



POLICE DEPARTMENT

June 2, 2022

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In the Matter of the Charges and Specifications : Case Nos.
- against - : 2020-22594
Police Officer Yevgeniy Deyko : 2021-23894
Tax Registry No. 946926 :
Housing PSA 4 :
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Michael Ricottone, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Police Officer Yevgeniy Deyko
Respondent appeared *pro se*

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Case No. 2020-22594

1. Said Police Officer Yevgeniy Deyko, while assigned to Housing PSA 4, in New York County, on or about January 14, 2020, after having been directed by his supervisors to conduct the interior patrol of a NYCHA building, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS

Case No. 2021-23894

1. Said Police Officer Yevgeniy Deyko, on or about April 7, 2021, while assigned to PSA 4 and on duty, did fail to make required entries in his Activity Log. (*Dismissed*)

P.G. 212-03, Page 2, Paragraph 7

ACTIVITY LOGS

2. Said Police Officer Yevgeniy Deyko, on or about April 7, 2021, while assigned to PSA 4 and on duty, did fail to sign out of his tour in uniform as required.

P.G. 212-03, Page 1, Paragraph 11

EXPIRATION OF TOUR

3. Said Police Officer Yevgeniy Deyko, on or about April 7, 2021, while assigned to PSA 4, did fail to check in with the Desk Sergeant upon his return to the command and seek approval to extend his tour.

P.G. 212-10

INTERRUPTED PATROL LOG

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 3 and 9, 2022.

Respondent, who represented himself, entered a plea of Not Guilty. The Department called Lieutenants George Gosta and David DeJesus, Sergeants Dalmin Vasquez and Fazilatun Nessa, and Police Officers Rodney Skipper and Vallery Alexis as witnesses. Respondent called Police Officers Tiffany Bruce-Watson and Gowell Soto, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police

Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty on all counts, and recommend that he forfeit twenty (20) vacation days and be admonished.

ANALYSIS

Respondent faces charges in connection with two separate cases. The two matters will be considered separately.

Case No. 2020-22594 (Order to Conduct Interior Patrol)

It is alleged that on January 14, 2020, Respondent failed to comply with a lawful order from his supervisors to perform an interior patrol of a particular New York City Housing Authority ("NYCHA") building. Respondent concedes that he did not conduct the interior patrol, but argues that he was effectively prevented from doing so due to other obligations during his tour.

Lieutenant George Gosta was the desk officer at PSA 4 on January 14, 2020. He testified that during that time period, there were a number of documented incidents of drug activity, as well as a shooting, at a particular NYCHA building on the west side of the precinct. In order to address the concern, the command assigned Sector C, on every tour, to conduct an "interior patrol" (also referred to as a "vertical patrol") of the building, in which the officers assigned to that sector were responsible for walking through each floor of the building, making sure that everyone was safe. According to the lieutenant, an interior patrol could be completed in approximately 10 minutes. (Tr. 28-30, 37, 45-46, 48, 54)

On the day in question, Respondent and his partner, Officer Skipper, were assigned to Sector C. When Lieutenant Gosta saw Respondent return to the command for meal at

approximately 1206 hours, the lieutenant “looked him straight in the eyes” and told Respondent that he and his partner needed to do the interior patrol. According to Lieutenant Gosta, both Respondent and his partner acknowledged that they understood. (Tr. 33-35)

Sergeant Fazilatun Nessa was the patrol supervisor that day. She testified that when she conducted roll call that morning, she specifically instructed Respondent and Officer Skipper to perform an interior patrol of the NYCHA building, as well as a “directed patrol,” which required the officers’ presence outside the building for a period of time. Later that morning, Sergeant Nessa checked the Resource Log for Sector C (Dept. Ex. 3) and saw that the interior patrol had not yet been done; at 1021 hours, she texted Respondent reminding him to do so (*see* Dept. Ex. 2, screenshot of text messages). In the afternoon, Sergeant Nessa saw that the interior patrol still had not been performed, and called Officer Skipper to remind him again to do so (*see* Dept. Ex. 5, screenshot of calls placed). According to Sergeant Nessa, despite these repeated orders, the interior patrol had not been done by Respondent and Officer Skipper when they returned to the command at the conclusion of their tour, which ended at 1540 hours. (Tr. 191-96, 200-01, 206-08, 214)

Police Officer Rodney Skipper confirmed that he and Respondent were instructed at roll call to do interior and directed patrols of the NYCHA building. From his experience, interior patrols take approximately 30 minutes to complete. After roll call, Officer Skipper drove Lieutenant Gosta to the old Police Academy, then returned to the command. He and Respondent arrived at their assigned sector at approximately 0915 hours. They handled a job, and at approximately 1046 hours, they performed the directed patrol, observing the NYCHA building from the outside until 1144. The officers returned to the command for meal, at which time Lieutenant Gosta reminded them that they still needed to do an interior patrol. Later that

afternoon, Officer Skipper received a call from Sergeant Nessa, again reminding them to do the interior patrol. After completing another job, the officers drove back to the building. However, instead of doing the interior patrol, he and Respondent spent time working on Officer Skipper's digital Activity Log, since it was his first day using the digital Log and he needed Respondent's help with it. The two officers then returned to the command to conclude their tours without having done the interior patrol, despite their "best intention" to do so. Officer Skipper acknowledged that he accepted a Command Discipline for this misconduct, since he "felt that we could have done a vertical." (Tr. 64-66, 75-77, 79-93)

Respondent admitted that he did receive clear instructions at roll call from Sergeant Nessa to do directed and interior patrols of the NYCHA building. At the start of his tour, Respondent was on standby at the command until his partner, Officer Skipper, returned from driving the lieutenant. Respondent and his partner were heading out to their sector at approximately 0900 hours when they received a harassment job, which they completed at approximately 0939. Sergeant Nessa texted him at 1021 hours, reminding him to do the interior and directed patrols. Intending to do just that, Respondent and his partner drove to the building. Respondent testified that the officers were preparing to go inside and do the interior patrol when Sergeant Nessa called and told him to hold off on the interior patrol, and to wait outside so she could come scratch their Activity Logs. While the officers waited, they performed the directed patrol of the building. As the time for their meal approached, Sergeant Nessa still had not arrived, and so Respondent reached out to her for guidance; she informed him that she was busy on the East side, and that he should return to the command for his meal. (Tr. 291-94, 312-15)¹

¹ Sergeant Nessa confirmed that she did not get to meet up with Sector C while they were out in the field that day, because she was busy on the East side of the precinct. She did not recall whether she told Respondent that morning to wait outside the NYCHA building because she was coming to scratch his Activity Log, but conceded that she may have done so, and then had a change in plans that required her presence on the East side. (Tr. 217-20, 223-27)

Before they headed back out after meal, Lieutenant Gosta reminded Respondent and his partner to do the interior patrol. On the way to their sector to do the interior patrol, the officers received an assault job, which they completed at approximately 1402 hours. Respondent testified that they then drove to the NYCHA building at 1415 hours, with the intention of conducting the interior patrol. However, they instead worked together on the paperwork for the assault job. It was Officer Skipper's first day using the digital Activity Log, and he asked for Respondent's help in completing it for the entire day. By the time they were done, it was 1500 hours, and so the officers, without consulting with a supervisor, decided to return to their command for their end of tour, which was 1540 hours, without having conducted the interior patrol; according to Respondent, they customarily allotted 40 minutes for the drive back. Respondent maintained that "we tried our best to do it," but that unfortunately "the circumstances didn't allow for that." (Tr. 295-98, 301, 317-25)

Specification 1 charges Respondent with neglecting to comply with an order to conduct an interior patrol of a particular NYCHA building. Section 203-03 (2) of the Patrol Guide requires police officers to "obey lawful orders and instructions of supervising officers."

It is undisputed that Respondent and his partner, Officer Skipper, failed to conduct an interior patrol of the building, despite being told multiple times by supervisors to do so. At roll call, Sergeant Nessa specifically instructed them do the interior patrol. At 1021 hours, Sergeant Nessa sent Respondent a text message (Dept. Ex. 2) reminding them to do the interior patrol, and Respondent answered, "No problem." While Respondent and his partner were inside the command during meal, Lieutenant Gosta reminded the officers that they needed to do the interior patrol. At 1421 hours, Sergeant Nessa called Officer Skipper, again reminding him that they needed to do the interior patrol before the end of their tour.

Respondent conceded that he and his partner concluded their tour at 1540 hours without having conducted the interior patrol of the building. Respondent testified that they fully intended to comply with the order, but that unfortunately, "circumstances did not allow for it." I credit Respondent's explanation as to why they did not conduct the interior patrol in the morning. Initially, the officers' arrival to their sector was delayed because Officer Skipper needed to drive Lieutenant Gosta to the old Police Academy. It is undisputed that the officers then handled a harassment job. Respondent testified that after completing that job, they did drive to the building with the intention of performing the interior patrol, but that Sergeant Nessa called and told them to wait outside because she was coming to the location to scratch their Activity Logs; while they waited, Respondent and his partner instead performed a directed patrol of the building. Sergeant Nessa did not arrive, as she had to deal with a matter on the FDR Drive, so Respondent and Officer Skipper returned to the command for meal. Although Sergeant Nessa could not recall this specific conversation, she conceded that she may have given that instruction to Respondent, and I credit Respondent's detailed, logical account.

However, I am not persuaded by Respondent's explanation as to why they did not conduct the interior patrol after meal. Respondent and Officer Skipper completed an assault job, and drove to the NYCHA building at approximately 1415 hours, which left them more than ample time to perform the interior patrol. Instead, Respondent chose to spend that time helping Officer Skipper with his digital Activity Log, with which his partner was having difficulty. According to Respondent, by the time he was done helping with the Activity Log, it was time for the officers to return to their command. As such, Respondent failed to comply with the order to conduct the interior patrol.

This decision to forego the interior patrol was a mismanagement of time on Respondent's part. Despite being repeatedly ordered to conduct an interior patrol of a specific, drug-prone location, Respondent chose to disregard those orders, and instead allocated his time to help with a less pressing matter, his partner's Activity Log. The credible evidence has established that Respondent failed to comply with a lawful order, and I find him guilty of Specification 1.

Case No. 2021-23894 (Approval for Extended Tour)

On April 7, 2021, Respondent and his partner, Officer Vallery Alexis, were assigned to guard a hospitalized prisoner. By all accounts, the prisoner was extremely difficult to deal with, as will be described further below. After Respondent and his partner were relieved, they returned to the command. Rather than sign out immediately upon his return, Respondent took time to shower and change his clothes, and, 39 minutes later, signed out in civilian clothes. Before exiting the command, Respondent presented the desk officer, Sergeant Dalmin Vasquez, with an overtime slip that included the extra 39 minutes Respondent had spent inside the command before departing. At issue is whether Respondent's failure to first seek the approval of Sergeant Vasquez for this extended overtime constitutes misconduct.

Lieutenant David DeJesus, who was the Integrity Control Officer on the date of the incident, testified that he observed Respondent and his partner return to the command, in uniform, at approximately 1621 hours. The lieutenant made this observation through camera footage (*see* Dept. Ex. 7, photograph of the officers entering the building), which he was viewing from his office. (Tr. 242-45)

According to Lieutenant DeJesus, the proper procedure for Respondent to have followed upon his return was to check in with the desk officer, sign out for the day, present his overtime

slip to the desk, go upstairs to change, and leave the command. If Respondent was seeking additional overtime for his time inside the stationhouse, he first needed to explain to the desk officer the basis for his request, and obtain approval. Lieutenant DeJesus testified that it was not customary at the command to grant overtime to an officer for the time spent changing out of uniform and showering, though he acknowledged that at certain times there might be a basis for such overtime, such as a situation where an officer had been dealing with a difficult prisoner, or more time was needed to complete paperwork. However, in all such cases, approval must first be obtained; here, Respondent did not seek or obtain such approval. (Tr. 247-56, 258-61)

Sergeant Dalmin Vasquez, the desk officer, testified that at approximately 1700 hours, Respondent, dressed in civilian clothes, handed him an “Unscheduled Overtime Report” (Dept. Ex. 9). On the overtime slip, Respondent indicated that he had worked until 1700 hours. Respondent did not, at any time, seek or receive permission from Sergeant Vasquez to extend his tour. The sergeant observed Respondent exit the stationhouse (*see* Dept. Ex. 8, photograph of Respondent leaving). (Tr. 98-107, 118-20)

Respondent testified that his scheduled tour that day was 0705 to 1540 hours. He described the hospitalized prisoner he was guarding as unruly, the most difficult prisoner he has ever guarded. When the 6'4", 250 lb. prisoner “came off of whatever drugs he was on and woke up,” he demanded to be uncuffed and let go. The prisoner vomited and spilled urine. Things got so bad inside the room that Respondent’s partner, Officer Alexis, had to leave the room to “cool off.” After Officer Alexis stepped out, the prisoner got out of his bed, lifted his gown, and defecated on the floor in front of Respondent. (Tr. 304-06, 325-26; *see also* Tr. 140, 145-46, 152-53, 281-82, testimony of Police Officers Alexis and Soto)

After he was relieved, Respondent returned to the stationhouse at 1621 hours, “upset and distraught” from his interaction with the prisoner. Respondent testified that he wanted to get out of his clothes as quickly as possible. He showered and dressed, and then dropped off his overtime slip with the desk officer, which had a sign-out time of 1700 hours, and signed out for the day. Respondent acknowledged that he did not first obtain approval from the sergeant for the 39 minutes of extended overtime, since he was stressed and embarrassed by his experience at the hospital, and did not want to tell a supervisor that he needed time to clean up because the prisoner had defecated right in front of him. (Tr. 307-09, 327-32)

Specification 1, which had alleged a failure to make Activity Log entries, was dismissed prior to trial.

Specification 2 charges Respondent with failing to sign out of his tour in uniform, while Specification 3 alleges that he did not seek approval from the Desk Sergeant before extending his tour. Lieutenant DeJesus, who was the ICO on the date of the incident, testified in a detailed, professional manner as to Respondent’s obligations upon returning to the stationhouse that day. The lieutenant credibly explained that the correct procedure would be for Respondent to go to the desk officer, present his overtime slip (for the overtime he already had done at the hospital), sign out in uniform with roll call (in order to account for his presence), go upstairs to change, and leave the command. The lieutenant had no issue with the overtime Respondent earned from 1540 to 1621 hours, for the extra time he was at the hospital during his shift. However, if Respondent was intending to extend his overtime for the additional time he spent inside the command before departing, he needed first to seek and obtain approval from the desk sergeant.

As such, the credible evidence has established that Respondent did not obtain approval from the desk sergeant for the extended 39 minutes he spent at the command after returning from

the hospital. It also is undisputed that when Respondent signed out, he no longer was in uniform. On the one hand, it was clear from Respondent's testimony that upon his return to the stationhouse, he still felt rattled by his experience with the prisoner at the hospital. Nevertheless, he was obligated to follow the proper procedures regarding extending his tour and signing out. This he failed to do, and therefore I find Respondent guilty of Specifications 2 and 3.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 8, 2008, has been found guilty of the three charges against him. The Department Advocate recommends a penalty of 30 vacation days: the Advocate seeks an aggravated penalty of 25 days for Respondent's failure to obey an order to do an interior patrol, and an additional five days for the incident in which he signed out in civilian clothes after failing to get approval to extend his overtime. Under the totality of the circumstances presented here, that recommendation is excessive.

The presumptive penalty for failing to comply with a lawful order is 20 penalty days. On the one hand, Respondent was instructed by his supervisors, *four separate times*, that he needed to do an interior patrol of the NYCHA building. Such patrols were being performed daily at that drug-prone location. As an experienced officer with more than 11 years on the job at the time,

Respondent should have realized the need to prioritize that assignment. As such, mitigation is not appropriate here.

However, imposition of an aggravated penalty also is not warranted under these facts. As discussed above, Respondent's failure to do the interior patrol was more due to a mismanagement of time near the end of his tour, rather than a willful decision to avoid doing the work that was assigned to him. There was nothing in the record to suggest that Respondent's behavior that day was part of a pattern where he was shirking responsibility. Rather, this appears to have been an isolated incident; there was no indication that Respondent failed to perform an interior patrol on any other occasion. In the morning portion of his tour, Respondent had to wait for his partner to return from driving the lieutenant, and then the two officers spent time handling a harassment call. After completing that job, they drove to the NYCHA building. As noted above, I credit that Respondent intended to do the interior patrol at that time, but was instead instructed by Sergeant Nessa to wait for her outside so she could come scratch their Activity Logs. The officers then used that time to conduct a directed patrol of the building, with which they also were assigned. After meal, the officers handled another job, then drove back to the NYCHA building. It was there that Respondent misallocated his time, as he spent the remainder of his tour completing paperwork, and teaching Officer Skipper how to use his digital Activity Log. The officers then returned to the command without having performed the interior patrol.

For this failure, there must be appropriate accountability, and the presumptive penalty will fairly and adequately address Respondent's misconduct. The forfeiture of twenty (20) vacation days is a significant penalty for what occurred here, and will serve as a serious deterrent to future misconduct by Respondent, who has no disciplinary history with the Department.

With respect to the second matter, it was undisputed that Respondent signed out in civilian clothes, and that he failed to seek and obtain overtime approval for the additional 39 minutes he spent inside the stationhouse cleaning up after his experience guarding an extremely difficult hospitalized prisoner. As discussed above, Respondent was rattled by that experience. Having had an extensive amount of time to observe and listen to Respondent throughout this trial, I am persuaded that his distress from his interactions with the prisoner was genuine, and he was preoccupied with it upon his return to the command. That distress does not excuse his misconduct here, but it is a relevant factor to consider in determining an appropriate penalty.

The Department Advocate concedes that these were essentially command discipline level offenses. The disciplinary guidelines allow for a penalty of oral admonishment for such misconduct. Under the totality of these circumstances, that penalty is appropriate here.

Accordingly, I recommend that Respondent forfeit twenty (20) vacation days for the 2020 case, and that he be admonished in connection with the second matter.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED



SEP 16 2022
KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER YEVGENIY DEYKO
TAX REGISTRY NO. 946926
DISCIPLINARY CASE NOS. 2020-22594 & 2021-23894

Respondent was appointed to the Department on July 8, 2008. On his three most recent annual performance evaluations, he was rated "Meets Standards" for 2020, and "Exceeds Expectations" for 2018 and 2019. He has been awarded three medals for Excellent Police Duty.

Respondent has no disciplinary history.

For your consideration.

A handwritten signature in blue ink, appearing to read "Jeff S. Adler".

Jeff S. Adler
Assistant Deputy Commissioner Trials