

1 The Commission consisted of Presiding Officer Commissioner Joel A. Nark,
2 Commissioner Herbert V. Johnson, and Commissioner Pro-Tem Dennis Schmidt. At the
3 hearing, held October 9-12, 15 and 16, 2007, attorney Stanley D. Tate represented Officer
4 Roberson and Assistant City Attorneys Erin Overbey and Zahraa Wilkinson represented the
5 Police Department. Each party was to submit a post-hearing brief by November 19, 2007. The
6 record therefore closed on November 19 and the Commission took the case under advisement on
7 that date.

8 **A. ISSUES**

9 The issues on appeal are:

10 **1. Did the Department Have Just Cause to Suspend Roberson?**

11 The Commission analyzes each of the three separate incidents separately to determine if
12 the Department had just cause to impose discipline.

13 **2. If So, Did the Department Have Just Cause to Impose a Thirty-Day
14 Suspension?**

15 If the Commission concludes that the Department had just cause to discipline Roberson
16 for one or more of the charged incidents, the Commission must then determine whether the
17 Department had just cause to impose the discipline it implemented – a thirty-day suspension.

18 **B. BURDEN OF PROOF**

19 PSCSC Rule 6.21 provides as follows:

20 **BURDEN OF PROOF.** At any hearing on appeal from a demotion, suspension,
21 or termination, the disciplining authority shall have the burden of showing that its
22 action was in good faith for cause. At any other hearing, the petitioner or
23 appellant shall have the burden of proof by a preponderance of the evidence.

23 Bown voluntarily recused himself from this hearing. The Commission appointed Seattle Fire Department Captain
Dennis Schmidt as a temporary replacement commissioner for this matter only as provided in SMC 4.08.200.

ROBERSON V. SEATTLE POLICE DEPARTMENT: PSCSC NO. 06-006
ORDERS ON MOTIONS AND FINDINGS AND CONCLUSIONS

1 The disciplinary action at issue here is a suspension. The Department therefore bears the
2 burden of proving by a preponderance of the evidence that the thirty-day suspension was “in
3 good faith for cause” (“just cause”).

4 **C. JUST CAUSE FACTORS**

5 The Commission considers several factors in determining just cause, including whether:
6 (1) the employee had notice that his or her conduct would result in disciplinary consequences;
7 (2) the rule was reasonable; (3) the employer investigated to determine whether the rule was in
8 fact violated; (4) the investigation was fair; (5) the employer’s decision-maker had substantial
9 evidence that the employee violated the rule as charged; (6) the employer applies its rules even-
10 handedly; and (7) the discipline administered was fair in relation to the nature of the offense and
11 imposed with regard to the employee’s past work record.²

12 **II. MOTIONS: DECISIONS AND ORDERS**³

13 Officer Roberson made a verbal motion for a directed verdict at the close of the
14 Department’s case.⁴ The Department later made a motion to strike portions of Roberson’s post-
15 hearing submittals. The Commission enters these DECISIONS AND ORDERS on Roberson’s
16 verbal motion and the Department’s written motion as a preliminary matter before addressing the
17 case on the merits.

18 **A. OFFICER ROBERSON’S VERBAL MOTION FOR A DIRECTED VERDICT**

20 ² The seven factors are a non-exhaustive list of the considerations the Commission takes into account in determining
“just cause”.

21 ³ Unless noted otherwise, the Decisions and the Findings of Fact and Conclusions of Law were unanimously
adopted by the three Commissioners. (See Dissent).

22 ⁴ Roberson’s motion has also at times in this case been described as a “motion to dismiss”. A Commission
disciplinary hearing is something of a “hybrid” process. The employee is the appellant seeking relief but the
23 department bears the burden of proof. Since Roberson is the appellant and is the party seeking relief, the
Commission concludes that his motion is most aptly considered a motion for a directed verdict. Dismissing an
appellant’s appeal would literally result in the employer, not the appellant, prevailing.

1 Roberson argued that he was entitled to prevail as a matter of law without having to
2 present his case. Because the motion raised issues of law that the Commission wanted to
3 carefully consider before ruling, it took the motion under advisement and continued with the
4 hearing.

5 Roberson's Motion raised three separate issues. The first involves a pure question of law
6 and the others involve the adequacy of the Department's proof at that stage of the proceeding.

7 **1. Conflict of Interest**

8 Roberson argued that the Commission has an inherent conflict of interest as a matter of
9 law because one of its members, Commission Chair Joel Nark, is a Seattle Police Department
10 employee. Roberson did not allege that Commissioner Nark was individually biased – rather
11 that the conflict is inherent in having any paid department employee serve on the Commission.

12 Commissioner Nark, a Seattle Police Officer, is the commissioner duly elected by eligible
13 public safety civil service employees. SMC 4.08.040 neither requires nor precludes the elected
14 commissioner from being a current employee of either the Seattle Police or Fire Departments.
15 Indeed, SMC Section 4.08.040(H) clearly contemplates that the elected commissioner may be a
16 current City employee.

17 Roberson has offered no authority in support of his broad-based allegation of inherent
18 conflict mandating automatic recusal. Roberson also did not make any pre-hearing motion to
19 recuse Commissioner Nark, as provided in Commission rules.

20 The Commission concludes that nothing in SMC Chapter 4.08 or other applicable law:
21 1) creates any inherent conflict of interest simply because the public safety civil service
22 employees have elected a current public safety employee as the elected Commissioner; or,
23

1 2) requires the elected Commissioner to automatically recuse him or herself in all appeals in
2 which his or her employing department is a party.⁵

3 **2. Officer Roberson's Due Process Rights**

4 Roberson's motion regarding due process is based on his argument that: 1) the Department
5 did not meet its burden of proving in its case in chief that it afforded him an in-person pre-decision
6 hearing; 2) his *Loudermill* due process rights were therefore violated as a matter of law, and, 3) he is
7 therefore entitled to a directed verdict without having to present his case.

8 *Loudermill* due process rights include two elements: 1) notice of the charges and the
9 evidence against the employee; and, 2) an opportunity for the employee to respond to the charges
10 before a final disciplinary decision is made.

11 As a preliminary matter, it is arguably beyond the scope of the Commission's authority to
12 determine whether an appellant's constitutional rights were violated. However, it is inarguably
13 within the Commission's authority to consider the application of the just cause factors in a
14 particular case, including those factors that relate to the fairness of the investigation.

15 The Commission concludes that just cause requires that the employer afford the
16 employee a fair investigation, which in turn requires the employer afford the employee
17 reasonable notice of the charges and evidence and a reasonable opportunity to respond to the
18 charges. The Commission therefore analyzes Roberson's motion in the context of just cause.

19 The Commission rejects Roberson's argument that he was entitled to judgment in his favor
20 without presenting his case. The Department bears the ultimate burden of proving its investigation
21 was fair. An opportunity to respond to the charges is certainly a factor in determining the fairness of

22 _____
23 ⁵ Of course, the facts of a particular case could compel a commissioner, including the elected one, to recuse himself from that case (for example, if the commissioner took part in the investigatory or disciplinary process or would be a witness for either party in the case). Roberson has alleged nothing of the sort here.

1 that investigation. However, Roberson cites no authority for the proposition that he is entitled to
2 judgment as a matter of law at the close of the employer's case in a civil service hearing if the
3 employer has not proven that they afforded him an in-person *Loudermill* hearing.⁶

4 In any event, the Commission declines to apply such a rigid "sequence of evidence/burden
5 of proof" rule in its hearings. The Commission notes that Superior Court Civil Rule 50 could
6 provide a basis for applying such a rule in Commission proceedings.⁷ The Commission Rules
7 provide that the Civil Rules for Superior Court may apply if no Commission rule is on point.
8 However, Civil Rule 50 by its terms applies to jury trials. The Commission declines to apply Rule
9 50 to Commission hearings, primarily because to do so would force a level of rigidity the
10 Commission finds inappropriate in its proceedings.

11 The Commission is a relatively informal forum. The Commission's general practice is that
12 the party bearing the burden of proof goes first (here, the Department), the other party then presents
13 its case, and the party with the ultimate burden may then offer rebuttal evidence.

14 The Commission does not, however, enforce a rigid format in the sequence of presenting
15 evidence. Witnesses are often, as they were in this case, presented out of order for the convenience
16 of the parties or the witnesses. The Commission therefore denies Roberson's verbal motion for a
17 directed verdict made at the close of the Department's case.⁸

18 **3. Did the Department Meet its Burden of Proof?**

19 Roberson argues that Department failed, as a matter of law, to present evidence sufficient
20 to support a conclusion that it had just cause to discipline him in the three particular incidents. A
21

22 ⁶ Indeed, Roberson concedes that even an employer's proven failure to afford an employee required *Loudermill*
rights does not automatically result in reversal of the discipline. (Roberson's Post-Hearing Brief, p. 9)

23 ⁷ See CR 50 "Judgment as a Matter of Law in Jury Trials: Alternative Motion for New Trial: Conditional Rulings".

⁸ Having denied the motion, the Commission will consider the rest of Roberson's due process argument in the context of its findings and conclusions regarding the Department's ultimate burden of proving the investigation was fair.

1 directed verdict is appropriate when the evidence, viewed most favorably to the nonmoving
2 party, is insufficient as a matter of law to sustain a decision for that party. CR 50; *Wright v.*
3 *Engum*, 124 Wn.2d 343, 356 (1994).

4 Viewing the Department's evidence in a light most favorable to it, the Commission
5 concludes that the Department offered evidence that could support a decision in its favor.
6 Roberson's motion should therefore be denied.

7 **4. Order on Roberson's Motion**

8 For all the reasons discussed above, the Commission unanimously concludes that
9 Roberson's Motion for a directed verdict is **DENIED**.

10 **B. THE DEPARTMENT'S MOTION TO STRIKE**

11 The Department moved to strike portions of Roberson's post hearing submittals on the
12 grounds that they include: 1) references to events that were not part of the evidence presented at
13 hearing and 2) attached documents such as newspaper articles that were also not part of the
14 evidentiary record at the hearing.

15 The Commission agrees that the references and attachments are immaterial. The
16 Commission unanimously concludes that the Department's Motion to Strike should be
17 **GRANTED**.

18 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19 The Commission, based on the hearing testimony and the record before it, enters the
20 following Findings of Fact and Conclusions of Law.

21 **A. FINDINGS FO FACT APPLICABLE TO ALL THREE INCIDENTS**

22
23

- 1 1. The Department charged Roberson with three violations based on three separate
2 incidents that occurred in 2005. Officer Richard Roberson was at the time of the 2005
3 incidents a twelve-year veteran of the Seattle Police Department.
- 4 2. The first incident occurred in June 2005 and involved allegations that Officer Roberson
5 failed to take appropriate action at the scene of a possible theft." Failure to Take
6 Appropriate Action. ("The Parking Garage Incident").
- 7 3. The second incident occurred in July of 2005 and involved allegations that Officer
8 Roberson failed to properly handle possible narcotics evidence in an incident that occurred
9 at a Seattle Public Library branch. "Safeguarding/Mishandling Evidence/Property" ("The
10 Library Incident").
- 11 4. The third incident occurred in August 2005 and involved allegations that Officer Roberson
12 did not properly respond when he was dispatched to a 911 call. (Ex. 3)
13 (Insubordination/Poor Exercise of Discretion ("The 911 Call Incident").
- 14 5. Officer Roberson's supervisor, Sgt. Guballa, initiated the complaints regarding the library
15 and 911 call incidents.
- 16 6. Sergeant Guballa did not initiate the complaint regarding the garage incident. That incident
17 came to the attention of Lt. Towne, Officer Roberson's lieutenant, via Captain Meehan.
- 18 7. The Department's Office of Professional Accountability (OPA) investigated each
19 incident, interviewed witnesses, took statements, and gathered records.
- 20 8. The investigation files were sent up the Department's chain of command for review and
21 analysis.
- 22 9. The Department's OPA Director, Captain Lowe, recommended that all three allegations be
23 sustained.

- 1 10. As a result of Captain Lowe's recommendation, the investigative files were sent to Chief
2 Kerlikowske for review and a preliminary decision.
- 3 11. The Chief reviewed the files and met with the Department Human Resources Legal
4 Advisor Mark McCarty and the rest of the command staff, all of whom had also reviewed
5 the files.
- 6 12. The purpose of the command staff meeting was to discuss whether the allegations should
7 be sustained and what the proposed level of discipline, if any, should be.
- 8 13. The command staff considered the three separate instances of misconduct together, along
9 with the seriousness of the offenses, Officer Roberson's disciplinary history, his length of
10 service, and comparable instances where similarly situated employees were disciplined for
11 engaging in similar misconduct.
- 12 14. The command staff concluded that no other SPD officer has had as many sustained
13 violations as Officer Roberson in a similar period of time (six incidents, including the three
14 current ones, in five years).
- 15 15. The command staff determined there was substantial evidence to support the allegations
16 and proposed a thirty-day suspension.
- 17 16. Officer Roberson was notified of the proposed suspension.
- 18 17. Although a *Loudermill* meeting is normal procedure, and one was apparently discussed in
19 this case, no in-person *Loudermill* meeting between the Chief of Police and Roberson was
20 held.
- 21 18. There were, however, several meetings between the Chief and Officer Roberson's
22 representatives regarding the three disciplinary incidents and the proposed discipline.
- 23

1 19. Roberson's attorney, Stanley Tate, also delivered a written document to Chief Kerlikowske
2 entitled "Memorandum- Officer's Loudermill Responses; Settlement Purposes Only-
3 Confidential"⁹

4 20. Chief Kerlikowske considered the record, including Tate's memo, and made a final
5 decision to suspend Officer Roberson for thirty days.

6 21. The Department permitted Officer Roberson to serve the suspension in two-day increments
7 over several pay periods.

8 **B. FINDINGS OF FACT REGARDING THE PARKING GARAGE INCIDENT**
9 **(Failure to Take Appropriate Action – Exhibits 1, 1A, 1B, 1C)**

10 22. On June 18, 2005, civilian Anna Haas called SPD to report a possible burglary in the
11 secured garage of one of the residential buildings she manages on Capitol Hill. She wanted
12 to "get a report in" regarding the incident.

13 23. The first line of the call history, which the responding officer can view on his/her mobile
14 data computer (MDC) prior to arriving at the scene, stated, "nonforced burg with video
15 evidence avail."

16 24. Prior to calling SPD, Ms. Haas had spent time viewing the surveillance video from the
17 garage to locate the three-to five minutes of relevant footage.

18 25. Officer Roberson responded to the call and met with Ms. Haas and a white male, probably
19 tenant Patrick Parisot, on the front porch of the building.

20 26. Ms. Haas reported to Officer Roberson that the male suspect had entered the secured

21 ⁹ Roberson objected to introduction of the document at the hearing, arguing it was a settlement proposal and as such
22 should not be admitted. Commission staff reviewed the document during a break. The Commission found the
23 document contained both Officer Roberson's Responses to the charges and settlement discussions. The Commission
ruled that the portions of the document containing a settlement offer or otherwise discussing settlement were not
relevant and therefore would not be considered by the Commission. The parties later stipulated that Chief
Kerlikowske had received the document.

1 garage and attempted to remove a bag from the sissy bar on her personal motorcycle. She
2 knew her bag had been tampered with because when she left the motorcycle the bag was
3 strapped securely to her sissy bar (with the bag straps and baling wire), and she later found
4 that most of the straps had been undone and the bag was partially off the sissy bar.

5 27. Ms. Haas told Officer Roberson that on the suspect's way out of the garage, he attempted
6 to block open the door with a card, which possibly indicated his intent to enter again at a
7 later time, perhaps to complete the job of removing the bag.

8 28. Ms. Haas also told Officer Roberson that the incident had been caught on surveillance
9 video. She told Officer Roberson that the video, garage, and motorcycle (which had not
10 been touched since the incident) were available for him to inspect.

11 29. Ms. Haas told Officer Roberson that the suspect had entered the building with an invited
12 guest of tenant Patrick Parisot, and that Mr. Parisot could provide the name of the suspect.

13 30. Officer Roberson concluded that no crime had occurred because the suspect had not broken
14 into the garage and had not actually taken anything.

15 31. Officer Roberson told Ms. Haas "there is no such thing as attempted theft."

16 32. Officer Roberson did not view or request a copy of the surveillance video. He did not go
17 into the garage to investigate the scene or inspect the motorcycle. He did not take the names
18 of the suspect or the male tenant. He did not write any kind of report. He left the location
19 after talking with Ms. Haas and Mr. Parisot for only a few minutes.

20 33. Several days later, Ms. Haas attended a community meeting where she reported to Captain
21 Meehan that she had been informed by an SPD officer that there is no such thing as
22 attempted theft.

23 34. Ms. Haas showed Captain Meehan still shots from the surveillance video. Captain Meehan

1 believed the photos showed a possible crime in progress. Captain Meehan then sent Officer
2 Pendergrass to meet with Ms. Haas. Officer Pendergrass spent about 40-60 minutes with
3 Ms. Haas and wrote an incident report of a residential burglary.

4 35. There were no facts available to Officer Pendergrass that had not also been readily
5 available to Officer Roberson.

6 36. Acting on the incident report, Detective Schorsch did some further investigation. He
7 determined that since the suspect had entered the building as a "guest" of a tenant and that
8 the access door to the garage did not have any "no trespass" signs on it, he could not charge
9 burglary. He did conclude, however, that he could charge attempted theft.

10 37. Ms. Haas told Detective Schorsch that she wanted to pursue the case in court. Detective
11 Schorsch testified he sent the case to Municipal Court, where the suspect eventually pled
12 guilty and was ordered to have no contact with Ms. Haas or her building.¹⁰

13 **C. FINDINGS OF FACT REGARDING THE LIBRARY INCIDENT**
14 **(Safeguarding/Mishandling Evidence/Property – Exhibits 2, 2A, 2B)**

15 38. On July 21, 2005, Officer Roberson responded to a call from the Capitol Hill Public
16 Library regarding a suspect in custody for trespass and possible narcotic possession.

17 39. The initial call specifically mentioned possible narcotics.

18 40. An update three minutes later indicated Library security guards found what they believed to
19 be five or six "rocks" of cocaine in the suspect's backpack.

20 41. One of the security guards had had drug recognition training in which he was trained how
21 to recognize crack cocaine.

22 42. When Officer Roberson arrived on the scene, he learned from the security guards that they
23 had found the possible "rock" cocaine when they searched the suspect's bag for weapons.

¹⁰ See Exhibit 1-C.

1 43. Officer Roberson believed the security guards' search of the suspect's backpack was
2 unlawful.

3 44. Officer Roberson searched the suspect's backpack himself and found a crack pipe and a
4 taser.

5 45. Officer Roberson wrote a trespass admonishment for the suspect.

6 46. Officer Roberson testified he intended to field test the possible crack cocaine and retrieved
7 a field test kit from the trunk of his patrol car.

8 47. Officer Roberson had in the meantime placed the "rocks" of possible cocaine on the dash
9 of his patrol car. It was a hot day. When Officer Roberson handled the "rocks" a few
10 minutes later, they felt soft to the touch.

11 48. Officer Roberson concluded, based on their softness after sitting in the hot sun on the dash,
12 that the "rocks" were wax (bunk) rather than real cocaine.¹¹

13 49. Convinced it was bunk and therefore of no evidentiary value, Officer Roberson discarded
14 the substance on the ground.

15 50. Officer Roberson discarded the pipe at the precinct, because he felt there was no testable
16 cocaine residue.

17 51. Several other Department employees testified that they either themselves routinely
18 destroyed, or observed others routinely destroy, crack pipes.

19 52. In the Event History, he wrote, "No crack found but found small amount of broke up wax.
20 He might try to sell it as crack."

21 53. On the back of the trespass admonishment card, Officer Roberson wrote that there was "a
22

23 ¹¹ Several witnesses used the term "bunk" to mean fake narcotics.

1 strong odor of crack in the bathroom” but no crack found on the suspect.

2 54. The Department cites SPD Manual Section 2.049 in support of its allegation that Roberson
3 mishandled evidence.

4 55. Manual Section 2.049 I. D provides under the heading “Guidelines”:

5 The Seattle Police Department has legal authority to take certain types of
6 property into possession (RCW 63.21.050). The property must meet one of
7 the following criteria to be taken into possession.

- 8 * If there is reasonable suspicion that the property is evidence of a crime.
9 * Any item that is dangerous or illegal to possess or presents a danger to the
10 public...

11 56. The Department argues that the manual section establishes that if there is a reasonable
12 suspicion that property is evidence of a crime, then the property must be placed into
13 evidence.

14 57. The Department also argues the policy section required Roberson to either field test the
15 possible crack cocaine and pipe or to take them into evidence for possible later testing, and
16 that his failure to do so justifies discipline.

17 58. The Department argues that “In the library incident, there was reasonable suspicion that the
18 seized rocks and pipe were evidence of a crime”¹².

19 59. The Department also argues that Officer Roberson’s written comment in the trespass
20 admonishment that he believed the suspect might try to sell the rocks as crack establishes
21 the existence of reasonable suspicion.

22 60. The Department also argues that Officer Roberson should know that selling and possessing
23 counterfeit controlled substances is a crime.¹³

61. Roberson argues the substance was “bunk”, that the pipe did not have a testable level of

¹² Dept Proposed Findings, p. 10.

¹³ Dept. Proposed Findings, p. 10.

1 residue, and that he therefore had no duty to either test or take into evidence either the
2 substance or the pipe.

3 **D. FINDINGS OF FACT REGARDING THE 911 CALL INCIDENT**
4 **(Insubordination/Professionalism-Exercise Discretion – Ex 3, 3A, 3B)**

5 62. On August 2, 2005, at about 1846 hours, Officer Roberson cleared a misdemeanor assault
6 call he had been on and sent the East Dispatcher a message from his mobile data computer
7 (MDC) asking for a half-hour meal break (a “931”).

8 63. The exchange via the MDC was as follows:¹⁴

9 Roberson: “Clear 040A and 931 Plz”.

10 Dispatch: “Sorry I can’t give U a 931 with a prec 1 call holding, that 911 hangup call
11 is holding in E2”.

12 Roberson: “I’m going out on a premis”[e check]

13 Dispatch: “Do whatever U have to do. I just can’t give u a 931”.

14 64. Officer Roberson then logged himself out on a premise check, which is considered a non-
15 emergency call.

16 65. The Chief Dispatcher immediately contacted Sgt. Guballa, Officer Roberson’s supervisor,
17 to report what had happened.

18 66. Sgt. Guballa immediately contacted Officer Roberson on an alternate frequency and
19 ordered him to respond to the 911 hang up call.

20 67. At the time Sgt. Guballa contacted him, Officer Roberson was in the process of parking his
21 squad car at the East Precinct.

22 68. After receiving Sgt. Guballa’s direct order, Officer Roberson responded to the 911 hang up
23 call. The call turned out to be a false alarm.

69. Sgt. Guballa testified he told his squad that he did not want them to take 931 meal breaks
after 1815 hours because he wanted to ensure sufficient officers were available at the end

¹⁴ Ex. 3-B, p. 129 and attachments (@ pp. 135-138).

1 of the second watch shift.

2 70. One other officer confirmed he had heard Sgt. Guballa issue such an order. Other officers
3 either did not remember any such statement or considered it a request but not an order.

4 **E. CONCLUSIONS OF LAW APPLICABLE TO ALL THREE INCIDENTS**

- 5 1. A fair investigation is a factor the Commission considers in determining whether the
6 Department had just cause to discipline Roberson, and if so what discipline was
7 justified.
- 8 2. Notice of the charges and evidence in the case(s) and an opportunity to respond before a
9 final disciplinary decision is made are necessary elements of a fair investigation.
- 10 3. A fair investigation does not necessarily require that an in-person meeting be held
11 between the Chief of Police and the employee.
- 12 4. A fair investigation does require that the employee have reasonable notice of the charges
13 and evidence against him and a reasonable opportunity to respond to the charges before
14 a final decision is made.
- 15 5. The Tate memorandum is not an exhibit, but it is not contested that it was presented to
16 the Chief of Police and that he considered it before making his final decision.
- 17 6. Officer Roberson had ample notice of the charges and evidence against him and a
18 reasonable opportunity to respond to those charges.
- 19 7. The Department conducted separate investigations of each alleged violation to
20 determine whether the violations had in fact occurred.
- 21 8. The investigations were conducted by neutral and objective investigators, Sgt. Williams
22 and Sgt. Proudfoot, in accordance with customary Department practices and procedures.
- 23 9. Each investigation contains statements, either in writing or transcribed from tapes, of

1 Officer Roberson and relevant witnesses.

2 10. Each investigation includes a summary that fairly reflects the facts obtained during the
3 investigation.

4 11. Officer Roberson's factual accounts of the incidents are largely consistent with those of
5 the key witnesses.

6 12. Neither of the investigators was involved in the events underlying the alleged violations,
7 and neither was involved in making any decision regarding whether to sustain the
8 allegations or impose discipline.

9 13. No evidence was presented to impugn the fairness or neutrality of the investigations.

10 14. The Department is not required to conduct a perfect investigation. It is required to
11 conduct a fair and unbiased investigation.

12 15. Interviews of additional witnesses would not have likely changed the Department's
13 ultimate conclusion - that substantial evidence showed Officer Roberson had engaged in
14 the alleged violations.

15 16. The Department's investigations were fair and unbiased.

16 17. The Chief and his command staff conducted a meaningful review of the facts to
17 determine whether the violations had occurred.

18 **F. CONCLUSIONS OF LAW REGARDING THE GARAGE INCIDENT**

19 18. Officer Roberson had notice that his conduct would result in disciplinary consequences
20 because he previously had been reprimanded and counseled for failure to respond
21 appropriately to civilian complaints of suspected criminal activity.

22 19. It is reasonable for the Department to require police officers to respond appropriately to
23 civilian complaints of suspected criminal activity, to investigate potential crimes, to

1 understand and apply basic criminal law, to write incident reports when the readily
2 available facts suggest a crime has been committed. As an experienced officer, he
3 should know that failure to understand and apply basic criminal principles, such as the
4 elements of the crime of theft, is considered a serious deficiency that may lead to
5 discipline.

6 20. Officer Roberson should know that when he is in doubt as to whether or not a crime has
7 occurred, he is expected to write a report or seek guidance from a supervisor or
8 detective.

9 21. The Commission concludes that Officer Roberson, as a twelve-year Department veteran,
10 should at a minimum have: 1) either reviewed the video himself or made arrangements
11 for other SPD personnel to review it; 2) viewed the crime scene; 3) written a report; and
12 4) interviewed the other witness to determine the identity of the suspect.

13 22. Even if Officer Roberson offered to write a suspicious persons report, there was
14 substantial evidence that he otherwise failed to take appropriate action because he failed
15 to do any investigation, failed to view or obtain a copy of readily available video
16 evidence, failed to apply basic criminal principles to the facts, and failed to appropriately
17 exercise his discretion to determine the appropriate action to take under the
18 circumstances.

19 23. Officer Roberson should have been aware that his failure to take those appropriate
20 actions could subject him to discipline.

21 24. The Department followed its standard procedures in investigating this allegation.

22 25. Roberson argues that the investigation was unfair because the Department did not
23 interview the suspect. The Commission concludes that it was not necessary to interview

1 the suspect because the focus of the disciplinary investigation was on what Officer
2 Roberson knew at the time and what he did, not on whether the suspect in fact
3 committed a crime or not. For the same reason, the Commission does not rely on
4 Exhibit 1-C or other evidence that the suspect eventually pled guilty to a crime.

5 26. The Department investigation of this incident was fair.

6 27. The Department had substantial evidence that Roberson failed to take appropriate action
7 in the garage incident.

8 28. The Department had just cause to discipline Officer Roberson for the garage incident.

9 29. The issue of the appropriate level of discipline for this violation is addressed in Section I
10 below.

11 **G. CONCLUSIONS OF LAW REGARDING THE LIBRARY INCIDENT¹⁵**

12 30. There was substantial evidence that Sgt. Guballa was not interested in counseling
13 Officer Roberson's perceived deficiencies. He instead wrote up the incident and
14 forwarded his complaints to OPA. However, there was no substantial evidence that
15 the subsequent OPA investigation was unfair or biased against Officer Roberson.

16 31. Officer Roberson had notice of the policy section since it is published in the Department
17 manual. A policy describing officer's authority to take possession of items and their
18 duty to place at least some such items into evidence is on its face reasonable.

19 32. The primary factors at issues in this charge are what did the section require Officer
20 Roberson to do under the facts as found above, and did the Department have substantial
21 evidence that he failed to do that which the policy required.

22 33. The Commission does not agree with the Department that the proper application of the
23

¹⁵ A majority of the Commission adopts the conclusions of law in this section. (See Dissent).

1 policy to these facts is so clear.

2 34. The policy does clearly authorize officers to take into their possession evidence of a
3 crime (based on a reasonable suspicion standard) and to “detain” and “screen” property
4 in order to determine if such a reasonable suspicion exists.

5 35. The issue here, however, is under what circumstances the policy requires an officer to
6 either field test or take into evidence: items that may or may not be real narcotics; and
7 paraphernalia that may or may not have testable amounts of narcotics residue.

8 36. The Commission does not agree that the policy requires an officer to take possession of
9 an item anytime the officer has a reasonable suspicion that it is evidence of a crime.

10 37. The Commission concludes that the policy section necessarily grants police officers
11 discretion to make reasonable determinations regarding whether to “detain” property
12 and if they do, to “screen” the property for reasonable suspicion that it is evidence of a
13 crime.

14 38. Officer Roberson initially had a reasonable suspicion that the rocks and the pipe were
15 evidence of a crime and so he had authority to “detain” them to investigate further.
16 (Section I.E).

17 39. Officer Roberson did detain both the substance and the pipe. However, he concluded
18 that neither was evidence of a crime and discarded both.¹⁶

19 40. Officer Roberson exercised his discretion reasonably in determining that the substance
20 was “bunk” (based upon it softening in the heat) and that the pipe did not contain
21 testable amounts of residue.

22 41. Under the facts in this incident, the Department did not have substantial evidence, and

23 ¹⁶ There were no facts indicating the suspect had either sold or attempted to sell the substance, so the potential crime of attempting to sell “bunk” as real narcotics is not relevant here.

1 therefore did not meet its burden of proof before the Commission, that Officer Roberson
2 exercised that discretion in an unreasonable manner.

3 42. The Department did not have just cause to conclude Officer Roberson violated SPD
4 Manual Section No. 2.049.

5 43. The Department did not have just cause to discipline Roberson for this incident.

6 **H. CONCLUSIONS OF LAW REGARDING THE 911 CALL INCIDENT¹⁷**

7 44. There was substantial evidence that Sgt. Guballa was not interested in counseling
8 Officer Roberson's perceived deficiencies. He instead wrote up the incident and
9 forwarded his complaints to OPA. However, there was no substantial evidence that
10 the subsequent OPA investigation was unfair or biased against Officer Roberson.

11 45. An officer is expected to follow the instructions and orders of the chain of command
12 even if he or she disagrees with the orders or feels they are unfair.

13 46. The Department did not, however, prove that Sgt. Guballa ordered either his squad in
14 general or Roberson in particular to not take any 931 breaks after a specified time each
15 shift.

16 47. Roberson's request to the dispatcher for such a 931 break was therefore not
17 insubordinate to Sgt. Guballa.

18 48. The policy manual states, "In all matters of deployment of field units, the
19 Communications Dispatcher speaks as the voice of, and with the authority of, the Chief
20 of Police.

21 49. The issue here, however, is "what did the dispatcher say"?

22 50. The dispatcher, while clearly not giving him a 931, also did not issue a "dispatch" order
23

¹⁷ A majority of the Commission adopts the conclusions of law in this section. (See Dissent").

1 to him to respond to the 911 call. Officer Roberson was therefore not insubordinate to
2 the dispatcher.

3 51. Officer Roberson was also not insubordinate to Sgt. Guballa's subsequent order to
4 respond to the call because he promptly followed that order once it was issued.

5 52. Roberson offered testimony and a proposed exhibit regarding the history of false 911
6 hang up calls at the address in question. The Commission concludes that that
7 information deserves little weight, since the issue is not whether the call was in fact a
8 valid 911 one or not.

9 53. Roberson also offered testimony and a proposed exhibit, dated August 2006, to the
10 effect that he required the 931 meal break due to a medical condition.¹⁸ However,
11 there is no evidence that he had at the time informed the Department about any such
12 condition, and so that testimony and exhibit are not relevant and the Commission
13 therefore gives them no weight.

14 54. The Department did not prove that Officer Roberson was insubordinate in the 911 call
15 incident.

16 55. The Department did not have just cause to discipline Officer Roberson for this incident.

17 **I. CONCLUSIONS OF LAW REGARDING THE APPROPRIATE PENALTY¹⁹**

18 56. Having concluded that the Department had just cause to discipline Roberson for the
19 parking garage incident, the Commission must then address whether the Department had
20 just cause to suspend Officer Roberson for thirty days.

21 57. This issue has two parts: 1) was the discipline administered fairly in relation to the
22 nature of the offense? and 2) was the discipline imposed with regard to the employee's

23 ¹⁸ See Exhibit 17.

¹⁹ A majority of the Commission adopts the conclusions of law in this section. (See Dissent").

1 past work record.

2 58. First, the Commission addresses the issue of Officer Roberson's expert witness.

3 Officer Roberson offered as an expert a lieutenant from the Sacramento Police
4 Department, Mr. Ed Tatosian.

5 59. Roberson did not establish that Mr. Tatosian was sufficiently qualified or experienced
6 to testify as an expert in this case. Mr. Tatosian did not establish that he had either
7 sufficient knowledge of the just cause standard or familiarity with the policies,
8 procedures, or disciplinary practices of the Seattle Police Department.

9 60. The Commission therefore accords little weight to Mr. Tatosian's written report dated
10 August 23, 2006 (Ex. 29) or the opinions he offered during his testimony at the
11 hearing.

12 1. The Offense

13 61. The Commission concludes that Officer Roberson failed to take even the minimum
14 appropriate action in the garage incident. The Commission further concludes that the
15 violation was a serious one and justifies the imposition of discipline.

16 2. Officer Roberson's Prior Record

17 62. Officer Roberson had three prior disciplinary cases sustained in one forum or another.²⁰

18 a. The Prior Verbal Reprimand

19 63. Officer Roberson was given a verbal reprimand in 2001 for failing to take appropriate
20 action when two women came to the South Precinct to report an alleged rape in which
21 one of the women was the victim.

22
23 ²⁰ For purposes of determining the appropriateness of the discipline, the Commission considers only incidents of sustained prior discipline. Other non-sustained incidents are not relevant to this determination and are therefore not considered.

1 b. The Prior Two-day Suspension.

2 64. In 2002, Officer Roberson was suspended for two days, ordered to undergo training, and
3 transferred to another precinct for administering corporal punishment to an eight-year-
4 old child.

5 65. Officer Roberson's two-day suspension was upheld by this Commission (Ex. 4).

6 c. The Prior Five-day Suspension

7 66. In 2003 or 2004, Officer Roberson was suspended for five days for insubordination for
8 administering corporal punishment while off duty to the same child, in violation of Chief
9 Kerlikowske's order not to have contact with the child.

10 67. Officer Roberson's five-day suspension was upheld by a labor arbitrator. (Ex.5).

11 3. The 30-day Suspension in this case²¹

12 68. The issue is whether, in light of Officer Roberson's prior disciplinary history, the
13 Department had just cause to suspend him for thirty days for the garage incident.

14 69. That issue is in turn related to the degree to which the present garage incident is related
15 to the prior incidents.

16 70. The Commission finds that misconduct for which Officer Roberson was previously
17 suspended, while certainly relevant, is also substantially different than his misconduct in
18 the garage incident.

19 71. While it has been conclusively established in prior proceedings that the previous
20 suspensions were justified, the Commission sees an important difference between the
21 prior incidents and this one.

22 72. The prior incidents both involved unique circumstances. They both involved

23 _____
²¹ A majority of the Commission adopts the conclusions in this section (See Dissent).

1 Roberson's sincere belief that he was helping the people involved and was not harming
2 the Department.

3 73. Because of those unique circumstances, the Commission concludes that the prior
4 suspensions are of somewhat more limited importance in applying progressive discipline
5 in the present case.

6 74. The Commission concludes that Officer Roberson's misconduct during the garage
7 incident, while substantial, does not justify a thirty-day suspension.

8 75. Taking into account Officer Roberson's overall work record, the Commission concludes
9 that the Department had just cause to suspend him for seven (7) days for the garage
10 incident.

11 **J. ATTORNEYS FEES**²²

12 76. Roberson argues that cases decided under a variety of provisions of state law require the
13 Commission to award him reasonable attorneys' fees.

14 77. Roberson has cited no authority for the proposition that the Commission has the
15 authority, let alone the legal obligation, to award a prevailing party his or her costs,
16 including attorneys' fees, in a civil service hearing.

17 78. In any event, the Commission elects not to award Officer Roberson any attorney's
18 fees or any other costs he incurred as a result of pursuing this appeal.

19 **IV. CONCLUSION**²³

20 1. The Department had just cause to discipline Officer Roberson for the parking
21 garage incident.

22 2. The Department did not have just cause to discipline Officer Roberson for the

23 ²² The Commission unanimously adopts the conclusions in this section.

²³ A majority of the Commission adopts the conclusions in this section (See Dissent).

1 library or 911 call incidents.

- 2 3. A thirty-day suspension was excessive under the circumstances.
- 3 4. The Department would have had just cause to suspend Officer Roberson for seven
- 4 (7) days for the garage incident.
- 5 5. The Department's thirty-day suspension is reduced to seven days.
- 6 6. The Department should take those actions necessary to make Officer Roberson
- 7 economically whole as if he had been suspended for seven days.

8 **PUBLIC SAFETY CIVIL SERVICE COMMISSION**
9 **OF THE CITY OF SEATTLE**

10 

Commission Chair Joel Nark

2-7-08

Date

11 

Commissioner Pro-Tem Dennis Schmidt

2-7-08

Date

12

13 **V. DISSENT**

14 I cannot agree with the majority's conclusions and reasoning regarding the library

15 incident, the 911 call incident, or the appropriate discipline, and I therefore dissent from those

16 portions of the decision.

17 **1. The Library Incident**

18 The evidence at the hearing established that Officer Roberson should have either

19 submitted into evidence or field tested the possible narcotics. He had a tester and could have

20 easily conducted a test. He chose not to do either. I believe that choice was not a reasonable

21 exercise of his discretion.

22 **2. The 911 Call Incident**

1 The evidence also established that Officer Roberson was insubordinate to the
2 dispatcher. Reading the exchange between the dispatcher and Officer Roberson as a whole, I
3 conclude that any reasonable officer would understand that he was obligated to respond to the
4 911 hang-up call. Officer Roberson chose not to.

5 **3. The Suspension**

6 Since I believe the Department proved that Officer Roberson violated reasonable
7 Department expectations in both the library and 911 call incidents, I conclude that a thirty-day
8 suspension is justified. Officer Roberson has three prior disciplines, including one for
9 insubordination. A neutral labor arbitrator upheld that discipline.

10 I also conclude that the garage incident, standing alone, justifies more than the seven-day
11 suspension upheld by the majority. Principles of progressive discipline indicate to me that the
12 Department would have just cause to impose a suspension that is longer than Officer Roberson's
13 most recent prior one of five days. I conclude that the garage incident alone justifies at least a
14 ten-day suspension.

15 For all these reasons, I respectfully dissent from the majority decision on these points.

16 
17 Commissioner Herb Johnson

18 
19 Date