The City of New York

POLICE DEPARTMENT

October 30, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Gregory Markov
Tax Registry No. 935252
43 Precinct
Disciplinary Case No. 2010-2425

The above-named member of the Department appeared before me on February 25, May 8, July 10, August 14, and October 7, 2013, February 27 and February 28, 2014, charged with the following:

1. Said Police Officer Gregory Markov, while assigned to the 70th Precinct, while on duty, at a location within the vicinity of the 70th Precinct, on or about and between the dates of November 11, 2008 and April 28, 2009, on eleven separate occasions, failed to follow DARP procedures by allowing a non-DARP towing company from Izabelle Collision to remove motor vehicles from the scene of various accidents, when said tow truck was not dispatched by the Communication Section.

P.G. 217-09, Page 2, Paragraph 6 DIRECTED ACCIDENT RESPONSE PROGRAM

2. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, at a location within the vicinity of the 70th Precinct, on or about and between the dates of November 11, 2008 and April 28, 2009, on eleven separate occasions, failed to follow DARP procedure by not issuing a notice of violation to the unauthorized towing company, Izabelle Collision, when it appeared at the scene of various motor vehicle accidents and towed said vehicles from the scene.

P.G. 217-09, Page 4, Additional Data DIRECTED ACCIDENT RESPONSE PROGRAM

3. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, at a location within the vicinity of the 70th Precinct, on or about and between the dates of November 11, 2008 and April 28, 2009, on eleven separate occasions, failed to follow DARP procedure by not requesting an authorized DARP towing company and allowing a non-DARP towing company to remove vehicles from the scene of various motor vehicle accidents.

P.G. 217-09, Page 2, Paragraphs 3, 6, and Note DIRECTED ACCIDENT RESPONSE PROGRAM

4. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, at a location within the vicinity of the 70th Precinct, on or about and between the dates of November 11, 2008 and April 28, 2009, on eleven separate occasions, failed to give a proper radio disposition to the Communications Section by not informing them that a vehicle was towed from the scene.

P.G. 217-09, Page 4, Additional Data – DIRECTED ACCIDENT RESPONSE PROGRAM

5. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, at various locations within the vicinity of the 70th Precinct, on or about and between the dates of November 11, 2008 and April 28, 2009, on eleven separate occasions, upon responding to the scene of a motor vehicle accident did fail to make proper memo book entries in his Department issued memo book, as required.

P.G. 212-08, Page 1, Paragraph 1, Subsection 5 ACTIVITY LOGS

6. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, at various locations within the vicinity of the 70th Precinct, on or about and between the dates of December 10, 2008 and April 28, 2009, on five separate occasions, upon responding to the scene of a motor vehicle accident, made an inaccurate entry in a Police Accident Report by documenting that a vehicle had not been towed from the scene of an accident when, in fact, it had.

P.G. 206-03, Page 1, Paragraph 9 – VIOLATIONS SUBJECT TO COMMAND DISCIPLINES

7. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, at various locations within the vicinity of the 70th Precinct, on or about and between the dates of January 15, 2009 and April 28, 2009, on four separate occasions, did engage in improper use of his personal cellular telephone.

P.G. 203-06, Page 1, Paragraph 17 – PERFORMANCE ON DUTY – PROHIBITED CONDUCT

8. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, at various locations within the vicinity of the 70th Precinct, on or about and between the dates of January 15, 2009 and April 28, 2009, on four separate occasions, conducted personal business while on Department time by utilizing his personal cellular telephone.

P.G. 203-06, Page 1, Paragraph 17 – PERFORMANCE ON DUTY – PROHIBITED CONDUCT

9. Said Police Officer Gregory Markov, while assigned as indicated in Specification #1, while on duty, within the vicinity of the 70th Precinct, on or about March 26, 2009, assisted in the removal of a vehicle from the scene of an accident by a non-authorized DARP tow company.

P.G. 217-09, Page 2, Paragraph 6 – DIRECTED ACCIDENT RESPONSE PROGRAM

The Department was represented by David Green, Esq., Department Advocate's Office, and Respondent was represented by Howard Tanner, Esq.

Respondent, through his counsel, entered a plea of Guilty in part to Specification Nos. 1 through 3 and testified in mitigation of the penalty. He entered a plea of Not Guilty to the remaining charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty in part, is found Guilty in part of Specification Nos. 1 through 3. Respondent is found Guilty in part of Specification Nos. 4 and 5, and Guilty in part of Specification Nos. 6, 7 and 8. Respondent is found Not Guilty of Specification No. 9.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that Respondent has known Leo Krylov for 15 years, that they are friends, and that they have socialized together. Krylov is the owner of Izabelle's

Collision, a business which has trucks to tow motor vehicles that have been damaged in accidents to Izabelle's repair shop at 736 Coney Island Avenue, Brooklyn. Izabelle's is not an authorized tow facility under the Department's Directed Accident Response Program (DARP) rotation towing schedule.

It is further undisputed that between November 11, 2008 and April 28, 2009, Respondent was assigned to the 70 Precinct and that while he was performing patrol duties he responded to vehicular accident scenes which are subject to DARP procedures. Under DARP procedures (which are delineated in Patrol Guide Procedure No. 217-09), where an officer who has responded to the scene of a vehicular accident determines that a vehicle is not able to be driven, the officer is required to call in to request that an authorized DARP tow truck respond to the scene.

Respondent acknowledged that on November 11, 2008, and again on February 25, 2009, while he was on duty and while he was at the scene of a motor vehicle accident within the confines of the 70 Precinct, he violated DARP procedures by allowing Izabelle's trucks to tow cars from each accident scene; by not issuing a notice of violation to Izabelle's when its tow trucks appeared at the scene of these two motor vehicle accidents and towed vehicles from the scene; and by not requesting that an authorized DARP towing company respond to the scenes and instead allowed Izabelle's, a non-DARP towing company, to remove vehicles from these two accident scenes.

In addition to the DARP violations Respondent admitted to committing on November 11, 2008 and on February 25, 2009, the Assistant Department Advocate (the Advocate) asserted that Respondent violated these same DARP procedures on nine other

occasions between November 11, 2008 and April 28, 2009 and engaged in other related misconduct.

The Department's Case

The Department called Sergeant Stephen Williams, Lieutenant Richard Beshlian, Police Officer Hubert Tai, Wendy Becker, Douglas Schwab, Dovid Loketch, Inna Vasenko, Morris Jacobs and McEdwin Charles as witnesses.

Sergeant Stephen Williams

Williams, a 13-year member of the Department who is assigned to the Internal Affairs Bureau (IAB), investigated an allegation that Respondent allowed non-DARP towing companies to tow vehicles from accident scenes. Williams reviewed every Police Accident Report (PAR) that Respondent prepared during a two-year period. On the 40 or 50 PARs that Williams reviewed, he examined the accident diagram section of the PAR to ascertain whether the damaged vehicles would have required towing. He then sent out certified letters to the motorists involved in the accidents, requesting that they confirm whether or not their vehicles had been towed from the scene.

On November 11, 2008, Respondent prepared PAR 2629 [Department's Exhibit (DX) 1A] on which he wrote that both vehicles involved in the accident were towed by Izabelle's to 736 Coney Island Avenue. Williams testified that when an officer becomes aware that a non-DARP-authorized tow truck is attempting to tow vehicles at an accident scene, the officer is required to issue a summons and have the tow truck seized, but

Respondent did not take any enforcement action against Izabelle's. Nor did he make any Activity Log entries regarding his response to the accident scene (DX 1B).

On December 10, 2008, Respondent prepared PAR 2812 (DX 2A), on which he indicated that no vehicles were towed from the scene. In a July 9, 2009 interview, however, the driver involved in the accident, [redacted], told Williams that his car had been towed from the location by Izabelle's. Respondent neither took any enforcement action against Izabelle's nor did he make any Activity Log entries with respect to the accident (DX 2B). Williams testified that if Respondent had transmitted over the radio a disposition regarding his response to the scene, he should have recorded this in his Activity Log.

On January 15, 2009, Respondent prepared a PAR, on which he indicated that no vehicles were towed from the scene. In an April 24, 2009 interview, however, a driver involved in the accident, [redacted], told Williams that his car had been towed from the location by Izabelle's. Respondent neither took any enforcement action against Izabelle's nor made any Activity Log entries with respect to the accident. Respondent indicated on the PAR that he handled the job at 3:10 p.m. Phone records that Williams obtained during the course of his investigation showed that Respondent made five calls from his personal cell phone to Leonid Krylov, the co-owner of Izabelle's, between 3:12 p.m. and 4:08 p.m. Each call lasted between 17 and 38 seconds. [DX 3A is PAR No. 137 pertaining to the January 15, 2009 accident. DX 3B is Respondent's Activity Log entries for that day.]

On January 20, 2009, Respondent prepared a PAR, on which he indicated that no vehicles were towed from the scene. In a June 1, 2009 telephone interview,

Person A, a driver involved in the accident, told Williams that his car had been towed from the location by Izabelle's. Person A also told Williams that he was unaware of how the tow truck came to the scene and that he did not observe any interaction between police officers and the tow truck operator. Though Williams never met Person A in person and Person A identified himself on the phone as "[redacted]," Williams was satisfied that the person he spoke with on the phone was in fact the Person A who had been named as a motorist on the PAR because Person A called the IAB office number that Williams had sent to Person A's address via certified mail. Person A acknowledged receiving the certified letter at his home, and Person A gave specific answers about the accident. [DX 14 is the transcript of Williams' June 1, 2009 interview with Person A.]

In a May 22, 2009 telephone interview, Person B, the other driver involved in the January 20, 2009 accident, told Williams that her car had also been towed by Izabelle's Collision. Person B identified the tow truck operator as a man named Leo. Though Person B never identified Respondent by name, she identified Respondent in a photo array during a June 1, 2009 in-person interview at her place of employment. [DX 15 is the transcript of Williams' May 22, 2009 interview with Person B.] Respondent neither took any enforcement action against Izabelle's Collision nor made any Activity Log entries with respect to the accident [DX 4A is PAR No. 206, pertaining to the January 20, 2009 accident. DX 4B is Respondent's Activity Log entries for that day].

On January 27, 2009, Respondent prepared a PAR, on which he indicated that no vehicles were towed from the scene. In a June 2, 2009 telephone interview, however, a driver involved in the accident told Williams that his car had been towed from the

location by Company 1. The driver was Person C. Person C did not indicate whether or not his car was towed while police officers were present. Respondent neither took any enforcement action against Company 1 nor made any Activity Log entries with respect to the accident. [DX 5A is PAR No. 282, pertaining to the January 27, 2009 accident. DX 5B is Respondent's Activity Log for that day. DX 16 is the transcript of Williams' June 2, 2009 interview of Person C.]

On February 25, 2009, Respondent prepared a PAR, on which he noted that one of the vehicles involved in the accident was towed by Izabelle's Collision. Respondent neither took any enforcement action against Izabelle's Collision nor made any Activity Log entries with respect to the accident. Respondent was working with Police Officer Dominick Latorre that day. [DX 6A is PAR No. 525, pertaining to the February 25, 2009 accident. DX 6B is Respondent's Activity Log entries for that day.]

On February 27, 2009, Respondent prepared a PAR, on which he indicated that no vehicles were towed from the scene. In May 7, 2009 interviews, however, both drivers involved in the accident – Person D and [redacted] told Williams that an Izabelle's Collision truck was present at the location while police officers were there. A telephone interview of Person D was conducted when Person D called Williams' office in response to a certified letter. Respondent neither took any enforcement action against Izabelle's Collision nor made any Activity Log entries with respect to the accident. There was no indication of a radio disposition for the job. Respondent was working with Police Officer Yevgeny Vaks that day. [DX 7A is PAR No. 571, pertaining to the February 27, 2009 accident. DX 7B is Respondent's Activity Log for that day. DX 17 is the transcript of Williams' May 7, 2009 telephone interview of Person D

On March 26, 2009, Police Officer Lukasz Solis prepared a PAR on which he indicated that no vehicles were towed from the scene of an accident which took place on 18th Avenue near Ocean Parkway and East 5th Street. In an April 6, 2009 telephone interview, Person E, a driver who was involved in the accident, told Williams that his car had been towed from the location to a repair shop on Coney Island Avenue. Williams subsequently learned that Person E's vehicle had been towed by Izabelle's Collision. Solis was partnered with Police Officer Dominic Cappiello that day. Although Respondent was not at the scene, phone records indicate he had contact with Cappiello and Krylov. [DX 8A is PAR No. 773, pertaining to this accident. DX 18 is the transcript of Williams' telephone interview Person E.]

On April 18, 2009, Respondent prepared a PAR, on which he indicated that no vehicles were towed from the scene. On February 10, 2010, Williams conducted a telephone interview of a driver involved in the accident, Person F, who told Williams that his car had been towed from the location by Izabelle's Collision. A telephone interview of the driver, Person F, was conducted when Person F called Williams' office in response to a certified letter. Williams' was informed by Person F that a second vehicle had also been towed. Respondent did not take any enforcement action against Izabelle's Collision. In his Activity Log, Respondent noted responding to the scene of the accident and he wrote a final disposition. Respondent's disposition indicated that a PAR had been prepared but that no tow occurred. [DX 9A is PAR No. 957, pertaining to the April 18, 2009 accident. DX 9B is Respondent's Activity Log for that day. DX 19 is the transcript of Williams' February 10, 2010 telephone interview with Person F.]

On April 26, 2009, Respondent prepared a PAR, on which he indicated that no vehicles were towed from the scene. In an April 29, 2009 interview, however, a driver involved in the accident told Williams that his car had been towed from the location by Izabelle's Collision and that the other car involved in the accident was towed by another, unidentified company. A telephone interview of the driver, Person G, was conducted when Person G called Williams' office in response to a certified letter. Respondent did not take any enforcement action against either towing company. In his Activity Log, Respondent noted responding to the scene of the accident, and he wrote a final disposition for the job. Respondent's disposition indicated that a PAR had been prepared but that no tow occurred. Respondent was working with Police Officer Hubert Tai that day. [DX 10A is PAR No. 1035, pertaining to the April 26, 2009 accident. DX 10B is Respondent's Activity Log for that day. DX 20 is the transcript of Williams' April 29, 2009 telephone interv iew with Person G.]

On April 28, 2009, Respondent prepared a PAR, on which he indicated that no vehicles were towed from the scene. A driver who was involved in the accident, [redacted], told Williams that she did not see any vehicles being towed from the location, but [redacted], who had been seated in the passenger's seat, told Williams that the car had been towed by Izabelle's Collision and that the police were present at the time of tow. The other driver involved in the accident, [redacted], also told Williams that his car had been towed by Izabelle's Collision. Respondent did not take any enforcement action against the towing company. In his Activity Log, Respondent noted responding to the scene of the accident, and he wrote a final disposition for the job. Respondent's disposition indicated that a PAR had been prepared

but that no towing had occurred. [DX 11A is PAR No. 1046, pertaining to the April 28, 2009 accident. DX 11B is Respondent's Activity Log for that day.]

On cross-examination, Williams confirmed that the investigation into Respondent's alleged misconduct was initiated after IAB received a complaint from an Person H, the owner of a DARP-authorized towing company. Williams interviewed Person I, a truck operator for Person H's company, who stated that he observed Respondent at the scene of a February 4, 2009 car accident and Person I would not have to worry about getting summonses because Respondent would be "okay" with the unauthorized tow. Because records indicated that Respondent was on vacation that day, Williams agreed that what Person I told him could not have been true. On January 27, 2009, Respondent had issued Person I two moving violation summonses. [Respondent's Exhibit (RX) A is Respondent's Activity Log, confirming that Respondent was on vacation on February 4, 2009. RX B consists of the summonses that Respondent issued Person I.]

Williams agreed that a public records check showed that Respondent did not have any connection with any towing company or any auto body repair shop. Telephone records did not show any calls made between Respondent and an Person J, Company 2, Company 3, or the Izabelle office. Cell phone records did show contact between Respondent and Krylov on a nearly daily basis. Sometimes there were calls between the two around the time that Respondent would have been at an accident scene; other times there were no calls at all during accidents. Williams confirmed that he did not ascertain any type of pattern relating to phone calls between Respondent and Krylov surrounding the accidents that were investigated. He further confirmed that he found no evidence that

Respondent received any type of benefit related to allowing non-DARP-authorized towing companies to tow vehicles from accident scenes.

Williams interviewed Krylov multiple times. Krylov did not say that Respondent had provided information to him about accident scenes. Krylov told Williams was that it was common practice for tow truck operators to monitor police scanners to ascertain that an accident had just occurred and the location of the accident. Krylov admitted to engaging in this practice himself.

On October 13, 2009, Williams conducted an integrity test on Respondent that involved an undercover officer posing as a motorist telling Respondent that his car was stalling and asking if Respondent could recommend a towing company. The goal of the test was to see if Respondent would steer the undercover to Izabelle or another towing company. Respondent passed the test in that he suggested that the undercover officer call 411 and in that he did not recommend a particular towing company, rather, he informed the undercover that there were a half dozen towing companies he could call.

Person I alleged that Respondent received repairs he did not pay for at Company 2, a location that Respondent brought his personal vehicle to be serviced. In his investigation, however, Williams found no indication that Respondent ever received free auto services. The investigation also revealed that Respondent had a reputation in his command for being a "cop's cop" which meant that he was there for his co-workers. Williams found no indication of any pattern of illegal activity relating to this case regarding Respondent.

Williams confirmed that an LD6 is a summons that officers issue to tow trucks that respond to scenes without authorization. A review of the 70 Precinct's LD6 Log

covering July 2008 through January 2010 showed that only four LD6 summonses were issued during that period. None of those summonses was issued by Respondent.

On April 6, 2009, Williams conducted a telephone interview of Person K, who was a party to the March 26, 2009 accident. Person K stated that the officer at the scene determined that his car was operable and did not offer to have the car towed. Person K drove away from the scene without assistance. About the other car involved in the accident (Person E's car), the officer came to a determination that it needed to be towed. Person K observed a tow truck tow Person E's vehicle away. [RX C is the transcript of Williams' interview with Person K.]

Person L, a party to the January 15, 2009 accident told Williams in a telephone interview that because he only had a flat tire and no other damage to his car, the officer at the scene did not offer to have his car towed. [RX D is the investigative worksheet Williams prepared about his interview with Person L, dated April 24, 2009.]

Lieutenant Richard Beshlian

Beshlian, a 25-and-a-half-year member of the Department currently assigned to IAB, was responsible for analyzing the phone records that Williams obtained during the course of the investigation into Respondent's alleged misconduct. Beshlian entered the phone records in a computer program to generate a report which was entered into evidence as DX 12. The report shows calls that were made between Respondent's cell phone and Krylov's cell phone during the period between January 1 and June 13, 2009.

On cross-examination, Beshlian testified that he took a four-day training course on analyzing cell phone records. He agreed that there were some duplicate entries on

Respondent's records. Beshlian agreed that there was no way to distinguish from looking at the records a deliberate call from an unintentional "pocket dial call."

Police Officer Hubert Tai

Tai, an eight year member of the Department who is assigned to the 70 Precinct, responded with Respondent to the scene of a car accident on April 26, 2009. They had agreed beforehand that Respondent would be responsible for preparing any paperwork. While they were at the scene, Tai saw two tow trucks. One of the trucks had the name "Isabella" printed on the side. Tai could not recall whether that truck towed a vehicle from the location.

On cross examination, Tai agreed he had no independent present recollection of anything relating to the accident. He could not recall what name was on the side of the other tow truck. Tai did not see Respondent call anyone while at the accident scene. He did not observe Respondent have a conversation with either truck operator. Respondent neither told Tai to call him when responding to car accidents nor recommended a particular tow truck company to him. As a result of this incident, Tai pleaded guilty to violating DARP procedure and forfeited 30 vacation days as a penalty.

[redacted], who is employed as a [redacted] in a New York City middle school recalled that on April 28, 2009 she was involved in a car accident on Avenue J in Brooklyn. She was driving and [redacted], was in the passenger's seat. [redacted] called 911, and police officers arrived at the scene. One of the

officers informed [redacted] that a tow truck had been called. [redacted] did not recall the name of the officer. A tow truck from Izabelle's Collision arrived and towed her car away. [redacted] did not recall seeing any police officer talking with the tow truck operator. She explained that she was "pretty shaken up" by the accident and did not recall the timing of events. The tow truck company repaired her car.

On cross-examination, [redacted] agreed that her memory of the incident was somewhat fuzzy. She did not recall seeing any police officer at the scene making a cell phone call. Nor did she recall being interviewed by Williams the week after the accident.

[redacted], who is employed as [redacted], testified that after he and [redacted] were in a car accident on April 28, 2009, two police officers arrived very quickly and at least one tow truck arrived shortly after the officers. When [redacted] asked the officers if they had requested the truck, he received an affirmative response. [redacted] remembered also talking to one of the officers about whether or not the tow truck was authorized. He explained that he wanted reassurance that he could trust the tow company with his property. [redacted] again received an affirmative response from the officer. [redacted] conversed with the tow truck operator, but he left the scene before the tow occurred. The officers and tow truck were at the scene at the same time, but [redacted] was not certain whether or not he ever saw the officers and truck operator converse with each other. The car was towed to a garage called Izabelle's on Coney Island Avenue. On cross-examination, [redacted] confirmed that the damage to his car was on the front end.

[redacted]

[redacted] recalled that on April 28, 2009, he was driving the vehicle that struck [redacted]'s car on Avenue J. He did not call 911, but police arrived at the scene. A tow truck belonging to Izabelle's Collision arrived a few minutes later. [redacted] asked an officer about the truck, and the officer replied that he would "take care of it." [redacted] observed the officers and tow truck operator converse, but he did not hear what they were saying. He did not know how the tow truck came to arrive at the scene. He believed that the officers were still present when his car was towed. A day or two later, he went to Izabelle's Collision to arrange for another body shop to pick up the car and repair it.

On cross-examination, [redacted] agreed that he did not know if the officers called the tow truck to the scene. He never saw an officer on the phone. His car sustained significant damage to its front end. [redacted] confirmed that prior to testifying, the Assistant Department Advocate had placed [redacted] in a conference room with [redacted] and [redacted]. [redacted] heard [redacted] reading aloud the transcript of her interview with Williams. [redacted] also heard [redacted] and [redacted] discuss their testimony and he discussed his interview transcript with them.

[redacted][1]

[redacted], who is currently employed by [redacted], was involved in a car accident on February 27, 2009. She was hit by a passing vehicle while parking in front of her residence. She called 911, and two police officers arrived quickly. She

[1] [redacted].

spoke with Respondent in [redacted] about the details of the accident. A tow truck from Izabelle's Collision arrived at the scene two or three minutes after the officers. [redacted] did not know how the truck came to arrive there. She spoke with the tow truck operator, whose name was Leo. Leo gave [redacted] his business card. [DX 13 is a photocopy of the card.] [redacted], Respondent, and Leo all spoke together about the accident, and the car was towed away. A few days later, [redacted] went to the Izabelle's Collision garage, where she spoke with a man who identified himself as Leo's partner and who told [redacted] that Leo and Respondent were cousins.

On cross-examination, [redacted] confirmed that she did not know whether a police officer called a tow truck to the scene. In a May 2009 interview, she told Williams that Leo and Respondent conversed while she was at a distance. She believed that Leo and Respondent were "working together." She was angry with Izabelle's Collision. She was dissatisfied with how the company treated her, and she accused the company of stealing her car.

On redirect examination, [redacted] testified that her interview with Williams was conducted in English. She did not entirely understand everything Williams asked her, but she answered to the best of her ability. When asked why she let Izabelle's Collision tow her car, she replied that Leo told her the car needed to be moved because it was blocking traffic. She did not blame the police for the bad experience she had with the towing company.

[redacted]

[redacted] who is currently employed [redacted], was involved in a car accident on January 15, 2009. He hit another vehicle while driving through the intersection of Avenue O and 16 Street. He did not call the police, but two officers arrived ten or 15 minutes after the accident. One of the officers asked if he needed a tow truck, and he responded that he obviously needed a tow truck because his car was blocking traffic. The officer returned to his car, and a tow truck appeared at the scene about ten minutes later. [redacted] did not see the officer call for the tow truck, nor did he see the officer on the phone before the tow truck arrived. Something like the name "Elzbeth's" was printed on the side of the truck. The truck and the police were present at the scene at the same time, though [redacted] did not observe any officer converse with the tow truck operator. [redacted] was satisfied with how the officers handled the accident and the repairs that the towing company made to his car.

[redacted]

[redacted], who is currently employed [redacted] was involved in a car accident on December 10, 2008 when, while he was driving on Ocean Parkway, another vehicle struck his car from behind. Witnesses called 911 and two officers arrived at the scene within 30 minutes of the accident. [redacted] car was not operable and a tow truck arrived within 15 minutes after the officers. [redacted] neither observed an officer call for the tow truck nor knew how the truck came to arrive at the location. [redacted] did not have any conversation with the officers about the tow truck nor did he observe the officers converse with the tow truck operator. The operator

may have told [redacted] that the towing company was Izabelle's and one of the officers advised him that the towing company had a good body shop. The officers remained at the scene until after the tow truck hooked up [redacted] car. [redacted] was satisfied with the repair work that Izabelle's performed on his car.

On cross-examination, [redacted] testified that it was his impression at the time that the tow truck just happened to be passing by when it stopped at the scene. In a July 2009 interview with Williams, he described the officer who told him about the towing company having a good body shop as being 5'9" or 5'10" tall. [redacted] estimated that this was the officer's height because the officer was shorter than him. The officers did not coerce him to use the tow truck and did not prevent him from calling another towing company.

On redirect examination, [redacted] testified that both officers were seated in their car when the officer advised him that the towing company had a good body shop. No other towing company showed up at the scene.

Respondent's Case

Respondent called Police Officers Dominic Cappiello, Phillip Monck, Yevgeny Vaks, Dominick Latorre and Lukasz Solis; Sergeants Mohamed Eltony and Joseph Durante; and Leonid Krylov and Kaashif Strachan as witnesses, and he testified in his own behalf.

Police Officer Dominic Cappiello

Cappiello, a seven-year member of the Department, is currently assigned to the 109 Precinct. While assigned to the 70 Precinct on March 26, 2009, he and Police Officer Lukasz Solis responded to a radio run of a car accident on 18 Avenue. Because both cars involved in the accident were safe and operable, Cappiello did not call for a tow truck. Cappiello knew Respondent from when they both worked in the 70 Precinct, but they did not socialize outside of work. Although phone records show that Cappiello called Respondent that day, Cappiello could not recall why he called Respondent although he may have called to ask for a summons code number because one of the motorists had an expired insurance card and he needed the enforcement code for that offense. He did not recall having any conversation with Respondent about a tow truck coming to the scene. Cappiello never had any conversations with Respondent about a towing company or auto repair shop. Both cars were still at the scene when Cappiello left. Cappiello pleaded guilty to violating DARP procedure, forfeited 30 vacation days and was placed on one year dismissal probation. He explained that he pleaded guilty because he "just wanted to get everything over with" because "it was a hold on my career at that point."

On cross-examination, Cappiello testified that though he did not see any tow trucks at the scene, he was later informed that Izabelle's towed both vehicles from the location. He did not know if Respondent had any connection to that company. He agreed that Respondent's Department radio would have broadcasted the dispatcher assigning the car accident on 18 Avenue to Cappiello and Solis. The time entered on the PAR was 7:08 p.m., and phone records showed that multiple calls took place between

Cappiello and Respondent during the period between 6:59 p.m. and 7:25 p.m. Cappiello explained these calls: "It could have been just dropped calls, we were trying to get in touch with him, [and there were] problems with the phone." [The parties stipulated that Cappiello made two calls to Respondent, and Respondent made four calls to Cappiello. One of the calls that Cappiello made to Respondent had a recorded duration of zero minutes and zero seconds.] Cappiello never issued a summons to the driver with the expired insurance card.

Police Officer Phillip Monck

Monck, a six-year member, was assigned to the 70 Precinct on April 28, 2009 when he and Respondent responded to a car accident at East 26 Street and Avenue J. He did not recall Respondent using a phone or a radio to summon a tow truck or whether a tow truck ever arrived at the scene. He did not recall observing Respondent violate any DARP procedure. Respondent never directed him to utilize any particular auto repair company. Monck pleaded guilty and forfeited 30 vacation days for violating DARP procedure and failing to make a proper Activity Log entry regarding his response to this car accident. He stated that even though he did not believe that he had committed misconduct, he accepted the plea offer at the recommendation of his union representation.

On cross-examination, Monck confirmed that he had pleaded guilty specifically to failing to follow proper DARP procedure by allowing a non-DARP tow truck company to remove a vehicle from an accident scene. He believed that the day of the incident was the only time he ever worked with Respondent as a partner or ever even conversed with him. Monck never got out of their Department vehicle while at the accident scene.

Respondent handled the entire job himself. Monck did not recall if he maintained visual contact with Respondent throughout the incident.

Police Officer Yevgeny Vaks

Vaks, a five-year member who is currently assigned to the 66 Precinct, worked in the 70 Precinct on February 27, 2009. He and Respondent responded to a car accident that day on East 14 Street. It was the only time that he and Respondent worked together as partners. Vaks arrested someone at the scene for heroin. He did not recall Respondent using his cell phone to call for a tow truck. Nor did he recall seeing a tow truck at the scene before he departed the location. Vaks had no recollection that either he or Respondent called for a DARP tow. Vaks did not observe any violation of DARP procedure on the part of Respondent. Respondent never recommended to him any particular towing company or auto repair shop. Vaks pleaded guilty to violating DARP procedure on February 27, 2009. He explained that even though he did not believe that he had committed misconduct he accepted the plea offer at the recommendation of his union representative.

On cross-examination, Vaks testified that he as a result of pleading guilty to failing to make proper Activity Log entries and failing to follow proper DARP procedure he forfeited ten vacation days. Upon arriving at the accident scene, Respondent told Vaks that he would "take care of the paperwork." Vaks did not recall speaking to any of the motorists involved in the accident. Both he and Respondent speak Russian. Vaks conceded that his attention was on the heroin arrest and not on the accident. He did not watch what Respondent was doing in connection with the accident, and he did not know

if Respondent made any arrangements for an unauthorized tow truck to tow the cars away. Vaks did not personally play any part in assessing whether or not towing was required. He did not recall if he left the scene before Respondent. He had no idea if Respondent followed DARP procedure. He reiterated that he did not see any tow trucks at the location.

On redirect examination, Vaks testified that he believed he and Respondent left the accident scene at the same time since he would not have transported his prisoner back to the station house by himself.

Police Officer Dominick Latorre

Latorre, a five-year member who is currently assigned to the Brooklyn South Gang Squad, was assigned to the 70 Precinct on February 25, 2009. He did not recall responding with Respondent that day to a car accident in the vicinity of Ocean Parkway and Avenue J or that an arrest was made there. It was the only time that he and Respondent ever worked together as partners. Respondent has never directed Latorre to utilize any particular towing company or auto body shop. Latorre did not know whether or not Izabelle's Collision was a DARP-authorized towing company. He had no knowledge of Respondent calling Izabelle's Collision to respond to the accident scene.

Police Officer Lukasz Solis

Solis, a seven-year member who is currently assigned to the 101 Precinct, worked in the 70 Precinct on March 26, 2009. He and Cappiello responded to a car accident that day, where he prepared PAR No. 773 (previously entered into evidence as DX 8A). Solis

neither called for a tow truck nor observed a tow truck while present at the accident scene. Solis never worked with Respondent, nor did he ever converse with Respondent about the accident. Because he was a summons officer, Respondent had a reputation in the command for being familiar with summons codes. Respondent never asked Solis to use Izabelle's. Solis had no knowledge of any other police officer asking to have a non-authorized tow truck come to the scene. Solis pleaded guilty and forfeited 30 vacation days for violating DARP procedure on March 26, 2009. Athough he did not feel that he was guilty of misconduct, he accepted the plea offer on the recommendation of his attorney.

On cross-examination, Solis confirmed that he had pleaded guilty to making an inaccurate entry on a PAR by documenting that a vehicle had not been towed when in fact a vehicle had been towed and to failing to follow proper DARP procedure by allowing a non authorized towing company to remove a vehicle from the scene, not issuing a notice of violation to the unauthorized towing company, and failing to give a proper radio disposition for the job. Solis did not know if Cappiello made any telephone calls while at the accident scene.

Sergeant Mohamed Eltony

Eltony, an eight-year member who is currently assigned to the 62 Precinct Detective Squad, was a police officer assigned to the 70 Precinct on February 25, 2009. On that day, he responded as a part of a backup unit to the accident scene on Ocean Parkway. One of the motorists was arrested for driving while intoxicated, and Sergeant Joseph Durante subsequently arrived at the location. Eltony did not see a tow truck nor

did he observe Respondent call for a tow truck. Eltony had worked with Respondent on many occasions and never heard him make a call to any tow truck company to respond to an accident scene. Respondent did not steer Eltony to any body shop.

On cross-examination, Eltony confirmed that his attention was largely focused on dealing with the prisoner, and he was not paying attention to what Respondent was doing. He did not know if Respondent called for a towing company. Eltony left the scene before Respondent, and he did not know what occurred after his departure. He did not know at the time that a vehicle had been towed from the location.

Sergeant Joseph Durante

Durante, a 15-year member who is currently assigned to the Emergency Service Unit, testified that he was assigned to the 70 Precinct on February 25, 2009, that he responded to a vehicular accident scene on Ocean Parkway, and that he authorized the arrest of an intoxicated driver. He otherwise had no recollection of the incident on February 25, 2009 or of responding to an accident scene on East 14 Street on February 27, 2009. Durante has responded to hundreds of accident scenes. He testified that non-DARP authorized tow trucks arrive at accident scenes from time to time. He was never Respondent's direct supervisor.

On cross-examination, Durante confirmed that PAR No. 525 (DX 6A) indicates that Izabelle's towed the car of the intoxicated driver on February 25, 2009. He testified that since DARP tow is for accident situations where there is no criminality, DARP procedure would not have applied in this situation and that the car should have been towed to the 70 Precinct and impounded as evidence. After reviewing PAR No. 571 (DX

7A), Durante agreed that nowhere on the form is it indicated that a drug arrest took place at the February 27, 2009 accident scene.

Durante agreed that when an unauthorized towing company responds to an accident where DARP procedure applies, the officer has the discretion to either tell the truck operator to leave or issue the operator an LD6 summons. While DARP procedure can sometimes be time-consuming for officers to comply with, officers are not allowed to take shortcuts and allow non DARP authorized tow trucks to tow vehicles away.

On redirect examination, Durante agreed that if an officer at an accident scene determines that the cars involved in the accident are drivable and after the officer leaves the scene non DARP tow trucks arrive at the scene and tow the cars, since the responding officer would be unaware of these tows, he would not be able to document on the PAR any information about the tows.

Leonid Krylov

Krylov owns a collision shop. In 2008 and 2009, he was co-owner of Izabelle's Collision, which had two tow trucks. Though he was familiar with the DARP program, Izabelle's Collision was not a DARP-authorized towing company. Although he had the opportunity to tow cars from accident scenes during that period, he was not called to the scenes by any member of the Department. He explained that at Izabelle's Collision they listen to police scanners for reports of accidents. According to Krylov, all towing companies engaged in this practice. He explained that when,

> (a) call would come out over the air, we would get to the scene, park the truck a block, half a block away not to be on the scene, come over to the owner of the car, try to talk to them, offer our services. If the police units show up after that, we would walk away. And if the customer agreed to

> go with us, we would walk away, wait until the police unit leaves, and then come back and just grab the car. Or if the car was DARP'd, the customer would have our business card where to tow it to, and I would pay the DARP charges when the company would bring the car to the shop.

Krylov further explained that he would keep the tow truck a block away from the accident scene in order to avoid getting an LD6 summons from the police.

Krylov has known Respondent for over 15 years. They [redacted] are friends. They go to family parties together, and their children play together. He agreed that he and Respondent may have spoken on the phone with each other more than 600 times between October 2008 and April 2009. Krylov uses the same cell phone for both personal and business calls. Respondent never called Krylov to alert him about responding to an accident scene nor did Krylov ever call Respondent to find out about an accident. Krylov never personally responded to an accident scene where Respondent was present, though it was possible that other Izabelle's Collision tow truck operators had that experience. Krylov has never serviced Respondent's personal vehicle. Respondent and Krylov have never exchanged money regarding any type of official police action. As to the December 10, 2008 accident, Krylov testified that [redacted]' car was brought to the Izabelle's Collision shop by Kaashif Strachan, a truck operator for Primo Collision, which at the time was a DARP-authorized towing company. [RX E is the receipt from Primo Collision.]

On cross-examination, Krylov confirmed that he was convicted of petit larceny in Kings County Criminal Court on May 27, 2010 and was sentenced to perform 20 days of community service. Krylov has personally received one or two LD6 summonses. About ten tow truck drivers worked for him at Izabelle's Collision. In total, they received one or two LD6 summonses between 2008 and 2010. He explained that when he heard about

a car accident on his police scanner he would contact one of his drivers via Nextel radio. The drivers also had police scanners of their own. He realized that it was against the law for his non-authorized trucks to respond to the scenes. While two of the tow trucks had "Izabelle's Collision" written on them drivers with other trucks also towed cars to the Izabelle's Collision shop. He asserted that no driver who worked for him would have gone to a scene while a police unit was present. Instead, the driver would have parked around the corner and waited until the police unit left. Krylov agreed that he would not want Respondent to lose his job. Krylov has never conversed with Respondent about his business or about towing vehicles from police accident scenes. Krylov has known Strachan for eight or nine years. Strachan worked at Izabelle's Collision after working for Primo Collision.

Kaashif Strachan

Strachan is currently employed as a bus mechanic. He started working as a tow truck operator in 2006, and he has engaged in both authorized and non-authorized tows. He agreed that it is common practice within the towing industry for operators to "roll up on accident scenes and try to take the tows." He does not know Respondent. He might have previously seen Respondent while picking up a car but they have never spoken to each other.

On December 10, 2008, Strachan worked for Primo Collision, which was a DARP-authorized towing company. He towed [redacted]' car that day. He explained that he was driving down Ocean Avenue when he saw an accident scene. Because a police car was present, he parked the tow truck around the corner to avoid

getting a summons. When the police left, he approached [redacted] and recommended a body shop. [redacted] gave Strachan permission to tow the car to Izabelle's Collision. Strachan explained that he took the car to Izabelle's instead of Primo Collision because Izabelle's was closer and paid faster. He brought it to Izabelle's on his own, not at Krylov's instruction. Strachan was paid $200 for the job.

On cross-examination, Strachan testified that while some tow truck operators have police scanners in their trucks, he did not have a scanner on December 10, 2008. The truck he was driving that day had "Primo Collision" written on the side of it. He has never towed a vehicle while police were present, nor has he received an LD6 summons. Strachan has had a professional relationship with Krylov for nine years. Krylov never contacted him about responding to a specific accident scene. It was Krylov who asked him to testify as a witness for Respondent.

Respondent

Respondent, a ten-year member who is currently assigned to the 43 Precinct on full duty, was never placed on modified duty or suspended from duty as a result of these charges. He has prepared many PARs and is familiar with DARP procedure. There has never been an instance where he observed a car towed from a scene but he failed to note that fact on a PAR. There were, however, instances where he entered a non-authorized towing company on a PAR. He admitted that on November 11, 2008 he documented on a PAR that Izabelle's Collision towed cars from an accident scene. An Izabelle's Collision truck arrived that day without him calling for it. He allowed the non-authorized truck to tow the cars away, explaining, "Well, the reason would have been . . . if a situation

caused, you know, public, I guess, unsafety, so to speak, or danger because of a particular situation, using common sense, sometimes for public safety's reasons it is wiser to remove those variables so no one else gets hurt, or so there is no situation that causes traffic or pedestrians to get injured." About the considerations at the November 11, 2008 accident scene, Respondent explained the following:

> This was directly behind, I believe, based on the address, a shopping center. . . . There was a parking lot there, so a lot of cars, pedestrians constantly going through there. And based, I guess, [a car involved in the accident] obviously it flipped over, so it caused a very serious situation. Once Emergency Services would have come and flip the vehicle back over, removed it to the side to a safer spot, but there was a ton of people around, still a car in the way, and kids, that is a very busy shopping center, it was more prudent for safety's sake to remove that situation as quick as possible rather than waiting the unknown length of time for someone else to show up.

Respondent asserted that it can take up to a half-hour for a DARP-authorized tow truck to arrive at a scene because a truck sometimes needs to travel from the opposite side of the borough. Moreover, if a truck does not respond to the first call, a second call has to be made and this can take another half hour, "all the while people are crossing, they're gathering, cars can't move, you have debris, you have children." Respondent did not call Krylov on November 11, 2008 to advise him to send one of his trucks to the accident scene. Officers issue summonses at their discretion, and Respondent did not issue an LD6 summons that day. According to Respondent, these summonses are seldom issued, and he has never personally issued one himself. He documented on the PAR that Izabelle's Collision towed the cars from the scene because he saw no reason to lie about it. He explained, "[Izabelle's Collision] came, they were there, and I am not going to make up anything, so you know, I put them in. That's what I am supposed to do."

Respondent admitted that on February 25, 2009 he again allowed Izabelle's Collision to tow a car from an accident scene. Respondent described the incident:

We arrived at the scene. I was with an Impact officer at the time. We started the basic paperwork, which is obviously the PAR. A number of other officers arrived to the scene... I was . . . looking to just leave obviously and go home, finish up my paperwork... The officer I was with was not looking to do anything, and he had to end his tour around relatively the same time. So I filled out the PAR, there was no tow trucks on the scene... The other responding officers were going to handle the arrest, whether it was an arrest or anything other. We left. I went back to the precinct. Shortly thereafter, I received a phone call [from Police Officer Eltony], and I was told that Izabelle's was the one that was going to take the vehicle, so I wrote in in. . . . There is no reason to lie, so I put it in.

Phone records, which were entered into evidence as RX F, confirmed that Respondent received a call from Eltony on February 25, 2009. Respondent did not call Krylov or anyone else about having an Izabelle's Collision truck respond to the accident scene that day. Respondent was not present at the time of tow.

About the PARs on which he made no indication of a tow taking place, Respondent testified that in none of those cases did a tow truck arrive while he was present at the scene. On none of those occasions did Respondent call Krylov to inform him that an accident had taken place, cause a particular towing company to respond, or encourage other members of the service to utilize Izabelle's Collision. Respondent was speaking to Krylov a lot on a daily basis during that period, but the frequency and nature of the calls had no relation to whether or not there was a car accident. About the phone calls with Krylov around the times that Respondent would have been at an accident scene, Respondent provided the following explanation:

Well, we speak. Calls go all day long. Sometimes you get the phone call, six seconds later, literally, 6, 10 seconds later, I gotta call you back, another phone call, it's a hang up. Try to call him back a second later, I'm busy. He calls me, I can't, I'm doing something. Constantly until we speak. It's coincidental. It is what it is.

Sometimes motorists involved in accidents asked Respondent if they could call a tow company of their choosing. Respondent explained how he handled these situations:

> I tell them, listen, my responsibility is to know if [the car] can be moved safely. . . . If they can demonstrate they can get into the car, turn it over, put it into drive and safely move it a block, two, park it, to me it's drivable. Then there is no requirement for me. Common sense, you get the car out of the way, there is no hazard, no danger. At that point, I finish my paperwork and I go. What they do once I leave is not my responsibility.

Respondent was unaware that Krylov had been convicted of a misdemeanor. Krylov has never repaired Respondent's personal vehicle and Respondent has never received free car repairs as a result of his relationship with Krylov. Respondent used to take his car to Company 2 where he paid for all of his repairs.

During the period relevant to these charges there were in excess of a thousand phone calls between Respondent and other members. Respondent provided the following explanation for these calls:

> There are times when we call each other to see if someone is looking for an arrest. There are times when we call each other for information about certain codes or summonses. There are times when, you know, using a radio is not the smartest thing when you are doing a vertical in the building and there may be someone with a gun where a cell phone is quieter. . . . And honestly, sometimes we call just to bust each other's chops.

Because Respondent was a summons officer at the precinct he was familiar with traffic codes and officers, especially Cappiello, often called him for assistance. Respondent testified that he did not know Kaashif Strachan.

On cross-examination, Respondent confirmed that he did not have a personal relationship with any of the motorists who were involved in the accidents that are the subject of these charges and he agreed that none of these motorists had reason to intentionally fabricate anything against him.

Respondent confirmed that while he was present at accident scenes he spoke with Krylov on the phone. Although he could not remember the subject matter of each of these calls, he did not think that he told Krylov his location during the calls.

He was unaware of Krylov's arrest record, his criminal conviction or that there were any criminal charges pending against him at any time. He described his relationship with Krylov as a "light, social friendship." They "would hang out" and "sometimes go to functions together" because they "knew the same people." Their friendship has lasted on and off for the past 15 years. They did not discuss Krylov's business and Respondent did not know that Krylov utilized a police scanner.

Respondent testified that November 11, 2008 and February 25, 2009 were the only occasions that he allowed non DARP authorized trucks to tow cars from accident scenes in the 70 Precinct. He did not call for a DARP tow on November 11 because a tow truck from Izabelle's Collision just happened to show up at the scene and he used his discretion to allow it to tow the cars away rather than call in for a DARP authorized tow truck and have to wait for the tow truck to appear at the scene. He explained that the time he indicated on a PAR was the time he started preparing the report. This generally occurred within a few minutes of his arrival at the scene. It generally took 15 or 20 minutes for him to finish the report, but it took longer when there were complications. At scenes where no tow was required, he would leave the scene upon completion of the report. At those scenes where a vehicle was inoperable and needed to be towed, he would call DARP and wait for the tow truck to appear. This wait could sometimes take as long as an hour.

FINDINGS AND ANALYSIS

Specification Nos. 1 through 3

Respondent is charged with having violated DARP procedures on a total of eleven occasions between November 11, 2008 and April 28, 2009 by allowing Izabelle trucks to tow cars from eleven different accident scenes in Brooklyn; by not issuing a notice of violation to Izabelle when an Izabelle tow truck appeared at each of these 11 accident scenes and towed vehicles from the scenes; and by not requesting an authorized DARP towing company and instead allowing a non-DARP towing company, to remove vehicles from these eleven accident scenes.

Respondent's admissions that he violated DARP procedures on two occasions

Respondent pleaded guilty to having violated the above-cited DARP procedures on two of these 11 occasions. He admitted that when he responded to the scene of a motor vehicle accident at East 22nd Street near Duryea Place and Beverly Road on November 11, 2008 (PAR 2629) and when he responded to the scene of a motor vehicle accident on Ocean Parkway near Avenues J and K on February 25, 2009 (PAR 525), he violated the above-cited DARP procedures on both occasions by allowing Izabelle trucks to tow cars from each accident scene; by not issuing a notice of violation to Izabelle when one of its tow trucks appeared at the scene of these two motor vehicle accidents and towed vehicles from the scene; and by not requesting an authorized DARP towing company and instead allowed Izabelle, a non-DARP towing company, to remove vehicles from these two accident scenes.

I will now analyze the evidence that was presented regarding the nine other occasions on which Respondent is charged with having violated the above-cited DARP procedures.

Analysis of evidence presented that Respondent violated DARP on nine other occasions

Introduction

In attempting to prove that a police officer violated DARP procedures the Advocate must overcome the fact that DARP procedures grant police officers a certain amount of discretion. A police officer who responds to the scene of an accident has the discretion to decide whether the cars that were involved in the accident are able to be driven away from the scene. If the police officer determines that a car is drivable, the officer does not need to call in to request that an authorized DARP towing company respond to the scene.

Also, where, as here, an officer is accused of having allowed a particular non-DARP tow company to tow a vehicle there is an additional hurdle the Advocate has to overcome. Department witness Williams did not dispute Krylov's claim that Izabelle and other tow companies possess police radio frequency scanners so that a tow truck driver who is in the vicinity of an accident scene can learn that an accident has just occurred and get to the scene quickly. Krylov's claim was supported by Strachan and by evidence offered by the Advocate. For example, Person E told Williams (DX 18 p. 6-7) that two or three tow trucks had appeared at the accident scene on March 26, 2009 on 18th Avenue near Ocean Parkway and East 5th Street (PAR 773). Krylov also testified that when a non-DARP tow truck arrives in the vicinity of an accident where police are already at the

scene, the tow truck driver will pull over near the scene but remain out of sight until the police leave the scene at which point the tow truck driver will appear at the scene and solicit the business of the parties whose cars are damaged.

Thus, absent credible evidence that Respondent was still present at the scene of an accident at the point in time when an Izabelle's tow truck appeared at the accident scene, I cannot discount the possibility that the above cited police radio scanner scenario had taken place and that an Izabelle's tow truck driver had learned of the accident via a scanner, responded to the scene, and towed a vehicle from the scene without Respondent's knowledge.

Finally, the Advocate argued that the standard *modus operandi* utilized by Respondent and Krylov was that when Respondent arrived at the scene of a motor vehicle accident where one or more cars were damaged, Respondent would notify Krylov about this via a cell phone call. Although the cell phone records in evidence reflect that Respondent and Krylov exchanged calls during time periods in which Respondent would have been on duty and on his way to or present at the scene of an accident, the cell phone records also show that Respondent and Krylov exchanged numerous cell phone calls on days when Respondent did not respond to an accident scene. For example, the cell phone records show that Respondent and Krylov called each other 196 times during December, 2008, a month in which Respondent prepared only one PAR documenting his response to a single accident scene. Most significantly, Williams confirmed on cross-examination that he could not ascertain any type of pattern relating to phone calls between Respondent and Krylov surrounding the accidents that he investigated.

As a result, even where the cell phone records in evidence reflect that Respondent and Krylov exchanged calls around the time that Respondent was at or responding to the scene of an accident, these cell phone calls are insufficient to support a finding that Respondent violated DARP procedures. Thus, I find that to sufficiently prove that Respondent violated DARP procedures with regard to Izabelle's there must be credible evidence that Respondent was present at an accident scene at the point in time that an Izabelle's tow truck was at the scene.

I will now analyze the specific evidence presented regarding the nine occasions on which Respondent has denied that he violated DARP procedures at an accident scene.

The nine occasions on which Respondent has denied that he violated DARP procedures

With regard to the accident that took place at Bedford Avenue near Tilden Avenue and Beverly Road on April 18, 2009 (PAR 957), Person F told Williams in a telephone interview that he could not recall what company towed his car from the scene to a location on "Coney Island" and even after Williams stated "Isabele's Tow and Collision," Person F only responded, "That could be it." (DX 19 p. 7) Also, Person F did not assert that officers were still at the scene when the tow truck operator hooked up his car (DX 19 p. 9-10). Thus, Person F's statement to Williams, which was offered by the Advocate as hearsay at this trial, insufficiently proves that Respondent was still present at the scene when Person F's car was hooked up and towed from the scene. Finally, the cell phone records show that no calls were exchanged between Respondent and Krylov. Thus, Respondent is found Not Guilty regarding that occasion.

With regard to the accident that took place at Elm Avenue and East 13th Street on April 26, 2009 (PAR 1035), Officer Tai was partnered with Respondent when they responded to this accident scene. The PAR denotes that the car driven by Person G was damaged but not towed (DX 10A). Although the cell phone records show that no calls were exchanged between Respondent and Krylov, Tai testified on direct examination that he saw two tow trucks at the scene and that one had the name "Isabella" printed on the side. Moreover, Tai pleaded guilty to a Charge and Specification that he had violated DARP procedure at this accident scene. Although on cross-examination Tai agreed he had no present recollection of anything relating to the accident scene, Tai's testimony on direct examination that a tow truck was at the scene that had the name "Isabella" on it is corroborated by the hearsay statement of Person G who told Williams in a telephone interview that the company that towed his car from this accident scene was "Isabele's" (DX 20 p. 5). Therefore, I find that the evidence presented is sufficient to support a finding of guilt regarding this occasion.

With regard to the accident which occurred on March 26, 2009 on 18th Avenue near Ocean Parkway and East 5th Street (PAR 773), it is not disputed that Respondent was never personally present at the scene of this accident which was handled by Solis and Cappiello who responded to the scene. Since this accident is also the subject of Specification No. 9, I will discuss the evidence presented regarding this accident under Specification No. 9.

With regard to the accident which occurred on January 20, 2009 at Avenue L near East 18th and 19th Streets (PAR 206), Respondent was personally present at the scene of this accident and prepared the PAR which contained an incident time of 0750 hours and

which denoted that neither of the two cars that were involved in this accident had been towed from the scene (DX 4A). The telephone records show that 14 calls were exchanged between Respondent and Krylov between 0619 hours and 1004 hours. One of the calls Respondent made to Krylov was placed at 0747 hours, three minutes before the time of incident Respondent entered on the PAR. The Advocate presented hearsay statements made by the two drivers who were involved in this accident (DX 14 and DX 15). In a telephone interview Person A told Williams that his car had been towed from the accident by Izabelle's and that he had Izabelle's business card. Person A told Williams that police officers were at the scene. I credit Person A's statement because he candidly acknowledged that he did not see the officers interact with the Izabelle's tow truck operator and because Person A's statement was corroborated by the statement of Person B the other driver involved in this accident who told Williams that Person A's car had been towed by Izabelle's and her car had also been towed by Izabelle's. Most significantly, Person B told Williams that the police officers at the scene had interacted with the Izabelle's tow truck operator and that one of the officers had told her that Izabelle's did "a wonderful job" of repairing cars. (DX 15 p. 5) Person B later identified Respondent by selecting his photo from a photo array prepared by Williams. Based on the above, I find that the evidence presented is sufficient to support a finding of guilt regarding this accident.

With regard to the accident which occurred on January 27, 2009 at Avenue H near 14th Street and Argyle Road (PAR 282), Respondent was personally present at the scene of this accident and prepared the PAR which contained an incident time of 1400 hours. Although the telephone records show that five calls were exchanged between Respondent

and Krylov that day, at 0721, 1006 and 1239 and then again not until 1547 hours, nearly two hours after the time of incident. Williams interviewed Person C one of the drivers in this accident. Person C who advised Williams that "I don't understand so much English," stated that that his vehicle was towed from the scene by "my body shop" Company 1 after he personally called them, that the police officers at the scene had nothing to do with Company 1 and that he does not know what company towed the other car that was involved in the accident. (DX 16 p. 5-6) Most significantly, Williams testified that Person C did not indicate whether or not his car was towed while the police officers were still present at the scene. Since the evidence presented at this trial regarding this accident does not sufficiently establish that Respondent was aware that Company 1 appeared at the scene and towed Person C's car, I find that the evidence presented is insufficient to support a finding of guilt regarding this accident.

With regard to the accident which occurred on December 10, 2008 on Ocean Avenue near Avenues J and K (PAR 2812), Respondent was personally present at the scene of this accident and prepared the PAR (DX 2A) which denotes an incident time of 1750 hours. The telephone records show that nine calls were exchanged between Respondent and Krylov between 0600 hours and 1909 hours. Most significantly, Respondent made three calls to Krylov between 1742 hours and 1744 hours. The PAR denotes that the car driven by [redacted] was damaged but not towed (DX 2A). However, [redacted] testified at this trial that his car was towed from the scene by a tow truck operator who may have told him that he was from Izabelle's, that one of the officers advised him that the towing company had a good body shop, and that the officers remained at the scene until after the tow truck hooked up [redacted]' car. Respondent's

witness Strachan corroborated [redacted]' claim that his car was towed to Izabelle's. Although Strachan asserted that he hooked up [redacted]' car to his tow truck after the police left the accident scene, I credit [redacted] testimony that the officers were still at the scene when the tow truck hooked up [redacted] car because [redacted] had no reason to lie about this. I find that the evidence presented is sufficient to support a finding of guilt regarding this accident.

With regard to the accident which occurred on January 15, 2009 at Avenue O and East 16th Street (PAR 137), Respondent was personally present at the scene of this accident between cars driven by Person L and [redacted]. Respondent prepared the PAR which contained an incident time of 1510 hours. The telephone records show that 9 calls were exchanged between Respondent and Krylov between 0612 hours and 1607 hours including a call to Krylov at 1512 hours, two minutes after the time of incident entered on the PAR. However, Person L told IAB that his car was not towed from the scene (RX D). The PAR denotes that the car driven by [redacted] was damaged but not towed. Although Jacobs testified that his car was towed from the scene, since [redacted] could only recall that the name on the tow truck was something like "Elzbeth's," Jacobs testimony is insufficient to support a finding that it was an Izabelle tow truck that towed his car from this accident.

With regard to the accident which occurred on February 27, 2009 near Avenues I and J at East 14th Street (PAR 571), Respondent was personally present at the scene of this accident and prepared the PAR which contained an incident time of 2119 hours. The telephone records show that 8 calls were exchanged between Respondent and Krylov that day and that Respondent called Krylov at 1832 hours and at 2344 hours. Although the

records show that no calls were exchanged between Respondent and Krylov around the time of the incident, the PAR denotes that the cars driven by [redacted] and Person D were not towed. However, [redacted] testified that her car was towed, after she spoke with Respondent in Russian about the details of the accident, by a tow truck from Izabelle's which arrived at the scene two or three minutes after Respondent arrived, that she spoke with the tow truck operator, who told her that his name was Leo and who gave [redacted] his business card (DX 13), and that [redacted] Respondent, and Leo all spoke together about the accident and then her car was towed away by Izabelle's. Although on cross-examination, [redacted] confirmed that she is now angry with Izabelle's because she became dissatisfied with how the company treated her and because she believed that they had stolen her car, she expressed no animus toward Respondent. In a statement to Williams, Person D, the other driver in this accident, corroborated [redacted]s testimony that she engaged in a joint conversation with the police officers at the scene and the tow truck operator (DX 17 p. 4). I find that the evidence presented is sufficient to support a finding of guilt regarding this accident.

Finally, with regard to the accident which occurred on April 28, 2009 on Avenue J and East 26th Street (PAR 1046), Respondent responded to the scene of this accident with Officer Monck and Respondent prepared the PAR which contained an incident time of 1642 hours. The PAR denotes that the cars driven by [redacted] and [redacted] were damaged but not towed (DX 11A). The telephone records show that 9 calls were exchanged between Respondent and Krylov that day between 1325 hours and 2234 hours. Respondent made a call to Krylov at 1545 hours, less than an hour before the time

of incident Respondent wrote on the PAR and Respondent made another call to Krylov at 1709 hours, 27 minutes after the time of incident.

The Advocate presented three witnesses: [redacted]. Although [redacted] left the scene before the towing company which towed her car arrived, her husband stayed at the scene. [redacted] testified that two police officers arrived very quickly; that when a tow truck arrived shortly after the officers he asked the officers if they had requested the truck and he received an affirmative response; that when he asked one of the officers whether or not the tow truck was authorized he again received an affirmative response; that the officers and tow truck were at the scene at the same time; and that [redacted]'s car was towed to a garage called Izabelle's on Coney Island Avenue. I credit [redacted]'s testimony because he candidly admitted that he was not certain whether he saw the officers conversing with the tow truck operator.

The other party to the accident, [redacted], testified that a tow truck from Izabelle's arrived soon after police officers arrived at the scene; that when he asked one of the officers about the truck the officer replied that he would "take care of it;" that the officers and tow truck operator conversed; and that he believed the officers were still present on the scene when his car was towed to Izabelle's. I credit [redacted]s testimony because he candidly admitted that he did not hear what the officers and tow truck operator said to each other during their conversation; that he did not know if the officers called the tow truck to the scene; and that he did not see either officer talking on a cell phone. Although the Assistant Department Advocate should not have placed [redacted] in the same pre-testimony waiting room as Becker and Schwab, or should have at least told [redacted],

[redacted]r and [redacted] not to converse about their upcoming testimony, I find that Schwab and [redacted] each testified from his own recollection of this event because their respective testimonies were consistent with what they each told Williams.

Finally, I credit Monck's testimony that he never got out of their Department vehicle while they were at the accident scene and that he let Respondent handle the accident scene which explains Monck's bitterness that he was charged with, and was advised to plead guilty to, having failed to follow proper DARP procedure by allowing a non-DARP tow truck company to remove vehicles from an accident scene. I find that the evidence presented is sufficient to support a finding of guilt regarding this occasion.

In conclusion, the evidence presented sufficiently supports a finding of guilt regarding five of the nine occasions on which Respondent has denied having violated any DARP procedures at an accident scene.

Specification No. 4

It is charged that between November 11, 2008 and April 28, 2009, Respondent on "eleven separate occasions" failed to give a proper radio disposition to the Communications Section by not informing them that a vehicle was towed from an accident scene.

It is not disputed that Respondent never responded to the scene of the accident on 18th Avenue near Ocean Parkway and East 5th Street (PAR 773) on March 26, 2009. Since Cappiello and Solis responded to the scene of this accident, they were responsible for radioing a proper disposition to the Communications Section. The Advocate should have amended this Specification to exclude this accident scene from the "eleven separate

occasions" on which Respondent is alleged to have failed to give a proper radio disposition.

As to the remaining occasions, since Respondent could not inform the Communications Section that a vehicle had been towed from an accident scene unless he was personally aware that a vehicle had been towed from the accident scene, I find Respondent guilty of this charge on those occasions where I have found that the evidence sufficiently establishes that he was present when an Izabelle's truck towed a car from an accident scene, and on the two occasions he has pleaded guilty to under Specification Nos. 1-3.

Specification No. 5

It is charged that between November 11, 2008 and April 28, 2009, Respondent "on eleven separate occasions upon responding to the scene of a motor vehicle accident" failed to make proper entries in his memo book.

Since Respondent did not respond to the scene of the accident on 18th Avenue near Ocean Parkway and East 5th Street on March 26, 2009, he would not have been required to make an Activity Log entry regarding "responding to" that accident. The Advocate should have amended this charge to exclude this accident from the "eleven separate occasions" on which the Advocate alleges that Respondent failed to make proper entries in his memo book.

With respect to April 18, 2009, Respondent has a memo book entry about the accident.

As to the remaining occasions, Respondent's Activity Log contains either no entry or an improper disposition regarding his presence at the scene of the charged accidents. Regarding the two occasions that Respondent has admitted that he violated DARP procedures by allowing an Izabelle truck to tow cars from the accident scenes on November 11, 2008 and February 25, 2009, Respondent's Activity Log contains no entry that he was present at the scene of either of these motor vehicle accidents.

Even though Respondent prepared PARs which documented that he had responded to these accident scenes, he was, nonetheless, also required to make accurate and complete entries in his Activity Log regarding his responses to the these motor vehicle accidents. Since he failed to do so, he is found Guilty of having failed to make proper entries in his memo book upon responding to the scene of a motor vehicle accident on nine occasions.

Specification No. 6

It is charged that between December 10, 2008 and April 28, 2009, Respondent, on five separate occasions when he responded to the scene of a motor vehicle accident, made an inaccurate entry in a Police Accident Report by documenting that a vehicle had not been towed from the scene of an accident when, in fact, it had. The five accidents that are the subject of this charge are: Avenue O and East 16th Street; Avenue H and East 14th Street and Argyle Road; Bedford Avenue near Tilden Avenue and Beverly Road; Elm Avenue and East 13th Street; and Avenue J and East 26th Street.

Based on the analysis conducted under Specification Nos. 1 through 3 above, there are two accidents where the Advocate failed to establish that Respondent was at the

scene when a tow truck was present, I therefore find Respondent guilty of three of the charged occasions.

Specification Nos. 7 and 8

It is charged that between January 15, 2009 and April 28, 2009, Respondent, on four separate occasions, engaged in improper use of his personal cell phone and conducted personal business while on Department time by utilizing his personal cell telephone. The four separate occasions that are the subject of this charge are: Avenue O and East 16th Street; Avenue H near East 14th Street and Argyle Road; Avenue J and East 26th Street; and Avenue L near East 19th Street and East 18th Street.

Based on the analysis conducted under Specification Nos. 1 through 3 above, I find Respondent guilty of two of these four occasions.

Specification No. 9

It is charged that on March 26, 2009, Respondent "assisted" in the removal of a vehicle from the scene of an accident by a non-authorized DARP tow company. It is not disputed that Respondent was never present at the scene of the accident on March 26, 2009 between cars driven by Person K and Person E on 18th Avenue near Ocean Parkway and East 5th Street (PAR 773).

Cappiello and Solis responded to the scene of this accident and prepared the PAR.

Person K told Williams that an officer at the scene told him that his car was driveable and did not need to be towed. (RX C p. 5) Person E told Williams that he could not recall the name of the company that towed his vehicle from the scene, only that

the car was towed to a location on Coney Island Avenue (DX 18 p. 4-5). Person E also told Williams that two or three tow trucks, not just one, had appeared at the accident scene (DX 18 p. 6-7). Thus, the Advocate offered insufficient evidence to prove that Respondent assisted Solis and Cappiello in having a non-authorized DARP tow company tow Person E's car from the accident scene. The telephone records which show that calls were exchanged that day around the time that the accident took place between Respondent and Krylov and between Respondent and Cappiello do not sufficiently prove this charge. The Advocate did not refute Cappiello's claim that he and other officers would sometimes call Respondent from accident scenes to get his advice on what codes to enter.

Based on the above, since the evidence presented is insufficient to support a finding of guilt, I find Respondent not guilty of Specification No. 9.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded guilty and admitted that when he responded to the scene of two motor vehicle accidents, one in November, 2008 and one in February, 2009, he violated DARP procedures on both occasions by allowing Izabelle's trucks to tow cars from each accident scene; by not issuing a notice of violation to Izabelle's when its tow

trucks appeared at the scene of these two motor vehicle accidents and towed vehicles from the scene; and by not requesting an authorized DARP towing company and instead allowing Izabelle's, a non-DARP towing company, to remove vehicles from these two accident scenes. Respondent has been found guilty of having violated these DARP procedures at five other accident scenes.

Although Respondent allowed Isabelle's, a non-DARP-authorized towing company, to tow vehicles from accident scenes, Williams testified that he found no evidence that Respondent engaged in criminal activity or received any type of personal benefit by doing this. Williams also confirmed that Respondent passed an integrity test in that he did not recommend a specific towing company to an undercover officer who was posing as a motorist who needed to call a towing company. Finally, Williams confirmed that his investigation uncovered no credible evidence that Respondent ever received free auto services or any other financial benefit for having violated DARP procedures.

In determining a penalty recommendation, I have taken into consideration the penalties that have been imposed in previous cases where police officers have violated DARP procedures and engaged in additional related misconduct.

In *Case No. 2010-1582* (Jan. 22, 2013), an eight-year officer who had no prior formal disciplinary record forfeited 30 vacation days as a penalty for failing to follow to DARP procedures by allowing a non-DARP tow truck to remove a vehicle from an accident scene, not issuing a notice of violation to the unauthorized towing company, failing to give proper radio disposition to the Communications Section, and failing to make proper Activity Log entries. In *Case No. 2010-2375* (Jan. 22, 2013), a six-year

officer who had no prior disciplinary history forfeited a penalty of 30 vacation days for failing to follow to DARP procedures by allowing a non-DARP tow truck to remove a vehicle from an accident scene, failing to give proper radio disposition to the Communications Section, and failing to make proper Activity Log entries. In *Case No. 2010-2222* (Feb. 1, 2013), a five-year police officer who had no prior disciplinary history forfeited 10 vacation days as a penalty for failing to follow to DARP procedures by allowing a non-DARP tow truck to remove a vehicle from an accident scene, failing to give proper radio disposition to the Communications Section, and failing to make proper Activity Log entries.

In a case where the charges and the evidence presented mirror the facts here, *Case No. 2010-1645* (Jan. 7, 2013), a seven-year officer who had no prior formal disciplinary record forfeited 30 vacation days and was placed on dismissal probation as a penalty for failing to follow to DARP procedures by not requesting an authorized DARP towing company; by allowing a non-DARP tow truck to remove a vehicle from an accident scene; by not issuing a notice of violation to the unauthorized towing company; by failing to give proper radio disposition to the Communications Section; and by engaging in improper use of his personal cell phone and conducting personal business while on Department time in that when he responded to the accident he used his personal cell phone to make calls to facilitate and coordinate the use of a non-DARP tow facility.

However, that case involved a single instance of violating DARP procedures and engaging in related misconduct whereas here Respondent violated DARP procedures and engaged in related misconduct on multiple occasions, including failing on a number of occasions to make any Activity Log entry regarding his response to an accident scene.

In fashioning a penalty recommendation, I have also taken into consideration Respondent's performance evaluations; his Department Recognition Summary; and the fact that he has no prior disciplinary record in over 10 years of service; as well as Respondent's submissions of character letters, and a certificate of perfect attendance for 2010.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further recommended that Respondent forfeit 60 vacation days.

Respectfully submitted,

Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

MAR 04 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GREGORY MARKOV
TAX REGISTRY NO. 935252
DISCIPLINARY CASE NO. 2010-2425

Respondent received an overall rating of 4.0 on his 2013 performance evaluation, 3.5 on his 2012 evaluation, and 3.5 on his 2011 evaluation. He has been awarded one Meritorious Police Duty medal and eight Excellent Police Duty medals. [redacted] He has no prior formal disciplinary record.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials