



## STATE OF NEW JERSEY

In the Matter of Nubia A. Bowen  
Winslow Township Police Department

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2018-1673  
OAL DKT. NO. CSR 18511-17

**ISSUED: DECEMBER 4, 2019 BW**

The appeal of Nubia A. Bowen, Police Officer, Winslow Township Police Department, removal effective November 22, 2017, on charges, was heard by Administrative Law Judge Jeffrey N. Rabin, who rendered his initial decision on October 30, 2019. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of December 4, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

**ORDER**

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Nubia A. Bowen.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>th</sup> DAY OF DECEMBER, 2019

A handwritten signature in black ink, reading "Deirdre L. Webster Cobb". The signature is written in a cursive, flowing style.

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO.: CSR 18511-17

AGENCY DKT. NO.: N/A 2018-1673

**IN THE MATTER OF NUBIA A.  
BOWEN, WINSLOW TOWNSHIP  
(POLICE DEPARTMENT).**

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**Thomas A. Cushane, Esq.,** for appellant, Nubia Bowen (The Cushane Law Firm, attorneys)

**Eric Riso, Esq.,** for respondent, Winslow Township Police Department (Platt & Riso, P.C., attorneys)

Record Closed: August 5, 2019

Decided: October 30, 2019

**BEFORE JEFFREY N. RABIN, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Nubia Bowen, has appealed the termination of her position with the Winslow Township Police Department ("Winslow")<sup>1</sup>. Respondent Winslow has asserted that appellant violated department rules and regulations including but not limited to: conduct unbecoming, neglect of duty, disobedience of orders and dishonesty, as they

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<sup>1</sup> This matter was transmitted to the Office of Administrative Law with the respondent shown as "Winslow Township (Police Department)."

related to appellant's alleged conduct during incidences on November 17, 2016, and December 19, 2016.

### **PROCEDURAL HISTORY**

On February 15, 2017, and February 23, 2017, appellant was served with Preliminary Notices of Disciplinary Action (PNDA). A disciplinary hearing took place on September 28, 2017. On November 30, 2017, appellant was served with a Final Notices of Disciplinary Action (FNDA).

An appeal was filed by appellant on December 14, 2017, and the matter was transmitted to the Office of Administrative Law ("OAL"), where it was filed on December 14, 2017, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On August 2, 2018, respondent filed a Motion for Summary Decision and accompanying brief. Appellant submitted a responsive brief dated October 29, 2018, and respondent submitted a reply brief dated November 8, 2018. On November 20, 2018, respondent's Motion for Summary Decision was denied.

Hearings were held on February 11 and 13, 2019. Post-hearing briefs were received by August 5, 2019, and the record closed on that date. An order of extension was granted on September 11, 2019, extending the date for Initial Decision to November 4, 2019.

### **FACTUAL DISCUSSION**

#### **Testimony:**

#### **For respondent:**

#### **The Elm Incident:**

**Eric Del Fava** had been a Winslow Township police officer for fourteen years, starting as a patrol officer for three years before becoming a detective. He became a

sergeant in July 2010. He investigated appellant regarding the Elm Fire Hall Incident ("Elm Incident").

On November 17, 2016, Ron Amoriello reported an incident to appellant, who then instructed him to call police dispatch. This was not a good instruction, because a citizen's only responsibility is to report a crime to a police officer, with no need to report something to police central dispatch. Appellant left the scene of the Elm Incident to go to Tara Drive to address another incident. Amoriello then reported the theft at Elm Fire Hall by a telephone call to dispatch.

Based on police radio transcripts, appellant did not want to have to handle the Elm incident and told dispatch, "Please don't send me to the Elm Fire call, cause that's some B.S., too." Appellant was instructed to make a telephone call to the Tara Drive (the "Tara Incident") complainant; appellant received the telephone number from dispatch, called the Tara number, then called back to dispatch to say that she had made the Tara call. Appellant then asked whether there was anything else pending, and dispatch told her Elm Fire. Appellant returned to the Elm Fire Hall site.

Del Fava asked appellant to prepare a report on the Tara Incident. A submitted an initial report, then on December 21, 2016, Del Fava requested a second report because an Internal Affairs (IA) investigation file had been opened. Appellant submitted her second report on December 29, 2016.

Based on appellant's Tara Incident report, she did not actually handle the Tara Incident. Radio transcripts from dispatch indicated that appellant had not been called to Tara Drive, but rather a different police officer was later dispatched there.

Del Fava went to the Elm Fire Hall due to a Lieutenant Robyn Fanelle telling him that there was a possible theft, and that they needed somebody to take fingerprints. Del Fava was the highest-ranking officer on duty at that time. On the police radio Del Fava heard that there was a possible safe robbery at the Fire Hall. Del Fava met with

Amoriello at Elm Fire Hall. Amoriello was mad because he had to call dispatch. Del Fava was puzzled by the instructions given by appellant to Amoriello.

Del Fava was unsuccessful taking fingerprints from the safe. He assigned the case to another detective, then returned to the station. He checked the Computer Assisted Dispatch System (CADS) to see where appellant had been. He checked the XRMS System for records of dispatch calls. He found no reason why appellant could not have handled the Elm Incident. Del Fava did not report this to appellant's supervisor, rather he discussed this with Lieutenant Chris Dubler at a meeting the next day, although he did not tell Dubler about Amoriello's complaints about appellant. Del Fava took three weeks to investigate the matter further, before starting his report on January 6, 2017.

**Chris Dubler**, was a police officer with Winslow Township for twenty-two years; first as a part-time patrolman then full-time. He was a sergeant for five years, then a lieutenant for five years. He had been the head of IA for Winslow Township for four years. He asked Del Fava to investigate appellant and the Elm Incident. He wrote two reports. Del Fava went to Elm and spoke with Amoriello, who was unhappy. Del Fava submitted an IA report. (WT005-010.)

Dubler met with appellant regarding the Tara Incident. Appellant indicated that she needed a month to prepare a regular narrative police report on the Tara call, because she had forgotten to do it immediately after the call. Appellant's report (WT 0023) indicated that she spoke to the complainant on Tara but took no action. This was a complaint of narcotics activity at a vacant property.

Dubler reported his findings regarding appellant and the Tara Incident to Del Fava. Concluding that appellant had lied in her report, Dubler discussed the matter with the Township prosecutor, who then sent this matter for an administrative review. The problems: appellant's report stated that she had called in the Elm Incident to dispatch, when it was actually Amoriello who called this in to dispatch. Appellant's call to dispatch came after the Amoriello call, and after Captain Fanelle had already done a radio

dispatch regarding the Elm Incident; appellant stated in her report that she was unaware that dispatch had "held" the Elm call, but the radio transcripts show that she had asked dispatch to hold the Elm case. (WT 0028); it was improper of appellant to tell Amoriello to call dispatch, because he reported a crime to her and she was at the site and should have handled the matter; appellant lied to Amoriello about being dispatched to the Tara Drive location, and in fact handled the Tara matter on her cell phone, and later appellant lied to IA regarding this, standing by her statements to dispatch at the time that she was on Route 73 on her way to Tara Drive, when she in fact had not gone to Tara; additionally, although appellant made a telephone call to the complainant on Tara, appellant did not fully handle the Tara Incident matter, because she did not investigate further, she failed to check out the vacant house, and she never called the Township's narcotics officers to advise of the complaint; and appellant did not complete and submit her report on the Tara Incident until a month after the incident. Dubler stated that police do not only do what a caller asks for, but are responsible for handling a job fully, and therefore appellant should have gone to the house where the drug activity was alleged to have occurred or contacted narcotic police.

Dubler cited 11:163 in the police manual, that false entries in reports are grounds for immediate dismissal. He looked at appellant's personnel files for prior incidences, and found violations, including a failure to respond to an officer's call for back up in 2016 (WT 0072-74), failure to respond to an officer indicating he was in a struggle (WT 0075), and a failure to complete a victim notification form (WT 0076).

Dubler referred this matter to the Camden County prosecutor, thinking that between the Elm and Vehicle Incidences there was sufficient evidence of false police reports to warrant a disciplinary case. The Camden County prosecutor found that there was not enough evidence to prove criminal conduct and chose not to pursue the matter. (WT 0004). Dubler continued to pursue this matter as administrative matter, feeling that appellant could no longer be trusted, particularly when it came to testifying.

Dubler did not take a statement from Amoriello, but Del Fava did. On cross-examination, appellant's counsel suggested that since appellant completed her report from memory, any discrepancies were due to her having a bad memory.

**George Smith** had been with the Winslow Township Police Department for twenty-two years; fourteen as a patrolman, three as a sergeant and three as a lieutenant. He was currently the Chief of Police, a position he has held since March 2016, and he was therefore the Chief of Police in November 2016. He was responsible for signing off on PNDAs. The first PNDA in this matter was signed by Sergeant Ossenmuller, only because Lieutenant Smith was on vacation at the time.

Smith discussed body worn cameras (BWCs). Winslow Police Department rules require that BWCs be worn through an entire encounter or episode when responding to a call for service or dealing with a motorist.

Smith also discussed a "Brady" officer as being a police officer with a sustained record of lying, "sustained" meaning that one had been found guilty by a criminal court or IA of lying. Brady officers needed to be disclosed; in other words, when completing questionnaires an officer would have to identify themselves as a Brady officer, meaning that the officer could not testify in court. Appellant was terminated because she was a Brady officer, and by Township rule no Brady officer could work for the Winslow Township Police Department. Even if these disciplinary matters were overturned in favor of appellant, Smith would still have to disclose to a prosecutor that appellant was a Brady officer.

Smith authorized discipline against appellant, based on the reports of Del Fava and Dubler. Del Fava obtained phone and radio transmission records in preparing his report. Smith stated his belief that a police officer should review phone and radio transcripts before writing reports; appellant failed to do so regarding the within Incidences. Appellant had not seen the BWC footage before writing her report; however, she could have, on her own, reviewed the BWC footage before writing her reports.



The Vehicle Incident:

**Del Fava** testified on the second day of hearing regarding the Vehicle Incident. Captain Leahy saw a complaint on Facebook regarding a disabled motor vehicle incident (DMVI), in which a woman said that appellant left her daughter stranded on the side of the road. Del Fava spoke with Leahy, investigated the matter and wrote a report. (WT 0054 and 0055.) Del Fava confirmed that there had been an incident with a motorist and her daughter who had been stranded on a township road. He looked at appellant's report, in which appellant indicated that she went to Sicklerville and Cross Keys roads but found no vehicle there.

Regarding a Master Incident Report (such as WT 60), dispatch (using CADS) would list the location of an incident on the report form, and then an officer would complete the narrative section. In the form for the Vehicle Incident, dispatch wrote that it had sent appellant to Sicklerville and Westerly roads. In the narrative section of the Master Incident Report in this matter, appellant indicated that she had been dispatched to Sicklerville and Cross Keys roads and that there was no vehicle at that location and that she then left the location. Cross Keys and Westerly roads are two-tenths of a mile apart, and one could see one intersection from the next. Del Fava looked at appellant's BWC footage, and confirmed that appellant had spoken with the vehicle operator, A.O-S., and her daughter at their car at the intersection of Sicklerville and Westerly, therefore contradicting appellant's written report. The motor vehicle was sticking out into the northbound lane of Sicklerville Road. Based on this contradiction, Del Fava started a Special Report. (WT 54-55.)

After appellant left the scene, A.O-S. called Winslow Township police dispatch to again report that she was stranded in her vehicle. Dispatch sent another officer to the scene. Officer Wallace was seen on his BWC footage coming to the vehicle and helping A.O-S. and her daughter. A.O-S. complained to Officer Wallace about appellant's behavior, claiming that appellant seemed upset that she had been called to help her.

Based on BWC footage, appellant took no action at the Vehicle Incident scene. She did not attempt to control traffic moving past the vehicle, even though traffic was being forced to move around her exposed vehicle. She did not move the vehicle off of the road, and did not stay with the stranded motorists until a tow-truck came; instead, appellant told A.O-S. that her car was fine where it was. This was improper behavior. Officer Wallace exhibited proper behavior when he moved A.O-S.'s car off of the road, to allow vehicle traffic to continue to flow safely. A.O-S. later came to police headquarters and filed a complaint against appellant. (WT 43-45.) Del Fava then turned this matter over to Lieutenant Dubler for an IA investigation.

**Chris Dubler**, opened an IA case on November 19, 2016, regarding the Vehicle Incident, due to the Special Report filed by Del Fava. Dubler filed a formal report. (WT 56-58).

After completing his report, Dubler referred this matter to the Camden County prosecutor due to there being a false police report. Appellant's report was contradictory to the BWC footage, because you could see appellant speaking with A.O-S. Dubler met with appellant to tell her that she would be hearing from the Camden County prosecutor. Appellant executed an IA Notice. (WT 48.) Dubler met with A.O-S. and took a taped statement, which he burned to compact disc. He reviewed appellant's personnel file.

After Camden County decided not to prosecute appellant criminally, the matter had to be handled by Winslow. Dubler wrote report WT 65-71. He reviewed the radio transmissions between dispatch and appellant. All officers were able to hear these radio transmissions. The Vehicle Incident had initially been dispatched to Officer Cohen, but was then reassigned to appellant. Reassignments are common. Appellant confirmed she had received the assignment, and asked dispatch to send it to "her screen," meaning to send the written details of the call to her police car dashboard computer, which would help her confirm the address. The radio transmissions indicated that at 7:15 p.m., appellant told dispatch that she was arriving at Westerly Road. Eleven minutes later, appellant told dispatch that she had "cleared" the call, meaning

that she had completed the assignment and was now available for another assignment. As seen on the BWC footage, A.O-S. told appellant that she had called the police, and appellant told A.O-S. that she was the police officer sent by dispatch in response. Appellant left before moving the vehicle off the road. She could have stayed at the scene until the motorist received help, or could have called for another police officer to attend the scene. There was no shoulder on the road, it was dark out, it was a heavily traveled road, and the car in question was halfway sticking out into the road.

The footage from Officer Wallace's BWC showed that he was surprised that the car was left blocking part of the road. Officer Wallace pushed the car out of the road and remained with the vehicle and the motorists until a tow-truck arrived. Therefore, appellant's statements in her report were wrong: she was there at the Westerly location, she did see A.O-S.'s stranded car and she did speak with A.O-S. That is why appellant had been accused of untruthfulness, pursuant to code 11:163, which stated that a police officer must be truthful at all times, and that false statements were grounds for termination.

Dubler did not interview appellant. His only face-to-face time with her was on January 3, 2017, when he gave appellant her notice of the IA investigation and told her that Camden County would be contacting her. The Camden report (WT 51-53) was reviewed by Dubler as part of his investigation. He spoke to the Camden interviewer. In WT 53, appellant stated to the Camden County interviewer that she was unable to find A.O-S.'s vehicle. Appellant stated that the vehicle operator she was seen speaking with on the BWC footage was a different vehicle operator with a different vehicle who was at that location on an unrelated, different accident. (WT 65.) However, this conflicted with the dispatch records, where appellant confirmed to dispatch that she was at the site she had been dispatched to. She never told dispatch that she had found an unrelated car from an unrelated accident.

For appellant:

No witnesses.

Credibility:

In evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness' story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, at pages 521–22; See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Further, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

**Eric Del Fava** was a well-prepared, thorough witness. He was forthright, stating what he knew and making clear what he did not know. He spoke with authority and

confidence, displaying a great deal of knowledge of the workings of police procedure. Despite intense cross-examination, he did not appear defensive. He exhibited no bias or motive in his testimony. His testimony is accepted as truthful and credible, and therefore it is accepted as **FACT** that:

Regarding the Elm Incident: On November 17, 2016, appellant arrived at Elm Fire Hall, where Ron Amoriello<sup>2</sup> reported a robbery to appellant; she instructed Amoriello to report the robbery directly to police dispatch, because she needed to leave Elm Fire Hall to drive to Tara Drive; appellant received the telephone number of the Tara Incident complainant, E.G., from dispatch with instructions to call E.G.; appellant telephoned E.G., then called back to dispatch to say that she had made the Tara call and was ready for another assignment; appellant had not been told to drive to Tara Drive, but instead a different police officer was later dispatched there.

Amoriello called the Elm Incident in to Winslow Township dispatch; a citizen had no responsibility to report a crime directly to police dispatch once they have reported the crime to a police officer. Del Fava checked CADS and the XRMS System for records of dispatch calls and concluded that appellant could have handled the Elm Incident.

Regarding the Vehicle Incident: Winslow Police central dispatch assigned appellant to go to the intersection of Sicklerville Road (Route 705) and Westerly Road to address a DMVI on December 19, 2016; appellant wrote in her Master Incident Report that she had been dispatched to Sicklerville and Cross Keys roads, that there was no vehicle at that location and that she then left the location; appellant's BWC footage showed that she had spoken with A.O-S. at the intersection of Sicklerville and Westerly; A.O-S.'s purple Scion was sticking out from the side of the road into the northbound travel lane; appellant told A.O-S. that her car was parked in a good place, then left A.O-S. without moving the vehicle out of the travel lane and without attempting to direct traffic around the vehicle, and left before any tow-truck or further assistance arrived; after appellant left the scene, A.O-S. called Winslow Township police dispatch to again report that she was stranded in her vehicle, and dispatch sent Officer Wallace to the

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<sup>2</sup> President of the Elm Fire Company.

scene; Wallace pushed A.O-S.'s vehicle off the road; A.O-S. later went to police headquarters and filed a complaint against appellant.

**Chris Dubler** was a credible witness whose testimony displayed a great knowledge of and confidence in his police work. He made a mistake earlier in his testimony when he said that he had interviewed appellant regarding the Vehicle Incident, and later admitted that he was mistaken, because he only interviewed appellant regarding the Elm Incident. Despite vigorous cross-examination, at no time did he appear defensive, but rather continued to display confidence in his knowledge of the details of these matters. He exhibited no bias or motive in his testimony. Accordingly, his testimony is accepted as truthful and credible and it is accepted as **FACT** that:

Regarding the Elm Incident: Dubler was the head of IA for Winslow Township, and asked Del Fava to investigate appellant regarding the Elm Incident; appellant indicated to Dubler that she needed a month to prepare a narrative police report on the Tara Incident, because she had forgotten to do it immediately after the call; appellant spoke to the Tara Incident complainant, E.G., on the telephone, who complained of narcotics activity at a vacant property; appellant told IA that she had started driving on Route 73 on her way to District One where Tara Drive was located; appellant had not started driving to Tara Drive and did not drive to that location; after appellant's telephone call with E.G., she did not investigate the Tara Incident further, she failed to investigate the vacant house, and she never informed Winslow narcotics police of the complaint; police do not only do what a caller asks for, but are responsible for handling a job fully.

Appellant's report stated that she had called in the Elm Incident to dispatch; appellant's call to dispatch came after Amoriello called his complaint in to dispatch, and after Captain Fanalle had done a radio dispatch regarding the Elm Incident; appellant stated in her report that she was unaware that dispatch had "held" the Elm call; appellant had asked dispatch to hold the Elm case.

Winslow Township Police Manual section 11:163 states that a police officer must be truthful at all times, and that false statements or entries in reports are grounds for termination; appellant's prior work violations included a failure to respond to an officer's call for back up, failure to respond to an officer indicating he was in a struggle, and a failure to complete a victim notification form.

Regarding the Vehicle Incident: appellant spoke with A.O-S. at the intersection of Sicklerville and Westerly; the Vehicle Incident had initially been dispatched to Officer Cohen, but was then reassigned to appellant; reassignments are common; appellant confirmed she had received the assignment, and asked dispatch to send it to "her screen," meaning to send the written details of the call to her police car dashboard computer, which would help her confirm the address; at 7:15 p.m., appellant told dispatch that she was arriving at Westerly Road; at 7:26 p.m., appellant told dispatch that she had "cleared" the call, meaning that she had completed the assignment and was then available for another assignment; A.O-S. told appellant that she had called the police and appellant confirmed that she was the police officer sent by dispatch in response; appellant left the scene before moving A.O-S.'s vehicle off the road and did not stay until the motorist received help or until backup police help arrived; there was no shoulder on Sicklerville Road; Sicklerville Road was a heavily traveled road; it was dark outside during the Vehicle Incident; A.O-S.'s vehicle was obstructing the flow of traffic on Sicklerville Road; Officer Wallace pushed A.O-S.'s vehicle off of Sicklerville Road and remained with the vehicle and the motorist until a tow-truck arrived.

Appellant was interviewed by the Camden County Prosecutor's Office; she stated to the Camden County interviewer that she was unable to find A.O-S.'s vehicle; appellant stated that the vehicle operator she was seen speaking with on the BWC was a different vehicle operator with a different vehicle who was at that location on an unrelated, different accident; appellant never told dispatch that she had found an unrelated car from an unrelated third party accident.

**George Smith** was a credible witness. He spoke with authority and confidence and answered questions directly and thoroughly. He displayed a great deal of

knowledge of the workings of a police department, and how investigations were to take place. He testified calmly and without bias or motive. Accordingly, his testimony is accepted as truthful and credible. Therefore, it is accepted as **FACT** that:

The Winslow Township Police Manual requires that BWCs be worn through an entire encounter or episode when responding to a call for service or when dealing with a motorist; a “Brady” officer was a police officer with a sustained record of lying, “sustained” meaning that you had been found guilty of lying by a criminal court or IA; being a Brady officer had to be disclosed, because a Brady officer could not testify in court; no Brady officer could work for the Winslow Township Police Department; even if the within disciplinary matters were to be overturned in favor of appellant, Smith would still have to disclose to a prosecutor that appellant was a Brady officer.

### **LEGAL ARGUMENT AND CONCLUSION**

The issue is whether the respondent, Winslow Township Police Department, acted properly in terminating appellant's employment as a police officer for violations of the Winslow Township Police Department Code of Conduct<sup>3</sup> and New Jersey law for conduct unbecoming, neglect of duty, disobedience of orders and dishonesty, as related to appellant's alleged conduct regarding incidences on November 17, 2016, and December 19, 2016 (respectively, the Elm Incident and Vehicle Incident).

An appellant's rights and duties are governed by the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.

Respondent had both the burden of persuasion and the burden of production, and was required to demonstrate by a preponderance of the competent, relevant and credible evidence that appellant committed the charged infractions listed in the Final

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<sup>3</sup> Set forth in the Winslow Township Police Manual.



Notices of Disciplinary Action. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). See generally Coleman v. E. Jersey State Prison, CSV 1571-03, Initial Decision (February 25, 2004); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550, 560 (1982); In re Darcy, 114 N.J. Super. 454, 458 (App.Div. 1971).

A preponderance of the evidence has been defined as that which “generates belief that the tendered hypothesis is in all human likelihood the fact.” Martinez v. Jersey City Police Dept., CSV 7553-02, Initial Decision (October 27, 2003) (quoting Loew v. Union Beach, 56 N.J. Super. 93, 104 (App.Div. 1959)).<sup>4</sup>

#### **I. Conduct unbecoming an Officer (Code section 12:34)**

One of the grounds for discipline of public employees is “conduct unbecoming a public employee.” N.J.A.C. 4A:2-2.3(a)(6). “Conduct unbecoming a public employee” encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); See also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of-conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, at 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

Conduct unbecoming is a fact sensitive determination rather than one based on a legal formula. In the Matter of Craig Venson, City of Plainfield, CSV 7545-07, Initial

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<sup>4</sup> The fact that appellant was not prosecuted criminally is irrelevant to the findings in the within matters, as the standard in administrative hearings is preponderance of the evidence, and in criminal prosecutions it is beyond a reasonable doubt.

Decision (June 9, 2009), aff'd, Civil Service Commission (August 6, 2009). The facts in this case support a finding that appellant committed conduct unbecoming a police officer. Appellant offered no documentary evidence or testimony to refute the facts as set forth by respondent with regard to these issues, but instead attempted to obfuscate the testimony of respondent's witnesses in order to offer various unsupported theories to bolster their position.

The filing of a false police report would constitute conduct unbecoming. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); Palladino v. Twp. Of Waterford, 227 N.J. 114 (2016). The finding that a police officer submitted a false report or committed some level of untruthfulness would constitute conduct unbecoming of a public employee, because such conduct created "issues whereby [the officer] cannot testify in any criminal court without a prosecutorial disclosure of [the officer's] 'Brady Issue,' thereby, reducing [the] ability to serve as a police officer." In the Matter of Edmund Ansara, City of Millville, Police Dept., OAL Dkt. No. CSR 08490-2016 (November 28, 2016). The filing of a false police report was conduct that would serve to irreparably undermine the public's confidence in the police. Cosme v. E.Newark Twp. Comm., 304 N.J.Super. 191, 206 (App.Div. 1997), cert. denied 156 N.J. 381 (1998).

Winslow Township Police Manual section 12:34 lists twenty-two offenses that constitute conduct unbecoming, including knowingly, willfully, or with negligence making a false police report, and making false statements, verbal or written during an investigation.

Regarding the Elm Incident, appellant indicated to dispatch that she had driven to Tara Drive in District One to address a complaint regarding illegal narcotics activity, when in fact she did not drive to Tara Drive but rather called the complainant by cell phone. Appellant told dispatch that they would be getting a call for a report of a theft at the Elm Fire Hall, but it was clear that Amoriello had already called dispatch to report the robbery, as he was instructed to do by appellant. Appellant indicated to dispatch that she had completed the Tara call and was ready for another assignment, when in fact she had merely spoken to the complainant on the telephone and had taken no

further action as would be required of a police officer, such as meeting in person with the complainant to take a statement, examining the vacant property in which complainant asserted there had been illegal drug activity, or advising Township narcotics officers of the complaint so they could investigate.

Regarding the Vehicle Incident, Winslow Police central dispatch had assigned petitioner to Sicklerville and Westerly roads to address a DMVI on December 19, 2016, but appellant wrote in her Master Incident Report that she had been dispatched to Sicklerville and Cross Keys roads. Appellant wrote in her report that, "[u]pon arrival the vehicle was no longer on the location. No action was taken and the scene was cleared." However, appellant's BWC footage showed that A.O-S.'s vehicle was at the location she was dispatched to, and appellant had in fact spoken with the vehicle operator A.O-S. The footage showed that the scene had not been cleared, but rather appellant simply told the motorist that vehicles had enough room to pass and that her car was parked in an acceptable spot. Appellant also indicated to A.O-S. that she would wait for a towing service to arrive, but then left the scene without taking any further action to assist the motorist and without waiting for a tow-truck. Appellant was heard on a radio transmission with dispatch acknowledging that the car she was looking for was a purple 2009 Scion on Sicklerville Road, as further evidenced by appellant requesting that the dispatch sergeant send that same information to her police car dashboard computer screen. Appellant was also heard on the radio confirming that she was "arriving on Westerly." A comparison of the documentary evidence on this issue—appellant's Master Incident Report and BWC footage—made clear that the description of the Vehicle Incident in her Master Incident Report was contradicted by the footage from appellant's BWC.

Appellant argued that she was only guilty of shoddy police work or honest lapses in memory, but provided no documentary evidence or testimony to lend credibility to such defenses. Such lapses would have been corrected had she reviewed the radio transmissions before writing her report, but she did not. Appellant also argued that the finding that she had filed a false police report was based solely on hearsay, without any residuum of legal and competent evidence. This argument fails, because the finding of a

false police report with regard to the Vehicle Incident was based on documentary evidence: appellant's Master Incident Report and BWC footage.

Additionally, appellant continued perpetrating these false facts during the IA investigation. For example, during the IA investigation of the Elm Incident, appellant indicated that she had started driving towards District One (Tara Drive), when in fact she had not done so. Winslow Township Police Manual section 12:34(U) states that conduct unbecoming includes "[m]aking false statements, verbal or written, pertaining to any internal investigation." As stated in Palladino, "An officer's dishonesty in an internal affairs investigation 'is significant' and independently constitutes conduct unbecoming."

Appellant's verbalizing that the Elm Incident was not worthy of her time, combined with falsely reporting that she had driven towards Tara Drive, evidenced that her false statements were knowingly and willfully submitted, which brings this under the list of offenses in Winslow Township Police Manual section 12:34. Section 12:34 lists twenty-two offenses that constitute conduct unbecoming; one offense alone will suffice to show conduct unbecoming. Section (F) covers knowingly and willingly or with negligence making a false report or entry in department records. Appellant argued that her false reports and entries were not knowingly and willingly entered, but rather were part of some kind of confusion or mistake, but that argument would merely place appellant's actions under the negligence portion of section 12:34(F). Additionally, as detailed above, section 12:34(U) states that conduct unbecoming includes "[m]aking false statements, verbal or written, pertaining to any internal investigation." Accordingly, in contradiction to an argument raised by appellant, intent need not be proved, as long as there was proof that false statements had been made during an investigation. In the within matter, appellant continued perpetrating her false statements from her reports through the IA process and interview with Camden County.

Accordingly, I **CONCLUDE** that appellant's filing of false police reports and making of false statements during the investigation of the incidences on November 17, 2016, and December 19, 2016, constituted conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6).

**II. Neglect of Duty (section 12:37), Performance of Duty (section 11:8) and Reports and Bookings (section 11:90)**

The facts of the case as set forth in the testimony of the various witnesses at the hearing support a finding of neglect of duty against appellant, and failure to perform her duties. Neglect of duty would occur when an employee had neglected to perform an act required by his or her job title or when the employee was negligent in the discharge of those duties. In the Matter of Ranko Kandic, Rowan College of New Jersey, OAL Dkt. No. CSV 330-08 (February 1, 2010). Neglect of duty charges are based on the nonperformance of some official duty that was imposed upon a public employee, and not merely the commission of an imprudent act. Rushkin v. Bd. Of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). The charge of performance of duty covered situations where an appellant failed to perform actual duties.

Winslow Township Police Manual section 12:37 defines neglect of duty. Subsection (A) addresses the failure to take police action when necessary, and failure to submit a written report of same. Subsection (F) addresses the failure to conduct proper, thorough and complete investigations.

Appellant offered no documentary evidence or testimony to refute the facts as set forth by respondent with regard to these issues, but instead attempted to offer various unsupported theories to reinforce their position, including an unsupported accusation that the Winslow investigators mishandled the investigations.

Appellant failed to submit her investigation report on the Elm Incident in a timely fashion. This constituted a violation of Winslow Township Police Manual section 11:90,

which requires police officers to issue timely reports. Regarding the Tara Incident, appellant used her assignment to handle the Tara Incident as a reason to leave the Elm Fire Hall scene. In fact, because appellant originally believed she could handle the Tara Incident matter by simply making a telephone call to the complainant, there was no reason for her to leave Amoriello and the Elm Fire Hall location; she could have made the Tara Drive call from her vehicle where she was parked at the Fire Hall.

Appellant was told that the Tara Drive complainant, E.G., wanted a telephone phone call. Appellant did speak by phone with E.G., who claimed there were illegal narcotics sales taking place in a vacant house near her home. Appellant could argue that she completed her assignment simply by having called E.G. on her cellphone. But nothing had been proffered to indicate that she was only to conduct a telephone call; she was asked to address a criminal complaint from a citizen of Winslow Township. After speaking with E.G., appellant did not report the substance of her conversation to dispatch or to Winslow Township narcotics officers, she did not drive to Tara Drive to interview E.G. in person, and did not investigate the vacant house in which illegal drug activity was alleged to have taken place.

As appellant was assigned to these locations, her failure to provide services at both Elm Fire Hall and Tara Drive evidenced a failure to take police action when necessary and failure to conduct proper, thorough and complete investigations, and therefore met the definition of neglect of duty in Winslow Township Police Manual section 12:37.

The strongest evidence that appellant was guilty of neglect of duty was regarding the Vehicle Incident. Appellant reported that she did not find the vehicle at the location she had been dispatched to; however, her BWC footage and the radio transmissions with dispatch clearly indicated that she had located the car and its owner. Although appellant indicated that "the scene was cleared," and told the vehicle owner, A.O-S., that other vehicles had sufficient room to pass, A.O-S.'s vehicle was positioned partly in the northbound lane of travel. Only after Officer Wallace was called to the scene was any assistance provided to A.O-S. Officer Wallace determined that the vehicle was

located in a hazardous position, and he pushed the vehicle off of the roadway. Appellant failed to move the vehicle out of the travel lane, and although she told A.O-S. that she would stay until a tow-truck arrived, appellant drove off without waiting for a tow-truck and without rendering any other assistance.

There were duties that needed to be performed regarding the Vehicle Incident—a fact conceded to in appellant's closing brief—as further evidenced by Officer Wallace moving the stranded vehicle out of the roadway to a safer location and waiting for a tow-truck to arrive. Because these were duties that were naturally part of a DMVI, it was clear that appellant's failure to act when she arrived at A.O-S.'s vehicle evidenced a failure to take police action when necessary and failure to conduct proper, thorough and complete investigations, and therefore constituted neglect of duty pursuant to Winslow Township Police Manual section 12:37.

Again, appellant argued variously that she was confused and only guilty of shoddy police work, and claimed that the internal affairs investigations were not conducted properly. However, appellant provided no evidence or testimony to lend credibility to such defenses.

Accordingly, I **CONCLUDE** that appellant's failure to perform acts required by her job regarding the incidences on November 17, 2016, and December 19, 2016, constituted neglect of duty.

**III. Disobedience of Orders and Dishonesty/Other Sufficient Cause (Code sections 12:38 and 11:163)**

The same arguments applicable to the first two charges are applicable to the charge that appellant disobeyed orders and displayed dishonesty. Appellant was in a position to handle the Elm Incident and Vehicle Incident, but failed on both counts. She was at the Elm Fire House and was approached by the complainant, but then left the scene without performing any official duties. Appellant argued that Amoriello was merely seeking advice from a police officer, and not reporting a crime, but offered no evidence

or testimony of such a claim. In fact, appellant told the complainant to call the alleged robbery in to dispatch himself, although he had already reported the crime to appellant. Similarly, dispatch had assigned appellant to the Vehicle Incident, but she left the scene without performing any of the required official duties. As stated above, appellant made false statements to dispatch and to the IA and Camden County investigators, and filed a false police report with regard to the Vehicle Incident. It is duplicative to have to address disobedience of orders and dishonesty again, but the above-referenced evidence regarding conduct unbecoming and neglect of duty also proved that appellant was guilty of disobedience of orders and dishonesty. At a minimum, appellant was guilty of disobedience of orders under Winslow Township Police Manual section 12:38(G) for failing to submit a report in a timely fashion.

Respondent also charged appellant with a violation of Winslow Township Police Manual section 11:48 with regard to both incidences, that being the carrying of required equipment when in uniform. However, no evidence or testimony was provided by respondent to prove these charges.

I **CONCLUDE** that appellant had disobeyed orders and displayed dishonesty with regard to the Elm Incident and Vehicle Incident.

### **THE PENALTY**

As stated above, an appellant's rights and duties are governed by the Civil Service Act and accompanying regulations. Further, a civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.

In assessing the propriety of a penalty in a civil disciplinary action, the primary concern is the public good; factors to be considered are the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. North Princeton Development Center, 96 N.J.A.R. 2d 465 (CSV)(1996). Progressive discipline is required in those cases where an employee is guilty of a series of offenses, none of



which is sufficient to justify removal. Harris v. North Jersey Developmental Center, 94 N.J.A.R. 2d (CSV)(1994).

N.J.A.C. 4A:2-2.3(a)(6) sets forth the charge of conduct unbecoming a public employee; penalties for this charge are enumerated in N.J.A.C. 4A:2-2.2(a), which permits discipline ranging from suspension and demotion, to removal. A civil service employee who committed a wrongful act related to his or her duties may be subject to major discipline. N.J.S.A. 11A:2-6. Additionally, regarding the false reports filed by appellant, Winslow Township Police Manual section 11:163 states that false entries in reports are grounds for immediate dismissal.

In focusing on the effect on the public good, as set out in George v. North Princeton Development Center, there is concern for returning an employee to a position where in two separate incidences they failed to properly conduct themselves. Three times during these two incidences appellant spoke with an aggrieved party, then ignored their request for assistance. Amoriello reported a robbery to appellant, but rather than getting out of her police vehicle and starting an investigation she told him to report the crime directly to dispatch, then left to address a different incident. After hearing a report from a complainant on Tara Drive that there was illegal drug activity happening in a nearby vacant house, appellant ignored the complaint. Appellant never drove to the scene of the complaint, never interviewed the complainant in person and never investigated or physically inspected the vacant house for illegal activity. And lastly, upon seeing a stranded vehicle extending from the side of the road into a travel lane, appellant failed to move the vehicle to a safe position, and failed to stay with the vehicle, with her police lights on, until additional help could arrive. These represented three opportunities for appellant to fulfill her obligations as a police officer to help the public; instead, in all three situations appellant failed to perform duties that would ensure the safety of the public.

When considering removal of an employee, their entire prior work/disciplinary record must be considered. In re Stallworth, 208 N.J. 182 (2010). Appellant had at least three prior work violations: a failure to respond to an officer's call for back-up;

failure to respond to an officer indicating he was in a struggle; and a failure to complete a victim notification form.

Because a determination had been made, based on appellant's actions stemming from the Elm and Vehicle Incidences, that appellant had violated a statute, regulation or rule concerning her employment, and because there were prior violations on appellant's employment record, the concept of progressive discipline could be considered. W. New York v. Bock, 38 N.J. 500 (1962). Yet In re Stallworth, allowed for the bypassing of progressive discipline, stating, "progressive discipline is not 'a fixed and immutable rule to be followed without question' because 'some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.'" In re Stallworth, at page 196. That court further stated, "Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property." In re Stallworth, at page 197 (quoting In re Herrmann, 192 N.J. 19, 33 (2007)).

Accordingly, when the underlying conduct was of an egregious nature or involved public safety, the imposition of a penalty up to and including removal was appropriate, regardless of the individual's prior disciplinary history. Henry v. Rahway State Prison, supra. Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Carter v. Bordentown, 191 N.J. 474, 484 (2007).

A police officer's primary duty is to protect the public. Respondent proved that appellant was responsible for misconduct that risked the public's safety and risked harm to persons or property. Appellant ignored a neighbor's complaint of illegal drug activity in a nearby vacant house, without any concern for the complainant's safety, her neighbors' safety or for what harm could have happened in and to the vacant house. Appellant left a woman and her daughter stranded in their vehicle, with the vehicle extended out into travel lanes on a busy road on a dark night, without moving the

vehicle, directing traffic, or putting on her police lights and remaining with the vehicle until additional help came.

Police officers must be held to a high standard of conduct. See Appeal of Emmons, 63 N.J. Super. 136, 141-42 (App. Div. 1960); Moorestown Tp. v. Armstrong, 89 N.J. Super. 560, 5466 (App. Div. 1965). Appellant committed several violations that could have created harm to the public. She committed multiple counts of filing false reports and lying; as a Brady officer, she would not be able to testify in cases on which she had worked, which removed a great deal of her effectiveness as a Winslow Township Police Officer, as well as being unacceptable under the Winslow Police code. Respondent proved that appellant's conduct not only put the public in harm's way, but also made her an ineffective police officer for Winslow Township. Winslow Township's own police manual set out a penalty of termination for the filing of false reports.

Therefore, I **CONCLUDE** that respondent met its burden of proof and burden of production, by showing that appellant's actions related to the Elm and Vehicle Incidences constituted conduct unbecoming, neglect of duty, the disobeying of orders, and dishonesty, and that the respondent acted properly in terminating petitioner's employment.

### **ORDER**

I **ORDER** that the disciplinary action of the respondent, Winslow Township Police Department, in removing appellant Bowen from her position as a Winslow Township police officer, is **AFFIRMED**, and that the within appeal is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION** pursuant to N.J.A.C. 1:1-18.6., by which law it is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt,

modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 30, 2019

DATE

  
\_\_\_\_\_  
JEFFREY N. RABIN, ALJ

Date Received at Agency:

10/30/19

Date Mailed to Parties:

10/30/19

JNR/mph

**APPENDIX**

**WITNESSES**

**For appellant:**

No witnesses

**For respondent:**

Sergeant Eric Del Fava  
Lieutenant Chris Dubler  
Lieutenant George Smith

**EXHIBITS**

**For appellant:**

Closing Brief, dated July 8, 2019  
Reply Brief, dated August 2, 2019  
Sur-Reply Brief, dated August 7, 2019

**For respondent:**

Document Binder: pages WT-1 through WT-0568  
Post-Trial Brief, dated July 8, 2019  
Reply Brief, dated August 5, 2019