credit Detective Decker's and the Postal Inspector's testimony that there *is* a Nigerian community as well as the reasonable inference that Ebe, as part of that community, was aware of Cyril's reputation within that community.

Lastly, Ebe asserts that the trial court was wrong to find that Ebe had a longstanding relationship with Cyril because all he did was help him out by renting a hotel room and by giving

him a ride. This assertion ignores that Ebe lived in Cyril's house for two years; ignores that they had known each other for 20 years; and ignores that Ebe took Cyril's son out with his own son. Taken as a whole and viewed in the light most favorable to the trial court's finding, this finding is supported by substantial evidence.

II. Penalty

The Department official who selected discharge as the penalty for Ebe's crime cited three reasons for doing so: (1) Ebe's association with Cyril "could further or assist [Cyril] in his criminal endeavors"; (2) this was not Ebe's first disciplinary run-in with the Department; and (3) Ebe had not been forthright with the federal investigators and with Department officials in the interviews that occurred after the search. Given that "[a] deputy sheriff's job is a position of trust and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer" (*Talmo v. Civil Service Com.* (1991) 231 Cal.App.3d 210, 231), the decision to impose the penalty of discharge for Ebe's conduct in knowing living with a convicted felon and then lying about it was not an abuse of discretion.

Ebe argues that discharge was excessive "as a matter of law" because (1) he had a good reason for renting a room from Cyril (namely, he needed a place to stay with his son), (2) he had only been disciplined once in the past and currently had good performance reviews, and (3) he moved out of the Arcos residence after the May 2013 search. These arguments do not render the penalty of discharge excessive: Ebe's motive for violating the fraternization policy does not excuse that violation (or lying about it afterwards); his prior discipline indicates that Ebe has history

of disregarding the Department's policies and his performance reviews while on the clock do not excuse his policy-violating activities while not on the clock; and Ebe's decision to stop violating the fraternization policy once he got caught is an act of self-preservation, not a mitigating factor.

DISPOSITION

The judgment is affirmed. The Commission and the Department are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST