



OFFICE OF THE DISTRICT ATTORNEY
WESTCHESTER COUNTY

WESTCHESTER COUNTY COURTHOUSE
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ANTHONY A. SCARPINO, JR.
DISTRICT ATTORNEY

December 8, 2020

Commissioner Glenn Scott
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550

Dear Commissioner Scott,

I write to inform you of the results of our investigation of overtime claims submitted by Richton Ziadie between January 2019 and September 2019, during his tenure as Chief of the Department. After referral of this matter to our office, specifically the Public Integrity Bureau, from the Mount Vernon Police Department (hereinafter "MVPD") Internal Affairs Division (hereinafter "IAD"), we have reviewed all of the evidence developed during the investigation, including relevant policies, submitted overtime claims, relevant police records, keycard access records, license plate reader records, [REDACTED] and witness interviews.

Background

In August 2019, this office was notified by the MVPD IAD that then Chief of Police Richton Ziadie (hereinafter "Ziadie") had been collecting overtime payments that, based on alleged long-standing departmental practice, Ziadie was not entitled to.¹ As a preliminary matter, this office reviewed "Procedure No. 2.005 of the Mount Vernon Police Department Administrative Guide: Compensatory and Overtime Reports/Procedures," issued on January 4, 1993 and effective January 18, 1993. This procedure requires that all "members" must be authorized prior to performing functions for which overtime requests will be submitted, and further provides the following list of circumstances which provide such authorization:

"A. Departmental Directive; B. Order of a superior officer; C. Subpoena or other notice to appear served via departmental process; D. Subpoena or other notice, request or

¹ MVPD practice includes payment of a stipend supplement to the salary for the Chief of Police. MVPD maintains that this stipend is provided for as compensation in lieu of overtime payments, thus prohibiting the Chief of Police from collecting overtime absent certain specific circumstances.

requirement to perform overtime duties upon approval of the Division Commander or his designee; [and] E. Emergencies where the circumstances make impractical to contact a superior officer for authorization. In such cases notification shall be made at the first opportunity.”²

This procedure further requires all “members” to complete an “overtime report,” referred to an “MV 79” form, including the date and time of the overtime claimed and the stated purpose for such work.³

This office also reviewed the collective bargaining agreement (“CBA”) between the City of Mount Vernon and the Police Association of the City of Mount Vernon.⁴ Article V of the CBA provides for overtime compensation to those holding the rank of Police Officer, Detective, Sergeant, Lieutenant and Captain. At the time of his promotion to Chief of the Department, effective March 16, 2017, Ziadie held the rank of Captain. According to personnel records reviewed by our office, Ziadie retained the rank of Captain upon his promotion to Chief of the Department. We understand that the position of the MVPD is that despite Ziadie’s rank of Captain, his position as Chief of the Department made him ineligible for overtime compensation pursuant to the CBA.⁵

Additionally, this office reviewed a September 9, 2019 memo from Mount Vernon City attorneys [REDACTED]. The memo states, in relevant part:

“[T]hose in the title of Chief and Deputy Chief would not be entitled to any overtime under the PBA’s collective bargaining agreement ... We are aware of some limited exceptions whereby Chiefs or Deputy Chiefs would work overtime – not as a Chief or Deputy Chief – but as a Captain pursuant to a grant, or if all overtime had been turned down by the Sergeants, or Lieutenants and other Captains. In those cases they worked as Captains, not Chief or Deputy Chief.”

Finally, this office reviewed documents associated with Ziadie’s promotion to Chief on May 16, 2017. The “Report of Personnel Change” form indicates that the title of position is “Police Captain”; however, the remarks section indicated that Ziadie “has been appointed to the position of Chief of Police” and would receive a stipend of \$2500.00.

Review of the MV 79 records provided by the MVPD IAD revealed that between January 2019 and September 2019, Ziadie submitted overtime requests for ninety-one different dates while he was employed by the MVPD in the capacity as Chief of the Police Department. Compensation paid for these ninety-one overtime claims totaled over sixty thousand dollars.⁶

² See MVPD Procedure 2.005, Section 1 (Authorization).

³ See MVPD Procedure 2.005, Sections 2 (Compensatory/Overtime Report) and 3 (MV 79 Completion Procedure).

⁴ This agreement is dated January 1, 2014 – December 31, 2017. WCADO has not been provided with any subsequent agreement entered into after December 31, 2017, and therefore believes this agreement still controls.

⁵ We were unable to find any explicit section in the CBA stating this position. We note that during the relevant time period, Police Association dues continued to be deducted from Ziadie’s paycheck, suggesting that Ziadie remained a member of the Police Association, and therefore a beneficiary of the terms of the CBA.

⁶ MVPD policy and the CBA permits members to collect overtime payments in either cash or compensatory time, subject to the limitations provided by the Fair Labor Standards Act (United States Department of Labor) that

Based on our office's understanding of the policies and agreements referenced, the investigation focused on: (i) whether Ziadie was working in the capacity of a Captain for the hours he claimed; and (ii) the veracity of the stated reasons for which Ziadie claimed the hours.

The Overtime Claims

This office reviewed individual overtime claims Ziadie submitted along with several other records, including corresponding: (i) keycard entry records⁷; (ii) license plate reader ("LPR") data for both the license plate registered to Ziadie's MVPD departmental issued vehicle⁸ and the license plate registered to Ziadie's personal vehicle⁹; [REDACTED]; and (iv) MVPD police reports, where applicable. Review of these additional records along with the submitted overtime claims was for the purpose of determining the veracity of the claims themselves, based on the stated purpose for which Ziadie claimed the overtime.

This review revealed certain dates for which Ziadie's presence in the City of Mount Vernon could not be independently verified. For example:

i. February 11, 2019

On February 11, 2019, Ziadie submitted an MV 79 form claiming five hours of overtime between the hours of 4 p.m. and 9 p.m. The cited reason included in the summary section of the form was "Mayor," believed to be a reference to then Mayor Richard Thomas. There are no corresponding keycard access records for Ziadie's presence at MVPD headquarters after 2:30 p.m., nor between the hours of 4 p.m. and 9 p.m. LPR data for Ziadie's departmental issued vehicle placed Ziadie at various locations in New York City between 5 p.m. and 6 p.m. [REDACTED]

members cannot accrue more than 480 hours of compensatory time. According to MVPD records, Ziadie reached the 480 hour limit of compensatory time on November 13, 2018. As such, thereafter Ziadie's overtime payments were in cash.

⁷ MVPD personnel are issued keycards which are used to access entry to police headquarters, including specific areas within headquarters. Access to Ziadie's office within police headquarters requires keycard entry.

⁸ For the time period January 1, 2019 through May 6, 2019, Ziadie was issued a Black 2011 Ford Expedition, [REDACTED]. On May 6, 2019 and thereafter, Ziadie was issued a Black 2019 Ford Expedition, [REDACTED].

[REDACTED]

ii. March 5, 2019

On March 5, 2019, Ziadie submitted an MV 79 form claiming six hours of overtime between the hours of 4 p.m. and 10 p.m. The cited reason included in the summary section of the form was "Admin," believed to be a reference to administrative duties. There are no corresponding keycard access records for Ziadie's presence at MVPD headquarters after 3:54 p.m., nor between the hours of 4 p.m. and 10 p.m. LPR data for Ziadie's departmental issued vehicle placed Ziadie at various locations in New York City between 5 p.m. and 6 p.m. [REDACTED]

iii. June 16, 2019

On June 16, 2019, Ziadie submitted an MV 79 form claiming eight hours of overtime between the hours of 2 p.m. and 10 p.m. The cited reason included in the summary section of the form was "Sandz," believed to be a reference to the "Sandz Carribean Music Fest" event which took place at Hutch Field in Mount Vernon on June 16, 2019 between 2 p.m. and 10 p.m. There are no corresponding keycard access records for Ziadie's presence at MVPD headquarters after 1:50 p.m., nor between the hours of 2 p.m. and 10 p.m. LPR data for Ziadie's departmental issued vehicle placed Ziadie in Bronx County at approximately 2:51 p.m. [REDACTED]

iv. July 9, 2019

On July 9, 2019, Ziadie submitted an MV 79 form claiming eight hours of overtime between the hours of 4 p.m. and 12 a.m. The cited reason included in the summary section of the form was "Mayors detail," believed to be a reference to security services including transportation for then Mayor Richard Thomas. There are no corresponding keycard access records for Ziadie's presence at MVPD headquarters after 4:15 p.m., nor between the hours of 4:15 p.m. and 12 a.m. LPR data for Ziadie's departmental issued vehicle shows a Bronx bound travel pattern after 4:15 p.m. with no additional data after 5:18 p.m. LPR data for Ziadie's personal and departmental issued vehicles did not reveal data for continuous travel between 4 p.m. and 12 a.m., consistent with providing transportation services for the Mayor. [REDACTED]

v. July 21, 2019

On July 21, 2019, Ziadie submitted an MV 79 form claiming fifteen hours of overtime between the hours of 9 a.m. and 12 a.m. The cited reason included in the summary section of the form was “Noise Complain[t] (Pelham Manor),” believed to be a reference for noise complaints connected to the “Funfest” event which took place on July 21, 2019. There are no corresponding keycard access records for Ziadie’s presence at MVPD headquarters on July 21, 2019. LPR data for Ziadie’s departmental issued vehicle placed Ziadie at various locations in New York City between 9:30 a.m. and 7:30 p.m. Review of associated police reports for July 21, 2019 revealed the existence of “noise complaints”; however, these complaints did not commence until approximately 5:49 p.m.¹² [REDACTED]

Witness Interviews

In connection with this investigation, this Office conducted several interviews of current and former members of the MVPD and other current and former Mount Vernon officials. We have not included summaries of all interviews in this letter. We highlight the following:

[REDACTED]

[REDACTED]

¹² MVPD blotter activity for July 21, 2019 records noise complaints at 10:02 p.m., 10:22 p.m., and 10:58 p.m. Incident reports from the Pelham Manor Police Department for July 21, 2019 records noise complaints at 5:49 p.m., 6:12 p.m., 6:19 p.m., 6:48 p.m., 6:50 p.m., 7:47 p.m., 8:02 p.m., 9:48 p.m., and 9:50 p.m.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Legal Analysis

We have considered these facts against our legal standard as prosecutors, to determine if applicable criminal charges against Ziadie can be proven beyond a reasonable doubt. We have determined that they cannot.

- i. Larceny offenses under Penal Law Article 155

Throughout the course of interviews connected to this investigation, this Office was informed that Ziadie was not entitled to overtime compensation based on his position as a “Chief.” While this position was repeatedly stated, this Office was unable to find any conclusive document,

[REDACTED]

policy or agreement stating the same. Notably, at the time of his promotion to Chief, Ziadie held the rank of Captain. In fact, his personnel change form to Chief of Police notes his position title as “captain.” We believe this fact to be significant, as all of the documents reviewed related to overtime compensation specify that a “captain” is entitled to overtime compensation. While this same personnel change form provides for Ziadie to receive a stipend of \$2500 in connection with his appointment to Chief of Police, there is no corresponding record explicitly stating that receipt of this stipend is in lieu of eligibility for overtime compensation.

We believe that the lack of clarity in this policy entitles Ziadie to a legal defense under Penal Law § 155.15(1), specifically: “[i]n any prosecution for larceny committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated under a claim of right made in good faith.” This is a defense for which the People would have the burden of disproving beyond a reasonable doubt. See People v. Zona, 14 N.Y.3d 488 (2010).

Here, the lack of evidence that Ziadie was explicitly notified that his promotion to Chief of Police meant that he was no longer authorized for overtime compensation, the repeated approval of overtime claims he submitted during his tenure, and the admission from [REDACTED], suggests that Ziadie would be able to avail himself of this defense to any offense charged under Penal Law Article 155, and that we would be unable to disprove such defense, beyond a reasonable doubt.

ii. Offenses involving false written statements under Penal Law Article 175

As stated above, this Office reviewed Ziadie’s overtime submissions in connection with other records in an effort to verify the veracity of the stated claim. While this review revealed instances where Ziadie’s presence in Mount Vernon during certain overtime shifts could not be independently verified, we do not believe this is sufficient for a potential charge under Penal Law Article 175. [REDACTED]

Additionally, analysis of keycard access records and LPR data would not be determinative on the issue of whether Ziadie was actually “working” during these instances, if the work was being performed via telephone or from home.

As such, even for the instances where Ziadie’s presence in Mount Vernon could not be independently verified, we do not believe that criminal charges under Penal Law Article 175 can be established to our legal standard.

Conclusion

Based on this analysis, we have concluded that no criminal charges against Ziadie will be filed in connection with this investigation.

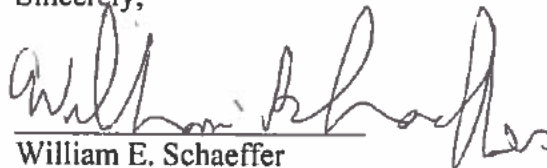
While this office is aware of the stated position of the MVPD that an individual in Ziadie's position, serving as the Chief of the Department, is not entitled to overtime compensation, this policy is not explicitly stated in writing. Additionally, throughout the investigation, this office received conflicting information from witnesses as to whether the Chief of the Department could claim overtime. Therefore, we believe the MVPD is in the best position to address these vulnerabilities and we note that it may be prudent for the MVPD to codify this policy in writing to ensure that parties in certain positions are put on notice that their position, and associated stipend, precludes them from submitting for overtime compensation.

Additionally, this office is unaware of any policy with the MVPD either permitting or prohibiting overtime claims for work performed via telephone or from home, [REDACTED] [REDACTED]. Should the intention of the MVPD be to prohibit these overtime claims, we believe it would also be prudent to codify such a policy in writing to ensure that department personnel are aware.

Our decision that criminal charges cannot be proven beyond a reasonable doubt on these facts should not be interpreted to mean that the Westchester County District Attorney's office condones this conduct. Instead, we believe the review of this incident has identified issues that can and should be addressed internally by the Mount Vernon Police Department and are referring the matter back to your agency for such review.

I look forward to having a continued discussion with you about how these vulnerabilities can best be addressed moving forward.

Sincerely,



William E. Schaeffer
Second Deputy District Attorney
Investigations Division Chief

cc: Hon. Shawn Patterson-Howard