



STATE OF NEW JERSEY

In the Matter of Ryan Marsh
Township of West Orange

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2020-2590
OAL DKT. NO. CSR 06748-20

ISSUED: DECEMBER 16, 2020 (NFA)

The appeal of Ryan Marsh, Police Officer, Township of West Orange, removal effective March 24, 2020, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on October 30, 2020. Exceptions and replies were filed on behalf of the appellant and the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and replies, the Civil Service Commission (Commission), at its meeting on December 16, 2020, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision as well as her recommendation to modify the removal to a six-month suspension.

The facts of this matter need not be repeated as they are clearly laid out in the attached initial decision. This is a relatively clear-cut case where the appellant has been found guilty of the charges proffered against him. In this regard, the ALJ stated:

I **CONCLUDE** that the charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause: failure to submit forms and reports, failure to carefully and thoroughly investigate all complaints and document the preliminary investigation, failure to determine what items have evidential value failure to enter evidence in the QED property and evidence menu, failure to do an incident report, failure to

thoroughly, failure to document field interviews and failure to activate body worn camera when responding to a call or service are **SUSTAINED**.

Regarding the penalty, the ALJ indicated:

Marsh has been a police officer in West Orange thirteen years and police officer in Newark for seven years. He has had during that time . . . received two disciplines in 2009, one of which was for insubordination and one was a minor rule violation. He received an oral reprimand and a written warning. He had two disciplines in 2017 for minor rule infractions. The disciplines were a performance notice and training. He also received a minor rule infraction in 2018 where the discipline was counseling.¹

The conduct of Marsh discarding the package that smelled of marijuana as opposed to placing it in evidence, failing to turn on his body camera and failing to write a report on the incident is concerning, but a penalty of termination is not appropriate. Due to his years as a police officer and none of his prior disciplines resulted in suspension, I **CONCLUDE** that the appropriate penalty in this matter is a one-hundred-and-eighty-day suspension.²

In his exceptions, the appellant argues that the ALJ erred in not considering the appellant's claims of disparate treatment regarding the penalty imposed. In this regard, he alleges that he was discriminated based on his race (African American) as other white officers with, what he characterizes as "substantially similar" infractions, received significantly lower disciplinary penalties. He further argues that the ALJ's imposition on a six-month suspension was unduly harsh given that the appellant's misconduct was not intentional.

In its exceptions, the appointing authority argues, among other things, that the ALJ improperly found the testimony of Allen Jean Baptiste not credible. Moreover, it contends that the ALJ erred in reducing the penalty as the appellant's misconduct was "severe" and worthy of removal.

After a *de novo* review of the ALJ's initial decision as well as the exceptions and replies, the Commission agrees with the ALJ's upholding of the charges and her

¹ The Commission notes that, of the actions indicated, none are considered disciplinary actions under Civil Service law and rules, as the lowest form of official disciplinary action is a formal written reprimand. See *N.J.A.C. 4A:2-2.3* and *N.J.A.C. 4A:2-3.1*. Oral reprimands, warnings, performance notices and training are not considered discipline and are not determinative in the Commission's assessment of the penalty to be imposed in a disciplinary proceeding.

² This reduction is considered a 180 calendar day, or six-month suspension, as disciplinary suspensions that do not involve criminal charges can only be for a maximum of six months. See *N.J.A.C. 4A:2-2.3(a)*.

recommended reduction of the penalty to a six-month suspension. In this regard, the Commission finds it unnecessary to address much of the exceptions and replies as it agrees with the ALJ's findings and conclusions regarding most of the issues presented in those submissions. It only makes the following comments.

The Commission rejects the appointing authority's arguments pertaining to the credibility determination made by the ALJ regarding Allen Jean Baptiste. 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)). 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). Upon its review, the Commission finds that there is sufficient evidence in the record to support the ALJ's credibility determination regarding Jean Baptiste, and finds nothing persuasive in the appointing authority's exceptions to establish that the ALJ's determination was arbitrary, capricious, unreasonable or not based on the credible evidence in the record.

Additionally, the Commission agrees with the ALJ's determination not to consider the appellant's claims of disparate treatment based on race in assessing the penalty. Under the applicable standards and case law, such a claim of disparate treatment should only be considered when the underlying misconduct is "substantially similar." In this regard, the ALJ found that the other officers referred to by the appellant did not engage in substantially similar misconduct as the appellant. The Commission agrees as it finds nothing persuasive in the appellant's exceptions to overturn that finding.³ Moreover, the Commission's notes that its review of the penalty imposed, as indicated above, 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

³ Even if such actions were substantially similar and reviewed by the ALJ and the Commission, and actual evidence of disparate treatment by the appointing authority was uncovered, it would not necessarily entitle the appellant, or any appellant, to any penalty below that which the Commission, in its *de novo* review, finds appropriate based on the infractions committed. While the Commission would clearly be disturbed if such evidence actually existed in any case, it cannot use such evidence to excuse an appellant's misconduct and/or impose a disciplinary penalty that is less than appropriate. Undoubtedly, the Commission would strongly rebuke any appointing authority found to engage in such practice.

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). However, where an infraction has not been found to be egregious, the tenets of progressive discipline are generally followed. See *In the Matter of Anthony Stallworth*, 208 N.J. 182 (2011). In this case, the appellant's misconduct is certainly serious and cause for concern. However, contrary to the appointing authority's assertions, the misconduct is not so egregious as to impose removal without consideration to progressive discipline. In this regard, the appellant is a longtime Police Officer and the record demonstrates no prior major discipline. In fact, the appellant's disciplinary history is lacking in any formal discipline as defined in Civil Service law and rules. Nevertheless, the appellant's misconduct is significant and worthy of a stern disciplinary penalty. Accordingly, the Commission finds that a six-month suspension, the most severe sanction available absent removal, is appropriate and should serve as a warning to the appellant that his misconduct was not appropriate and will not be tolerated, and that any future infractions will result in further discipline up to and including removal from employment.

Since the removal has been modified, the appellant is entitled to be reinstated to his position with back pay, benefits and seniority following his six-month suspension until the date of his reinstatement pursuant to N.J.A.C. 4A:2-2.10.

Regarding counsel fees, N.J.A.C. 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. 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 this matter, while the penalty was modified, the charges were sustained, and major discipline was imposed. Therefore, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as appellant has failed to meet the standard set forth at 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 Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, 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. However, under no circumstances should the appellant's reinstatement be delayed based on any dispute regarding back pay.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modifies the removal to a six-month suspension. Pursuant to *N.J.A.C. 4A:2-2.10*, the appellant is entitled to receive mitigated back pay, benefits and seniority from the conclusion of the six-month suspension until the actual date of reinstatement. An affidavit of mitigation 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*, the parties are encouraged to make a good faith effort to resolve any dispute as to back pay. However, under no circumstances should the appellant's reinstatement be delayed based on any dispute regarding back pay.

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 shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF DECEMBER, 2020



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 06748-20

AGENCY DKT. NO. N/A

2020-2510

**IN THE MATTER OF RYAN MARSH,
TOWNSHIP OF WEST ORANGE.**

**Frank C. Cioffi, Esq., for Appellant (Sciarra &
Catrambone, attorneys)**

Nicole Espin, Esq., for Respondent (Fox Rothchild, LLP)

Record Closed: October 19, 2020

Decided: October 30, 2020

BEFORE KIMBERLY A. MOSS, ALJ:

Appellant, Ryan Marsh (Marsh), appeals his removal by respondent, Township of West Orange (West Orange), on charges of incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause relating an incident that occurred on January 9, 2020, where Marsh discarded property and did not write an incident report among other allegations. At issue is whether Marsh engaged in the alleged conduct, and, if so, whether it constitutes incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause that warrants removal.

PROCEDURAL HISTORY

On March 11, 2020, West Orange served Marsh with a Preliminary Notice of Disciplinary Action. A departmental hearing was held on April 17, 2020. West Orange served Marsh with a Final Notice of Disciplinary Action on or about May 8, 2020, sustaining charges of incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause. Marsh requested a hearing and forwarded simultaneous appeals to the Civil Service Commission and the Office of Administrative Law (OAL). The appeal was filed with the OAL on July 2, 2020. Petitioner filed a discovery motion on September 2, 2020 to produce internal affairs files. Respondent filed opposition to the motion on September 10, 2020. I denied the motion on September 15, 2020. Prior to the hearing petitioner filed a motion in limine to exclude hearing officer Ellen O'Connell's decision in the Loudermill and departmental hearings in this matter. I ordered that any statements from the departmental hearing could only be used as prior inconsistent statements. Respondent filed a motion in limine to exclude the Internal Affairs Policies and Procedure's which became affective after January 2020 and the Attorney General's Law Enforcement Drug Testing Policy. I Ordered both excluded. The hearings were held on September 24, 2020 and October 2, 2020. Post-hearing briefs were filed on October 19, 2020, at which time I closed the record.

FACTUAL DISCUSSION

TESTIMONY

Allen Jean Baptiste

Allen Jean Baptiste (Jean Baptiste) lives at [REDACTED]
On or about January 8, 2020, he arrived home at 4:30p.m., a USPS package arrived at his home. The package did not have a return address, it was not addressed to anyone. It only had the address [REDACTED] He took the package inside and opened it. The package contained a white tee shirt and a Ziplock bag containing crushed green leaves that smelled like marijuana. Jean Baptiste thought that the package may have been sent to his neighbor. He left it outside the door to his second-

floor apartment. If his neighbor did not retrieve the package, Jean Baptiste would call the police.

Later that night, after midnight, Jean Baptiste's doorbell rang. He saw someone at the door and another person in a car. The person ringing the doorbell continued to ring the doorbell. Jean Baptist called the West Orange Police Department (WOPD) and informed them about the package he received which contained marijuana and of the person ringing his doorbell. The police came ten to fifteen minutes later.

Two police officers arrived. Jean Baptiste spoke to officer Marsh and told him about the package, the marijuana, and the men ringing his doorbell. Marsh told him to go inside. He did not see Marsh speak to the two men outside. Marsh asked for the package, Jean Baptiste gave Marsh the package and Marsh went outside. The package contained the Ziplock bag with marijuana. Marsh asked Jean Baptiste for his name and telephone number. When Jean Baptiste later spoke to the police, he stated that Marsh had the package with him when Marsh spoke to the man ringing the bell.

The next day at 4:30 p.m. the same man who rang the doorbell the night before came back asking for the package. He told Jean Baptiste that the officer told him to come back the next day. Jean Baptiste again called WOPD. When the police arrived, he told the officers what had occurred the night before.

Lieutenant Michael O'Donnell

Lieutenant Michael O'Donnell (O'Donnell) was a sergeant in WOPD Internal Affairs department during the January 2020 to March 2020 time period. At that time Marsh had been a patrol officer with WOPD for several years. O'Donnell did the investigation of Marsh for the incident that occurred on January 9, 2020. Memorandum's from Lieutenant Barbella and Sargent DeLeon prompted the investigation. O'Donnell checked the internal affairs database, the body cam system and the computer aided dispatches. He checked the vehicles that Marsh and officer Hamilton (The second officer on the scene) used at that time. There was no body cam footage for Marsh or

Hamilton. The computer assisted dispatch (CAD) report show the type of incident and who was dispatched.

Once he received the reports, O'Donnell contacted the Prosecutor's Office due to potential criminal charges. He was told to continue the investigation but do not interview Marsh or Hamilton. O'Donnell interview Jean Baptiste who stated that on January 8, 2020 at 4:30 a package arrived at his home which contained marijuana and a tee shirt. Jean Baptiste placed the package on the steps outside of his apartment.

O'Donnell received a declamation letter from the Prosecutor's Office stating that they were not proceeding with criminal charges. After receipt of this letter he interviewed Marsh. In the interview Marsh stated that he responded to [REDACTED] [REDACTED] He saw a black male (Cadet) in front of the premises, who told him that the guy inside had a package for him. Marsh asked Cadet why he had the package delivered to [REDACTED], when he lived across the street. Cadet stated that his mother used to live at [REDACTED] Cadet stated that the package contained items from Fashion Nova. Marsh told him to come back tomorrow. Jean Baptiste told Marsh that Cadet was trying to get marijuana that was in the package.

Jean Baptiste gave Marsh the package. Marsh brought the package to his car and inspected the package. It contained a white tee shirt, industrial tape and paper. Marsh was confident that there was no marijuana in the package, although it had a strong odor of marijuana. Hamilton had left the scene by the time Marsh brought the package to the car. Marsh took the package and threw it in a dumpster. The package only had [REDACTED] written on it. After Marsh put the package in the dumpster, he went back on patrol. He took Jean Baptiste's name and address. Later that evening, Marsh went back to headquarters to get gloves or a scarf.

Marsh saw the package as garbage. He believed that he had turned on the body camera, but it was not on. Marsh believes that the body camera was malfunctioning. He does not recall turning off the body camera after the incident. He could not locate the name and address of Jean Baptiste on the note pad.

A neighbor came out during the incident to see what was going on. Marsh admits that he should have submitted a report. He did not inform anyone that the body camera was not working. He found it suspicious that Cadet was ringing Jean Baptist's doorbell, but Cadet's license stated that he lived at [REDACTED] Marsh stated that it could have been a test run to see if drugs can be sent through USPS without being detected.

Marsh did not submit an incident report or submit the package into evidence as required. The package was never recovered. O'Donnell checked using the GPS from Marsh' vehicle. The dumpster behind Eagle Rock Lanes was searched on February 19, 2020.

O'Donnell was advised as to which charges to include on the preliminary notice of disciplinary action (PNDA). Marsh was not charged with obstruction or untruthfulness. Evidence pertains to crimes; property could be anything.

A potential crime was never investigated because Marsh did not write a report and he threw away property (the package). In most cases an investigation should be documented.

O'Donnell checked the body camera system which did not document the incident. The body camera did not work prior to the incident. There had been issues with body camera batteries and body camera malfunctioning. Hamilton did not have his body camera on.

The CAD Marsh responded to was of a specious person. The dispatcher did not list that there was marijuana or a package.

Marsh received a written warning in October 2009 and a performance letter for a previous body camera issue. Other officers were investigated for not using their body camera, but none were terminated.

After each incident, the officer needs to stop recording and categorize the incident. If there is an incident with the body camera, the dispatcher needs to be informed. Marsh did not notify dispatch that the body camera was not working.

Captain William Vapanelli

William Vapanelli (Vapanelli) is the commander of internal affairs in WOPD. The Marsh investigation reports came to him. He assigned O'Donnell to investigate Marsh allegations. He approved O'Donnell's report. Vapanelli sent O'Donnell's report to Deputy Chief Keir, who sent the report to Chief Abbott. Vapanelli recommended termination and Abbott agreed. When directives are not followed, it reduces the public's confidence in the police department. Marsh was a twenty-year police officer, writing an incident report and collecting evidence are a fundamental part of the job.

Lack of credibility is not mentioned in the specifications against Marsh. The public must trust the police they cannot protect the public without respect.

Chief James Abbott

James Abbott (Abbot) has been the chief of police for WOPD for twenty-three years. He is familiar with the charges against Marsh. He was involved in the decision to charge Marsh. He agreed with the findings of O'Donnell. Marsh failed to secure evidence. Marsh violated police directives. Marsh was dispatched to a suspicious person call.

WOPD has previously terminated six officers. One was for propositioning a juvenile and another was for falsifying a report. Progressive discipline is followed by WOPD, there is no outline as to what is the proper discipline. He believes that based on this incident Marsh can no longer work for WOPD. The IA interview of Marsh was done February 26, 2020. Marsh was still working as a patrol officer on full duty until March 20, 2020.

Marsh had a limited disciplinary history.

George Lopez

George Lopez (Lopez) has been a police officer for WOPD for fifteen years. Prior to that he was a police officer in Newark with the Safe City Unit. He worked with Marsh when they were both police officers in Newark. Lopez is in charge of evidence entry for WOPD. He oversees training of evidence procedure. This training is mandatory. The last evidence training was a few years ago.

Lopez has seen officers submit items such as empty plastic bags that contained drugs that were found on the street, where no one was charged. If police receive a call that something was found, it should be submitted into evidence. Lopez was asked by O'Donnell if anyone submitted evidence in relation to this incident. No one had submitted evidence regarding this incident.

A package sent through the mail that contained the odor of marijuana would have evidential value. An officer throwing away a package with a strong odor of marijuana is violating the collection of evidence and criminal investigation procedures directives. Officers should err on the side of caution when determining evidential value.

Christopher Jackic

Christopher Jackic (Jackic) retired as a WOPD Officer. He was with the WOPD for twenty-five years. He retired in May 2020. Jackic was the president of the union for approximately twelve years, until he retired.

As union president one of his duties included assisting officers in disciplinary matters. When an officer meets with internal affairs on a disciplinary charge a union member accompanies the officer. In disciplinary matters WOPD practice progressive discipline. He is vaguely aware of the charges against Marsh. An officer being terminated for one discipline is extreme, although there are instances where it can be done.

A package with a strong odor of marijuana could have evidential value. Not every stop an officer makes is a field stop requiring a report to be written.

Ryan Marsh

Marsh has been a police officer with WOPD for thirteen years. Prior to that he was a police officer with the Newark Police Department for seven years. While he was with the Newark Police, he was in the Safe City Unit for three- and one-half years which involved narcotics investigations. While he was in that unit, he gained experience identifying narcotics including marijuana. He did not do narcotics investigations in West Orange.

On January 9, 2020, Marsh worked the 10:30 p.m. to 6:30 a.m. shift. He received a call of a suspicious person at [REDACTED]. Drugs were not mentioned in the call. He approached the address with lights on and saw two men, one on the stairs of [REDACTED] was Cadet and one was in a car. Cadet told Marsh that he had a package from Fashion Nova delivered to [REDACTED]. Cadet said he previously lived there and produced a driver's license with the address of [REDACTED]. [REDACTED] Cadet said that he now lived at [REDACTED].

Marsh told Cadet to come back tomorrow in the day to get the package. He did not take Cadet's information because Cadet showed him identification stated that Cadet lived at [REDACTED]. At that time Marsh did not know that there was suspected marijuana in the package. Cadet stated it was items from Fashion Nova. Marsh watched Cadet enter [REDACTED]. Shortly afterwards Cadet left that address.

Once Cadet left, Jean Baptiste approached Marsh and stated that the guys were trying to pick up marijuana. Jean Baptist and Marsh went to the hallway of [REDACTED] where Jean Baptiste gave Marsh the package Marsh could not see inside of the package in the hallway. Marsh did not tell Jean Baptiste that he told Cadet to come back the next day. Marsh took the package to the police car where he began to smell the odor of marijuana. He put on gloves and took a bag out of the package. The bag contained paper and industrial tape. He did not see any marijuana. Marsh put the paper and tape in the bag and the bag into the package and put them in the dumpster behind the Eagle Rock Lanes. Marsh did not write a report on the incident. He did not

take action to deter Cadet from coming to [REDACTED] the next day. Marsh did not suspect criminal activity based on the package smelling of marijuana. He believed that the package was garbage.

Officer Hamilton was his backup. Hamilton did not get out of the car. He does not know if Hamilton wrote a report. Marsh does not know if Hamilton interacted with Jean Baptiste or Cadet. Hamilton did not participate in the investigation.

Marsh went back to the police department to get gloves and went out on patrol. He later patrolled [REDACTED] for traffic violations.

Marsh was interviewed by IA on February 18, 2020. During the interview he stated that the incident could be a dry run for selling drugs. He also stated in the interview that he mostly looked in the package but now says that he looked thoroughly in the package. After the interview Marsh continued to work as a police officer for WOPD on full duty until March 24, 2020.

In his last performance evaluation of Marsh in the end of 2019, Marsh did not receive any negative comments.

Marsh has received one written reprimand in his career for not turning on his bodycam. Marsh believes that this discipline is discriminatory because white officers had committed acts such as leaving the scene of an accident and received lesser discipline.

Marsh testified that the odor of marijuana could be evidence of a crime but later testified that he was not sure because of medical marijuana. He believes that the package in this case with the odor of marijuana was not evidence of criminal activity. The package had no name on it only an address. Marsh did not believe this was suspicious.

Marsh did not recall that he did not mention to IA that he watched Cadet go into [REDACTED] or that he returned to [REDACTED] on traffic patrol.

Marsh received Department standards of conduct and patrol duties and responsibilities. He has some familiarity with the department's criminal investigation standards and evidence gathering procedures. There is a duty to bring evidence of criminality to the police department. He has only seen marijuana in leaf form.

FINDINGS OF FACT

Considering the contradictory testimony presented by respondent's witnesses and appellant and his witness, the resolution of the charges against Marsh requires that I make credibility determinations regarding the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-522 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** the testimony of O'Donnell, Vapanelli, Abbott and Lopez to be credible. Their testimony was clear and consistent. I **FIND** Jean Baptiste less credible because of the inconsistency between his prior statement to O'Donnell and his testimony. An example of this is when Jean Baptiste told O'Donnell that he saw Marsh speak with Cadet and contradicted this

in his testimony or when he told O'Donnell that he intended to call the police regarding the marijuana but his testimony was that he thought it belonged to a neighbor and he waited to see if the neighbor would retrieve the package before he would call the police. I also **FIND** Marsh to be less credible. When he was interviewed by O'Donnell, he did not state that he watched Cadet go into [REDACTED] or that Marsh returned to [REDACTED] later January 9, 2020. He also told O'Donnell that once he took the package to his car, he mostly looked through the it. When he testified, he stated that he thoroughly looked through the box.

Having heard the testimony, reviewed the evidence and made credibility determinations, I make the following findings of **FACT**:

On January 8, 2020, Jean Baptiste [REDACTED]. At approximately 4:30 p.m. a package with no return address and not addressed to anyone, with only the address [REDACTED] arrived at [REDACTED] delivered by USPS. Jean Baptiste took the package inside and opened it. It contained a white t-shirt and a Ziplock bag what Jean Baptiste believed was marijuana. Jean Baptiste believed that the package may have been sent to his neighbor. He put the package on the stairs outside of his apartment.

At approximately midnight on January 9, 2020, a man began ringing the doorbell of [REDACTED]. Jean Baptiste called the WOPD informing them that someone was ringing his doorbell and he had received a package containing marijuana.

Marsh received the call from dispatch of a suspicious person at [REDACTED]. He was not informed by dispatcher that a package containing marijuana had arrived at [REDACTED]. Marsh arrived on the scene. He spoke with Cadet, who was the man ringing the doorbell. There was another man with Cadet who was in a car. Cadet stated that he had a package sent to [REDACTED] which is where he lived previously. Cadet showed Marsh a driver's license that showed Cadet's address as [REDACTED]. Cadet stated that the package contained clothes from Fashion Nova. Marsh told Cadet to return the next day about the package.

Jean Baptiste then approached Marsh and told him about the package with the tee shirt and what Jean Baptiste believed was marijuana. Marsh and Jean Baptiste went into the hallway of [REDACTED] where Jean Baptiste gave the package with the only marking being [REDACTED] to Marsh. Marsh took the package to the police car. As he was approaching the police car, he noticed the odor of marijuana coming from the package. Once in the car, he opened the package. Inside was a white tee shirt, industrial plastic and paper but no marijuana. Marsh took Jean Baptiste information and left the scene. Believing that the package and its contents were garbage, Marsh drove to Eagle Rock Lanes and put the package and its contents in the dumpster behind Eagle Rock Lanes. Marsh did not write a report of the incident. Marsh did not activate his bodycam during the incident. Marsh did not place the package and its contents into evidence, he threw them into a dumpster. Marsh did not tell Jean Baptiste or any police officer that he told Cadet to return to the property the next day. Cadet returned to the property the next day again asking for the package. Jean Baptiste again called WOPD.

O'Donnell conducted the internal affairs investigation of the incident. Once he received the reports, O'Donnell contacted the Prosecutor's Office due to potential criminal charges. He was told to continue the investigation but do not interview Marsh or Hamilton. O'Donnell interviewed Jean Baptiste at that time.

O'Donnell received a declamation letter from the Prosecutor's Office stating that they were not proceeding with criminal charges. O'Donnell interviewed Marsh after receipt of the declamation letter. Marsh was interviewed by O'Donnell regarding this incident on February 18, 2020. Marsh stated that the package smelled like marijuana but did not contain marijuana. The package did not have a return address and was not addressed to anyone. He believed that the package was garbage and threw it into the dumpster behind Eagle Rock Lanes.

Marsh has the following prior disciplines- insubordination 2009, discipline- oral reprimand, Minor rule infraction-missed side job 2009, discipline -written warning ,minor rule infraction violation of directive 2017 discipline- performance notice, Minor rule

infraction missed training, discipline -training, and minor infraction, improper conduct, discipline counseling.

Respondents believe that Marsh cannot be an effective police officer as a result of throwing the package in the dumpster. They believe that Brady/Giglio designation would be required for Marsh. The Brady Giglio designation was not addressed in the Final Notice of Disciplinary Action. The guidelines state, "Evidence impeaching the testimony of a government witness falls within the Brady rule when the reliability of the of the witness may be determinative of a criminal defendant's guilt or innocence" State v. Carter 91 NJ 86,111 (1982).

There are ten guidelines for investigative employees to determine if they fall within the Brady/Giglio criteria, which include:

- i. A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life;
- ii. A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor;
- iii. A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609;
- iv. A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness;
- v. A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency, which includes a finding that the investigative employee was intentionally untruthful in a matter, either verbally or in writing;
- vi. A sustained finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and investigative employees should disclose findings or allegations that relate to substantive violations concerning: (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence; 2

- vii. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;
- viii. Information that may be used to suggest that the investigative employee is biased for or against a defendant. See *United States v. Abel*, 469 U.S. 45, 52. This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered Giglio information for purposes of disclosure. Page 6 (1984). The Supreme Court has stated, "bias is a term used in the 'common law of evidence' to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest."); and
- ix. A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group.

Marsh believes that he was retaliated against because in September 2017, Marsh complained of discriminatory comments by parking enforcement Officer Stock who stated that the NFL player who kneel should be grateful to the NFL if not for the NFL they would all be thugs. Marsh complained. An IA investigation was launched. Marsh was not interviewed by IA for this. Stock's discipline was counseling.

Marsh believes that his discipline was more severe than the discipline of other white officers. One white officer left the scene of an accident and another did not write a report and they were suspended.

LEGAL ANALYSIS AND CONCLUSION

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the charges of incompetency, inefficiency or failure to perform duties conduct unbecoming a public employee ,neglect of duty, and other sufficient cause: failure to submit forms and reports, failure to carefully and thoroughly investigate all complaints and document the preliminary investigation, failure to determine what items have evidential value failure to enter evidence in the QED property and evidence menu, failure to do an incident report, failure to thoroughly, failure to document field interviews and failure to activate body worn camera when responding to a call or service are **SUSTAINED**.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline). "In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change." Klusaritz v. Cape May Cnty., 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a County treasurer who couldn't balance the books, after the auditors tried three times to show him how).

In reversing the MSB's insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that "[t]he [MSB's] application of progressive discipline in this context is misplaced and contrary to the public interest." The court determined that Klusaritz's prior record is "of no moment" because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35–36 (2007) (citations omitted).]

There is no definition in the administrative code of the term “inefficiency,” and therefore, it has been left to interpretation.

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

The fundamental concept that one should be able to perform the duties of the position is stated in Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), which happens to be a probationary period case involving a nurse:

Manifestly, the purpose of the probationary period is to further test a probationer's qualifications. Neither the Legislature nor the Commission has given the courts any guidance in determining the extent of assistance or orientation which a probationer must receive. Undoubtedly her duties must be explained to her and she must be given reasonable opportunity to perform the duties expected of her. But this does not mean she is entitled to on-the-job training in the manner of performing her duties. This is what she must be qualified for -- the proper performance of her duties as outlined by the appointing authority.

“Unbecoming conduct” is broadly defined as any conduct which adversely affects the morale or efficiency of the governmental unit or which has a tendency to destroy public respect and confidences in the delivery of governmental services. The conduct need not 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. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term “neglect” connotes a deviation from normal standards

of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

The charges can be merged in this matter. Marsh discarded evidence, a package which he admitted had an odor of marijuana. In addition, the package was suspicious as it was not addressed to anyone, it did not have a return address and it only had the address of [REDACTED]. When he realized that the package had an odor of marijuana, he did not tell Jean Baptiste or anyone in the police department that he told Cadet to return the next day, which Cadet did.

Marsh did not write an incident report although he spoke to Cadet and Jean Baptiste, took the package that had an odor of marijuana and took Jean Baptiste name and phone number. In addition, Marsh did not activate his body camera.

WOPD have directives that state officers must submit all forms and reports that are required by the department. Marsh did not submit a report on this incident. He did not document the interviews with Jean Baptiste or Cadet. Officers should carefully and thoroughly investigate all complaints brought to their attention. In this matter although Marsh thought it could have been a dry run for transporting drugs, he did not follow through, he threw away the package. Marsh did not activate his body camera. The actions of Marsh constitute neglect of duty, incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee and violation of WOPD directives.

The Attorney General guidelines establish a policy to comply with *Brady v Maryland* and *Giglio v United States* that require prosecutors to disclose exculpatory and impeachment material to defense counsel.

The Attorney General guidelines regarding *Brady/Giglio* disclosures state, "Evidence impeaching the testimony of a government witness falls within the *Brady* rule when the reliability of the of the witness may be determinative of a criminal defendant's guilt or innocence" *State v. Carter* 91 NJ 86,111 (1982).

There are ten guidelines for investigative employees to determine if they fall within the *Brady/Giglio* criteria, which include:

- i. A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life;
- ii. A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor;
- iii. A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609;
- iv. A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness;
- v. A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency, which includes a finding that the investigative employee was intentionally untruthful in a matter, either verbally or in writing;
- vi. A sustained finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and investigative employees should disclose findings or allegations that relate to substantive violations concerning: (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence; 2

- vii. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;
- viii. Information that may be used to suggest that the investigative employee is biased for or against a defendant. See *United States v. Abel*, 469 U.S. 45, 52 2 This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered Giglio information for purposes of disclosure. Page 6 (1984). The Supreme Court has stated, "bias is a term used in the 'common law of evidence' to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest."); and
- ix. A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group.

Marsh does not fall into any of these categories. Marsh erroneously threw the package into the dumpster because he believed it was garbage and had no evidential value. He did not intentionally destroy evidence because he did not believe that the package was evidence. There was no charge or allegation that Marsh was intentionally untruthful.

Marsh argued that he was retaliated against by West Orange Police because in 2017 he filed a complaint against parking enforcement Stokes for stating that football players who kneeled, if they were not in the NFL would be thugs. There was no evidence that his complaint against Stokes had any relationship to the discipline in this matter.

Marsh also argued that there was disparate discipline. He stated that white officers who left the scene of an accident or did not file a report were not terminated, they were suspended.

In the case of In re Castillo 2012 N.J. SUPER. UNPUB. LEXIS 1754, appellant, a sheriff's officer, was removed from his position for sending notes to a female co-worker, one of which stated that she was hot and the other was sexually graphic. Castillo

requested discovery of the disciplinary file of a Caucasian officer who engaged in similar conduct who was disciplined for sending several romantic notes to a co-worker. The court stated that:

We remand to the Commission for reconsideration of the penalty after appellant is afforded an opportunity to conduct discovery related to his Caucasian co-worker, who Tuohy claimed engaged in similar misconduct but was given only an eight-day suspension. Any claim of privilege in connection with this individual's case may be appropriately addressed in accordance with the discovery procedures outlined in Rule 4:10-2(e) and N.J.A.C. N.J.A.C. 1:1-10 1 ID at 17.

In the case of DiBuonaventura v. Washington Township 462 N.J. Super. 260 (App. Div. 2020) which had an issue of disparate treatment, the court stated:

Plaintiff's allegations of disparate treatment illustrate why the remedy is a "poor fit." Engquist, 553 U.S. at 605. Persons are similarly situated under the Equal Protection Clause when they are alike in "all relevant aspects." Radiation Data, 456 N.J. Super. At 562 (citations omitted). Here, plaintiff contends that he was treated differently from two police detectives when he was charged with misconduct related to the Moriarty stop and arrest. At his disciplinary hearing, plaintiff also argued that he was treated differently from another officer who issued fictitious warnings and received only a one-day suspension. In fact, plaintiff was treated differently because his conduct was different both in kind and degree from the conduct of the two detectives and the other police officer. DiBuonaventura at 270

Marsh's was not only failing to file a report it was also discarding evidence and failing to activate the body camera. The conduct was not substantially similar to the other officers although one did not file a report. This was also addressed in the prior motion for discovery by Marsh.

Accordingly, I **CONCLUDE** that the conduct of the officers that appellant testified to is not substantially similar to the alleged conduct of Marsh.

The case of West New York v. Bock, 38 N.J. 500(1962), deals with progressive discipline. It states when determining the appropriate penalty to be imposed, the appointing authority must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. West New York v. Bock, 38 N.J.

500,523 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522–24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197–98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also In re Hermann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

. . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

WOPD uses progressive discipline. Marsh has been a police officer in West Orange thirteen years and police officer in Newark for seven years. He has had during that time he had five disciplines. He received two disciplines in 2009, one of which was for insubordination and one was a minor rule violation. He received an oral reprimand

and a written warning. He had two disciplines in 2017 for minor rule infractions. The disciplines were a performance notice and training. He also received a minor rule infraction in 2018 where the discipline was counseling.

The conduct of Marsh discarding the package that smelled of marijuana as opposed to placing it in evidence, failing to turn on his body camera and failing to write a report on the incident is concerning, but a penalty of termination is not appropriate. Due to his years as a police officer and none of his prior disciplines resulted in suspension, I **CONCLUDE** that the appropriate penalty in this matter is a one-hundred-and-eighty-day suspension.

ORDER


It is hereby **ORDERED** that the discipline of termination is modified to a one-hundred-and-eighty-day suspension.

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, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 30, 2020



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

October 30, 2020

Date Mailed to Parties:
ljb

October 30, 2020

WITNESSES

For Appellant

Christopher Jackic

For Respondent

Allen Jean Baptiste

Lieutenant Michael O'Donnell

Captain William Vapanelli

Chief James Abbott

Officer George Lopez

EXHIBITS

Joint Exhibits

J-1 Preliminary Notice of Disciplinary Action Dated March 11, 2020

J-2 Preliminary Notice of Disciplinary Action Dated March 24, 2020

J-3 Final Notice of Disciplinary Action Dated May 8, 2020

J-4 WOPD Property and Evidence Directive

J-5 WOPD CDS, Vice and Organized Crime Investigations Directive

J-6 WOPD Field Interviews Directive

J-7 WOPD Body Worn Camera Directive

J-8 Audio of Marsh's Internal Affairs Interview

J-9 Audio of Allen Jean Baptiste's Internal Affairs Directive

J-10 Audio of George Lopez Internal Affairs Interview

J-11 Petitioners Disciplinary History Dated March 28, 2020

J-12 Performance Notices and Commendations

J-13 Cover Letter and Resume of Marsh submitted to Abbott Dated October 1, 2006

J-14 Release authorization Dated November 3, 2006

J-15 Training Records for Marsh

J-16 Performance Evaluation of Marsh Dated January 7, 2018

J-17 Accommodations

J-18 Respondents Answers to Interrogatories

J-19 Respondents Answers to Demand for Documents

J-20 Appellant's Responses to Respondent's Document Demands

J-21 Appellant's Response to Respondent's interrogatories

J-22 Appellants Response to Respondents Request for Admissions

For Appellant

A-1 Not in Evidence

A-2 Not in Evidence

A-3 Not in Evidence

A-4 Not in Evidence

A-5 Internal Affairs Investigation Report Dated February 26, 2020

A-6 Not in Evidence

A-7 Not in Evidence

For Respondent

R-1 CAD incident Report Dated January 8, 2020

R-2 Not in Evidence

R-3 Memo from Lieutenant Barbella to Captain Dalgauer Dated January 9, 2020

R-4 Memo from Sargent De Leon to Lieutenant Barbella Dated January 9, 2020

R-5 Not in Evidence

R-6 Not in Evidence

R-7 Internal Affairs Investigation Report Dated February 26, 2020

R-8 Not in Evidence

R-9 Not in Evidence

R-10 Not in Evidence

R-11 WOPD Uniform Standards of Conduct Directive Effective date May 18, 2014

R-12 WOPD Patrol Duties and Responsibilities General Directive Effective Date December 12, 2008

R-13 WOPD Criminal Investigations Directive Effective Date December 2, 2013

R-14 Not in Evidence

R-15 Not in Evidence

R-16 Not in Evidence

R-17 Not in Evidence

R-18 Not in Evidence

R-19 Not in Evidence

R-20 Not in Evidence

R-21 Not in Evidence

R-22 Not in Evidence

R-23 Not in Evidence

R-24 Not in Evidence

R-25 Not in Evidence

R-26 Not in Evidence

R-27 Not in Evidence

R-28 Not in Evidence

R-29 Not in Evidence

R-30 Video of Marsh Internal Affairs Interview

R-31 Video of Marsh Internal Affairs Interview

R-32 Not in Evidence

R-33 Not in Evidence

R-34 Not in Evidence

R-35 Not in Evidence

R-36 Not in Evidence

R-37 Not in Evidence

R-38 Not in Evidence

R-39 Not in Evidence

R-40 Not in Evidence

R-41 Not in Evidence

R-42 Not in Evidence

R-43 Not in Evidence

R-44 Not in Evidence

R-45 Not in Evidence

R-46 Internal Affairs investigation of SLEO Robert Stock Dated September 25, 2017

R-27 WOPD Performance Evaluation of Marsh Dated January 26, 2014