

Dep't of Correction v. Gairy

OATH Index No. 2043/25 (Dec. 11, 2025), *adopted*, Comm'r Dec. (Feb. 12, 2026), **appended**

Petitioner proved that respondent possessed an unauthorized cell phone inside a facility and provided a false or misleading report about the incident. A penalty of 50 suspension days is recommended with credit for time served.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
ALEXUS GAIRY
Respondent

REPORT AND RECOMMENDATION

SEON JEONG LEE, *Administrative Law Judge*

Petitioner, the Department of Correction (“Department”), brought this employee disciplinary proceeding against respondent, Correction Officer Alexis Gairy, shield number 15016. Civ. Serv. Law § 75 (Lexis 2025). Petitioner alleges that respondent failed to efficiently perform her duties and engaged in conduct unbecoming and of a nature to bring discredit upon the Department by possessing an unauthorized electronic device and providing a false or misleading report about the incident (ALJ Ex. 1).

Trial was held by videoconference on September 9 and 11, 2025. Petitioner relied on the testimony of a captain and three correction officers, and documentary evidence. Respondent testified on her own behalf, offered the testimony of two correction officers, and presented documentary evidence.

For the reasons set forth below, petitioner proved the charges by a preponderance of the credible evidence. I recommend a penalty of 50 suspension days with credit for time served.

ANALYSIS

The charges stem from respondent's alleged possession of her personal cell phone during the start of a Special Search Team ("SST") operation at the North Infirmiry Command facility ("NIC"). Respondent concedes that she inadvertently brought her phone on a bus reserved for transporting members of service ("MOS transport bus"), but denies taking the phone inside NIC. She provided an official report stating as such.

The Department's Directive 4508R-E, entitled Control of and Search for Contraband, provides that cellular phones should be kept out of jails because they are "contraband" that endanger "the safety and security of the facility, its employees, visitors, inmates, and the surrounding community" (Pet. Ex. 9 at 3, 6, 56-59 (Attachment D)). The Department's Operations Orders Numbers 05/15 and 01/05 for "Electronic/Recording Devices" prohibit the introduction of devices such as cellular or digital phones or others used for text messaging into Department facilities (Pet. Ex. 8 at 1-2 (I, II, III); Pet. Ex. 10 at 2-3 (I, II, III)). The Orders require all members of the Department to "secure their non-DOC issued electronic/recording devices in their lockers" (Pet. Ex. 8 at 2 (IV.A); Pet. Ex. 10 at 1, 3 (IV.A)). Those without access to a personal locker must place them "in a facility approved secure area specifically designated for storage of the individual's personal articles (i.e., a closet, coatroom, etc.)" (Pet. Ex. 8 at 2 (IV.B); Pet. Ex. 10 at 3 (IV.B)). The Orders define "facility" as "all inmate housing facilities," and include "all vehicles designated to transport inmates" (Pet. Ex. 8 at 2 (III.B.1, 5); Pet. Ex. 10 at 2 (II.B.i, v)). The Orders also warn staff members that possession of an unauthorized cell phone while on duty could result in disciplinary action (Pet. Ex. 8 at 4 (V.B.1); Pet. Ex. 10 at 5 (V.B.1)).

Respondent is charged with possessing an unauthorized cell phone in violation of Operations Orders 05/15 and 01/05, as well as rules and the Department's regulations relating to the failure to perform duties efficiently and engaging in conduct unbecoming and of a nature to bring discredit upon the agency (ALJ Ex. 1, Spec. 1). *See* Department's Rules and Regulations §§ 2.30.010, 3.05.010, 3.05.120, 3.20.010, 3.20.030, 3.20.300, 4.35.080. Respondent is also charged with providing a false or misleading report about whether she had her cell phone inside NIC while in T-1 formation awaiting instructions for the special search operation (ALJ Ex. 1, Spec. 2). *See* Department's Rules and Regulations §§ 3.20.010, 3.20.030, 3.20.300, 4.30.020.

Petitioner must prove the charges by a preponderance of the credible evidence. *See Dep't of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *adopted*, Comm'r Dec. (Nov.

2, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008). Preponderance has been defined as “the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.” *Prince, Richardson on Evidence* § 3-206 (Lexis 2008); *see also Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc.*, 39 N.Y.2d 191, 196 (1976).

The resolution of these charges rests in part on a determination of the witnesses' credibility. In assessing credibility, relevant considerations include demeanor, consistency of testimony, supporting evidence, witness motivation, bias or prejudice, and whether the testimony comports with common sense and human experience. *See, e.g., Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *adopted*, Comm'r Dec. (Feb. 17, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998). Petitioner's witnesses endeavored to describe the incident based on their recollections, offered consistent and straightforward testimony, and did not seem to have a bias against respondent or reason to embellish. Their testimony is also supported by their contemporaneous written accounts of the incident. However, respondent's testimony was less credible and appeared calculated to avoid liability.

Possession of Cell Phone on July 24, 2024

Captain Davey Payne has been with the Department since 2014, and part of his duties as a captain is to supervise officers on the SST that conduct tactical search operations (“TSOs”) in the Department's facilities (Tr. 16-17, 198; Pet. Ex. 1). Respondent testified that this is her ninth year with the Department and is presently assigned to the Robert N. Davoren Complex and the SST (Tr. 197).

On July 24, 2024, during the 6:00 a.m. to 2:00 p.m. tour, Captain Payne ordered approximately 25 correction officers, including respondent, who were part of his SST, to report for a TSO at NIC (Pet. Ex. 1; Tr. 53, 70, 198, 200). At 7:19 a.m., using the “Telegram” text messaging application, Captain Payne instructed the officers to gather at 7:40 a.m. (Pet. Ex. 7; Tr. 70). The officers received the Telegram message on their personal cell phones (Tr. 18-19, 31, 67-70, 108-09, 149, 162-63). Captain Payne testified that after receiving the Telegram notification about an operation, SST officers are required to store their personal cell phones in a secure location, such as a car or in their assigned facility locker (Tr. 31-32, 85-86). To prevent SST officers from accidentally bringing their cell phones into a facility, they are further instructed not to bring their phones on the MOS transport bus (Tr. 21-22, 45-46, 74, 85-86). Several SST officers confirmed

they are not allowed to bring personal cell phones on the bus (Missigher: Tr. 98-99, 109-10; Grainger: Tr. 145-46, 157, 160; Boykin: Tr. 162-63, 175-76). At 7:50 a.m., the SST boarded a MOS transport bus for the drive to NIC for the search operation (Tr. 19, 48).

Possession of Cell Phone Inside the MOS Transport Bus

Captain Payne testified that the Department's Operations Orders and rules and regulations do not prohibit cell phones on the MOS transport bus (Tr. 46-48, 83-84). He further testified that the Orders prohibiting such devices in vehicles that transport detainees do not pertain to MOS transport buses (Tr. 74, 83-85, 88). Nevertheless, as noted previously, SST officers are instructed not to bring their phones on the bus, and SST officers are well aware of this order from supervisors (Tr. 74; Pet. Ex. 1).

It was undisputed that respondent possessed her cell phone on the MOS transport bus on July 24, 2024. Both on the day of the incident and at trial, respondent admitted that she had her cell phone on the bus on July 24, 2024 (Tr. 198; Pet. Ex. 6). She recalled receiving a Telegram notification about a "last-minute TSO" at NIC, with a message to board the bus at 7:40 a.m. (Tr. 198, 211; Pet. Ex. 7). She "was rushing to [the] operation" and boarded the bus with her equipment (Tr. 198, 211). Inside the bus, she realized she had forgotten to secure her cell phone in her car or a facility locker (Tr. 198). Respondent testified that before leaving the bus, she put her phone inside the "lockbox above the driver's seat" where such devices are typically stored (*Id.*). She recalled that hers was not the only phone inside the lockbox that day (*Id.*).

Respondent asserted that there was no risk in securing her cell phone inside the bus because detainees are not permitted on this bus, even to clean (Tr. 205). She testified, "I am allowed to have my phone on the bus," because the bus is "not a Departmental facility" (Tr. 205, 211). She stated that not having a phone on the bus was a "preference of [her] supervisor" and "[t]echnically, that's [an] unlawful order because I could bring my phone on the bus just in case there's emergencies" (Tr. 211). She also explained that if NIC had been her assigned facility, she could have locked her phone inside the facility locker before the search because officers are allowed to bring their phones into "certain places in the facility, but can't bring [their] phones behind the gate," where persons in custody are detained (Tr. 198-99). Nevertheless, she stated that she did not intend to "undermine" her supervisor and mistakenly brought her phone on the bus (Tr. 211).

At trial, petitioner argued that respondent committed misconduct by failing to obey a lawful order not to bring a personal cell phone on the bus, in violation of the Department's rules and regulations and policies (Tr. 246). However, in the amended charges and specifications, petitioner did not allege that respondent failed to obey a supervisor's lawful order against bringing a cell phone on the MOS transport bus, nor was she charged with violating section 3.20.070, the pertinent provision of the Department's rules and regulations. *See* Department's Rules and Regulations § 3.20.070 ("Members of the Department shall promptly obey all lawful orders of their supervisors."). Petitioner must plead with sufficient specificity and identify the rules and regulations or policy that was allegedly violated. *See* 48 RCNY § 1-22 (Lexis 2025) ("The petition must include a short and plain statement of the matters to be adjudicated, and, where appropriate, specifically allege the incident, activity or behavior at issue The petition must also identify the law, rule, regulation, . . . or policy that was allegedly violated").

Respondent was not charged with failing to obey a supervisor's lawful order. Petitioner did not request that the charge be amended, and I decline to amend the charge *sua sponte*. *See Dep't of Correction v. Hedges*, OATH Index No. 1962/15 at 12-13 (Aug. 21, 2015), *adopted*, Comm'r Dec. (Mar. 8, 2016) (declining to conform the charge to the evidence where petitioner did not request it and "to do so might prejudice respondent"); *Dep't of Correction v. Jenkins*, OATH Index No. 3070/09 at 13-14 (Dec. 16, 2009) (declining to *sua sponte* amend the charges to comport with the evidence presented as "the failure of notice could lead to prejudice").

Possession of Cell Phone Inside NIC

Captain Payne and his SST arrived at NIC and, following an order from the command post, entered the facility through the side entrance without a magnetometer, also referred to as the "visit[] side of NIC" (Tr. 50-52, 55-56, 148-51). Inside the facility, the SST officers lined up in height order in a "T-1 formation," with female officers standing towards the back of the line (Tr. 20; Pet. Ex. 1). They stood in a small corridor located next to the command post, the central base where the facility's "intake" is located and equipment is housed (Tr. 20, 53-54, 60, 101).

Captain Payne testified that he was informed by SST Officers Stacey Missigher, Eric Cohn, Carolyn Grainger, and Latoya Boykin about hearing a cell phone sound inside NIC (Tr. 21, 33). While the SST waited for instructions from the command post, Captain Payne said several officers approached him to say that they heard "a cell phone going off like a notification" while standing

on the line (Tr. 20). He was told that the sound came from “the vicinity of where [respondent] was standing” (Tr. 57). None of the officers claimed to have seen a phone (Tr. 58). He personally did not see or hear any phone sounds while the SST was in T-1 formation (Tr. 60-61). After he was notified about the cell phone sound and while they were still awaiting instructions, Captain Payne recalled that respondent approached him and said, without stating a reason, that she had to go to the bus (Tr. 20, 74-75, 86). Captain Payne stated that officers sometimes leave the line to return to the bus (Tr. 75, 86). After the search operation had ended, Captain Payne ordered the SST officers to submit official 600AR reports about what they had heard while standing in line inside NIC (Tr. 38, 42, 44; Pet. Ex. 1).

Officer Grainger testified that, while she could not recall the exact date, she remembered this incident (Tr. 142). She was the officer in charge of “security” and stood at the end of the T-1 formation line, and she believed that respondent stood “towards the middle and the back” (Tr. 142, 152-54). She did not recall how many officers were between her and respondent or how far apart they were standing (Tr. 153-54). Officer Grainger recalled seeing respondent leave the line, but she did not know why (Tr. 146). She also testified that, at this time, a fellow SST member, Officer Cohn, told her that “he heard something that may have sounded like a cell phone” (Tr. 143-44). She replied to Officer Cohn, “[W]hat are you telling me for, speak to the captain” (Tr. 144). She “assumed” that he told the captain because he stepped off the line (*Id.*). She did not personally hear a cell phone ring (Tr. 144, 154-55, 158). She also recalled that there were “a lot of unintelligible noise[s]” in the area where they were standing in line, such as “people talking on the line . . . [and] equipment mov[ing] around,” but no one sound “stood out” to her (Tr. 155). Office Grainger submitted a 600AR report stating that she “was informed by CO Cohn #3701 that he heard an unusual tone consistent with a cellular device notification stemming from the immediate vicinity of CO Gairy #16016” (Pet. Ex. 2; Tr. 144).

Officer Cohn, who was unavailable as a witness on the trial dates, reported that respondent had her cell phone inside NIC (Tr. 179, 217). He wrote the following in his 600AR report:

Herein is an ordered report to which was heard during a T one inside of NIC during a TSO.

On Wednesday July 24th 2024, I C/O Cohn 3701 assigned to the Special Search Team during the 0600X1431 hrs[sic] was conducting a TSO in NIC. At an unknown time during a T one this writer heard a cell phone noise and brought it to Capt[.] Payne #472 attention that C/O Gairy had her cellphone.

(Pet. Ex. 4).

Officer Boykin recalled that on July 24, 2024, she was standing in line before respondent but was not directly in front of her (Tr. 164). They were inside the facility in a “narrow” corridor, and, in contrast to Officer Grainger’s recollection, she remembered the area was “quiet” (Tr. 164-65). She believed there might have been about five officers at the “rear” of the line where she stood (Tr. 169, 172). Officer Boykin testified that she heard a “loud” sound, “like a ring” from a cell phone, but she ignored it (Tr. 165, 173). She did not see a cell phone (Tr. 167). She did not know how far she was from respondent when she heard a phone sound, from where the sound originated, or whether the sound came from respondent (Tr. 165, 171-73). In her 600AR report submitted later that day, Officer Boykin wrote, “On Wednesday July 24, 2024[,] I CO Boykin #3609 . . . was standing in a T-1 formation inside NIC visit corridor when I heard a cellular phone notification coming from the rear of the line” (Pet. Ex. 3; Tr. 166).

Officer Missigher testified that, on that day, she was standing towards the back of the T-1 formation line inside NIC, and respondent was standing in front of her (Tr. 100-01, 110-11). She did not recall if other officers were between them, but they were standing “less than five feet” apart (Tr. 111-12). They were standing in line right outside the command post, the “central base” that had its door opened, and, like Officer Grainger, she remembered hearing “phones ringing. . . radios going off,” people talking, walkie talkie radios, and different noises coming from “everywhere” (Tr. 101-02, 112-14). She also recalled that, at one moment, “a sound was made. Gairy grabbed her pocket, and she said that she’s going to the bus,” and walked off the line (Tr. 101). She did not know where respondent went (*Id.*).

Captain Payne testified that, later that morning, during the search operation, Officer Missigher handed him two notes with the following messages: “I heard a ping sound, she touched her right cargo pocket and said oh shit. I said u have your phone, she said shhh. . . and went to the bus. (I think)”); and “She asked me if you said something to me about her. I said NO!!!” (Pet. Ex. 5; Resp. Ex. V; Tr. 20, 22-23, 61-65, 76, 87). Officer Missigher did not write her name on the notes or include any other information besides the messages. She also did not name respondent in her notes. Captain Payne indicated in his 600AR submission that he was attaching “an anonymous note” to the report (Tr. 87-88; Pet. Ex. 1).

Officer Missigher testified credibly that she wrote the two anonymous handwritten notes to Captain Payne during the search operation in the housing area (Tr. 102-03, 105, 117-18). She

did not address the notes to Captain Payne or include her name in the notes because she had written them in the housing area (Tr. 105). She said she wrote them because Captain Payne had asked her if respondent had her phone (Tr. 104-05, 121-22). I found these contemporaneous notes from Officer Missigher describing her interaction with respondent, together with her credible testimony about them, reliable and revealing about what had occurred. *See Dep't of Information Technology and Telecommunications v. Arocho*, OATH Index No. 1146/18 at 7 (Oct. 17, 2018), *adopted*, Comm'r Dec. (Feb. 21, 2019), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2019-0149 (Sept. 18, 2019) (citing *Dep't of Correction v. Boyce*, OATH Index No. 789/97 at 14 (July 9, 1997), *adopted*, Comm'r Dec. (Jan. 15, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 99-75-SA (July 19, 1999) (“Contemporaneousness usually evinces reliability.”); *People v. Brown*, 80 N.Y.2d 729, 733 (1993) (“[A] statement describing an event when or immediately after it occurs is reliable because the contemporaneity of the event observed and the hearsay statement describing it leaves no time for reflection. Thus, the likelihood of deliberate misrepresentation or faulty recollection is eliminated.” (citations omitted)).

Officer Missigher confirmed the brief verbal exchanges with respondent that she had memorialized in her notes (Tr. 132-33; Pet. Ex. 5). She testified consistently with her note that she heard “a ping sound,” after which respondent said, “Oh shit,” and touched her lower right cargo pants pocket (Tr. 103-04, 132; Pet. Ex. 5). She said to respondent, “You have your phone,” and respondent replied, “Shhh” (Tr. 132-33; Pet. Ex. 5). While Officer Missigher recalled that her last interaction with respondent was when respondent touched her cargo pants (Tr. 106), the second note appeared to describe a later interaction in which she wrote, “She asked me if you said something to me about her. I said NO!!!” (Pet. Ex. 5). She testified that this note described her verbal exchange with respondent who asked if Captain Payne had asked about her (Tr. 105).

Officer Missigher submitted a 600AR report later that day which did not include any of the details contained in her earlier anonymous notes or mention respondent (Pet. Ex. 5 at 4). In her report, Officer Missigher wrote: “While in the T-one formation, this writer heard MOS’s [sic] speaking and multiple unknown sounds[] while by the visit area” (Pet. Ex. 5 at 4; Tr. 105-06). She explained that the “multiple unknown sounds” were from “radios, phones, everything,” from various sources by the “visits” area (Tr. 130-31). It appeared that Officer Missigher wrote a deliberately vague report after the search operation in order to avoid incriminating a fellow officer.

However, this official report does not diminish the reliability of the statements in the anonymous notes that Officer Missigher affirmed were true at trial.

Besides Officers Grainger, Cohn, Boykin, and Missigher, the remaining twenty-one SST officers denied in their 600AR reports of hearing a cell phone or any notable sound while waiting inside NIC (Resp. Exs. A-U). SST member Officer Mei Ting Gong testified that she stood approximately five or six feet away from respondent with one or two officers in between them, and she neither heard a cell phone nor saw respondent with a phone (Tr. 181-84). Another SST member, Officer Joe Stanislaus, who stood approximately six or seven feet ahead of respondent, testified that he did not hear anything “unusual,” including a cell phone sound, inside NIC (Tr. 188, 190-91, 193-94). Although most of the SST officers denied hearing a cell phone sound, their individual experiences neither negate nor undermine the different experiences of the officers who credibly testified about hearing a cell phone sound inside NIC coming either from respondent’s person or from respondent’s direction.

Respondent denied possessing her cell phone inside NIC. Respondent testified that she secured her cell phone on the MOS transport bus before entering the facility (Tr. 198-99). She pointed out that Captain Payne followed an “improper” order from the command post to enter through the “back exit” which is against their “directive” that requires officers to enter through the magnetometer via the front entrance (Tr. 199-200). This testimony appeared to be an attempt to shift the blame on the Department for not leading the SST through a magnetometer, which could have detected a cell phone on an officer’s person and prevented entry into the facility.

Respondent further testified that as she waited in the “visit” area, she realized that she had forgotten her special search equipment on the bus, specifically, her grabber, magnet, and mirror (Tr. 202). She explained that SST officers are responsible for and carry “a lot of equipment,” including gas masks, mechanical handcuffs, chemical sprays, radios, and cameras (Tr. 213-14). She added that officers forget search equipment on the bus “all the time,” and they “are allotted time to go get what [they] need” (Tr. 203, 215). She said that she told Captain Payne she was returning to the bus to get equipment, and he replied, “[O]kay, go ahead Gairy” (Tr. 202-03). It took her “a minute” to get the equipment from the bus, and she returned to her position in line (Tr. 203).

After the SST completed the search operation and exited the facility, Captain Payne asked the team if anyone had their phone during the housing area search (Tr. 75-76, 142-43, 167, 177,

181, 185, 204). As he waited for someone to come forward, he stated that he would bring canine dogs to “sniff out” the phone (Tr. 78, 189, 194-95). Captain Payne did not recall telling the officers that they would not get into trouble if they stepped forward (Tr. 77-78).

In contrast, respondent testified that she recalled Captain Payne saying, “This is your amnesty period” (Tr. 204-05). According to respondent, an “amnesty period” is “like a grace period” in which someone possessing contraband will not “get in trouble” for disclosing the contraband (Tr. 205). Respondent testified that when no one stepped forward for two minutes, she “took it upon [herself]” and addressed Captain Payne, stating, “Sir, I do not have my phone on my person nor during the search, but my phone is on the bus” (Tr. 204). Captain Payne confirmed that respondent volunteered that she had her cell phone on the bus (Tr. 78-79). They boarded the bus together and respondent retrieved her phone from a “lockbox” in the overhead area above the driver's seat (Tr. 79, 204). Captain Payne believed respondent had a “black cell phone” (Tr. 21).

Captain Payne explained that a cell phone found in a facility would be confiscated and relinquished to the appropriate unit, but he did not take respondent's cell phone that was recovered from the bus (Tr. 19, 79-80). Following this incident, Captain Payne took “appropriate steps,” using the “proper channels,” to obtain documentation for a “thorough investigation” to determine disciplinary actions if necessary (Tr. 38-40, 44, 81, 87-88). Captain Payne submitted his own 600AR report for this incident (Tr. 32-33). He summarized the incident in his report as follows: “At approximately 0800 [hours] while standing in the command post Officer Gairy had her personal cellphone device in her pocke[]t while in a T-1 formation. Several SST members came to this writer to notify me that they heard phone notifications going off” (Pet. Ex. 1). Based on his investigation, Captain Payne determined that respondent had violated the Department's Directive and Operations Orders prohibiting unauthorized cell phones in a facility (Tr. 38, 41, 44).

Petitioner established by a preponderance of the credible evidence that respondent possessed her cell phone inside NIC. Officers Missigher, Grainger, Boykin, and Captain Payne offered credible testimony about their individual recollections of the incident, which were supported by their contemporaneous notes and reports. Furthermore, I credited Officer Cohn's 600AR report, which is mostly consistent with Officer Grainger's testimony, about his statement to her that he heard a cell phone sound while in T-1 formation. In sum, the credible evidence established that three officers heard a cell phone sound near where respondent stood in line in T-1 formation, and two officers stated that the sound came from respondent. Furthermore, it is

undisputed that respondent left the line to return to the bus. After the search operation was completed, respondent's cell phone was found stored inside the bus. The most plausible explanation for this sequence of events is that respondent had possessed her cell phone when entering the facility, and upon realizing that she had her phone with her, she quickly left the facility to store it on the bus.

I found respondent's testimony about the incident self-serving. I did not credit her testimony that she had stored the phone on the bus before entering the facility and later stepped off the T-1 formation line to retrieve search equipment from the bus.

The Operations Orders prohibit unauthorized cell phones in a facility, which includes "all inmate housing facilities" (Pet. Ex. 8 at 2; Pet. Ex. 10 at 2), and are not limited to areas within the facility that are designated as detainee housing. *See Dep't of Correction v. DeMaitre*, OATH Index No. 1907/14 at 14-15 (Sept. 29, 2014), *aff'd*, NYC Civ Serv. Comm'n Case No. 2014-1427 (Feb. 18, 2015) (finding that correction officer violated Operations Order No. 01/05 for having a personal cell phone plugged in to an electrical outlet in the officers' lounge in the AMKC visit area, which was restricted to uniformed officers assigned to the area but detainees could enter it to clean). Petitioner established that respondent brought her cell phone into NIC in violation of the Department's Operation Orders and rules and regulations, and this charge is sustained.

Respondent Provided a False or Misleading Report

Captain Payne ordered reports from all the SST officers (Tr. 38). Respondent testified that Captain Payne told her to write a report explaining why she had her phone on the bus (Tr. 204). Later that day, respondent submitted her 600AR report with the following statement:

On Wednesday July 24,[]2024[,] I, CO Gairy #15016 was assigned to the special search team operation at NIC on the 0600x1431 tour. Captain Payne #472 notified the special search team to be on the bus at 0740 via Telegram. While on the bus[,] I . . . realized I forgot my mobile device on my person. I . . . immediately secured my mobile device on the bus before entering NIC building. The special search team supervisors utilized the mobile device app telegram to communicate all special search team official business and when we are departing base for an operation, training, scheduling &[]etc. I . . . normally secure my phone in my car after receiving said notifications. This writer was in a hurry to retrieve all my special search equipment and to get on the bus in a timely fashion and forgot to secure my mobile device in my vehicle. Moving forward I will

be more mindful to secure my device before entering the bus. Your consideration in this matter is greatly appreciated.

(Pet. Ex. 6; Tr. 206-07).

The Department's rules prohibit members of service from making "any false entries or notations or render[ing] any false reports concerning the business of the Department." See Department's Rules and Regulations § 4.30.020. To prove a false statement charge, "petitioner must first establish the facts of the underlying incident which is the basis for the report. Second, petitioner must establish that respondent made material deviations from the actual incident or intentionally misrepresented the events in question." *Dep't of Correction v. Ward*, OATH Index No. 2137/18 at 4 (Dec. 31, 2018) (citing *Dep't of Correction v. Pelle*, OATH Index No. 1410/07 at 6 (May 22, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-11-SA (Feb. 20, 2008)). Imprecise language should not be found to be false or misleading if there was no intent to conceal or deceive. *Dep't of Correction v. Dominguez*, OATH Index Nos. 615/19, 731/19, & 770/19 at 16 (May 21, 2019), *adopted*, Comm'r Dec. (Aug. 6, 2019), *aff'd*, NYC Civ. Serv. Comm'n Case Nos. 2019-0824, 2019-0825 (Feb. 5, 2020); see *Dep't of Correction v. Galarza*, OATH Index Nos. 348/90 & 433/90 at 23 (June 11, 1990), *adopted*, Comm'r Dec. (July 27, 1990) (finding that statement is not misconduct unless it is due to "some fault, not mere inadvertence or poor drafting").

As discussed above, the credible evidence established that respondent had brought her cell phone inside NIC for a brief period before exiting to secure the phone inside the bus. Respondent's report materially deviated from the facts of the incident and mirrored respondent's implausible explanation put forth at trial. Her report falsely stated that she secured her cell phone in the bus before entering the facility and omitted any reference to having it with her inside the facility.

The credible evidence established that respondent intentionally made a materially false or misleading statement in her official report, which was calculated to avoid liability and conceal that she had violated the Department's rules and regulations. This charge is sustained.

FINDINGS AND CONCLUSIONS

1. Petitioner established that respondent brought an unauthorized cell phone into NIC, in violation of the Department's Operations Orders and rules and regulations.

2. Petitioner established that respondent submitted a false or misleading report that failed to state that she had her cell phone inside NIC, in violation of the Department's rules and regulations.

RECOMMENDATION

Upon making these findings, I obtained and reviewed respondent's personnel history (ALJ Ex. 2). Respondent has been employed with the Department since June 2017 (*Id.* at 1). She has one prior discipline from 2021 that was settled for 20 suspension days, for inefficient performance of duty involving three discrete acts of misconduct: failing to conduct routine tours as required, being off post, and making false logbook entries (*Id.* at 1, 3, 5). In addition, for the present case, respondent was summarily suspended for ten days in August 2024 (*Id.* at 7).

For the proven misconduct, petitioner seeks a penalty of 15 suspension days for having an unauthorized cell phone in a facility and termination for submitting a false statement in her official report (Tr. 246-47). This is excessive.

This tribunal "has consistently applied the principle of progressive discipline which aims to achieve employee behavior modification through increasing penalties for repeated or similar misconduct." *Dep't of Correction v. Ash*, OATH Index No. 397/21 at 23 (Apr. 12, 2021), *modified on penalty*, Comm'r Dec. (Apr. 27, 2021), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2021-0229 (Dec. 3, 2021).

Possessing an unauthorized cell phone inside a facility presents a legitimate security risk. This tribunal has imposed penalties ranging from eight to 15 days in similar misconduct cases. In *Dep't of Correction v. Pierre-Clark*, an 18-year veteran officer was suspended for eight days for having a cell phone at her post, allowing a detainee to access and use her phone, and making 16 personal calls while on duty. OATH Index No. 2259/04 at 9-10 (Mar. 29, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-116-SA (Nov. 8, 2006). In *Dep't of Correction v. Finch*, a 12-day suspension was deemed appropriate for a correction officer found in violation of being off post with an unauthorized cell phone, being disrespectful to a superior officer, and failing to submit a report. NYC Civ. Serv. Comm'n Item No. CD 08-19-M at 20 (Mar. 19, 2008), *modifying on appeal*, Comm'r Dec. (May 24, 2007), *modifying on penalty*, OATH Index No. 652/07 (Nov. 28, 2006). In *Dep't of Correction v. Blount*, a correction officer who possessed a Nook Reader with Wi-Fi capability in a facility received a penalty of 15 suspension days as a first offense.

OATH Index No. 142/12 (Feb. 6, 2012), *modified on penalty*, Comm'r Dec. (Mar. 22, 2012), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 12-35-SA (July 24, 2012).

There is significant mitigation for respondent's misconduct for possessing an unauthorized cell phone. The SST officers rely on their personal cell phones to receive instructions from the captain before gathering for the operation. Here, respondent received a Telegram notification on her phone 21 minutes before the reporting time for the TSO (Pet. Ex. 7), which is not much time to get ready for an assignment. Respondent testified credibly that she was in a rush to get to the meeting location in time and forgot that she was carrying her phone (Tr. 198, 211). Furthermore, while respondent was negligent in entering a facility with an unauthorized cell phone, she eliminated any potential risk by quickly leaving the facility and securing her phone on the bus before the start of the search operation. Balancing these mitigating factors with the aggravating factor of a prior discipline for inefficient performance of duty, I find that a ten-day suspension is appropriate for this violation.

The more serious and consequential misconduct here is respondent's false statement in her 600AR official report. The penalty for making false or misleading statements in an official report generally ranges from 20 to 30 days' suspension for a first offense. *See generally Dep't of Correction v. Russell*, OATH Index No. 880/25 at 20 (Dec. 19, 2024), *adopted*, Comm'r Dec. (Feb. 11, 2025), *modified on penalty*, NYC Civ. Serv. Comm'n Case No. 2025-0121 (May 21, 2025) (upholding a 30-day suspension in accordance with Use of Force disciplinary guidelines against a captain for his first false report charge); *Dep't of Correction v. Davis*, OATH 2648/09 & 2649/09 at 15-16 (Feb. 12, 2010) (30-day suspension recommended for officer with no disciplinary history for misrepresentations and omissions in a use of force report and MEO 16 interview and for failing to secure her post); *Dep't of Correction v. Centeno*, OATH Index No. 2031/04 at 7 (Mar. 16, 2005) (20-day suspension for false statement at MEO 16 interview); *Dep't of Correction v. Mangham*, OATH Index No. 257/93 at 9 (Jan. 14, 1993) (imposing a 20-day suspension for officer who was found to be insubordinate and submitted a false report omitting any mention of the insubordination). In some instances, a 30-day suspension could also be appropriate for a second false reporting violation. *See Dep't of Correction v. Spencer*, OATH Index No. 1387/97 at 15-16 (Oct. 20, 1997), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 99-62-A (May 12, 1999) (imposing a 30-day suspension for an officer with a prior disciplinary charge for false reporting

who was found to have submitted a false report to his captain during an investigation into a faulty security check).

This proven misconduct for false reporting is respondent's second offense related to making a dishonest statement. In 2021, respondent was found to have made false logbook entries, which is an aggravating factor, and warrants a significant penalty in this case. However, an important consideration under progressive discipline is "whether a penalty short of termination will change the respondent's behavior." *Ward*, OATH 2137/18 at 8 (quoting *Dep't of Housing Preservation and Development v. Ray*, OATH Index Nos. 1460/00 & 2135/00 at 31 (Sept. 14, 2000), *adopted*, Comm'r Dec. (Oct. 27, 2020), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 01-84-SA (Dec. 28, 2001)). The repeat offense involving falsehood suggests a lack of trustworthiness that is troubling. But respondent has served the Department for over eight years and a severe penalty short of termination could deter against future similar misconduct and provide an opportunity for rehabilitation. Moreover, the underlying incident did not cause injury or risk to others and a penalty of termination would be unduly harsh. A 40-day suspension is a significant penalty and would be appropriate for this violation.

In sum, I recommend a total penalty of 50 suspension days, with credit for the ten suspension days already served.

Seon Jeong Lee

Administrative Law Judge

December 11, 2025

SUBMITTED TO:

LYNELLE MAGINLEY-LIDDIE
Commissioner

APPEARANCES:

ERIC YUEN, ESQ.

WINDERLINE P. HERNANDEZ, ESQ.

Attorneys for Petitioner

DAVID KIRSCH, ESQ.

Attorney for Respondent

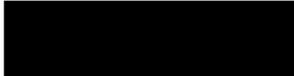


NEW YORK CITY DEPARTMENT OF CORRECTION
Lynelle Maginley-Liddie, Commissioner

Solange Grey, Deputy Commissioner
Trials & Litigation Division
75-20 Astoria Boulevard – Suite 310
East Elmhurst, NY 11370

718-546-0301
Fax 718-278-6526

Alexus Gairy



RE: Final Determination

DR #: 642/2024

Dear C.O. Gairy,

After a complete review of the record and the report and recommendation of the Honorable Seon Jeong Lee, Administrative Law Judge, duly designated to conduct a disciplinary hearing on the charges and specifications listed above, I find you guilty as reflected in the report and recommendation. A copy of the report and recommendation is enclosed.

The sanction imposed upon is:

**50-DAY SUSPENSION, WITH CREDIT FOR 10 SUSPENSION DAYS SERVED
AUGUST 6, 2024-AUGUST 16, 2024, EFFECTIVE FORTHWITH.**

Under the provision of Section 76 of the Civil Service Law, you are entitled to appeal from this determination by application either to the Civil Service Commission or to a court in accordance with the provisions of Article 78 of the Civil Practice Law and Rules. If you elect to appeal to the Commission such appeal must be filed in writing within twenty (20) days of receipt of this determination. A decision of the Commission is final and conclusive.

Sincerely,



Lynelle Maginley-Liddie, Commissioner

Date: 2/12/2026

CC: Office of Administrative Trials and Hearings

Employee's Signature: _____ Date: _____
Print & Sign Name

Witness Signature: _____ Date: _____
Print & Sign Name

**THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION**

**Findings and Recommendations of
Charges and Specifications
AGAINST**

File No.	OATH Index No. 2043/25
Case No.	DR #642/2024
Book No.	Page

<u>Correction Officer</u> Rank or Title	<u>Alexus Gairy</u> Name	<u>15016</u> Shield/ID	<u>RNDC</u> Facility/Unit	<u>6/19/2017</u> Date Appointed
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-By-

<u>Agency Attorney Interne</u> Rank or Title	<u>Winderline P. Hernandez</u> Name	<u>Office of Trials and Litigation</u> Facility/Unit
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<u>5/28/2025</u> Date of Charges	<u>9/9/2025</u> Trial Commenced	<u>9/11/2025</u> Trial Concluded
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ADJOURNMENTS: _____

EXAMINED BY: Hon. Seon Jeong Lee

CHARGES

Directives: 4508R-E
Operations Order: 05/15
Teletype Order: HQ-02589-0
Rules: 2.30.010
3.05.010
3.05.120
3.20.010
3.20.030
3.20.300
4.30.020
4.35.080

Other:

SPECIFICATIONS

- Said officer, on or about July 24, 2024, at approximately 0800 hours, failed to efficiently perform her duties and engaged in conduct unbecoming an employee of the Department and of a nature to bring discredit upon the Department in that said officer possessed an unauthorized electronic device in violation of Departmental rules and regulations.
- Said officer, on or about July 24, 2024, engaged in conduct unbecoming and of a nature to bring discredit upon the Department in that she gave a false and/or misleading report regarding having her cell phone on her person while in the T formation at NIC facility in preparation to participate in a special search operation.

FINDINGS AND RECOMMENDATION

DATE: 12/11/2025

ON CHARGES

Directive 4508R-E: Guilty
Operations Order 05/15: Guilty
Teletype Order HQ-02589-0: Guilty
2.30.010: Guilty
3.05.010: Guilty
3.05.120: Guilty
3.20.010: Guilty
3.20.030: Guilty
3.20.300: Guilty
4.30.020: Guilty
4.35.080: Guilty

ON SPECIFICATIONS

Guilty for possessing an unauthorized cell phone on July 24, 2024 inside the members of service transport bus.

Guilty for possessing an unauthorized cell phone on July 24, 2024 at North Infirmary Command facility.

Guilty for providing a false and/or misleading report regarding securing her cell phone in the bus before entering the facility and omitting any reference to having it with her inside the facility.

**THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION**

**Findings and Recommendations of
Charges and Specifications
AGAINST**

File No. OATH Index No. 2043/25

Case No. DR #642/2024

Book No. Page

Correction Officer
Rank or Title

Alexus Gairy
Name

15016
Shield/ID

RNDC
Facility/Unit

6/19/2017
Date Appointed

-By-

Agency Attorney
Interne
Rank or Title

Winderline P. Hernandez
Name

Office of Trials and Litigation
Facility/Unit

DISPOSITION

**50-day suspension, with credit for the 10
suspension days already served between
August 6, 2024 and August 16, 2024.**

DEPUTY COMMISSIONER

ACTION OF THE COMMISSIONER

DATE

2/12/26

COMMISSIONER OF CORRECTION