



## STATE OF NEW JERSEY

## DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Victor Vazquez, *et al.*,  
City of Hackensack, Police Department

CSC Docket Nos. 2018-2412, 2018-2474,  
2018-2457, 2018-2472  
& 2018-2510

OAL Docket Nos. CSR 03158-18,  
CSR 03159-18, CSR 03186-18,  
CSR 03358-18 & CSR 03729-18  
(consolidated)

**ISSUED:      APRIL 8, 2019      (EG)**

The appeals of Victor Vazquez, Mark Gutierrez, Joseph Gonzales and Rocco Duardo, Police Officers with the City of Hackensack, and Justin de la Bruyere, a Police Sergeant with the City of Hackensack, of their removals, effective May 9, 2017, on charges, were heard by Administrative Law Judge Susana E. Guerrero (ALJ), who rendered her initial decision on February 8, 2019. Exceptions and replies to exceptions were filed on behalf of the appointing authority, and exceptions and replies to exceptions were filed on behalf of the appellants.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on March 27, 2019, did not adopt the ALJ's recommendation to modify the removals of Vazquez and Duardo to 90-day suspensions and modify the removals of Gutierrez and de la Bruyere to 150-day suspensions. Rather, the Commission modified the removals of Vazquez and Duardo to six-month suspensions and upheld the removals of Gutierrez and de la Bruyere. However, the Commission adopted the ALJ's recommendation to reverse the removal of Gonzales.

## DISCUSSION

The appellants were removed on charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, neglect of duty, other sufficient cause, and violations of various Hackensack Police Department Rules and Regulations. The appellants were also charged with misconduct and disobedience pursuant to *N.J.S.A.* 40A:14-147. Specifically, the appointing

authority alleged that the appellants conducted an illegal warrantless search of a residence and illegally seized personal property of the resident. It also alleged that the appellants filed false, misleading and inaccurate police reports. Upon the appellants' appeals, the matters were transmitted to the Office of Administrative Law (OAL) for hearings as contested cases. The matters were consolidated at the OAL.

The ALJ, after describing the background of this matter and summarizing the extensive testimony, set forth in her initial decision her findings of fact. The ALJ found that Gonzales testified credibly that former Police Captain Vincent Riotto<sup>1</sup> directed him to conduct a record check on C.G. prior to leaving headquarters on December 28, 2016. The record check revealed that C.G. had an outstanding warrant for a traffic violation, and the officers were made aware of the warrant before departing for 64 P. Ave., Apt. A. The officers went to 64 P. Ave., Apt. A at the direction of Riotto to contact C.G. and conduct a weapons investigation. Surveillance video depicted the five appellants along with Riotto and Police Lieutenant Scott Sybel<sup>2</sup> entering 64 P. Ave., Apt. A on December 28, 2016, with a key that they had received from the building's owner to enter the building for law enforcement purposes. Upon entering the building, the officers walked directly to the third floor and Apt. A without encountering or speaking to anyone. The video also showed that Duardo placed his ear on the apartment door and tried to look under the door. After being there for six minutes, Vazquez, Duardo and de la Bruyere spoke with G.H., Sr. at his apartment across from Apt. A. After speaking with G.H., Sr., the officers continued to stand around with no visible change in their conduct or demeanor. The ALJ noted that when Riotto exited the building, Sybel became the officer in charge.

Approximately two and half minutes after speaking with G.H., Sr., Vazquez walked directly to the door and entered Apt. A along with all of the officers, except Gonzales. Gonzales had been ordered down to the superintendent's office and never entered the apartment. The ALJ found that the video surveillance was inconclusive as to whether any officer tampered with the lock of Apt. A or if the door was unlocked when they gained entry. Additionally, the ALJ indicated that the officers had entered the apartment without a warrant but asserted that they entered based on a claim from G.H., Sr. that an unattended child was inside. The ALJ did not find this assertion credible. She stated that other than their testimony, the appellants offered no credible evidence that G.H., Sr. indicated to them that a child was unattended in Apt. A. Further, the ALJ determined that upon her review of the video, the officers' testimony, and the absence of any testimony from an impartial witness corroborating the report of an unattended child or that a child had been heard that morning, she found that no exception to the warrant requirement

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<sup>1</sup> It is noted that Riotto retired effective November 1, 2017.

<sup>2</sup> It is noted that Sybel retired effective March 1, 2017.

applied and the officers' warrantless search of the apartment was unjustified and improper.

The ALJ also found that Sybel, the senior officer on the scene at the time, ordered the officers to enter the apartment. Additionally, the ALJ indicated that it was inconclusive as to whether the officers had removed any personal property from the apartment. Further, the ALJ determined that it was inconclusive as to whether the officers had conspired or planned to conduct an unauthorized or improper warrantless search of Apt. A. Furthermore, the ALJ found that the report documenting the events of December 28, 2016, at 64 P. Ave, that had been prepared by Gutierrez and reviewed and approved by de la Bruyere falsely indicated that while walking through the building the officers encountered a resident who informed them that there was an unattended child in Apt. A. The ALJ indicated that the report was not only vague, but contained misleading and inaccurate information.

Therefore, with respect to each appellant, based on her findings, the ALJ issued the following conclusions.

#### Victor Vazquez

The ALJ determined that Vazquez was one of the officers that conducted an improper search of the apartment. Thus, the ALJ concluded that the appointing authority had proven by a preponderance of the credible evidence the charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, neglect of duty, other sufficient cause, and violations of Hackensack Police Department Rules and Regulations. However, the ALJ indicated that the charges based on *N.J.S.A. 40A-14-147* and the rules and regulations referring to misconduct observed by police personnel were not proven by the appointing authority. The ALJ noted that while Vazquez was the lowest ranking officer at the scene, and was ordered by Sybel to enter the room, he should have known that the search of Apt. A. without a warrant was not legitimate. Thus, discipline was appropriate. Nevertheless, in determining the penalty, the ALJ found that the act was not egregious enough on its own to warrant Vazquez's removal, and that in applying progressive discipline, she concluded that a 90-day suspension was appropriate.

#### Mark Gutierrez

The ALJ determined that Gutierrez was one of the officers that conducted an improper search of the apartment. He also authored and filed an investigation report containing inaccurate and misleading information about the events of December 28, 2016. Based on the foregoing, the ALJ concluded that the appointing authority had proven by a preponderance of the credible evidence the charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming a public

employee, neglect of duty, other sufficient cause and violations of Hackensack Police Department Rules and Regulations. However, the ALJ indicated that the charges based on *N.J.S.A. 40A-14-147* and the rules and regulations referring to misconduct observed by police personnel were not proven by the appointing authority. The ALJ noted that Gutierrez did not go to 64 P. Ave. or enter Apt. A. to further any personal interest but rather to conduct a legitimate investigation. Additionally, while he was ordered by Sybel to enter the room, he should have known that the search of Apt. A. without a warrant was not legitimate. Thus, discipline was appropriate. In determining the penalty, the ALJ noted that in addition to conducting the improper search, Gutierrez wrote and filed a misleading and inaccurate report. Therefore, while the ALJ found that the act was not egregious enough on its own to warrant removal, in applying progressive discipline, she concluded that a 150-day suspension was appropriate.

#### Joseph Gonzales

The ALJ determined that Gonzales did not enter the apartment. Further, she reiterated that the appointing authority failed to establish that a plan or conspiracy existed among Gonzales and the other officers. Therefore, the ALJ found that the appointing authority failed to sustain any charges against Gonzales and reversed his removal.

#### Rocco Duardo

The ALJ determined that Duardo was one of the officers that conducted an improper search of the apartment. Based on the foregoing, the ALJ concluded that the appointing authority had proven by a preponderance of the credible evidence the charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, neglect of duty, other sufficient cause and violations of Hackensack Police Department Rules and Regulations. However, the ALJ indicated that the charges based on *N.J.S.A. 40A-14-147* and the rules and regulations referring to misconduct observed by police personnel were not proven by the appointing authority. The ALJ noted that while Duardo was ordered by Sybel to enter the room, he should have known that the search of Apt. A. without a warrant was not legitimate because no exigent circumstances existed. Nevertheless, in determining the penalty, the ALJ found that the act was not egregious enough on its own to warrant Duardo's removal, and that in applying progressive discipline, she concluded that a 90-day suspension was appropriate.

#### Justin de la Bruyere

The ALJ determined that de la Bruyere was one of the officers that conducted an improper search of the apartment. He also reviewed and approved the investigation report filed by Gutierrez which contained inaccurate and misleading

information about the events of December 28, 2016. Based on the foregoing, the ALJ concluded that the appointing authority had proven by a preponderance of the credible evidence the charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, neglect of duty, other sufficient cause and violations of Hackensack Police Department Rules and Regulations. However, the ALJ indicated that the charges based on *N.J.S.A.* 40A-14-147 and the rules and regulations referring to misconduct observed by police personnel were not proven by the appointing authority. The ALJ noted that de la Bruyere did not go to 64 P. Ave. or enter Apt. A. to further any personal interest but rather to conduct a legitimate investigation. Additionally, while he was ordered by Sybel to enter the room, he should have known that the search of Apt. A. without a warrant was not legitimate. Thus, discipline was appropriate. In determining the penalty, the ALJ noted that in addition to conducting the improper search, Gutierrez reviewed and approved a misleading and inaccurate report concerning the events of December 28, 2016. Therefore, while the ALJ found that the act was not egregious enough on its own to warrant removal, in applying progressive discipline, she concluded that a 150-day suspension was appropriate.

### Exceptions and Replies

In its exceptions and replies to exceptions,<sup>3</sup> the appointing authority argues that the ALJ improperly determined the penalty of all the appellants. It contends that conducting an improper warrantless search of the apartment when no exigent or emergency circumstances existed was an egregious enough act to warrant removal. In this regard, it contends that such actions undermine the public's trust in law enforcement officers. Additionally, the appointing authority argues that the act of filing and reviewing a false and misleading report should in and of itself result in removal. Such an action to intentionally attempt to hide what they knew was an illegal entry and search of the apartment should result in the harshest penalty. Further, it contends that the ALJ incorrectly determined that no conspiracy or planning before the search of the apartment existed. It claims that Gonzales was part of this conspiracy as he looked up information on C.G. before leaving the station for 64 P. Ave. Thus, it maintains that Gonzales should also be removed. In addition, the appointing authority submits that the ALJ erred in finding that the appellants did not engage in misconduct pursuant to *N.J.S.A.* 40A:14-147. It emphasizes that such a ruling, as a matter of law, is inconsistent with the findings of fact. Finally, the appointing authority urges the Commission not to award back pay and benefits should the removals be reversed and/or modified, as such an award is improper under the totality of the circumstances.

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<sup>3</sup> The appointing authority filed exceptions to the ALJ's initial decision and replies to the separate and individual exceptions filed by Vazquez, Gutierrez, Duardo and de la Bruyere.

In their exceptions and reply to exceptions,<sup>4</sup> the appellants argue that the ALJ improperly placed the burden of proving that they received information about an unattended child on the appellants. They claim that the appointing authority should have to disprove their assertion, which it did not. Specifically, they assert that the lack of a tape from the Internal Affairs interview with G.H., Sr., and the general lack of evidence in this regard, should have resulted in the charges against them being dropped. They maintain that they had a legitimate reason to enter the apartment. Further, the appellants indicate that their actions were not so egregious to warrant removal and that the ALJ properly applied the concept of progressive discipline. Moreover, in his exceptions, de la Bruyere argues that the ALJ erred in finding that he read and approved the report filed by Gutierrez. He contends that he did not read the contents of the report but merely checked that everything was filled out.

### Commission Review

Upon its *de novo* review of the record, the Commission agrees with the ALJ's determination regarding the charges. However, the Commission does not agree with the ALJ's recommendation to modify the removals of Vazquez and Duardo to 90-day suspensions and modify the removals of Gutierrez and de la Bruyere to 150-day suspensions. Rather, the Commission modifies the removals of Vazquez and Duardo to six-month suspensions and upholds the removals of Gutierrez and de la Bruyere. With regard to Gonzales, the Commission agrees with the ALJ's recommendation to reverse his removal. The appointing authority contends in its exceptions that the ALJ erred in not finding that there was conspiracy among the officers and that Gonzales was part of the conspiracy based on his actions of looking up information. The Commission does not agree. The ALJ correctly determined that it was inconclusive that the appellants conspired beforehand to improperly enter Apt. A of 64 P. Ave. Further, the fact that Gonzales looked up information prior to leaving the station for 64 P. Ave. does not prove a conspiracy. In this regard, the Commission notes that Gonzales was ordered by Riotto to conduct such searches.

Additionally, the Commission agrees with the ALJ's credibility determinations. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)).

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<sup>4</sup> Vazquez, Gutierrez, Duardo and de la Bruyere all filed exceptions to the ALJ's initial decision. Vazquez, Gutierrez, Gonzales, Duardo and de la Bruyere all filed replies to the appointing authority's exception to the ALJ's initial decision.

Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by the credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). Nevertheless, upon its review of the entire record, the Commission finds that there is sufficient evidence in the record to support the ALJ's credibility determinations. The ALJ explicitly indicated that she found the appellants' testimony that G.H., Sr. reported to them that there was an unattended child in Apt. A was not credible. The ALJ found that apart from the officers' own testimony, they offered no evidence to support their assertions G.H., Sr. reported to them that there was an unattended child in Apt. A.

In their exceptions, the appellants contend that that ALJ improperly placed the burden of proving that they received information about an unattended child on the appellants. The Commission is not persuaded by this argument. The ALJ clearly indicated in her initial decision that based on her review of the video, the officers' testimony, and the absence of any testimony from an impartial witness corroborating the report of an unattended child or that a child had been heard that morning, she found that no exception to the warrant requirement applied and the officers' warrantless search of the apartment was unjustified and improper. The appointing authority initially presented sufficient evidence in the form of witness statements from its investigation and the surveillance video that the appellants did not possess or find any exception to enter the apartment without a warrant. Thus, the appellants needed to show that they did indeed obtain such information, which as the ALJ indicated, they failed to do. Accordingly, with the exception of Gonzales' case, the ALJ properly found that charges against the appellants were sustained.

### Penalty

As to the proper penalty, the Commission's review is *de novo*. In addition to considering the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). Although the Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. *Henry v. Rahway State Prison*, 81 *N.J.* 571, 580 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007). Further, even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the

seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. See *Henry v. Rahway State Prison*, *supra*, 81 N.J. at 579-80.

Therefore, upon its review as set forth above, the Commission makes the following conclusions with respect to the appellants' penalty.

#### Mark Gutierrez and Justin de la Bruyere

Gutierrez and de la Bruyere improperly entered the apartment without a warrant and both were responsible for a false and misleading report being filed about the incident on December 28, 2016. Both of these actions are extremely serious offenses. In this regard, the Commission notes that a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990). The illegal entry of a law enforcement officer into a member of the public's home is not acceptable and is deserving of a severe punishment. Such actions erode the public trust in the law enforcement community. Further, falsification of a record by a law enforcement employee is a very serious offense. Law enforcement officers are charged with properly maintaining and keeping accurate records. When a public employee falsifies a record, he or she erodes the trust that the general public places on the government to maintain accurate records. See *In the Matter of Romana Carter* (CSC, decided May 3, 2017). See also, *In the Matters of Kenneth Bolton, Robert Knoblock and Michael Lubrano, Mercer County*, Docket No. A1457-10 (App. Div. February 4, 2013) *affirming* (CSC, decided September 15, 2010); *In the Matter of Michael Ogonowski* (CSC, decided June 1, 2011). Moreover, in the instant matter, Gutierrez and de la Bruyere have been found to have purposefully reviewed and submitted an inaccurate and misleading report to hide their actions at 64 P. Ave. on December 28, 2016. In this regard, while de la Bruyere claims that he did not review the contents of the report, the Commission agrees with the ALJ's conclusions that it was reasonable to assume that de la Bruyere read the report as he had firsthand knowledge of the incident and de la Bruyere offered no evidence to support his assertion that he was not required to review the report for accuracy. Accordingly, the Commission finds that Gutierrez and de la Bruyere's actions were sufficiently egregious to warrant the penalty of removal.

#### Victor Vazquez and Rocco Duardo

Vazquez and Duardo entered the apartment without a warrant and without any exigent or emergency situation existing. This action was an extremely serious offense. Moreover, although they did not author the report, they acted falsely by representing that the reason they went into the apartment was because they thought they heard a child or were told that there was a child in the apartment. In



this regard, the Commission reiterates that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown, supra. See also, In re Phillips, supra.* The illegal entry of a law enforcement officer into a member of the public's home is not acceptable and is deserving of a severe punishment. Such actions erode the public trust in the law enforcement community. However, the Commission agrees with the ALJ's finding that mitigating factors justify a penalty less severe than removal. In this regard, the ALJ found as mitigating factors that the appellants went to 64 P. Ave on legitimate police business and not for personal gain, and that the appellants were directed into Apt. A by Sybel, the commanding officer on the scene. Nonetheless, their conduct is deserving of more than a 90-day suspension given the seriousness of their actions. Therefore, the Commission finds that the appropriate penalty is a six-month suspension for Vazquez and Duardo, which will serve as an indication that any further infractions committed by them will potentially subject them to removal from employment.

Accordingly, contrary to the appointing authority's arguments, Vazquez and Duardo are entitled to back pay, benefits and seniority for the period after the imposition of the six-month suspension up to their dates of reinstatement. With regard to counsel fees, since Vazquez and Duardo have not prevailed on the primary issues on appeal, they are not entitled to awards of counsel fees. *See N.J.A.C. 4A:2-2.12.* The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. *See Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, while the penalty was modified, most of the charges were upheld and major discipline imposed. Consequently, as Vazquez and Duardo have failed to meet the standard set forth in *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Superior Court of New Jersey, Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. In the interim, as the court states in *Phillips, supra*, the appointing authority shall immediately reinstate Vazquez and Duardo to their permanent positions.

#### Joseph Gonzales

Since the appointing authority has not met its burden of proof regarding the charges against Gonzales, his removal must be reversed. Therefore, he is entitled

to back pay, benefits, and seniority and reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Superior Court of New Jersey, Appellate Division's decision, *Phillips, supra*, the Commission's decision will not become final until any outstanding issues concerning back pay and/or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate Gonzales to his permanent position.

#### **ORDER AS TO MARK GUTIERREZ AND JUSTIN DE LA BRUYERE**

The Civil Service Commission finds that the action of the appointing authority in removing Mark Gutierrez and Justin de la Bruyere was appropriate. Therefore, the Commission affirms that action and dismisses the appeals of Mark Gutierrez and Justin de la Bruyere.

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

#### **ORDER AS TO VICTOR VAZQUEZ AND ROCCO DUARDO**

The Civil Service Commission finds that the appointing authority's actions in removing Victor Vazquez and Rocco Duardo were not justified. Therefore, the Commission modifies the removals to six-month suspensions. The Commission further orders that Victor Vazquez and Rocco Duardo be granted back pay, benefits and seniority for the period after the imposition of the six-month suspension through the dates of their actual reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellants to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should Victor Vazquez and Rocco Duardo's reinstatements be delayed pending resolution of any potential back pay dispute.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative

determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter should be pursued in the Superior Court of New Jersey, Appellate Division.

### ORDER AS TO JOSEPH GONZALES

The Civil Service Commission finds that the appointing authority's actions in imposing a removal was not justified. Therefore, the Commission reverses the removal. The Commission further orders that Joseph Gonzales be granted back pay, benefits and seniority from May 9, 2017 to the date of his actual reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Reasonable counsel fees are granted pursuant to *N.J.A.C. 4A:2-2.12*. Proof of income earned and an affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and/or counsel fees. However, under no circumstances should Joseph Gonzales' reinstatement be delayed pending resolution of any potential back pay and/or counsel fees dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and/or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter should be pursued in the Superior Court of New Jersey, Appellate Division.

DECISIONS RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 27TH DAY OF MARCH, 2019



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachment



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

**INITIAL DECISION**  
**(CONSOLIDATED)**

**IN THE MATTER OF VICTOR VAZQUEZ,  
CITY OF HACKENSACK, POLICE  
DEPARTMENT.**

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OAL DKT. NO. CSR 03158-18

**IN THE MATTER OF MARK GUTIERREZ,  
CITY OF HACKENSACK, POLICE  
DEPARTMENT.**

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OAL DKT. NO. CSR 03159-18

**IN THE MATTER OF JOSEPH GONZALES,  
CITY OF HACKENSACK, POLICE  
DEPARTMENT.**

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OAL DKT. NO. CSR 03186-18

**IN THE MATTER OF ROCCO DUARDO,  
CITY OF HACKENSACK, POLICE  
DEPARTMENT.**

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OAL DKT. NO. CSR 03358-18

**IN THE MATTER OF JUSTIN DE LA BRUYERE,  
CITY OF HACKENSACK, POLICE  
DEPARTMENT.**

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OAL DKT. NO. CSR 03729-18

**Frank P. Arleo, Esq.,** for appellant Victor Vazquez (Arleo & Donohue, attorneys)

**James P. Patuto, Esq.,** for appellant Mark Gutierrez (Galantucci, Patuto, DeVencentes, Potter & Doyle, attorneys)

**Robert M. Biagiotti, Esq.,** for appellant Joseph Gonzales (Law Offices of Robert M. Biagiotti, attorneys)

**Charles J. Sciarra, Esq.,** for appellant Rocco Duardo (Sciarra & Catrambone, attorneys)

**Joseph M. Horn, Esq.,** for appellant Justin de la Bruyere (Law Offices of Joseph M. Horn, attorneys)

**Raymond R. Wiss, Esq.,** for respondent City of Hackensack (Wiss & Bouregy, attorneys)

Record Closed: January 30, 2019

Decided: February 8, 2019

BEFORE **SUSANA E. GUERRERO, ALJ:**

### **STATEMENT OF THE CASE**

Detective Joseph Gonzales (Gonzales), Officer Victor Vazquez (Vazquez), Detective Rocco Duardo (Duardo), Detective Mark Gutierrez (Gutierrez), and Sergeant Justin de la Bruyere (de la Bruyere) (collectively appellants or officers) contest the decision of the City of Hackensack Police Department (HPD or Hackensack) to remove them from employment. The removals result from a determination by Hackensack that the appellants improperly conducted, and conspired to conduct, an illegal warrantless search of a private residence; that entry to the residence was achieved by tampering with the entrance lock/doors; and that they seized, and conspired to seize, personal property from the residence without a warrant.

Gutierrez and de la Bruyere were also charged with knowingly filing misleading and inaccurate police reports.

### **PROCEDURAL HISTORY**

A Preliminary Notice of Disciplinary Action (PNDA) dated May 9, 2017, was issued to each appellant concerning the alleged incidents of December 28, 2016. Amended PNDAs containing additional charges, dated September 29, 2017, were later issued to each appellant. A Final Notice of Disciplinary Action (FNDA) dated February 9, 2018, was issued to each appellant sustaining all charges.

The appellants requested hearings and filed their appeals with the Office of Administrative Law (OAL), pursuant to N.J.S.A. 40A:14-202(d). Gonzales filed his appeal with the OAL on February 22, 2018; Gutierrez and Vazquez filed their appeals on February 27, 2018; Duardo filed his appeal on March 1, 2018; and de la Bruyere's appeal was filed on March 6, 2018.

A motion to consolidate the five appeals for hearing and disposition was granted on March 28, 2018.

A motion to consolidate this matter with CSR 04774-18, CSR 04771-18, CSR 04770-18, CSR 15819-18, and CSR 05617-18 was denied on May 21, 2018. Duardo's motion to amend his appeal to include claims of retaliation and hostile work environment as set forth in a complaint filed by him in federal district court was denied by Order dated May 22, 2018.

The matter was heard over the course of eight days: June 8, June 11, June 12, June 14, July 10, July 18, July 19, and July 30, 2018. The record closed on January 30, 2019, upon receipt of a letter correcting an error in the officers' joint brief.

## **CHARGES**

The sustained charges in the February 9, 2018 FNDAs of the five appellants include violations of the following regulations: incompetency, inefficiency, or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). The sustained charges also include violations of N.J.S.A. 40A:14-147, and several provisions of the City of Hackensack Police Department Rules and Regulations.

Gutierrez and de la Bruyere's FNDAs also contain sustained charges for violations of two HPD Rules and Regulations in connection with the filing of false reports.

The incidents giving rise to these charges are as follows:

On or about December 28, 2016, together with other members of the Hackensack Police Department, you conducted, and conspired to conduct, an illegal warrantless search of a residence located at [64 P. Ave., Apt. A<sup>1</sup>]. In connection with such search, entry to the referenced apartment was achieved by tampering with the entrance lock/door. While conducting the foregoing warrantless search, you illegally seized, and conspired to seize, without a warrant, personal property of [C.G.], the resident at [64 P. Ave., Apt. A].

The Specifications for Gutierrez and de la Bruyere also include the following:

In addition to the foregoing, you knowingly filed false, misleading, and inaccurate police reports with respect to the events relating to the above-referenced warrantless search of [Apt. A].

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<sup>1</sup> The address will be referred to as "64 P. Ave., Apt. A," and initials may be utilized in lieu of full names, to protect privacy interests.

## BACKGROUND

The appellants were employed with the HPD in December 2016, when the events at issue occurred. At the time, Vazquez was employed as a patrolman, de la Bruyere was a sergeant, and Gutierrez, Gonzales, and Duardo were detectives in the Narcotics Division.

On March 28, 2017, an anonymous complaint letter was found in the HPD's Internal Affairs (IA) Division mailbox. The letter read:

Captain Riotto and his boys covered up [64 P. Ave.], the reports are full of lies!!! You think your guys got away with it, we know what really happened. Keep effin with patrolmen Riotto!!!!, remember you were the highest ranking asshole there, you let them lie, your [sic] responsible for their actions.....CAPTAIN the city the papers and the prosecutors will all know about the lies...you keep it up Riotto.<sup>[2]</sup>

Upon receipt of the anonymous letter, Capt. Peter Busciglio (Busciglio), who served as head of the IA Division, became the lead investigator in this matter and authored investigative reports in connection with his investigation.

Busciglio initiated his investigation by searching for HPD reports associated with the address listed in the complaint letter, 64 P. Ave. He found an Investigation Report (R-10) written by Detective Gutierrez on December 28, 2016. The Investigation Report lists 64 P. Ave. as the "Incident Location." The "Incident Type" was marked as "Narcotics Investigation" and a "Welfare Check." The report states that on that day, Det. Lt. Scott Sybel (Sybel), Detective Duardo, Detective Gonzales, and Officer Vazquez responded to 64 P. Ave. to check for narcotics activity. The report states:

Upon our arrival we began walking through the building at which time we were met by a resident who requested to remain anonymous. This individual informed us that he believed there was an unattended child left in [Apt. A]. Upon

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<sup>2</sup> Capt. Vincent Riotto (Riotto), referenced in the complaint letter, headed the Narcotics Division at the time.



receiving this information we responded to this apartment and began knocking on the apartment door. After a short time no one answered the door. While standing outside we discovered this door was left insecure [sic]. At this time a check of this residence was conducted at which time we discovered there was no one home. Upon completion of this check the apartment was secured when we left.

Busciglio discovered another Investigation Report prepared by Gutierrez documenting his account of an arrest of two individuals that occurred at 500 South River Street in Hackensack on December 27, 2016. (R-2.) Busciglio testified that the events of December 27 led the officers to 64 P. Ave. the following day.

- According to Gutierrez's report, he was contacted by Vazquez, who informed him that he observed two individuals acting suspiciously in the area of 500 South River Street. Gutierrez, together with Duardo, responded to Vazquez's request for backup.
- They questioned the two individuals, identified as M.F. and R.M., who gave conflicting reasons as to why they were walking on the walkway behind the ShopRite. Gutierrez detected the smell of marijuana while speaking with M.F., and, according to his report, M.F. authorized Gutierrez to search his person and his car. Gutierrez searched M.F.'s vehicle and discovered marijuana inside the trunk. M.F. and R.M. both denied ownership of the marijuana, and the two were transported to headquarters. Gutierrez questioned them at headquarters, and the two were charged with possession of marijuana. M.F. was also charged with possession of a controlled dangerous substance in a motor vehicle.

Sometime after M.F. and R.M. were processed, charged, and released, a fingerprint check revealed that R.M. had lied about his identity and that he had outstanding warrants issued out of Georgia and California. R.M. was apprehended again later that day and charged with hindering apprehension and forgery by uttering. According to Gutierrez's report, R.M. had an outstanding warrant in Georgia from January 2016 for trafficking cocaine/possession of a firearm during commission of a felony, and a warrant out of California involved cultivating marijuana/possession of marijuana for sale.

Busciglio also found an Investigation Report (R-8) prepared by Vazquez on December 28, 2016, documenting his discovery of a cell phone inside his police vehicle. The "Property – Found" Report states that at the start of his patrol day on December 28, 2016, Vazquez discovered a dark gray Samsung cell phone "tucked in the plastic foot rest area of the rear driver side," which Vazquez reportedly recognized as a phone belonging to M.F., whom he had arrested the day before. Vazquez's report indicates that Lt. Benny Marino was informed of the incident, and that the cell phone was turned over to the Narcotics Division.

The cell phone that was found was opened and examined by Gutierrez later that morning. Gutierrez, who claims to have opened and checked the phone in order to verify its owner, prepared a report in which he notes that the cell phone contained a photograph of a handgun that was being negotiated for sale. (R-9.) The message concerning the handgun was written in Spanish, and Gutierrez asked Vazquez to help translate the message for him. They were able to determine that the handgun was being delivered to 64 P. Ave. in Hackensack. Approximately two and a half to three hours later, the five officers, together with Riotto and Sybel, left for 64 P. Ave.

After reviewing these Investigation Reports, Busciglio and Sgt. Anthony DiPersia (DiPersia), who assisted him with the investigation, went to 64 P. Ave. on April 6, 2017, and saw surveillance cameras in the building, as well as recorded video footage from December 28, 2016. Busciglio viewed the surveillance footage recorded on December 28, 2016, and found inconsistencies between Gutierrez's Investigation Report (R-10) and what was on the video.

Busciglio called the Bergen County Prosecutor's Office (BCPO) and advised them that the video appeared to show officers entering 64 P. Ave. and Apt. A by tampering with the doors/locks. On or around April 7, 2017, Busciglio met with members of the BCPO, including detectives and an assistant prosecutor, who reviewed the surveillance footage and provided guidance on how to proceed with the investigation. They discussed that there may have been an unlawful entry into the apartment. The assistant prosecutor advised Busciglio to contact and interview possible witnesses observed on the video. He also determined that the matter was to

be handled as a criminal investigation by the BCPO and that they would monitor Busciglio's investigation. The BCPO ultimately opted not to pursue any criminal charges against the officers.

Once Busciglio secured the cell phone, he obtained a warrant to search the phone. The phone was examined at the BCPO, and it was noted that the SD card and SIM card, which hold text messages and numbers, had been removed from the phone, and that the cell phone was last used on January 5, 2017.

Busciglio issued IA Notifications dated May 1, 2017 to the five appellants, as well as Riotto, informing them that a complaint had been made against them and they were being investigated regarding an incident that occurred on December 28 at 64 P. Ave., Apt. A. The PNDAs, dated May 9, 2017, were issued to each appellant and to Riotto, charging each officer with conducting, or conspiring to conduct, a warrantless search of Apt. A, and asserting that entry to the apartment was achieved by tampering with the entrance lock/door.<sup>3</sup> The five appellants, together with Riotto, were suspended without pay. Sybel was never charged for his involvement in the events at 64 P. Ave. He retired from employment with the HPD, with full pension benefits, before charges were even filed. While Riotto was initially charged with the officers, Hackensack did not pursue the charges against him after he retired from the HPD (with full pension benefits) and dismissed a lawsuit that he had filed against Hackensack.

Busciglio continued his investigation after the officers were suspended. Among other things, Busciglio discovered a bank statement and a motor-vehicle summons belonging to C.G. in a file pertaining to the December 27, 2016, 500 South River Street arrests of R.M. and M.F.

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<sup>3</sup> Gutierrez and de la Bruyere were also charged with knowingly filing false, misleading, and inaccurate police reports in connection with the incident.

## TESTIMONY

### Capt. Peter Busciglio

Busciglio is currently a captain with the Hackensack Police Department, where he has worked for twenty-three years. He was promoted to captain in 2016 and reassigned to the Internal Affairs Division in December 2016, to start on January 2, 2017. Busciglio served as the head of the IA Division in 2017, and led this investigation. This was his first major IA investigation.

### Cell Phone

Busciglio testified that the officers had the cell phone on December 27 and that they knew there was evidence in the phone. He testified that M.F. could not have hidden the phone inside Vazquez's patrol car because there is no place to hide the phone (photographs were presented to support this assertion). Moreover, since HPD procedures require inspection of a police vehicle prior to and after every shift, the phone would have been discovered either at the end of Vazquez's shift on the 27th, or by the officer who used the patrol car on the evening of December 27. Also, HPD procedures require a pat down of anyone being taken into custody and placed inside a police car, so the phone presumably would have been discovered when M.F. was patted down. Busciglio also points out that M.F. had four cell phones on his person when inventoried by Gutierrez at headquarters on December 27, and these four were returned to him when he was released.

When challenged, Busciglio agreed that an uncuffed individual could try to hide a phone in the back seat of the patrol car; however, the phone would have been discovered on the person before entering the patrol car since individuals are typically patted down before being placed in a patrol car.

64 P. Ave.

Busciglio described 64 P. Ave. as an apartment building that “at one time” had been known as a narcotics building. Two narcotics arrests were made there since 2013.

Busciglio's testimony was that de la Bruyere tampered with the lock to gain entry into 64 P. Ave. The video shows him opening the entrance door and then placing something in his pocket that Busciglio asserts was used to pick the lock.

Busciglio pointed out that the officers knew that they were going to Apt. A since they walked directly to that apartment. He testified that they did not appear concerned that there might be somebody in Apt. A with a gun. Also, the video does not show them speaking with anyone before arriving at Apt. A, contrary to Gutierrez's report, which indicates that upon arrival they were approached by a resident who reported that an unattended child was left in Apt. A.

Based on his review of the video, Busciglio concluded that the officers gained entry into Apt. A by tampering with the lock. Specifically, de la Bruyere picked the lock during the fifteen-to-sixteen-minute period while the officers were standing around the door. Although Busciglio was unable to identify the moment that this occurred, it occurred before the officers spoke with G.H., Sr., the resident who lived in an apartment down the hall. He testified that the officers knew there were cameras in the building (some looked directly at the camera) and they intentionally obstructed the camera's view when the lock was tampered with and unlocked. He testified that he did not know who gave the order to enter the apartment, but noted that Sybel was the highest-ranking officer present when entry was achieved.

Busciglio was questioned extensively as to whether the door to Apt. A was locked or unlocked when the officers arrived. Busciglio testified that he believed the door was locked based on the officers' actions at and around Apt. A, and because he was told by some witnesses (e.g. C.G. and J.K.) that the door was locked. Even if the door was unlocked at the time, and the lock was not tampered with, Busciglio testified

that entry to Apt. A without a warrant was still improper. As Gonzales did not enter Apt. A, he is only charged with conspiracy.

Busciglio testified that the officers illegally removed C.G.'s bank statement and a traffic summons from Apt. A. These were the documents discovered by Busciglio in HPD's 500 South River Street file. He agreed that the officers are not seen holding these documents when they exited the apartment, and that the documents do not contain any information that would have been useful in running the search of C.G. that was conducted by Gonzales upon leaving 64 P. Ave. at 1:05 p.m.

Busciglio testified that he believed that the officers fabricated the story about an unattended child in Apt. A because they had to come up with an exigent circumstance to justify their warrantless entry into Apt. A since they knew that they were being recorded.

#### Headquarters

A surveillance video of the HPD headquarters shows Riotto coming down the hallway towards Captain Coffey's office on the morning of December 28 (prior to his departure for 64 P. Ave.) and speaking with Busciglio for about eight seconds. Busciglio testified that Riotto asked Busciglio to tell Coffey that he was going to P. Ave. to "check an apartment from yesterday's arrest." While Busciglio did not reference this in his report, he testified that the omission was unintentional and inconsequential. Busciglio did reference this in his April 17, 2017, affidavit to the Superior Court in support of an application for a warrant to search M.F.'s cell phone. Busciglio also testified that on December 29, 2016, he was told by Coffey that Riotto and Gutierrez told Coffey that they were going to apply for a warrant to search the cell phone found in Vazquez's car. Busciglio testified that at the time, he did not know what phone Coffey was referring to.

### Interviews

Busciglio spoke with J.K., the superintendent's girlfriend/wife, on April 11, 2017, as part of his investigation and recorded the interview. She recalled officers coming to her door and telling her that they needed to get into Apt. A because they received a phone call that there may be someone in danger there, and they asked that she open the door to Apt. A for them. She said that she knew nobody was home because the tenants were at work, and she texted F.J., a tenant living on the same floor as Apt. A, who confirmed that nobody was at Apt. A. J.K. also indicated on the tape recording that she told the officers that she does not believe a baby lives in Apt. A full time. She had a key to the apartment but did not open the apartment for the officers.

Busciglio spoke with F.J. (who lives in an apartment next to Apt. A) on April 10. She indicated that she did not hear a child, or any screaming, on December 28, and acknowledged having received a text from J.K. that day inquiring as to whether she heard anything.

Busciglio spoke with G.H., Sr., who resides across the hall from Apt. A, on April 10, 2017. Busciglio did not record his conversation with G.H., Sr. However, he kept a written summary of his conversation with G.H., Sr. and others he questioned at 64 P. Ave. Busciglio noted that G.H., Sr. did not remember much. Busciglio's notes of the conversation indicate that G.H., Sr. told him that the officers knocked on his door and asked him if he had heard any knocking or noises coming from Apt. A. According to Busciglio's notes, G.H., Sr. indicated that he "really wasn't sure what he told them, but when I [Busciglio] asked if he remembered hearing any screams or a baby crying that day he said he didn't remember hearing anything like that." G.H., Sr. referred Busciglio to his son, G.H., Jr., who also spoke with the officers on December 28.

Busciglio spoke with G.H., Jr., who was visiting his father on December 28, and taped the interview on April 10, 2017. He told Busciglio that two officers saw him in the lobby and asked him to take them to the superintendent. He did not say that he heard an unattended child in Apt. A that day.

Busciglio also spoke with G.H., Sr.'s caregiver, who is seen on the video exiting G.H., Sr.'s apartment while the officers were outside Apt. A. She confirmed that she did not call the police on December 28, nor did she report any noises coming from Apt. A.

Busciglio spoke with C.G. on April 10, 2017, and again in August 2017. He confirmed that nobody was in his apartment between 12:30 p.m. and 1:30 p.m. on December 28 and that neither he nor his wife called the police that day. C.G. indicated that he did not notice that anything was missing from his apartment that day, but that the bank statement and traffic ticket were in his apartment. It was not until the interview that he became aware that officers had been inside his apartment.

On April 12, 2017, Busciglio reached out to John Dalton, a detective with the HPD who was on loan to the Drug Enforcement Administration (DEA) at the time of this incident, seeking contact information for R.M. and M.F. Dalton provided Busciglio with various documents provided to him by Vazquez on December 29, 2016. DiPersia interviewed Dalton on April 21, 2017. Dalton indicated that he was familiar with the names R.M. and M.F. in connection with another matter that he was consulted about. Specifically, he was approached by Riotto requesting assistance, from a "federal standpoint," regarding a follow-up investigation on the two who had been arrested, and stating that Gutierrez would provide him with the incident reports so that Dalton could begin his workup. According to Dalton, Gutierrez faxed him the incident reports and a phone number pertaining to one of the target's phones.

### Investigation

Busciglio conceded that he may not have followed all of the Attorney General Guidelines (AG Guidelines) in this investigation. He testified that he wanted to interview the officers as part of his investigation, but the BCPO instructed him not to advise the officers that they were under investigation. Busciglio continued his investigation while the BCPO monitored the investigation, and even after the City manager and the City attorney decided to charge the officers (without having interviewed them). Busciglio testified that he would have provided Garrity immunity to the officers, but he was



prohibited from doing so by the BCPO. The criminal investigation was incomplete when the officers were administratively charged.

Busciglio conceded that there is no indication that the officers engaged in these activities for any monetary or other personal gain, or that they were retaliating against anyone. He agrees that this was "just police work."

#### Lawsuit Against HPD

Busciglio was questioned about the lawsuit filed by Duardo and Riotto against Hackensack. While it was filed on April 5, 2017, Busciglio did not learn of it until April 17, 2017, and did not read the Complaint until it was amended to name him as a defendant (after he had initiated the IA proceedings). Busciglio also denied speaking with Vazquez about the lawsuit on April 1, as Vazquez testified, and explained that he only contacted Vazquez that day at the request of a friend with regard to guns the friend had purchased.

#### Gutierrez's Report

When Busciglio first reviewed Gutierrez's Investigation Report concerning the visit to 64 P. Ave., he understood the purpose of the officers' response to that location to be a narcotics investigation and welfare check. Busciglio said that Gutierrez's report, which was reviewed by de la Bruyere, contains false and incomplete information. For example, Gutierrez's report states: "Upon our arrival we began walking through the building at which time we were met by a resident who requested to remain anonymous. This individual informed us that he believed there was an unattended child left in Apt. A." Busciglio testified that this is false, because no officer was observed on the video speaking with anyone in the building prior to arriving at Apt. A, and no one informed them that there was an unattended child left in Apt. A.

Busciglio also testified that the report falsely states that the door to Apt. A was left unlocked (or "insecure"), and it fails to indicate that Riotto and de la Bruyere also responded to 64 P. Ave.

**Victor Vazquez**

Vazquez began his employment with the HPD in November 2013 and had no prior disciplinary history. He had the rank of patrolman in December 2016, and had approximately eleven years of police experience at the time. He was the lowest-ranking officer on the scene on December 28, 2016.

While on patrol on December 27, 2016, Vazquez noticed M.F. and R.M. outside a shopping center acting suspiciously. He approached them and smelled marijuana on M.F. Vazquez called Gutierrez for backup because he believed that he may have been interrupting some sort of criminal activity. Gutierrez and Duardo responded to the scene, and the suspects were questioned. M.F. consented to a search of his vehicle after denying that he possessed any narcotics. Vazquez drove M.F. back to where his vehicle was parked because M.F. claimed to be cold. Vazquez patted down, but did not handcuff, M.F. before he got into the patrol car. Vazquez recalled that M.F. had a phone on his person at that time, and that other phones were later found in M.F.'s car.

When marijuana was discovered in M.F.'s car, the two suspects were placed in handcuffs and arrested. They were not patted down a second time. M.F. was placed back in Vazquez's patrol car and R.M. was placed in Gutierrez's car. They were taken to headquarters and charged for possession of the marijuana. Vazquez's shift ended at 5:00 p.m., but he was asked to return to headquarters at approximately 6:30 p.m. to assist in the search for R.M. (who had since been released) after it was discovered that R.M. had lied about his identity, and had outstanding warrants out for his arrest. R.M. was found by Gonzales and Gutierrez. Later that evening, Vazquez returned to 500 South River Street to search the area of the arrests, and he called the sheriff's office to request assistance from the canine unit to conduct a "free air sniff" of M.F.'s car.

The next morning, Vazquez returned to headquarters to begin his 6:00-a.m.-to-5:00-p.m. shift. He testified that while cleaning his patrol car at the start of his shift, he noticed a cell phone tucked away in a corner of the back seat. He recognized it as M.F.'s phone from when he patted him down the day before. Vazquez informed

Lt. Benny Marino that he had discovered the phone, and Lieutenant Marino instructed him to write a report and to take the phone to the front desk. Vazquez prepared an Investigation Report documenting his discovery of M.F.'s cell phone inside his patrol car that morning.

Vazquez was not present when Gutierrez picked up the phone from the front desk and initially opened and looked at the phone. Later that morning, Gutierrez asked Vazquez to translate something that he had read on the cell phone that was written in Spanish. Vazquez saw that a handgun was being negotiated for sale. By looking up the tracking number, Vazquez could tell that the handgun was being delivered to 64 P., Apt. A. Vazquez testified that this was the only time that he looked inside this cell phone, and he had no further contact with the phone after the 28th.

Later that morning, Riotto told Vazquez that they were going to 64 P. Ave. Vazquez understood that they were going to 64 P. Ave. because of the suspected gun transaction, and to potentially effectuate the arrest of C.G., who they believed lived in the apartment. Prior to leaving for 64 P. Ave., Gonzales conducted a record check of C.G. and discovered that he had a warrant for a traffic violation out of Newark.

Vazquez testified that he was aware that de la Bruyere had a key to 64 P. Ave., and that he saw the key that morning. De la Bruyere was having trouble opening the front door with the key, and Vazquez pressed some of the buzzers to have a resident open the front door. The door was ultimately opened using the key.

Vazquez took the elevator to the third floor, and neither he nor any other officer spoke with anyone in the building until after they arrived at the third floor. As they approached Apt. A, they were concerned that there was an armed and dangerous man behind the door in Apt. A. He testified that Duardo heard noise in the apartment and that Duardo detected early on that the door was unlocked.

About six and a half minutes after arriving at Apt. A, the officers spoke with G.H., Sr. at the door of his apartment. Vazquez testified that he overheard some of the conversation with G.H., Sr. He did not recall the exact conversation, but said that it

involved a crying child across the hall.<sup>4</sup> He testified that either Sybel or de la Bruyere gave the orders to go into the apartment. Vazquez turned the handle of the unlocked door and entered the apartment first because he was in uniform.

Vazquez testified that they entered the apartment for two reasons: (1) there may have been a sale or delivery of a gun to the apartment; and (2) there was possibly a child in the apartment. Vazquez testified that he could hear "noises," but did not testify that he heard a child in the apartment.

Vazquez denied seeing any parking ticket or bank statement in Apt. A, and explained that these documents were placed in the 500 South River Street file after the marijuana was retrieved from M.F.'s vehicle on December 27. Gutierrez had informed him that the documents were found in the plastic bag containing the marijuana.

Vazquez testified that on or around April 1, 2017, Busciglio called Vazquez and asked him to meet him at the house/business of Busciglio's friend to discuss guns, at which time Busciglio threatened Vazquez and told him to tell the "narcotics guys" to dismiss their lawsuit against Hackensack and Busciglio.

### **Mark Gutierrez**

Gutierrez had been employed by HPD since 2005, and had no significant prior disciplinary history.

Gutierrez was on duty from 9:00 a.m. to 5:00 p.m. on December 27, 2016. His partner that day was Duardo. While on patrol that day, Vazquez called him to request assistance at 500 South River Street, due to suspected narcotics activity. Gutierrez's account of what occurred on December 27 was largely consistent with Vazquez's testimony.

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<sup>4</sup> He testified, "To be honest, the exact conversation I don't recall, but I know it involved a child being across the hall. I think it was either crying or—my best recollection I think was involved with crying."

After they detected the smell of marijuana on M.F., Gutierrez asked if they could search his vehicle, and M.F. authorized him to search his car. When he patted down R.M., he found at least one cell phone on his person, but he then located several additional phones in the center console of M.F.'s car. While searching M.F.'s trunk, Gutierrez found marijuana in a shopping bag.

Prior to M.F.'s car being searched, R.M. was placed in Gutierrez's car. He was later taken out of the police vehicle so that he could watch Gutierrez conduct the search of M.F.'s car. After finding the marijuana, Gutierrez searched and handcuffed R.M., and transported him to headquarters. While Gutierrez played no role in booking these individuals, he was involved in taking and documenting inventory of their personal property at headquarters. Gutierrez's reports indicate that R.M. had two phones on his person at the time of the arrest, while M.F. had four. Gutierrez also brought R.M. and M.F. to the Narcotics Division, where he interrogated them and itemized the marijuana for evidence. Gutierrez testified that M.F. told him that R.M. was associated with a Mexican cartel, and M.F. felt that his life and his wife's life were in jeopardy.

After R.M. was released, it was discovered that R.M. had two outstanding warrants for manufacturing, trafficking, and smuggling narcotics. Gonzales and Gutierrez later found R.M. and returned him to headquarters. R.M. was questioned at headquarters again by Gutierrez, and Gutierrez, together with other officers, returned to 500 South River Street at approximately 7:00 p.m. that evening. According to Gutierrez, M.F. authorized him to search his car again, but did not want to sign a "Consent to Search" form because he was fearful of R.M. and possible repercussions. Vazquez, Gonzales, and Duardo went to 500 South River Street that evening, along with other officers and dogs from the sheriff's department.

Ultimately, R.M. and M.F. were released at approximately 3:00 a.m. on December 28, at which time Gutierrez went off duty. Later that morning, Gutierrez received a call from Lieutenant Marino informing him that a cell phone had been found in the rear of Vazquez's police vehicle, and asking that he come into headquarters.

Gutierrez returned to headquarters, and at the front desk he retrieved the cell phone discovered by Vazquez. Lieutenant Marino informed him that Vazquez believed it was M.F.'s phone from the prior day's arrest. Gutierrez opened the phone to make sure that it was, in fact, M.F.'s.

Gutierrez testified that he reviewed the WhatsApp messages on the phone. One of the messages contained exchanges regarding what appeared to be a firearms transaction, including a photograph of a firearm. Gutierrez called Vazquez for assistance in translating the Spanish exchanges, and Vazquez confirmed that the firearm was being negotiated for sale. When they tracked the USPS code to 64 P. Ave., Gutierrez informed Riotto of their discovery and that they believed a gun was being delivered to the address. According to Gutierrez, Riotto made the decision to go to 64 P. Ave. to attempt to locate C.G. Gonzales informed Gutierrez of C.G.'s traffic warrant. The officers intended to use the warrant as a tool to arrest him and conduct an investigation.

Gutierrez testified that while itemizing the marijuana evidence found in a plastic bag inside M.F.'s trunk, he discovered two documents in the bag (i.e., the bank statement and summons) containing C.G.'s name and address.

Prior to arriving at 64 P. Ave., the officers did not discuss how entry to the building would be achieved, but Gutierrez assumed that someone had a key. Gutierrez had made drug arrests at 64 P. Ave. in the past. The officers put on their protective vests underneath their clothing prior to leaving headquarters since they might encounter someone with a gun in the apartment.

There was no discussion about how they were going to get into Apt. A. About forty-five seconds after they arrived at Apt. A, Duardo indicated that he may have heard someone inside the apartment. The door was unlocked. Gutierrez was on the third floor for about eight minutes when Riotto asked him to go back down to the ground level to try to locate the superintendent. Riotto asked him to find the superintendent to obtain more information about who lived in the apartment. Gutierrez was met on the first floor by Gonzales, and they walked up to the fourth floor after G.H., Jr., informed him that the

superintendent lived on the fourth floor. On the fourth floor, Gutierrez spoke with J.K., the superintendent's girlfriend, who informed them that the superintendent was not home. Gutierrez denied asking J.K. for a key or access to the apartment.

After speaking with J.K. on the fourth floor, Gutierrez returned to the third floor and spoke with Sybel, who told him that there might be a child in the apartment. At some point, Sybel gave the officers the order to go into the apartment. The purpose of going into the apartment was to check for an unattended child. He testified that if they had been looking for a gun or narcotics, the room would have been searched thoroughly, and it would have taken longer than the six minutes they were in the apartment.

When Gutierrez returned to headquarters that day, he spoke with Sybel, who instructed him to write the Investigation Report in a vague fashion and not mention C.G.'s warrant, to avoid someone from the Patrol Division poaching their investigation. Riotto gave him the same instructions, and ordered him to inform Dalton of what had occurred.

The next day, Gutierrez called the assistant prosecutor to request a warrant to search the cell phone found in Vazquez's vehicle, but the request for a warrant was denied. Riotto later informed Gutierrez that the case would be forwarded to the DEA, and Gutierrez was instructed to forward the case, including the cell phone, over to the DEA. Riotto instructed Gutierrez to leave the cell phone on his desk, and when Gutierrez realized that Dalton had not picked up the phone by the next day, Gutierrez called Riotto again to ask whether Dalton was picking up the phone. Riotto told him to put the cell phone in the supply drawer, and that Dalton would pick it up eventually. Gutierrez put the cell phone in a bag, but did not log the phone into evidence because the case was being transferred over to the DEA. Gutierrez maintains that he mistakenly indicated in his report that he placed the evidence (phone) in an evidence bag. Despite his report, the phone was never placed into evidence. Gutierrez called Dalton later that day and faxed him all the reports. As far as Gutierrez was concerned, he was no longer involved in this investigation.

Months later, when Busciglio asked Gutierrez for the phone, Gutierrez found the cell phone inside the desk where he had left it months before. Gutierrez denied being aware that the SD and SIM cards were missing when he handed the phone to Busciglio. Gutierrez asserts that he had no reason to remove the cards. His report concerning the phone that he wrote at that time indicates that the original evidence bag holding the phone had been destroyed; however, it was not destroyed, as it was being used to store other evidence. The phone was placed into an evidence bag on April 17, 2017.

Regarding the Investigation Report documenting the activity at 64 P. Ave. on December 28, 2016, Gutierrez testified that he mistakenly omitted de la Bruyere's name, and did not include Riotto's name because it was common practice at HPD not to list the tour commander's name in these reports. His Investigation Report indicates that he ("we") spoke with a resident. However, Gutierrez did not personally speak with G.H., Sr., as it was Sybel who told him that G.H., Sr. indicated that there might be an unattended child across the hall, and not to tell anyone that he told him that. Gutierrez explained that he left things out of his report because he was not there the entire time, and when he returned to headquarters he was given more information about what had occurred. He wrote his Investigation Report to protect the anonymity of the neighbor. Sybel reviewed the report, it was signed off on by de la Bruyere, and Gutierrez was never told that there was a problem with the report. Gutierrez testified that he was trained at HPD to keep his reports "short and sweet," and when he became a Narcotics detective he was instructed to keep his reports vague to protect the integrity of the investigation. When he wrote the Investigation Report concerning the visit to 64 P. Ave., Apt. A, he felt that he was following that directive.

### **Joseph Gonzales**

Gonzales began his employment with the Hudson County Sheriff's Office in November 2008, and was hired by the HPD in November 2013 as a patrolman. He was assigned as a detective in the Narcotics Division in May 2016. He was the second-lowest-ranking officer at 64 P. Ave., Apt. A. He had no prior disciplinary history at the HPD.



Gonzales had no involvement in the arrests of M.F. and R.M. on December 27, 2016. After R.M. was released from headquarters the first time, he and Gutierrez rearrested him. While he did not participate in the interrogation of M.F. or R.M., he overheard Gutierrez ask the suspects about paperwork pertaining to C.G. that he had found in the car. Later that evening, Gonzales went out to 500 South River Street with Gutierrez, Duardo, and Vazquez.

The following day, Gonzales arrived at the HPD at approximately 11:30 a.m. and was informed that a cell phone had been discovered in the back of a patrol car, and that the phone revealed a gun being negotiated for sale. He was also informed that a tracking number indicated that it was being delivered to 64 P. Ave., Apt. A. Riotto asked Gonzales to get more information on C.G., and Gonzales was given the traffic ticket belonging to C.G. that was found in M.F.'s car. Gonzales ran the name through the CAD, ACS, and ATS systems. Through the ATS search, he discovered that C.G. had an outstanding arrest warrant for unlicensed driving. He gave that information to Riotto.

Gonzales put on his bulletproof vest before leaving for 64 P. Ave., Apt. A. He was advised that C.G. could be armed and dangerous. He was aware that they had keys to 64 P. Ave., Apt. A. Before leaving for 64 P. Ave., Apt. A, the plan was to attempt to make contact with C.G. and to use the warrant as a tool to get more information. They planned to do a "knock and talk."

At 64 P. Ave., Gonzales walked up the flight of stairs to the third floor and did not speak with anyone on his way up. Duardo led the way, pointed to Apt. A, and put his ear to the door. Gonzales understood Duardo's gesture to indicate that he heard something inside the apartment. Gonzales heard the officers knock on the door, and after about four minutes on the third floor, Riotto asked him to accompany Gutierrez to the first floor. Gutierrez told him that they were looking for the superintendent to confirm who lived in the apartment.

On the first floor, they met with G.H., Jr., who took them to the superintendent's apartment on the fourth floor, where they spoke with J.K. (at approximately 12:48). He denied asking J.K. for a key to Apt. A. The superintendent was not home, so J.K. called

him and Gonzales spoke with him over the telephone. The superintendent could not remember who lived in Apt. A. Gonzales returned to the third floor at about 12:52, and went back to the fourth floor three minutes later because Sybel asked him to check to see if the superintendent had arrived, and if not, to ask J.K. to come down to the third floor. Back on the fourth floor, Gonzales told J.K. that his boss wanted her to come downstairs because they believed somebody could possibly be in danger in the apartment, and she came down to the third floor about a minute later. While Gonzales was on the fourth floor the second time, the officers entered Apt. A.

When Gonzales returned to the third floor, he saw the officers exiting Apt. A. He was told that Sybel had a concern of a community caretaker and that he decided to make entry into the apartment.

When the officers left the building, Sybel asked Gonzales to conduct a rundown of C.G. for the purpose of determining whether there was any other vehicle attached to the license number listed on the traffic ticket.

### **Justin De La Bruyere**

De la Bruyere was hired by the HPD in July 2003, and promoted to the rank of sergeant in 2013.

De la Bruyere had no involvement in the events of December 27, 2016. On December 28, 2016, he reported for duty at about noon, after he was asked to come in by Riotto because of an investigation involving guns. When de la Bruyere arrived at the Narcotics office, he was briefed by Gutierrez, per Riotto's direction. Riotto later went into the office shared by de la Bruyere and Sybel, informed them that C.G. had a warrant, and instructed them to suit up to go to 64 P. Ave., Apt. A.

Prior to departing headquarters for 64 P. Ave., Apt. A, Sybel told de la Bruyere to grab the key for 64 P. Ave., which was in a box on Sybel's desk. De la Bruyere used this key to open the front door of 64 P. Ave.

De la Bruyere recalled knocking on the door to Apt. A, after Duardo was listening at the door, and announcing that the HPD was at the door. G.H., Sr. heard the knocking and opened his apartment door, thinking that the officers were knocking on his door, and de la Bruyere engaged in a brief conversation with G.H., Sr. De la Bruyere testified that G.H., Sr. indicated that a family with kids lived in Apt. A, and stated: "I don't know if they leave these kids alone, but these kids are crying and screaming all day long." De la Bruyere did not hear any screaming or crying himself, and no other officer told him that they heard anyone screaming or crying on the third floor.

De la Bruyere believes that he heard Duardo say that the door to Apt. A was unlocked. When he entered Apt. A, he had his service weapon drawn, as did Vazquez and other officers.

De la Bruyere signed off on the December 27 Investigation Report written by Gutierrez, and explained that the general purpose of signing off on a report is to verify that the report is completed, that boxes are checked, and that certain information is included. Since de la Bruyere was not present on December 27, he could not attest to the accuracy of the information contained in that report.

De la Bruyere also signed off on Gutierrez's December 28 Investigation Report (R-10) without making any changes to the report. He agreed with Gutierrez's testimony about being instructed to keep reports short and simple. He testified that he did not read the narrative, but that his signing off indicated that the report itself was complete. Before receiving Gutierrez's report, he had asked Sybel if the report was completed, and Sybel indicated that he told Gutierrez what Riotto wanted in the report.

De la Bruyere testified that it was Riotto's decision to go to 64 P. Ave., Apt. A. Riotto was the commanding officer making the decisions while he was present, and Sybel became the commanding officer when Riotto left. He also testified that it was Sybel who made the decision to enter Apt. A.

**Rocco Duardo**

Duardo was hired by the HPD in July 2004 and was assigned to the Patrol Division until 2013. In 2013, he was assigned detective to the Narcotics Division. He was reassigned back to the Patrol Division effective January 2017. Duardo testified that he had no history of major discipline. In 2016 he was suspended without pay for five days for violating HPD Rules and Regulations concerning insubordination and personal appearance (for how he kept his hair).

On December 27, Duardo was present during the questioning and arrests of M.F. and R.M. He did not handle the questioning himself, nor did he search M.F.'s vehicle, but he saw Gutierrez pull a plastic bag containing marijuana out of the car. He rode back to headquarters with Gutierrez and R.M. Duardo denies ever handling any of M.F.'s or R.M.'s cell phones. Back at headquarters, while Gutierrez was emptying out the plastic bag that contained the marijuana evidence, he heard Gutierrez ask M.F. who C.G. was.

On December 28, Duardo reported to headquarters at approximately 11:00 a.m. He recalls that Riotto told him that C.G. had a warrant out of Newark and that a weapon was being negotiated for sale. The officers left headquarters with the intention of making contact with C.G. at Apt. A.

When Duardo and other officers arrived at 64 P. Ave., they waited for de la Bruyere to arrive because they knew that he had a key to the building. Duardo testified that he had been engaged in undercover narcotics operations out of 64 P. Ave. in the past.

When they arrived at the third floor, Duardo was the first to arrive at Apt. A. The video shows him pointing and then leaning into the door. When he tried to listen at the door, he heard something inside and signaled to the other officers that he heard something. He then turned the doorknob, pushed in (at about 12:42), and realized that the door was unlocked. He tried to look under the door, but a weather strip prevented him from seeing anything. He asked Sybel and de la Bruyere if they heard what he

heard coming from the apartment, and de la Bruyere tried to listen at the door, and knocked on the door. They knew that an armed man could potentially be in the apartment.

At approximately, 12:48 G.H., Sr. opened the door to his apartment. Vazquez walked over to speak with G.H., Sr. and Duardo walked away moments after and took over the conversation. Duardo asked G.H., Sr. who the superintendent was, and he was told that it was R.B. G.H., Sr. dialed the superintendent and gave Duardo the phone. Duardo asked G.H., Sr. if he knew who lived in Apt. A. According to Duardo, G.H., Sr. replied (but not verbatim): "Well, I know a family lives there because I heard kids. I hear kids screaming all the time, okay, and I think the parents might leave them alone, because they don't stop screaming. Just, it's constant. They don't stop." Duardo says that he believes it was no more than three minutes after the conversation with G.H., Sr. ended that they entered the apartment. Entry was effectuated at 12:57.

Duardo also testified that it was Sybel who made the call to enter the apartment, and that he believed they had an obligation to enter that apartment and "check to see the welfare of the possible child being in there."

### **FINDINGS OF FACTS**

When assessing credibility, inferences may be drawn concerning the witness's expression, tone of voice, and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness's interest in the outcome, motive, or bias should be considered. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

After reviewing the exhibits, including the video taken on December 28, 2016, and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

The cell phone that was thought to belong to M.F. contained information that led the officers to believe that a handgun was being delivered to 64 P. Ave., Apt. A.

Hackensack asserts that M.F.'s cell phone was illegally seized by the officers when Gutierrez conducted an illegal warrantless search of M.F.'s car on December 27, and that Vazquez and Gutierrez illegally searched the phone. Hackensack claims that because such illegal search would render all evidence derived therefrom inadmissible in court, the two officers fabricated circumstances to justify how it came to be that they searched the phone legally but without a warrant. This in turn led to the fabrication of a story as to how they allegedly found the phone (i.e., tucked away in the back of Vazquez's patrol car) under circumstances that permitted them to search the phone without a warrant to verify its owner. While a great deal of testimony was offered concerning the circumstances surrounding the discovery of the phone, there are no separate charges that specifically address any alleged illegal search and seizure of the phone, the alleged illegal search of the car, the alleged fabrication of the story by Vazquez and Gutierrez concerning the discovery of the phone, or the alleged falsification of records concerning the phone. The testimony and other evidence presented concerning the 500 South River Street arrests, and the cell phone that was discovered in connection with those arrests, are only considered here with respect to the conspiracy claims.

Riotto was informed of the handgun sale and that the cell phone belonged to M.F., who had been arrested the day before for possession of marijuana.

Gonzales testified credibly that Riotto directed him to conduct a record check on C.G. prior to leaving headquarters that morning, and that he discovered that C.G. had an outstanding warrant for a traffic violation. The officers were made aware of the warrant before departing for 64 P. Ave., Apt. A.

The officers left headquarters at the direction of Riotto, to make contact with C.G. at Apt. A and to conduct a weapons investigation. Before leaving, the officers put on their bulletproof vests as a precaution, as they knew that they could potentially be confronted with an armed and dangerous individual.

In addition to the testimony of the witnesses, surveillance video of 64 P. Ave. was reviewed and considered. The video depicts the five appellants, together with Riotto and Sybel, entering 64 P. Ave., at approximately 12:40 p.m. on December 28, 2016. The officers were at the entrance door for less than one minute before de la Bruyere unlocked the door. His hands and the lock cannot be seen in the video, and the officers all testified that de la Bruyere had a key to the building that was given to the HPD by the building's owner. This is consistent with the letter received by the HPD from the building's owner. While the building's owner does not expressly state that he gave the officers a key to the building, the letter indicates that he installed cameras in the building due to suspicious tenant behavior and narcotics activity, and that he made it common practice to grant permission for building access to the HPD.<sup>5</sup> I, therefore, **FIND** that the officers achieved entry to 64 P. Ave. using a key provided to the HPD by the building's owner, and that the officers did not improperly enter 64 P. Ave., as they were authorized by the building's owner to enter the building for law-enforcement purposes, including suspected narcotics/weapons activity.

When the officers entered 64 P. Ave., they walked directly to the third floor (arriving at 12:41) and to Apt. A without encountering or speaking with anybody. Duardo is seen pointing to the door of Apt. A, and then placing his ear to the door. Duardo attempted to look under the apartment door but was unable to see anything or anyone. The officers stand at or around Apt. A for several minutes.

The lock to Apt. A cannot be seen on the video and no officer is actually seen tampering with the lock or door. It is difficult to see what they are doing at the door.

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<sup>5</sup> Neither the owner nor the superintendent of 64 P. Ave. testified at the hearing. Hackensack's assertion that the entry to the building was illegal/improper was supported by the fact that the officers did not have a warrant, and by Busciglio's own interpretation of the surveillance video.

Some officers hover around the door, and there are times when others obstruct the camera's view of Apt. A and of the officers at the door.

In considering the question of whether the door to Apt. A was locked or unlocked when the officers arrived, C.G.'s and J.K.'s recorded statements were not given any greater weight than the officers' testimony in this regard. Neither C.G. nor J.K. testified at the hearing; C.G. is self-interested in claiming that his door was locked and secured when the officers entered the apartment without his knowledge or authorization; and it is not clear how J.K. would have firsthand knowledge that the door to Apt. A (which is on a different floor than her own) was locked. Therefore, I **FIND** that the evidence is inconclusive as to whether any officer (including de la Bruyere) tampered with the lock to Apt. A or whether the door was unlocked upon the officers' arrival.

Approximately six and a half minutes after arriving at Apt. A, Vazquez, Duardo and de la Bruyere spoke with G.H., Sr. at his apartment door across the hall from Apt. A, and then with G.H., Jr., who was visiting his father. After speaking with G.H., Sr. for about six minutes, the officers continue to stand at or around Apt. A, with no visible change in their conduct or demeanor. About two and a half minutes after speaking with G.H., Sr., Vazquez walks directly to Apt. A and is the first to enter the apartment. He is followed by de la Bruyere, Gutierrez, and Duardo. After Riotto left the building at about 12:50, Sybel became the commanding officer at the scene.

Gonzales did not enter Apt. A. He arrived at the third floor with the other officers, but went down to the first floor at about 12:45. Gutierrez had left the third floor one minute before Gonzales to look for the superintendent. Gonzales and Gutierrez went to the superintendent's apartment on the fourth floor, where they spoke with J.K. They returned to the third floor at about 12:52 and, pursuant to Sybel's direction, Gonzales left the third floor again about three minutes later to see if the superintendent had returned from work, and if not, to ask J.K. to go to the third floor. Gonzales spoke with J.K. outside her apartment until almost 12:59, at which time they started to make their way back to the third floor.



Gutierrez, Duardo, Vazquez and de la Bruyere exited the apartment at approximately 13:03, after spending about six minutes inside, and then left 64 P. Ave.

The officers did not have a warrant when they entered Apt. A, but claim that they entered the unlocked apartment to check for an unattended child based on a statement made by G.H., Sr. Their testimony concerning G.H., Sr.'s report of an unattended child and his request to remain anonymous, however, was not credible. Apart from the officers' own testimony, they offered no evidence to support their assertion that G.H., Sr. indicated that there was an unattended child in Apt. A. G.H., Sr. did not testify to corroborate the officers' testimony, and nobody testified, or even indicated in a recorded statement that they heard a child in or around Apt. A on the morning of December 28, 2016.<sup>6</sup> The officers stood outside Apt. A for about six and a half minutes before speaking with G.H., Sr., and remained at or around Apt. A for an additional eight minutes before entering the apartment, and not one officer heard a child inside that apartment.

After speaking with G.H., Sr., the officers' behavior on the video did not appear to change in any way—they continued to mill around the third floor as they did earlier and their behavior did not reflect any sense of urgency or concern that someone could potentially be in danger in Apt. A. There is also no evidence of any type of follow-up by the officers or HPD to ascertain further information about a reported child. Based on my review of the video, my assessment of the officers' testimony, and the absence of any testimony from an impartial witness corroborating the report of an unattended child or that a child was heard in the apartment that morning, I **FIND** that the officers were not informed that there was an unattended child in Apt. A at that time, and that the officers' conversation with G.H., Sr. did not trigger or create an exigent circumstance or emergency situation.<sup>7</sup> Consequently, I further **FIND** that the credible evidence presented supports Hackensack's assertion that no exception to the warrant requirement applies here and that, therefore, the warrantless search of the apartment was unjustified and improper.

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<sup>6</sup> Others who were in the vicinity of Apt. A that morning, including F.J. (another third-floor tenant) and G.H., Sr.'s caregiver, reported not hearing any child or noises coming from Apt. A that morning.

<sup>7</sup> The community-caretaking doctrine, which appellants assert applies here, is addressed in the subsequent Legal Analysis and Conclusions.

I also **FIND** that Sybel ordered Gutierrez, Duardo, Vazquez, and de la Bruyere to enter Apt. A. As lieutenant, Sybel was the highest-ranking officer on the third floor at the time, and the officers all testified consistently that they entered Apt. A once they received the order from Sybel. Sybel did not testify at the hearing, and Hackensack offered no evidence to disclaim the officers' assertion that they were following orders when they entered Apt. A.

Gutierrez, Duardo, Vazquez, and de la Bruyere were inside Apt. A for about six minutes. No officer is seen on the video carrying any papers out of Apt. A. The officers all maintain that these documents were obtained in connection with M.F.'s arrest the day before and used to conduct a look-up of C.G. prior to departing for 64 P. Ave. While, on the one hand, it is curious that these documents were never logged into evidence if, in fact, they were found with the marijuana evidence, it is also noteworthy that Busciglio discovered the documents inside the 500 South River Street file, which could support the position that the documents were found on December 27. I **FIND**, therefore, that it is inconclusive whether the officers removed any personal property from Apt. A.

In reviewing the evidence relating to the events of December 27 and December 28, 2016, I **FIND** that there was insufficient evidence to demonstrate the existence of a plan or agreement between or among the officers to engage in or facilitate the commission of an improper or unlawful entry and search of Apt. A, or the seizure of personal property found therein. I, therefore, **FIND** that the evidence is inconclusive as to whether the officers planned or conspired to conduct an unauthorized or improper warrantless search of Apt. A, or to seize personal property of C.G. The reason the officers left headquarters on the morning of December 28 was to conduct a legitimate law-enforcement investigation. They left for 64 P. Ave. at the direction of Captain Riotto, expecting to possibly make contact with C.G. If the officers had a plan or agreement to illegally enter Apt. A once they left headquarters, it is doubtful that it would have taken them so long to make entry. Also, the officers' actions and demeanor outside Apt. A, as depicted in the soundless video, do not establish the presence of any agreement or plan among the officers.

The Investigation Report (R-10) documenting the events of December 28, 2016, at 64 P. Ave., which was prepared by Gutierrez and reviewed by de la Bruyere, does not mention that Riotto and de la Bruyere also responded to 64 P. Ave. More importantly, while Gutierrez was not on the third floor the entire time and may not have had firsthand knowledge of some of the events that occurred, I **FIND** that the report falsely indicates that while walking through the building Gutierrez and the other officers (i.e., "we") were met by a resident who informed them that he believed there was an unattended child left in Apt. A. Even if Gutierrez did not speak directly with G.H., Sr., and only heard of a possible unattended child from Sybel, as he testified, the report does not reflect this. The report also states that "upon receiving" this information concerning the unattended child, they responded to the apartment "and began knocking on the apartment door." The report continues: "After a short time no one answered the door. While standing outside we discovered this door was left insecure [sic]." Contrary to this written report, the officers not only testified that it was G.H., Sr. who reported the unattended child, but that the unlocked door was discovered before even speaking with G.H., Sr. I **FIND** that the report is not simply vague, it contains misleading and inaccurate information.

De la Bruyere claims that he should not be held responsible for any incorrect or misleading information found in the report because he did not read it. He asserts that he was not required to read it and verify its content, and should not be held responsible for the report because it was reviewed by Sybel, who said the report was "good to go." First, de la Bruyere had firsthand knowledge of the events, and by indicating on the report that he reviewed it, it is reasonable to assume that he read and approved its content. Second, de la Bruyere offered no evidence to support his assertion that he was not required to read the report he "reviewed," and check its content for accuracy, and that he was only required to ensure that the report was actually filled out. If he did not read it, he certainly should have done so before indicating on the report that he had reviewed it. Third, even if Sybel indicated that he and/or Riotto approved of the report, it does not excuse de la Bruyere's obligation, as the reviewing officer, to read it and verify its accuracy, particularly since he was personally involved in that investigation and spoke with G.H., Sr. I **FIND**, therefore, that Gutierrez wrote, and de la Bruyere reviewed

and approved, the filed Investigation Report of December 28, 2016, which contained knowingly false, misleading, and inaccurate information with respect to events relating to the search of Apt. A.<sup>8</sup>

### **LEGAL ANALYSIS AND CONCLUSIONS**

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Hackensack seeks the removal of the five appellants from their respective positions at the HPD. It alleges that appellants violated numerous regulations and HPD policies in connection with the warrantless search of a private residence on December 28, 2016. The officers are specifically charged with: (1) Conducting an illegal warrantless search of Apt. A; (2) Improperly tampering with the doors/locks to 64 P. Ave. and Apt. A to gain entry; (3) Conspiring to conduct an illegal warrantless search of Apt. A; and (4) Illegally seizing and conspiring to seize personal property of C.G. from his apartment. Gutierrez and de la Bruyere are also charged with: Knowingly filing false, misleading, and inaccurate police reports regarding the events related to the warrantless search of Apt. A.<sup>9</sup>

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<sup>8</sup> Investigation Reports 16-097342C (R-9) and 16-097342F (R-19) were not considered here as part of this charge since they do not relate directly to the search of Apt. A, but to the handling of the cell phone that was discovered in connection with the 500 South River Street arrests.

<sup>9</sup> At the hearing, and in its post-hearing brief, Hackensack makes a number of separate allegations of wrongdoing, including but not limited to: the improper and illegal search(s) of M.F.'s car on December 27; the illegal seizure of M.F.'s cell phone out of M.F.'s car on December 27; the illegal search of M.F.'s cell phone by Vazquez and Gutierrez; falsified reports concerning the 500 South River Street arrests and the

Appellants deny all charges asserted and argue collectively that: the officers had a reasonable belief that the entry into Apt. A was necessary and justifiable under the community-caretaking exception to the Fourth Amendment, as they believed there to be an unattended child in the apartment, and that the appellants acted in accordance with the City's Standard Operating Procedures pertaining to following orders of superior officers (Riotto and Sybel), and, therefore, seeking their termination is not warranted. Appellants also argue that the charges warrant dismissal because Hackensack's investigation did not comply with the AG Guidelines; because there existed conflicts of interest on the part of the City and the investigator; and because evidence critical to the appellants was destroyed or not produced.

### **Community-Caretaking Doctrine**

The Fourth Amendment of the United States Constitution and N.J. Const. art. I, para. 7, in virtually identical language, guarantee the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and no warrants shall issue but upon probable cause. State v. Edmonds, 211 N.J. 117, 121 (2012). Warrantless searches are permissible only if justified by one of the few specifically established and well-delineated exceptions to the warrant requirement. In criminal cases, it is the State's burden to prove that a warrantless search falls within one or more of those exceptions. State v. Robinson, 228 N.J. 529, 544 (2017).

One narrow exception to the warrant requirement is the community-caretaking doctrine. Under this exception, police may conduct a warrantless entry and search of a home to check on the welfare of a resident in the absence of the resident's consent. The Supreme Court of New Jersey held in State v. Vargas, 213 N.J. 301, 305 (2013), that the community-caretaking doctrine is not a justification for the warrantless entry and search of a home in the absence of some form of an objectively reasonable emergency

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discovery of the cell phone inside Vazquez's patrol car; and the alleged cover-up following the illegal search of Apt. A and seizure of documents. These allegations of wrongdoing, however, do not appear in the FNDA's, and were only considered for the limited purpose of assessing the conspiracy charges.

or some species of exigent circumstances. The presence of an immediate danger and the urgent need for police action are factors in determining objective reasonableness. Id. at 310. The New Jersey Supreme Court has concluded that the community-caretaking doctrine remains a narrow exception to the warrant requirement. Id. at 305.

The appellants all concede that they had no warrant to enter Apt. A. They left headquarters intending to make contact with C.G. and further the weapons investigation. After waiting outside the apartment for about fourteen minutes, the four officers entered the apartment. I was not convinced by the officers' testimony that they were informed that there was an unattended child in Apt. A that morning, or that they entered the apartment in response to a report of an unattended child. There was, therefore, no evidence of any immediate danger or urgent need for police action. Consequently, there did not exist any objectively reasonable emergency or species of exigent circumstances to justify their entry into Apt. A, and the community caretaking exception to the warrant requirement cannot apply. Despite Sybel's order, the officers knew, or should have known, that the search of the apartment was not legitimate absent an emergency or exigent circumstance.

### **Appellants' Motions to Dismiss**

The motion to dismiss filed on behalf of Victor Vazquez and opposed by Hackensack in its post-hearing submission<sup>10</sup> asserts that all charges should be dismissed as a result of an alleged conflict of interest on the part of Busciglio and Hackensack's City manager. Upon review of the motion and considering evidence presented at the hearing, I **CONCLUDE** that the motion is without merit and is hereby **DENIED**.

The appellants also argue that all charges should be dismissed because the City of Hackensack failed to conduct an investigation in compliance with the requirements of the Attorney General Guidelines. Specifically, appellants assert that the City of Hackensack violated the AG Guidelines because: the City charged each officer before the BCPO closed

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<sup>10</sup> Vazquez filed the motion prior to the conclusion of the hearing and Hackensack responded to said motion as part of its post-hearing brief. In their post-hearing brief, Gutierrez, Vazquez, de la Bruyere, and Gonzales joined in Vazquez's motion.

its criminal investigation; the City failed to conduct recorded interviews of the officers before charging and suspending them; the City manager became involved in the IA investigation and recommended that the officers be served with disciplinary charges and suspended without pay; and not every interview or conversation conducted pursuant to the IA investigation was recorded. Based on my consideration of the evidence before me, I **CONCLUDE** that the City of Hackensack and the IA investigators did not violate the AG Guidelines in any way that would warrant dismissal of the charges.

Appellants also argue that dismissal of the charges is appropriate because Hackensack intentionally destroyed, and/or failed to produce, "highly relevant evidence critical to appellants." This evidence, according to appellants, includes investigatory notes taken; audiotape and investigatory notes of certain interviews; videotape of the HPD hallway showing DiPersia's retrieval of the "anonymous" letter from the IA box; and "chain of custody for physical evidence." In reviewing the record, I **CONCLUDE** that there is no merit to the assertion that Hackensack intentionally destroyed any evidence or failed to produce highly relevant evidence that it was required to produce, and therefore, dismissal of the charges on these bases is not warranted.

### **Charges**

#### **Incompetency, inefficiency, or failure to perform duties:**

The officers are charged with violating N.J.A.C. 4A:2-2.3(a)(1) for incompetency, inefficiency, or failure to perform their duties. In this type of breach, an employee performs his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980), <http://njlegallib.rutgers.edu/njar/>. Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. Rivera v. Hudson Cty. Dep't of Corr., CSR 6456-16, Initial Decision (October 24, 2016), <http://njlaw.rutgers.edu/collections/oal/>.

### **Conduct unbecoming:**

The officers are also charged with conduct unbecoming, N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that 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 Atl. 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, 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)).

Appellants' status as law-enforcement officers subjects them to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

### **Neglect of duty:**

Appellants are charged with "neglect of duty," N.J.A.C. 4A:2-2.3(a)(7). "Neglect of duty" has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable



conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

**Other sufficient cause:**

Appellants were also charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, CSR 9803-13, Initial Decision (May 19, 2014), adopted, Civil Service Commission (September 3, 2014), <http://njlaw.rutgers.edu/collections/oal/>.

**N.J.S.A. 40A:14-147 – Removal, Suspension of Police Officer:**

N.J.S.A. 40A:14-147 states, "no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force." Further, N.J.S.A. 40A:14-147 limits the circumstances in which disciplinary charges can be brought against members or officers of the police department or force. Among other things, it requires that charges of violations of the rules and regulations established for the conduct of a law-enforcement unit must be made within forty-five days of the receipt of sufficient information to file such charges by the authority vested with such power.

**City of Hackensack Police Department Rules and Regulations:**

The officers are charged with violating the following eleven provisions of the HPD Rules and Regulations:

- 3:1.1 Standards of Conduct – Employees shall conduct their professional lives in such a manner as to avoid bringing the department into disrepute.
- 3:1.5(6) General Responsibilities – Police officers of all ranks shall at all times take appropriate action to . . . exercise authority consistent with the obligations imposed by the oath of office and in conformance with the policies of the department.
- 3:1.7 Neglect of Duty – Employees shall not commit any act, nor shall they be guilty of any omission that constitutes neglect of duty as defined under these Rules and Regulations and recognized by New Jersey law.
- 3:1.8 Performance of Duty – All employees shall perform their duties as required or directed by law, department rule and regulations, policy or order, or by order of a supervisor. All lawful duties required by competent authority shall be performed promptly as directed, notwithstanding the general assignment of duties and responsibilities.
- 3:1.11 Obedience to Laws and Regulations – Employees shall observe and obey all laws and ordinances, all rules and regulations and orders of the department.
- 3:1.21 Unlawful Orders – An employee receiving an unlawful, unjust or improper order, shall at first opportunity, report in writing to the Chief of Police through official channels. This report shall contain the facts of the incident and the action taken. Appeals for relief from such orders may be made at the same time. Department action regarding such an appeal shall be conducted through the Office of the Chief of Police.
- 3:1.27 Withholding Information – Employees shall not, at any time, withhold any information concerning suspected criminal activity or other information concerning police business, which may be of interest to the Department. Employees shall obey all laws, ordinances, rules, policies, and directives of the agency and shall report any violations of such.
- 3:1.29 Reporting Violations of Law, Ordinances, Rules and Regulations or Orders – Employees knowing of other employees violating laws, ordinances, or rules and regulations of the department, or disobeying orders, shall report same in writing to the Chief of Police through the chain of command. If the employee believes the information is of such gravity that it must be brought to the immediate personal attention of the Chief of Police or if the offending employee is in the employee's chain of command, then official channels may be bypassed.
- 3:1.31 Civil Rights – All employees shall observe and respect the civil rights of all persons.

- 3:2.21 All Other Conduct – Conduct not specifically addressed by law, department policy, public policy, philosophy, rule or regulation shall be consistent with existing law, department policy, public, philosophy, rule or regulation.
- 5:2.6 Misconduct Observed by Police Personnel – Whenever any command or supervisor observes or is informed of the misconduct of another employee, which indicates the need for disciplinary action, they shall take authorized and necessary action in compliance with the Rules and Regulations.

Gutierrez and de la Bruyere are also charged with violating the following HPD Rules and Regulations, in connection with the filing of false, misleading, and inaccurate reports:

- 3:5.7 Truthfulness – Employees shall not knowingly lie, give misleading information, or falsify oral or written communications or any official report.
- 3:8.4 Truthfulness – Employees are required to be truthful at all times whether or not under oath.

#### Vazquez

Victor Vazquez was one of the four police officers who conducted an improper warrantless search of Apt. A.

Based upon the foregoing, I **CONCLUDE** that the appointing authority has proven by a preponderance of the credible evidence that the following charges should be sustained as to Victor Vazquez: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), and 3:2.21 (all other conduct).

I also **CONCLUDE** that the following charges have not been proven by a preponderance of the credible evidence as to Victor Vazquez: N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel).

### Gutierrez

Mark Gutierrez is one of four officers who conducted an improper warrantless search of Apt. A. He also authored and filed an Investigation Report containing inaccurate and misleading information concerning the events of December 28, 2016.

Based upon the foregoing, I **CONCLUDE** that the appointing authority has proven by a preponderance of the credible evidence that the following charges should be sustained as to Mark Gutierrez: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), 3:2.21 (all other conduct), 3:5.7 (truthfulness), and 3:8.4 (truthfulness).

I also **CONCLUDE** that the following charges have not been proven by a preponderance of the credible evidence as to Mark Gutierrez: N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel).

### Gonzales

Joseph Gonzales never entered Apt. A. He was on another floor of the building at the time the other officers entered the apartment. As indicated above, Hackensack failed to establish by a preponderance of the credible evidence that a plan or conspiracy existed among Gonzales and other members of the HPD to conduct an improper warrantless search of Apt. A or to seize personal property of the resident of Apt. A.

Based upon the foregoing, I **CONCLUDE** that Hackensack has failed to sustain, by a preponderance of the credible evidence, all charges filed against Joseph Gonzales.

#### Duardo

Rocco Duardo was one of the four officers who conducted an improper warrantless search of Apt. A on December 28, 2016.

Based upon the foregoing, I **CONCLUDE** that the appointing authority has proven by a preponderance of the credible evidence that the following charges should be sustained as to Rocco Duardo: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), and 3:2.21 (all other conduct).

I also **CONCLUDE** that the following charges have not been proven by a preponderance of the credible evidence as to Rocco Duardo: N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel).

#### De la Bruyere

Justin de la Bruyere is one of four officers who conducted an improper warrantless search of Apt. A. He also reviewed and filed an Investigation Report containing inaccurate and misleading information concerning the events of December 28, 2016.

Based upon the foregoing, I **CONCLUDE** that the appointing authority has proven by a preponderance of the credible evidence that the following charges should be sustained as to Justin de la Bruyere: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), 3:2.21 (all other conduct), 3:5.7 (truthfulness), and 3:8.4 (truthfulness).

I also **CONCLUDE** that the following charges have not been proven by a preponderance of the credible evidence as to Justin de la Bruyere: N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel).

### **Penalty**

In attempting to determine whether a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. The concept of progressive disciplinary action is described in Bock, 38 N.J. at 519. A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522–24. Termination of employment is the penalty of last resort reserved for the most severe infractions or habitual negative conduct unresponsive to intervention. Rotundi v. Dep't of Health & Human Servs., OAL Dkt. No. CSV 385-88, Initial Decision (September 29, 1988).

Here, Hackensack argues that the appellants' misconduct was so severe that it falls outside of progressive discipline, and that removal is the only appropriate remedy. I do not agree.

Victor Vazquez

The only sustained specification that applies to Vazquez is that he conducted an improper warrantless search of Apt. A. This is a serious charge, particularly considering that a police officer's primary duty is to enforce and uphold the law. As a police officer, Vazquez represents law and order in the community and when he, himself, fails to follow the rules, particularly those that protect the public's Constitutional rights, order is disturbed, the integrity of legitimate law-enforcement work is compromised, and the public trust in law enforcement suffers.

While Hackensack asserts that removal is the appropriate penalty here, mitigating factors justify a less severe penalty. First, Vazquez did not go to 64 P. Ave. or enter Apt. A to further any personal interest. He went to conduct a legitimate law-enforcement investigation, pursuant to a captain's order. Second, Vazquez only entered Apt. A after Lieutenant Sybel, the commanding officer, directed him to do so. Vazquez was the lowest-ranking officer at the scene, and while officers are typically required to obey the orders of a commanding officer, no officer is required to obey an order that is contrary to law. Here, Vazquez knew, or should have known, that the search of Apt. A without a warrant was not a legitimate one because no exigent circumstance or emergency existed.

Therefore, I **CONCLUDE** that Vazquez's actions were insufficiently severe to render him unsuitable to continue in his position as patrolman, and in light of the aforementioned mitigating factors, I further **CONCLUDE** that the penalty of removal is excessive, and that progressive discipline should apply.

It is undisputed that in his four years at the HPD, Vazquez had no prior disciplinary history. Nevertheless, even considering the aforementioned mitigating factors, the sustained charges against Vazquez are serious in nature and major disciplinary action is warranted. I, therefore, **CONCLUDE** that a ninety-day suspension is more appropriate and proportionate to the offense.

Mark Gutierrez

Gutierrez conducted an improper warrantless search of Apt. A, and filed a false report regarding the events that occurred at 64 P. Ave. Conducting an improper warrantless search of a person's residence is a serious offense, given that a police officer's primary duty is to enforce and uphold the law. As a detective (with the rank of patrolman), Gutierrez represents law and order in the community, and when he fails to follow the rules, particularly those that protect the public's Constitutional rights, order is disturbed, the integrity of legitimate law-enforcement work is compromised, and the public trust in law enforcement suffers. Gutierrez's writing and filing of a misleading and inaccurate Investigation Report is also significant and warrants discipline.

While Hackensack asserts that removal is the appropriate penalty here, mitigating factors justify a less severe penalty. First, Gutierrez did not go to 64 P. Ave. or enter Apt. A to further any personal interest. He went to conduct a legitimate law-enforcement investigation, pursuant to a captain's order. Second, Gutierrez entered Apt. A after Lieutenant Sybel, the commanding officer, directed him to do so. Despite the paramilitary-like nature of the police force requiring an officer to obey his commanding officer's orders, Gutierrez would not have been required to follow an order that is contrary to law. Here, Gutierrez knew, or should have known, that the search of Apt. A without a warrant was not a legitimate one because no exigent circumstance or emergency existed.

Therefore, I **CONCLUDE** that Gutierrez's actions were insufficiently severe to render him unsuitable to continue in his position as detective, and in light of the aforementioned mitigating factors, I further **CONCLUDE** that the penalty of removal is excessive, and that progressive discipline should apply.

In his nearly twelve years at the HPD, Gutierrez had no prior significant disciplinary history. However, even considering the lack of any significant discipline over the past several years and the aforementioned mitigating factors, the sustained charges against Gutierrez are serious and major disciplinary action is warranted. I,



therefore, **CONCLUDE** that a 150-day suspension is the more appropriate and proportionate discipline.

Rocco Duardo

The one sustained specification as to Duardo is that he conducted an improper warrantless search of Apt. A. This is a serious charge, particularly considering that a police officer's primary duty is to enforce and uphold the law. As a police officer, Duardo represents law and order in the community and when he, himself, fails to follow the rules, particularly those that protect the public's Constitutional rights, order is disturbed, the integrity of legitimate law-enforcement work is compromised, and the public trust in law enforcement suffers.

While Hackensack asserts that removal is the appropriate penalty here, mitigating factors justify a less severe penalty. First, Duardo did not go to 64 P. or enter Apt. A to further any personal interest. He went to conduct a legitimate law-enforcement investigation, pursuant to a captain's order. Second, Duardo entered Apt. A after the commanding officer directed him to do so. While an officer is generally required to obey his commanding officer's orders, he is never required to obey an order that is contrary to law. Here, Duardo knew, or should have known, that the search of Apt. A without a warrant was not a legitimate one because no exigent circumstance or emergency existed.

Therefore, I **CONCLUDE** that Duardo's actions were insufficiently severe to render him unsuitable to continue in his position as patrolman, and in light of the aforementioned mitigating factors, I further **CONCLUDE** that the penalty of removal is excessive, and that progressive discipline should apply.

It is undisputed that in his thirteen years at the HPD, Duardo had no significant prior disciplinary history. His only prior discipline was a five-day suspension. Nevertheless, even considering the aforementioned mitigating factors, the sustained charges against Duardo are serious in nature and major disciplinary action is warranted.

I, therefore, **CONCLUDE** that a ninety-day suspension is more appropriate and proportionate to the offense.

Justin de la Bruyere

Justin de la Bruyere conducted an improper warrantless search of Apt. A, and filed a false report regarding the events that occurred at 64 P. Ave. Conducting an improper warrantless search of a person's residence is a serious offense, considering that a police officer's primary duty is to enforce and uphold the law. As a sergeant, de la Bruyere represents law and order in the community and when he, himself, fails to follow the rules, particularly those that protect the public's Constitutional rights, order is disturbed, the integrity of legitimate law-enforcement work is compromised, and the public trust in law enforcement suffers. De la Bruyere's review and filing of a misleading and inaccurate Investigation Report is also significant and warrants discipline.

While Hackensack asserts that removal is the appropriate penalty here, mitigating factors justify a less severe penalty. First, de la Bruyere did not go to 64 P. Ave. or enter Apt. A to further any personal interest. He went to conduct a legitimate law-enforcement investigation, pursuant to a captain's order. Second, de la Bruyere entered Apt. A after Lieutenant Sybel, the commanding officer, directed the officers to do so. While the paramilitary-like nature of the police force typically requires an officer to obey the orders of his commanding officer, he would not be required to obey an order that is contrary to law. Here, de la Bruyere knew, or should have known, that the search of Apt. A without a warrant was not a legitimate one because no exigent circumstance or emergency existed.

Therefore, I **CONCLUDE** that de la Bruyere's actions were insufficiently severe to render him unsuitable to continue in his position as detective, and in light of the aforementioned mitigating factors, I further **CONCLUDE** that the penalty of removal is excessive, and that progressive discipline should apply.

De la Bruyere was employed by the HPD for about fourteen years, and was promoted to sergeant in 2013. No evidence of any significant prior disciplinary history

was presented. Even considering the lack of evidence of any significant discipline over the past several years with the HPD, and the aforementioned mitigating factors, the sustained charges against de la Bruyere are serious and major disciplinary action is warranted. I, therefore, **CONCLUDE** that a 150-day suspension is the more appropriate and proportionate discipline.

### **ORDER**

#### **Victor Vazquez**

Hackensack has proven by a preponderance of the credible evidence the following charges against Victor Vazquez: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), and 3:2.21 (all other conduct). Accordingly, I **ORDER** that the aforesaid charges against Victor Vazquez be and are hereby **SUSTAINED**.

Hackensack has not proven by a preponderance of the credible evidence the following charges against Victor Vazquez, N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel), and, accordingly, I **ORDER** that these two charges against Victor Vazquez be and are hereby **REVERSED**.

Furthermore, I **ORDER** that Vazquez be suspended for ninety days, and that he be reinstated to his position as a patrolman, and that any applicable back pay and other benefits be issued to Vazquez.

Mark Gutierrez

Hackensack has proven by a preponderance of the credible evidence the following charges against Mark Gutierrez: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), 3:2.21 (all other conduct), 3:5.7 (truthfulness), and 3:8.4 (truthfulness). Accordingly, I **ORDER** that the aforesaid charges against Mark Gutierrez be and are hereby **SUSTAINED**.

Hackensack has not proven by a preponderance of the credible evidence the following charges against Mark Gutierrez, N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel), and, accordingly, I **ORDER** that these two charges against Mark Gutierrez be and are hereby **REVERSED**.

Furthermore, I **ORDER** that Gutierrez be suspended for 150 days, and that he be reinstated to his position as a detective, and that any applicable back pay and other benefits be issued to Gutierrez.

Joseph Gonzales

Hackensack has not proven by a preponderance of the credible evidence any of the charges. Accordingly, I **ORDER** that all charges filed against Joseph Gonzales be and are hereby **REVERSED**.

Furthermore, I **ORDER** that Gonzales be reinstated to his position as detective, and that any applicable back pay and other benefits be issued to Gonzales.

Rocco Duardo

Hackensack has proven by a preponderance of the credible evidence the following charges against Rocco Duardo: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), and 3:2.21 (all other conduct). Accordingly, I **ORDER** that the aforesaid charges against Rocco Duardo be and are hereby **SUSTAINED**.

Hackensack has not proven by a preponderance of the credible evidence the following charges against Rocco Duardo: N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel), and, accordingly, I **ORDER** that these two charges against Rocco Duardo be and are hereby **REVERSED**.

Furthermore, I **ORDER** that Duardo be suspended for ninety days, and that he be reinstated to his position as patrolman, and that any applicable back pay and other benefits be issued to Duardo.

Justin de la Bruyere

Hackensack has proven by a preponderance of the credible evidence the following charges against Justin de la Bruyere: N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause); and City of Hackensack Police Department Rules and Regulations 3:1.1 (standards of conduct), 3:1.5(6) (general responsibilities), 3:1.7 (neglect of duty), 3:1.8 (performance of duty), 3:1.11 (obedience to laws and regulations), 3:1.21 (unlawful orders), 3:1.27 (withholding information), 3:1.29 (reporting

violations of law, ordinances, rules and regulations or orders), 3:1.31 (civil rights), 3:2.21 (all other conduct), 3:5.7 (truthfulness), and 3:8.4 (truthfulness). Accordingly, I **ORDER** that the aforesaid charges against Justin de la Bruyere be and are hereby **SUSTAINED**.

Hackensack has not proven by a preponderance of the credible evidence the following charges against Justin de la Bruyere, N.J.S.A. 40A:14-147 and HPD Rules and Regulations 5:2.6 (misconduct observed by police personnel), and, accordingly, I **ORDER** that these two charges against Justin de la Bruyere be and are hereby **REVERSED**.

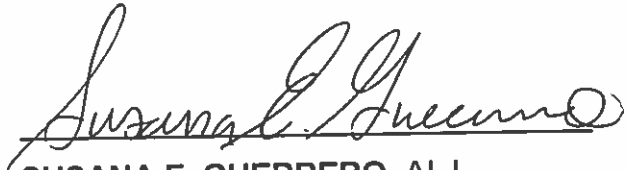
Furthermore, I **ORDER** that de la Bruyere be suspended for 150 days, and that he be reinstated to his position as a sergeant, and that any applicable back pay and other benefits be issued to de la Bruyere.

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**, which by law 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. 40A:14-204.

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, P.O. 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.

2/8/19  
DATE

  
SUSANA E. GUERRERO, ALJ

Date Received at Agency:

2/8/19

Date Mailed to Parties:  
jb

2/8/19

**APPENDIX**

**WITNESSES**

**For Appellants:**

None

**For Respondent:**

Peter Busciglio

Victor Vazquez

Mark Gutierrez

Joseph Gonzales

Justin de la Bruyere

Brian Feuilly

Rocco Duardo

**EXHIBITS**

**For Appellant Victor Vasquez:**

AVV-1	Photo of police car 117
AVV-2	Photo of police car
AVV-3	Photo of police car
AVV-4	Photo of police car

**For Appellant Mark Gutierrez:<sup>11</sup>**

AMG-1	Transcript of discussion between Capt. Peter Busciglio and Assistant Prosecutor Carol Catuogno (AMG-58)
AMG-2	Commendations (AMG-4 through AMG-57)

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<sup>11</sup> Exhibits marked into evidence on behalf of Mark Gutierrez did not conform to Mr. Biagiotti's letter dated December 11, 2018, but has been marked accordingly.



**For Appellant Joseph Gonzales:**

AJG-1            E-mail dated July 17, 2018

**For Appellant Rocco Durado:**

ARD-1           Internal Affairs Policy & Procedures  
ARD-2           Internal Affairs Investigation Report  
ARD-3           Commendations

**For Appellant Justin de la Bruyere:**

AJD-1           Preliminary Notice of Disciplinary Action dated August 11, 2015  
AJD-2           Hackensack Police Department Activity Sheet (start dated March 3, 2016)

**For Respondent:**

R-1            Anonymous Letter  
R-2            Investigation Report by Mark Gutierrez (Case #16-097342) dated  
December 27, 2016  
R-3            Arrest Report of M.F. by Mark Gutierrez dated December 27, 2016  
R-4            Arrest Report of R.M. (aka J.L.) by Mark Gutierrez dated December 27,  
2016  
R-5            Property Report of R.M. by Mark Gutierrez dated December 27, 2016  
R-6            Property Report of M.F. by Mark Gutierrez dated December 27, 2016  
R-7            Investigation Report of R.M. by Mark Gutierrez dated December 27, 2016  
R-8            Investigation Report of M.F. by Victor Vazquez (found cell phone in patrol  
car) dated December 27, 2016  
R-9            Investigation Report of M.F. by Mark Gutierrez ( cell phone with gun  
photos) dated December 27, 2016  
R-10           Investigation Report by Mark Gutierrez (checking Apt. A) dated December  
28, 2016  
R-11           Audit Log of Case #s 16-097342, 16-097342A, 16-097342B, 16-097342C  
R-12           CD of Headquarters on December 28, 2016  
R-13           CD of Security Surveillance at 64 P. Ave. on December 28, 2016  
R-14           CD of hallways and lobby at 64 P. Ave.  
R-15           CD of Victor Vazquez and Benny Marino

- R-16 Notes by Captain Peter Busciglio
- R-17 Handwritten Narcotics Log
- R-18 Not in evidence
- R-19 Investigation Report dated December 27, 2016
- R-20 Activity Sheet of Police Officer Benjamin Fashi dated December 27, 2016
- R-21 Evidence Report by Mark Gutierrez dated March 31, 2017
- R-22 Investigation Report by Mark Gutierrez (Case #17-027885) dated March 28, 2017
- R-23 Investigation Report by Mark Gutierrez (Case #17-027885A) dated March 31, 2017
- R-24 Photos of Evidence Bag 3131355
- R-25 CD of Internal Affairs interview with Det. John Dalton
- R-26 Infocop screen shot of C.G. from Victor Vazquez and Mark Gutierrez to Det. John Dalton
- R-27 Documents from Det. John Dalton to Captain Peter Busciglio
- R-28 Text messages from Victor Vazquez to Det. John Dalton
- R-29 MARS response to December 28, 2016 request by Joseph Gonzales
- R-30 MARS response to January 5, 2017 request by Victor Vazquez
- R-31 Search Warrant Approval Form dated April 17, 2017
- R-32 Application For A Communications Data and Search Warrant dated April 17, 2017
- R-33 Communications Data and Search Warrant dated April 17, 2017
- R-34 Request for Forensic Examination of Digital Data dated April 17, 2017
- R-35 DVD of Forensic Examination of Digital Data
- R-36 Notice of Immediate Suspension to Captain Vincent Riotto dated May 9, 2017
- R-37 Notice of Immediate Suspension to Rocco Duardo dated May 9, 2017
- R-38 Notice of Immediate Suspension to Justin de la Bruyere dated May 9, 2017
- R-39 Notice of Immediate Suspension to Victor Vazquez dated May 9, 2017
- R-40 Notice of Immediate Suspension to Mark Gutierrez dated May 9, 2017
- R-41 Notice of Immediate Suspension to Joseph Gonzales dated May 9, 2017

- R-42 Preliminary Notice of Disciplinary Action as to Vincent Riotto dated May 9, 2017
- R-43 Preliminary Notice of Disciplinary Action as to Joseph Gonzales dated May 9, 2017
- R-44 Preliminary Notice of Disciplinary Action as to Rocco Duardo dated May 9, 2017
- R-45 Preliminary Notice of Disciplinary Action as to Justin de La Bruyere dated May 9, 2017
- R-46 Preliminary Notice of Disciplinary Action as to Victor Vazquez dated May 9, 2017
- R-47 Preliminary Notice of Disciplinary Action as to Mark Gutierrez dated May 9, 2017
- R-48 Not in evidence
- R-49 Audiotape Statement of J.K.
- R-50 Audiotape Statement of G.H., Jr.
- R-51 Audiotape Statement of caregiver for G.H., Sr.
- R-52 Summary of verbal statements of witnesses by Capt. Peter Busciglio
- R-53 Internal Affairs Investigation Report by Capt. Peter Busciglio dated June 1, 2017
- R-54 Internal Affairs Investigation Allegations & Conclusions dated June 1, 2017
- R-55 Memo from Capt. Peter Busciglio to Det. John Dalton dated April 19, 2017
- R-56 Memo from Capt. Peter Busciglio to Rocco Duardo dated May 1, 2017
- R-57 Letter from Capt. Peter Busciglio to Scott Sybel dated May 1, 2017
- R-58 CD of Internal Affairs interview with officers on May 15 and 16, 2017
- R-59 Not in evidence
- R-60 CD of telephoned statement of Carol Catuogno on May 19, 2017
- R-61 Handwritten Narcotic Log Book for December 28, 2016
- R-62 Letter from Paul Nigito to Hackensack Police Department dated May 25, 2017
- R-63 Not in evidence
- R-64 Activity Sheet for Victor Vazquez dated December 28, 2016
- R-65 Internal Affairs Investigation Report Continuation dated August 31, 2017

R-66	Incident Report
R-67	Not in evidence
R-68	Not in evidence
R-69	Not in evidence
R-70	Not in evidence
R-71	Not in evidence
R-72	CD of Interview of Capt. Coffey dated August 8, 2017
R-73	Not in evidence
R-74	Overtime Report for Victor Vasquez dated December 28, 2016
R-75	Not in evidence
R-76	Not in evidence
R-77	Not in evidence
R-78	Not in evidence
R-79	Not in evidence
R-80	Not in evidence
R-81	Arrest Report for J.L. (aka R.M.) dated December 27, 2016
R-82	CJIS 2000 Response printout for J.L. (aka R.M.) dated December 27, 2016
R-83	Complaint/Summons for J.L. (aka R.M.) dated December 27, 2016
R-84	Chase Bank Statement for C.G.
R-85	Newark Parking Ticket issued to C.G.
R-86	Audio Recordings (2) on April 10, 2017 and August 10, 2017
R-87	Individual letters from Brian Sinclair, Assistant Bergen County Prosecutor, to Vincent Riotto and appellants dated August 24, 2017
R-88	Amended Preliminary Notice of Disciplinary Action for Vincent Riotto dated September 29, 2017
R-89	Amended Preliminary Notice of Disciplinary Action for Joseph Gonzales dated September 29, 2017
R-90	Amended Preliminary Notice of Disciplinary Action for Rocco Duardo dated September 29, 2017
R-91	Amended Preliminary Notice of Disciplinary Action for Justin de la Bruyere dated September 29, 2017

- R-92 Amended Preliminary Notice of Disciplinary Action for Victor Vazquez dated September 29, 2017
- R-93 Amended Preliminary Notice of Disciplinary Action for Mark Gutierrez dated September 29, 2017
- R-94 Handwritten Notes by Capt. Peter Busciglio
- R-95 Printout of warrant look-up
- R-96 Printout of warrant look-up
- R-97 Printout of warrant look-up
- R-98 Printout of warrant look-up
- R-99 Hackensack Police Department Rules and Regulations
- R-100 Internal Affairs Investigation Attachment Log dated June 1, 2017
- R-101 Internal Affairs Investigation Attachment Log dated September 8, 2017
- R-102 Hackensack Police Department Search and Seizure procedures
- R-103 Hackensack Police Department Consent to Search form
- R-104 Not in evidence
- R-105 Hackensack Police Department Arrest and Transportation procedures
- R-106 Letter from Raymond R. Wiss, Esq., to Charles J. Sciarra, Esq., dated August 8, 2017
- R-107 Letter from Raymond R. Wiss, Esq., to Appellants' counsel dated August 29, 2017
- R-108 Not in evidence
- R-109 Final Notice of Disciplinary Action of Mark Gutierrez dated February 9, 2018
- R-110 Final Notice of Disciplinary Action of Joseph Gonzales dated February 9, 2018
- R-111 Final Notice of Disciplinary Action of Justin de la Bruyere dated February 9, 2018
- R-112 Final Notice of Disciplinary Action of Victor Vazquez dated February 9, 2018
- R-113 Final Notice of Disciplinary Action of Rocco Duardo dated February 9, 2018
- R-114 Incident Report by David Celiento, Sr., dated December 27, 2017
- R-115 Investigation Report by Lt. Mark Criscuolo dated January 5, 2017

R-116	Not in evidence
R-117	Not in evidence
R-118	Not in evidence
R-119	United States District Court, District of New Jersey Summons
R-120	E-mail from Capt. Peter Busciglio to "Joe" dated April 1, 2017
R-121	Not in evidence
R-122	Not in evidence
R-123	Not in evidence
R-124	Memo from Rocco Duardo to Capt. Frank Aquila dated February 15, 2017
R-125	Memo from Capt. Peter Busciglio to Capt. Francesco Aquila dated February 16, 2017
R-126	Disciplinary Action Consent Disposition for Rocco Duardo dated January 23, 2017
R-127	E-mail from Bryan Feuilly dated October 16, 2017
R-128	Not in evidence
R-129	Investigation Report dated February 11, 2015
R-130	Audit Log
R-131	Photographs of patrol car 117