



## STATE OF NEW JERSEY

In the Matter of Kevin O'Connor,  
Union County, Sheriff's Office

CSC DKT. NO. 2020-1522  
OAL DKT. NO. CSR 17768-19

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: FEBRUARY 2, 2022

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The appeal of Kevin O'Connor, Sheriff's Officer, Union County, Sheriff's Office, removal effective May 17, 2018, on charges, was heard by Administrative Law Judge Julio C. Morejon (ALJ), who rendered his initial decision on December 30, 2021. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of February 2, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Kevin O'Connor.

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 2<sup>ND</sup> DAY OF FEBRUARY, 2022

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 17768-19

AGENCY DKT. NO. N/A

2020-1522

**IN THE MATTER OF KEVIN O'CONNOR,  
UNION COUNTY SHERIFF'S OFFICE  
APPOINTING AUTHORITY.**

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**Frank C. Cioffi, Esq.** (Sciarra & Catrambone, LLC, attorneys) <sup>1</sup> for Appellant

**Dominic P. DiYanni, Esq.** (Eric M. Bernstein & Associates, LLC, attorneys) for  
Respondent

Record Closed: November 1, 2021

Decided: December 30, 2021

**BEFORE JULIO C. MOREJON, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Kevin O'Connor (O'Connor), was employed as a Sheriff's Officer with the Union County Sheriff's Office (Sheriff's Office). O'Connor appeals the Sheriff's Office decision contained in a Final Notice of Disciplinary Action (FDNA) dated November 13, 2019, terminating O'Connor, effective May 17, 2018, for failing a drug test.

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<sup>1</sup> Appellant was originally represented by Joshua Nahum, Esq., of the Law Offices of Alan L. Zegas, who was substituted out of this matter on October 5, 2020.

## PROCEDURAL HISTORY

On May 7, 2018, the Sheriff's Office served O'Connor with a Preliminary Notice of Disciplinary Action ("PNDA"). (Exhibit J-1), that charged O'Connor with violations of the following:

1. N.J.A.C. 4A: 2-2.S(a)1 (Immediate suspension without pay).
2. N.J.A.C. 4A:2-2.3(a):
  - (1) Incompetency, inefficiency, or failure to perform duties;
  - (3) Inability to perform duties;
  - (6) Conduct unbecoming a public employee; and,
  - (12) Other sufficient cause.
3. Violation of the New Jersey Attorney General's Law Enforcement Drug Testing Policy, Revised April 2018, Section VII, Consequences of a Positive Test Result, Subsection C, Immediate Suspension, Administrative Charging and Termination (Attorney General's Drug Policy)
4. Violation of the Union County Sheriff's Office Duty Manual, Volume I, Chapter 2, Section J1C, Conduct Unbecoming an Officer - Use of Prohibited Controlled Dangerous Substance. (Sheriff's Office Regulations-Conduct Unbecoming-Use CDS).
5. Violation of the Union County Sheriff's Office Duty Manual, Volume I, Chapter 23, Drug Screening, Section L2, Consequences of a Positive Test Result, Immediate Suspension, Administrative Charging and Termination. (Sheriff's Office Regulations-Positive Result).
6. Violation of the Union County Sheriff's Office Duty Manual, Volume I, Chapter 2, Section Bld, Courtesy (Sheriff's Office Regulations-Courtesy).

The specifications of the PNDA were as follows:

- 1) At all relevant times hereto, the County of Union Sheriff's Office (herein after referred to as the "County" or "Office") has employed you in the position of Sheriff's Officer.
- 2) On Tuesday, March 6, 2018, at approximately 06:00 P.M., while attending the 2018 PBA Convention in Atlantic City, New Jersey, you were in the

Elizabeth Police Department "Hospitality Room" in the Tropicana Hotel. When Police Officer Melissa Esteves of the Springfield Police Department entered the room, you confronted her about a recent occasion on which she had effected a motor vehicle stop of your brother by saying, "So, you're the bitch." Such conduct is unbecoming a member of this Office, especially to another law enforcement officer and the language is clearly inappropriate.

- 3) On Thursday March 8, 2018, at approximately 04:30 A.M. while still attending the PBA Convention in Atlantic City, you were in a public area on the lower level of the Tropicana Hotel. When Police Officer Esteves and Police Officer Brian Trotman, also of the Springfield Police Department, entered the area, a conversation ensued amongst the three of you as you walked. During that conversation, you began to approach Police Officer Esteves in a hostile manner while making derogatory remarks such as "You ain't no fucking cop," "You ain't shit" and "How many guns you take off the street?" When Police Officer Trotman interposed himself between you and Police Officer Esteves, you continued to press forward toward Police Officer Esteves and shoved Police Officer Trotman. This continued from the lower level of the hotel, up a staircase and onto a landing until security personnel arrived and took control of the situation. During the confrontation, you stated to Police Officer Trotman: "Nigger, I'm going to fuck you up." Again, your behavior, demeanor, language and actions are contrary to being a member of this Office.
- 4) On April 4, 2018, you provided a sample of your urine to the Union County Sheriff's Office for analysis. On May 10, 2018, the Union County Sheriff's Office received the results your urine analysis showing that your urine was positive for Nandrolone, a Schedule III Controlled Dangerous Substance. Such results are clearly contrary to and violative of the Attorney General's Law Enforcement Drug Testing Policy. Id.

On November 13, 2019, the Sheriff's Office issued a FNDA, sustaining all of the PNDA charges and terminating O'Connor, effective May 17, 2018. (J-2).

Thereafter, pursuant to N.J.S.A. 40A:14-202(d), on December 11, 2019, O'Connor filed an appeal with the Civil Service Commission, contesting the substantiated charges and termination contained in the FNDA issued by the Sheriff's Office. The matter was then transmitted to the Office of Administrative Law (OAL) as a contested case on December 16, 2019, N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Prehearing telephone conferences were held in this matter on January 13, 2020, January 23, 2020, February 6, 2020, February 18, 2020, and April 15, 2020.

On February 6, 2020, hearing dates were originally scheduled for March 2, 2020, March 4, 2020, March 5, 2020, and March 6, 2020.

On February 12, 2020, counsel for the Sheriff's Office submitted correspondence to the undersigned addressing O'Connor's failure to provide them with an expert's report contesting the Sheriff's Office drug testing procedure and requesting an adjournment of the hearing dates scheduled for March 2020, as a result of the same. A telephone conference was then scheduled for February 18, 2020.

Following the telephone conference on February 18, 2020, a prehearing order, was issued, which among other things, established a March 20, 2020, date by which O'Connor was to submit his expert report to the Sheriff's Office; and allowing the Sheriff's Office to file a motion in the event the expert report was not provided. In addition, the March hearing dates were adjourned to June 17, 2020, June 19, 2020, and June 23, 2020.

On April 9, 2020, the Sheriff's Office filed a Notice of Motion to Bar Plaintiff/Appellant's Expert Report, as O'Connor had not provided the same by March 20, 2020. On April 15, 2020, a telephone conference was held concerning the issues raised in the Sheriff's Office motion to bar the expert report. Following the said telephone conference, O'Connor was instructed to submit the expert's report by May 1, 2020, or in the alternative, to file his opposition to the Sheriff's Office motion. On May 1, 2020, O'Connor did not provide the Sheriff's Office with the expert report, and he then filed his opposition to the motion. On May 8, 2020, the Sheriff's Office submitted its sur-reply. Oral argument was scheduled and held on May 11, 2020.

On May 13, 2020, an Order was entered allowing O'Connor until May 20, 2020, to provide the Sheriff's Office with an expert report contesting the drug test result. The Order further provided that if O'Connor did not submit the expert's report to the Sheriff's Office by May 20, 2020, he would be barred from doing so in the hearing. On May 20, 2020, O'Connor did not provide the Sheriff's Office with the drug expert report, and he was therefore barred from introducing any expert report to contest the Sheriff's Office charges concerning his failing the drug test.

Prior to the June 17, 2020, hearing, counsel for O'Connor informed the undersigned that the matter had settled, and a stipulation of settlement would be provided in due time. The hearing dates for June 2020, were adjourned. No further communication was received from O'Connor until October 2020.

On October 7, 2020, a Substitution of Attorney was submitted removing the Law Offices of Alan Zegas as attorneys for O'Connor and substituting current counsel. Telephone conferences were then held on October 13, 2020, and October 26, 2020, at which time, substituted counsel for O'Connor requested additional time to obtain the case file and prepare for a hearing.

On October 26, 2020, hearing dates were scheduled for February 11, 2021, February 12, 2021, and February 18, 2021.

On February 5, 2021, O'Connor filed a Notice of Motion *In Limine*, seeking to 1) deny the Sheriff's Office request for an adjournment of the hearing due to the unavailability of its expert witness, and 2) that if an expert from the outside lab utilized by the Sheriff's Office was unavailable to testify, the Sheriff's Office lab report be excluded from evidence, as well as any testimony regarding the same. On February 9, 2021, the Sheriff's Office filed its opposition.

Oral argument was conducted on February 11, 2021, at which time the undersigned reserved ruling on O'Connor's *In Limine* motion, inasmuch as the Sheriff's Office had not requested an adjournment as contemplated by O'Connor.

Hearings were rescheduled and held on February 18, 2021, February 19, 2021, February 24, 2021, and March 8, 2021. A post-hearing conference was held on June 15, 2021, wherein the parties were instructed that written summations would be due by August 9, 2021. A second post-telephone conference was held on June 24, 2021, wherein it was agreed that between the filing of O'Connor's appeal with the OAL on December 19, 2019 and the final hearing on March 8, 2021, sixty-eight (68) days would be counted toward the one-hundred eighty (180) days under N.J.A.C. 4A:2-2.13, N.J.A.C.

4A:2-2.10, and N.J.S.A. 40A:14-201b(1)). The parties were notified that the time between March 9, 2021 and August 9, 2021, would be tolled under N.J.S.A. 40A:14-201b(4), to allow for the filing of written submissions (O'Connor's written summation was filed with the OAL on August 10, 2021).

Written summations were filed by August 10, 2021. The record closed November 1, 2021, upon submission of hearing transcripts.

### **ISSUES PRESENTED**

Should the disciplinary charges outlined below against O'Connor be upheld and if so, is removal the appropriate penalty.

While the underlying charges resulting in O'Connor's termination are formed in his alleged misconduct while attending a PBA Mini-Convention in Atlantic City in March 2018, the crux of the case involves a determination if it was appropriate for the Sheriff's Office to order O'Connor to submit to a "reasonable suspicion" drug test that returned a positive result for a substance identified as 19-Norandrolone, a prohibited anabolic steroid, and regardless of the same, if the drug test result be set aside because the Sheriff's Office failed to establish a proper chain-of-custody.

### **FACTUAL DISCUSSION AND FINDINGS**

#### **Undisputed Facts**

Since 2015, O'Connor has served as a sheriff's officer with the Sheriff's Office. Sometime in 2016 he was assigned to work with the Community Policing Street Crimes Unit, a task force between the Sheriff's Office and the City of Elizabeth Police Department. Between O'Connor's start with the Sheriff's Office in 2015 and the filing of the PNDA in May 2018, his personnel file contained a "supervisory referral" related to his conduct (J-3).



Specifically, on October 17, 2017, the Sheriff's Office complained of O'Connor as follows: "During the last 3 to 4 months, O'Connor's attitude and coworker interactions have significantly declined. O'Connor has a habit of talking down to both Union County Sheriff/Elizabeth Police personnel and is often dismissive." (Id.). As part of his supervisory referral, O'Connor was the subject of thirty, sixty and ninety-day reviews of his behavior (J4, J-5 and J-6), which resulted in O'Connor "successfully completed" his reviews and no disciplinary charges were sought.

On March 6, 2018, at approximately 6:00 P.M., while attending the 2018 Police Benevolent association Mini-Convention in Atlantic City, New Jersey, (PBA Convention) O'Connor was in the Elizabeth Police Department "Hospitality Room" in the Tropicana Hotel, when Sergeant Melissa Esteves (Esteves) and Officer Brian Trotman (Trotman) of the Springfield Police Department entered the room. O'Connor had some words with Esteves regarding a recent occasion on which she had conducted a motor vehicle stop of O'Connor's brother.

On March 8, 2018, at approximately 4:30 A.M. while still attending the PBA Convention, O'Connor was in a public area on the lower level of the Tropicana Hotel, when Esteves and Trotman arrived. A conversation ensued amongst the three that was seen on the hotel security video (J-20), which showed O'Connor approaching Esteves. The video also shows Trotman interjecting himself between O'Connor and Esteves, while O'Connor continues to walk forward toward Esteves and also shows O'Connor pushing or shoving Trotman. The three officers continued talking from the lower level of the hotel, up a staircase and onto a landing until hotel security personnel arrived and separated the three.

On March 9, 2018, following the two incidents at the PBA Convention, O'Connor self-reported the same to his supervising officer, Sergeant Sean Perez (Perez) (J-7).<sup>2</sup> Perez then reported the incident to Lieutenant Carlo Caparruva (Caparruva). Id. Caparruva then reported the incident to Undersheriff Dennis Burke (Burke). Id. On March

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<sup>2</sup> Esteves and Trotman also reported the two incidents to the Springfield Police Chief John Cook (Cook) (J-8 and J-10).

15, 2018, an Internal Affairs Complaint Notification was commenced by Detective Charles Mancuso (Mancuso) (R-4).<sup>3</sup>

On March 15, 2018, Burke issued a memorandum to Sheriff Peter Corvelli (Corvelli) and Undersheriff Joseph Cryan (Cryan). (J-12). As part of the memorandum, Burke confirmed that O'Connor self-reported the incidents that occurred at the PBA Convention. Id. Burke also provided additional details of the incident that he received from the Springfield Police Department's Chief of Police, John Cook (Cook). Id. In reviewing the details of this incident, Burke recommended that O'Connor be referred to the County's Employee Assistance Program ("EAP") for an alcohol screening. Id.

Following through on Burke's recommendation, on March 22, 2018, the Sheriff's Office ordered O'Connor to attend an alcohol screening at a facility called High Focus (J-12). On March 23, 2018, O'Connor provided a urine sample while at High Focus, which came back negative for alcohol abuse and drug usage (R-1).

Following the order to report to High Focus, O'Connor contacted Caparruva, and told Caparruva that he was "worried" about the screening because of the over-the-counter supplements O'Connor was using as part of his workout regimen. On March 23, 2018, Caparruva reported this conversation with O'Connor to both Corvelli and Burke. (Id.) Upon receipt of the Caparruva memorandum (J-11), Burke recommended to Corvelli that O'Connor have his testosterone levels examined as well. (J-13).

According to a Report of Investigation and Findings of Lieutenant Gaetano Bracciale (Bracciale) (Report) (R-3), Corvelli ordered O'Connor to submit to a reasonable suspicion drug test. The Report states that Corvelli ordered the reasonable suspicion test based on (1) urinalysis results from High Focus, (2) the memorandums submitted by supervisors, (3) supervisory referral forms, (4) the PBA Convention allegations, and (5) previous incidents/investigations." (Id.)

On April 4, 2018, as part of the reasonable suspicion drug test, O'Connor provided a urine sample. The test was administered by Bracciale and another detective from the Sheriff's Office division of internal affairs (R-3).

On April 30, 2018, the Toxicology Report of O'Connor's urine analysis showed his urine tested "positive" for Nandrolone (R-5), a Schedule III Controlled Dangerous Substance, which is contrary to and in violation of the Attorney General's Law Enforcement Drug Testing Policy dated May 21, 2012 (J-14). The reasonable suspicion drug test was not performed at the New Jersey State Toxicology Laboratory but was performed at Aegis Laboratory.

Thereafter, on May 7, 2018, the Sheriff's Office issued the PNDA charging O'Connor with violating certain state and departmental regulations resulting from his conduct at the PBA Convention and the positive drug test for steroids as part of the reasonable suspicion drug test and recommending his termination. On November 13, 2019, the Sheriff's Office issued the FNDA confirming the charges and O'Connor was terminated as a Union County Sheriff's Officer.

### **Summary of Testimony**

At the hearing, the Sheriff's Office presented testimony from the following witnesses: Sergeant Sean Perez, Officer Brian Trotman, Sergeant Melissa Esteves, Lieutenant Carlo Caparruva, Undersheriff Dennis Burke, Lieutenant Gaetano Bracciale, Sorin Diacomescu, Lora McCord, and Dr. Andrew Falzon, M.D.

O'Connor testified and called the following witnesses to testify: Detective Charles Mancuso, (Retired), Lieutenant Gaetano Bracciale, and Lieutenant Carlo Caparruva

Below is a brief description of the testimony provided.

**Sergeant Sean Perez**

Sergeant Sean Perez (Perez), testified on February 18, 2021. Perez testified that he's been employed by the Sheriff's Office since approximately December 2006, and he has served in the title of Sergeant since approximately January 2016. Perez's job duties and responsibilities included being a first level supervisor for Sheriff's Officers assigned to his shift. He is responsible for scheduling and time off for those officers under him. Perez testified that he reports to Lieutenant Caparruva.

Perez testified that in 2017 and 2018, he was responsible for supervising four or five officers per shift, which included O'Connor. Perez stated that he had been supervising O'Connor since January of 2016 up until the time in which O'Connor was placed on administrative duty sometime in March 2018.

Perez testified that he interacted with O'Connor "at least fifty (50%) percent of the time" when O'Connor was on duty, until November or December 2017, when he was O'Connor's sole supervisor, and then he interacted with O'Connor's one hundred (100%) percent. Perez testified that he noted a change in O'Connor's attitude and demeanor during the second half of 2017 and the beginning of 2018. Specifically, Perez testified that he believed it was late summer 2017 that O'Connor seemed to be having a more difficult time getting along with his peers at the Sheriff's Office, as well as the individuals he had worked with in conjunction at the Elizabeth Police Department.

Perez recalled that during the late summer 2017, O'Connor began putting other officers down and demeaning them in their work, while bragging about how much more he knew. When asked how Perez became aware of O'Connor's negative conduct, he testified that he had personally observed this O'Connor's change in attitude on multiple occasions.

Perez then testified that it is part of his job duties and responsibilities as a direct supervisor to issue supervisory referrals to Sheriff's Officers. Perez explained that the supervisory referral could be used as a training tool in some instances. In addition to the

form being utilized as a training tool, Perez testified that the referral could also be used for the correction of attitude and, demeanor, as well as for citations and commendations.

Perez then testified as to a supervisory referral form dated October 17, 2017 (J-3). Regarding his personal observations of O'Connor treating his coworkers "poorly". Perez testified that he had to address O'Connor at "least four if not five times prior" to him having to draft the supervisory referral. Perez testified that when he personally observed O'Connor's attitude and demeanor toward fellow officers, he would use the opportunity to bring it up to O'Connor and discuss it with him. Perez stated that in response to the same, O'Connor would "self-correct for a limited period of time", for example, one or two days and then "revert" to his previous attitude/demeanor.

Perez testified that his ultimate conclusions and/or recommendations regarding the October 17, 2017 referral, were that if O'Connor's behavior and attitude toward his coworkers did not change, Perez would recommend O'Connor's removal from the task force unit with the Elizabeth Police Department. Perez stated that O'Connor would also be under close monitoring for the next three months at thirty-, sixty- and ninety-day intervals.

Perez stated that after completing the supervisory referral he goes over the referral directly with the officer in question and the officer signs and acknowledges receipt of the same. Perez testified that in this case he did go over the October 17, 2017 referral with O'Connor, and a copy was provided to him.

Perez then testified as to another supervisory referral form, dated November 17, 2017 (J-4). The November 17, 2017, supervisory referral form was the thirty-day review period which was referenced in the October 17, 2017, referral form. Perez stated that within the first thirty-day review period, O'Connor had done what he was asked to do, and he was working in a more professional manner and treating his peers the way they should be treated. However, Perez testified that there was one minor incident when O'Connor was argumentative with his coworkers, O'Connor was able to address and correct.

Perez stated that O'Connor was still subject to a sixty and ninety-day review under the October 17, 2017 referral (J-5 and J-6). Perez testified that the sixty-day review dated December 19, 2017, (J-5) and the ninety-day review, dated January 20, 2017, (J-6) were fine as O'Connor's attitude and behavior toward his co-workers remained "positive".

Perez testified regarding the March 6, 2018, incident at the PBA convention in Atlantic City ("PBA incident"). He recalled that on March 9, 2018, he overheard O'Connor discussing with other officers that he had had an argument with Springfield Police officers during the PBA Atlantic City convention and that alcohol was involved. Perez further testified that after roll call on that day that he had pulled O'Connor and asked him what happened, and that O'Connor told him he had had a verbal argument with Springfield Police officers while he was at the convention on March 6, 2018.

Perez stated that on March 12, 2018, he informed Lieutenant Carlo Caparruva (Caparruva) concerning O'Connor's statement to him regarding the PBA incident and that Caparruva wrote a memorandum to Undersheriff Dennis Burke (Burke) (J-7) regarding the same. As to why he had informed Caparruva, Perez testified that he felt he needed to report what he had overheard to the Lieutenant because O'Connor's self-reported incident at the PBA convention was in contrast to his successful completion of his review on January 2017 (J-6), and that he was concerned that the PBA convention is a statewide event, and O'Connor was appearing there as a representative of the Sheriff's Office and the Sheriff.

I **FIND** the testimony of Perez concerning O'Connor's prior conduct and successful completion of review as documented in the departmental referrals to be truthful, and I therefore **FIND** the same to be **FACT** herein. I also **FIND** Perez's testimony regarding O'Connor reporting the incident at the PBA Convention as truthful and I therefore **FIND** the same as **FACT** herein.

### **Officer Brian Trotman**

Officer Brian Trotman (Trotman) is employed by the Springfield Township Police Department. Trotman testified that he has been employed with the Springfield Police

Department since June 2011. Trotman stated that he was a State delegate to the PBA in calendar year 2018. Officer Trotman testified that, as a State delegate to the PBA, he would attend the annual convention and the mini convention, which is held separately.

Trotman testified regarding the two incidents at the PBA involving O'Connor that form the basis for his termination. Trotman stated that his first interaction with O'Connor at the March 2018 PBA convention occurred in a hospitality suite located in the Tropicana Hotel, which had been set up for members of the Elizabeth Police Department. Trotman stated that he and Sergeant Melissa Esteves (Esteves), also of the Springfield Police Department, walked into the hospitality suite around 7:00 P.M. Trotman testified that he and Esteves had been invited to the hospitality suit by an Elizabeth Police PBA delegate.

Trotman testified as soon as he and Esteves entered the hospitality suite, he recalls O'Connor coming over to them and said to Esteves "there's the bitch there". Trotman then testified that, upon hearing that comment, he asked O'Connor why he had made the statement. Trotman testified that O'Connor begin discussing an issue he had with Esteves conducting a motor vehicle stop of O'Connor's brother at some point months prior to the convention. Trotman stated that O'Connor seemed very annoyed and upset about the motor vehicle stop, and Trotman recalls attempting to calm down the situation.

Trotman testified that this discussion with O'Connor lasted approximately twenty-minutes, and that O'Connor kept talking about Esteves' motor vehicle stop of his brother, Trotman again attempted to diffuse the situation. Trotman testified that, during this initial interaction, O'Connor was becoming very loud in expressing his dissatisfaction to Esteves, and he appeared to be annoyed and combative when speaking with him and Esteves.

Trotman also noted that O'Connor was drinking in the hospitality suite during this initial interaction, and that he and not consumed any alcohol during the time he interacted with O'Connor.

Next, Officer Trotman testified as to the second interaction he had with O'Connor at the PBA convention in Atlantic City in March 2018. He testified that the second

interaction took place in the Tropicana Hotel at approximately 4:00 A.M. in the morning. Trotman stated that he and Esteves had just returned to the Tropicana Hotel and were heading to their respective rooms, when they both saw O'Connor standing outside a Starbucks. Trotman testified that Esteves made a comment to O'Connor calling him "red pants", a reference to the red pants O'Connor was wearing.

Trotman testified that O'Connor apparently did not take too kindly to the comment and began following the two of them as they walked toward the escalator to get to their respective rooms. Trotman testified that O'Connor began making remarks to Esteves, again calling her a bitch and told her that she was not a "real cop" because she doesn't "take guns off the streets" like he had done. Trotman further testified that O'Connor continued to follow them, making similar remarks to Esteves to the comments he had made earlier that evening in the hospitality suite.

Trotman stated that as they were approaching the escalators, O'Connor positioned himself in front of Trotman and Esteves, impeding their ability to utilize the escalators. Trotman then stated that he and Esteves continued on towards the stairs to utilize them instead of the escalators. Trotman stated that when walking toward the stairs, O'Connor continued his inappropriate language directed at Esteves, calling her more names. Trotman then stated that during that verbal exchange that O'Connor called him a "nigger", which Trotman did not appreciate.

Trotman stated that while going up the stairs that he continued to try to talk to O'Connor advising him that it was not worth it for him to continue his behavior and that the parties should simply go back to their rooms. According to Trotman's testimony, O'Connor continued to try to get in Esteves' face, and attempting to "pick a fight". Trotman stated that he had to get in between O'Connor and Esteves, at which time Trotman stated that O'Connor pushed him, and he pushed him back. Trotman testified that there was a bit of a struggle with O'Connor, with both "locking arms". Trotman testified that Esteves then got in between the two of them to calm things down.

Trotman stated that during the entire time of the altercation with O'Connor, he was speaking to O'Connor attempting to calm him down and advising him that everything was



being recorded on camera and that he should just take it easy and get back to his room as the verbal argument was over "nothing". Trotman stated further that O'Connor was not listening to him and only calmed down when hotel security arrived, but only after O'Connor knocked over a "velvet red rope stand".

Trotman testified that he saw Esteves walking back up the stairs in front of them and that Trotman walked with O'Connor again asking him to stop with his behavior and that it was not worth losing his job over what was occurring. Next, Trotman testified that he and Esteves made it to the elevators at the top of the stairs and entered the elevator to get to their rooms. Trotman testified that O'Connor entered the same elevator with them, and they all rode up together. Trotman stated that nothing occurred during that elevator ride but that he did continue talking to O'Connor to calm down and not continue his behavior.

Trotman testified that they all exited the elevator when it reached Trotman and Esteves' floor, although O'Connor was staying on another floor. Trotman testified further that security also exited on their floor and escorted O'Connor away from them to his room.

Trotman characterized O'Connor's demeanor during the 4:00 A.M. incident as "very aggressive". He stated that it appeared O'Connor was trying to get to Esteves to "pick a fight". Trotman described Esteves as a "small female" in stature and O'Connor as very "fit and muscular individual". Trotman also described O'Connor as appearing to be "intoxicated" when he was communicating to him and Esteves.

Trotman testified that after the PBA convention and his return to work, he was told to write an e-mail to Police Chief John Cook (Cook) to document what had occurred with O'Connor during the PBA convention in Atlantic City. Trotman testified that the Springfield Police Department was already aware of the events that had occurred at the Tropicana Hotel between O'Connor and Trotman and Esteves prior to his writing the e-mail. Trotman then testified concerning his e-mail to Cook on March 12, 2018 (J-8), and the same is consistent with the sworn testimony provided during these proceedings.

Trotman also testified that he subsequently gave a video recorded statement to the Union County Sheriff's Office Internal Affairs ("IA") Department as part of the Sheriff's Office internal affairs investigation. Officer Trotman testified that the events he testified to were the same statements/testimony that he had provided to the Union County Sheriff's Office during the video recorded IA investigation interview.

Finally, Trotman was shown the video from part of the incident which occurred in the early morning hours at the Tropicana (J-20). Trotman testified as to the contents of the subject video, which corroborated his sworn testimony in these proceedings.

Upon cross examination, Trotman was asked why he did not report these incidents/interactions with O'Connor immediately to his police department to which Officer Trotman testified that upon his leaving the following day he had already been advised that same had been reported to his Police Department. Trotman also testified during cross examination that he was unaware of a Tropicana Hotel Daily Log Report (J-9), which was presented to him for review. Upon review, Trotman testified that the contents contained in the synopsis was not a result of any statements or answers to questions posed to him that evening by any of the security guards. Trotman maintained his testimony on direct that O'Connor was able to get on the elevator with he and Esteves without any of the security guards who were referenced in the Daily Log Report.

When asked by the undersigned, Trotman confirmed that his testimony describing both interactions with O'Connor at the PBA convention was consistent with his e-mail of March 12, 2018, to Chief Cook (J-8); his recorded statement to IA, and any communication with Tropicana Hotel security

### **Sergeant Melissa Esteves**

Sergeant Melissa Esteves (Esteves) testified that she has been employed by the Springfield Township Police Department for twelve-years, and as a Sergeant the past two years. Esteves was a patrol officer when she attended the PBA Convention in Atlantic City in March 2018. Esteves stated that she was serving as the PBA president for the Springfield Police Department when she attended the convention.

Esteves testified that she was familiar with O'Connor and had met him once prior to the PBA convention in March 2018, when she had a brief conversation with O'Connor while he was working a "side job" at the Shoprite in Springfield Township.

Esteves then testified as to her two interactions with O'Connor at the PBA convention in March 2018. Esteves testified that she had just arrived in Atlantic City for the convention and that the Springfield Police hospitality suite was the first place she went along with Trotman. Esteves testified that as soon as she walked into the hospitality suit, O'Connor stood up and said, "oh, so you're the bitch". Esteves testified that when O'Connor made that statement, she knew that he must be the brother of the individual she had previously pulled over on a motor vehicle stop.

Esteves also testified in response to my questions, that she felt "embarrassed" when O'Connor called her the expletive in front of other people.

Esteves testified that in her remaining time in the hospitality room, she and O'Connor had a cordial conversation, and that she left the hospitality room on cordial terms with O'Connor. Esteves also testified that she did not feel that O'Connor had an aggressive demeanor towards her after their initial interaction.

Esteves then testified regarding her second interaction with O'Connor at the Tropicana Hotel, which occurred at approximately 4:30 A.M. on March 8, 2018. Esteves testified that she and Trotman had just returned to the Tropicana Hotel and were walking to find some food when she saw O'Connor leaning up against a pillar, swaying back and forth, and that she noticed he was wearing red pants. Esteves testified that when she passed by O'Connor, she said "hey, red pants", and that O'Connor began to follow them. Esteves recalled that O'Connor was walking with the two of them, but after some time he was speaking in a loud voice and appeared angry. Esteves testified that she did not understand why, but O'Connor became very aggressive and angry towards her, and that Trotman then tried to diffuse the situation and put himself in between her and O'Connor. Esteves testified that O'Connor had Trotman pinned against a wall and that she had to climb on his back and hold his hands to get him away from Trotman.

Esteves testified that O'Connor said she was not a "real fucking cop" and that she "didn't get guns off the street" and that she does not know his history. Esteves stated further that O'Connor continued to get angry, getting in her face, "puffing his chest out." Esteves stated that Trotman tried to stay in the middle and was trying to diffuse the situation and speak to O'Connor. Esteves testified that a security guard ultimately came down to them and advised them that they were being watched and that a bunch of security guards were coming down to speak to them. Esteves testified that she told Trotman to leave, but O'Connor kept trying to get to Esteves and Trotman continued to place himself physically in the middle so that would not happen. Esteves testified that O'Connor and Trotman pushed each other, and she recalled O'Connor using the "N" word toward Trotman, and that he was going to "fuck him up".

Esteves testified that she and Trotman decided to leave for their respective room, but that as they were walking toward the elevator, another pushing match ensued between O'Connor and Trotman. Estevez said she tried to push O'Connor away, but she was not able, as he is much larger than her and very "fit and muscular".

Esteves also stated that both O'Connor and Trotman then were talking, but nothing was calming down O'Connor, so she began to walk up the remaining stairs to the elevator to her room. Esteves testified that when she realized Trotman was not with her, she walked down the stairs and found O'Connor and Trotman at the top level of the stairs with a row of security guards in between them. Estevez stated that O'Connor was still acting irate and screaming. Esteves testified that the security guards allowed her and Trotman to leave to their rooms.

Estevez stated that she and Trotman got into an elevator to go up to their rooms and O'Connor got in as well, and that nothing occurred while they were in the elevator. Estevez recalled that when the elevator reached her floor, another elevator arrived with hotel security guards who were there to escort O'Connor to his room.

Esteves testified characterized O'Connor's demeanor during the 4:30 A.M. interaction as belligerent, pretty uncontrollable and irate. She further testified that there was no calming him down.

Esteves testified that upon returning home on March 9, 2018, she received a phone call from the Springfield Police Department, regarding what had occurred at the PBA convention with O'Connor. She stated that she informed the Department of the two incidents with O'Connor and was instructed to report to Chief Cook of the Springfield Police Department as to what had occurred. Estevez then stated that she sent an e-mail to Chief Cook on March 11, 2018, explaining the two incidents (J-10).

Esteves stated that she provided a recorded statement to the Union County Sheriff's Office as part of the Sheriff's Office internal affairs investigation that they were conducting regarding the incidents in at the PBA convention. Esteves testified that her statement provided to the Sheriff's Office internal affairs investigation was consistent with both her testimony provided during this hearing and the events set forth in her March 11, 2018 e-mail communication.

Finally, Esteves testified as to the Tropicana Hotel security footage (Exhibit J-20), which was played during her testimony. Esteves watched the security footage video and provided testimony as to what was being shown in the video (Id.).

I **FIND** the testimony of both Trotman and Esteves regarding their interactions with O Connor to be consistent with the core events that transpired at the PBA Convention in March 2018. Specifically, Trotman and Esteves provided detailed and straightforward testimony regarding their recollection of the events at the PBA Convention. I **FIND** Trotman and Esteves' testimony corroborated by their respective reporting to their Chief, regarding O'Connor calling Esteves a "bitch" when he entered the hospitality suite, and his aggressive conduct toward Trotman and Esteves in the second encounter. In addition, I **FIND** Trotman and Esteves' testimony unwavering that O'Connor called Trotman the "N-word" in their second encounter in the hotel common area. I therefore, **FIND** the testimony of Trotman and Esteves as **FACT** herein.

**Lieutenant Carlo Caparruva**

Lieutenant Carlo Caparruva (Caparruva) testified that he had been employed by the Sheriff's Office for twenty-five years and had been a Lieutenant for the last four years. Caparruva testified that he was a Lieutenant during calendar years 2017 and 2018. Caparruva testified that as a Lieutenant, his job duties and responsibilities included supervising approximately twenty-four individuals, four of whom are clerks. Caparruva testified that, on a day-to-day basis, he would handle fugitive investigations and community policing along with managing the NCIS database, budgeting, overtime budgeting, policy review within the union, general management of the personnel from vacations, sick time, and coordination with other agencies.

Caparruva testified that in calendar years 2017 and 2018, he reported to Burke, and he also indirectly supervised O'Connor because Perez was O'Connor's immediate supervisor. Caparruva further testified that he would have periodic face to face interaction with O'Connor in 2017 and 2018, and that he was familiar with the supervisory referral forms.

Caparruva testified that on March 12, 2018, he sent a memorandum to Burke, (J-7), regarding his conversation with Perez regarding O'Connor's involvement in the two incidents at the PBA convention. Caparruva also testified that he sent a second memorandum to Burke dated March 22, 2018 (J-11), regarding his conversation with O'Connor on March 22, 2018, wherein O'Connor expressed concern about the urine test that was administered. Caparruva explained that O'Connor told him that he was using an over-the-counter supplement during his physical training regimen and O'Connor was worried that the urine test could show high levels of testosterone from the supplement.

On cross examination, Caparruva testified that he did not take part in the investigation of O'Connor regarding the "reasonable suspicion test" which resulted in O'Connor taking the urine test for the supplement usage.

I **FIND** Caparruva's testimony consistent with facts that are uncontested and corroborated with memorandums authored on or about the time the events occurred, and I therefore **FIND** the same as **FACT** herein.

**Undersheriff Dennis Burke**

Undersheriff Dennis Burke (Burke) testified that he currently serves as the Undersheriff to the Sheriff's Office and has served in that capacity since approximately February 2018. Prior to becoming Undersheriff, Burke testified that he was a Captain in the Sheriff's Office for the two- and one-half years prior to February 2018.

Burke testified regarding his job duties and responsibilities, which include serving as the commander of both the administrative and field services division. Burke testified he reports to Sheriff Corvelli. Burke testified that he had a face-to-face interaction with O'Connor in late 2017 when he was serving as Captain. He testified that he made it a habit to try to get to know each of the individuals he worked with, but he could not recall if he had had face to face interaction with O'Connor.

Burke did recall O'Connor's demeanor changing in late summer of 2017, which prompted his immediate supervisor Perez authoring a supervisory referral in October 2017 (J-3). Burke recalled that he had discussions with Perez and Caparruva regarding the supervisory referral (Id.), and the summary of the referral was that the Sheriff's Office wanted a harmonious relationship with the Elizabeth Police Department regarding the Community Policing Unit. Burke also recalled that the Elizabeth Police Department's supervisors had had discussions with Perez regarding O'Connor's demeanor and conduct resulting in a "toxic" relationship between the two agencies.

Burke acknowledged receiving the March 12, 2018 memorandum from Caparruva (J-7), and that the substance of the same concerned Perez reporting to Caparruva O'Connor's conduct at the PBA in Atlantic City involving O'Connor. Burke testified that he took no further action at that time against O'Connor, as he was familiar with the consumption of alcohol at the PBA conventions and that it sounded to him as though O'Connor had been drinking.

Burke testified that several days later, he received a telephone call from Chief Cooke of the Springfield Township Police Department, and that Chief Cook informed him that O'Connor's conduct at the PBA convention was more than just a "dust up" as there were two incidents involving O'Connor, and he proceeded to inform Burke as to the same. In addition, Burke testified that Chief Cooke informed him that O'Connor had also used a number of racial epithets directed at Trotman.

Burke testified that upon speaking with Chief Cooke on March 15, 2018, he wrote a memorandum to Sheriff Corvelli and then Undersheriff Cryan outlining his discussion with Chief Cooke (J-12). In addition, Burke testified that he had discussions with Undersheriff Cryan, who had command of the Internal Affairs or Professional Standards Unit. Burke stated that after discussing the information he had learned from Chief Cooke with Undersheriff Cryan there was a determination made that a referral for a Professional Standards Unit investigation would be done as well as a referral to the County's Employee's Assistance Program ("EAP") for an alcohol screening, due to their being alcohol consumption involving O'Connor's alleged conduct.

Burke testified that Chief Cooke also informed him that O'Connor was no longer to be included on eligible lists for outside jobs in Springfield Township. Burke testified that he found "troublesome" the two PBA convention incidents involving O'Connor, as it now was a second time in a matter of months that an outside law enforcement agency has had an issue with O'Connor's attitude and demeanor-the first being complaints from the Elizabeth Police Department.

Burke testified as to the contents of Exhibit J-11, a March 23, 2018 memorandum from Caparruva to Sheriff Corvelli through him as Undersheriff. Burke testified that when he received the memorandum, he was very "concerned" as he was not sure what screening test would be administered to O'Connor by the facility called High Focus. Burke explained that initially O'Connor was referred to High Focus for an alcohol evaluation, but after receiving Caparruva's memorandum (J-11), he realized that additional screening for possible elicit substance use O'Connor should be ordered, as O'Connor had expressed



concern to Caparruva regarding a high reading for testosterone because of his taking an over-the-counter supplement.

As a result of this concern, Burke testified that he wrote another memorandum to Sheriff Corvelli dated March 26, 2018 (J-13). Burke stated that when he received the March 23, 2018 memorandum (J-11), he realized that it may have been steroids which was fueling O'Connor's actions, and not alcohol. Burke testified that based upon this suspicion, he recommended in his March 26, 2018 memorandum that the results of O'Connor's urinalysis be tested for high testosterone levels.

Burke stated that he was not sure at the time he authored the March 26, 2018 memorandum if O'Connor's urinalysis could be tested for high testosterone levels. He testified that he later found out when the results of the urinalysis came in that it did not test for the presence of high testosterone levels as requested in his March 26, 2018 memorandum. Burke then testified that upon receiving the High Focus urinalysis results which were negative for illicit drugs and alcohol, but did not test for high testosterone levels, he made the recommendation that, based upon the "entirety of what they had in front of them" concerning O'Connor's recent behavior and his own self admission regarding having possibly high testosterone levels, "reasonable suspicion" existed to test O'Connor for steroids.

Burke testified as to the procedures to conduct a reasonable suspicion drug test, which is contained in the New Jersey Attorney General Drug Testing Policy dated May 21, 2012, ("Attorney General Drug Testing Policy") (J-14). Burke testified that the May 2012 version of the Attorney General Drug Testing Policy (Id.) was the version which was in effect at the time O'Connor's reasonable suspicion test was ordered.<sup>4</sup>

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<sup>4</sup> Burke testified that a memorandum from the Attorney General of New Jersey regarding changes to law enforcement drug testing policy issued March 20, 2018 (J-16), advised all law enforcement agencies to have the new changes to their policies and same would take effect within thirty (30) days of March 20, 2018. Burke testified that since the Sheriff's Office had not yet changed their policies to reflect the newly revised policies on April 4, 2018, O'Connor's reasonable suspicion test was ordered in accordance with the Attorney General's policy from May 2012 policy (J-14).

Burke testified he had come to find out by April 2, 2018, or April 3, 2018, that no reasonable suspicion test had been performed on O'Connor, and that he was concerned that it was taking so long to do. Burke explained that the reason he was concerned no reasonable suspicion test was performed by April 2018, was the lapse of time between O'Connor admitting to Caparruva that he was concerned about a testosterone reading in his uranalysis and the conclusion of the IA investigation. Burke stated that over fifteen days had lapsed, and there was a growing concern that the steroids test had to be ordered immediately so that the potential substances, if any, would still be in the body. Burke testified that, based upon that "emergent need" to get the test conducted immediately the Sheriff, with all of the information previously provided, verbally ordered the reasonable suspicion test the following day on April 4, 2018.

Burke then testified that O'Connor's reasonable suspicion test, included a positive test for 19-norandrosterone, a schedule III controlled dangerous substance. Burke testified that after receiving the said test results, he contacted Sheriff Corvelli and based upon the mandatory consequences for a positive steroid test for a schedule III controlled dangerous substance, he was ordered to issue O'Connor a PNDA seeking termination dated May 17, 2018, (J-1) and the eventual FNDA dated November 13, 2019 (J-2).

Finally, Burke testified and authenticated the contents of the Sheriff's Office Duty Manual, Chapter Two, Code of Conduct of Personnel. He testified that this Chapter was the Chapter that was in effect in calendar year 2017 and 2018 (J-17).

I **FIND** Burke's testimony straightforward, professional, convincing, and corroborated by the record, and as such, I **FIND** the same as **FACT** herein.

#### **Lieutenant Gaetano Bracciale**

Lieutenant Gaetano Bracciale (Bracciale) testified that he is currently employed by the Sheriff's Office as Lieutenant in the Internal Affairs Unit. He testified he has been employed by the Sheriff's Office for approximately fifteen years and has served in the capacity as Lieutenant for approximately two years. Bracciale testified that in calendar years 2017 and 2018, he was a Sergeant in the Sheriff's Office. Bracciale testified as to

his current job duties and responsibilities, which include the accepting of complaints regarding officer misconduct and, rule violations from either the public, fellow employees and/or anonymous complaints. In addition, Bracciale testified that he also carried out discipline that the Sheriff decides on, as well as responsible for the hiring and selection process for the Sheriff's Office.

Regarding O'Connor's investigation, Bracciale testified that he was informed by Undersheriff Cryan that a complaint was made by Chief Cook of the Springfield Township Police. As part of the investigation conducted, Bracciale testified that they collected video surveillance footage from the Tropicana Hotel, reviewed the e-mails which were sent by Trotman and Esteves to their Chief of Police and conducted interviews of Trotman, Esteves and O'Connor.

Bracciale next testified that on March 15, 2018, he along with Detective Charles Mancuso (Mancuso) prepared a written report regarding the investigation conducted of O'Connor (R-3). Bracciale stated that, his investigation revealed a "preponderance of evidence" that there was enough to sustain administrative charges against O'Connor. Bracciale then testified that in accordance with the Sheriff's Office procedure, his investigation report was provided to Corvelli, who would then make the final decision concerning the same.

Regarding the reasonable suspicion urine test of O'Connor, Bracciale testified he and Mancuso were responsible for collecting a urine test from O'Connor as ordered by Corvelli and that the same occurred on April 4, 2018. Bracciale stated that the reasonable suspicion test conducted was performed in accordance with the Attorney General's guidelines that was in effect at the time (J-14).

As to the procedure for conducting and collecting the reasonable suspicion urine sample, Bracciale testified that he had to pick up the specimen collection kit and chain of custody forms, including the medical questionnaire form, from the New Jersey State Toxicology Lab. Bracciale stated that he was the designated test "monitor", and he was responsible that O'Connor filled out the medical questionnaire form and placed the same in a sealed envelope provided to Bracciale. Bracciale then testified that as test monitor,

he collected one urine specimen from O'Connor and he was responsible for all urine sample paperwork be completed and provided to him by O'Connor; he observed O'Connor provide the urine sample, to insure there was no opportunity to adulterate the sample. Bracciale then testified that upon receipt of the urine test from O'Connor, he immediately checked the temperature strip to make sure that the temperature was within range. Once confirmed, Bracciale testified that he placed his initial on the form to indicate the temperature check was performed.

Bracciale testified that on April 4, 2018, he delivered O'Connor's urine sample along with the Chain of Custody Form ("Custody Form") (R-4) to the New Jersey State Toxicology Lab ("State Lab"). He testified that he delivered the urine specimen to the State Lab and provided the same to a State Lab employee named Jean Smith, who stamped and signed the Custody Form acknowledging receipt of the urine specimen. Bracciale testified that the Custody Form was appropriately filled out and indicated that the sealed medical questionnaire form and sealed specimen were provided.

Bracciale testified that the process and procedure he took in collecting and delivering O'Connor's urine specimen on April 4, 2018 was consistent with both the Attorney General Policy and the Union County Duty Manual chapter for conducting drug testing.

On cross examination, Bracciale testified and clarified that the urinalysis conducted by High Focus (R-1) was administered as part of the alcohol evaluation of O'Connor. Bracciale was also questioned as to whether he had advised O'Connor that he could provide a second specimen to which Bracciale testified that he did not advise O'Connor of the same, as the Attorney General Policy in effect at the time the reasonable suspicion test was administered on April 4, 2018, did not require Bracciale to advise O'Connor of same. Bracciale also testified that the urinalysis conducted at High Focus was not considered a reasonable suspicion test and that it was just performed as part of the alcohol treatment evaluation process and procedure of O'Connor.

I **FIND** Burke's testimony straightforward, professional, convincing, regarding his investigation of O'Connor, and I therefore **FIND** the same as **FACT** herein. I further **FIND**

Burke's testimony regarding the collection of O'Connor's reasonable suspicion urine sample and the chain of custody of the same to the New Jersey State Lab to be articulate and detailed and I therefore **FIND** the same as **FACT** herein.

**Sorin Diacomescu**

Sorin Diacomescu (Diacomescu) testified that he is currently the laboratory manager for the State Lab and that he has been employed by the State Lab for approximately ten years and has served in the capacity as Laboratory Manager since May 2016. Diacomescu testified that he is responsible for the scheduling of testing for the State Lab staff, the scheduling and training and competency evaluation for the State Lab staff among other things. In addition, Diacomescu testified that, as part of his job duties and responsibilities as Laboratory Manager, he is familiar with the chain of custody procedures. Diacomescu testified then as to the general procedures, which consist of the specimen being delivered to the State Lab five days a week and the State Lab has specimen receiving staff who review the specimen and the chain of custody documentation as they are received. Diacomescu stated that anything that does not pass "acceptance criteria" is rejected.

Upon acceptance of the specimen containers, mediation forms and chain of custody, Diacomescu testified that the staff would then enter the demographic information for each specimen in the State Lab's computer system, which is called the Laboratory Information Management System ("LIMS") (R-6). Once that information is entered in the LIMS system, Diacomescu testified that everything is then scheduled to proceed. At that point, every transfer of custody, including everything and anything that happens to the specimen, or a part thereof is captured electronically in the chain of custody by the LIMS system. According to Diacomescu's testimony, this electronic capturing of the information goes throughout the testing phase all the way up to the final disposition of the specimen. Diacomescu testified that if a specimen tests negative it is discarded after a couple of weeks, and any positive test specimens are stored in secure long-term freezer storage.

Diacomescu testified to the authenticity of LIMS (R-6) and provided further testimony detailing what was set forth on the LIMS printout. Specifically, Diacomescu

testified that for O'Connor's specimen, there were two aliquots taken, labeled 1-A and 1-B. According to Diacomescu the aliquot labeled 1-A on the LIMS form is for the drug screening that the State Lab conducts, and the aliquot labeled 1-B was created to be sent out to the laboratory that was conducting the steroid testing on the specimen. Diacomescu further testified that in April 2018, the State Lab did not conduct steroid testing on specimens, and the same was sent to Aegis Laboratory (Aegis), and that O'Connor's specimen (R-6, aliquot 1-B) was sent to Aegis for steroid testing on April 6, 2018.

Diacomescu next testified as to the contents of the Aegis Forensic Drug Testing Custody and Control Form ("Forensic Custody and Control Form") (R-8), provided by Aegis to the State Lab for purposes of sending out aliquots of urine for anabolic steroid testing. Diacomescu testified that, after the subject aliquot is obtained from the specimen, it is transferred to a container provided by Aegis, which container is then sealed. The paperwork is then filled out and packaged in a FedEx shipping supply provided by Aegis as well. Then, according to Diacomescu's testimony, the FedEx package is delivered to Aegis. Diacomescu then testified that the State Lab sent aliquot 1-B of O'Connor's specimen to Aegis, via FedEx, on April 6, 2018 (R-6) and the same was received by Aegis the following day on April 7, 2018 (R-8). Diacomescu testified that the ID Number contained in the State Toxicology Report (R-5), which is the State Lab final drug test report for O'Connor, matched the ID Numbers contained in LIMS (R-6), and Forensic Custody and Control Form (R-8). Diacomescu testified further that he had no reason to believe that the chain of custody procedures associated with O'Connor's specimen were not done in accordance with the New Jersey State Toxicology Laboratory procedures.

I **FIND** Diacomescu's testimony to be thorough and precise regarding the State Lab chain of custody procedures and, corroborated by the record, and I therefore **FIND** the same as **FACT** herein. I further **FIND** Diacomescu's testimony credible that O'Connor's reasonable suspicion urine sample was in compliance with the State Lab's chain of custody procedure.

**Lora McCord**

Lora McCord (McCord) testified that she is currently the Senior Analytical Chemist with Aegis and has been employed by Aegis since 2007. McCord was qualified as an expert witness in drug detection through Gas Chromatography/Mass Spectrometry ("GC/MS").

McCord testified as to the chain of custody procedures as well as the steroid testing procedures conducted generally at Aegis, as well as specifically concerning O'Connor's steroid test. McCord testified that she is responsible for maintaining and operating the instruments, responsible for training other chemists, responsible for communicating workflows and making sure everything gets done. She also testified that as part of her job duties and responsibilities, she is familiar with the Aegis Forensic Custody and Control Form (R-8).

McCord testified as to the contents of the Forensic Custody and Control Form utilized for O'Connor's specimen. McCord testified that the Forensic Custody and Control Form reflected that O'Connor's subject sample was received on April 7, 2018, and that the subject test requested to be performed was for anabolic steroids. McCord then testified that the box checked off next to the Aegis signature of receipt of the specimen on the Forensic Custody and Control Form indicated that the sample was received and was sealed at the time of receipt and that the container containing the specimen was not damaged or opened in any manner.

McCord next provided testimony that once the specimen is received, an aliquot is taken from the specimen and that aliquot is set up for testing. McCord then testified as to the contents of a document which she identified as a document generated by Aegis regarding the types of tests conducted on O'Connor's specimen for anabolic steroids ("O'Connor test document") (R-9). Specifically, McCord testified that the O'Connor test document reflected that Aegis conducted a GC/MS testing, including a GC/MS anabolic steroid profile, a specific gravity confirmation, a GC/MS TE ratio confirmation and a GC/MS nandrolone confirmation. McCord testified that there is an order to these tests and that the initial test to be performed would be the GC/MS anabolic steroid profile and also the specific gravity confirmation. McCord testified that the GC/MS anabolic steroid

profile test is a screening method, and according to McCord is performed on GC/MS that is used to detect up one hundred different anabolic steroids.

McCord testified that the GC/MS method is a method in which samples are injected into a gas chromatograph and then they go through the mass spectrometer. McCord testified that the sample is then fragmented into smaller pieces, which pieces are detected by a detector. McCord testified that she would review the report generated for this type of test to determine if there is a peak presence with the correct criteria met for those compounds to be considered nonnegative.

McCord testified that the criteria utilized for anabolic steroids, would be ion ratios that are within twenty percent of the positive and negative controls utilized by Aegis. McCord further testified that a "nonnegative" would have to be within twenty percent of those controls. McCord testified that it would have to be above the cutoff which is one nanogram per ml. and it would have to meet a signal-to-noise ratio that was three to one.

McCord testified as to the GC/MS TE ratio confirmation test and the GC/MS nandrolone confirmation test which she performed on the subject specimen. McCord testified that Aegis would perform the GC/MS TE ratio confirmation test as a follow-up test to a presumptive positive test from the anabolic steroid profile. McCord further testified that the GC/MS TE ratio confirmation test is a more detailed test than the GC/MS anabolic steroid profile as it relates specifically to the TE ratio.

McCord next testified that the confirmation tests would be performed if there was a positive result found in the anabolic steroid profile, and that with respect to O'Connor's anabolic steroid profile she recalled that there were positive for both nandrolone and TE ratio, which then required that the confirmation testing be performed.

In terms of actually conducting the GC/MS TE ratio confirmation test, McCord testified that she would check the laboratory equipment first to ensure same were all fully functioning and had been maintained properly before utilizing same. McCord testified that for the tests performed on O'Connor's specimen, as identified in the steroid test



document (R-9), none of those tests would have been performed if the equipment was not properly maintained and/or malfunctioning in any manner.

McCord also testified that she would also make sure that the chain of custody or the TE ratio confirmation is correct and complete and, making sure it was loaded on the instrument properly. McCord then testified that the correct sample controls were loaded onto the instrument, verifying that same are not expired and that they are in fact the current controls. McCord testified that once she was able to verify that all of the controls and calibration were passing and that all of the criteria had been met, she would also verify that all sample criteria has been met as well.

McCord testified further that the ions that she is looking for have to be the correct amounts and the peak presence as to be present at a signal-to-noise ration of at least three to one. McCord testified that all required procedures were performed with regard to the tests performed on O'Connor's specimen.

McCord testified that the GC/MC TE ratio confirmation test and the GC/MC nandrolone confirmation test were both performed and certified on April 17, 2018. As a result of those tests being performed, in conjunction with the GC/MS anabolic steroid profile test, which showed that O'Connor's sample tested positive for the anabolic steroid 19-noresdrosterone, a metabolite of nandrolone and for positive TE ratio.

McCord testified that Aegis' cutoff for reporting limit for GC/MS nandrolone is ten nanograms per ml. that the nandrolone confirmation test, and that any specimen reading above the ten nanograms per ml cutoff would be considered a positive test. McCord stated that on April 20, 2018, Aegis' report revealed that O'Connor's urine specimen tested positive for nandrolone at more than ten nanograms per ml. (R-10).

On cross-examination, McCord admitted that Aegis Labs destroyed the chain of custody of form related to the test performed on O'Connor's specimen, and she could not answer as to the whereabouts of O'Connor's specimens between the time it was received by Aegis Labs and the first test that was performed.

Also on cross-examination, McCord testified that there are people who are trained to calibrate the machines and that when these machines are calibrated, the individuals who calibrate the machines sign off on a piece of paper indicating that the machine has been properly calibrated. McCord testified that Aegis no longer maintains the records specific to O'Connor's sample, and therefore her testimony was based on her recollection of O'Connor's urine samples taken in April 2018.

On questions from the undersigned, McCord testified that the Aegis' report was prepared on April 20, 2018 (R-10), and the O'Connor test document (R-9) was prepared from the "laboratory information management system" maintained by Aegis containing the data from the tests performed, and that the same was a report prepared for the underlying hearing. McCord also testified that she had not seen the State Lab's LIMS (R-6) prior to her testimony but that the same reflected that O'Connor's specimen was shipped out by the State Lab on April 6, 2018, and received by Aegis on April 7, 2018, as indicated in the Forensic Custody and Control Form (R-8).

I **FIND** McCord has provided detailed credible testimony supported by the record regarding the Aegis Labs chain of custody procedures as well as the steroid testing procedures conducted generally at Aegis Labs, and I **FIND** the same as **FACT** herein. I also **FIND** McCord has provided credible testimony as derived from the record and her recollection of procedures concerning Aegis Lab's testing procedures of O'Connor's urine specimen and results evidencing the same tested positive for steroids, and I therefore, **FIND** the same as **FACT** herein.

**Andrew Falzon, M.D.**

Dr. Andrew Falzon (Dr. Falzon) is the Medical Review Officer ("MRO") from the State Lab and testified as to his review of the Aegis test results (R-10). Dr. Falzon was qualified as an expert witness in the field of Forensic Pathology and Medical Review. Dr. Falzon testified that, as the MRO for the State Lab, his job duties and responsibilities consist of reviewing all law enforcement drug testing cases that test positive.

Dr. Falzon testified, that he followed the State Laboratory procedures in conducting

his medical review of the Aegis results from O'Connor's urine specimen for steroid testing (R-10). In addition, Dr. Falzon testified that when a donor of a specimen submits a specimen for drug testing, they also fill out the Medication Log, which is placed by the donor in a sealed envelope. Dr. Falzon stated testimony, the donor will list on that Medication Log sheet all the medications that they are currently taking or have taken in the recent days before the specimen was provided and that Medication Log sheet is sealed in an envelope by the donor once the information is filled out. Dr. Falzon testified that he is the only individual who would open that sealed envelope containing the Medication Log sheet that was filled in by the donor.

Dr. Falzon testified that once a positive drug test is identified, the case is referred to him and at that time he would open the sealed envelope containing the Medication Log sheet and would compare the medication(s) listed on that Medication Log sheet to the positive findings to determine whether the medication the person has listed would explain the findings from the drug test. Dr. Falzon further testified that, as a certified clinical pathologist, he would have the knowledge and training to make that review and comparison.

Dr. Falzon testified as to the toxicology report generated by the State Lab for O'Connor's test. Dr. Falzon testified that, in accordance with the appropriate procedures, he reviewed the results of the Aegis lab result against O'Connor's Medication Log Sheet (R-13) and found that there were no medications and/or supplements that O'Connor was taking which would have resulted in the positive steroid test results.

Dr. Falzon testified that it was his expert opinion that the positive steroid test result was without a doubt due to O'Connor taking 19-norandosterone, and that based upon his review, Dr. Falzon testified that it could not have been a result of something that the body just naturally produced. Dr. Falzon testified that he certified the positive result based upon his review and provided the findings to the requesting agency (R-5).

**I FIND** Dr. Falzon's testimony to reveal that he has the proper medical education and training in the area of Forensic Pathology and Medical Review, and that his testimony concerning his adhered procedures of the State Lab in conducting his medical review of

the Aegis results of O'Connor's urine specimen for steroid testing to be credible and is **FACT** herein. I further **FIND** Dr. Falzon's testimony credible, and as **FACT** herein, concerning his medical opinion that the Aegis positive steroid test result were without a doubt due to O'Connor taking 19-norandosterone, and that based upon his review, that it could not have been a result of something that the body just naturally produced.

### **Kevin O'Connor**

Kevin O'Connor testified that he began working for the Sheriff's Office in 2015 after he graduated the police academy. O'Connor testified that the first five months of employment at the Sheriff's Office he was assigned to work a courtroom. He testified that around the fifth month as Sheriff's Officer, the Sheriff's Office started a Community Policing Street Crimes Unit with the Elizabeth Police Department. O'Connor stated that he was asked to join the Community Policing Unit. He testified that he started his assignment in the Community Policing Unit in the end of 2015.

O'Connor provided testimony regarding the Sheriff's Office supervisory referral process. O'Connor testified that he had a "difference of opinion" with his field training officer over how a matter was handled, which led to Perez issuing the ninety-day supervisory referral (J-3). O'Connor testified that his position on the Community Policing Unit was never in jeopardy because of the supervisory referral.

O'Connor testified that he had "two encounters" with Esteves prior to the March 2018 PBA Convention incidents. Specifically, O'Connor testified that he first interacted with Esteves while working a "side job" at a Shoprite in Springfield, where O'Connor lives. He stated that Esteves was making "jokes" about what Sheriff's Officers do and she was surprised that O'Connor was assigned to the "Street Crimes Unit" and wanted to know if he was "political" in getting the assignment. O'Connor testified further that he was "taken aback and offended" by Esteves' interaction with him at Shoprite, but he didn't "want to make a big deal" so he did not address the same with Esteves.

O'Connor testified that the second time he met Esteves prior to the PBA Convention was when Esteves was working a side job at the Springfield Motor Vehicle

office, and O'Connor was there to update his driver's license. O'Connor stated that Esteves again discussed his assignment to the street crimes and she also called him a "Guido" because he was wearing gold chains. O'Connor stated that he was offended by what Esteves said to him but he did not want to "make a big deal" of the same. O'Connor categorized Esteves' comments to him as "breaking chops".

As to his interaction with Esteves at the Elizabeth Police hospitality suit, O'Connor corroborated much of what Esteves had testified to, but he denied calling Esteves a "bitch". He said Esteves was calling him a "rookie" and joking with him about hanging out with his "street crime pals". O'Connor testified that Esteves discussed stopping O'Connor's brother in Springfield in a motor vehicle incident and she described his brother as being an "arrogant asshole". O'Connor stated he was "a little taken aback" by Esteves' statement about his brother, but he did not address with Esteves. O'Connor stated the conversation with Esteves never got heated.

O'Connor testified that he did not speak with Trotman at the hospitality suite, and when he was talking to Esteves, Trotman was sitting on a couch nearby about "ten feet" away. O'Connor stated that all three were in the hospitality suit about twenty-minutes and left around the same time. O'Connor described his conversation with Esteves as "calm" and "mild-toned conversation".

O'Connor then testified as his interaction with Esteves and Trotman in the lobby area of the Tropicana Hotel around 4:00 A.M. He said he had come back from a dinner banquet held by the Elizabeth Police Department and was texting a friend when he heard Esteves call out to him about his "tight red pants" and about being a "rookie". O'Connor stated that both Esteves and Trotman were walking toward him and he described them as appearing to be "intoxicated" by their "behavior" and as being "hostile" towards him.

O'Connor testified that Esteves was again breaking his chops and saying the same things she had said earlier in the evening and that "due to having drink and it being late at night" he took "offense" to her comments and he "acted out toward her comments" to him. O'Connor described the conversation among the three as being a "heated exchange" as they were walking side-by-side toward the elevator. O'Connor described

Trotman taking his belt off and he deemed this action as "very aggressive" and he said it seemed Trotman wanted to "fight" him.

O'Connor admitted to pushing Trotman because he was very close in his "personal space", touching O'Connor and grabbing his arm very tight. O'Connor said he pushed Trotman because he wanted to "separate" from him. O'Connor testified that while the three were on the landing area of the lobby, Esteves was screaming, and he was keeping Trotman away and he wanted to diffuse the situation. O'Connor stated that no punches were thrown by anyone. O'Connor recalled that hotel security appeared and were walking behind them as they walked to the elevators. O'Connor stated he took an elevator up to his room and he had no further contact with Esteves and Trotman.

O'Connor testified that he was not asked to provide a statement to hotel security and that the Atlantic City police were not on the scene. O'Connor stated that upon returning to work he informed Perez of the verbal altercation that had occurred at 4:00 A.M. at the Tropicana Hotel.

O'Connor testified that he did not call Trotman the "N-word" and the first time he heard of the allegation was during his Internal Affairs investigation, and he told Bracciale and Mancuso that "he did not recall" making the statement. He stated he was in "shock" that it was alleged or mentioned that he had used the N-word at the PBA Convention, as it is not a word he has ever used, and that he informed Bracciale and Mancuso of the same. O'Connor testified that he informed Bracciale and Mancuso during his Internal Affairs investigation that he did not use the N-word (R-3).

Upon cross-examination, O'Connor admitted that he told Bracciale and Mancuso during their investigation that there was a "possibility" that he could have called Esteves a bitch. (Id.) Also during cross-examination, O'Connor testified that after his termination in May 2018, he was working full-time and became unemployed following the business closures that occurred in March 2020 due to Covid-19 and collected unemployment at that time. Thereafter, O'Connor testified he was employed full-time for calendar year 2021 and continues to be employed. O'Connor testified on cross-examination that signed off and read the Sheriff's Department Duty Manual in 2018.

I **FIND** that O'Connor has provided testimony that is consistent with the statements that he provided during his Internal Affairs investigation, and that the same corroborates some of the factual statements made by Esteves, and Trotman as to the events that occurred on March 2018, and I **FIND** the same as **FACT** herein.

As to O'Connor calling Esteves a bitch in the hospitality suite, I **FIND** O'Connor's testimony to be unsure and not convincing that he did not call Esteves a bitch, inasmuch as O'Connor admitted that he told Bracciale and Mancuso that there was a "possibility" that he may have called Esteves the expletive. I therefore **FIND** O'Connor's denial of calling Esteves the expletive and **FIND** as **FACT** that he did call Esteves a bitch as the same has been attested to by Esteves and Trotman and corroborated by the record herein.

As to O'Connor calling Trotman the N-word in the second incident at the PBA Convention, I **FIND** that while O'Connor was effusive in his denial of stating said expletive, his response to Bracciale and Mancuso that he "did not recall" making said statement was not convincing. I **FIND** that O'Connor stated in his Internal Affairs questioning that the use of the N-word is not a word he would use, however, his testimony and investigatory statements of denial do not convince me that O'Connor did not utter the N-word, and I therefore **FIND** the same as **FACT** herein.

In rendering my **FINDING** regarding O'Connor's use of the N-word, I have taken into consideration O'Connor's statement that "due to having a drink and it being late at night" he took "offense" to Esteves' comments breaking his chops, as she had done before, and that he "acted out toward her comments". O'Connor described the conversation among the three as being a "heated exchange" as they were walking side-by-side toward the elevator; and O'Connor described Trotman's conduct of taking off his belt as a "very aggressive" action, and he said it seemed Trotman wanted to "fight" him, which I **FIND** describe O'Connor's state of mind at the time of the incident, and as **FACT** herein.

#### **LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

The Civil Service Act and its associated regulations govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. 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. Among the causes for major discipline are incompetency, inefficiency or failure to perform duties; inability to perform duties; and conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(1), (3), (6).

The issues to be determined at the de novo hearing are whether the employee is guilty of the charges brought against him/her and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

This case is particularly sensitive because it involves law-enforcement officials.

[A] police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.

[Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).]

Law enforcement officers have long been held to a higher standard of behavior, both on and off the job. See, In re Phillips, 117 N.J. 567, 577 (1990). Discipline is especially important in police departments. Rivell v. Civil Service Commission, 115 N.J. Super. 64 (App. Div.), certif. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). The higher standard is imposed because a police officer "represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied 47 N.J. 80 (1966).



The maintenance of internal good order and discipline is essential in order to keep departmental morale and efficiency high at all times. Moorestown Township 47 N.J. at 560; Rivell, 115 N.J. Super. at 64.

Even more troubling is the fact that illicit drugs may be involved. "Every police officer understands that an officer who uses or sells drugs is a threat to the public." Rawlings v. Police Dept of Jersey City, 133 N.J. 182, 189 (1993).

In this matter, the Sheriff's Office bears the burden of proving the charges against O'Connor by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). Thus, it is my duty to 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. Delaware, Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

The charges contained in the PNDA dated May 17, 2018, which were upheld in the FNDA of November 13, 2019, form the basis for the charges herein. The FNDA alleged as follows:

1. N.J.A.C. 4A: 2-2.5 (a)1 (Immediate suspension without pay)
2. N.J.A.C. 4A:2-2.3(a):
  - (1) Incompetency, inefficiency, or failure to perform duties;
  - (3) Inability to perform duties;
  - (6) Conduct unbecoming a public employee; and,
  - (12) Other sufficient cause.
3. Violation of the New Jersey Attorney General's Law Enforcement Drug Testing Policy, Revised April 2018, Section VII, Consequences of a Positive Test Result, Subsection C, Immediate Suspension, Administrative Charging and Termination.

4. Violation of the Union County Sheriff's Office Duty Manual, Volume I, Chapter 2, Section J1C, Conduct Unbecoming an Officer - Use of Prohibited Controlled Dangerous Substance.
5. Violation of the Union County Sheriff's Office Duty Manual, Volume I, Chapter 23, Drug Screening, Section L2, Consequences of a Positive Test Result, Immediate Suspension, Administrative Charging and Termination.
6. Violation of the Union County Sheriff's Office Duty Manual, Volume I, Chapter 2, Section B1d, Courtesy.

The record reveals and I have made a **FINDING** herein, that on March 6, 2018, O'Connor directed offensive language toward Esteves when he called her a "bitch" in front of other law enforcement officers attending the PBA Convention. Although, O'Connor disputes making the statement and Esteves joins him in describing their conversation as being "cordial" following O'Connor's declaration, there is no dispute that the statement was made and Esteves stated that she was "embarrassed" by the same.

O'Connor is alleged to have violated "conduct unbecoming a public employee" as codified at N.J.A.C. 4A:2-2.3(a)(6). The term "unbecoming conduct" has been broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy the public's respect for public employees and destroy the public's confidence in the delivery of government services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

I **CONCLUDE** that O'Connor's conduct on March 6, 2018, in directing the expletive toward Esteves is "conduct unbecoming a public employee", act of incompetency, inefficiency, or failure to perform duties, or inability to perform duties under N.J.A.C. 4A:2-2.3(a)(1) and (3), and the same is justifiably grounds for the Sheriff's Office to sanction him for "other sufficient cause." N.J.A.C. 4A:2-2.3(a) (6) and (12). I also **CONCLUDE** that said conduct is also violative of Violation of the Union County Sheriff's Office Duty Manual, Volume I, Chapter 2, Section B1d, Courtesy.

Now on to address O'Connor's conduct concerning the second incident at the PBA-Convention at 4:00 A.M., March 8, 2018. I **CONCLUDE** that there is no doubt from the record in this matter, that on March 8, 2018, at 4:00 A.M., O'Connor, had a run-in with Esteves and Trotman in the Tropicana lobby. I **CONCLUDE** further that O'Connor's own testimony admits such, and the hotel security video that was played in the hearing confirms the same. The specifications from the Sheriff's Office regarding the 4:00 A.M. incident contained in the FNDA state that O'Connor's "behavior, demeanor, language and action are contrary to being a member of this office." I agree.

O'Connor testified that Esteves was again "breaking his chops" and saying the same things she had said earlier in the evening and that "due to having a drink and it being late at night" he took "offense" to her comments and he "acted out toward her comments" to him. O'Connor described the conversation among the three as being a "heated exchange" as they were walking side-by-side toward the elevator. O'Connor described Trotman taking his belt off and he deemed this action as "very aggressive" and he said it seemed Trotman wanted to "fight" him.

The only conduct that is in dispute is whether O'Connor called Trotman the N-word. O'Connor denied in the hearing, and he also denied in the IA investigation, that he uttered the expletive at Trotman. However, both Trotman and Esteves have testified to having heard O'Connor say the N-word, and I have previously **FOUND** and now **CONCLUDE** their testimony to be reliable and convincing and that O'Connor did say the expletive to Trotman.

For these reasons, I **CONCLUDE** that the Sheriff's Office has sustained its burden of proof by a preponderance of the credible evidence that O'Connor's conduct on March 8, 2018, in directing the expletive toward Trotman and his demeanor, language, and actions toward Esteves and Trotman on said date is "conduct unbecoming a public employee" and the same is justifiably grounds for the Sheriff's Office to sanction him for "other sufficient cause." N.J.A.C. 4A:2-2.3(a) (6) and (12). I also **CONCLUDE** that said conduct is also violative of the Sheriff's Office Duty Manual, Volume I, Chapter 2, Section B1d, Courtesy.

I **CONCLUDE** further that O'Connor's conduct and language on March 8, 2018, is proof of his incompetency, inefficiency, and a failure to perform duties, or inability to perform duties under N.J.A.C. 4A: 2-2.3(a)(1) and (3), inasmuch as the same is contrary to the behavior, demeanor and conduct expected of a law enforcement officer. I therefore **CONCLUDE** that the Sheriff's Office has sustained its burden of proof regarding the March 8, 2018 incident, concerning the stated charges.

Regarding the Sheriff's Office requiring that O'Connor undergo a drug test based upon reasonable suspicion, I **CONCLUDE** that the record in this matter reflects that the same was done pursuant to the Attorney General Drug Testing Policy dated May 2012 (J-14), and as mirrored in the Sheriff's Office Duty Manual, Chapter 23, Drug Screening (J-15).

Specifically, Burke testified that a memorandum from the Attorney General of New Jersey regarding changes to law enforcement drug testing policy issued March 20, 2018 (J-16), advised all law enforcement agencies to have the new changes to their policies and that the same would take effect within thirty (30) days of March 20, 2018. Burke testified that since the Sheriff's Office had not yet changed their policies to reflect the newly revised policies on April 4, 2018, O'Connor's reasonable suspicion test was ordered in accordance with the Attorney General's policy from May 2012 policy (J-14).

I, therefore, **CONCLUDE** that O'Connor's reasonable suspicion test was ordered on April 4, 2018, in accordance with the Attorney General's policy from May 2012 policy (J-14), and that the said Policy had been adopted by the Sheriff's Office in Chapter 23 of the Sheriff's Office Duty Manual (J-15). I **CONCLUDE** further that the drug testing policies contained in the Attorney General's Drug Testing Policy revised April 2018, (J-14), took effect on April 20, 2018 (J-16).

Having concluded that the Sheriff's Office was operating in accordance with the Attorney General Drug Testing Policy dated May 2012 (J-14 and J-16), as contained in the Sheriff's Office in Chapter 23 of the Sheriff's Office Duty Manual (J-15), I must now consider if the Sheriff's Office had reasonable suspicion to order O'Connor to undergo the drug test on April 2, 2018.

The record herein reveals the following, which I **CONCLUDE** demonstrates the Sheriff's Office did have reasonable suspicion to order the drug test:

- 1) The incidents regarding O'Connor's interactions with members of the Elizabeth Police Department as part of the Community Policing Unit he was assigned in late 2017, which resulted in the Supervisory Referral (J-3);
- 2) The incidents with O'Connor and Trotman and Esteves at the PBA Convention in March 2018; and,
- 3) O'Connor's concerns communicated to Caparruva regarding a potential high testosterone reading from his urinalysis conducted at High Focus where he was going for an alcohol evaluation, due to over-the-counter supplements O'Connor was using as part of his daily physical training regimen (J-11).

O'Connor argues that the Sheriff's Office provided "inconsistent testimony from the County's witnesses and a specific reason as to why the test was ordered". However, while I agree with O'Connor that the witnesses produced by the Sheriff's Office did not all provide consistent reasons for ordering the reasonable suspicion test, the record reveals, and I **CONCLUDE**, that O'Connor's statement to Caparruva that he was concerned about a potential high testosterone reading from his urinalysis conducted at High Focus is sufficient cause for the Sheriff's Office to order the reasonable suspicion drug test. That is, O'Connor's admission to Caparruva alone absent the other reasons provided by the Sheriff's Office, I **CONCLUDE** is sufficient reasonable suspicion for the Sheriff's Office decision to order O'Connor to undergo the drug test.

I **CONCLUDE** that O'Connor has not provided independent rebuttal evidence to refute the Sheriff's Office reason for a reasonable suspicion test other than to argue that the witnesses have provided "inconsistent testimony". It was O'Connor's concerns of a potential high testosterone reading communicated to Caparruva and contained in the memorandums submitted by his supervisors to Sheriff Corvelli that is the main reason in my **CONCLUSION** that the Sheriff's Office had reasonable suspicion to order O'Connor to conduct a drug test on April 4, 2018.

O'Connor next argues that even if reasonable suspicion is found to have been established by the Sheriff's Office, the drug test should still be set aside and disciplinary charges dismissed as the Sheriff's Office failed to establish the proper chain of custody. For the reasons set forth below, I **CONCLUDE** that the reasonable suspicion drug test administered to O'Connor was done in conformance with the procedures as required by the Attorney General Drug Testing Policy dated May 21, 2012 (J-14), and the Sheriff's Office Duty Manual (J-15).

The determination whether the chain of custody of a drug sample has been sufficiently established to justify admission of test results is committed to the discretion of the trier of fact. In re LaLama, 343 N.J. Super. 560 (2001). Although there is a relaxed evidentiary standard in administrative hearings, there must be substantial, or sufficient, credible evidence in the record to support the charges assessed. N.J.S.A. 52:14B-10(a); In re Taylor, 158 N.J. 644, 656-657 (1999); Cumberland Farms, Inc., v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

The record reveals, and O'Connor does not dispute, that Lt. Bracciale properly collected O'Connor's urine specimen and delivered the same to the State Lab in accordance with the Attorney General Drug Testing Policy (J-14) and the Union County Sheriff's Office Duty Manual (J-15), and I therefore **CONCLUDE** that the Sheriff's Office has complied with the requirements of the same herein.

The record also reveals, and O'Connor does not dispute, that the State Lab complied with its chain of custody requirements (R-5 and R-8) when it received O'Connor's urine specimen on April 4, 2018, and then provided the same to Aegis. The testimony of Sorin Diaconescu explained the chain of custody procedures and the LIMS system (Laboratory Information Management System) (R-3), which electronically maintains the chain of custody of urine specimen received by the Laboratory for to delivery to Aegis (R-5 and R-8), and therefore, I **CONCLUDE** that the Sheriff's Office has established by a preponderance of the credible evidence the chain of custody of O'Connor's urine specimen provided to the State Lab and then Aegis, in accordance with

the with the Attorney General Drug Testing Policy (J-14) and the Sheriff's Office Duty Manual ( J-15).

O'Connor's sole argument that the Sheriff's Office did not comply with the chain of custody requirements set forth by the Attorney General Guidelines (J-14) and the Sheriff's Office Duty Manual (J-15), is that Aegis did not maintain its records regarding the testing procedure for O'Connor's urine specimen. Specifically, O'Connor argues that the testimony of Lora McCord and her reliance on her "recollection" of performing the test in 2018 is not sufficient to support the Sheriff's Office burden of proof that the chain of custody was satisfied to support O'Connor's termination.

In support of his argument that McCord's testimony did not satisfy the chain of custody requirements, O'Connor relies upon In Re Brown, 2009 WL 2045235, at 1 (2009), a case involving a petitioner's termination from the Monmouth County Correctional Facility (Monmouth County) for failing a drug test. In In Re Brown the Merit System Board agreed with the Administrative Law Judge's decision to uphold the charges and Monmouth's County decision to remove Petitioner despite the fact that no one from the State Laboratory appeared to testify about the testing process or verified that the test was conducted in accordance with the Attorney General Guidelines. Id. at \*2.

On appeal, the Appellate Court reversed the decision of removal and reinstated the petitioner to his position with Monmouth County. The Court found that as there were no witnesses who testified having first-hand knowledge of the procedures employed, and no witnesses testified who could verify that any of the essential elements of a fair and reliable testing procedure were followed, it reversed. Id. at \*2.

Unlike the Appellate Court's decision in In Re Brown, in this matter the Sheriff's Office has provided the testimony of Bracciale, who testified as to collecting the sample and properly delivering the same to the State Lab, and the testimony of Diaconescu, who testified as to the State Lab's procedure in collecting the specimen and submitting the same to Aegis. In addition, O'Connor fails to challenge the testimony of Dr. Falzon and his conclusions.

Dr. Falzon testified that he followed the New Jersey State Toxicology Laboratory procedures in conducting his medical review of the Aegis results from the steroid testing of O'Connor urine specimen. Specifically, Dr. Falzon testified that in accordance with the appropriate procedures he reviewed the results (R-10) against the medication sheet personally filled out by O'Connor on the date the urine specimen was collected (R-13) and found that there were no medications or supplements that O'Connor was taking which would have resulted in the positive steroid test results. Moreover, Dr. Falzon testified and I **CONCLUDE**, that it was his expert medical opinion that the positive steroid test result was, without a doubt, due to O'Connor taking 19-norandosterone.

Based upon the forgoing, I **CONCLUDE** that the record herein reveals that the Sheriff's Office has sustained its burden of proof in establish that the collection and testing of O'Connor's urine specimen for drugs is in compliance with the chain of custody requirements set forth in the Attorney General Drug Testing Policy (J-14) and the Sheriff's Office Duty Manual (J-15), and O'Connor's termination was appropriate.

### **PENALTY**

Having concluded that the Sheriff's Office was operating in accordance with the Attorney General Drug Testing Policy dated May 2012 (J-14 and J-16), as contained in the Sheriff's Office Duty Manual (J-15), and that O'Connor tested positive for an illegal drug, I must consider the terms of discipline set forth in therein. Thus, it is not necessary for me to determine if progressive discipline is at issue here to note termination as a proper form of discipline.

The Sheriff's Office Duty Manual, Chapter 23, which mirror's the Attorney General Drug Testing Policy, and determines the disciplinary action that a police officer is subject to on failing a drug test. Consequence of a Positive Test Result provides, Section I(2), in relevant part:

2. The following administrative procedures will be implemented for sworn Sheriff's officers who test positively for illegal drug use:



- a. The officer shall be immediately suspended from all duties;
- b. The officer shall be terminated from employment as a Sheriff's officer, upon final disciplinary action;
- c. The officer shall be reported to Central Drug Registry maintained by the Division of State Police; and,
- d. The officer shall be permanently barred from future law enforcement employment in New Jersey." (J-15)

Having **CONCLUDED** that the Sheriff's Office has demonstrated by a preponderance of the credible evidence that O'Connor tested positive for steroid use of 19-norandosteron, I **CONCLUDE** that the Sheriff's Office decision to immediately suspend O'Connor without pay, pursuant to N.J.A.C. 4A:2-2.5(a)(1), and the penalty of removal under Sheriff's Office Duty Manual, Chapter 23, were appropriate.

#### **ORDER**

Accordingly, it is hereby **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of the Union County Sheriff's Office, dated May 17, 2018, terminating Kevin O'Connor is **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.

December 30, 2021

DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

December 30, 2021

Date E-Mailed to Parties:

December 30, 2021

JCM/lr

**APPENDIX**

**WITNESSES**

**For Appellant:**

Kevin O'Connor  
Detective Charles Mancuso, (Retired)  
Lieutenant Gaetano Bracciale  
Lieutenant Carlo Capparuva

**For Respondent:**

Sergeant Sean Perez  
Officer Brian Trotman  
Sergeant Melissa Esteves  
Lieutenant Carlo Caparruva  
Undersheriff Dennis Burke  
Lieutenant Gaetano Bracciale  
Sorin Diacomescu  
Lora McCord  
Dr. Andrew Falzon, M.D.

**EXHIBITS**

**For Appellant:**

- P-1 Attorney General Guidelines Drug Testing Policy –Revised 2018.
- P-2 Letter from High Focus to Lieutenant Patrick Horo dated March 16, 2018
- P-3 Not in evidence
- P-4 Internal Affairs Complaint Notification dated March 16, 2018
- P-5 Commendations Received by Petitioner

**For Respondent:**

- R-1 Quest Diagnostics Report for Specimen BR583162, collected 03-22-18
- R-2 NOT IN EVIDENCE
- R-3 Office of Professional Standards, Report of Investigation and Findings from Sgt. Bracciale dated 03-15-18
- R-4 Law Enforcement Drug Testing –Chain of Custody and Instructions
- R-5 Toxicology Report dated 04/30/18 re: Sample ID 18L004636
- R-6 Chain of Custody document from NJ State Laboratory
- R-7 NOT IN EVIDENCE
- R-8 Aegis Forensic Drug Testing Custody and Control Form
- R-9 Aegis testing form
- R-10 Aegis Laboratory Report dated 04-20-18
- R-11 Copy of N.J.A.C.13:45H–10.1- Schedules of controlled dangerous substances
- R-12 Dr. Falzon CV
- R-13 Medication sheet
- R-14 McCord CV

**Joint and Stipulated:**

- J-1 Preliminary Notice of Disciplinary Action
- J-2 Final Notice of Disciplinary Action
- J-3 Supervisory Referral By Sergeant Sean Perez dated 10-17-17
- J-4 Supervisory Referral By Sergeant Sean Perez dated 11-17-17
- J-5 Supervisory Referral By Sergeant Sean Perez dated 12-19-17
- J-6 Supervisory Referral By Sergeant Sean Perez dated 01-20-18
- J-7 Memorandum from Lieutenant Carlo Caparruva to Undersheriff Dennis Burke dated 03-12-18
- J-8 E-mail from Chief John P. Cook to Detective Charles Mancuso dated 03-22-18 forwarding an e-mail from Patrol Officer Brian Trotman to Chief John Cook dated 03-12-18
- J-9 Daily Log Full Report, 0-3-08-18
- J-10 E-mail from Chief John P. Cook to Charles Mancuso dated 03-22-18 forwarding an e-mail from Patrol Officer Melissa Esteves to Chief John Cook dated 03-11-18

- J-11 Memorandum from Lieutenant Carlo Caparruva to Sheriff Peter Corvelli dated 03-23-18
- J-12 Memorandum from Undersheriff Dennis Burke to Sheriff Peter Corvelli dated 03-15-18
- J-13 Memorandum from Undersheriff Dennis Burke to Sheriff Peter Corvelli dated 03-26-18
- J-14 Attorney General's Law Enforcement Drug Testing Policy, May 21, 2012
- J-15 Union County Sheriff's Office Duty Manual, Volume I, Chapter 23- Drug Screening
- J-16 Attorney General Law Enforcement Directive No. 2018-2 dated 03-20-18
- J-17 Union County Sheriff's Office Duty Manual, Volume I, Chapter 2- Conduct of Personnel
- J-18 NOT IN EVIDENCE
- J-19 NOT IN EVIDENCE
- J-20 Video of Incident at Tropicana Hotel in Atlantic City, NJ, March 2018
- J-21 NOT IN EVIDENCE
- J-22 NOT IN EVIDENCE
- J-23 NOT IN EVIDENCE