

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.) Docket # 1778
)
Esteban Garcia)
Correctional Officer)

DECISION

THIS MATTER COMING ON to be heard before Merit Board Member John J. Dalicandro pursuant to notice, the Cook County Sheriff's Merit Board finds as follows

Jurisdiction: The Respondent, Esteban Garcia, hereinafter "Respondent". Respondent's position as a Correctional Officer involves duties and responsibilities to the public; and Each member of the Cook County Sheriff's Merit Board, hereinafter "Board," has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and The Respondent was personally served with a copy of the Complaint and Notice of Hearing and did not appear before the Board to contest the charges contained in the complaint; and The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

By complaint dated August 28, 2014, Sheriff Thomas J. Dart, sought the termination of Correctional Officer Esteban Garcia. The complaint states that on March 10, 2003, the Respondent was assigned a Correctional Officer. That on August 25, 2013, the Respondent was assigned to the External Operations/Transportation Unit of the Cook County Department of Corrections ("CCDOC"), located at 2834 West 31st Street, Chicago, Illinois 60608. That on or about December 5, 2013, Respondent deprived Correctional Officer ("C/O") [REDACTED] of his personal property, specifically, C/O [REDACTED] [REDACTED]' cellular telephone. That on December 5, 2013, Respondent failed to report that he recovered C/O [REDACTED] [REDACTED] cellular telephone in the CCDOC complex to his chain of command and/or turn the cellular telephone in as lost/found property. That as of December 5, 2013 until the present time, Respondent's address is [REDACTED] [REDACTED] That on December 5, 2013, the Respondent was assigned to Transportation Bus No. 8394 on the 12:00-20:00 hour shift. Respondent was on duty on December 6, 2013 and December 9, 2013. Respondent's Regular Days Off ("RDOs") were December 7, 2013 and December 8, 2013. That on December 5, 2013, C/O [REDACTED] [REDACTED] was

assigned to the External Operations/Transportation Unit of the CCDOC. That on December 5, 2013, C/O [REDACTED] [REDACTED] locked his service weapon and cellular telephone in a lockbox at post 10. C/O [REDACTED] [REDACTED] retrieved his service weapon from the lockbox at post 10 but forgot to retrieve his cellular telephone. Upon C/O [REDACTED] [REDACTED] returning to retrieve his cellular telephone from the lockbox at post 10, C/O [REDACTED] [REDACTED] realized that the lockbox where he left his cellular telephone was locked and he was unable to retrieve his cellular telephone. That on December 5, 2013 at approximately 22:07 hours, C/O [REDACTED] [REDACTED] utilized an internet program on his home computer which uses Global Positioning System ("GPS") capabilities and pinpointed the exact, current location of his cellular telephone. The internet program showed the current location of C/O [REDACTED] [REDACTED] cellular telephone to be [REDACTED] in Chicago. That on December 6, 2013, C/O [REDACTED] [REDACTED] reported to the Chicago Police Department ("CPD") that his cellular telephone had been stolen at work and CPD Officer [REDACTED] filed an Incident Report reporting the same. That on December 6, 2013 at approximately 20:03 hours and again at 20:05 hours, C/O [REDACTED] [REDACTED] utilized the internet program which uses GPS capabilities and pinpointed the exact location of his cellular telephone. The internet program showed the current location of C/O [REDACTED] [REDACTED] cellular telephone to be [REDACTED] Chicago, Illinois, which is Respondent's residence.

That on December 7, 2013, C/O [REDACTED] [REDACTED] drove to the [REDACTED] Chicago, Illinois address and recognized Respondent as a co-worker from the CCDOC. C/O [REDACTED] [REDACTED] observed Respondent park his vehicle in front of that address and walk toward the address.

That on December 7, 2013, C/O [REDACTED] [REDACTED] approached Respondent outside of his residence at [REDACTED] Chicago, Illinois and asked Respondent if he had C/O [REDACTED] [REDACTED] cellular telephone. Respondent denied having C/O [REDACTED] [REDACTED] cellular telephone. That on April 1, 2014, Respondent was interviewed and provided a signed statement to investigators from the Cook County Sheriff's Office of Professional Review ("OPR") and Respondent stated that he found a cell phone on the ground by Post 10. Respondent also stated that he examined the phone and noticed it was locked but had a Sprint Cellular address on it. That on April 1, 2014, Respondent stated to investigators from the OPR that he took the phone home with him in order to contact the Sprint Company about it.

That on April 1, 2014, Respondent stated to investigators from the OPR that he contacted Sprint by phone on December 6, 2013 and was advised to mail the phone back to them. Respondent stated that C/O [REDACTED] [REDACTED] came over to his residence on Saturday (December 7, 2013) and accused him of having C/O [REDACTED] [REDACTED] cellular telephone in his possession. Respondent stated that he told C/O [REDACTED] [REDACTED] that he did not have the cell phone but had mailed it back to Sprint because he did not know who the phone belonged to.

That on April 1, 2014, Respondent stated to investigators from OPR that he spoke to Lieutenant [REDACTED] on Monday December 9, 2013 at work about finding the cellular telephone and about his encounter with C/O [REDACTED] [REDACTED] at his residence on Saturday December 7, 2013. Respondent also stated that he was instructed by Lieutenant [REDACTED] to submit a memorandum to him about the incident and Respondent submitted the memorandum on December 9, 2013.

That on April 1, 2014, Respondent falsely reported to investigators from the OPR that he never denied finding or having C/O [REDACTED] [REDACTED] cellular telephone when asked about it by Lieutenant [REDACTED]

That on April 1, 2014, Respondent falsely reported to investigators from the OPR that he never lied about the cell phone's whereabouts when asked about it by Lieutenant [REDACTED]

That on March 11, 2014, investigators from OPR interviewed Lieutenant [REDACTED] [REDACTED] in regards to C/O [REDACTED] [REDACTED] complaint against Respondent for taking his cellular telephone from a lock box at work. Lt. [REDACTED] stated to investigators from the OPR that he asked Respondent about the cellular telephone and Respondent stated that he knew nothing about it and denied finding any phone on the CCDOC complex. Lieutenant [REDACTED] [REDACTED] stated that he directed Respondent to submit a memorandum to him delineating that he had no knowledge of the missing cell phone.

That on March 11, 2014, Lieutenant [REDACTED] [REDACTED] stated to investigators from the OPR that he later received a memorandum from Respondent in which Respondent stated he found a cell phone on the ground near Post 10.

That by his actions, Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff's Court Services Department, specifically:

SHERIFF'S ORDER 11.2.20.0 (effective date: January 25, 2013)

RULES OF CONDUCT, in its entirety, including but not limited to, the following subparts:

II. POLICY

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

VI. RULES AND REGULATIONS FOR ALL SWORN AND CIVILIAN CCSO EMPLOYEES

A. Compliance with Laws, Ordinances, and Regulations

1. Employees shall uphold the Constitution of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the employee is present, and comply with court decisions and orders of courts having jurisdiction.
2. Employees shall comply with lawful rules, Sheriff's Office written directives, verbal orders, SEAM articles, and political prohibitions issues by the proper authorities.

B. Conduct on and off duty. CCSO employees shall:

1. Maintain a professional demeanor while on duty and will not engage in off-duty behavior that would reflect negatively on the CCSO.
2. Conduct themselves on and off-duty in such a manner to reflect favorably on the CCSO. Employees, whether on or off-duty, will not engage in conduct which discredits the integrity of the CCSO, its employees, the employee him/herself, or which impairs the operations of the CCSO. Such actions shall constitute conduct unbecoming of an officer or employee of the CCSO.

D. Prohibited associations, establishments, and activities

22. Disrespect property rights or engage in the unauthorized use, theft, misuse or waste of property belonging to the CCSO, a subject, an employee, a visitor or the public.

25. Fail to cooperate or fail to be truthful with external and/or internal agencies in an investigation of a criminal or civil matter.

H. Reporting violations.

2. It shall be the responsibility of every employee to immediately report to OPR and his/her immediate supervisor (or a supervisor of his/her choice within his/her Chain of Command) verbally and in writing, any fact or situation which may give rise to or be construed as corrupt, illegal, or unethical behavior, and/or a possible conflict of interest.

4. Employees are prohibited from making a false report, written or oral.

I. Cooperation within the CCSO and with other agencies.

CCSO employees shall:

1. Truthfully answer all questions, provide proper materials, and provide truthful and relevant statements when the employee is involved in an investigation, either as the subject or not, as long as the employee's rights are preserved.

Furthermore, the Respondent's actions violated the Rules and Regulations of the County Sheriff's Merit Board, specifically:

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND

REGULATIONS, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer of the Cook County Sheriff's Department, nor any Correctional Officer of the Cook County Department of Corrections, nor any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

1. violate any law or statute of any state or of the United States;

2. violate any ordinance of a county or municipal government;

3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Office.

Issues Presented: Whether the actions of the Respondent violated any of the General Orders and Rules and Regulations set forth above and what if any discipline is appropriate if a violation occurred.

Findings of Fact: Evidentiary hearing on this matter was held on March 19, 2015 and April 9, 2015. Present were Assistant State's Attorney [REDACTED] on behalf of the Sheriff and [REDACTED], Assistant General Counsel for the Sheriff of Cook County [REDACTED] appeared on behalf of Respondent Esteban Garcia who was also present.

Four witnesses testified for the Sheriff, [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]

Two witnesses testified for the Respondent [REDACTED], [REDACTED] the respondent Esteban Garcia also testified.

DIRECT EXAMINATION

Witness [REDACTED] testified at the relevant times. [REDACTED] is currently assigned to the Transportation Unit at 23rd and Rockwell. On December 5, 2013 he was assigned to the Transportation Unit. Post 10 is where Correctional Officers place their belongings and any type of weapons or cell phone. Officer [REDACTED] stored his iPhone 5 and weapon in a lockbox. After securing the detainees down in RCDC, he returned to his vehicle and headed towards Post 10 to retrieve his belongings and leave the compound. He opened the lock box, grabbed his weapon, and left the facility. He left post 10 and went to Division 11 to have lunch with his partner. At this point he realized that his phone was missing. He called the post from his partner's cell phone to see if anyone turned in his phone. No one had returned a cell phone. He decided to go back to Post 10 and look for the phone. The lock box he had used was already in use by someone else. [REDACTED] went home and signed into his iCloud account, to track his phone. Around 10 pm, he gets a message that phone was found and the address of where it was found [REDACTED]. He then sent a text message to the phone to please contact him at his wife's number. No one ever contacted her with information about the phone.

A day went by and no contact at which time he decided to file a police report at the 10th District, Chicago Police Department. (Sheriff's Exhibit No. 1.)

Also on December 6th he decided to drive to the location with a friend to the address that his iCloud was giving him. After a few minutes he noticed a coworker driving a truck towards him. It was Officer Garcia; he slowed down by the house, and then Garcia took off. He waited about ten minutes when Garcia comes back this time Officer [REDACTED] drives down the street after him and gets out of the vehicle asking Garcia if he found his cell phone. Garcia tells him he doesn't have his phone. [REDACTED] tells Garcia that his address came up as the location for his phone. [REDACTED] keeps telling Garcia that if he would just give him his phone back this would be over. Garcia continues to deny that he has the phone.

Officer [REDACTED] testified that on December 9, he went to work, he had his emails from iCloud (Sheriff's Exhibit No. 2) with him and he asked to speak to Lieutenant [REDACTED]. He explained to Lt. [REDACTED] about the incident with Officer Garcia. Lt. [REDACTED] instructed him to file a report with OPR. (Sheriff's Exhibit No. 3)

Officer [REDACTED] testified that he spoke with Sergeant [REDACTED] when he returned from his OPR visit. Sergeant [REDACTED] told [REDACTED] that he told Officer Garcia to give him the phone back because [REDACTED] went to OPR and he could lose his job. At that point Lt. [REDACTED] joined the conversation and told [REDACTED] that Officer Garcia mailed the phone back to Sprint.

Two Days later Investigator [REDACTED] contacted [REDACTED] and told him that the phone could be at two possible Sprint locations. [REDACTED] wife called and it was at the Western Avenue location.

On December 12th he picked up the phone.

CROSS EXAMINATION

Officer [REDACTED] testified that on December 5, 2013, he was working the 12:00 to 8:00p.m.shift. His job duties are to pick detainees up from court and bring them back to the compound. He placed his belongings in Post 10 between 4:00 and 4:30. There were approximately four officers at Post 10 two inside and two outside. When officers place their personal items in the lockbox, there is an inventory book that they sign off on to reflect that they placed their items in the lockbox. He did not enter anything in the log book. It is procedure that officers are required to put down the items they place in the lockbox in the log book. He did not see the book at the lock box.

█████ testified that between 4:00 and 4:30pm he placed his items cell phone and weapon in the lockbox. It was approximately 15 minutes between the time he placed his items in the lockbox and the time he returned. He retrieved his weapon and walked out of the post. 15 minutes later he realized that his phone is missing while he was having lunch and it was not in his shirt pocket. He called post 10 and asked if anyone had his cell phone. The officer told him he did not see a phone and that no one had turned in a cell phone.

Post 10 is an area that has constant traffic of Officers going in and out of. Post 10 is part of the jail compound. He did not notify a supervisor that his phone was missing and that he couldn't find it. December 5 at about 8:45 p.m., he returned home and went to "Find my iPhone.com" on his iCloud account. At 10:07 p.m., he received the first email giving the location of the phone ██████ Officer ██████ testified that he went to breakfast with friend before he drove to the Newport address to look for his phone. Once he arrived at the address a neighbor came up to him asking him what they were doing there. He informed her that he was a Sheriff's officer.

REDIRECT EXAMINATION

Officer ██████ testified that the inventory book is located at the post. Officers write their name in the book along with the box number that they put their belongings in. On December 5, 2013, when he went through Post 10, he did not complete the log book. The book was not located on or near the lockbox. He did not notify a supervisor that his phone was missing right away because he thought it would show up.

He felt it necessary to notify a supervisor after his confrontation with Officer Garcia.

RECROSS EXAMINATION

Officer ██████ did not notify any supervisor on Friday, Saturday, or Sunday that he made contact with a non-Sheriff's law enforcement outside agency. He also, waited till his first day back to work to notify his immediate supervisor.

DIRECT EXAMINATION

Lieutenant ██████ testified. He is the shift commander for the Transportation Unit of CCDOC. He is responsible for four sergeants and approximately 110 officers.

On December 9, 2013 Correctional Officer ██████ ██████ told him that his cell phone was missing. ██████ told him he thought he left it in the lockbox at Post 10. Since no one found it he located the phone on his computer and he went to Officer Garcia's home. He said he asked Officer Garcia about the phone, and Officer Garcia told him that he did not have his phone.

█████ told him that he was going to then go to OPR and file a formal complaint with them.

Lt. ██████ asked if he could first talk to Garcia. He checked the roster to see who was working on that day with Officer Garcia. The roster showed Officer Garcia, ██████ and ██████ also, reviewed the video from the bus that the officers were assigned to. The video revealed that Officer ██████ and Garcia went inside to retrieve their weapons and personal items. The video also showed that Garcia had a cell phone in his hand when he was back on the bus. He asked both Officers ██████ and Garcia if they had Officer ██████ cell phone and they both told him they did not have it.

After Officer Garcia told him that he had had no knowledge of the cell phone, Officer Garcia was instructed to complete a memorandum, To/From, stating that he had no knowledge of Officer ██████ phone.

(Sheriff's Exhibit No. 4) On December 9, 2013, Lieutenant [REDACTED] received a memorandum from Officer Garcia, "Found lost cell phone." In summary the memo stated Garcia found a cell phone near post 10 and he was returning it to Sprint.

Lieutenant [REDACTED] testified that any time anything is found on the compound, officers should note the area upon which it was found and notify a supervisor. Finding a cell phone on the property of the jail or around the complex is considered to be contraband if it's not yours, something's going on with the cell phone, and needs to be reported

CROSS EXAMINATION

Lieutenant [REDACTED] testified that he has not had work related problems with Officer Garcia. He stated he is "a great officer, takes care of business". In review of his statement to OPR Lt. [REDACTED] did tell Officer Garcia to submit a memorandum to him delineating that he had no knowledge of the missing cell phone. Officer Garcia submitted a memorandum that was totally different from what he told Lt. [REDACTED]

In review of the video from the bus Lt. [REDACTED] saw Officer Garcia with a phone in his hand talking to the other officers. It is not clear to him in the video if Officer Garcia was asking those other officers about the phone.

Officers assigned to the transportation are permitted to carry cell phones when they're off the compound. They are allowed to have their own cell phones on the bus.

It is policy that officers are required to fill out the logbook when they place items in the lockbox.

DIRECT EXAMINATION

[REDACTED] testified. He is a Sergeant currently assigned to the Transportation Unit at the Cook County Sheriff's Department. On December 9, 2013 he was working and both Officers Garcia and [REDACTED] were working under his supervision. Lt. [REDACTED] informed him that there was an incident of a lost phone and Officer [REDACTED] was claiming that it was taken by Officer Garcia. Sgt. [REDACTED] asked Officer Garcia if he knew anything about the phone. Garcia told him that he mailed the phone back to Sprint. Officer Garcia also told him that Officer [REDACTED] came to his residence. He informed Officer Garcia that if he found some contraband or found a cell phone, he should have notified a supervisor.

(Sheriff's Exhibit No. 5) Assignment sheet of officers who were assigned to various duties for the day, December 5, 2013, for the 12:00 to 8:00 shift. Officer [REDACTED] was assigned to 3359 Juvenile Detention. Officer Garcia was assigned to 3358.

CROSS EXAMINATION

Sergeant [REDACTED] testified that OPR never discussed with him about a videotape taken from inside the bus. The log book at Post 10 logs in officers who secure their weapons and other material placed in the lockboxes at Post 10. It tracks the number of the key tag that they take out of a lockbox. Officers are supposed to complete and sign the log book consistent with Sheriff's policy. Lieutenant [REDACTED] talked to him about a cell phone controversy between [REDACTED] and Garcia on December 9, prior to the shift starting on that day.

Sergeant [REDACTED] did talk to Officer Torres. [REDACTED] told him he felt that Officer Garcia stole his phone and he went his house to get it back.

Sergeant [REDACTED] stated Officer Garcia "He is an excellent officer."

REDIRECT EXAMINATION

Sergeant [REDACTED] testified that, if Officer Garcia found a cell phone on the sidewalk outside of the facility, he still should report it to a supervisor or take it to the nearest post.

DIRECT EXAMINATION

[REDACTED] testified, He is currently employed as an Investigator with Cook County Sheriff's Office, the Office of Professional Review. He was assigned to investigate the case involving Esteban Garcia. He reviewed Officer [REDACTED] complaint, interviewed Officer [REDACTED] interviewed Lieutenant [REDACTED] Sergeant Alonzo [REDACTED] and Officer Garcia.

He interviewed Officer Garcia on April 1st, 2014. (Sheriff's Exhibit No. 6). Investigator [REDACTED] testified that during his interview he asked Officer Garcia if he found a cell phone on December 5th while he was working near Post 10. He told him he found a cell phone there on the ground near Post 10. He noticed the cell phone was locked it was an iPhone with a Sprint address on it, and he said he wasn't familiar with the policies and rules and procedures of finding property on the complex. He did not report it immediately to any supervisor or turn it over to the nearest post like he probably should have done. He instead took the phone home and contacted Sprint, and they advised him to mail the phone in to their lost and found center. Officer Garcia also told him about his encounter with Officer [REDACTED]. He said Officer [REDACTED] came to his residence on Saturday the 7th and wanted his phone returned, and they had a minor verbal altercation. Officer Garcia said that he had mailed the phone back to Sprint, and Officer [REDACTED] did not believe him. Officer Garcia wasn't truthful when speaking to him about his interview about what had happened and also that Officer Garcia wasn't truthful with Lieutenant [REDACTED] when Lieutenant [REDACTED] asked him about the whereabouts of the cell phone.

CROSS-EXAMINATION

[REDACTED] testified he did not interview any of the Officers assigned to post 10 or on the busses that day of the incident specifically, Officer [REDACTED] or [REDACTED] or [REDACTED]. He also did not investigate whether or not there was an inventory or log book pertaining to items placed in the lock boxes at Post 10 on the date of incident.

[REDACTED] testified that he was made aware that Officer [REDACTED] did get his cell phone back.

REDIRECT EXAMINATION

[REDACTED] testified that he did not investigate all of the individuals involved in this case because he was made aware that the cell phone was returned.

DIRECT EXAMINATION

[REDACTED] testified over the telephone. Both Attorneys agreed to have the witness testify via telephone. His current position is a recruit with the Cook County Sheriff's Police. In December 2013, he was with the Department of Corrections, Transportation Unit. On December 5, 2013 he had a conversation in the bathroom with Officer [REDACTED] about his iPhone. In summary the conversation went as follows: He walks in the restroom, I finished using the restroom, I'm washing my hands, he says, "So you're going to save him." I said, "Save who?" He says, "Garcia." I was like, "I can't save anybody, but as a union steward, it's my job to represent him if he needs representation." And then I proceeded to ask him, "So how did

you lose your phone?" He said he didn't lose his phone, his partner lost his phone. He gave his phone to his partner to put in the lock box, and when they went in, so that they could go to drop off whatever inmates they had, and when they came back, his partner got out retrieve the phone again a second time, so when I said, "Well, if you didn't lose your phone, why did you say you lost it? Your partner [REDACTED] lost your phone," so I said, "Well, anyway. [REDACTED] came into the bathroom, too, so I asked [REDACTED] I said, "So you lost the phone. He was like, "Yeah, I did." So I said, "Well, why aren't you telling the sergeant or lieutenant that you lost the phone, instead of him saying he lost his phone, because he gave his phone to you."

CROSS-EXAMINATION

Kevin [REDACTED] testified that he did work in the Transportation Unit and he worked the same shift with Officer Garcia. As the Union steward he is friends with everybody.

REDIRECT EXAMINATION

Officer [REDACTED] stated that he is friends with everybody and his testimony is not tainted by his friendships.

DIRECT EXAMINATION

[REDACTED] testified, he is in the Cook County Sheriff's Department, Transportation Unit. He was working on December 5, 2013 with Officer Esteban Garcia. They were partners. It was his day to drive and Officer Garcia and Officer [REDACTED] were responsible to get the detainees from the courtrooms. While he was fueling up the bus. Officer Garcia told him that he found an iPhone near post 10. Monday December 9, 2015 Lieutenant [REDACTED] asked him, Garcia and [REDACTED] if anyone found a cell phone. The three of them said no.

CROSS-EXAMINATION

Officer [REDACTED] testified that Officer Garcia told him that he found a cell phone near Post 10. Officer Garcia told him he was going to turn it into Sprint. Monday December 9th Lieutenant [REDACTED] spoke to him with Garcia and [REDACTED] present. All 3 of them told Lt. [REDACTED] they did not find a cell phone. Officer Garcia did tell Officer [REDACTED] that Officer [REDACTED] showed up at his house asking if he had his cell phone and that they had "words".

DIRECT EXAMINATION

Esteban Garcia currently working for the Cook County Sheriff's Department Transportation Unit first hired by the Department in 2003. Officer Garcia testified on December 5, 2013 he was working the 12 to 8pm shift. He was leaving Post 10 after picking up all of his belongings from the lock box as he was walking back to the bus. He stepped on a phone in the snow, he thought he had dropped his phone, He then picked it up. Officer Garcia at the time owned an iPhone 5s model. After giving Officer [REDACTED] his belongings he noticed, he had another phone, he then put it in his jacket pocket. As they stopped to refuel the bus Officer Garcia tells Officer [REDACTED] that he found a cell phone and he is going to turn it into Sprint. At 8pm on December 5th he finishes his shift and then proceeds to go pick up his daughter. It was his week end with his Daughter. At no time is he thinking about the cell phone. He was busy taking care of his daughter. On December 6th he takes his daughter to school prior to going into work. December 6th was a busy work day for him he was assigned to equipment; which meant he was in charge of collecting all the radios and handcuffs that are coming in from the previous shift. (Respondent Exhibit 5) Officer Garcia's personal cell phone bill. The call detail section shows that he made a call to Sprint on Friday December 6th at 3pm. He called Sprint to get information on how to return the phone he had found. Sprint instructed him to mail it back to them.

After work he picked up his daughter and stopped at Walgreen's, where he purchased a yellow manila envelope to send the phone back to Sprint. Sometime Friday evening he placed the phone in the envelope and addressed it to Sprint.

Saturday morning around 11am December 7th he dropped it off in the mailbox. Officer Garcia testified that later in the day he was returning in his truck with his daughter when Officer [REDACTED] pulled up to his house. Officer [REDACTED] who was speeding down the street, gets out the car with a "big guy" and asks him if he found a cell phone? Officer Garcia tells him he did find a cell phone and that he mailed it back to Sprint. [REDACTED] tells him "Give me my shit." Officer Garcia then tells him again that he mailed back to Sprint and just put in the mailbox. The incident lasted about 10 minutes. Officer Garcia felt Officer [REDACTED] demeanor was very hostile. It was so loud that several neighbors came outside to see what was going on. He returned to work on Monday December 13, 2015. Prior to roll call that day he was approached by Sergeant [REDACTED] Sergeant [REDACTED] asked him if he found a cell phone, he told him he did find it and mailed it back to Sprint. It was made clear to him that Officers knew something had happened between him and Officer [REDACTED]. After Sergeant [REDACTED] conducted roll call, Lieutenant [REDACTED] speaks with Officers Garcia, [REDACTED] and [REDACTED]. He asked them if anyone found a cell phone. Officer [REDACTED] answered no, Officer [REDACTED] answered no.

Officer Garcia didn't answer yes or no. After Lieutenant [REDACTED] walked away Officer Garcia went after him and asked to talk to him. He proceeded to tell Lieutenant [REDACTED] that he did find a cell phone. He also told him about the altercation with Officer [REDACTED]. Lieutenant [REDACTED] instructed to put it in writing. (Sheriff's Exhibit 4) Lieutenant [REDACTED] told him he was going to fax the memo to OPR and put a copy in his file.

He was interviewed by OPR and at he was represented with an attorney. He was made aware that Officer [REDACTED] did get his phone back.

Officer Garcia testified that he should have turned the phone in as soon as he found it. He admits he used bad judgement. Since the incident he has found cell phones and has turned them into a supervisor.

CROSS-EXAMINATION

Officer Garcia testified that he was not trained regarding lost and found property.

On December 5, 2013 he stated that he was leaving the post and picking his and Officer [REDACTED] belongings from the same lock box at post 10. He picked up two guns, four magazines, and two cell phones. He didn't find an extra cell phone in any other lock boxes inside the post area.

There was snow on the ground on December 5th and as he stepped on something it lit up and he realized it was an iPhone and he saw the Sprint information on the face of the phone. When he first picked up the phone he thought it was his or Officer [REDACTED]. He didn't know it was an extra phone until they were refueling the bus and everyone had their phones. When he first found the phone he didn't think he should have notified a supervisor. Based on where he found the phone he did not think it was on the Jail property, that is why he didn't think it was contraband. Officer Garcia placed the phone in his work jacket pocket on Thursday and made no attempt to contact Sprint.

On Friday December 6th he did not notify anyone at work that he found a cell phone. He did call Sprint and they gave him the addresses to mail the phone back to. Saturday, December 7th, he dropped the phone in the mailbox before 11am. Later in the day he notices Officer [REDACTED] trying to pull up to his car and talk to him. Officer [REDACTED] was upset about the phone and accused him of having it in his residence. He told Officer [REDACTED] that he mailed the phone back to Sprint.

Monday, December 9th, Officer Garcia has a conversation after roll call with Sergeant [REDACTED]. Officer Garcia tells him that he did find a phone and about the incident with Officer [REDACTED]. Sergeant [REDACTED] also told him he should have turned it in to a supervisor.

After roll call Lieutenant [REDACTED] asks Officer Garcia, [REDACTED] and [REDACTED] if they found a cell phone? Officer Garcia stayed silent, the other two officers said no. He went after Lieutenant [REDACTED] and told him that he did find a cell phone, and that he mailed it to Sprint. He also told him about the altercation with Officer [REDACTED].

REDIRECT EXAMINATION

Officer Garcia testified that he did not call the Police when Officer [REDACTED] came to his residence. Previously he had lost a cell phone and it was turned in and Sprint they contacted him and returned it. The phone was in his work jacket pocket and forgot it was there. It wasn't till Friday when he remembered that the phone was still in his pocket.

RECROSS-EXAMINATION

Officer Garcia showed up at roll call on Friday, December 6th, the phone was still in his work jacket pocket

Conclusions of Law: Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Merit Board finds that the Respondent did violate the Cook County Sheriff's Police Department Rules and Regulations Sheriff's Order 11.2.20.0 RULES OF CONDUCT Section II. Policy VI, A 1.2, B 1.2 D. 22, 25 H 2., I 1, 23 Cook County Sheriff's Merit Board Rules and Regulations, Article X., Paragraph B

Order: Officer Garcia by his own testimony knew that he should have turned the phone in and informed his supervisor. Officer Garcia showed lack of candor to the OPR investigator and Lt. [REDACTED] Wherefore, based on the foregoing, it is hereby ordered that the Esteban Garcia be suspended without pay for 90 days, effective August 28, 2014.

[REDACTED]
James P. Nally, Chairman

[REDACTED]
Kim R. Widup, Board Member

[REDACTED]
Vincent T. Winters, Board Member

[REDACTED]
Byron T. Brazier, Board Member

[REDACTED]
Patrick Brady, Board Member

[REDACTED]
Jennifer E. Bae, Board Member

[REDACTED]
Brian J. Riordan, Board Member

[REDACTED]
John J. Dalcandro, Board Member

Dated: June 23, 2015