

DECISION

IN THE MATTER OF THE APPEAL OF:

ANTHONY ROMERO, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Anthony Romero, appeals his dismissal from employment with the Denver Sheriff's Department (Agency), on December 22, 2011, for alleged violations of specified Career Service Rules pertaining to an alleged improper relationship with an inmate, as well as Romero's alleged cover-up of that relationship. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on March 2, 2012. The Agency was represented by Jennifer Jacobson, Assistant City Attorney, and Appellant was represented by Michael O'Malley, Esq. Testifying for the Agency were: the Appellant; Deputy 2; Sgt. Deric Wynn; Deputy 1; and Deputy Manager of Safety Ashley Kilroy. The Appellant testified on his own behalf, and presented witness Capt. Silver Gutierrez. Threats of retaliation against certain witnesses were deemed sufficiently credible that this Decision is redacted and the case file shall remain sealed. For reasons which follow, the Agency decision to dismiss Romero from employment is AFFIRMED.

II. ISSUES

The following issues were presented for appeal:

- A. whether the Appellant violated any of the following Career Service Rules: §§ 16-60 A., B., E.3., L., Y., or Z.; and
- B. if the Appellant violated any of the aforementioned Career Service Rules,

whether the Agency's decision to dismiss him conformed to the purposes of discipline under CSR 16-20.¹

III. FINDINGS

Romero was a Denver deputy sheriff for 19 years. He was familiar with the Agency's rules and expected to abide by them, including the prohibition against fraternizing with inmates. [Romero testimony].

On July 13, 2011, Deputy 2 notified the Internal Affairs Bureau (IAB) that Romero was in a relationship with an inmate, Sarah Sanchez. Deputy 2 learned of the relationship from Deputy 1, who also said he had known about it for four or five years.

Romero first met Sanchez when she was booked into custody when she was 18 years old in the year 2000. She was known as a "frequent flyer" to deputies at the county jail. Romero acknowledged spending time with Sanchez, talking to her about her drug addiction. He also spoke with her about the bible, and provided her with a copy of the bible. A close relationship developed between them. He put money into Sanchez' inmate account. Romero sought out Sanchez while she was in custody in 2008 and when she was on work release in 2008 or 2009. He also sought her out during periods when she was out of custody. [Exhibit 8-13; Deputy 1 testimony].

While he was on duty, during the same period as cited above, Romero's encounters with Sanchez included that he: had other deputies bring Sanchez to the infirmary so that he could speak with her; hugged Sanchez intimately by pulling her close and putting his hands around Sanchez' pelvic area; waited for, and talked with Sanchez outside the front entrance of the county jail for 30-45 minutes when Sanchez was on a work release program; and held hands with Sanchez "like lovers" in the jail infirmary. [Deputy 1 testimony; Exhibit 8].

When Sanchez was not in custody, Romero sought her out in the following ways: he wanted Sanchez to live with him so he could get her off drugs; he asked Deputy 1 to help look for Sanchez at homeless shelters in downtown Denver and adjoining areas; he looked for Sanchez at Sloan's Lake Park; Romero asked Deputy 1 and other deputies four or five times to locate Sanchez in the Department of Corrections (DOC) system by using the DOC inmate locator, but did not disclose to them why he sought her location. [Deputy 1 testimony; Exhibit 8-12; Exhibit 8-35, 8-43].

¹ Appellant raised witness tampering as an affirmative defense, but only in his post-hearing written closing statement, and is, therefore, not considered here.

IAB opened an investigation, including interviews with Deputy 1, other deputies, and Sanchez. [Exhibit 8-6, 8-7]. During the investigation, the Agency placed Romero on investigatory leave, beginning July 27, 2011. On December 6, 2011, Romero attended the pre-disciplinary meeting with his union representative, Mr. Ed Bagwell, who read two statements denying fraternization.

On December 22, 2011, the Agency served Romero with a notice of dismissal, effective the same day. Romero filed a timely appeal on January 3, 2012.

IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-10 A.1.a., as the direct appeal of a dismissal. I am required to conduct a *de novo* review, meaning to consider the evidence as though the Agency had not yet decided if Romero violated any Career Service Rules. See Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

B. Burden and Standard of Proof

In a disciplinary case, the Agency retains the burden of persuasion, throughout the hearing, to establish one or more Career Service Rule violations. The standard of proof is preponderant evidence.

C. Credibility

The hub issue, underlying each of the Agency's claims against Romero, was the relative credibility of Deputy 1 and Romero. The following factors were determinative.

1. Lifelong friendship between Romero and Deputy 1. The most important credibility consideration was that Romero could not explain why Deputy 1, his close friend since childhood,² would suddenly lie. This is a particularly acute gap in Romero's case since, if Deputy 1 suddenly lied about his good friend fraternizing with an inmate, he subjected his friend to certain and severe discipline for no apparent reason, and, at the same time, Deputy 1 would have, inexplicably, subjected himself to discipline for failing to report an

² Even at the time of his IAB interview, Romero described his relationship with Deputy 1 as "brothers." [Exhibit 8-37]. Moreover, Romero acknowledged Deputy 1 "would have nothing to gain" by his statements about a relationship between Sanchez and Romero. [Id].

inappropriate relationship for five years. Romero's allegation, that Deputy 1 is a story-teller who gets carried away, does not comport with the consequences just described. Deputy 1 denied fabricating any of his report to IAB; and when Deputy 2 was asked if Deputy 1 had a reputation as a story-teller, Deputy 2 flatly denied it. [Deputy 2 cross-exam].

2. Consistency of Agency witnesses' testimony. When Sanchez was in custody, IAB secretly taped a telephone conversation between her and her sister. There was no indication Sanchez was aware of the monitoring or that she was anything less than candid with her sister. Sanchez' conversation affirmed Deputy 1's allegations of all critical matters, including that: Sanchez stated she had a close relationship with Romero; Romero arranged for her to be brought to the infirmary so he could talk with her; Romero told her he loved her and wanted her to move in with him; Romero put money in her inmate account (citing specific amounts on three occasions); she met Romero outside the county jail when she was on work release; sometime in 2008, she was supposed to meet Romero at Sloan's Lake, but decided not to go; and Romero purchased a cell phone for her to call him. In the same conversation with her sister, Sanchez also recounted, as did Deputy 1, that Romero was "extremely upset" when he found out Sanchez had overdosed. [Exhibit 8-27]. Finally, it is significant that, although Deputy 1 and Sanchez did not talk with each other about Romero's relationship with Sanchez, they independently corroborated the relationship in their IAB interviews.

3. Romero's explanations contained significant contradictions. Romero provided contradictory information about significant matters including:

a. Romero claimed Deputy 1 was "not truthful" and "exaggerates a lot" [Romero cross-exam], but told IAB he considered Deputy 1 to be as close as a brother. [Exhibit 8-37].

b. Romero claimed never to have talked with Sanchez outside of the county jail, and that she called his house to threaten his family; however, call records from prison show Sanchez listed him as a friend; she called numerous times from jail or prison to a number which Romero acknowledged was his cell phone, used exclusively by him; on one occasion, Romero acknowledged he spoke with Sanchez when she called his cell phone from prison on October 11, 2008,³ [Exhibit 8-33], and the call lasted 20 minutes [Exhibit 13-29]. Since inmates may make only collect calls, [Exhibit 13-8, 8-29; Romero testimony], then, in order to accept Romero's explanation that Sanchez called only to ask

³ Romero acknowledged his cell phone number ended with the numbers 5269. The same number appears frequently in Sanchez' calls from prison, although only one was successful - the 20 minute call described here.

for money or threaten his family, we would have to believe Romero accepted a collect call from Sanchez in order to be threatened for 20 minutes. Moreover, Romero did not tell his family about the call despite his alleged concern for their safety. [Exhibit 8-36]. In explaining how Sanchez may have obtained his phone number, Romero offered that one of his children may have given it to her when she called his house. Since Romero had already explained Sanchez called his house to threaten his family, this explanation is as baffling as it is incredible.

c. During his IAB interview, Romero insisted that, when he saw Sanchez returning from work release in the county jail parking lot, he did not speak with her then or any other time. [Exhibit 8-31]. Shortly afterward, he stated he spoke with her in the parking lot briefly, and no other time. [Id.]. Later, he said he spoke with her there twice. [Id.]. He also stated he spoke with Sanchez briefly when she was booked in during February 2011. [Exhibit 8-32]. In the same interview, he said, “we spent a lot of time talking.” [Exhibit 8-38].

d. Romero said he never sought out Sanchez at Sloan’s Lake, but sometimes went there to take a walk even though it is many miles from his home in the Bear Valley community. Also, Deputy 1 told IAB that Romero confided he once found Sanchez there. [Exhibit 8-42].

e. During his August 2, 2011 IAB interview, Romero said Sanchez obtained his cell phone number from his children. Later, in the same interview he said he had no idea how she obtained it. [Exhibit 8-34].

f. Romero claimed Sanchez called his house, and threatened and stalked his family, [Appellant testimony; Exhibit 8-36], yet he did not seek a restraining order, did not file a police report, did not notify his supervisors to block her calls, or take any other action to separate himself from contact with her. Additionally, he sought out Sanchez at least 10 times per month in downtown Denver out of “active curiosity” as to her whereabouts, ostensibly out of concern for his family’s safety. [Exhibit 8-35, 8-36, 8-38].

g. Romero claimed to have no more interest in Sanchez than other inmates he helped. However, he also stated he took an interest in helping her “over other inmates.” [Exhibit 8-38].

h. At hearing, when asked why Deputy 1 would have claimed Romero described Sanchez as his cousin, Romero replied “that’s his own delusion that he came up with.” [Romero testimony]. However, Romero acknowledged to IAB that he told Deputy 1 and Deputy 3 Sanchez was his cousin. [Exhibit 8-31].

4. Romero's dissembling responses.

During his August 2, 2011 interview with IAB, when Romero was asked if he ever referred to Sanchez as his cousin, he replied "there is a term that they or we would use customarily as 'hente' [sic] which could mean cousin." Then he stated he "possibly" told another deputy that Sanchez was his cousin, then stated he told Deputy 3 and Deputy 1 that Sanchez was his cousin, using the English word. [Exhibit 8-31].

Romero denied purchasing a cell phone for Sanchez, but acknowledged she listed him as a phone contact, and admitted the number she listed for him was his, but denied knowing how she could have obtained the number. When asked directly how Sanchez was able to obtain his cell phone number, Romero replied, "well again you're asking about me looking for her. I'm trying to figure out, I'm not very literate, my cell phone number, and home phone." [Exhibit 8-33].

When asked, simply, why he didn't contact authorities if inmates were calling his home, Romero replied

We, as a family, I had gone, you talk about the issues I have gone through as a family: my wife, my kids, we all decided number one, she [Sanchez] ain't getting nothing, she's not getting money, she's not getting nothing, these other people ain't getting money. We changed the number on our home phone, we got rid of the cell phones. The cell phones got trashed, I never turned it back on after that conversation and it got threw away later, and we changed the number and we decided as a family, we were going to go through this when it came up. Guess what: it's here. You know I got a lot of support from my family. We've already gone through this, the accusations, the things that it's gone through, everything. There's not a lot, you know, as a family, that was our decision. That was our decision, period. Now, as the head of the household, I had a lot of curiosity to not only, where her whereabouts were, looking things up. I'm what you would say technically challenged. It was very easy for her [Sanchez] to find the information. My name is in the phone book, my phone number was in the phone book. It took a lot of investigation to come that far to where I can figure out, okay, how did she do this, because I don't know the computer. One day I look in the phone book, there's my name, there's my number, my address, and now that I know that, she, it's been something that I stressed through for a long time on. [Exhibit 8-34].

5. Romero's detailed recollection of his allegedly rare interactions with Sanchez. Romero had extraordinary recollection of minute details regarding his interactions with Sanchez, who he claimed was just another inmate he treated no differently than any other. For example, he recalled: that in the several years Sanchez was in and out of custody, he spoke to her exactly one time, and recalled the names of two deputies who were present at that time; he said hello to her a second time, but didn't speak with her; the details about Sanchez' parole to "North Metro;" [Romero testimony]; Sanchez was on work release for exactly two days, and how she was dressed when leaving for that work release; [Exhibit 8-31]; and the names of Sanchez' mother and father. [Exhibit 8-35]. The consistency of the Agency's witnesses, coupled with Romero's contradictory and dissembling responses, prove Deputy 1 was more credible than Romero, with respect to Romero's relationship with Sanchez.

C. Alleged Career Service Rule Violations

1. CSR 16-60 A. Neglect of duty.

To sustain a violation under CSR 16-60 A., the Agency must establish Romero failed to perform a job duty known to him. In re Compos et al, CSA 56-08, 57-08, 58-08, 59-08, 2 (CSB 6/18/09). The Agency claimed Romero violated this rule when he spoke with Sanchez for 30-45 minutes outside the jail while he was on duty. Romero claimed the encounter never occurred. Since Deputy 1 was more credible than Romero regarding Sanchez, [see *discussion of credibility, above*], then it is more likely than not that Deputy 1 saw Romero speak with Sanchez for 30-45 minutes in the county jail parking lot. [Exhibit 8-11; Deputy 1 testimony].

Romero stated he could have been on a break at the time Deputy 1 saw him. [Appellant testimony]. However, Deputy 1, for reasons stated above, was also more credible in recalling Romero was on duty at the time. Consequently, Romero neglected his work duties during the time he socialized with Sanchez outside the county jail. For the same reasons, he also neglected his work duties when he had Sanchez brought to the infirmary and spent time with her there on several occasions.

2. CSR 16-60 B. Carelessness in performance of duties and responsibilities.

While CSR 16-60 A. and CSR 16-60 B., share similar elements of proof, they are distinguished in that, under 16-60 B., it is the employee's acts (performance), rather than his omissions (neglect), which are reviewed. See In re Simpleman, CSA 31-06, 4-5 (10/20/06). Thus, a violation under this rule occurs for performing poorly, rather than neglecting to perform, an important duty. Kilroy explained Romero violated this rule because he was not performing his duties, and was not vigilant at those times he

made excessive and inappropriate contact with Sanchez in the jail, such as when he was seen holding hands with her, or talking with her at length. [Kilroy testimony]. Even if these allegations are true, Romero's failure to perform his duties while engaged with Sanchez would constitute neglect of duty, rather than a careless performance of it. For that reason, this violation is unproven.

3. CSR 16-60 E. Any act of dishonesty, which may include, but is not limited to... Lying to superiors... with respect to official duties, including work duties, disciplinary actions...

A violation of this rule is established where an employee makes any knowing misrepresentation within the employment context. In re Mounjim, CSA 87-07, 5-6 (CSB 1/08/09). The Agency deemed that Romero violated this rule when he reported to IAB that he never spoke with Sanchez outside the jail, but later acknowledged he did, but only briefly. [Kilroy testimony; Exhibit 3-8]. Deputy 1 and Sanchez independently informed IAB that Sanchez spoke with Romero in the parking lot of the county jail when Sanchez was on work release. Romero alleged Sanchez' testimony cannot be trusted. [See, e.g. Appellant's written closing statement p. 2]. Even if Sanchez' statements could otherwise be considered unreliable based upon her criminal history, her independent description of meeting with, and speaking to, Romero outside of the county jail, when she returned from work release, mirrors, and therefore supports, Deputy 1's statements.

In addition, Romero acknowledged he asked other deputies to issue official requests (kites) to bring Sanchez to the infirmary. While Romero claimed his reason to see Sanchez repeatedly was professional, Deputy 1's observations about Romero's intimacy with Sanchez in the infirmary, and the fact that Romero asked other deputies to sign kites for Sanchez, instead of him, are strong indications of a personal relationship. Romero's denial of his personal relationship with an inmate, during the course of an official investigation, was dishonest in violation of CSR 16-60 E.

4. CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules.

An agency establishes an employee's violation of this rule by showing it provided notice to the employee of a clear, reasonable, and uniformly enforced rule, regulation, or policy, and the employee failed to follow it. In re Mounjim, 87-07, 6 (CSB 1/08/09). The Agency claimed the Appellant was aware of, yet failed to observe the following written department rules.

200.4.2 Commission of a Deceptive Act
In connection with any investigation or any judicial or administrative

proceeding, Deputy Sheriffs... shall not willfully, intentionally, or knowingly commit a materially deceptive act, including, but not limited to departing from the truth verbally, making a false report, or intentionally omitting information.

The same evidence which established a violation of CSR 16-60 E., above, also establishes a violation of this Agency rule.

300.17.1 Fraternization with Prisoner

Deputy sheriffs and employees shall not fraternize with any prisoner in any jurisdiction except in line with authorized duties or as explicitly authorized by the Director of Corrections or designee.

Wynn and Kilroy testified, without rebuttal, that fraternization is not limited to sexual relationships, and includes any personal relationship between a deputy and an inmate. [Wynn testimony; Kilroy testimony]. Such relationships create multiple security issues, for the inmate, the sheriff, and for the department. [Wynn testimony].

Kilroy testified Romero violated this rule by manifesting a personal interest in Sanchez, in particular, spending an inordinate amount of time talking with her and being with her. Romero's placing his own funds into Sanchez' inmate account is also indicative of the kind of personal relationship prohibited by this rule. Romero's denial of having a personal relationship with Sanchez was not credible for reasons stated above.

Moreover, even if Romero's version of his actions were trustworthy, his own words and acknowledgements establish a violation of this rule, including referring to Sanchez as his "cousin" or "people;" stating that he had an "active curiosity" to seek her out 10 times per month in downtown Denver, (no matter what the reason); and engaging in a 20-minute collect call from Sanchez. This violation is, accordingly, established by a preponderance of the evidence.

300.17.3 Reporting of Prohibited Associations

Deputy Sheriffs and employees shall immediately report, in writing to the Internal Affairs Commander, any continuing relationships with prisoners, ex-prisoners, the family of current or ex-prisoners... or any person the employee has reasonable belief to suspect to be engaged in or planning to commit criminal activities.

Romero's close relationship with an inmate, both while in custody and outside of custody, required him to self-report that relationship. His failure to do so was a violation of this Agency rule.

5. CSR 16-60 Y. Conduct which violates the Rules, the City Charter, the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority.

Since the Agency established Romero's violation of other Career Service and Agency rules, no further consideration is due under this catchall rule.

6. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

To sustain this violation, the Agency must prove Romero's conduct caused actual harm to an agency mission, or actual harm to the City's reputation or integrity. *In re Jones*, CSA 88-09, 2 (CSB 9/29/10). Kilroy claimed Romero's fraternizing with Sanchez damaged the Agency's security, but did not specify an actual loss. Kilroy stated Romero's fraternizing placed him in a position to be taken advantage of, inferably by other inmates. These "effects" are theoretical, as the Agency adduced no evidence of them.

However, Kilroy also testified harm occurred in the form of "internal blowups" when Romero solicited others to help him pursue his relationship with Sanchez, and therefore put his friend, Deputy 1, and other deputies, in a position detrimental to the Agency. That averment is established by the destruction of the working relationship between Deputy 2 and Deputy 1, both of whom testified as to the poisonous atmosphere between them following Deputy 2's revelation of Romero's interest in Sanchez. Where Romero confided his fraternization of an inmate to deputy 1, with a deleterious result to the working relationship between deputies 1 and 2, then the good order of the Sheriff's Department was significantly diminished in violation of CSR 16-60 Z.

V. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities must consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

A. Severity of the proven offenses.

Romero's secrecy and misinformation about his relationship with Sanchez caused the department to lose trust in him, and ruined personal as well as professional relationships within the Sheriff's Department. Romero's actions forced his good friend to make the miserable choice between protecting his best friend and jeopardizing his own career. [See, e.g. Exhibit 8-18, bottom

paragraph; 8-21, 2nd full paragraph]. Romero's conduct ultimately forced another deputy, Deputy 2, to decide whether to report misconduct after he learned about Romero's relationship with Sanchez. The working relationship between Deputy 1 and Deputy 2 was significantly damaged when Deputy 2 reported Romero's misconduct. [Exhibit 8-22, 23]. "Deputy 1... approached Deputy 2 calling him a rat... and [Deputy 2] has taken Deputy 1's threats as a serious concern and doesn't feel comfortable working with Deputy 1... Deputy 2 is concerned because he believes that Deputy 1 is crazy and Deputy 1 said 'if [I] lose everything, somebody might go down...' Deputy 2 said Deputy 1 is a hunter and he is concerned about working with him." [Exhibit 8-22, 23]. While the cost of a friendship is beyond the scope of the Career Service Rules and this Decision, the personal and professional damage in this case demonstrate the impact spatter of dishonesty and deception in the workplace.

B. Past record

The Agency acknowledged Romero's work history was very good, including past commendations and past work reviews rated "exceeds." The Agency reported no prior discipline of Romero. Nonetheless, Romero's damage to the Agency outweighs his past record.

C. Penalty most likely to achieve compliance.

Romero continued to deny any wrongdoing throughout the appeal, making it impossible for the Agency to determine if his behavior was correctable. In light of these three factors, the Agency's election to dismiss the Romero was within the range of reasonable alternatives available to it.

VI. ORDER

The Agency's termination of the Appellant's employment on December 22, 2011, is AFFIRMED.

DONE April 17, 2012.



Bruce A. Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this Decision in accordance with the requirements of CSR § 19-60 *et seq.* within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL OR PERSONAL DELIVERY:

Career Service Board
c/o Employee Relations
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY FAX:

(720) 913-5720

Fax transmissions of more than ten pages will not be accepted.

CERTIFICATE OF DELIVERY

I certify that, on April 17, 2012, I delivered a correct copy of this DECISION to the following:

| | |
|--|------------------|
| Mr. Anthony Romero, 3679 Newland St., Denver, CO 80235 | (via U.S. mail); |
| Michael O'Malley, Esq., Michaelomalleylaw@hotmail.com | (via email); |
| Russ Harris, Esq., edwardrussellharris@yahoo.com | (via email); |
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