

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF MAY, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 16797-17

AGENCY DKT. NO. N/A

**IN THE MATTER OF JOSEPH MAGLIONE,
EWING TOWNSHIP, POLICE DEPARTMENT.**

Frank M. Crivelli, Esq., for appellant, Joseph Maglione (Crivelli & Barbati, LLC,
attorneys)

Rocky L. Peterson, Esq., for respondent, Ewing Township Police Department (Hill
Wallack, LLP, attorneys)

Record Closed: March 9, 2018

Decided: April 3, 2018

BEFORE TAMA B. HUGHES, ALJ:

STATEMENT OF THE CASE

Joseph Maglione ("Maglione" or "appellant") a lieutenant with the Ewing Township Police Department ("respondent" or "Department") appeals the Department's decision to remove him from employment.

PROCEDURAL HISTORY

On July 14, 2017, a Preliminary Notice of Disciplinary Action (PNDA), was issued seeking appellant's removal based on the following violation of Departmental Rules and Regulations (DR&R), specifically, Sections: 3.1.1(a) (Police Officers Shall: Take Appropriate Action To Protect Life And Property); 3.1.3 (Police Officers Shall: Abide By All Rules, Regulations And Department Procedures And Directives Governing Police Officer Employees); 3.1.5 (Police Officers Shall: Coordinate Efforts With Other Employees Of The Department To Achieve Department Objectives); 3.1.10 (Police Officers Shall: Perform All Related Work As Required); 3.2.1 (Supervisors In The Department Shall: Enforce Department Rules And Insure Compliance With Department Policies and Procedures); 3.2.3 (Supervisors In The Department Shall: Exercise Necessary Control Over Their Subordinates To Accomplish The Objectives Of The Department); 3.2.4 (Supervisors In The Department Shall: Guide And Train Subordinates To Gain Effectiveness In Performing Their Duties); 4.1.1 (General Conduct - Performance Of Duty); 4.1.5 (General Conduct - Truthfulness); and 4.12.6 (Judicial Appearance And Testimony - Truthfulness)

On August 23, 2017, and September 3, 2017, a Department hearing was held. On October 18, 2017, all charges against appellant were sustained and incorporated into a Final Notice of Disciplinary Action (FNDA). (R-146.) The proposed penalty was removal from employment.

Appellant appealed his removal to the Office of Administrative Law (OAL), where it was perfected on November 2, 2017. Prior to the hearing, appellant partially waived the 180-day rule, granting a 90-day waiver. The hearing in this matter commenced on January 26, 2018, and continued thereafter on January 31, 2018, February 1, 2018, February 12, 2018, and February 21, 2018. Upon receipt of the parties' summation briefs, the record closed on March 9, 2018.

FACTUAL DISCUSSION AND FINDINGS

Nicholas A. Muscente (Muscente), a detective with the Ewing Township Police Department, testified that he has been with the Department for the past fifteen years and in the Internal Affairs Department (IAD) since 2015. On May 31, 2017, he was formally assigned to handle an internal investigation (Investigation) regarding an incident that occurred on May 20–21, 2017, involving a high-risk missing child and how Maglione, as the supervisor on duty, handled the investigation. As part of the investigation, Muscente pulled and reviewed several reports, including telephone records and tapes (audio and video), and conducted interviews. Muscente's findings were placed in an Administrative Investigation Report. (R-12.)

According to Muscente, there are Departmental "General Orders" or Guidelines in place for the investigation and handling of a missing-person case, as well as Attorney General (AG) directives. (R-13; R-17.) Each officer is required to read and initial receipt of General Orders and AG directives. (R-14; R-18.) Protocol for investigating a "high-risk" missing person requires the responding officers and/or supervisor to, among other things:

- Search the house completely—inside and out, including basement and attic areas;
- Treat the place last seen (PLS) as a crime scene;
- Set up a command post;
- Notify the appropriate supervisors in the chain of command;
- Contact the "on-call detective";
- Notify the Child Abduction Response Team (CART) in accordance with the Attorney General Guidelines;

- Contact the K-9 unit.

Procedures for setting up a command post are typically kept in a binder in the supervisor's vehicle or can be accessed on the patrol-car computer. Additionally, General Orders and AG Guidelines can also be accessed back at the station.

Muscente testified that one of the first reports that he reviewed as part of his investigation was the investigative report (IR) prepared by Officer Paul Dorio (Dorio), dated May 21, 2017. (R-1.) According to the IR, on May 20, 2017, at 11:53 p.m., Dorio was detailed to the residence of a missing juvenile (J.D.). Upon arrival, Dorio met with J.D.'s father (J.B.) and stepmother (L.S.), who informed him that J.D. was last seen earlier that day around 3:00 p.m. and had not been seen since. The report further stated that "a search of the residence and surrounding area proved negative" and that a side window had been left open, indicating that J.D. had left through the window. The IR was approved by Maglione. In looking at the report history, prior to approving the report, it was "modified" by Maglione four times. (R-21.) Muscente stated that when a report is "modified" it means that something has been changed in the report.

Dorio's body-camera footage (footage) was also reviewed as part of the Investigation. (R-87.) According to Muscente, the footage, which included audio, picked up the voices of Dorio, Maglione, J.B., and L.S. Review found that neither Dorio nor Maglione conducted a search of the house; they did not request permission from the parents to conduct a search; and they did not have any discussion between themselves regarding a search of the residence. Additionally, while there was a seventeen-year-old sibling asleep upstairs, he was not interviewed at the time.

Muscente went on to state that there was no request by Maglione to Dorio to search the surrounding area at that time; no command center was set up; no K-9 unit was called in even though one was available; the on-call detective was never notified; and no additional backup was called in to assist in the search, even though resources were available.

Also reviewed were the taped calls that were made on May 20 – 21, 2017, pertaining to the missing juvenile. (R-86.) The first call was the 911 call by L.S. reporting that J.D. was missing. The second call was from Dorio to the New Jersey State Police, Regional Operations Intelligence Center (ROIC). The third call was from Dorio to Maglione wherein Maglione instructs Dorio to go back to the residence to speak to J.D.'s brother. The fourth call was from Officer Cabell (Cabell) to Maglione wherein Maglione requested Cabell to accompany Dorio when he returned to J.D.'s residence to speak to the brother. A fifth call was from Dorio to Maglione filling Maglione in on the visit to the residence. The sixth call was from Dorio to Officer Pellegrino, a former juvenile detective, seeking his expertise. Muscente noted that at no time was CART contacted or Dorio or Cabell advised to search the interior of the residence.

As part of his Investigation, Muscente also interviewed a number of witnesses, which included Cabell, Captain David Muller (Muller); Detective Patrick Holt (Holt); Lieutenant Jeffrey Jacobs (Jacobs); Sergeant William Lardieri (Lardieri); J.B.; J.S.; Dorio; and Maglione. All interviews were taped. (R-88.) In synthesizing their interviews, Muscente stated:

Cabell. Cabell was interviewed twice. During his first interview, Cabell stated that he accompanied Dorio when he (Dorio) returned to J.D.'s residence for the second time. While he was the K-9 officer, no K-9 services were requested by Maglione. Cabell informed Muscente, for this type of missing person, a bloodhound, not his K-9, would have been recommended. Maglione only asked him to accompany Dorio to the residence not to search the interior or exterior of the home. During Cabell's second interview, which occurred after Maglione had been interviewed, Cabell did not recall Maglione asking him to search the house, much less every floor and closet.

Muller. Muller stated that the first he learned of the incident was on May 21, 2017, from Jacobs, the Day Shift Supervisor. Jacobs learned of the missing juvenile after reading the Line-up (shift report) which gets distributed via email and at roll call for the next shift. (R-22; R-23.) It was not reported to him by Maglione.

Jacobs. Jacobs stated that no information was relayed to him from Maglione during the shift change regarding the missing juvenile. He learned about it from the shift report.

Lardieri. During Lardieri's interview, he knew that the juvenile was still missing however, did not know that anything else needed to be done. If additional actions needed to be taken, there would have been a directive to continue the investigation.

Holt. Holt stated that he was the on-call detective on May 21, 2017, and after reading the shift report, called to see if the juvenile had been located. After learning that the juvenile was still missing, he contacted CART and was informed that they had not been contacted. After activating CART, he reached out to the Ewing schools superintendent for contact information at J.D.'s school. Upon reaching school officials at J.D.'s school, Holt was able to get the names and numbers of J.D.'s friends. Thereafter J.D.'s friends were contacted, resulting in J.D. being located unharmed. Prior to reaching out to school officials, a complete search of J.D.'s residence was performed.

J.B. and J.S., (J.D.'s parents) stated that they would not have objected to their house being searched however, there was no such request. J.S. was familiar with the missing person protocol, due to one of her children having previously gone missing and found hiding in the house after the police searched it.

Dorio. Dorio initially stated that he searched the residence however, this statement changed at the end of the interview with the admission that he had not searched the residence. He did not recall Maglione telling him to search the residence including the exterior, even on his (Dorio's) second visit. According to Dorio, Maglione while present during the initial contact with J.D.'s family, left when Dorio went out to the patrol car to get paperwork. While he thought that he had contacted CART and told Maglione the same, in actuality he contacted ROIC not CART. Dorio could not recall what changes were made to his IR by Maglione.

Maglione. Rather than summarizing Maglione's interview, the taped interview was played, which revealed in relevant part:

Maglione stating that he and Dorio arrived at J.D.'s residence at the same time. Upon entering the residence, they met with J.B. and J.S., in the foyer area of the home. While Dorio was obtaining information from the parents, he stood nearby and listened. While he could not remember the explicit conversation, he requested Dorio to search the interior of the residence while he went outside to check the exterior. Shortly thereafter, they met on the sidewalk outside of the residence at which point he told Dorio to contact Pellegrino as a resource, which Dorio did. Maglione stated that when Dorio left to meet Pellegrino, he also left to go back to the station. When Dorio arrived back at the station, he entered J.D. into NCIC.

Once back at the station, he met up with Dorio, and given the fact that the initial contact with J.D.'s parents provided no leads other than J.D. liked to play basketball, he instructed Dorio to check the surrounding area, including parks and schools. About an hour later, Dorio and Cabell went back to the residence to speak to J.D.'s brother. Maglione was not sure whether the brother was present at the residence when he and Dorio were initially there. Back at the station, he overheard Dorio talking to Pellegrino about CART activation.

After a short break, wherein Muscente requested Maglione's counsel and Maglione to step out, the interview continued. Maglione stated that J.B. was questioned about his son's possible whereabouts however, no real answers were provided. At some point he went outside while Dorio remained inside. When Dorio came out, he (Maglione) suggested that Dorio contact Pellegrino, given his prior experience as a juvenile detective. After that, he left and went back to the station where he met with Dorio and asked if he (Dorio) had contacted the Detective Unit and CART. Maglione could not remember Dorio's response other than he did speak to a sergeant regarding CART and

had K-9 respond. Maglione then had Dorio return to the residence to perform a search.

Maglione stated that he did not have his body camera on or his vest when he responded to J.D.'s residence. Once inside the residence, he stayed in the foyer and did not see the window where J.D. climbed out. He stayed in the foyer until he went outside and searched the exterior of the residence - except for the garage. He did not know whether Dorio searched the house after he went outside. He was also unsure whether the garage was searched.

When questioned again about their arrival at J.D.'s residence, Maglione stated that he and Dorio entered the residence together, but at some point he left Dorio alone inside the residence and he went outside. He could not remember when he told Dorio to search the house, the first or second visit, but he did tell him to search it. Maglione went on to state that he did not search the house—his thought was that Pellegrino would be contacted to assist. Maglione agreed that both he and Dorio should not have left the house and that CART and the on-call detective should have been called.

It was Maglione's impression that the Detective Unit had been called however, he himself did not call them. He could not answer why he left the residence the first time without CART's arrival, although he did instruct Dorio to contact them and he was under the impression that they had been called. While he had Dorio and Cabell go back to J.D.'s residence, he could not answer why a bloodhound had not been called in or why backup officers were not utilized to assist in the search other than it was a busy night and he did not know who was available.

Maglione stated that he advised the incoming sergeant on the next shift about the missing juvenile, but did not give them direction. It was his impression that they would follow up. He did not contact Muller. Maglione first found out

that CART had not been contacted when he received a call at home from Holt. He did not realize that the number Dorio called was from a flyer on the station wall for ROIC. (R-24.) While he questioned why CART was not coming in, he did not think to call CART or the on-call detective himself because he thought that they had already been contacted, citing to the fact that Holt was involved. Maglione was unsure whether a "Be On the Look Out" (BOLO) had been sent, the explanation being that it had been a busy night and that was something the officer handles. He was unsure whether anything had been sent to the Attorney General's office.

With regard to Dorio's IR, Maglione stated that he may have made changes to the report. When questioned about the statement "search of the surrounding area proved negative" and "search of the residence proved negative"—he was not sure who wrote it, but he did not believe that he had. He recalled telling Dorio to check the closets, attic and the house. He may also have requested Cabell to search the residence when he went with Dorio. That was the whole reason he sent him (Cabell) and Dorio back—to talk to the brother and search the residence and surrounding area. When asked again whether he told them to search the house, Maglione stated, "I don't know if I told them to search the house...that is what we do." Maglione could not answer why the IR was incomplete or whether he felt the report was adequate.

While Maglione was aware of the Attorney General's Guidelines regarding the handling of a missing person, he could not recall what they stated. (R-17; R-18.) He was not sure why information was left out of his shift report such as who from CART had been contacted; what on-call detective had been notified; and who searched the residence. Maglione acknowledged that it was his responsibility to ensure that the report was complete, that CART had been contacted and that additional assistance was called in—stating, "I'm done, it was my job."

Muscente stated that the interview was stopped one time to allow him (Muscente) to speak to Maglione's counsel regarding his client's inconsistent statements such as searching J.D.'s residence and the instruction to Dorio to search the residence. Other statements Muscente found to be inconsistent included Maglione's comments regarding search of the exterior of the residence; the request that Cabell search the house when he went back with Dorio; and whether Dorio had made the requisite calls. In all, Muscente stated that Maglione lied to him at least three times when questioned on searching the interior of the residence and two times when questioned on searching the exterior.

On cross-examination, Muscente stated that he was verbally assigned to investigate the May 20, 2017, incident on May 31, 2017, at which time he started scanning documents into the IA-Pro, the IA software program. He was aware that Muller had previously been assigned to investigate the matter, but not as an IA investigation—probably to determine if it needed to go to IA. Muscente explained that the IA-Pro is the software program that IAD uses for investigations. The other program that the Department supervisors use is "Blue Team." If documents are scanned in through the Blue Team, it transfers over into the IA-Pro program.

While the system can generate a log which tracks who accesses an IA investigation, Muscente is unfamiliar with the log and could not explain what all of the coding meant. (R-137.) Additionally, even though he may access the IA-Pro to "link" or "add documents," such administrative work does not go into his Investigation reports.

Muscente recollected that the prosecutor's office was contacted on May 31, 2017, by Captain Colanduoni (Colanduoni). He was present during that telephone call. Two weeks later, on June 14, 2017, or June 15, 2017, he was present at a meeting with the Prosecutor's office which lasted approximately two hours. Prior to that however, he was given permission to start his investigation and thereafter, on June 12, 2017, he commenced the investigation reviewing reports, footage, and General Orders, among other things. Over the next few days he conducted witness interviews and went to J.D.'s home to diagram the layout. (R-26.) On June 17, Dorio was interviewed and thereafter, Maglione on June 22, 2017. Dorio and Cabell were re-interviewed on June 27, 2017.

According to Muscente, he drafted the majority of the charges in this matter. When questioned why the charges were brought on July 14, 2017, but the report was dated three days later, July 17, 2017, he explained that the investigation was complete on June 27, 2017, and the report was completed shortly thereafter, however, there was an administrative hold on filing the charges because of ongoing settlement discussions. The report was not signed off until July 17, 2017.

When questioned about Dorio's interview, specifically his questions to Dorio regarding who drafted the search of the interior and exterior of the residence verbiage, Muscente responded that Dorio claimed that it was his verbiage.

With regard to the gap in time between being formally assigned on May 31, 2017, to investigate the May 20, 2017, incident and when he began formal interviews, Muscente testified that he believed that the matter was with the prosecutor's office during that time period. He did not know what action the prosecutor's office took nor did he receive anything from them when the criminal investigation was closed out. He was not familiar with the Attorney General Guidelines regarding cessation of IAD investigations if the matter is being reviewed criminally. (R-128.)

Muscente testified that he has been involved in numerous missing children investigations. After referencing General Order titled, "Handling Missing Persons," he acknowledged that pulling in additional assistance is discretionary on the part of the supervisor, and that command posts are not set up in every instance. (R-13.) He went on to state, however, that while the verbiage in the General Order states the PLS "should" be treated as a crime scene, the word "should" should be interpreted as "shall," given the age of the child. Muscente disagreed that bloodhounds are not required in every situation, especially in high-risk missing persons—if a K-9 is called and nothing is found, then a bloodhound is brought in.

Patrick Holt (Holt), testified that he has been employed by the Department for the past twenty-one years and is currently assigned to the Criminal Investigation Unit. On May 21, 2017, he was the on-call detective for the Department.

According to Holt, on May 21, 2017, when he reviewed the line-up (shift report) from the previous shift, there was a report of a missing eleven-year old. The report noted that the missing child had been entered into the National Criminal Information enter (NCIC) and that a TRAK Message had been sent.¹ Upon reading this, Holt called Jacobs, the Day Shift Supervisor, and questioned whether the child had been found. According to Jacobs, the child had not yet been located and when he (Jacobs) had spoken to Maglione, no additional information was provided other than CART had been contacted. Upon learning this, Holt called the on-call detective from the prior shift and learned that there had been no notification to the Detective Bureau regarding the missing child.

Holt next called the Mercer County Prosecutor's Office CART Team Liaison, Sergeant Gary Wasko (Wasko), to see if they had been notified and learned that there had been no notification. Upon hearing this, Holt called Maglione and questioned him about the status of the juvenile. In response Maglione stated that he had gone to the house; that the child had been entered into NCIC; that a TRAK notification had gone out; and that CART had been notified. Maglione did not know who Dorio had spoken to from CART other than a female. No instruction was given by Maglione as to what needed to be done with regard to the investigation.

According to Holt, based upon what he learned, he went into the station to conduct the investigation into the missing juvenile. As part of his investigation, he went to J.D.'s residence, along with Lardieri and Jacobs to speak to J.D.'s family members. Holt testified that when they arrived at the residence, no other vehicles were there. If CART had been notified, the homicide task force would have been present and the scene would not have been left unattended in case the child comes home. Holt notified Wasko of the situation who indicated that they would be responding immediately to the scene. Holt also reached out to Dorio and questioned who he had spoken to from CART. All Dorio could remember was that he had spoken to a female sergeant but he did not know her name.

¹ According to Holt, the TRAK system is a criminal alert system that is statewide. In the case of a missing child, a picture of the child, physical details of the child and additional identifiers are placed in the TRAK system which disseminates the information statewide. (R-8.)

At that point, Jacobs went back to the station to pull the phone records. In so doing, it was learned that Dorio had called the ROIC and not the CART. This information was relayed to Holt and Wasko. Back at J.D.'s residence, Holt and Lardieri set up a command post. When the CART arrived, they set up in front of the house.

In speaking to J.B., Holt learned that J.D. had not been seen since 3 p.m. the prior day - May 20, 2017. While their son had run away in the past, they had not reported it because he typically came home later in the day. This time was different because he had been gone for so long and had not called. While the location was not set up as a crime scene, a search of both the interior and exterior of the residence was undertaken which proved negative for J.D. Holt testified that at that juncture, the Sheriff's Department was called to activate a bloodhound. Additionally, calls were made to J.D.'s school to obtain contact information for J.D.'s school friends. Upon receipt of this information, officers spread out to assist in the bloodhound tracking and reaching out to J.D.'s friends. J.D. was subsequently found at one of his friend's houses.

On cross-examination Holt was questioned about his experience with CART. In response, Holt stated that he was involved in one prior case where CART was notified and upon arrival, they (CART) took over the scene. Holt stated that usually the on-call detective is notified of a situation and they in turn, notify CART. It is up to CART to determine if they will respond to the scene.

Holt was also questioned about report procedures as found under General Order "R" (Report Procedures). (R-100.) He testified that road officers are required to get their reports in by the end of the shift, if not then, by the next tour. This rule does not apply in the Detective Bureau, due to the volume of cases however, it is not unusual to finish a report three or four days later. Even then, it may not get reviewed by a supervisor for a couple of days. In this case, his supplemental report regarding the missing juvenile was delayed due to the heavy volume of cases he had at the time. Additionally, it may not have been approved by his supervisor right away. Holt did not recall whether he kept hand-written notes regarding his investigation. If he did, they would have been scanned in and attached to the file.

Holt testified that as part of his responsibilities, he is also assigned to IAD. He is familiar with the policies and procedures of IAD and the IA-Pro system. According to Holt, if he is a witness in a matter, he would not get assigned to investigate it. He could not say one way or the other, whether he could or should access an IAD investigation file if he was a witness in an IAD investigation. Holt was also unable to explain why he accessed the IAD file for Maglione multiple times over the course of the IAD investigation even though he knew he was going to be a witness. (R-137.) Holt noted that documents in the IA-Pro are scanned in as PDF's and cannot be altered.

Holt stated that throughout his investigation on May 21, 2017, he kept his supervisors apprised of the situation which would have included Jacobs, Caldwell and Muller. Holt could not remember if he spoke to Muller or Colanduoni on May 21, 2017, however, recalled a meeting on May 22, 2017, in Stemler's office where Maruca, Muller and Stemler were present.

Michael Pellegrino (Pellegrino), testified that he has been with the Department for twenty-four years and currently holds the position of police officer in the Community Response Unit. Prior to his current assignment, he was in the Detective Bureau—Juvenile Division as a school resource officer.

While on duty on May 20, 2017, he heard the report of a missing child over the radio. At some point during his shift, he received a call from Dorio questioning if he knew the missing child due to his prior involvement in the school system as a Resource Officer. Pellegrino stated that he was not the on-call detective at the time nor was he Dorio's supervisor. Dorio did not ask him to contact anyone regarding the missing juvenile or ask who the current juvenile detective was. According to Pellegrino, the call only lasted a couple of seconds. He saw Dorio back at the station at the end of his shift. Dorio was working on his report and they had limited conversation at that time. There was no discussion regarding CART.

David Muller (Muller), testified that he has been with the Department for the past twenty-one years and a Captain for the past two years. In his current position, he is in charge of, among other things: Patrol; K-9 Unit; vehicle fleet; and traffic services.

Muller stated that on May 21, 2017, he received a call from Jacobs questioning if he was aware of a missing eleven-year-old, of which he was not. Jacobs filled him in on the situation and let him know that the Detective Bureau would be handling the investigation. Jacobs had learned of the missing juvenile by Holt, the May 21, 2017 on-call detective. According to Muller, such late notification on a high-risk juvenile was contrary to policy and procedure as he (Muller) should have been notified sooner as the patrol commander. After speaking to Jacobs, Muller called Stemler to inform him of the situation. Sometime later in the day, Jacobs notified Muller that the child had been located. This information was relayed to Stemler as well.

The following day, May 22, 2017, Muller met with Stemler and after some discussion, Stemler requested that he (Muller) look into whether there were policy and procedural violations such as why the Detective Bureau wasn't contacted; why CART wasn't notified and why he (Muller) wasn't contacted sooner.

Muller testified that as part of his investigation, he reviewed Dorio's IR and footage. In so doing, questions arose regarding the discrepancy in the report versus what was seen on the footage. Specifically the IR stated that the house was searched and CART was activated or notified when the footage revealed that the house was not searched and there was no further action done in the investigation other than taking the initial report. Based upon this, there was concern that the IR was either false or had been changed—the latter being an issue in the past with Maglione. Muller went on to state that supervisors are only allowed to make grammatical but not content changes to reports. (R-100; R-124.) In review of the report log for Dorio's IR, Maglione's name appears multiple times as "modifying" the report. (R-21.)

Based upon these concerns and upon discussion with Stemler, the matter was referred to IAD as it was unclear whether the matter went beyond a policy and procedural

error. Muller did not contact the Prosecutor's office and was not involved in any meetings however, he was aware that they had been contacted.

Muller stated that he is familiar with the IA-Pro system that IAD utilizes and as an Administrator, he has access to it and in fact, initiated the investigation in IA-Pro. (R-137.) Once you enter documents into the IA-Pro, his responsibility ended. Other than being interviewed, he was not involved in the Investigation.

On cross-examination, Muller was questioned about his multiple entries into IA-Pro on May 24, 2017. In response, Muller stated that while he's never seen the IA-Pro log before, he made one entry on that date however, if you make changes, it may show as a different entry and add lines to the log. Muller did not recall what changes if any were made. When questioned if Dorio was included in his entry, Muller could not recall—stating that he added Maglione because he was Maglione's immediate supervisor. He was not Dorio's immediate supervisor—there were levels between he and Dorio. While he knew that Dorio had violated the rules as well, his only concern was Maglione, given his twenty-two years of experience with the Department.

In questioning Muller regarding his statement about Maglione altering reports in the past, Muller stated that there were implications in the past of report content being changed by Maglione. While the allegations could not be substantiated, Maglione was verbally counseled on the issue which was appropriate under the General Order on Professional Review and Disciplinary Procedures. (R-124.) It was Muller's concern that was what happened in the missing juvenile investigation. He did not learn until after formal interviews were conducted that Dorio admitted that the verbiage in his IR was his.

William Lardieri (Lardieri), a sergeant with the Department, testified that he has been employed by the Department for the past ten years. Prior to his promotion to sergeant, he was a patrolman. As part of his responsibilities, he handles roll call; overtime; and shift assignments. His supervisor is Lieutenant Jacobs.

On May 21, 2017, he was on duty working the 7:00-a.m.-to-7:00-p.m. shift. During shift change, he spoke to Maglione about what had occurred on the prior shift at which time he learned about the missing eleven-year old. Maglione informed him that he and Dorio had responded to the juvenile's residence; that Dorio had taken a report; searched the house; and that CART had been contacted.

According to Lardieri, based upon his prior dealings with CART, he was under the assumption that CART was handling the investigation. The information conveyed to him by Maglione and the information in the shift report were passed along to the shift during line-up. (R-23.) He did not notify Jacobs as he assumed that he (Jacobs) had received notification through the shift report. It was not until sometime later that he learned from Jacobs that neither CART nor the on-call detective had been contacted. According to Lardieri, it is the responsibility of the sergeant or lieutenant on duty to notify the on-call detective.

On cross-examination, Lardieri stated that each shift typically has two supervisors working—a sergeant and a lieutenant. If one supervisor is off, which is not unusual, the other supervisor takes on the missing supervisor's responsibilities. Regardless of whether there is one or two supervisors on duty, at all times departmental policies are to be followed. It is the responsibility of the supervisors to contact the on-call detective if an incident occurs, regardless if you are down a supervisor.

Lardieri testified that other than questioning if the juvenile had been located, he did not ask Maglione any additional information regarding the investigation. In discussing the shift report, Lardieri stated that supervisors put what they believe to be pertinent information in their shift report so that the next shift knows what to expect or what happened on the previous shift.

Jeff Jacobs (Jacobs) testified that he has been employed by the Department for the past seventeen years and a lieutenant for the past eighteen months. Currently, he is in the Professional Standards Bureau however, in May 2017, he oversaw a platoon. On May 21, 2017, he was working the 7-a.m.-to-7-p.m. shift. His responsibilities at the time included

oversight of his platoon and patrol sergeant, review reports, cell checks, and review service calls.

Jacobs stated that prior to coming on shift, he read the shift report that had gone out via email. (R-22.) When he came on duty, other than saying good night to Maglione, he did not speak to him regarding the missing juvenile. According to Jacobs, as long as a supervisor is notified on the next shift of the situation, then that suffices. In this case, it appeared that Maglione had updated Lardieri. Jacobs heard Lardieri, during his morning briefing to the platoon, re-read the shift report and tell the platoon that CART had been notified – even though it was not in the shift report. As such, it was his belief that CART was handling the investigation. After receiving a call from Holt, who asked about the status of the investigation into the missing juvenile, he learned that the on-call detective had never been notified.

In looking at the IR, it stated that CART was notified but did not identify who was contacted from that agency. This information was relayed to Holt who thereafter, reached out to CART directly. Around noon, Holt called back and informed him that CART had not been notified. Upon learning this, Jacobs notified his supervisor—Muller. Thereafter, he went to J.D.'s residence to assist in the search of the outside area. Upon arrival, other officers were present, including Lardieri. When CART arrived, he left to assist with the bloodhound search. He later learned that the child was located.

Jacobs testified that he has been involved in numerous missing juvenile investigations in the capacity of a supervisor and a detective. As a supervisor, he made sure that a supervisor went to the scene—even if it was a sergeant. He also made sure that CART and the on-call detective were notified. If he was the supervisor, he would get involved in the search of the residence as one is required. Depending on the type of case, he may or may not leave the scene however, someone should stay if possible. Once the on-call detective is notified, it becomes their case and they determine how to investigate the matter. If deemed beneficial and if available, K-9 would be called in. For the duration of the investigation, Jacobs stated that he would stay in touch with the detectives and CART to get

updates and would most likely have officers involved in the search until CART indicates that their assistance was no longer needed.

On cross-examination, Jacobs stated that when he spoke to Dorio that evening, Dorio did not seem surprised when he informed him that CART had not been contacted. Dorio informed him that the number came from a flyer on the bulletin board in the charge room and he believed at the time that it was the correct number. Jacobs never mentioned anything to Maglione.

When asked if his responsibilities increase when he works without a supervisor, Jacobs responded by stating "yes—obviously, you have one less supervisor so you can't split responsibilities—you handle both the sergeant and lieutenant's job." Jacobs went on to state that while the situation changes every night, the sergeant is the first line supervisor for the officers and conducts roll call; assigns zones and reads the shift report among other things; the lieutenant handles the in-house responsibilities. If both are working on the shift, the lieutenant has the discretion to go out on the road depending on the workload.

When questioned about his shift report for May 21, 2017, Jacobs stated that he only places noteworthy events on his shift report. (R-23.) On May 21, 2017, only one incident was listed as that was the only noteworthy event. With regard to investigations into missing persons, Jacobs acknowledged that the PLS is not always treated as a crime scene and a command post is not always set up—that is in the discretion of the detective or supervisor and on a case-by-case basis. Additionally, while a supervisor does not have to participate in searching the PLS, the PLS must get searched.

Larry Wayne Cabell (Cabell), testified that he has been with the Department since 2002 and currently he holds the rank of sergeant. In May 2017, he was a patrol officer assigned to the K-9 unit.

On May 20, 2017, Cabell heard a call go out regarding a missing eleven year old boy. Sometime thereafter, while on patrol, he received a call from Maglione who asked if he could accompany Dorio to J.D.'s residence so that Dorio, who had less than three years of

service at that time, was not by himself. Maglione did not ask him to search the residence nor was he asked to bring in the K-9.

Upon arrival at the residence, there were no other officers present. After knocking several times on the door with no answer, they had dispatch call the residence to see if anyone was home at which time J.B. answered the door. In speaking to J.B., they learned that J.D.'s brother was not home however, they were able to contact him by phone. While waiting to talk to him, Cabell wandered around the entrance hall area. Neither he or Dorio searched the residence. It was Cabell's assumption that the house had already been searched. When he and Dorio walked out, he briefly looked around outside. He thought it strange that the family was not out looking for the missing juvenile.

Cabell stated that at the end of his shift, he mentioned to Maglione that he thought it was odd that the family did not answer the door; the door was locked so even if J.D. came home he couldn't get in; and he didn't see any photos of J.D. even though there were pictures of the other kids. Cabell could not recall what Maglione's response was.

According to Cabell, as an Officer, he has been involved in the search of high-risk missing persons. Cabell stated unlike his dog that can track scents for up to forty-five minutes, bloodhounds are more effective as they can sense the odor of the missing person.

On cross-examination, Cabell recalled that there was an auto accident during his shift however, it was subsequent to his visit to J.D.'s residence. The accident was a DWI which occurred on a major artery in the township with the call coming in about three hours after the call for the missing juvenile. (R-135.) The vehicle hit a fire hydrant, light pole and traffic signal which caused every officer in the platoon to respond. The driver was transported to the station after being apprehended. According to Cabell, when a suspect is transported to the station, it is ideal to have a supervisor present. The accident was cleared up by the time his shift was done.

Rocco Maruca, Jr. (Maruca), testified that he has been with the Department for over twenty-two years and a Captain since October 2014. Among his responsibilities is

the oversight of the IAD. Maruca first learned about a missing juvenile on May 22, 2017, when he received a text from Stemler informing him that there was a missing eleven-year old and that the investigation had not been handled properly by Maglione. He also learned that CART had not been notified. When he arrived at work the next day, Stemler brought him up to speed on the investigation and informed him that the matter had been assigned to Muller, Maglione's direct supervisor, to gather additional information.

Sometime between May 22nd and May 31st, he learned that Muller wanted the matter referred to IAD due to the inconsistencies in Dorio's IR and the footage. This inconsistency raised a concern that there may be a criminal aspect in the matter if a false report had been filed. Because of the criminal nature of the matter, it was referred to IAD.

On May 31, 2017, a meeting was convened with Colanduoni, the lieutenant in IAD and Muscente. The purpose of the meeting was to discuss the investigation that was being turned over to IAD and to contact the First Assistant Prosecutor, Doris Galuchie (Galuchie) with the Mercer County Prosecutor's Office to discuss the possible criminal activity. The concerns raised with Galuchie were the fact that the report stated that the residence had been searched when it was not; questions as to whether Dorio was ordered by Maglione to put the verbiage in the report to cover their tracks; or did Maglione himself change Dorio's report. According to Maruca, the matter had to be fully investigated before action, if any, was taken against Dorio and/or Maglione.

After speaking to Galuchie, it was decided that the IAD would proceed with the investigation; interview witnesses; collect evidence; and do everything needed to be done before the targets (Dorio and Maglione) were interviewed. At that point, the Prosecutor's Office would be contacted and they would discuss how to proceed from there.

According to Maruca, Muscente took the lead on the investigation however, he remained in constant contact with him. The Prosecutor's Office was also contacted

during Investigation seeking their input on whether certain interviews should be taped. Around mid-June 2017, when the preliminary investigation was complete, the Prosecutor's Office was again contacted to determine how to proceed with the interviews of Dorio and Maglione. Thereafter, on June 15, 2017, a meeting was convened with Galucci to discuss how to proceed with the investigation and target interviews. At that time, it was decided that Dorio would be interviewed first.

On June 17, 2017, Dorio was interviewed. On June 20, 2017, they met with Galucci and went through Dorio's interview. After some discussion, it was decided that the criminal investigation would be closed out and the matter would proceed administratively. Additionally, Dorio was given use immunity.

On June 22, 2017, Maglione was interviewed. Sometime after Maglione's interview, there was some settlement discussions in lieu of charging however, the discussions ended and the Department moved forward with the administrative charges which were drafted by Muscente and reviewed by him. The disciplinary charges were served on Maglione on July 14, 2017 and included ten charges of alleged misconduct. Maruca stated that he signed the disciplinary charges in the capacity of Acting Chief as Stemler was away. (R-63.)

On cross-examination, Maruca stated that he first learned of a missing child on May 22, 2017, when Stemler texted him about the investigation and its mishandling by Dorio and Maglione. When he went into the office later that day, he spoke with Stemler about the incident and was informed that Muller was going to be following up on the matter. Muller is not in IAD. Maruca went on to state that when an investigation is opened in the IAD, it is logged into the IA-pro system through either an IA officer or a supervisor through Blue-Team.

Maruca stated that the prosecutor's office was contacted on May 31, 2017, and informed that there may have been criminal activity surrounding the investigation of a missing juvenile. The call was made by Colanduoni in his presence along with Muscente. Maruca could not recall whether the call was on speaker phone or not.

When questioned about Dorio's interview and whether he (Dorio) lied during the interview, Maruca stated that he could not recall and would have to review the taped interview. Maruca did state however, that he spoke to Muscente after the interview and it was Muscente's opinion that Dorio had lied.

Maruca testified that Dorio was administratively charged with a recommended disciplinary action of removal. (R-79.) While some of the charges levied against Maglione were similar to Dorio's, additional charges were levied against Maglione as a supervisor. When Dorio transferred to the MCSD, the administrative charges were dismissed. He closed the administrative charges out in the IA-pro system because Dorio was no longer with the Department. Maruca does not know who made the decision to dismiss the charges. He was not involved in Dorio's transfer.

The investigator's involved in the IAD investigation were Muscente and Colanduoni. Holt was an IA investigator in the IAD in May 2017, however, was not involved in the investigation as he was involved in the initial investigation regarding the missing juvenile and therefore a witness in the IAD investigation. Maruca stated that to maintain the integrity of an investigation, individuals who are witnesses in an IAD investigation should not access the IA-Pro. He went on to state that there are both word documents and PDF documents in the IA-Pro system. You cannot create a report in the IA-Pro however, you can change certain documents. Maruca was unaware that Holt had repeatedly accessed the IAD file on Maglione. (R-137.)

With regard to the notification to the Prosecutor's Office, Maruca testified that typically initial notifications are done by phone and in some instances, followed up with a written form that provides information on the matter. In this instance, no written form was sent. When the Prosecutor's Office closed out the criminal matter, nothing was sent to the Department confirming that fact. Maruca acknowledged that he read Muscente's report before it was finalized and confirmed that there was no reference to the telephone conversation with the Prosecutor's Office on May 31, 2017.

John Stemler (Stemler) testified that he has been with the Department for twenty-four years and has been the chief for the past three. He became aware that there was a missing juvenile when he read the line-up post online. The line-up post stated that there was a missing juvenile and that there was an investigation. At some point he was contacted by Muller, Maglione's direct supervisor, who explained that the juvenile had been found after Holt came into work to handle the investigation. He was also informed that there were issues with the underlying investigation, among them being no notification to CART.

When he went into work the next day, May 22, 2017, he spoke with Muller who advised that while CART was notified, the notification did not occur until many hours after the report came in. This was contrary to the Attorney General Directive and would have to be reported to the Prosecutor's Office. Once notified, CART immediately came out and shortly thereafter, the juvenile was located. After the juvenile was located, he and Muller started looking at what happened with the investigation, specifically, reviewing the IR, footage and phone logs.

In review of the footage, Dorio and Maglione were observed responding to the juvenile's residence and interviewing his parents. Upon gathering the necessary information, Dorio and Maglione left the residence and went to Dorio's car where they briefly conversed. During this conversation, Maglione told Dorio to contact Pellegrino to see if he had any information. Maglione left after this to go back to the station. There was no search of the residence – inside or out.

Also reviewed were the phone logs. From the logs, it appeared that: Dorio contacted the ROIC not CART; Maglione called Dorio and told him to go back to the residence to speak to the juvenile's brother; and Maglione contacted Cabell and told him to go to the residence with Dorio so that he was not by himself, and to check around outside, "real quick" to see if the juvenile was spotted.

After review of the information, Stemler told Muller to look further into the matter to determine why certain protocols were not followed. At some point, it was brought to

his attention that there was a possibility of a false report filed by either Maglione or Dorio. Given the fact that there may be a criminal element involved, the matter was referred over to the IAD in accordance with the Attorney General guidelines. No charges were brought at that time as the investigation was not complete.

After IAD conducted their investigation, it was determined that Maglione and Dorio did not follow DR&R or the AG guidelines and that both appeared to be untruthful during their statements.

Stemler went on to state that IAD contacted the county Prosecutor's Office. He was only involved in one of the meetings which was in July 2017. The purpose of that meeting was to discuss Dorio's statement and the fact he was untruthful during his interview. Due to his untruthfulness, Dorio would be subject to a "Brady" disclosure and the Department would not be able to have Dorio testify in court and his reports would be called into question. Given that, Dorio would have to be terminated.

According to Stemler, at some point, he was informed by Maruca that the County Prosecutor had closed out their criminal investigation however, IAD's investigation continued. At the conclusion of the IAD's investigation, it was determined that Maglione had been untruthful in his statement regarding the search of the residence and the actions that he took or allegedly ordered to be taken. With his (Stemler's) approval, charges were prepared and signed off by Maruca in his absence.

The decision to suspend Maglione without pay was done in July 2017, to maintain the safe and smooth operation of the Department. Due to the issue of untruthfulness and how the investigation was handled, there was also concern about Maglione's ability to lead a platoon. Termination was recommended because they had an officer who lied during an internal affairs investigation and now, was subject to a "Brady" disclosure. It was questionable whether he could even sign off on any reports because that too, would have to be disclosed. Additionally, he did not want a precedence set that it was acceptable to lie during an IAD investigation. Last, there were concerns about how Maglione would be perceived by the officers and their faith in

his leadership. This was due to Maglione having lied when he claimed to have told the officers to search the house - inferring that they (the officers) did not follow direction when it was clear that no direction was ever given. Stemler went on to state that to keep Maglione on the job, the integrity of the entire police department would be in jeopardy. Therefore, termination was appropriate.

On cross-examination, Stemler stated that as of May 22, 2017, he was aware that Dorio's report conflicted with the footage; that CART had not been notified; that the residence had not been searched; and that the on-call detective had never been notified.

Stemler went on to state that he assigned Muller to look in to what happened with the investigation and that Muller opened the file in the IA-Pro system—not the Blue Team. According to Stemler, regardless of which system the investigation was opened in (IA-Pro or Blue Team), the file would have been merged into the IAD's investigative report in IA-Pro.

According to Stemler, discipline begins and ends with him. He is the only one in the Department who determines what type of discipline is levied against an officer. In this case, he authorized the charges filed against Maglione. With regard to Dorio, the charges were dismissed when he (Dorio) transferred out of the Department pursuant to a settlement agreement. Stemler acknowledged that one of the stipulations in the settlement agreement was the requirement that Dorio testify at Maglione hearing.

When questioned about his meeting with the Prosecutor's Office, Stemler revised his earlier testimony that he met with the Prosecutor's Office in July 2017, stating that the meeting was actually held in June 2017, when the criminal investigation was closed in this matter. (P-1.)

Stemler was also questioned about Holt's access to Maglione's investigative file in the IA-Pro system and whether that was a violation of the Departmental policies

given the fact that Holt was a witness. In response, he stated that he could not respond without first seeing why Holt accessed the IAD report.

Paul Dorio (Dorio)² testified that he is currently a sheriff's officer with the Mercer County Sheriff's Department (MCSD) and has been employed in that capacity for the past four to five months. Prior to joining the MCSD, he was a police officer for three years with the Department.

While on duty on May 20, 2017, he was dispatched to the residence of a missing juvenile where he met up with Maglione. Upon entering the residence, they were met by J.D.'s parents. In speaking to J.D.'s father, he learned that J.D. left through the window of the house. The parents did not know who J.D.'s friends were or where he could be. No search of the residence, interior or exterior, was performed by either himself or Maglione, nor did Maglione instruct him to do so on this visit or when he went back later in the day. The parents were not asked for permission to search the house.

When he and Maglione exited the residence, Maglione told him to contact Pellegrino as he may be familiar with J.D. He also told Dorio to contact the Prosecutor's Office, but did not specifically identify CART. When Dorio went back into the residence to obtain additional information from the parents, Maglione left to go to the station. (R-2.) Dorio did not see if he left right away.

Dorio reached out to Pellegrino who informed him that he was unfamiliar with J.D. Dorio also reached out to what he believed to be the Prosecutor's Office for CART, however it was ROIC.

After leaving the residence, he went back to the station and started drafting the IR and entered J.D. into NCIC. (R-1.) Dorio testified that the final draft of his IR was

² Prior to Dorio's testimony, appellant made an application to introduce the Fitness for Duty Evaluation of Dorio on the basis that: 1) respondent examined it and considered it in making a decision to charge appellant; 2) the information may further support appellant's defense and may contain admissions by Dorio; and 3) the probative value outweighs any potential prejudice. The application was denied on the basis that the information sought was for a person who was not a party to the litigation; was not himself charged and was not information that was reasonably calculated to lead to the discovery of admissible evidence.

not the same as the first draft. He could not remember all the changes made to the IR however, the IR went back and forth between Maglione and him several times. Dorio did not recall informing Maglione that he had searched the residence and admitted that he did not fully or completely search it.

Additionally, once back at the station and after speaking to Sergeant Estevez (Estevez) who he believed to be with the CART, he filled Maglione in on the conversation. That is when Maglione told him to go back to the residence a second time to speak to J.D.'s brother. Additionally, he was also told to search the exterior of the house and surrounding neighborhood to see if J.D.'s bike was there. Cabell met him at the residence as back-up. Prior to entering the residence, they looked around the exterior of the residence. While Cabell's K-9 was in the patrol vehicle, it was not used.

Upon entering the residence and while waiting to speak to J.D.'s brother, he looked around but did not search the first floor to see if there were any clues. In speaking to the brother via phone, no additional information was obtained. After leaving the residence, he drove around the neighborhood looking for J.D.'s bike. It was around this time that a call came in regarding a car hitting a telephone poll to which he responded.

According to Dorio, the only calls that Maglione asked him to make in reference to the missing juvenile were the calls to Pellegrino and the Prosecutor's Office. At no time did Maglione ask him to contact the on-call detective. Additionally, at no time did Maglione ask him to search the interior of the residence, including the basement or attic or the exterior of the residence.

Dorio stated that when he arrived home from his shift, he received a call from Holt who questioned whom he had spoken to from CART. Dorio relayed his conversation with Estevez to Holt.

On cross-examination, Dorio stated that he was interviewed by IAD two times and was truthful during both interviews. When questioned if he told Muscente that he had searched the residence, he responded by stating that he looked around the first floor. When questioned if he told Muscente that he searched the home outside the presence of Maglione, he stated, "I might have."

When questioned about contacting CART, Dorio stated he did not know what CART was however, acknowledged that Maglione did tell him to contact the Prosecutor's Office. He could not remember if Maglione specifically mentioned contacting CART. He then stated that maybe it was Pellegrino who told him to contact CART when he saw him back at the station. He could not remember the specifics of that conversation; however, he did recall asking Pellegrino for CART's telephone number and Pellegrino referring him to the "on-call book."

The "on-call book" contains various agency contact numbers which includes CART's telephone number. When he went to dispatch to find the "on-call book" he noted that the contact information was outdated. In questioning dispatch for the CART's telephone number, he was directed to a flyer on the wall which he later learned was for ROIC. (R-24.)

With regard to his IR, Dorio testified that he completed it after his second visit to J.D.'s residence and after he responded to the auto-accident. When questioned about the wording in his IR and his interview with IAD wherein he claimed the wording was his, Dorio stated that he told IAD that the wording in the IR "could be" his. He went on to state that he could not remember what wording was specifically his at this time, but at the time he was interviewed by IAD, he was truthful.

Regarding the disciplinary charges levied against him, Dorio stated that he was charged and suspended. Subsequently, he entered into a separation agreement however, prior to entering into the separation agreement, he transferred over to the MCSD.

Dorio's videotaped statement with IA was played during his cross-examination. In relevant part, the videotaped interview revealed:

On May 20, 2017, Dorio was dispatched to the residence of a missing eleven-year old (J.D.) where he met Maglione. In speaking with J.D.'s father, they learned that J.D. had not come home that night after leaving the residence through the living room window. According to the father, this has happened before with J.D. leaving to play basketball and not telling anyone where he was going. J.D.'s father did not know any of J.D.'s friends. After speaking to J.D.'s parents, he and Maglione went outside to get paperwork however, Maglione left when he went back inside. Upon going back inside, he searched the residence. Dorio went on to state that he searched the neighborhood and later went back to the residence a second time to speak to J.D.'s brother. Cabell was present on the second visit to the residence, at which time the residence was again searched.

Later, back at the station, he spoke to Pellegrino who told him to call CART. He found the number for CART off a flyer on the wall. When he called, a female sergeant informed him that they could not assist him unless the Department needed a helicopter or a dog. After he got off the phone, he told Maglione about his conversation with the sergeant. Maglione told him to go back to the residence to speak to the brother and search the neighborhood for the juvenile's bike. When questioned why the brother wasn't interviewed the first time he and Maglione were at the residence, Dorio stated that the father informed them that the brother wouldn't know anything. While he was out looking for the bike, a call went out over the airways regarding an auto accident to which he responded.

Muscente questioned Dorio a couple of times about whether he searched the residence during his first visit. Dorio changed his statement a couple of times, first admitting that he did not search the residence and

again when he stated that he did not "fully and completely" search the residence. When questioned if he searched the exterior of the residence including the garage on his first visit, he admitted that he had not. When questioned if Maglione gave him any instructions prior to him leaving, he stated that Maglione told him to call Pellegrino. Maglione did not tell him to call CART or the on-call detective. He also did not tell him to search the interior of the residence.

When he went back to the residence the second time, Dorio stated that he and Cabell searched the exterior of the residence. When he went inside, he looked around the downstairs, walking into the rooms, but did not go upstairs. This statement later changed wherein he stated that he only looked in some of the rooms downstairs. When questioned about the kitchen which was one of the rooms he claimed to have looked in, he could not describe it, explaining that he did not turn on the lights and only used his flashlight. When he left the residence, he called Maglione who told him to look around the neighborhood for the juvenile's bike. No other directives were given.

In questioning who drafted the IR, Dorio stated that for the most part, the words were his however, Maglione may have changed a word or two. When questioned who drafted the verbiage "search of the house proved negative," Dorio stated that he was pretty sure that he wrote it but could not remember if Maglione told him to, or if Maglione himself added it. He went on to say that he was under the assumption that J.D.'s parents had been looking all day for him and that he (J.D.) was not in the residence. Dorio also pointed out that the wording doesn't specifically say that he (Dorio) searched the house, just that a search proved negative. The second visit to the residence was not in his report because he had finished the report prior to going out to the residence. He didn't believe that there was any additional relevant information to add.

Joseph Maglione (Maglione) testified that he worked for the Department for over twenty-two years, working his way up through the ranks until he was promoted to the rank of lieutenant in May 2016. On May 20, 2017, he worked the 7:00-p.m.-7:00-a.m. shift. Due to the fact there was no sergeant on duty, he had to handle the responsibilities of both sergeant and lieutenant. The sergeant supervises the road officers and is on calls for service – making judgements as to what is needed out on the road. The lieutenant handles the “house” and administrative matters which includes checking everything the sergeant does. Typically, weekends are the busiest time in the Department.

On May 20, 2017, the Department was busy with officers finishing one job and getting dispatched to another. Among the calls on May 20, 2017, was an assault/robbery which resulted in an arrest; a missing juvenile; and a motor vehicle accident which also resulted in an arrest. If an arrest is made in a matter, the lieutenant needs to be present at the station. On the night in question, he was at the station handling the complaint paperwork for the individual involved in the assault/robbery when a call came in at 11:53 p.m. for a missing juvenile.

He responded to the juvenile’s residence where he met Dorio, both arriving at the same time. They had a short discussion prior to going into the residence wherein he told Dorio to search the house; call Pellegrino and to call CART as that was protocol for a missing child under the age of fourteen.

Upon entering the residence, Dorio spoke to J.B. and walked around the first floor. He stayed in the entrance area, not searching the interior of the residence as he was only there to supervise Dorio. It was Dorio’s responsibility to search the residence and area to make sure the child was not there and to get the necessary information from the parents to prepare a report. There were protocols that are in place that needed to be followed. According to Maglione, they were there for at least twenty minutes.

Maglione went on to state that there came a point when he left the inside of the residence. Once outside, he spoke to Dorio where he reiterated to him that he needed to call Pellegrino, due to his experience as a juvenile detective and school resource officer, as well as to call the Prosecutor's Office. After speaking to Dorio who went back inside the residence, he looked around the outside and at cars near the house. He also walked the block looking for anything unusual or relevant before he went back to the station. No crime scene was established because in his judgment and based upon what J.B. stated, no crime had occurred.

Dorio arrived back at the station about a half hour later and informed him that he was going to make calls; enter J.D. into NCIC; prepare a TRAK message; and prepare his IR. A little while later, he overheard Dorio discussing CART with Pellegrino. Sometime thereafter, he went into the line-up room to ask Dorio about the case specifically asking if he had spoken to the brother. When he learned that he had not, he had Dorio to go back to the residence to speak to the brother and make sure that J.D. was not there. He also told him to check the area parks and schools. Additionally, he also had Cabell to go to the residence to assist Dorio. No other officers were ordered to assist at that time as he was not sure of their availability and thereafter, everyone was occupied with the auto accident.

Maglione testified that all the officers, including himself, responded to the accident which had occurred at 2:45 a.m., due to the location and gravity of the accident which resulted in road closures. The accident scene was not cleared up until noon the following day due to the utility repair work that was required before the road could be opened. When he returned from the accident scene prior to the end of his shift, he prepared the shift report. He also spoke to the day shift sergeant (Laurdieri) and informed him about the prior night's incidents.

The first he learned that Dorio had not contacted CART was on June 9, 2017. When he was interviewed by Muscente, a month after the incident, he was trying to be truthful. He did not review the footage or listen to the recorded calls prior to his interview. Maglione went on to state that Dorio told him that he had called CART and

spoken to a female sergeant, who questioned if aviation or a K-9 were required. He could not recall whether Dorio informed him that he had called the on-call detective. With regard to the IR, he stated that he probably did edit it, recalling that Dorio had the juvenile's name reversed and the wrong age of the child. Additionally, some of the grammar had to be corrected. At no time did he add, "search of the residence" or "search of the surrounding area proved negative" nor did he add "CART unit was contacted".

Maglione admitted that when he responded to the residence, he did not have his body armor or vest on, explaining that he was working at his desk when the call came in and he responded immediately without putting it on. He acknowledged that things could have been done better however, at no time did he have any malice or ill intent. He went on to state that over the twenty-two years that he has been with the Department, he has received numerous awards, commendations and medals, many of them for saving lives and for exceptional service. (R-40; P-3.)

On cross-examination, Maglione was questioned about Dorio's report log and the number of times he modified the IR. Maglione could not recall what specific modifications were made to the IR or when. When questioned about the verbiage "search of the residence" and whether that was in the IR when it was sent to him, Maglione could not recall. Maglione went on to state that he was in the residence with Dorio half of the time and outside of the residence the other half. The residence was not searched in his presence and he did not know if Dorio searched it when he went back however, it was in his (Dorio's) report and he relied upon that.

Maglione was also questioned why he did not search the residence given the fact that it was a high-risk missing child. Maglione responded by stating that in his judgment, the situation did not call for it, adding that Dorio was sent back to make sure the child had not returned. He also reiterated that he told Dorio to search the residence upon arrival, prior to going inside. When Dorio was inside, he was outside. It was his belief that was when Dorio searched the residence. While ideally, if he had had the time, he would have wanted to make sure that the house had been searched. He made

a judgement call based on his experience and the father's comments that he expected his son to return home.

Maglione stated that he has never been involved in a high-risk missing child investigation. He did not ask any other officer or supervisor to assist him in the matter but in his judgment, there was no indication that the residence was a crime scene. Additionally, Dorio was given instruction and direction and it was his belief that Dorio could handle it. He did not verify that Dorio called CART commenting that he wasn't sure what he would have verified. Other than receiving the General Order, he has never received any training on CART. While he never had any dealings with CART, in his experience with the Department, detectives either respond immediately or in the morning and they may not contact him. He called the on-call detective when he got home after his shift. Muller was notified through his shift report and the TRAK message.

When questioned again about searching the house, Maglione stated that he spoke to Dorio about the case at the station and asked him then if he searched the residence. This statement subsequently changed with Maglione stating that he saw that the residence had been searched when he read Dorio's IR. The statement was later modified wherein, he stated that he told Dorio in the Line-up room to search the interior of the residence, including the basement when he went back for the second visit. When Dorio went back to the residence to speak to the brother, he sent Cabell to assist. While Cabell was not asked to use the K-9, it was Maglione's position that Cabell should know.

Upon speaking to Cabell when he returned to the station, Cabell stated that when he went through the residence, he did not see any photos of J.D. While he did not specifically ask Cabell if he searched the residence, it was his belief, based upon those comments, that he had.

In questioning Maglione on the importance of protocols, he stated that he is familiar with what he signed for. He agreed that the protocols do not say to call a

former juvenile detective, and that the protocols may require that the on-call detective be notified. It was his belief that Dorio had contacted the on-call detective even though admittedly it was his responsibility to confirm it. Maglione went on to state that he did the best he could with what he had to work with, there was no sergeant on duty that night, which happens occasionally and it was a busy night. He likened it to triage—there were life-safety issues that he was trying to deal with and mitigate. In this case, he did not want anything to happen to the prisoner or anyone to burn in the accident and he would have loved to have found the child and return him home.

When questioned about his shift report, Maglione stated that there were four main incidents that occurred that evening: a shoplifting; a warrant arrest; a missing juvenile; and a DWI auto accident. The call for the missing juvenile came in at 11:53 p.m. and two hours later, at 2:45 a.m., the call for the DWI came in. (R-22.) There were no calls in between the two incidents. He did not get assistance from any other officers because he did not ask or know if any were available. He did not call the captain or the on-call detective for their resources either. He relied on Dorio to make the appropriate calls as directed, based upon his (Dorio's) prior work experience. Cabell went with Dorio on the second visit to the residence to assist him, not "hold his hand."

With regard to Dorio's IR and his review of the same, Maglione admitted that the report could have been better and that information was missing such as the second visit to the house; the conversation with the brother; and the search of the residence and area. Despite not having this information, even after reviewing the IR five or six times, he approved it.

FINDINGS OF FACT

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' 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).

Having considered the testimonial and documentary evidence offered by the parties, I **FIND** the testimony of all of the witnesses to be credible except for Dorio and Maglione.

With regard to Dorio’s testimony, I **FIND** that parts of his testimony were self-serving in his attempt to contrive an interpretation of the word “search” in the context of his report and justify his actions. I also **FIND** that he was not truthful in his IAD interview. Despite this finding, I do **FIND** Dorio’s testimony credible that he was never told by Maglione to search the residence—interior or exterior—or that he was given no direction or assistance by Maglione other than to call Pellegrino and the Prosecutor’s Office.

I **FIND** Maglione’s testimony incredible with regard to his assertion that he told Dorio to conduct a full search of the residence prior to going inside. I further **FIND** Maglione’s testimony incredible that when he walked out of the residence, he looked around the area and walked the block. I **FIND** that Maglione did not tell Cabell or Dorio to search the residence, including the attic and basement when they went back to speak to J.D.’s brother.

I **FIND** that on May 20, 2017, a call came into the Department as it relates to a missing eleven-year-old. I **FIND** that due to the juvenile’s age, he was deemed a “high-risk” missing child under the General Order “T” and AG guidelines. I **FIND** that General Order “T” and the AG guidelines provide protocol for the handling of missing persons.

I **FIND** that Dorio and Maglione were the initial responders to the residence. I **FIND** that after speaking to the parents of the juvenile, both Dorio and Maglione left the residence without searching either the interior or exterior. I **FIND** that Maglione did not have on his body armor when he responded to the residence.

I **FIND** that no crime scene or command post was set up at the residence. I **FIND** that other than telling Dorio to call the Prosecutor's Office and Pellegrino prior to heading back to the station, Maglione provided Dorio no other directives. I further **FIND** that no BOLO was issued on the missing juvenile; the surrounding municipalities were not contacted and no additional resources were called in. I **FIND** that Maglione did not direct, question or look to see if any of that had been done.

I **FIND** that Maglione did not provide Dorio any directives or directions regarding CART or how to notify them. I further **FIND** that Maglione did not follow up on the lack of response by CART or whether the Detective Unit had been contacted. I **FIND** that other officers were available to assist in this matter but none were called in. I **FIND** that the K-9 unit was available, but not activated.

I **FIND** that Dorio's IR was reviewed and edited by Maglione several times. I further **FIND** that material information was missing from Dorio's IR, but it was still approved by Maglione.

I further **FIND** that no notification of the missing juvenile was sent to Maglione's superiors. I **FIND** that several times during his IAD interview, Maglione was not truthful.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v.

Essex DOC Park Comm'n, 46 N.J. 138, 147 (1965). Governmental employers also have delineated rights and obligations. The Act sets forth that it is State policy to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, respondent bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Therefore, I must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959) (citation omitted). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954).

In the case at bar, appellant was determined to have violated the following DR&R:

- 1) 3.1.1a Police Officers shall take appropriate action to protect life and property;
- 2) 3.1.3 Police Officers shall abide by all rules, regulations and departmental and directives governing police officer employees;
- 3) 3.1.5 Police Officers shall coordinate their efforts with other employees of the department to achieve department objectives;
- 4) 3.1.10 Police Officers shall perform all related work as required;
- 5) 3.2.1 Supervisors in the Department shall enforce department rules and ensure compliance with department policies and procedures;
- 6) 3.2.3 Supervisors in the Department shall exercise the necessary control over their subordinates to accomplish the objectives of the Department;
- 7) 3.2.4 Supervisors in the Department shall guide and train subordinates to gain effectiveness in performing their duties;
- 8) 4.1.1 General Conduct—Performance of Duty—All employees shall promptly perform their duties as required or directed by law, departmental rule, policy or directive or by lawful order of a superior officer;
- 9) 4.1.5 General Conduct—Truthfulness—Employees are required to be truthful at all times to members of the Department, including supervisors unless it jeopardizes the confidentiality of an investigation. Any employee not being truthful will be required to justify his deception; and
- 10) 4.12.6 Judicial appearance and Testimony – Truthfulness – Employees are required to be truthful at all times whether under oath or not.

Appellant argues that the respondent has failed to satisfy its burden of proof to sustain the disciplinary charges lodged against him, specifically, the Department:

- 1) Failed to prove that he should be responsible for the deficiencies in contacting the CART and/or the on-call detective;

- 2) Failed to prove that he should be responsible for deficiencies in searching the missing juvenile's residence;
- 3) Has not established that he had an imperative obligation to contact the on-call detective and establish a command post and/or crime scene;
- 4) Failed to establish that he was untruthful during his investigation.

For the reasons cited below, I disagree.

Under Count 1—violation of Section 3.1.1a—respondent determined that appellant violated DR&R:

Specifically:

- not ensuring a complete and thorough missing person's investigation/search for an eleven-year-old child was done.
- not ensuring the Mercer County Prosecutor's Office, Child Abduction Response Team (CART) was contacted for the missing eleven-year-old missing child.
- not broadcasting or making sure a broadcast of a BOLO for the missing eleven-year child was completed on the Ewing Police Radio channel, Mercer County Crime Alert Radio Channel, phoning surrounding agencies such as but not limited to the Trenton Police Department or the Lawrence Police Department.

Departmental General Order "T," Section IV(C)(1) states in relevant part that if a child thirteen years old or younger is missing, the initial responders shall complete a search of the subject's residence which should include all storage areas, cellars, attics and outbuildings among other locations.

Appellant's testimony on this issue was all over the place and inherently contradictory. Appellant testified that he told Dorio to search the interior of the residence prior to entering it and before the Dorio's body camera was turned on. When he left the residence, it was his assumption that Dorio was going to search the house when he went back inside to handle the paperwork. According to appellant, if he had had more time, he would have stayed to make sure that the house had been searched but he made a judgment call to return to the station based upon his experience and J.B.'s comments that he expected his son to return. Before heading back to the station however, he walked the block looking around for anything unusual. The residence was approximately five to ten minutes from the station. When he arrived back at the station, Dorio showed up a half hour later.

The residence is a three-story home that contained multiple rooms. (R-26.) Yet Dorio arrived back at the station within a half hour of appellant's return. Even factoring in the time appellant alleges to have spent looking around the block, the time line does not add up as Dorio would have had to have completed the necessary paperwork with J.D.'s parents; conducted a thorough search of the three-floor residence and arrived back at the station in less than a half hour. Dorio's presence back at the station so soon after leaving the residence, was never questioned by appellant. By his own admission, at no time was the exterior of the residence searched.

The inconsistencies on this issue continued when appellant testified that he asked Dorio if the residence had been searched and was told yes. This statement subsequently changed when he later testified that he saw that the residence had been searched when he read Dorio's IR. This was again modified when he stated that he told Dorio in the Line-up room to search the interior of the residence, including the basement when he went back for the second visit.

Based upon the credible evidence presented in this matter, it is clear that appellant and Dorio, as initial responders, did not conduct a search of the residence—interior or exterior—nor was there a directive by appellant to Dorio to do so prior to entering the residence. It is also clear that when Dorio and Cabell went back to the residence the

second time, no search of the residence, interior or exterior, was undertaken nor was there a directive to do so. As the lieutenant in charge of the shift, appellant was responsible to ensure that the residence (interior and exterior) was thoroughly searched to properly assess the situation and need for additional resources in accordance with General Order "T."

Under General Order "T," Section IV(C), and the Attorney General Law Enforcement Directive No. 2008-4, upon the report of a high-risk missing child, CART must be immediately notified.

It is undisputed that CART was not immediately notified as required under the guidelines or that Dorio, contacted ROIC not CART. Appellant argues that he properly relied upon Dorio's representation that CART had been notified.

In his testimony, appellant stated that he did not verify that Dorio had called CART commenting that he wasn't sure what he would verify. Other than receiving the guidelines, he has never had any training on CART. He himself did not contact the on-call detective and he wasn't sure if Dorio had. It was his assumption that all the necessary calls had been made. At no time did appellant reach out to his supervisor to determine if additional steps were required to be taken given his lack of experience in a high-risk missing child investigation. No flags went up with appellant when Dorio relayed his conversation with whom he believed to be CART. According to appellant, this was because he has never been involved in an investigation where CART had to be notified.

Ignorance is no excuse for failure to follow departmental protocol of which appellant received and signed off on. Had appellant followed the guidelines or at least looked at them, particularly since he never had to handle a high-risk missing juvenile before, he would have known what to do, how to do it, and would have been able to direct or further guide Dorio in the proper notification procedures.

Appellant was additionally charged with failing to broadcast or making sure a broadcast of a BOLO for the missing eleven-year-old child was completed on the Ewing Police Radio channel, Mercer County Crime Alert Radio Channel, phoning surrounding

agencies such as but not limited to the Trenton Police Department or the Lawrence Police Department.

It is undisputed that a BOLO was not issued in this matter or that the surrounding municipalities were not notified. In questioning Dorio, his statement was that he did not think to do one. During appellant's interview, he stated that he was unsure whether one had been issued but stated that sending out a BOLO was the responsibility of the officer. There was no guidance or follow-up by appellant on this notification, just an assumption that Dorio had sent out a BOLO in a high-risk missing-child investigation.

With the above in mind, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 3.1.1(a) of the DR&R.

Under Count 2—violation of Section 3.1.3—respondent determined that appellant violated DR&R:

Specifically:

- Failing to abide by the Ewing Police Department General Order: Handling Missing Persons.
- Failing to abide by the Ewing Police Department General Order: Handling Missing Persons, if the missing person is a child of thirteen years of age or younger, the Mercer County Prosecutor's Office Child Abduction Response Team (CART) shall be contacted in accordance with Attorney General Law Enforcement Directive No. 2008-4.
- Failing to abide by the Ewing Police Department General Order: Handling Missing Persons, as a first step, a complete search of the subject's residence should have been conducted which includes but not limited to all storage areas, cellars, attic and outbuildings.

- Failing to abide by the Ewing Police Department General Order: Handling Missing Persons by notifying the Ewing Police Criminal Investigation Bureau supervisor or the on-call Ewing Police Detective as instructed.
- Failing to abide by the Ewing Police Department General Order; Handling Missing Persons by not requesting that a K-9 come to the scene for a track of the eleven-year-old missing person.
- Failing to abide by the Ewing Police Department General Order: Handling Missing Persons by not notifying your command staff either by a phone, call, text or email or any other way, of the incident.
- Failure, by his own admission in the interview at Ewing Police Department on June 22, 2017, to wear the appropriate Body Armor Vest while in uniform, investigating the report of a missing eleven-year-old as required by the Ewing Police Department General Order: Body Armor.

Under General Order "T," Section IV(C), if a missing child is age thirteen and under, initial responders are required to refer to Attorney General Law Enforcement Directive No. 2008-4—CART.

Under this count, appellant is charged with failure to notify CART. It is undisputed that CART was not initially notified. Appellant asserts that he relied upon Dorio's representation that CART had been notified. Ordinarily, it would not be unreasonable for a supervisor to rely upon an officer's statement that a task had been completed. In this case however, it was not reasonable to rely upon Dorio's representation that CART had been contacted given Dorio's level of experience and after hearing the content of Dorio's conversation with "CART" or rather, the lack of response/assistance from the same. While appellant has never had to contact CART in his twenty-two years of service with the Department, he has received, reviewed, and signed off on both the General Order "T" and the Attorney General Law Enforcement Directive No. 2008-4 and should have realized that something was amiss.

At a minimum, even if he didn't realize that something was off, the guidelines should have been pulled and reviewed, particularly since this was his (Maglione's) first high-risk missing child investigation, so as to ensure that all protocol had been properly followed.

For the foregoing reasons and ones cited above, it is clear that Maglione failed to abide by General Order "T," Section IV(C).

Under General Order "T," Section IV(C)(1), a complete search of the residence should be conducted, including but not limited to all storage areas, cellars, attics and outbuildings.

In this case, neither appellant or Dorio, as initial responders, conducted a search of the residence—interior or exterior—nor was there a directive by appellant to Dorio to do so prior to entering the residence. It is also clear that when Dorio and Cabell went back to the residence the second time, no search of the residence, interior or exterior, was undertaken nor was there a directive by appellant to do so. As the lieutenant in charge of the shift, appellant was responsible to ensure that the residence (interior and exterior) were thoroughly searched to properly assess the situation and need for additional resources in accordance with General Order "T," which he failed to do.

For these reasons and the ones cited above, it is clear appellant failed to ensure that a thorough search of the residence was conducted in accordance with General Order "T," Section IV(C)(1).

Under General Order "T," Section IV(B)7, if a missing person is deemed a high-risk, the patrol supervisor will notify the Criminal Investigations Bureau supervisor (or "on-call detective" when after-hours).

Here, it is undisputed that neither appellant nor Dorio contacted the on-call detective. According to appellant, he assumed that Dorio made the necessary calls, including contacting the on-call detective; however, he admittedly failed to confirm that fact or question why he had not heard from the on-call detective.

For the reasons cited above, it is clear appellant, as the supervisor in charge of the investigation in a high-risk missing child, failed to contact the on-call detective as required under General Order "T," Section IV(B)7.

Under General Order "T," Section IV(C)(9) and Section IV(D), should the initial search actions fail to locate the lost subject, an early decision should be made to call in a K-9 unit. Under Section IV(D), should a K-9 unit be called in, appropriate measures are required to be put in place to secure the last place seen.

In this case, no K-9 was called in by appellant during any part of this investigation. While appellant directed Cabell to go to the residence a couple of hours after the initial call came in so that Dorio was not alone, he was not requested to go in his (Cabell's) capacity as the K-9 officer. According to appellant, while Cabell was not asked to use the K-9, he should know.

As appellant should be aware under the guidelines, K-9 officers work in two capacities—that of police officer and, when detailed, a K-9 officer. In this case, appellant gave no directive for the use of a K9, therefore, Cabell's assistance in this matter was that of a patrol officer.

For the reasons cited above, it is clear appellant failed to request the services of a K-9 initially, or thereafter, to assist in tracking J.D. in accordance with General Order "T," Section IV(C)(9) and Section IV(D).

Under General Order "T," Section IV(B)7, the patrol supervisor, in addition to notifying the on-call detective, is required to notify the command staff.

In this case, appellant testified that Muller received notification through the shift report. The shift report which is generated daily, was posted online and was posted prior to the end of Maglione's shift, almost seven hours after the initial call came in for a high-risk missing child. At the time the shift report was sent out, the child was still missing. Muller testified that he did not learn about the missing child until he received a call from Jacobs the

following morning. Maglione did not make any personal attempts to contact either Muller or Stemler regarding the missing child or progress, or lack thereof, in the investigation.

It is essential that unit supervisors and command staff be informed immediately of any critical and/or serious incidents. The report of a high-risk missing child clearly is a serious incident which should have been immediately brought to the attention of the unit supervisors and command staff. Sending out a Departmental email to the general staff that contains all incidents that occurred on the prior shift, falls far short of the type of notification which should have occurred in this instance.

For the foregoing reasons, it is clear appellant failed to notify command staff as required under General Order "T," Section IV(B)7.

Under General Order E, officers are required to wear the appropriate body armor vest while in uniform and engaged in field activities. (R-146.)

By his own admission and as seen on the footage, appellant failed to wear his body armor vest while in uniform and responding to a call regarding a missing juvenile on May 20, 2017.

For the foregoing reasons, including those previously cited above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 3.1.3 of the DR&R.

Under Count 3—Section 3.1.5—respondent determined that appellant violated the DR&R by specifically: "not organizing police officers under your command to conduct a search for an eleven-year-old missing child."

Other than having Cabel go back to the residence so that Dorio would not be alone, no additional resources were called in to assist in the search of the missing juvenile despite the fact that other officers were available. No crime scene was set up because in appellant's judgment, based upon his years of experience and the statements of the

missing juvenile's father, no crime had been committed. Despite the fact that he has never been involved in a high-risk missing child investigation, appellant did not search the residence due to time constraints. Additional resources were not called in until Holt took over the investigation and within hours the missing juvenile was located.

For the foregoing reason including those previously cited above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 3.1.5 of the DR&R.

Under Count 4—Section 3.1.10—respondent determined that appellant violated DR&R:

Specifically:

by not ensuring all work related to a missing eleven-year-old child was performed as required, such as a complete search of the home was never conducted, the proper notifications were not conducted, a BOLO was not completed, a K9 was never utilized, the investigation report by Police Officer Dorio was not thorough nor complete and yet approved by you.

It is undisputed that no search of the residence—interior or exterior— was performed by Dorio or appellant during the initial visit to the residence. Nor was there a directive by appellant to Dorio to do so. Also undisputed is the fact: that proper notifications were not sent out; a BOLO was not sent out; and the K9 was never called in.

With regard to the IR, by appellant's own admission it was deficient with material information missing. Despite this fact, and having reviewed and edited the IR multiple times, Maglione signed off.

Under General Order "R," Section II(C), a supervisor shall review all reports for spelling and grammatical errors, and to ensure that each report meets departmental standards as follows: (4) The report is complete and accurate. (R-100.) That did not happen in this instance.

For the foregoing reasons including those previously cited above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 3.1.10 of the DR&R.

Under Count 5—Section 3.2.1, respondent determined that appellant violated DR&R:

Specifically:

By not ensuring that the Ewing Police Department General Order; Handling Missing Persons was followed;

By not ensuring that the Mercer County Prosecutor's Office Child Abduction Response Team (CART) was contacted in accordance with Attorney General Law Enforcement Directive No. 2008-4, when a missing person is a child of thirteen years of age or younger;

By not ensuring as a first step, a complete search of the subject's residence should have been conducted which includes, but is not limited to, all storage areas, cellars, attic and outbuildings in accordance with the Ewing Police Department General Order: Handling a Missing Persons;

By not ensuring that the Ewing Police Criminal Investigation Bureau supervisor or the on-call Ewing Police Detective was notified as instructed in the Ewing Police Department General Order: Handling Missing Persons;

By not ensuring that a K9 was requested for a track of the eleven-year-old missing person as instructed in the Ewing Police Department General Order: Handling Missing Persons;

By not ensuring that the residence of the eleven-year-old missing child was treated as a crime scene as instructed in the Ewing Police Department General Order: Handling Missing Persons.

Appellant argues that respondent has failed to establish that he had an absolute obligation to contact the on-call detective and establish a command post and/or crime scene. This is based on the fact that the General Order uses the word "should" not "shall" in the applicable sections. I disagree.

In the DR&R policy, Section 2.7, the word "should" means "that the action indicated is expected and will be taken." Under Section 2.11 of the policy, the words shall/will as used, indicates that the action required is mandatory. Under Section 2.4 of the policy, a Directive, which includes General Orders, details the performance of a specific activity or method of operation and falls under the umbrella of the overall policy.

While the word "should" is not defined in General Order "T," the same definition as found under the DR&R is applicable. In looking at the policy as a whole, it is apparent that "should" is not a discretionary term, rather the next step in the investigative process. This is particularly evident when looking at Section IV(C) of the General Order "T," which provides a step-by-step breakdown of an initial responder's responsibilities.

For the foregoing reasons and ones cited above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 3.2.1 of the DR&R.

Under Count 6—Section 3.2.3—respondent determined that appellant violated the DR&R: "Specifically, by not ordering members of your patrol platoon to coordinate a search of an eleven-year-old missing child."

There appears to have been no follow-up or supervision by appellant in this matter. According to appellant, Dorio had enough experience between being a police officer for two years and a sheriff's officer prior to that, to know how to search a residence and handle the necessary calls and paperwork. While appellant himself, a twenty-three-year veteran had never handled a high-risk missing-child investigation or activated CART, he apparently felt that Dorio knew how.

While appellant had Dorio go back to the residence with Cabell, a more experienced officer, to speak to the brother, no other directives were given or resources pulled in. There was absolutely no follow-up by Maglione as the supervisor in charge to see what had or had not been done in the investigation and what additional resources could be utilized. It

appears that the search for a high-risk missing juvenile was not a priority and in fact, took a back seat when the auto accident occurred a couple of hours later.

For the foregoing reasons and ones cited above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 3.2.3 of the DR&R.

Under Count 7—Section 3.2.4—respondent determined that appellant violated DR&R:

Specifically, by not guiding and training Police Officer Dorio on how to contact the Mercer County Prosecutor's office Child Abduction Response Team (CART) when needed for the missing eleven-year-old child or any missing child thirteen years of age or younger.

Other than telling Dorio to contact the Prosecutor's Office, there was no other guidance provided by appellant on what CART was and how it could be contacted. Dorio testified that he did not even know that he had to contact CART until Pellegrino told him. Even then, he called the wrong agency not knowing any better. There was no guidance or follow-up by appellant.

For the foregoing reasons and ones cited above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 3.2.4 of the DR&R.

Under Count 8—Section 4.1.1—respondent determined that Maglione violated departmental rules and regulations:

Specifically:

By not conducting a missing person investigation in accordance with the Ewing Police Department General Order Title: Handling Missing Persons;

By not ensuring the Mercer County Prosecutor's Office Child Abduction Response Team (CART) was activated in accordance with Attorney General Law Enforcement Directive No. 2008-4;

By not notifying the Command Staff in accordance with Ewing Police Department Order: Notification Policy – On Call;

By not notifying the Youth and Family Services Juvenile Detective in accordance with Ewing Police Department General Order: Notification Policy on Call.

For the foregoing reasons and ones previously cited above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 4.1.1 of the Department Rules and Regulations.

Under Count 9, Section 4.1.5 and Section 4.12.6, respondent determined that appellant violated the DR&R:

Specifically:

By stating in your interview on June 22, 2017, with Ewing Police Detective Nicholas Muscente, that while you were inside the home at . . . with Police Officer Dorio, you instructed Police Officer Dorio to check the house, inside and outside of the home in an attempt to find the missing eleven-year-old child.

By stating in your interview on June 22, 2017, with Ewing Police Detective Nicholas Muscente that you left the home at . . . while Police Officer Dorio was inside speaking to the family and you stated that you searched the exterior of the home, in an attempt to find the missing eleven-year-old child while Police Officer Dorio was speaking to the family.

By stating in your interview on June 22, 2017, with Ewing Police Detective Nicholas Muscente, that when Police Officer Dorio and Police Officer Cabell came back to Ewing Police Headquarters after leaving the residence . . . they informed you that the inside and outside area revealed nothing more than the initial contact.

By stating in your interview on June 22, 2017, with Ewing Police Detective Nicholas Muscente, that you asked Police Officer

Dorio if he made the appropriate calls, which mean to you, calling the on-call detective and the Mercer County Prosecutor's Office Child Abduction Response Team (CART).

By stating in your interview on June 22, 2017, with Ewing Police Detective Nicholas Muscente, that you asked Police Officer Dorio if he checked closets, the attic, basement and stating to Police Officer Dorio that he needed to check the inside, outside and every bit of the house . . . in an attempt to find the missing eleven-year-old child.

By stating in your interview on June 22, 2017, with Ewing Police Detective Nicholas Muscente, that you instructed Police Office Cabell to return to [the residence] with Police Officer Dorio and speak to the brother of the missing eleven-year-old and to conduct a better search, inside, outside and surrounding area.

During his taped interview, the only consistent statement that appellant made was that he did not search the interior of the residence. Thereafter, his statements to Muscente repeatedly changed and once again changed at the hearing with appellant's testimony varying from his taped interview.

By way of example, during his interview, appellant initially stated that when he and Dorio were inside the residence, he told Dorio to search the interior and that he left to go outside to check the exterior. This is contrary to the footage and his testimony at the hearing.

Later in his interview, appellant stated that he could not recall if he told Dorio to search the residence the first time or the second time. A short time later in the interview, appellant stated that he specifically told Dorio to search the closets and attic when he went back on the second visit. He had Cabell go back to assist with the search both interior and exterior. Both statements were contrary to Dorio and Cabell who testified that no such requests was rmade by appellant.

Appellant also stated during the interview that he left to go back to the station after speaking with Dorio outside of the residence. During the hearing, appellant testified that when Dorio went back inside the residence to handle paperwork, he walked the block and

looked at vehicles. There was no search of the exterior of the residence or the garage. This statement is inconsistent with his interview.

At the hearing, eight months after the incident, appellant testified that prior to going into the residence and before Dorio's body camera was turned on, he told Dorio to do a thorough search of the interior and exterior of the residence. This version of events was not provided during his interview, despite being questioned repeatedly on whether he told Dorio to search the residence.

In sum, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant violated Section 4.1.5 and 4.12.6 of the DR&R.

Appellant also argues that the Department is holding him responsible for its own shortcomings. Specifically, the Department is seeking to make him a scapegoat for a deficient investigation when it fails to take into consideration the magnitude of Dorio's actions; its own shortcomings in supervisory staffing; and its failure to keep the investigative tools such as the "on-call" book up to date.

This argument is specious at best given the credible evidence presented in this matter. While Dorio's actions were relied upon by appellant to some extent, for the reasons cited above, it was appellant's own actions, or lack thereof, as an officer and supervisor, that formed the basis for the disciplinary charges levied against him. Additionally, as appellant himself testified, the fact that there was only one supervisor working on May 21, 2017, happens occasionally. It is not a Departmental shortcoming. Lastly, the argument that the "on-call" book was out of date, which led Dorio to look elsewhere, is equally without merit and misses the underlying crux of the issue which is appellant's lack of supervision over the investigation as a whole.

Appellant further argues that the charges must be dismissed under the auspices of the 45-day rule.

Prior to the commencement of the hearings, appellant filed a Motion to Dismiss most of the charges for respondent's failure to bring the disciplinary charges within the time constraints set forth under N.J.S.A. 40A:14-147. N.J.S.A. 40:A14-147 is commonly referred to as the "45-day rule."

Through this motion, appellant asserts that respondent had sufficient knowledge and/or information to bring disciplinary charges against the appellant on May 22, 2017, yet failed to file the Preliminary Notice of disciplinary Action until July 14, 2017, approximately fifty-three days after the incident in violation of the 45-day rule.

In support of this argument, appellant cites Aristizibal v. City of Atlantic City, 380 N.J. Super. 405 (Law Div. 2005), where the court held that Atlantic City violated the 45-day rule under N.J.S.A. 40A:14-147 by failing to start an investigation into alleged violations of police department rules and regulations until seventy-two days after an incident in which over 100 police officers called out sick from work as part of a labor dispute. According to the court, there was an absence of "extraordinary circumstances" that justified the appointing authority's failure to promptly begin an investigation and "the investigation did not involve a complicated matter" because "[e]ither the police officers had valid excuses for failing to report to work, or, they did not. 380 N.J. Super. at 434.

Respondent argues that the disciplinary charges brought against Maglione were within the time constraints set forth. N.J.S.A. 40A:14-147. Specifically: 1) The department requires a full investigation to confirm whether there are sufficient documents and/or proofs to substantiate that a violation of departmental rules and protocols have occurred; 2) There was a concurrent criminal investigation by the Mercer County Prosecutor's Office regarding possible criminal law violations by appellant; and 3) When respondent was preparing to serve appellant with the disciplinary action, appellant requested additional time from respondent to discuss possible settlement with his family and attorney.

N.J.S.A. 40A:14-147 states in pertinent part:

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement

unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. . .

The 45-day rule applies only to alleged violations of internal rules and regulations and not to the general causes for major discipline listed under N.J.A.C. 4A:2-2.3(a). McElwee v. Bor. of Fieldsboro, 400 N.J. Super. 388 (App. Div. 2008).

A complaint charging a violation of internal rules and regulations may be dismissed if an appointing authority unnecessarily delays an investigation or fails to file the complaint within forty-five days of obtaining sufficient information. As the former Merit System Board explained in McCormick v. Lawrence Township, CSV 6319-00, Initial Decision (September 21, 2001), rejected, MSB (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>:

N.J.S.A. 40A:14-147 is designed to protect police officers from an appointing authority unduly and prejudicially delaying the imposition of disciplinary action. However, the statute does not prohibit an appointing authority from doing a proper investigation into a matter to determine whether disciplinary charges are necessary and appropriate. The fact that such normal and necessary investigation may span a period of time, which may exceed 45 days, does not automatically call for the dismissal of such charges. Rather, for the purposes of N.J.S.A. 40A:14-147, the charges must be brought within 45 days of the "person filing the complaint" obtaining sufficient information to bring such charges. The "person filing the complaint" is generally acknowledged to be the Chief of Police. See N.J.S.A. 40A:14-118. There, the 45 days start when the Chief of Police has sufficient knowledge to bring the charges against an officer. However, the Board does not interpret this provision to allow an appointing authority to unnecessarily delay the bringing of charges by not promptly attempting to obtain sufficient information to bring charges and promptly forwarding such information to the person responsible for filing the complaint. Under such circumstances, it would be appropriate to dismiss charges against a police officer based on the 45-day

rule. Conversely, the statute is undoubtedly not designed to force an appointing authority, at the risk of being estopped, to prospectively bring ultimately valid, but unripe, disciplinary charges within 45 days of an incident without properly investigating the matter to ensure that sufficient information to bring such charges is obtained.

The instant matter is distinguishable from Aristizibal for a couple of reasons. First, the Department did not obtain "sufficient information" to bring charges until the IAD investigation was complete.

The incident occurred on May 20–21, 2017. Upon review of the IR, footage and phone logs by Stemler on May 22, 2017, he directed Muller to look further into the matter to determine why certain protocols were not followed. In so doing, a concern arose that there may be a criminal element to the matter. Thereafter the matter was formally turned over to IAD on May 31, 2017. Also on this date, the Prosecutor's Office was contacted.

Over the next couple of weeks, interviews were done by IAD, of which the Prosecutor's Office were kept apprised. Once the preliminary interviews were done, the targets of the investigation were interviewed, first Dorio and thereafter, appellant. After viewing Dorio's interview, the Prosecutor's Office made a determination not to proceed criminally however, the IAD investigation was not complete until appellant was interviewed and Dorio and Cabell were re-interviewed. This occurred on June 27, 2017, at which time the IAD investigation was complete and charges were ready to be filed.

With the above in mind, until the completion of the IAD investigation, there was insufficient information on May 22, 2017, to bring formal disciplinary charges against appellant.

Second, while appellant argues that respondent "concocted" the notion that there was a concurrent criminal investigation, laying great emphasis on the lack of written documentation and taped calls from the Prosecutor's Office, such argument is misguided.

The credible testimony presented in this matter finds that the Prosecutor's Office was notified on May 31, 2017 and thereafter, kept apprised of the progression of the IAD investigation, including the timing of the target interviews. After lengthy meetings on June 15, 2017, and June 20, 2017, which was after Dorio's interview, the Prosecutor's Office made a determination not to proceed criminally. The fact that no referral form or written communication from the Prosecutor's Office was presented at the hearing, does not negate or undermine the credible evidence presented to the contrary.

Third, the disciplinary charges were not immediately filed due to an administrative hold after good faith settlement discussions were undertaken between Maglione and respondent. Once those discussions fell through, charges were immediately brought on July 14, 2017, seventeen days after the IAD investigation was complete. Had the charges been filed on June 27, 2017, they would have been well within the 45-day rule.

For the reasons cited above, I **CONCLUDE** that there was no violation of the 45-day rule pursuant to N.J.S.A. 40A:14-147, and therefore **DENY** appellant's motion to dismiss.

The next question is the appropriate level of that discipline. 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. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. See Bock, 38 N.J. at 523-24. 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 should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See In re Herrmann, 192 N.J. 19, 33 (2007) (Division of Youth and Family Services worker snapped lighter in front of five-year-old), in which the Court stated:

. . . 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).

In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Bock, 38 N.J. at 522-24. Major discipline may include removal, disciplinary demotion, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Respondent argues that Maglione knowingly and intentionally violated all departmental protocol, placing the Township at risk, in the investigation into a high-risk missing child. Compounding the matter was the fact that Maglione lied about his actions; took no responsibility as a supervisor; and his utter lack of concern about the missing child when he left his shift without verifying that some agency was searching for the missing child.

Appellant argues that over the course of a twenty-two-year career, he has had an exemplary and unblemished record, receiving numerous awards and commendations for his meritorious service to the community.³ To terminate him would be harsh and excessive, and flies in the face of progressive discipline.

³ Reference was made during the hearing about a prior disciplinary action against the appellant. That matter is currently pending appeal under OAL Docket No. 03275-17 with no final decision having been rendered. As such, it will not be considered for purposes of this matter as it relates to consideration of progressive discipline.

There is no question that Maglione has had an exemplary record over the course of his twenty-two years in law enforcement. Unfortunately, his actions or lack thereof, if not intentional, were grossly negligent in the handling of a high-risk missing child. This was compounded by his lack of candor in his IAD interview and calls into question his fitness to be a supervising officer. Such conduct places not only the public but the Department at risk.

Accordingly, I **CONCLUDE** that removal is the appropriate discipline for the violations of DR&R Sections: 3.1.1a (Take Appropriate Action to Protect Life and Property); 3.1.3 (Abide By All Rules, Regulations and Departmental Procedures and Directives Governing Police Officer Employees); 3.1.5 (Coordinate Their Efforts With Other Employees Of The Department to Achieve Department Objectives); 3.1.10 (Perform All Related Work as Required); 3.2.1 (Enforce Department Rules and Ensure Compliance With Department Policies And Procedures); 3.2.3 (Exercise Necessary Control Over Their Subordinates To Accomplish The Objectives Of The Department); 3.2.4 (Guide And Train Subordinates To Gain Effectiveness In Performing Their Duties); 4.1.1 (Performance of Duty); 4.1.5 (Truthfulness); and 4.12.6 (Truthfulness). I further **CONCLUDE** that the disciplinary action taken by the Department be **AFFIRMED**.

ORDER

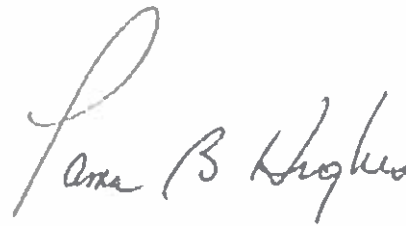
Accordingly, it is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of the Ewing Township Police Department against appellant, Joseph Maglione, is hereby **AFFIRMED**.

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.



April 3, 2018

DATE

TAMA B. HUGHES, ALJ

Date Received at Agency:

4/3/18

Date Mailed to Parties:

4/3/18

TBH/vj

APPENDIX

WITNESSES

For appellant:

Joseph Maglione

For respondent:

Nicholas Muscente
Patrick Holt
Larry Wayne Cabell
Jeff Jacobs
David Muller
William Lardieri
Paul Dorio
Michael Pellegrino

EXHIBITS

For appellant:

- P-1 Email from Prosecutor Doris Galuchie, dated January 25, 2018 (3 pages)
- P-2 Separation Agreement (2 pages)
- P-3 Commendations

For respondent:

- R-1 Investigation Report by Officer Dorio, dated May 21, 2017 (1 page)
- R-2 Missing Person Report, dated May 20, 2017 (1 page)
- R-3 Call for Service, dated May 20, 2017 (2 pages)
- R-4 Supplemental Investigation Report, dated May 30, 2017 (3 pages)

- R-5 Call for Service, dated May 21, 2017 (2 pages)
- R-6 Picture of J.D. (1 page)
- R-7 Trak Message, dated May 21, 2017 (1 page)
- R-8 Trak Message, dated May 21, 2017 (1 page)
- R-9 Ewing Police Department Facebook Alert (1 page)
- R-10 Not in Evidence
- R-11 Not in Evidence
- R-12 Administrative Investigation Report, dated July 19, 2017 (17 pages)
- R-13 General Order T-02 (12 pages)
- R-14 General Order T-02 (signature) (4 pages)
- R-15 General Order P-10 (6 pages)
- R-16 General Order P-10 (signatures) (2 pages)
- R-17 Attorney General Law Enforcement Directive No. 2009-4 (2 pages)
- R-18 Attorney General Law Enforcement Directive No. 2009-4 (signatures)
(4 pages)
- R-19 Not in Evidence
- R-20 Not in Evidence
- R-21 Dorio's filed Report History of Investigation, dated May 20, 2017 (3 pages)
- R-22 Line-Up, dated May 20, 2017 (1 page)
- R-23 Line-Up, dated May 21, 2017 (1 page)
- R-24 NJSP Missing person flyer (2 pages)
- R-25 Consent to Search residence (1 page)
- R-26 Rough sketch of residence (3 pages)
- R-27 Activity Report for Vehicle 646 from May 20, 2017 - May 21, 2017 (16 pages)
- R-28 Activity Report for all vehicles in the area of P.A. between May 20, 2017 –
May 21, 2017 (17 pages)
- R-29 Not in Evidence
- R-30 Not in Evidence
- R-31 IA Complaint Notification Form Private Messages (8 pages)
- R-32 IA Complaint Notification Form Lt. Maglione, dated June 12, 2017 (1 page)
- R-33 Use Immunity Grant Advisement from PO Dorio, dated June 15, 2017 (1 page)
- R-34 Administrative Advisement Form PO Dorio, dated June 17, 2017 (1 page)

- R-35 Administrative Advisement Form PO Dorio, dated June 27, 2017 (1 page)
- R-36 Principal Statement Form PO Dorio, dated June 17, 2017 (2 pages)
- R-37 Witness Acknowledgement Form PO Cabell, dated June 13, 2017 (1 page)
- R-38 Sworn/Employee Witness Statement Form PO Cabell, dated June 13, 2017 (2 pages)
- R-39 Witness Acknowledgement Form PO Cabell, dated June 27, 2017 (1 page)
- R-40 Witness Acknowledgement Form Det. Holt, dated June 13, 2017 (1 page)
- R-41 Sworn Employee Witness Statement Form Det. Holt, dated June 13, 2017 (2 pages)
- R-42 Witness Acknowledgement from Lt. Jacobs, dated June 13, 2017 (1 page)
- R-43 Sworn/Employee witness Statement Form Lt. Jacobs, dated June 13, 2017 (2 pages)
- R-44 Witness Acknowledgement Form Sgt. Lardieri, dated June 13, 2017 (1 page)
- R-45 Sworn/Employee Witness Statement Form Sgt. Lardieri, dated June 13, 2017 (2 pages)
- R-46 Witness Acknowledgment Form Capt. Muller, dated June 14, 2017 (1 page)
- R-47 Sworn/Employee Witness Statement Form Capt. Muller, dated June 14, 2017 (2 pages)
- R-48 Sworn Witness Statement Form Jaiqualle Blackie, dated June 14, 2017 (2 pages)
- R-49 Sworn Witness Statement Form Lorpue Suah dated, June 14, 2017 (2 pages)
- R-50 Administrative Advisement Form Lt. Maglione, dated June 22, 2017 (1 page)
- R-51 Principal Statement from Lt. Maglione, dated June 22, 2017 (2 pages)
- R-52 Ewing Police Department Rules and Regulations, dated April 14, 2015 (22 pages)
- R-53 Not in Evidence
- R-54 Not in Evidence
- R-55 Not in Evidence
- R-56 Not in Evidence
- R-57 Not in Evidence
- R-58 Not in Evidence

- R-59 Not in Evidence
- R-60 Not in Evidence
- R-61 Not in Evidence
- R-62 Memo from A/Chief Maruca to All Police Personnel regarding Lt. Joseph Maglione Suspension, dated July 14, 2017 (1 page)
- R-63 Memo from A/Chief Maruca to Lt. Maglione regarding Disciplinary Charges IAD# (17)-543, dated July 14, 2017 (8 pages)
- R-64 Preliminary Notice of Disciplinary Action (8 pages)
- R-65 Not in Evidence
- R-66 Not in Evidence
- 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 Not in Evidence
- R-73 Not in Evidence
- R-74 Not in Evidence
- R-75 Not in Evidence
- R-76 Not in Evidence
- R-77 Not in Evidence
- R-78 Not in Evidence
- R-79 Memo from Chief Stemler to Hilary Hyser, dated July 26, 2017 (6 pages)
- R-80 Not in Evidence
- R-81 Not in Evidence
- R-82 Not in Evidence
- R-83 Not in Evidence
- R-84 Not in Evidence
- R-85 Not in Evidence
- R-86 1 DVD – containing phone conversations
- R-87 1 DVD – PO Dorio's body camerage footage

- R-88 1 DVD – taped interviews (Maglione; Dorio; Muller; Jacobos; Lardieri; Holt; Cabell; J.B. and L.S.)
- R-89 1 DVD – Photos of J.D.'s residence
- R-90 Not in Evidence
- R-91 Not in Evidence
- R-92 Not in Evidence
- R-93 Not in Evidence
- R-94 Not in Evidence
- R-95 Not in Evidence
- R-96 PO Dorio Oath of Office (2 pages)
- R-97 Not in Evidence
- R-98 Not in Evidence
- R-99 General Order A-1 – Written Directive System Revision, dated November 16, 2016, with signature pages (11 pages)
- R-100 General Order R-2 Report Procedures – Revision date May 22, 2015, with signature pages (31 pages)
- R-101 Not in Evidence
- R-102 Not in Evidence
- R-103 Not in Evidence
- R-104 Not in Evidence
- R-105 Not in Evidence
- R-106 Not in Evidence
- R-107 Not in Evidence
- R-108 Not in Evidence
- R-109 Not in Evidence
- R-110 Not in Evidence
- R-111 Not in Evidence
- R-112 Not in Evidence
- R-113 Not in Evidence
- R-114 NJ Civil Service Commission State of New Jersey Job Description Lieutenant (3 pages)

- R-115 NJ Civil Service Commission State of New Jersey Job Description Police Officer (8 pages)
- R-116 Not in Evidence
- R-117 Not in Evidence
- R-118 Not in Evidence
- R-119 Not in Evidence
- R-120 General Order P-27 Body Camera Worn Cameras (22 pages)
- R-121 General Order P-27 Body Warn Cameras signature page (1 page)
- R-122 Not in Evidence
- R-123 Not in Evidence
- R-124 General Order O-1 Office of Professional Review and Disciplinary Procedure (16 pages)
- R-125 General Order O-1 Office of Professional Review and Disciplinary Procedures Signature page (1 page)
- R-126 Not in Evidence
- R-127 Ewing Police Department Rules and Regulations promulgated April 14, 2015, (22 pages)
- R-128 Attorney General's Internal Affairs Policy and Procedures Revised July 2014, (114 pages)
- R-129 Not in Evidence
- R-130 General Order T-02 Handling of Missing Persons Revision Date May 2, 2014, (12 pages)
- R-131 General Order T-02 Handling of Missing Persons signature page (4 pages)
- R-132 General Order P-10 Notification Policy – on call (6 pages)
- R-133 General Order P-10 Notification Policy signature report (2 pages)
- R-134 Attorney General Law Enforcement Directive 2008-4 Child Abduction Response Team with signature report (6 pages)
- R-135 Calls for Service (4 pages)
- R-136 Detailed Calls for Service (8 pages)
- R-137 IA Pro System – Agency Complaint Entry Log for Case NO. (17) IA-543 (1 page)
- R-138 Not in Evidence

R-139 Not in Evidence

R-140 Google Calendar Entry, dated July 7, 2017, (1 page)

R-141 Captain Maruca's Personal Cell Phone Log (3 pages)

R-142 First Assistant Prosecutor Doris Galuchie's Cell Phone Log (4 pages)

R-143 Lt. Colanduoni's Cell Phone Log (1 page)

R-144 Maglione's Vacation Schedule May and June 2017 (2 pages)

R-145 Holt Log (5 pages)

R-146 Final Notice of Disciplinary Action (8 pages)

R-147 General Order E – Body Armor