

**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**DANIEL TRUJILLO**, Appellant,

vs.

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

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The hearing in this appeal was held on July 14, 2017 before Hearing Officer Valerie McNaughton. Appellant was present and was represented by Don Sisson and Zachary Wagner of Elkus, Sisson & Rosenstein, P.C. Assistant City Attorney Jessica Allen represented the Agency in the appeal. The Agency presented the testimony of Shannon Elwell, and Appellant testified on his own behalf.

I. STATEMENT OF THE APPEAL

Appellant Daniel Trujillo appealed his thirty-day suspension dated Mar. 14, 2017, which was based on allegations that Appellant neglected his duties and failed to protect an inmate from attempting suicide. The parties stipulated to all Agency exhibits, numbered 1 – 23. Appellant withdrew his exhibits, which were duplicates of the Agency exhibits.

II. FINDINGS OF FACT

Appellant has been employed as a Deputy Sheriff in the Denver Sheriff's Department for the past three years, and was assigned to Housing Unit 3D on the date in question. Two deputies were responsible for operating the 48-cell unit, which houses prisoners with severe mental illness and those in protective custody or administrative segregation. The deputies alternated between shifts behind the central duty desk and conducting rounds to observe inmates within their cells. At the duty desk, a deputy is responsible for controlling door locks and monitoring all unit activity via cameras throughout the unit, among other duties. [Appellant, 11:01 am.] Rounds are done every fifteen minutes, and each deputy is assigned to walk rounds twice an hour.

In the afternoon of Nov. 1, 2015, an inmate whose initials are RG was transferred to a camera cell in Unit 3D. During rounds between 2 and 3 pm, RG separately told both deputies he would hang himself. At 3:15 pm, RG tucked paper over the wall-mounted camera in his cell. Deputies entered his cell at 3:18 pm and removed a blanket hanging from the camera frame, the other end of which was tied around RG's neck. Both deputies were disciplined for failing to protect the inmate from harming himself.

The parties in this appeal stipulated to the admissibility of several jail videos. Exhibits 16 and 17 show RG in his cell. Three other videos record activity in the unit's central area and the duty desk. [Exhs. 18, 22, 23.] A comparison of events in those two settings presents the fullest picture of this incident.

a. View from the cell camera

After his transfer to 3D, RG spent most of his time pacing and looking out the windows at the front of his cell. At about 2 pm, RG told Appellant's partner, Deputy Thomas Trujillo (T. Trujillo), that he was going to hang himself, "and it would be Deputy Thomas Trujillo's fault." [Exh. 1-4.] At 2:35, RG stopped Appellant during his round and complained about his cell. He told Appellant he would hang himself if he did not get cleaning supplies. Appellant spoke to RG for a few minutes and then returned to the duty desk, where he informed his partner about RG's statements. After Appellant resumed his seat at the desk, he enlarged the view of RG's cell to full view so he could better monitor RG's behavior. The cell camera shows that RG spent the next twenty minutes pacing the floor and looking out the cell door, stopping occasionally to kick the door and press the intercom buzzer. [Exh. 16.] Appellant could view RG from the cell camera, and could also physically see him from the desk when RG was at the cell door.

Another inmate, referred to here as R, was visible walking around the common area outside of RG's cell. RG called him over and they are seen speaking together through the cell door. At 3:03 pm, R slid a thin fleece blanket under the cell door. RG threw the blanket on his cot. He smiled widely into the cell camera and held up a pencil. RG used the pencil to write a note on the inside of the front cover of a book, climbed onto the commode under the camera, and held the note in front of the camera for ten seconds. The note said, "Officer showed me how to hang myself over the camera, he said they will just cut me down." RG lengthened the blanket and wound it slowly as it lay on the cot for about 15 seconds. He returned to the door to look out. At 3:07, RG looped the blanket over the circular camera fixture, then went back to look out the window in the cell door. He returned to the camera and tucked the blanket around the camera frame. At 3:09, Deputy T. Trujillo passed by and looked in as RG was working the blanket around the camera. RG turned and looked at T. Trujillo, who moved on. A few minutes later, RG held up the note to the camera for another eight seconds. For the next three minutes, RG looked out the door, pressed the buzzer, held up two fingers while talking to the camera, checked his watch, and adjusted the blanket around the camera frame. At 3:15, RG pulled another book from under his cot, tore pages from it, and fit the pages over the camera's protruding half-circle lens. [Exh. 4.] The paper completely blocked the camera's view into the cell. It remained still for 25 seconds, then moved slightly a few times. Eight seconds after its last movement, the paper fell away, showing four officers guiding a strongly resisting RG down on the floor. [Exh. 17, 15:18:48.] More deputies entered as they struggled to gain control of RG. At 3:19, medical staff arrived and RG was removed from the cell.

b. The view from the central area

The videos from the unit's central area show the actions of the officers from 3:09 pm until RG was taken from his cell at 3:19. As noted above, RG did not obtain the blanket until 3:03, and displayed his note to the camera at 3:05. [Exh. 16, 15:05:52 – 15:06:02.] The videos of the duty desk begin at about 3:10, and therefore do not capture Appellant's movements the first time the book was held up. [Exhs. 22, 23.]

As the central area videos begin, Appellant is seated at the duty desk, typing and using the touch screens. At 3:11, RG displayed the note for the second time for eight seconds. During that time, Appellant's head is turned to the left corridor behind him, and then turned right toward RG's housing pod. [Exh. 17, 22.] Appellant testified that his duties include monitoring all activities in the 48-cell unit, including the physical movements of prisoners, staff and visitors. There is no video or other evidence that Appellant saw the note, and Appellant consistently stated he did not recall seeing it.

In any event, by 3:10 pm Appellant had already noticed the blanket and radioed T. Trujillo to check on RG. Medical was immediately called to ready a suicide cell. The videos show that at 3:13, T. Trujillo completed his rounds and joined Appellant at the duty desk. At 3:14, Deputy Jackman arrived from the medical unit, followed a moment later by Deputy Rouillard. At 3:16, the nurse entered. At 3:17, the pod door opened and the team entered and mounted the stairs to extract RG from his cell on the second tier. In the next two minutes, another fifteen officers and medical personnel arrived to assist. At 3:20, RG was escorted out of the unit. [Exhs. 5, 22, 24.]

### c. Evidence at hearing

Appellant testified that he knew RG from previous incarcerations, during which RG had attempted to get results by manipulation, including threats of suicide and violence against deputies. [Appellant, 10:56 am.] After RG's 2:35 pm suicide threat on this day, Appellant testified that he took several steps to monitor the inmate's conduct and ensure his safety. Appellant first tried to verbally dissuade RG, pointing out that if he tried to hang himself, Appellant would simply "cut him down" and RG may be transferred to a floor-flush hole with no sink. [Appellant, 11:03 am; Exh. 5-18.] RG had not been classified by the medical unit as a suicide risk. [Appellant, 10:56 am; Exh. 5-10.] When Appellant got back to the duty desk, he enlarged the screen view of RG's cell and monitored him closely while performing his other duties. Sometime between 3:03 and 3:08, Appellant noticed RG had acquired a blanket. He radioed T. Trujillo to check on the inmate while doing his round. T. Trujillo saw the blanket in RG's cell at 3:09, and called the medical unit to see if there was a suicide cell available. Deputy Jay Jackman called Appellant at the duty desk and informed him he did have a cell available. Appellant told Jackman they had a prisoner threatening self-harm, and Jackman said he would send a nurse to the unit shortly. [Exh. 3-3.] T. Trujillo returned to the duty desk at 3:13, and the two officers waited for the nurse. During that two-minute interval, Appellant saw RG covering his camera with paper. Because Appellant could no longer visually monitor RG's status, he radioed for additional officers and medical assistance. [Appellant, 11:08 am; Exhs. 3-1, 5-35.]

The Control Center put out a general call for additional officers, and reaction was immediate. Deputies Jackman and Rouillard arrived at 3:14 pm, followed by the nurse two minutes later. [Exhs. 3-5, 22.] Two deputies are required to escort medical personnel into cells. [Appellant, 10:58; Exh. 5-8.] Appellant briefed them on the situation, gathered gloves and other tools, and waited with the others to enter the pod. At 3:17, the right housing area door was opened remotely, and Appellant, Jackman and the nurse entered and headed up the stairs. Two other deputies remained behind and directed inmate R, who was still in the common area, to leave the pod. By 3:18, Appellant had removed the blanket from the camera with one hand. The tied but unknotted end of the blanket around RG's neck fell away. RG was conscious, and immediately resisted the officers' efforts to control him. It took four deputies thirty seconds to secure RG in handcuffs and remove him from the cell. [Exh.

17, 22.] Ultimately, fourteen officers filed Offense In Custody (OIC) reports immediately after the incident. [Exh. 3.]

The Agency investigated the incident, and charged Appellant with ignoring an inmate's threat of suicide for 40 minutes, despite signs of an intent to self-harm. On Mar. 14, 2017, the Agency imposed a 30-day suspension based on its finding that Appellant neglected his duty to render aid to the inmate, and that he violated two departmental rules requiring full attention to duties and alertness to protect inmates from harm. [Exh. 1.] The decision-maker did not find that Appellant had mishandled a mentally ill inmate, as alleged in the contemplation of discipline letter, or that he "showed RG how to hang himself", as stated in RG's note. [Elwell, 8:57, 9:24 am.]

### III. ANALYSIS

The Agency bears the burden to establish the asserted violations of the Career Service Rules by a preponderance of the evidence, and that a 30-day suspension is within the range of discipline that can be imposed based on the evidence proven at the hearing.

The Agency determined that Appellant failed to give his full attention to his duties under RR-200.9 based on his failure to notice RG's actions with a pencil and the note. [Elwell, 10:45 am.] Those actions were visible on screen for a total of about 20 seconds. [Exh. 16, 15:04:22, 15:05:52; Exh. 17, 15:11:48.] Given that Appellant's responsibilities were not limited to monitoring a single inmate, but included a duty to monitor 48 cells and the activities in the pod, his failure to notice 20 seconds of screen time in one cell does not by itself establish a failure to attend to his duties. The Agency presented no evidence that Appellant was engaged in anything other than his duties at any time during this incident. The Agency thus failed to prove that Appellant was not devoting his full attention to the duties of his position under RR-200.9.

It was also determined that Appellant violated RR-400.8.1, which requires deputies to be alert to protect prisoners from self-harm. The Agency based its conclusion in part on its finding that Appellant ignored "red flag" signs including gestures and preparation to hang himself for 40 minutes before taking preventive action. [Elwell 8:57.]

RG was transferred to 3D without a classification of suicide risk. Elwell was not aware of RG's jail classification, or whether he had ever been classed as suicidal. [Elwell, 9:24 am.] Appellant was aware that RG had not been classified as a suicide risk in the past, but that he had often threatened suicide to get his demands met. RG's conduct on this day was consistent with that history. His threat to hang himself was conditional on not getting what he wanted: cleaning supplies or a new cell. RG kept careful watch for observers through the door. Once he received the blanket, RG became cheerful and animated, gesturing toward the camera. Timed to coincide with T. Trujillo's walk past his cell, RG looped the blanket over the camera, a fact noted by Elwell. [Exh. 16, 15:08 – 09; Elwell, 10:04 am.] Seconds after Jackman and Rouillard arrived in the unit, RG caught someone's eye in the central area and held up two fingers. He gave two final adjustments to the blanket, and placed the paper over the lens. To mime a suicide attempt, RG wrapped an unknotted fleece blanket on a rounded camera frame and his own neck. When Appellant entered the cell and grasped the blanket, it easily fell away. The blanket could not have held RG's weight for any but the briefest moment, as shown by its slack appearance after the incident. [Exh. 17, 15:20:08.]

The next issue is whether Appellant failed to act for 40 minutes. The evidence showed conclusively that RG did not obtain the means to hang himself until 3:03 pm, almost 30 minutes after Appellant heard him threaten to kill himself. The means he obtained was a fleece blanket rather than a sheet, a material that resisted RG's efforts to tie it securely to the circular camera frame. A few minutes after RG obtained the blanket, Appellant saw it and notified his partner, who confirmed its presence in the cell and called the medical unit, as required by departmental order 5410.1F. [Exh. 21-2.] Within minutes, two deputies and a nurse were on their way. Appellant spoke to Jackman in the medical unit, assembled the extraction team, called for backup and removed RG from the cell, all within ten minutes of his first action. By the time RG blocked the view into the cell, the nurse had arrived and the officers were preparing to enter the pod. The only delays were caused by the need to assemble the medical and extraction force necessary to do the job consistent with jail safety standards.

RG's conduct did not put Appellant on notice of an imminent or serious attempt at self-harm until Appellant saw the blanket. Before that, Appellant closely monitored RG's conduct by viewing his activities on screen, despite his knowledge that RG had nothing he could use to hang himself, having just been transferred without his belongings. Appellant maintained visual contact with RG, and saw RG standing at the cell door in no immediate danger. Appellant was not permitted to leave the duty desk unattended, and his partner was not available to relieve him until 3:13 pm. Under these circumstances, Appellant took all actions he could reasonably have taken to ensure RG did not harm himself.

The departmental rules do not require a deputy to call for assistance after every threat of suicide. As Elwell conceded, such a threat requires a deputy to keep careful watch over the inmate. The next step - a mandatory call for assistance - is only required "when you see that the inmate then comes in possession of items to hang himself." [Elwell, 10:40 am.] Appellant's actions were consistent with that protocol, and with the departmental rules governing the protection of inmates.

In summary, neither the video nor testimonial evidence show any inattention to his duties by Appellant. Despite Appellant's opinion that RG was trying to manipulate him, Appellant took prompt and effective action to prevent any harm to the inmate. Based on the same evidence, the Agency did not establish Appellant neglected his duties to attend to his assigned tasks or render assistance to an inmate. The evidence failed to establish any of the rule violations alleged, and therefore the penalty imposed was unsupported by the evidence.

#### IV. Order

Based on the foregoing findings of fact and conclusions of law, the Agency's action dated March 14, 2017 is REVERSED.

Dated this 16<sup>th</sup> day of August, 2017.



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Valerie McNaughton  
Career Service Hearing Officer