



STATE OF NEW JERSEY

In the Matter of Michael Forfa,
Linden, Police Department

CSC DKT. NO. 2020-544
OAL DKT. NO. CSR 11993-19

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: OCTOBER 12, 2022

The appeal of Michael Forfa, Police Officer, Linden, Police Department, removal, effective August 9, 2019, on charges, was heard by Administrative Law Judge Nanci G. Stokes (ALJ), who rendered her initial decision on August 19, 2022. 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, including a thorough review of the exceptions and reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of October 12, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

The Commission makes the following comments. As indicated above, the Commission thoroughly reviewed the exceptions filed by the appellant in this matter and finds most do not merit extended discussion. Nevertheless, the Commission notes that the ALJ's findings and conclusions in upholding the charges and the penalty imposed was based on her thorough and painstaking assessment of the record and were not arbitrary, capricious or unreasonable. In this regard, upon its *de novo* review of the record, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately

gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations or the findings and conclusions made therefrom.

Additionally, the Commission finds that the appellant's infractions in this matter are clearly worthy of removal from employment for a Police Officer. In this regard, the Commission emphasizes that a Police Officer is a law enforcement officer who, by the very nature of his job duties, is held to a higher standard of conduct than other public employees. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also, *In re Phillips*, 117 *N.J.* 567 (1990). The appellant's demonstrated failures during his brief tenure clearly fall short of what is expected of a Police Officer and support his removal from employment.

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 Michael Forfa.

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 12TH DAY OF OCTOBER, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 11993-19

AGENCY DKT. NO. N/A

2020-544

**IN THE MATTER OF MICHAEL FORFA, CITY OF
LINDEN, POLICE DEPARTMENT**

Peter B. Paris, Esq., for appellant (Beckett & Paris, attorneys)

Robert J. Merryman, Esq., for respondent (Apruzze, McDermott, Mastro &
Murphy, attorneys)

Record Closed: July 11, 2022

Decided: August 19, 2022

BEFORE **NANCI G. STOKES, ALJ**:

STATEMENT OF THE CASE

On April 24, 2018, Officer Michael Forfa did not carry his gun on patrol despite knowledge of its absence. While on a training performance plan, Forfa improved in some areas but not others. Should Forfa be terminated for failure to perform duties or conduct unbecoming? Yes. When the job involves public safety, and the misconduct causes a risk of public harm or impedes the officer's ability to perform satisfactorily, progressive discipline is contrary to the public interest. In re Herrmann, 192 N.J. 19 (2007).

PROCEDURAL HISTORY

On June 19, 2018, Linden served Forfa with a Preliminary Notice of Disciplinary Action (PNDA). In its notice, Linden charged Forfa with incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Linden also charged Forfa with violations of Linden Police Department Rules and Regulations regarding obedience to laws and written directives (3:1.7); performance of duty (3:1.5); work expectation (3:7.5), and personal appearance (3:8.6).

In its specifications, Linden charged that Forfa was on a ninety-day performance improvement plan (PIP) on March 21, 2018. However, a review of his work performance during April and May failed to reveal satisfactory improvement in decision-making, field performance, officer safety, prisoner control, orientation, field activity, vehicle stops, pedestrian stops, driving skills, patrol procedures, radio transmission, and general appearance.

Linden issued a second PNDA on June 19, 2018, charging Forfa with the same violations of the New Jersey Administrative Code, adding conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and Linden Police Department rules and regulations regarding obedience to laws and written directives (3:1.7); performance of duty (3:1.5); work expectation (3:7.5); equipment on duty (3:9.1); and truthfulness (3:13.5).

In its specifications, Linden alleged that on May 2, 2018¹, Forfa patrolled Linden without his service weapon for approximately two and a half hours. During that time, Forfa and his partner, Field Training Officer (FTO) Antonio Lacosta conducted two motor vehicle stops and a service call response.

¹ By all accounts, the date is April 24, 2018. Indeed, Forfa does not dispute that he did not carry his service weapon for a period while on patrol on April 24, 2018.

An internal affairs (IA) investigation discovered that Forfa was aware that he was unarmed on the second motor vehicle stop but failed to retrieve his weapon and continued to patrol the city unarmed. Linden also charged that Forfa provided a false sworn statement to an IA investigator during an administrative interview on May 28, 2018, about the missing service weapon.

On July 12, 2018, Linden issued a third PNDA regarding the PIP, charging Forfa with the same violations of the New Jersey Administrative Code and Linden Police Department rules and regulations regarding obedience to laws and written directives (3:1.7); performance of duty (3:1.5); work expectation (3:7.5); reporting for duty (3:7.1), and personal appearance (3:8-6).

In its specifications, Linden charged that Forfa was on a ninety-day performance improvement plan on March 21, 2018. A review of his work performance during June 2018 failed to reveal satisfactory improvement in decision-making, field performance, officer safety, prisoner control, orientation, vehicle stops, pedestrian stops, interview skills, report writing, New Jersey motor vehicle code Title 39, and general appearance. In addition, on June 18, 2018, Forfa reported to his post forty minutes late.

On June 27, 2019, Linden sustained the charges and specifications relative to Forfa's failure to improve during PIP satisfactorily, the incidents on May 2, 2018, and May 28, 2018, removing Forfa from its employ effective August 9, 2019. On August 12, 2019, Linden personally served Forfa with Final Notices of Preliminary Disciplinary Actions (FNDA) dated August 10, 2019. On August 15, 2019, Forfa filed this appeal, and the OAL assigned the case to me for hearing on September 5, 2019.

I conducted a pre-hearing conference on September 24, 2019, and instructed the parties to exchange additional discovery.

On October 21, 2019, Forfa waived his return to back pay after the expiration of the 180-day-period to obtain more discovery.

On October 22, 2019, I issued a pre-hearing Order scheduling hearing dates for January 14, 17, 21, 28, February 4, and 7, 2020.

Despite multiple discussions, the parties could not resolve their discovery issues. On December 17, 2019, Forfa filed a motion to compel further discovery, maintaining Linden's responses were insufficient.

On January 16, 2020, I issued a confidentiality Order requested by the parties.²

On April 14, 2020, I issued an Order directing Linden to supply additional discovery. However, I concluded that Linden presented legitimate concerns about specific discovery, and I did not require production or responses to all demands.

On March 9, 2020, under Executive Order No. 103, the Governor of the State of New Jersey first declared a State of Emergency caused by COVID-19.³

On March 17, 2020, the OAL stopped in-person proceedings due to the COVID-19 pandemic and conducted hearings via Zoom.

Initially, the parties agreed to adjourn the hearings because in-person proceedings were unavailable. Indeed, the parties highlighted that this case involved multiple FNDAs with numerous charges against Forfa over an extended period. The parties also anticipated presenting substantial documentary, video, and audio evidence to numerous witnesses over many days.

Ultimately, Linden objected to the continued adjournment of the hearings. On February 12, 2021, I ordered hearings to proceed via Zoom over Forfa's objection.

² On April 27, 2022, I also issued an Order to Seal the videos. Videos, in this case, depict members of the public, including juveniles and victims of domestic assault. The parties designated these materials as confidential in the Confidentiality Order I signed. All videos should remain confidential until final adjudication and the return to producing counsel or agreed upon destruction. See Confidentiality Order at ¶ 6.

³ The Governor extended the State of Emergency through subsequent Executive Orders, which initially continued until June 4, 2021. The New Jersey Legislature eliminated most Executive Orders thirty days from June 4, 2021, although several Executive Orders remained in effect. However, because of the Omicron variant, the Governor again declared a State of Emergency that ended on March 7, 2022.

Forfa sought interlocutory review with the Commission, which the Commission denied on March 4, 2021.

On March 29 and April 7, 2021, I conducted hearings via Zoom with testimony from Lieutenant Vinnie Wegrzynek. A discovery dispute arose during his testimony, and petitioner filed a motion seeking discovery sanctions that Linden opposed.

On April 30, 2021, the next scheduled hearing date, I requested that the parties clarify the motion. That day, Wegrzynek testified concerning the FTO training records petitioner's motion addressed. Based on that testimony, I directed Linden to provide more documentation before testimony from Forfa's FTOs and reserved my decision on whether to grant petitioner's request for sanctions. Linden provided the materials, and the parties resolved the motion.⁴

Afterward, hearings proceeded via Zoom on June 1, 8, 16, and 28; July 8, 13, 16, and 26; August 24 and 30; October 13 and 28, 2021; and November 5, 2021. The parties requested transcripts and agreed to file post-hearing submissions thirty days after receipt.⁵

On July 11, 2022, the parties filed post-hearing briefs, and the record closed.

FINDINGS OF FACT

The parties do not dispute much of the factual background, and after my consideration of the credibility of the testimony, stipulated facts, and the sufficiency of documents presented, I find the following as **FACTS**:

⁴ A subsequent discovery issue arose during these proceedings. Following Schulhafer's testimony on June 28, 2018, petitioner first sought discovery about Schulhafer, and Linden opposed that request. I heard oral argument regarding petitioner's discovery requests and the introduction of additional evidence, which I denied on the record on July 8, 2018.

⁵ Despite Linden's timely requests for transcripts following each hearing date and diligent follow-up, multiple unanticipated delays ensued with the transcription service. On June 22, 2022, the OAL received the final hearing transcript.

On July 5, 2016, Linden hired Forfa as a police officer, and he began pre-academy training to become mentally and physically ready for the academy. From July 15, 2016, through December 14, 2016, Forfa attended and completed the police academy.

Forfa was under a working test period from December 15, 2016, through December 14, 2017. From January 6, 2017, through June 30, 2017, Forfa was in a training program where FTOs evaluated his performance. Next, Forfa patrolled on his own without FTO supervision from July 1, 2017, through March 1, 2018.

In 2016 and 2017, Linden's Chief Parham issued Standard Operating Procedure (SOP) for Linden's "Field Training and Evaluation Program," that included standards for an officer's successful completion of their working test period. Indeed, Linden made Forfa a permanent officer after his working test period ended.

However, on March 19, 2018, Linden developed a ninety-day performance improvement plan (PIP) where Linden would again pair Forfa with an FTO to address concerns brought to the training department's attention in 2018. The PIP notes seven categories of "deficient areas and unsatisfactory performance" with "desired outcomes":

- 1) Lack of initiative and confidence. Failure to exercise authority. Desired outcome: the ability to take charge of the situation and to promptly exercise authority as a police officer, including exhibiting no fear in asking for guidance.
- 2) Failure to perform duties promptly, faithfully, and diligently. Desired outcome: not creating undue delay in taking charge and completing a job, including report writing and situational awareness.
- 3) Failure to coordinate efforts with other employees. Desired outcome: speaking out as the primary officer by advising back-up officers as to what assistance is necessary.
- 4) Failure to strive to improve skills and techniques via studying and training. Desired outcome: the ability to follow basic domestic violence (DV) state and local procedure, learning about and using available sources of written information pertinent to police work.

- 5) Failure to perform related work in a timely fashion. Desired outcome: the ability to confidently look up information and consult with supervisors if unsure
- 6) Failure to administer Standardized Field Sobriety Tests (SFSTs) properly and safely. Desired outcome: the ability to apply SFSTs safely and efficiently.
- 7) Failure to retain information. Desired outcome: the ability to take proper notes and have enough practice with miscellaneous jobs; knowing the information or know where to look it up when quizzed orally.

The PIP advised Forfa that "if the employee fails to improve his job performance and/or to meet the required standards during the period set forth above, further discipline may be instituted." The PIP also noted that Linden required Forfa to attend advanced DV training and the first available SFST class. However, Linden did not set up Forfa's attendance at that training.

FTOs prepare computerized daily officer reports (DORs) for each day that they are partnered with the trainee. Before the computerized system in use for over five years, FTOs would complete handwritten observations and assessments.

A DOR includes twenty-five categories, referenced as "questions," that assess the trainee's competency and performance:

- 1) stress control
- 2) decision-making/problem-solving
- 3) driving skills
- 4) field performance; non-stress conditions
- 5) field performance; stress conditions
- 6) officer safety
- 7) prisoner control/investigative detention
- 8) orientation
- 9) self-initiated field activity
- 10) vehicle/pedestrian stops

- 11) interview skills
- 12) driving skills; normal conditions
- 13) radio: transmissions/perceptions/procedures
- 14) report writing
- 15) laws of arrest
- 16) accident investigation
- 17) departmental policies and procedures
- 18) NJ Code of Criminal Justice 2C
- 19) NJ motor vehicle code Title 39
- 20) patrol procedures
- 21) acceptance of criticism and feedback
- 22) attitude toward police work
- 23) relationship with citizens
- 24) relationship with department members
- 25) general appearance

The DOR also permits an FTO to identify the “most satisfactory performance of the day” or “least satisfactory performance of the day” and includes a “comments” section to describe what occurred. Linden does not require FTOs to complete questions number twenty-six and twenty-seven.

In the twenty-five rated categories, FTOs can use unacceptable, acceptable, not observed, or superior ratings. Under each rated category, the DOR computer system offers a drop-down menu permitting the FTO to identify standard responses and write “training comments” for any rating. These standard responses are reference points used by FTOs. For example, the first category, stress control, involving verbal communication and physical behaviors, has nine drop-down “unacceptable” selections, including “indecisive,” “uses too little or too much verbal force for the situation,” and “unable to maintain control during routine matters.” Moreover, the drop-down for each rating has an “other” selection to give an FTO flexibility if the FTO finds the drop-down options unsuitable. See P-56B. “Unacceptable” rating drop-down menus for all categories also include an “NRT” or “did not respond to training” option. Ibid.

The computerized DOR system can also generate reports based upon the "drop down" menu of comments, including "did not respond to training" or an "NRT chart" compiling each date and category when the FTO deemed the trainee failed to respond to previous training in that category.

However, training comments are not standardized. Instead, the FTO can reference specific incidents or provide a personal abstract of the event leading to the rating. Incident reports are documents completed by officers with correlating computer-aided dispatch (CAD) incident reports, though numbered differently. FTO comments identify incident reports rather than reference CADs.

The DOR also includes a section to identify time engaged in training or counseling the trainee regarding an unacceptable rating in the category.

The DOR system values an unacceptable rating as one while an acceptable rating has a value of two. Any category noted as "not observed" has no value as do the most and least satisfactory performance sections. A superior rating has a value of three, is rarely used, and denotes only extraordinary effort above and beyond expectations.

From the DOR system, Linden obtained various reports summarizing performance or training. Initially, the "daily rating" or "performance" chart provides a synopsis of daily performance in each category compared to other days. It also calculates an average daily rating in each category utilizing numerical values. The daily performance chart also highlights unacceptable ratings as red and acceptable ratings as blue. See R-6.

During the PIP period, Forfa received all acceptable ratings in the following categories:

- Acceptance of feedback
- Attitude towards police work

- Department policies and procedures
- NJ Criminal Code of Justice 2C
- Relationship with department members

Thus, these five categories note an average score of two and no deficiencies.

A daily training chart compiles the time FTOs denoted for trainee counseling for each DOR category, including the total amount of training for that section during a selected period.

A DOR “roll-up report” summarizes the ratings and FTO comments by category. However, this report highlights only those ratings where the FTO placed a comment, whether acceptable or unacceptable. The roll-up report also calculates the number of unacceptable and acceptable ratings for a particular category. See R-5.

Linden paired Forfa with several FTOs from April 3, 2018, through June 29, 2018. Forfa worked with none of these FTOs before. The DORs identify the date, FTO, and have an assigned number.

On April 3, 4, and 6, 2018, Linden paired Forfa and FTO Wojciech Dziadosz. See DORs 34, 35, and 36.

On April 9, 15, 16, 17, 18, 23, and 24, 2018, Linden paired Forfa and FTO Antonio Lacosta on a day shift from 6:30 a.m. to 5:15 p.m. See DORs 37, 39–44.

Linden also paired Forfa with FTO Ralph Heston on one date, April 10, 2018. See DOR 38. The FTO calendar indicates “Heston off” or “Heston out early” on six days, where Linden paired Forfa with Lacosta instead.

On April 25, 26, May 1, 2, 9, 10, 11, 12, 17, 18, 19, 20, June 2, 3, 4, 5, 2018, Linden paired Forfa and FTO James Schulhafer on a night shift from 5:15 p.m. to approximately 4:00 a.m. See DORs 45–59. Notably, Linden designated a DOR as forty-five twice, one for April 25, 2018, and the other for April 26, 2018.⁶

On May 25, 26, and 28, 2018, Forfa was at the stationhouse and not evaluated. Although Forfa patrolled with Sergeant Joseph Rivera on May 27, 2018, Rivera did not complete a DOR. On June 27, 2018, Forfa attended academy training, so no DOR exists.

On June 10, 11, 12, 13, 19, 20, 21, 26, 28, and 29, 2018, Linden stationed Forfa at the headquarters' (HQ) front desk with FTO Turon. See DORs 60–70. In total, Forfa served twenty-seven days on patrol during the PIP, and ten days stationed at HQ, where an FTO evaluated him.

Linden has 365 CAD reports involving Forfa during the PIP period. See P-57. CAD incidents document officer activity and could include stopping at 301 North Avenue or headquarters to pick up paperwork or other non-patrol actions. CAD entries do not reflect an officer's role on a given job. Cf. pp. Forfa 1230-1237 to Forfa 1036-1052.⁷

⁶ This decision uses 45(1) and 45(2) for these DORs.

⁷ P-57 includes a listing of CAD incidents concerning Forfa, Bate-stamped Forfa 1230-37, and a previous CAD listing with incident type, Bate-stamped Forfa 1036-52. Forfa 1230-37 identifies the events involving Forfa, whereas the other list encompasses incidents involving Forfa's vehicle, not necessarily Forfa. For example, Forfa did not work on May 8, 2018, making those CADs unrelated, and the first CAD on May 9, 2018, involving Forfa was 1803557.

Instead, one must review the CAD report to determine whether Forfa was serving as a back-up or primary unit.

Forfa has no prior disciplinary history.

TESTIMONY

For Respondent

Lieutenant Vinnie Wegrzynek

Wegrzynek served Linden as a police officer for more than thirteen years and works in the training unit. Wegrzynek joined the training division in January 2014 as an FTO and then achieved the rank of sergeant in August or September 2014. In 2016, Wegrzynek became Linden's training coordinator. In January 2018, Linden leadership changed, and Chief Parham retired. In that same month, Linden promoted Wegrzynek to the rank of lieutenant, and he served as the training unit commander.

However, Wegrzynek was not assigned a trainee while an FTO before moving to an administrative role.

Wegrzynek explained that Linden places all police officers on a training program before and following the police academy. Once completing the police academy, Linden provides a probationary officer with firearms training, tactical exercises, basic medical instruction, and information on Linden's units and divisions. Next, Linden assigns the trainee to a FTO for six months. Training with an FTO precedes the trainee's release to patrol without supervision.

Linden selects FTOs to serve as an example to the trainees, work one-to-one with the trainees, and patrol in the same car with a trainee. An FTO has at least three years of experience and must have a supervisor's recommendation to apply for the position. As part of the process, Linden reviews a prospective FTO's internal affairs file, performance evaluations, and professional standards documentation concerning the

applicant's training. An FTO applicant would also undergo an interview process. However, Wegrzynek did not interview the FTOs that evaluated Forfa during the PIP period, and the Chief decides which officers become FTOs. Still, Wegrzynek prepared the FTO calendar to designate the FTOs assigned to Forfa daily.

Wegrzynek helped create a revised 2021 FTO Training Manual. That manual contains a typographical error duplicating a DOR category heading of interview skills rather than listing vehicle and pedestrian stops. Regardless, Linden only used the previous manual from 2005, as updated in 2015, to train FTOs on the DOR rating system information used to evaluate Forfa. However, these FTOs did not receive the complete FTO manual, only sections addressing the DOR system. Each FTO undergoes a training program run by Pennsylvania State University at local police academies or training facilities lasting three days. The training unit also provides in-house training, including how to use the DOR system, and conducts monthly meetings to discuss trainees or general training issues.

FTO supervision involves three phases. During the first phase, the trainee observes the FTO performing various police tasks or the "watch and learn" training section. In the second phase, approximately two months later, the trainee performs these responsibilities with FTO assistance. Phase two is considered "active learning." The trainee performs all tasks in the third phase, and the FTO observes or "shadows" the trainee. In the third phase, the FTO will still step in when the trainee is not taking the appropriate action.

Linden assigned Forfa to the Patrol Unit. Towards the end of his working test period in 2017, Linden paired Forfa with a senior officer for additional guidance. Although that guidance was unusual, Forfa still completed his working test period.

Yet, in February 2018, Forfa's supervisors copied Wegrzynek as the training unit coordinator on correspondence expressing concerns about Forfa's solo patrol conduct. Specifically, patrol supervisors noted Forfa's memory and retention issues, poor notetaking, inability to act due to an apparent lack of confidence, and lack of knowledge of Linden streets. Forfa's supervisors also noted concerns in the Guardian Tracker

System that identifies negative and positive incidents about every officer a supervisor deems necessary to document.

Patrol Lieutenant Ivan Ordonez prepared the performance improvement plan, but he did not testify in this case. Forfa would undergo ninety days of retraining with FTOs in the "shadow phase." FTOs would observe Forfa and prepare DORs to critique and assist Forfa.

Generally, Linden retrains officers absent from the job for a significant time due to illness, military service, or other circumstances. Wegrzynek recalls no officer other than Forfa being subject to retraining without such an absence or even needing a PIP with retraining. Outside of training periods, DORs are no longer used to assess performance. Instead, supervisors document favorable or unfavorable performance in the Guardian system or on performance evaluations completed by an officer's immediate supervisor.

Before the PIP, Wegrzynek was familiar with Forfa and served as one of Forfa's training officers at the police academy. However, Wegrzynek denies insulting Forfa at the academy.

Wegrzynek monitored Forfa's progress and utilized the DOR computer system to prepare the rollup report and daily rating chart. Wegrzynek explained that because Forfa underwent prior training, his review of the DOR evaluations was more exacting because an officer at this point in their career should not have unacceptable ratings and should not need significant training time.

Wegrzynek's review of the comments and daily rating chart revealed several areas of continued deficiency in Forfa. According to Wegrzynek, some areas showed critical concerns indicating that Forfa was not responding to what FTO's were telling him or the steps FTO's were taking to assist Forfa's improvement. Even one unacceptable rating for officer safety would be worrying, but Forfa had six during the PIP. On seven occasions during the PIP, FTO's also rated Forfa's orientation as unacceptable which

undeniably implicates officer safety. Self-initiated field activity remained a concern with nine unacceptable ratings.

FTOs also criticized Forfa's interview skills nine times during the PIP. Issues with radio transmissions on patrol persisted with nine unacceptable notations. FTOs documented that Forfa's knowledge of the New Jersey Motor Vehicle Code lacked on three occasions, including routine violations. On eight days during the PIP, FTOs unfavorably assessed Forfa's report writing. FTOs rated decision-making negatively on twelve occasions. Wegrzynek expressed concern hearing Forfa's testimony that FTO comments on DORs were just "opinions." To Wegrzynek, Forfa's testimony suggested that while his goal should be to improve his performance, Forfa's did not take the FTO critiques seriously.

Unacceptable DOR ratings required more explanation to assist the trainee's understanding of the reason for that rating. DORs do not document every action, and an FTO does not always directly observe all actions. The FTO focuses on critical tasks and must view enough to justify a particular rating. When an FTO notes "not observed" on a DOR category, this notation does not necessarily mean that the activity did not happen. Instead, the FTO's observation level may not warrant an acceptable or unacceptable rating.

A secondary role involved lower expectations of the trainee. Thus, whether the trainee acted as a primary or back-up officer on the scene impacted whether the FTO would rate the trainee's actions. Forfa's experience level also affected an FTO's expectations, meaning an FTO would anticipate better performance given that Forfa had more experience than a newer officer.

Wegrzynek also highlighted the numerous notations of "did not respond to training," meaning that an FTO counseled Forfa on a deficient significant performance task, but the issue persisted. Wegrzynek did not believe additional training would make a difference with Forfa given his failure to respond to repeated counseling. DORs consistently advised Forfa of continued problems, but his conduct did not adequately improve.

Forfa had an opportunity to respond to the FTO ratings on each of the DORs before signing off but never did. Indeed, during a trainee's review of each DOR, if an FTO commented, the word "respond" appeared in blue in the left-hand column prompting the trainee of that option.

After his review of the DORs, Wegrzynek prepared memoranda to Capt. James Sarnicki discussing Forfa's continuing deficiencies during the PIP retraining. See P-54, dated April 23, 2018; R-42, covering the period of April 1 to 30, 2018; R-43, covering the period of May 1 to June 6, 2018; and R-44, covering the period of June 1 to June 28, 2018.

The training unit met with Forfa approximately monthly to go over Forfa's continuing deficiencies, and Wegrzynek prepared a letter following each meeting, signed by the participants. See R-8, R-9, and R-10. The meetings discussed areas still needing improvement, incidents noted on DORs, and what Forfa could do to obtain acceptable ratings in deficient categories. Forfa did not disagree or suggest the FTOs falsely rated his performance on the DORs reviewed. Wegrzynek received no complaints about Forfa's FTOs. Such criticisms would go to him as the training unit commander. Wegrzynek's memorandum recommended Linden bring charges against Forfa based on poor performance. Wegrzynek believed Forfa exhibited unsafe practices posing a danger to himself, his fellow officers, and the public. See March 29, 2021 Transcript, pp. 135 to 137.

Wegrzynek also explained the roles of specific units or divisions in Linden. While Linden's traffic unit handles motor vehicle accidents and may issue summonses, the Patrol Unit remains responsible for enforcing motor vehicle laws. Although patrol officers have some discretion concerning motor vehicle stops, they should endeavor to address all violations occurring in their presence. Officer discretion addresses whether to issue a summons, a warning, or discuss safety concerns, not if they should stop the motorist committing the violation an officer observed.

Officer Wojciech Dziadosz

Dziadosz has been an FTO for approximately three years and was briefly an FTO when paired with Forfa. Yet, at the time of his testimony, Dziadosz trained ten to fifteen officers. Dziadosz served in the United States Marine Corps before becoming a Linden police officer in the patrol division and is in his tenth year.

Dziadosz's FTO training included a two-day course at Penn State, in-house training, and a course at the Morris County police academy. In-house training included lessons on using the DOR system to evaluate trainees, but Dziadosz did not recall receiving an FTO manual. As an FTO, Dziadosz reported significant or "stand-out" events during his shift with the trainee, which he generally completed at the end of the shift.

Dziadosz acknowledged that while he completed the DORs to the best of his ability, he did not document everything. For example, in reviewing BWC footage on April 6, 2018, Dziadosz observed Forfa demonstrated an unacceptable officer safety concern, not on the April 6, 2018. See P-4, DOR 36. Forfa and Dziadosz responded to the sounding of a residential alarm. With only two officers on the scene, one would take the front of the home, and the other would be in the back. Yet, Forfa, noting that the front door was slightly ajar, left his post to communicate this to Dziadosz. Instead, Forfa should have immediately reported this fact to dispatch and Dziadosz through his radio.

Yet, Dziadosz noted he could also have rated several "not observed" categories as "acceptable." For example, during a motor vehicle theft incident, Forfa was respectful and sincere in his "relationship with [the] citizens." See P-2, DOR 35. Dziadosz also observed a landlord-tenant call on April 4, 2018, where Dziadosz told Forfa to remove his hands from his pockets, precluding quick access to police equipment, a safety issue Dziadosz did not document. See P-3.

Dziadosz expects a police report to convey the events in chronological order from start to finish based on when the events occurred as opposed to how events

transpired upon arrival on the scene. For two days, Dziadosz assisted Forfa in properly completing several reports, which he deemed unacceptable as written, and highlighted the excessive time Forfa needed to complete paperwork, especially for simple cases. See DORs 34 and 35.

On two of the three days, Dziadosz deemed Forfa's radio transmission skills unacceptable because he failed to respond to Linden Central Communications (dispatch) when being called on two occasions. See DORs 35 and 36. Dziadosz reminded Forfa of the importance of radio transmission procedures. Officers must multi-task, and dispatch may have or need critical information from an officer. Notably, on April 6, 2018, Forfa failed to immediately transmit stolen vehicle information to dispatch, alerting other officers to the vehicle's status and increasing its chance of recovery. Dziadosz needed to ask Forfa "you know what to do, right?" because nearly four minutes had elapsed since being at the call without telling dispatch that they verified the vehicle as stolen. See R-45B, BWC footage. Dziadosz considered radio transmission deficiencies as "a failure to respond to training" even though he did not record a prior issue because these procedures are part of any officer's early training. Dziadosz also rated patrol procedures as unacceptable for this incident, noting that motor vehicle thefts are routine tasks.

On all three days, Dziadosz considered Forfa "unacceptable" in the decision-making and problem-solving DOR category, although he selected "not observed" on April 4, 2018. Dziadosz felt Forfa appeared confused and frequently looked to Dziadosz for guidance. Indeed, Dziadosz expected Forfa to complete tasks unassisted at this stage of training, where standards are higher, and FTO involvement is minimal. Dziadosz documented Forfa's confusion because he considered it significant and described decision-making as critical for police officers who may face life or death situations. For example, Forfa was unsure how to handle a walk-in report, a common task for patrol officers. While responding to HQ to take the report, Forfa was unsure whether to bring the alleged victim outside of HQ into the stationhouse to investigate the reported incident further. See DOR 34. Still, Dziadosz acknowledges that Forfa was not always confused.

Dziadosz noted Forfa's orientation was incorrect on one call where Forfa made a wrong turn, but he rated Forfa as acceptable in that category on the other two days. Cf. DOR 35 with DOR 34 and 36.

Dziadosz also documented issues with field performance in non-stress conditions. Essentially, Forfa had difficulty with routine and frequent tasks. According to Dziadosz, that persisting difficulty after the length of Forfa's training made Forfa's performance "below average."

Sergeant Antonio Lacosta

Since November 2011, Lacosta has served the Linden police department and was a Paterson police officer for four years before joining Linden. Before becoming a police officer, Lacosta served as a platoon sergeant in the United States Marine Corps for eleven years, instructing soldiers on firearms, military operations, and urban terrain combat. Lacosta achieved the rank of sergeant in August 2020 and supervises patrol officers on the second platoon day shift.

Lacosta has certifications to teach physical training (PT), and motor vehicle stops at the police academy. He and Wegrzynek instructed pre-academy classes to help new hires become mentally and physically fit for the police academy. Lacosta denies insulting Forfa during pre-academy training or PT while at the academy.

Lacosta was an FTO with Linden from 2014 until April or May 2018. Lacosta's training included a one-week FTO course at Penn State and in-house training involving monthly meetings on the DOR reports, updates, or program changes. Lacosta estimates that he worked with ten or more trainees while an FTO. Part of the training involved understanding the differing learning styles of trainees.

Lacosta noted three phases of trainee training with differing FTO task involvement, and FTOs generally spent approximately a month with a trainee in an assigned phase. Lacosta also describes the third phase as one where the trainee performs all tasks, and that Forfa was in that phase during his retraining or PIP period.

Yet, Lacosta's assignment to Forfa was different as Forfa was well beyond the academy, and repeating phase three was to address Forfa's patrol issues.

In preparing to train Forfa, Lacosta reviewed Forfa's prior DORs. Also, monthly FTO meetings would include discussions about trainees and their respective deficiencies. Lacosta explained that the patrol unit officers likely knew of Forfa's issues because these officers communicate concerns about struggling officers to foster assistance or help with retraining.

Lacosta described body-worn camera (BWC) use by officers and when officers can pause the video feed during a call. An officer may stop the video for conferences between officers to discuss tactics or strategies about the call. Yet, if public members are present, BWCs should not be stopped. However, Lacosta insisted on BWC activation on April 23, 2018, because he felt documentation of Forfa's deficiencies was necessary.

According to Lacosta, FTOs use DORs to gauge areas of improvement or no improvement. Lacosta would usually prepare the computer-generated report at the end of the shift and after going over the DOR with Forfa. At times, Lacosta took notes but often did not have time to do so. Lacosta suggests that an FTO could rate every DOR category if the FTO took notes from every event observed. Still, Lacosta only graded those events or calls he saw from start to finish and when he and Forfa were the primary responding unit on the scene rather than the back-up unit, where they had fewer responsibilities. In other words, he graded an event where the trainee handled all aspects of the call. When Linden releases an officer from training, that trainee is on their own.

However, Lacosta explains that he may grade something "above and beyond" that he observed in situations where he and Forfa were not the primary unit. Moreover, Lacosta was concerned with things that "stood out." For example, during the hearing, Lacosta watched portions of Forfa's "okay" handling of a welfare check-up on April 15, 2018. Yet, Lacosta did not report this on the DOR because they were a back-up unit, even though Forfa was in the field and interviewing citizens. See DOR 39 and P-8; P-

12. Another back-up situation involved a domestic violence response that day. Lacosta did not assess interview skills despite Forfa's questioning of one involved party because Forfa did not handle the call from start to finish. See P-10.

Lacosta acknowledges that most jobs police officers perform involve an officer safety concern, but not every DOR rated Forfa in officer safety. Indeed, Lacosta assessed officer safety on three out of seven days. Still, Lacosta maintains that he would only rate Forfa if they were the primary unit enabling Forfa to handle the incident from beginning to end. On April 17, 2018, Lacosta allowed a suspect to walk away from him with his hands in his pockets, although that would be something an officer would not generally want for safety.

Also, Lacosta would review the drop-down menus for the rated categories to assess whether to grade the trainee in a particular category. According to Lacosta, if an FTO clicked on a DOR category and did not place an acceptable or unacceptable rating, the section would generate a "not observed" rating. The blank sections without ratings meant that the FTO did not click on the selection.

Lacosta deferred to the drop-down menu for categories like stress control or field performance in stress conditions. The DOR system may differ from Lacosta's opinion of a stressful or non-stressful situation give his experience level. When Lacosta denoted training time on the DOR, this indicated that he spoke to Forfa about an issue he deemed "unacceptable." Lacosta identified five minutes of training time for each unacceptable rating but acknowledged that he did not time the training discussions.

Lacosta would address an issue immediately or discuss the problem at the end of the shift. Lacosta would not grade Forfa if Lacosta served a primary role at a scene. In that situation, Forfa was to observe Lacosta's handling of a case, such as a motor vehicle stop, to gauge what Lacosta expected of Forfa. Yet, because Lacosta was training Forfa, when Forfa acted, he was expected to handle the job as though Lacosta was not there.

Following an unacceptable rating in a DOR category, subsequent DORs noted that Forfa "did not respond to training" under the "unacceptable" drop-down menu, indicating a consistent problem despite initial training. However, Lacosta acknowledges that DORs often do not identify a specific incident, making it difficult to recall precisely why he used a DOR heading or unacceptable rating years later.

On April 17, 2018, Forfa qualified with his handgun and was at the range most of the day. Thus, Lacosta only completed two acceptable ratings on the April 17, 2018, DOR, although he and Forfa did handle calls not identified on the DOR. Lacosta highlights that given Forfa's range assignment, Lacosta dealt with the calls before that appointment because Lacosta wanted to ensure that Forfa could be on time and not involved in an incident. During this period, Lacosta requested Forfa shadow him rather than Lacosta act as an observer, which was typical during the third training phase. In this regard, Lacosta notes that Forfa left in the middle of one call, which provided minimal observation to record or discuss on the DOR.

Lacosta also watched a video from a medical call on April 17, 2018, from Forfa's perspective during the hearing. See P-16. Lacosta acknowledges that Forfa set up oxygen for the injured resident correctly. Yet, Lacosta did not document this incident on the DOR because Forfa and Lacosta were a back-up unit, and Lacosta was in a separate room. However, on April 23, 2018, Forfa handled a suspect search correctly that Lacosta could have graded as acceptable under officer safety and decision-making but did not. See P-19. Similarly, although Forfa conducted vehicle stops on April 24, 2018, Lacosta did not rate Forfa in this category.

Still, on April 9, 2018, Lacosta rated Forfa as unacceptable on orientation and officer safety. See DOR 37. Lacosta considers these areas overlapping because an inability to know or communicate your location can be a safety concern if a situation escalates and back-up or other assistance cannot find you. According to Lacosta, safety is paramount, given the dangers of police work.

Other days note additional officer safety concerns. Instead of pulling behind a double-parked vehicle, Forfa pulled alongside the car, failing to observe a front seat

passenger in the front seat. See DOR 39 for April 15, 2018. In other words, pulling alongside a car becomes a potential hazard if you cannot see inside the vehicle. On that same day, when attempting to conduct a motor vehicle stop, Forfa reported he was on an incorrect street. Lacosta directed Forfa not to make the stop because he could not identify his location. Lacosta highlighted this failure as unacceptable in both orientation and officer safety. Similarly, Forfa also provided dispatch with the incorrect place, reversing south for north, when broadcasting for assistance to a disabled vehicle. See DOR 39. Still further, while responding to a suspicious person's call on April 18, 2018, Forfa took an incorrect route that would bring him to the wrong location, which he corrected after Lacosta advised of the mistake. See DOR 42. Nonetheless, Lacosta admits he does not know every street in Linden despite years on the force, but he memorized those areas he regularly patrols. Yet, Lacosta also acknowledges that he should have graded Forfa as acceptable under officer safety on April 23, 2018, regarding his search of an individual before placing him in the patrol car. See P-19.

Officers have field-generated events and those received from dispatch or calls for service. On April 9, 2018, Forfa did not transmit his location before addressing a routine parking violation he observed while on patrol, so Lacosta did so. See R-45D, video, and R-14, CAD 18017832. Forfa was also unaware of the street location at that stop, a frequently patrolled area where crimes often occurred. Notably, that location is an area checkpoint. Linden instructs officers to patrol area checkpoints for the crime level or other reasons for its designation. Forfa's failure to transmit his location and lack of familiarity led to Lacosta's unacceptable ratings in orientation and officer safety that day. Lacosta notes that officers should be familiar with the areas they patrol regularly, and Forfa regularly patrolled this district. Lacosta again commented that Forfa's orientation was unacceptable on April 15 and 18, 2018. See DOR 39 and 42. Still, Lacosta acknowledged that at other times on these days, Forfa could have exhibited acceptable orientation behaviors that he did not report.

The BWC video for April 9, 2018, shows that Lacosta and Forfa discussed the correct parking violation for the call, and Lacosta felt Forfa should have readily discerned the routine violation code. Despite its involvement, Lacosta did not assess an unacceptable rating to this concern or even address "NJ Motor Vehicle Code Title 39"

on the DOR. Similarly, although Forfa issued a summons for a motor vehicle code violation on April 15, 2018, Lacosta did not rate Forfa in the Title 39 category.

Still, further, Lacosta acknowledges that he may not have reported other favorable or acceptable ratings on DORs. For example, at the April 9, 2018, parking violation, Forfa did conduct an interview, but Lacosta did not rate this activity on the DOR. Lacosta also failed to grade interview skills on April 15, 2018, despite stopping to assist a disabled vehicle, ultimately issuing a summons, and creating a report of the incident. See R-16 and DOR 39. Lacosta explains that he would not document Forfa's routine interviewing on a stop unless the job turned into a more significant event. Still further, on April 16, 2018, while back up on a domestic call in the Meriden apartment building, Forfa interviewed a suspect and reported the information he obtained to the responding officer. See P-10. Interview skills are unrated for this incident although Lacosta rated favorable interview skills on another domestic call that day, No. 18017471. See DOR 40. Indeed, Lacosta gave Forfa no unacceptable rating on April 16, 2018, even though Lacosta intervened with a question concerning the victim's drinking to alert Forfa to its importance during Forfa's victim interview during incident No. 18017471.

Lacosta acknowledged other errors. Although Lacosta noted Forfa's acceptable field performance in non-stressful conditions on April 18, 2018, he erroneously utilized the "did not respond to training" drop-down heading.

Lacosta agrees that an officer cannot go on a call without implicating a department policy or procedure, but Lacosta only addressed this category on three of seven days. Lacosta also acknowledges that although he filled out the DOR for each day, the DOR could be different from one day to the next. Indeed, Lacosta did not complete all categories each day. Moreover, Lacosta made general comments about Forfa on certain days. For example, on April 15, 2018, Lacosta wrote, "At, times, Ofc. Forfa appears unsure of himself, questions what actions to take, and can't recall safety issues from prior incidents and apply them to similar situations." Yet, Lacosta admits that Forfa's indecisiveness did not apply to all calls on April 15, 2018, and that he could not discern whether Forfa was indecisive on a call, a few calls, or more that day.

If Lacosta addressed an issue, he believed it did not matter where he listed it on the DOR. For example, Lacosta viewed Forfa's failure to self-initiate field activity as to avoid situations that could raise Forfa's stress level. Yet, Lacosta could have noted this under "field performance; stress conditions" but did not because Lacosta identified that behavior under self-initiated field activity. See, e.g., DOR 39 for April 15, 2018. Even so, while commending Forfa for addressing multiple violations for double-parked or incorrectly parked vehicles on April 15, 2018, Lacosta also rated Forfa as unacceptable for self-initiated field activities. Ibid. Notably, the favorable comment under "most satisfactory performance of the day" has no numerical rating. In contrast, a negative rating under self-initiated filed activity carried is valued at one, detracting from Forfa's average in the category. Lacosta noted a favorable rating in the accident investigation on April 15, 2018, but did not assess Forfa's interview skills, even though Forfa interviewed the involved drivers. Still, Lacosta notes that he rated Forfa's relationship with citizens as acceptable, praising Forfa's professional and unbiased communications.

Lacosta also highlighted that pre-planned radio transmissions are a patrol procedure, especially in non-stressful situations. Pre-planning shortens the dispatch time and helps the officer focus on the necessary information, including the number of occupants observed, location, and plate number. Keeping dispatch on the line longer than needed makes dispatch unavailable to address other calls. Other officers hear the transmissions that alert them to the situation and whether back-up may become necessary. However, on April 9, 2018, Forfa was not pre-planning his transmissions on routine calls, so Lacosta also rated Forfa as unacceptable on radio transmissions. Similarly, Lacosta highlighted radio transmissions as deficient on April 15, 2018, when Forfa failed to pre-plan and often paused after only a few words during a single message. Lacosta noted Forfa's pre-planning improved on April 16, 2018, resulting in an acceptable rating. However, Lacosta again criticized Forfa for not adequately pre-planning transmissions on April 18, 2018. Although Lacosta acknowledges that an officer can occasionally miss a dispatch communication when in a conversation or involved in a job, he did not rate Forfa for missing transmissions.

Lacosta usually rated Forfa as acceptable in his driving skills, maintaining control over the vehicle, and obeying traffic laws. Notably, driving skills are on the DOR twice, once with driving skills under normal conditions, section twelve, and the other as just driving skills, section three. However, the DOR drop-down menu in the FTO manual describes section three, driving skills involving moderate stress or an emergency.

On April 15, 2018, however, Lacosta noted that Forfa improperly turned onto a one-way street onto Nora Drive from Crawford Street, corrected his mistake, and made a U-turn. Thus, Lacosta designated section twelve driving skills as unacceptable on April 15, 2018. An officer can only make an improper U-turn such as this for an emergency, but none existed there. Lacosta acknowledges that he mistakenly wrote Nora Street, but the same street has another name at that location. See P-55.

Lacosta also frequently rated Forfa as unacceptable in self-initiated field activity. On April 9, 2018, Lacosta noted that Forfa let multiple violations go unaddressed, including the failure to wear a seatbelt, illegal window tinting, the failure to yield to pedestrians, and improper plate display. Lacosta was in the passenger seat and had an opportunity to observe the violations Forfa let go. Lacosta reminded Forfa of the importance of such activity because it deters crime.

Lacosta highlighted this deficiency on multiple DORs. See DORs 37, 39, 42, 43, and 44 for April 9, 15, 18, 23, and 24, 2018. Indeed, Lacosta felt that Forfa either did not see or avoided activity during shifts, despite being regularly advised to address violations he saw. Even when Forfa made vehicle stops after being counseled, Lacosta felt Forfa's inexperience and indecisiveness delayed completion. See DOR 42 for April 18, 2018. Lacosta felt Forfa evaded field activity that would give rise to an increase in stress level. Thus, although Forfa addressed parking violations on his own initiative, these were non-stress violations and did not yield an acceptable rating in this category. See DOR 44. Although believing that Forfa may become emotional or panic-stricken under a stressful situation alone, Lacosta did not observe this. While Lacosta understands patrol officers have the discretion to address violations, Forfa was a trainee expected to address violations he observed. In other words, outside of training, Forfa would have more control.

On April 16, 2018, Lacosta noted that Forfa performed well in the field under non-stressful conditions and in interview skills regarding a domestic incident. See DOR 40, Incident 18017471. Yet, Lacosta complained about the time Forfa took to complete the report for the incident although noting that Forfa showed a slight improvement in report writing. Even though the call may implicate other categories, such as laws of arrest or officer safety, Lacosta did not offer a rating. Lacosta did not consider this incident as being under "stress conditions" or an "officer safety" concern. Instead, the complainant was well-known to the department as a "frequent flyer" because of previous incidents, is an alcoholic that generally talks "nonsense," and only one party to the alleged assault was present. Lacosta also did not assess decision-making during the domestic violence call, although Forfa had to ascertain if the complainant was a victim, whether an assault occurred, and the relationship of the involved parties. Lacosta explains that he views decision-making as requiring more than that, consistent with the drop-down items for an acceptable rating, such as deciding between two versions of an event or exhibiting flexibility rather than simply reporting one side of an alleged altercation. Lacosta also highlights that he rated Forfa favorably on interview skills and field performance in a non-stress condition covering the more significant aspects of the job.

Notably, Lacosta and Forfa also had another domestic violence call on April 16, 2018, not reflected on the DOR. After observing video P-12 for Incident No. 18017494, from Lacosta's BWC, Lacosta could not recall if they served as the primary unit because other officers were present at the scene. At some point during the call, Forfa stood outside the door of the involved young woman's room while another officer was inside with the woman. Lacosta agreed that Forfa's actions assisted in officer safety even though not addressed on the DOR and that Forfa handled himself well in the actions taken.

On April 18, 2018, Lacosta also rated Forfa as unacceptable on field performance in stress conditions and stress control, primarily related to indecisiveness and lack of initiative to address more tense situations. In other words, Lacosta believed that Forfa would become panicked, not knowing how to proceed or act without supervision, and his stress level would rise, so he avoided them. Specifically, Forfa was

indecisive about what to do following his issuance of a summons for an unregistered vehicle, which became a stressor. See DOR 42. This category also involves proper communication skills that help de-escalate stressful encounters. When a back-up unit, stress conditions are lower because an officer has fewer responsibilities and follows the primary's lead.

In contrast, Forfa performed well in non-stressful situations in the field, with four acceptable ratings out of five, where Lacosta reported a rating. The only unacceptable rating concerned Forfa's failure to act on three consecutive vehicles driven by operators without seatbelts passing in front of the patrol car. See DOR 43 for April 23, 2018. Lacosta duplicated this comment for an unacceptable rating under the "did not respond to training" category in the self-initiated field activity category. Ibid. Lacosta also criticized Forfa under Motor Vehicle Code Title 39 regarding this failure, asserting that Forfa either did not recognize or incorrectly identified violations. Notably, Lacosta highlighted that Forfa did not accept criticism or feedback in failing to correct his actions despite being counseled multiple times on repetitive errors. See DOR 43.

Another concern was Forfa's decision-making and problem-solving, and Lacosta rated Forfa as unacceptable on DORs 39, 42, and 43 for April 15, 18, and 23, 2018. Lacosta describes this category as one that assesses the trainee's knowing what to do without assistance or guidance. On April 15, 2018, Lacosta reported that Forfa appeared unsure of himself and questioned what actions to take, but he described no specific incident.

On April 18, 2018, Lacosta criticized Forfa's decision-making because of a walk-in warrant where Lacosta felt Forfa did not act quickly or effectively to address a prominent smell of marijuana. See DOR 42, R-45E1 and E2, R-18 Incident Nos. 18017817 and 18017826. Lacosta considered this event to begin as non-stressful involving a simple walk-in warrant but then became stressful when Forfa failed to act. Thus, Lacosta addressed his decision-making rating and comment to both stressful and non-stressful conditions.

The parties presented BWC footage from both Lacosta and Forfa regarding this incident. When entering the vestibule near the front desk window at HQ, they encountered two men and a heavy marijuana smell. Instead of addressing a straightforward issue, Forfa engaged the individuals in conversation and then looked at Lacosta with what Lacosta felt was a confused look. Lacosta considers this look as one where Forfa looked for guidance or confirmation instead of acting, which he observed previously. See, e.g., R-45D and E, BWC footage. Nonetheless, Forfa took his eyes off the suspect whenever he turned to Lacosta for guidance or assurance. Lacosta explains that he experienced similar looks or "pauses" from other trainees when they were unsure of the next steps.

Because time passed without Forfa noting the marijuana scent or acting on it, Lacosta activated his BWC, asked Forfa to do the same, and asked Forfa if he smelled marijuana. Lacosta believes that he and Forfa were with the suspects from five to ten minutes before they activated the BWCs. Usually, a walk-in warrant in the vestibule would not require BWCs because a camera covers the area, but Lacosta wanted BWC video to capture the "extenuating circumstances." Lacosta testified that he asked Forfa whether he smelled marijuana because Forfa was about to take one person into headquarters, which would allow the other man to leave. Forfa replied that he did, and Lacosta took over from that point. Indeed, Forfa did not communicate a plan to Lacosta to address the smell. Lacosta asserts it was his obligation as an FTO to step in when the trainee fails to act and that his actions were not out of impatience. Still, because they were the initial unit expected to handle the job from beginning to end, Lacosta rated this failure. Lacosta's actions resulted in charges against the individual accompanying the person with the warrant. In other words, the man could have left or destroyed the marijuana once Forfa brought the other man into HQ.

For the same incident, Lacosta rated Forfa as unacceptable on arrest laws in failing to understand steps from suspicion to a probable cause because even the smell of marijuana gave an officer probable cause to search when the incident occurred. Lacosta also rated report writing as unacceptable, which Lacosta noted took excessive time, lacked detail, and involved several mistakes when using the computerized report system. Still, Lacosta rated Forfa as acceptable in officer safety for his search of the

suspect for marijuana. However, Lacosta did not observe Forfa search and noted this. Although Lacosta could rate this category as "not observed," he rated Forfa as acceptable because he knew that Forfa searched the suspect safely.

On April 23, 2018, Lacosta also found Forfa's decision-making to be lacking in addressing a fire call Forfa heard while at headquarters. Instead of saying, "Hey, let's go to that job," in response to the fire call, characterized as a critical incident, Forfa asked Lacosta if they should respond. Lacosta considered it an obvious situation to which any available officer would know to respond. On the same day, Forfa asked Lacosta about responding to another alarm while being some distance from the call. They did not respond. Lacosta again referenced Forfa's decision-making as unacceptable.

Report writing yielded mixed ratings from Lacosta. Forfa often completed reports without assistance. See DOR 37, 42, and 44. Moreover, Lacosta trained Forfa to place events in "logical" order, although Forfa later needed more instruction. See DOR 39 and 43. That order could be chronological as events occurred or as the participants reported events to the officer on a case-by-case basis. Time management was a concern, but Forfa's report writing improved by April 16, 2018. See DOR 40. Yet, on the final day with Forfa, Lacosta noted Forfa completed all reports without assistance but needed to work on time management. See DOR 44.

On April 23 and 24, 2018, Lacosta rated Forfa as unacceptable in interview skills by failing to obtain the necessary information. On April 23, 2018, Linden dispatched Lacosta and Forfa to the McManus Middle School for a possible critical incident involving a student's screenshot of a of a Snapchat⁸ conversation discussing a school shooting. Lacosta noted that Forfa did not take notes at the scene, needed to have facts repeated, and his report included misstatements from involved parties. Lacosta criticized interview skills and carried this over to report writing because necessary information was lacking. See DOR 43. Further, Forfa appeared indecisive in what steps to take to resolve the situation or determine if another division's assistance was

⁸ Snapchat is a mobile messaging application used to share photos, videos, text, and drawings available to the recipient for approximately ten seconds. A screenshot captures an image of what is viewed on the screen or mobile device, allowing a person to save an image from Snapchat.

necessary. That indecisiveness resulted, in part, in Lacosta's unacceptable rating in decision-making on April 23, 2018. See DOR 43, R-45F BWC footage, R-20 CAD18-20526, and Incident No. 18-18711.

Notably, Forfa was the primary or initial contact officer on the scene, and Lacosta's role was to shadow Forfa. At the school, Forfa and Lacosta held an "officer conference" after leaving the principal's office, and Lacosta requested Forfa record that meeting. In essence, Forfa went over what he intended to do and sought confirmation from Lacosta about the next steps. Lacosta, on the other hand, expected Forfa to act. Indeed, Lacosta's response to Forfa's plan was to ask a question: "Are you asking me or telling me?" Consistent with this question, Lacosta denied ever telling Forfa to run his plans by Lacosta before acting. Lacosta acknowledges that Forfa told him he had not handled an event like this. Yet, Lacosta highlights procedures exist for investigating incidents that could be critical, even if deemed only suspicious after the inquiry ends. Here, a possible threat to life required the event to be initially considered a critical event. Although the DOR notes Forfa's failures concerning a critical incident, Linden determined that the middle school call was only a suspicious event.

Further, Lacosta had to remind Forfa to contact their supervisors to assist in determining if a threat existed at the middle school. The supervisor would communicate with the juvenile bureau to ascertain whether a detective was necessary on the scene. In other words, Linden has a protocol for handling critical incidents or potential critical events. Yet, Lacosta acknowledges that the CAD report notes dispatch called their patrol unit and the juvenile detective to the scene simultaneously, a fact that Forfa seemed to know. Still, the patrol unit and detective bureau have different supervisors. Forfa was also confused about whether to contact the student's parents or who should do so. Lacosta had to inform Forfa that the school's policy dictated parental notice. Still, the vice principal told Forfa and Lacosta that "juvenile" usually has the school contact the parents before the police. As Lacosta explained, their role was to investigate the incident and ensure that the school was safe. Lacosta also noted that the report for the McManus middle school event needed revision three times. Thus, Lacosta also identified Forfa's report writing as deficient for this call.

On April 24, 2018, Forfa left the scene of an auto dealership where a customer dispute arose over a purchased vehicle without obtaining the vehicle identification number. As such, Lacosta rated Forfa as unacceptable in interview skills.

For this incident and two motor vehicle stops, Forfa was without his service weapon. Lacosta considers motor vehicle stops the most dangerous interactions for patrol officers and the lack of a service weapon is a significant safety concern. Lacosta testified that Forfa did not inform him that he was without his service weapon on April 24, 2018. Lacosta also denies that Forfa told him that he had left an important piece of equipment at headquarters.

Overall, Lacosta felt additional training would not assist Forfa become a better police officer. Forfa received considerable training beyond what training other officers received. Typically, Linden officers patrol on their own without assistance. However, Forfa lacked command presence or confidence, needed significant supervision, had insufficient situational awareness, and could not retain information, including his location. According to Lacosta, Forfa's deficiencies created safety issues for himself, fellow officers, and Linden citizens. Lacosta described Forfa as the worst trainee of the

ten trainees he worked with in Linden and resigned from his FTO position because of his experience with Forfa.

Sergeant James Schulhafer

Schulhafer served Linden as an officer in the patrol division on the late shift for eleven years and as an FTO for three years beginning in February 2018. Schulhafer describes this role as one where he coaches new hires out of the academy through their probationary period.

While new trainees take longer to complete tasks, the slower pace was because of minimal knowledge on how to complete new tasks. However, Forfa was unique given his earlier service in Linden and because Forfa was not starting with the basics like a normal trainee. Schulhafer expected Forfa to have greater knowledge and there was less of a need to evaluate basic tasks. When the primary unit, he and Forfa were more engaged with the call and Schulhafer could evaluate more tasks. However, when serving as a back-up unit, Forfa would perform tasks if the primary needed assistance, but Schulhafer advised those actions were "not much" to evaluate. Schulhafer used DORs to highlight things that stood out rather than "routine calls," like a response to a noise complaint which even a new officer should be able to handle appropriately. See, e.g., P-34.

Schulhafer underwent a three-day FTO class at the police academy and attended ongoing in-house training through the training division, including how to use the DOR computer system. He completed initial DOR training on April 5, 2018. Schulhafer also attended monthly informal meetings where they discussed training issues or individual trainees. Schulhafer was a new FTO when paired with Forfa and believes Forfa may have been his first trainee. Schulhafer trained approximately twelve officers while an FTO with whom he was paired for approximately three to five weeks. Schulhafer described similar training phases, with the third phase having less FTO involvement in handling calls, where the FTO allows the trainee to handle the call and jumps in only if necessary. FTOs generally did not work with a trainee for all three phases.

Before paired with Forfa, Schulhafer reviewed earlier DORs regarding Forfa to determine what areas were issues and what to focus on. If Schulhafer noted an issue that he later observed in Forfa while paired as his FTO, Schulhafer would note that Forfa did not respond to training even though the earlier training was with another FTO. Schulhafer used training time to break down the call, discuss what should have occurred, and to assess whether Forfa tried to correct any deficiency.

Schulhafer's approach with Forfa was to handle as many calls as possible to have more information for the DORs which he completed to the best of his ability. Schulhafer similarly reports that if an FTO clicks a DOR category but does not choose "acceptable" or "unacceptable ratings," the system generates a "not observed." If the FTO does not click on the category, then it remains blank. Schulhafer often rated the same incident in multiple DOR categories, noting that many categories overlap.

For example, the category of "stress control" overlaps with "field performance - stress conditions." Schulhafer believes that the stress control categories assess how the trainee responds when you have less time to think and must act quickly because a situation escalates. In other words, patrol incidents that were not routine.

On April 25, 2018, Schulhafer rated Forfa as "unacceptable" in both stress related categories for an incident where a father arrived later the scene of a domestic dispute between the mother whom he was divorcing and their son. Schulhafer gave Forfa an unacceptable rating in stress control because Forfa did not use the correct "verbal force" because he did not say or do anything to deescalate the situation. Schulhafer noted an unacceptable rating field performance-stress control noting the same issue and the DOR drop-down choice of "performance deteriorates under stressful conditions." Forfa's interview skills were also unacceptable in not "maintain[ing] control" of the interaction faced with the father's aggressive behavior. Lastly, Schulhafer also rated Forfa as unacceptable in his relationship with citizens for this incident. Forfa was unaware of community resources and proper procedures for juvenile cases. Citizens look to police officers for answers or help requiring an officer to be clear and direct with people about procedures and assistance available. Yet, Forfa was not. Instead, Schulhafer needed to intervene and explain how to proceed.

In noting Forfa's unacceptable actions on the DOR, Schulhafer maintains he had to raise his voice many times to calm the man down, and he had to step in to provide information that Forfa did not. The BWC records the man insisting on pressing charges against his wife for child abuse and that she be arrested. Forfa's response was "okay" or "alright" and that they would document everything. Further, although this was not a situation where the son would file a complaint against his mother, Forfa said that he could. In other words, Forfa allowed the man to continue his aggressive stance and appeared hesitant advising the father.

At this point, Schulhafer stepped in to address the man's behavior by raising his voice and explaining that the incident would not result in an immediate arrest and that the juvenile bureau would investigate the incident further. Schulhafer felt that Forfa did not demonstrate confidence in his approach to the situation and was unaware how to proceed. Still, the video shows that the father initially became more upset after Schulhafer told him to "relax" upon his arrival and that Forfa lifted his hands in attempts to calm the man down and assured him that other officers were present to assist. Schulhafer acknowledges that Forfa's actions appeared to de-escalate the situation at that point. Moreover, along with other officers, Forfa did tell the man to "stop" once in the home when he became aggressive towards his wife, although Schulhafer did not initially hear Forfa. Yet, Schulhafer later became involved in the conversation because he observed Forfa's lack of confidence and inability to address the father's demands and aggressive tone. Schulhafer highlights that this was not simply impatience on his part. Instead, Schulhafer felt that Forfa was ineffective, lacked adequate verbal force with an irate party, and was not addressing the correct procedures. See R-45G1-3, Incident No. 1801900.

However, on May 2, 2018, Schulhafer noted that Forfa used constructive authority and an aggressive tone to de-escalate the situation and keep the two involved parties from arguing further. Schulhafer rated this as the most satisfactory performance of the day, noting that this was the first time he observed Forfa use his authority to control a situation. Schulhafer also notes stress control and interview skills as acceptable on May 2, 2018, where Forfa had "control" over the interview and situation "using verbal commands." See P-27A, B, and C. Similarly, on June 2, 2018,

Schulhafer rated Forfa as acceptable in stress control when he took control over an incident with multiple parties yelling, even though the call was not in their patrol district. See DOR 57, P-43.⁹

When shown another video from a different call on April 25, 2018, not addressed on the DOR, Schulhafer explains that nothing Forfa did warranted a rating. Indeed, on a suspicious person stop, Schulhafer handled the call, and Forfa only asked the individual's name to verify the license. This limited interaction did not lead to a rating in interview skills or relationship with citizens. See P-22.

On April 26, 2018, Forfa and Schulhafer responded to a domestic assault in progress that resulted in four unacceptable ratings by Schulhafer. Two back-up units arrived first and began the preliminary investigation. However, the incident was in their patrol district so they would be the primary unit even if not arriving first. When Forfa and Schulhafer arrived, other officers were present that did not report any victim injury and suggested that it looked like a "verbal" rather than a physical violence dispute. Forfa stayed outside and spoke with the female victim and Schulhafer went inside to speak with the offender. After speaking with the victim about the incident, Forfa reported to Schulhafer that it was an argument, or "not even an argument," and he saw no marks. See R-45H1, Incident 18019300. Schulhafer acknowledges that Forfa did not tell him it was a "verbal" argument even though he noted Forfa as stating so on the DOR. However, pulling hair or reports of being struck would escalate the situation from just an argument. See DOR 45 for April 26, 2018.

When Schulhafer entered the home, FTO Garrison and Officer Ralda were interviewing the suspect trying to get him to leave for the night. Schulhafer let them continue and then jumped in at the end to assist in getting the man to leave. See R-45H2

The female victim is seen on the BWC video explaining the altercation to Forfa. She relays that while working on her computer, her husband would not leave her alone, became more aggressive, and tugged her hair. See R-45H1. She had to fight him off,

⁹ During his testimony, Schulhafer corrected the incident number to 18025468 rather than 18025469.

he struck her, and threw her to the floor. She stated that she felt bruised up but was "going to be fine." Ultimately, she grabbed the keys and went outside to get away from the situation.

Schulhafer highlights that Forfa did not use a flashlight despite the darkness, and her statements about being bruised and her hair being pulled warranted further inquiry about whether there was an injury or pain. An officer attending a domestic dispute needs to determine if the fight was verbal or physical once on scene because a complaint of pain or sign of injury leads to the offender's arrest. When Forfa told Schulhafer the victim relayed she felt bruised and that her husband pulled her hair, Schulhafer asked Forfa if he questioned her about pain. Yet, Forfa did not ask the victim if she had pain. FTO Garrison asked Forfa if there were signs of injury, and Forfa replied, "not that I see." However, FTO Garrison then spoke with victim, observed a split lip, and arrested the offender. FTO Garrison then took over the job.

That domestic assault call led to unacceptable ratings in stress control, decision making/problem-solving, field performance in stress conditions and interview skills. Forfa did not observe the lip injury, communicate effectively, or investigate the incident properly. Schulhafer based these ratings on Forfa's report to him after interviewing the victim.

Schulhafer also reports that Forfa was abrupt to the victim when she was indecisive about an ambulance and rated Forfa as unacceptable in his relationship with citizens. Per the video, Forfa only asked her "Do you want an ambulance? It's a yes or no question." Yet, Schulhafer added "It is not hard" to Forfa's commentary, but the video does not include that statement and Schulhafer acknowledges this discrepancy. Nonetheless, Schulhafer maintains that the video shows Forfa was curt in his interaction.

After watching the video of this incident multiple times, Schulhafer adds that Forfa's interview was even more deficient than he reported on the DOR. Notably, Forfa failed to get the victim's name or ask follow-up questions to a report of being thrown against a wall or being beaten by her husband. Schulhafer felt that Forfa's brief

questioning was poor and not responsive to her statements. Indeed, it is the victim's version of the event, their complaint of pain or sign of injury, that moves the call forward to being a domestic violence act.

Schulhafer noted similar issues with radio transmissions as the prior FTOs had and these yielded unacceptable ratings, including that Forfa did not respond to training. Notably, Schulhafer felt Forfa's admission that he did not listen to all radio transmissions was troubling and he noted this concern on the April 26, 2018, DOR 45(2). Schulhafer documented this same failure to listen on May 2, 2018, because Forfa often asked Schulhafer to repeat transmissions or ask for recently broadcasted job details. On May 9, and 10, 2018, Schulhafer highlighted Forfa's failure to preplan transmissions. Further, Forfa seemed to have "stage fright" when on the radio for extended transmissions. See DOR 48. However, the remainder of Forfa's radio transmissions were rated favorably while paired with Schulhafer.

On May 1, 2018, Schulhafer noted an unacceptable officer safety issue during a motor vehicle stop. Notably, during a motor vehicle stop at a dark location, Forfa failed to activate his flashlight for several minutes into the call. However, the video reveals that the correct time to be closer to a minute and a half. Nonetheless, Schulhafer explains that it's a safety protocol that Forfa failed to initiate at the beginning of the stop. Forfa's failure also led to an unacceptable rating in vehicle stops with a drop-down comment for "fail[ing] to use recognized safety procedures."

A subsequent officer safety issue arose on May 11, 2018, leading to another unacceptable rating. During a driving while intoxicated (DWI) arrest, Forfa was tasked with searching the suspect once arriving in HQ and performed an unsafe and poor search. See R-45K. This search also led to an unacceptable rating in decision making and problem-solving. Still, Forfa could observe the suspect was compliant at the scene and permitted to walk around. Even though Sergeant Rivera searched the arrestee at the scene and Forfa searched him again before getting into the vehicle for transport, procedures are in place for safely conducting searches when at the police station that Forfa did not follow. Schulhafer explains that all suspect searches assist in limiting the "potential for disaster." Notably, Rivera missed something in the suspect's pocket

during his search that Forfa retrieved before placing the suspect in the patrol car. Schulhafer notes that the HQ search requires the officer to take off the handcuffs, the suspect removes clothing, and the officer is expected to perform a more thorough assessment of the suspect. Yet, Forfa did not search the suspect after uncuffing him and the suspect turns and faces Forfa. Regardless, Forfa missed no weapon or other improper items on the suspect.

Similarly, Schulhafer noted another officer safety concern regarding an improper search of a DWI suspect on June 2, 2018. Forfa removed change from the suspect's pocket and kept it in his hand during the search, effectively making that search one-handed. Schulhafer acknowledges that there is no written policy concerning the property in a suspect's pockets, but he either hands it off to another officer or places it on the hood or roof of the car so that both hands are free. Schulhafer noted this same search in rating Forfa as unacceptable in prisoner control. Schulhafer also criticized Forfa's report writing for taking "in excess of nine hours to complete a basic DWI report." Although Schulhafer does not reference the incident number as in other categories, this was the only DWI case that day. The three and one-half page report Forfa completed was about the DWI charge, and other officers addressed the related accident investigation. See R-28, Incident No. 18202535.

Still further, Schulhafer rated Forfa as unacceptable in officer safety for May 18, 2018. See 45I and DOR 53. Schulhafer and Forfa were dispatched to a fight in progress. Upon arrival, a male individual was holding a large rock, and Forfa did not use an authoritative voice. Instead, Forfa had to ask the individual to put the rock on the ground several times before he complied. Forfa also allowed the man to walk away into a store without attempting to verbally stop him or otherwise convince the man to listen to him. Schulhafer documented that Forfa failed to properly assess a dangerous situation, underacted in a stressful situation, and needed to use a more authoritative voice given the unknown nature of what was occurring. In other words, Forfa lacked the necessary command presence. The fact that the man holding the rock was the alleged victim does not change Schulhafer's criticism because upon their arrival, the situation was unclear. For the same incident and reasons, Schulhafer rated Forfa as unacceptable in stress control and field performance under stress conditions.

Schulhafer further highlighted this call as Forfa's least satisfactory performance of the day. Yet, on the same day, Forfa handled a domestic violence harassment case well with clear explanations to the victim and proper paperwork completion that Schulhafer noted as Forfa's most satisfactory performance.

Schulhafer acknowledges that he could have noted more acceptable ratings. After watching the video for a "hit and run" accident on May 9, 2018, Schulhafer agreed that he could have rated relationship with citizens as favorable given Forfa's interaction with a witness. See P-29. However, Schulhafer notes that he addressed the interaction under accident investigation, that he rated as acceptable. Similarly, Forfa interacted with citizens favorably while back-up on another call on May 9, 2018, that Schulhafer did not report. See P-30. Schulhafer also could have rated an accident investigation as acceptable on May 11, 2018, but did not. See P-33. Still further, Schulhafer noted no unacceptable ratings on May 12, 2018, and nine acceptable ratings. However, Schulhafer references no incident numbers on the DOR for May 12, 2018.

Schulhafer also highlights that although a lengthy domestic call late occurred late into the May 11, 2018, shift, the video is dated May 12, 2018, because of the early morning time. See P-37. Still, the DOR for May 11, 2018, does not refer to Forfa's relationship with citizens or officers, decision making, criminal code 2C, or laws of arrest for this call, even though his interactions implicate those categories. Instead, Schulhafer addressed the call with categories four and five, addressing field performance, in stress, and non-stress conditions. Notably, Schulhafer indicates that he spoke to Forfa numerous times about clearly conveying facts and information to people while on scene. Although Forfa could explain things when one-on-one with Schulhafer, his ability to do so diminishes greatly while on the call. This led to unacceptable ratings in both categories on May 11, 2018.

Yet, Schulhafer also noted unacceptable ratings he missed by not being present during all of Forfa's interactions but viewed on videos from Forfa's BWC. For example, during Forfa's interview on May 11, 2018, with witnesses reporting being chased by a man with a stick, Forfa did not advise them of their rights as harassment victims.

Schulhafer also had concerns about Forfa's lack of self-initiated activity. On May 1, 2018, Schulhafer used drop-down comments on the DOR that the trainees "does not see or avoid[s] activity" and "does not take action unless directed by the FTO." Schulhafer states that he made comments to Forfa regarding making motor vehicle stops during quiet periods, to which he did not react, and that Forfa did not address numerous blatant violations. For the same failure, Schulhafer also identified an unacceptable rating under patrol procedures for "fail[ing] to observe suspicious persons or activity." Even though officers have discretion concerning motor vehicle violations, Schulhafer maintains this was a valid concern. Forfa still exhibited the same deficiency on May 10, 2018, noting an unacceptable rating under self-initiated field activity. Schulhafer again noted that Forfa did "not take action unless directed by [the] FTO." See also May 17, 2018. Moreover, although Schulhafer rated "self-initiated field activity" as acceptable on June 5, 2018, because Forfa made one motor vehicle stop that day, Schulhafer noted Forfa lacked motivation and initiative under the "field performance non-stress conditions" category. Schulhafer notes that this was a frequent issue despite numerous discussions with Forfa.

Forfa and Schulhafer were involved in a lengthy call on May 11, 2018, involving a mother and grandmother on Mother's Day, and a custody issue. Schulhafer rated Forfa as unacceptable in decision making and problem solving, noting the drop-down comment "does not exhibit signs of empathy." Schulhafer also noted Forfa's failure to exhibit empathy in an unacceptable rating for the "relationship with citizens" category. Ultimately, the father refused to allow the child to spend time with her mother and grandmother that day, despite it being Mother's Day, and the officers were unable to effectuate visitation. See R-45J, R-25, and DOR 50.

This call required separate interactions with the mother, grandmother, and father. Initially, the father called to report a custody issue regarding his six-year-old daughter with the child's grandmother, D., and Linden dispatched Forfa and Schulhafer to his residence. However, before they left headquarters, D. and her daughter, J., showed up there, so Forfa and Schulhafer met with D. and J. outside the station. Schulhafer noted that if they knew that the matter was a custody dispute and were on their way out, it would be okay to interview D. and J. outside until they got some basic information.

D. explained that she has visitation rights for her granddaughter on specific weekends from 4 p.m. on Friday to 4 p.m. on Sunday. The weekend before, the child's father had a medical emergency and then posted a suicide note on social media. In both instances, D. contacted police emergency services by calling "911." Although D. was to return the child to her father that Monday, she withheld the girl given her concerns about his medical and mental condition. The father filed a police report. D. contacted DYFS, and the agency advised D. to go to court and file for custody, which she did. The court provided the parties with a return date on May 17, 2018. The parties were in court on the Monday before Mother's Day, and the judge issued an order requiring the parties discuss Mother's Day, the father's weekend. However, the father refused visitation. Schulhafer acknowledges that to this point, Forfa handled the call correctly and properly advised D. and J. that the police will not remove the child when the child is safe and happy, even if there is a custody violation. After another eight to ten minutes, the officers left to go to the father's home in Linden.

The father explained that D. should not have kept his daughter Monday, and because she violated the custody order, he refused to give her his weekend for visitation, including Mother's Day. However, he did offer to have them over for dinner. Despite these discussions, D. and J. attempted to pick up the child at the father's home on Mother's Day. After twenty-five minutes of interviews, Schulhafer felt that they had enough information, could possibly talk to the child, and wrap up the call. If the child was okay with the father, Schulhafer would advise D. that the child would stay there, and the police would document the incident. Yet, Forfa continued the conversation with the father and his girlfriend for almost another twenty minutes.

Thereafter, Forfa discussed the situation with D. and J. in a parking lot across the street from the father's residence. Understandably, D. and J. were unhappy that they would not be seeing the child on Mother's Day, to the point of requesting to speak with a supervisor. Schulhafer felt Forfa could have been more compassionate in his explanation so that they could better handle the unfavorable result. Moreover, Schulhafer felt Forfa asked irrelevant questions that delayed resolution, did not focus the conversation, and took too long to complete the call. Thus, he rated Forfa as unacceptable under decision-making for this incident.

Similarly, Schulhafer negatively assessed Forfa's decision-making regarding a motor vehicle stop on June 5, 2018. See R-45Q, Incident No. 180258593. Forfa was unclear how to proceed and what tickets to issue the violator. Schulhafer attempted to move the situation along by asking Forfa what he wanted to do but Schulhafer had to ask several times before getting an answer. Forfa also originally thought he would have the vehicle towed but then changed his mind.

Although Schulhafer rated Forfa's driving skills as acceptable nearly all days, he criticized Forfa's driving skills on May 11, 2018, in response to a call where a man was walking down the street carrying a large stick chasing other citizens. Notably, driving skills in category three suggest moderate stress and emergency conditions while category twelve encompasses driving skills under normal conditions. On May 11, 2018, under category three, Schulhafer commented that Forfa "misused lights and sirens" by failing to activate his lights and sirens to arrive on the scene quickly for assistance to other units. Forfa also drove too slowly to respond to potentially dangerous situation. Still, Schulhafer acknowledges that the video of this incident demonstrates activated sirens, whether from other vehicles or not. Further, their patrol vehicle was in traffic and could not pass other motorists. See P-35.

On May 19, 2018, Schulhafer also rated Forfa unacceptable in driving skills because Forfa was driving too fast during wet conditions. However, all other rated categories on May 19, 2018, were "acceptable."

On May 12, 2018, Schulhafer did not rate any category as "unacceptable." Still, Schulhafer rated multiple categories as "not observed." However, videos from at least one domestic incident calls indicate that Forfa interviewed parties and that he may have decided whether to consider the alleged offense as arrestable. See P-36. Yet, Schulhafer did not rate decision-making or relationship with citizens asserting Forfa's actions were those expected of him. Schulhafer was not clear whether Forfa decided if the offense was arrestable because he did not recall if he and Forfa discussed that decision. Id. However, Schulhafer rated Forfa's interview skills as acceptable on May

12, 2018, noting that Forfa "connects evidence suspects when appropriate," and "takes and records necessary information."

The domestic call depicted in P-37 dated May 12, 2018, was lengthy. Both involved parties exhibited signs of injury. Normally, when injury is present, the aggressor is arrested but which individual started the altercation was unclear. Forfa called a sergeant to the scene to assess how to move forward after an officer conference. Notably, Schulhafer addressed Forfa's performance during this incident on the DOR for May 11, 2018. Their shift began in the evening on May 11, 2018, but concluded on May 12, 2018, and Linden's video is dated May 12, 2018. Schulhafer criticized Forfa's inability to clearly convey information to people in both stressful and non-stressful field performance categories, noting how long the call took. Still, Schulhafer rated Forfa's relationship with other department members favorably on the DOR for May 11, 2018.

Even though Forfa conducted four motor vehicle stops on May 17, 2018, Schulhafer still rated Forfa as unacceptable in non-stressful field performance and self-initiated activity. See DOR 52. Schulhafer highlights that his criticism is based on Forfa's continued inaction unless directed by an FTO to perform tasks. In other words, the stops were made but not self-imitated.

Schulhafer noted no unacceptable ratings on May 20, 2018.

Like other FTOs, Schulhafer tied orientation to motor vehicle stops. Notably, on June 3, 2018, Schulhafer commented that Forfa was unaware of his location when he pulled a vehicle over during a motor vehicle stop and took an excessive amount of time, approximately twelve blocks, to decide whether to pull the vehicle over. See DOR 57, R-450. Schulhafer expects that a newer patrol officer should be familiar with major roads and intersections but not necessarily all streets. This stop occurred off a major city highway, Saint George's Avenue or Route 27. However, Forfa was unclear of his location and advised dispatch he would provide them with the cross street "in a moment." Schulhafer recalled that location has landmarks that Forfa could have used in describing his location if he was unsure of the street to give dispatch a clearer idea of

his location, but he did not. Schulhafer recalled asking Forfa what he was going to do without Schulhafer being present to assist. During a motor vehicle stop on June 4, 2018, Schulhafer similarly reported that Forfa was unfamiliar with the major streets in Linden and had to look around for signs before calling dispatch. See DOR 58.

Officer Daniel Turon

Turon worked for Linden as a police officer for fourteen years with the front desk assignment for the last five years. As a front desk officer, Turon handles walk-in reports, answers phone calls, and monitors cellblocks and prisoners. Turon underwent FTO training immediately before serving as an FTO with Forfa for several weeks. His FTO responsibilities involves training officers on front desk procedures.

Like other FTO's, Turon rated Forfa on unacceptable or acceptable actions that stood out. However, many of the patrol-related categories noted on the DOR would not be evaluated when working at the front desk, including vehicle or pedestrian stops, driving skills, and patrol procedures. Indeed, Turon noted most DOR sections as "not observed."

Also, like other FTOs, Turon found Forfa's decision-making and problem-solving lacking. Turon rated Forfa as unacceptable in this category on June 11 and June 12, 2018. See DOR 61 and 62. Turon explained that he noticed Forfa had trouble with routine reports, and Forfa would get flustered when seemingly unaware of the incident type he was handling. Once flustered, Forfa asked questions that were not relevant to the job and failed to obtain the facts needed to proceed or prepare a report, noting that Forfa tended to ramble. Without the necessary information, other officers or detectives have difficulty following up on incident reports.

Turon also noted Forfa's unacceptable interview skills on June 28 and 29, 2018, identifying similar problems with rambling when trying to obtain information needed to complete reports. See DOR 69 and 70. According to Turon, Forfa still seemed unable to ask the right questions which gave Turon concern. If Forfa had difficulties taking a

simple report at the front desk, then more serious issues could arise on patrol where the stress level was higher.

On June 13, 2018, Forfa released a prisoner charged for driving while intoxicated without completing the required John's Law form to release Linden from liability given the prisoner's intoxication. Any individual picking up such a prisoner signs off on being responsible for the prisoner. All officers undergo training on the use of this form and Turon believed Forfa's failure to be a major mistake. Therefore, Turon identified an unacceptable report writing rating. Once Forfa realized his mistake, Forfa appeared panic stricken, and he could not regain his composure. Thus, Turon considered Forfa's performance as deteriorating under stress and rated field performance under stress conditions as unacceptable on June 13, 2018. See DOR 63. Despite this one unfavorable report writing rating, Turon rated report writing rating as acceptable or not observed on all other dates he was paired with Forfa. Acceptable ratings noted that Forfa completed forms accurately with little assistance and that he used the computerized systems in a timely manner.

On June 19, 2018, Forfa overslept and was forty minutes late to his shift. Turon identified Forfa's tardiness as the least satisfactory performance of the day. Forfa's supervisor documented the lateness in the Guardian tracking system.

Although Turon noted that Forfa accepted criticism, had a positive attitude towards police work, and was courteous to citizens and other officers, Turon did not believe that additional training would improve Forfa's deficient performance areas.

Sergeant Eric Calleja

Calleja worked for the Linden Police Department for seventeen years, many of which involved various patrol positions and specialized task forces. Since January 2018, Calleja has served as a detective sergeant in the Internal Affairs Division (IAD). Calleja is one of six certified internal affairs instructors for Union County.

At IAD, Calleja investigates internal and external complaints for sworn and non-sworn personnel and oversees all use of force incidents, drug testing, standard operating procedure review, and agency hiring.

Calleja investigated the April 24, 2018, service weapon incident involving Forfa and Lacosta and allegations that Forfa left his service weapon at headquarters for extended periods. Calleja's supervisor assigned the investigation to him. Once completing the investigation, he issued a report on June 6, 2018, that he provided to his superior. The report went up the chain of command to the Chief of Police.

Calleja's investigation began after reviewing internal documents from Wegrzynek, the complainant, highlighting the incidents. As part of the investigative process, Calleja prepares an "attachment log" that identifies various items considered in the investigation. These materials include the reportable incident form from Wegrzynek leading to the investigation, the supporting emails describing the service weapon events, BWC and other video footage, interview recordings, and witness acknowledgment forms. The attachment log also includes a target letter sent by Calleja notifying Forfa of the allegations before an interview occurs.

Calleja explained that Lacosta learned that Forfa was without his service weapon on calls during their April 24, 2018, shift, on April 25, 2018, from Officer Elias. From reviewing the video footage, Calleja determined that Forfa was without his service weapon from approximately 1:27 p.m. to 4:17 p.m., during which Forfa and Lacosta covered two motor vehicle stops and a customer dispute at a car dealership. Specifically, Calleja observed Forfa securing his service weapon in a locker at HQ at 11:45 a.m. and not returning to the locker until after Lacosta and Forfa returned from patrol. Indeed, after being dispatched to a call at 4:17 p.m., Forfa left HQ and quickly returned to retrieve his gun from the locker. Moreover, videos of the motor vehicle incidents, the customer dispute, and HQ's interior confirm that Forfa did not have his service weapon on his person, despite having returned to headquarters during this time. See R-38, Incident No. 18018919; R-46C, D and E.

Calleja testified that Forfa's failure to carry his service weapon during police duties violated Linden's Standard Operating Procedure (SOP) for the Care and Use of Firearms,

135.2.1(A)(1), in effect since October 14, 2010. Further still, general guidelines regarding department-issued weapons require all sworn officers to carry guns while on duty. SOP 135.6.1 requires each officer to store their service weapon while processing prisoners. Otherwise, sworn officers should always have their service weapons on them.

Based on the interviews with Lacosta, Elias, and Forfa, Calleja concluded that Forfa knowingly did not have his service weapon upon him and did nothing to remedy the situation during that period, despite going on multiple calls.

On May 28, 2018, Calleja interviewed Forfa concerning the incidents, and Forfa did not deny failing to carry his service weapon during this period. Forfa stated that he became aware that he was without his service weapon during the second motor vehicle stop. Forfa maintained that he told Lacosta he needed to return to HQ but could not recall details of that conversation. Still, Forfa admitted that he never told Lacosta he had left his gun at HQ. Regardless, Lacosta denied that Forfa requested to return to HQ, let alone ask to retrieve his service weapon. When asked why he failed to tell Lacosta that he was without his firearm, Forfa expressed embarrassment and shame for not having the weapon. That statement disturbed Calleja because Forfa knowingly endangered the safety of the public, himself, and his partner out of embarrassment. Although a rifle may be in the patrol vehicle's trunk, this fact does not excuse an officer's obligation to carry his department-issued service weapon, his first weapon, on his person while on duty.

Even though Forfa admitted that he was aware of the situation at the second motor vehicle stop, Calleja disagrees. Calleja observed Forfa touch his holster during the first motor vehicle stop, which should have alerted Forfa to its absence, given the weapon's weight and position in the holster. See R-46C. Calleja also believed Forfa was untruthful about the conversation with Lacosta regarding the missing gun, regardless of whether he told Lacosta he was missing "important equipment." The realization that an on-duty officer is without his service weapon is a stressful moment that should be memorable. Further, if your FTO refused to return to headquarters for retrieval, as Forfa explained, the situation would become even more upsetting and unforgettable. Thus, Calleja sustained Linden rule violations under 3:1.7, obedience to laws, ordinances, rules, or directives; 3:1.5, the performance of duty; 3:7.5, work expectation; 3:9.1, equipment on duty; and 3:13.5,

truthfulness. Moreover, Calleja sustained the violation of SOP 135.2.1(A)(1) and statutory charges under N.J.A.C. 4A:2-2.3(a)(1), (3), (6), (7), and (12) against Forfa.

The other incident involving Forfa's service weapon did not involve a rule violation, as he was not on duty, even though it is not common to leave a service weapon overnight in a locker.

In his time at IAD, Calleja investigated only Forfa's failure to carry a service weapon on duty. However, although Calleja was aware of instances when officers left their guns behind, Calleja considered this a rare occurrence and was unaware of disciplinary charges for such a failure. Moreover, Calleja recalled leaving his weapon behind on one occasion, but he immediately rectified the situation and did not attempt to hide that his weapon was absent.

For Petitioner

Officer Michael Forfa

Forfa grew up in Linden, New Jersey, and his father served as a police officer with the Linden department. Before applying to be a police officer, Forfa worked as a corrections officer for four months and obtained an associate degree. Forfa also helped with community projects assisting Linden citizens through the mayor's office from age twelve to twenty. A few years after Forfa passed the civil service test, Linden contacted Forfa to ascertain his interest in becoming an officer.

Forfa's family history is also notable for his mother's alcoholism, which is how Forfa became familiar with the signs and symptoms of alcohol abuse and why he frequently chose not to bring his service weapon home when residing with her. Forfa subsequently moved to his residence.

While at the police academy, Forfa received training from Linden police officers, including Wegrzynek, Lacosta, Calleja, and Garrison. Forfa described the training as mental and physical to prepare him for the job. Forfa considered comments made by

Lacosta and Wegrzynek as harsh attempts to discourage Forfa from completing his training. Specifically, Forfa recalled Wegrzynek calling him a "fat shit" and expressing disbelief that his father was a Marine. Forfa also stated that Lacosta joked about his being sweaty during physical therapy training and "flopping in his filth like a silverfish." Nonetheless, Forfa graduated from the police academy successfully.

During his initial FTO training after the academy, Linden paired Forfa with multiple FTO's. From January to March 2018, Forfa was on patrol on his own, assigned to car 703, one of the busiest cars in the district, on a shift from 6:30 AM to 5:15 PM. Forfa considered issues during his solo patrol period minor. Yet, Forfa believes that his performance has improved over time. For instance, Forfa acknowledged that he initially struggled with report writing because he wanted to take his time to ensure that reports were complete, but he later completed them more quickly. Therefore, Forfa felt blindsided by the placement of a PIP, even though he knew the Guardian tracking system reported specific performance issues soon before the PIP.

The meeting about the PIP included the Police Benevolent Association representative and other Linden officers. These officers informed Forfa that he needed to improve, and specific performance observations led to the development of the PIP. Forfa did not consider the meeting a discussion. He was shown the document, told to sign it, and left. Similarly, monthly recap meetings during the PIP were supposed to assist him in identifying areas he should work on, but the discussions were more of a verbal beat down. Forfa asserts he asked the officers to review BWC videos showing his performance, but they did not. Forfa wanted to improve, but the reviewing officers failed to offer any guidance on how to be better.

Forfa acknowledged that he was unfamiliar with DV incidents, had only participated in one or two DV calls, and received minimal training in the area. Forfa was on the day shift, and most domestic violence incidents occurred at night.

Regarding the PIP's concern about completing SFSTs promptly, Forfa explained that another officer arrived on the scene before his arrival, and it was that officer's responsibility to complete the testing. Thus, Forfa felt the criticism was unfair.

Generally, Forfa explained his approach to calls and speaking with parties involved in incidents. Every officer has a different style based on their comfort level stemming from the learning process through police officer training. Specifically, Forfa does not like rushing people when telling their stories concerning the events leading to police involvement. Interested parties guide the conversation to a point, but Forfa maintains he stepped in at the appropriate time and obtained the necessary information. Forfa believes establishing a rapport with citizens is part of being a good police officer.

Forfa testified that all FTOs were fast-paced and unreasonably attempted to rush him on calls. He felt the FTOs were "itchy to take over" and completed calls instead of letting him finish. Indeed, Forfa explains that he takes his time to avoid missing information or forgetting things necessary for a report. Forfa also agrees that he asked the FTOs many questions. In turn, FTOs criticized this. However, Forfa wanted to know why or how FTO's performed tasks before going into a situation.

Forfa testified that his training with FTO Dziadosz was favorable because Dziadosz provided helpful advice and showed him how to perform tasks that Dziadosz felt Forfa needed further guidance on.

However, Forfa disagrees with several unacceptable ratings by Dziadosz. On April 3, 2018, Dziadosz highlighted that Forfa appeared confused about how to proceed with a walk-in report. Forfa testified that he was not confused. Instead, Forfa explains that officers handle walk-in reports differently, some bringing the person inside the police station while others address the report outside HQ. Forfa states he asked FTOs their preference but was told that was an inappropriate question. On April 4, 2018, Dziadosz noted that Forfa appeared confused or "lost" on calls. Yet, Forfa explains that he knows what to do but takes an opportunity to look around and observe before beginning a task. In essence, Forfa maintains that Dziadosz and other FTO's unfairly criticized his pace in handling situations and calls.

Forfa acknowledged that FTOs gave unacceptable ratings for report writing and that he took extra time to complete reports on occasion. Still, Forfa disagrees with his

failure to improve and many criticisms. Forfa maintains that each FTO had a different style of reporting incident events. For example, Lacosta expected Forfa to complete the report based on how involved parties relayed information. In contrast, Dziadosz expected the events to be reported in the order of occurrence or chronologically. These stylistic differences made it difficult for Forfa and often led to more revisions and extra time. Indeed, Dziadosz considered Forfa's report writing lacking on April 3, 2018.

Further, Forfa needed to wait until the FTO reviewed each report before its completion. Thus, Forfa often worked on multiple accounts during the period the FTO attributed to only one report. Still, further, Forfa would try to complete reports only needing some revisions rather than start on a new one. FTOs also had their reports and other tasks to complete, often delaying their review of Forfa's reports. Forfa's vehicle was also one of the busiest, if not the most active, in the district, generating multiple incident reports. Even so, Forfa highlights that many DORs indicate he improved in this area and received numerous acceptable ratings. Forfa recalls that Schulhafer told him that he was heading in a good direction with report writing.

Schulhafer rated Forfa's report writing as unacceptable for excessive time on June 2, 2018, for a basic DWI. However, multiple units responded, the accident involved significant property damage, a fleeing suspect, and the drunk driver had a medical episode during the call. Forfa also needed the sergeant on duty to report back from the prosecutor's office before he could complete the report. In other words, Forfa disagrees that this was a basic DWI.

Multiple FTO's rated Forfa as unacceptable in "orientation." However, Forfa maintains he knows the town and occasionally makes errors like other officers. For instance, although Lacosta criticized Forfa's turning onto a one-way street, Lacosta's comment accompanying that unacceptable rating noted the incorrect street. Also, Forfa usually patrolled the north side, but when paired with Dziadosz, he served the south side and needed to adjust to the different street orientations.

On April 4, 2018, Dziadosz also rated Forfa as unacceptable in radio transmissions. In response to a reported stolen vehicle, Dziadosz had to remind Forfa that dispatch was calling him and report the stolen car promptly. See R-45B. Forfa explained that although he heard the call, Forfa did not want to interrupt the citizen speaking. Moreover, although Forfa acknowledged that time was of the essence in recovering stolen vehicles, he needed to ascertain adequate information and determine if the individual speaking owned the car. Forfa highlights that Dziadosz agreed that Forfa's questions during the interview with the owner were appropriate.

Regarding the alarm call on April 6, 2018, Forfa highlighted that the door was only slightly open and that he did not handle the situation as he should have. See P-8. Indeed, he left the front of the home instead of radioing Dziadosz that the door was open. If an entry is unlocked when officers respond to an alarm call, the officers are to clear the house. Still, Forfa notes that another vehicle was on the scene, so he does not believe this represents a safety issue, as Dziadosz testified.

Forfa maintains FTO Ralph Heston was more relaxed than Lacosta. Heston would sit back and watch rather than jumping in if he believed Forfa was not acting quickly enough. Heston would also talk to Forfa about a call once completed and answered questions Forfa might have. Although Forfa believed Heston would be with him throughout his PIP period, Heston served as an FTO only on one date.

Forfa's experience with Lacosta was challenging, whether at the police academy or on patrol. Forfa believes Lacosta was "gunning" for him the entire time as partners. Lacosta had a different pace than Forfa, and was more aggressive than Forfa, and was not responsive to Forfa's questions. Lacosta did not sit back and observe; instead, Lacosta would dictate what to do. Forfa felt Linden pressured Lacosta to find negative ratings on the DORs and never provided positive feedback when discussing calls. During conversations or training concerning "unacceptable" ratings, Lacosta was unwilling to accept Forfa's explanation simply because Forfa did not handle the situation as Lacosta may have. In other words, Forfa felt Lacosta only looked to criticize his performance, failed to identify many of Forfa's appropriate actions, or accepted that a different way could also be effective.

Forfa relayed that Lacosta unfairly criticized him for officer safety on the first day for not contacting dispatch before engaging a suspect with a possible suspended license. Forfa explained that the patrol car's automatic plate reader returned as "suspended." Forfa observed the person he believed to be the owner getting out of the vehicle, so Forfa exited the patrol car to speak with him. Forfa felt that as a two-person patrol team, Lacosta, on the passenger side, could have radioed dispatch with their location because Forfa was handling the call. Further, Forfa correctly asked the vehicle's operator to remove his hands from his pockets, a standard safety protocol, and appropriately leaned into the parked car to look for contraband or weapons. Yet, Lacosta did not note Forfa's correct safety behavior on the DOR.

Forfa also disagrees with Lacosta's negative assessment regarding officer safety on the April 15, 2018, DOR. Lacosta reported that Forfa failed to observe a passenger in a double-parked vehicle with tinted windows before pulling up alongside the car. Lacosta yelled "stop" as Forfa was going past the car, so Forfa reversed and pulled behind the vehicle. Forfa recalls this differently, highlighting that he would not have been able to see through the tinted windows. Moreover, he recalled issuing no ticket for double parking or tinted windows and observed people getting into the car to leave. Still, Forfa acknowledged that he saw the double-parked vehicle but thought nothing of it and did not want to issue a ticket.

Although Forfa testified that he understood the importance of always knowing his location, Forfa believes that Lacosta unfairly assessed unacceptable ratings for orientation or driving on multiple dates. Forfa often called out streets he was approaching, not necessarily the exact street he was passing in a moving patrol car. Lacosta initially instructed Forfa not to do anything without telling him first, and Forfa felt that was the best approach given that instruction. Still, Forfa acknowledged that Lacosta corrected him advising him to identify where they were. Forfa maintains that he studied Linden maps to address any deficiency. According to Forfa, Linden does not expect its police officers to know every street in the city.

Forfa highlights that Lacosta criticized Forfa for turning up a one-way street under "driving skills," on April 15, 2018, but he was only pulling into the road's entrance

to make a U-turn. Even Lacosta incorrectly identified the street in his comment section regarding the incident. On April 18, 2018, Lacosta also failed to acknowledge other means of getting to a location, which he qualified as "orientation" problems. Forfa testified that he knew the route to the scene but changed course at Lacosta's direction. See, e.g., DOR 42.

Lacosta rated Forfa as "unacceptable" on multiple occasions for failing to engage in self-initiated field activity. However, Forfa blames this criticism on their differing styles. Lacosta was far more aggressive, and he constantly sought arrestable offenses. Forfa attempted to balance his workload, pulling people over for things that stood out rather than every violation. Similarly, Forfa felt it more effective to address vehicles with multiple offenses and safety issues rather than single, less consequential violations like window tinting and improper plate display.

Moreover, Forfa expressed difficulty visualizing whether a driver was wearing a seatbelt in vehicles moving at high speeds. In response, Lacosta told Forfa to "focus." However, Forfa often pointed out violations that were disregarded or not acknowledged as "self-initiated." See, e.g., P-20. Other times, Lacosta would drive and be the one determining whether to stop a vehicle, not Forfa.

Even when Forfa initiated vehicle stops, Lacosta found other criticisms, like timeliness or indecisiveness. See, e.g., DOR 42 for April 18, 2018. Yet, Lacosta's complaints failed to address that there were multiple parts to the April 18, 2018, vehicle stop. The female driver not only did an improper U-turn on a busy road but also failed to have proper paperwork requiring Forfa to ensure vehicle removal from the street. Lacosta also lectured Forfa on whether to have made the stop while Forfa was processing the violation, adding time to Forfa's completion of the incident.

Forfa maintained police officers have some discretion regarding violations they see. However, Lacosta appeared focused on finding violations even when they were busy on multiple serviced calls just because he could; an attitude Forfa felt placed him in a poor position, especially with report writing. He wanted to ensure he had sufficient time to finish reports wholly and accurately to avoid later criticisms about overtime.

Linden also has a traffic unit that handles motor vehicle accidents and violations, leaving patrol units more time to take service calls. To support officers' discretion, Forfa highlights that BWC footage shows Lacosta giving a break on a violation to someone with a PBA card. See P-21. Yet, Lacosta criticized Forfa for "ignoring" minor infractions such as failing to wear a seatbelt or improper plate display, which he considers he had the discretion to overlook.

Forfa recalls a response to a disabled vehicle on April 15, 2018, where Lacosta was so aggressive that Forfa told him to stop yelling and stay in the car. Forfa wanted to assist the driver in getting a tow truck to remove the vehicle from a busy road, whereas Lacosta looked to address motor vehicle violations. Forfa felt Lacosta was unnecessarily escalating the situation with a distressed motorist. See R-16, Incident No. 18017346.

In essence, Forfa believed that the summonses Lacosta issued for exceeding a sixty-day non-resident driving authorization and the inability to demonstrate insurance were not significant violations. The driver provided a reasonable explanation for these issues and attempted to retrieve his insurance card from his phone, but the battery died. The driver also admitted that he lived in Linden for a year but maintained that he lived in New York six days a week and only one day in Linden. Forfa acknowledges a duty to report concerns observed of fellow officers and states he did so. Yet, Forfa could not recall the name of the supervisor to whom he reported this incident and recalled few details about making the report.

Forfa also disagrees with Lacosta's unacceptable ratings regarding Forfa's radio transmissions. Often, Lacosta would interrupt during a message, making completion difficult. Still further, Lacosta also missed hearing radio transmissions, and Forfa needed to inform Lacosta of the details. See, P-13.

Forfa's version of the April 18, 2018, events concerning the walk-in warrant and marijuana incident at headquarters (HQ) differs from Lacosta. Forfa testified that his father, an officer stationed at the front desk in HQ, told him that the two gentlemen were at the HQ vestibule concerning the warrant and that they "didn't smell right." Forfa

testified that he was not confused about how to proceed or failed to smell marijuana but instead looked to Lacosta to "give him a heads-up" that something was wrong. Then, Lacosta jumped in and took over, not permitting Forfa to handle the situation.

Forfa testified that he had a plan for the situation, but Lacosta's interruption prevented its execution. Initially, Forfa intended to remove the one individual with the outstanding warrant inside a cell without alerting the other party that he smelled marijuana as a safety measure because it was two officers to two suspects. Even though other officers were at headquarters and could observe the vestibule, a safer ratio was to have one individual to two officers. Once inside, with more personnel nearby, an officer could verify if the individual had marijuana while checking him in on the warrant. Another officer could do that search, and Forfa could return to the vestibule with back-up if needed.

Although Forfa attempted to explain his strategy to Lacosta, Lacosta did not believe him and rated Forfa as "unacceptable" in decision-making, arrest laws, and report writing for that incident. Forfa acknowledges he opened the incorrect arrest report because there were two and did not initially input a second warrant correctly. Yet, while Lacosta suggests the reports took excessive time, Forfa maintains that this was because Lacosta wanted the report completed in a certain way, different from other FTOs. However, Lacosta also noted that he finished the computerized incident reports without assistance.

Forfa disagrees with Lacosta's comment that he constantly looks for guidance during stressful and non-stressful situations and that he would become panic-stricken if left without supervision. Forfa highlights that he had been on patrol on his own for months without him being panic-stricken.

Forfa was not indecisive about the fire call on April 23, 2018. Instead, he advised dispatch that he and Lacosta were not clear because Lacosta appeared busy and did not hear dispatch report a fire. Once Lacosta became aware that a fire was in progress, he advised dispatch they would respond.

Forfa also does not believe he was indecisive in handling the McManus Middle School (McManus) incident. Forfa recalls that he and Lacosta received a call concerning a suspicious event at McManus, that turned out to be the circulation of a Maryland student's Snapchat screenshot discussing a school shooting. The screenshot was on a chain to many people, and there was no indication it applied to a Linden school or was attributable to any geographic location. Dispatch also advised them that a juvenile detective was on the way to the scene. The vice principal reported the incident after seeing the McManus student's phone, noting the screenshot, but relayed that he was "ninety-nine percent that this was nothing." The vice-principal spoke to the student, who he felt was believable.

Forfa handled the call and disagreed that he was unsure how to proceed. Forfa felt that Lacosta insisted on an officers' conference to try to hurt or intimidate Forfa rather than assist in handling the call. Forfa highlights that Lacosta suggested they follow the school's policy regarding parental notification rather than simply notifying the parents and that Forfa notify superiors. Still, Forfa already knew the juvenile detective would be on the scene soon and believed that the detective would contact the sergeant, follow up on the incident, and issue a separate report. Although Lacosta considered this event as a potential critical incident, no information suggested the Snapchat was related to Linden or areas surrounding Linden. Forfa agrees that a serious crime or indictable offense requires an officer to notify the desk to alert a superior, but this was not the case here. Regardless, Forfa called the desk at Lacosta's suggestion.

Although Lacosta criticized the report Forfa wrote for the McManus incident, Forfa highlights their stylistic differences and Lacosta's inaccurate time assessment. Forfa was preparing other reports while waiting for Lacosta to review this incident's report. Moreover, the juvenile detective's report would be the most comprehensive regarding the incident and conclude the investigation.

On one occasion, Lacosta rated Forfa as unacceptable in appearance. Forfa acknowledged not washing his uniform but explained that uniforms are expensive. Further, adjusting to the differing FTO schedules with multiple days in a row occasionally made it difficult to keep his uniform appropriately pressed or cleaned.

Forfa was diligent in keeping his assigned weapon and equipment clean. Although Schulhafer noted Forfa's appearance as unacceptable on May 2, 2018, Forfa explained that a schedule change required him to walk around town for approximately five hours immediately before getting in the car with Schulhafer. Forfa also explains that the back of his pressed shirt would wrinkle on the drive to work. Still, Schulhafer noted an unacceptable rating for his appearance on June 4 and 5, 2018.

Forfa felt rushed with Schulhafer, although not as much with Lacosta. Schulhafer would often not let Forfa finish a job before interjecting to make an assignment go faster. Discussions with Schulhafer similarly focused on unacceptable ratings.

During the angry father incident on April 25, 2018, Forfa suggested Schulhafer's aggressive tone worsened the situation. Instead, Forfa's raising his hands in a calming gesture to get the man to focus was a more effective de-escalation technique. Indeed, Forfa maintains he knew the procedures but could not tell the man because Schulhafer jumped into the conversation. Forfa tries to listen first and then responds quickly.

Forfa explained that his failure to ask follow-up questions of the domestic violence victim on April 26, 2018, was because she was vague and unwilling to disclose her injuries to him. He expected to come back and speak with her again. Multiple officers were present that did not see the minor cut on her lip, which Forfa described as being on the inside. FTO Garrison agreed that the victim was initially non-specific about her injuries. Further, another officer with a flashlight advised Forfa that he would talk to the victim.

Although Forfa admits he could have put his flashlight on sooner for the motor vehicle stop on May 1, 2018, he felt that their lights adequately illuminated the stopped car's interior.

Forfa acknowledges that he and Schulhafer frequently discussed the issue of conducting stops or self-initiated activities. Schulhafer expected Forfa to perform more motor vehicle stops. Forfa admits that this issue was a frequent complaint of FTOs, and Wegrzynek noted the same concern during monthly assessment meetings. Yet, Forfa

maintains that even if he was not conducting a vehicle stop, he was doing other relevant things such as reports, park checks, or reading police procedure materials. Further, no FTO told him how many stops were enough despite his asking that question. He increased the number of stops, but no FTO told him he was doing any better. Instead, Schulhafer routinely stated that Forfa failed to address blatant violations or was not actively looking for offenses or suspicious activity. Forfa also highlights that not nearly as many motor vehicles are out during the overnight shift.

Forfa similarly disagrees with Schulhafer's criticisms about radio transmissions. Schulhafer notes that Forfa often asked Schulhafer to repeat radio transmission or ask for job details on recent broadcasts. Forfa explained that he wanted to ensure he had not missed any information, almost as a test. Forfa admits that he told Schulhafer that he did not listen to all radio communications, but that Schulhafer took this comment out of context. Often dispatch communicates information to the fire department that is not relevant to police officers. So, Forfa did not mean that he did not try to listen to all relevant communications. Schulhafer disliked any pause in Forfa's dispatch communications, but Forfa maintains that he paused to allow dispatch sufficient time to get all the information without asking him to repeat comments.

Forfa admits that he occasionally forgot to get an individual's phone number because he focused on getting people off the scene. Often the computer system has phone numbers. Schulhafer's negative comment concerning accident investigations on May 10, 2018, did not specify an incident, and Forfa did not recall missing information that day.

Forfa felt bad for the mother and grandmother involved in the visitation dispute on May 11, 2018, so he disagreed with Schulhafer's comment that he lacked empathy. Still, Forfa admits that he let them talk, hoping they would feel better about the situation. Forfa wished he could have done more.

On May 11, 2018, Forfa explains that multiple searches of the DWI suspect occurred before getting to HQ. See R-26, Incident report No. 1802197. Forfa acknowledges there are specific procedures concerning subject searches. Regardless

of previous searches, an officer again searches a subject before being placed in a cell. The suspect was compliant and was nonaggressive during the prior interactions and searches at the scene. Although Forfa usually had the suspect interlock his fingers behind his head before facing him, but did not on this occasion. Instead, Forfa had the man raise his hands. Further, Forfa notes that other officers were present if the suspect were to become violent. Forfa acknowledges that other tactics suggested by Schulhafer were safer.

Schulhafer also noted Forfa's unfavorable search skills on June 2, 2018, when Forfa searched with many coins in his hand. Rather than get a property bag before the search or put the change elsewhere, Forfa explained that he searched the suspect with the back of his hand. Forfa asserts he did so because he wanted to keep the man's property intact.

On May 11, 2018, Schulhafer also criticized Forfa's driving skills for not activating his lights or sirens and driving too slowly in a potentially dangerous situation. However, Forfa disagrees, maintaining that he started his siren immediately. Further, Forfa explains that the video shows vehicles passing by them going the other way, and there was a car in front of their patrol car. Thus, Forfa maintains it was impossible to go any faster or pass the other vehicle on the left. Forfa also denies that he was speeding while driving with Schulhafer on May 19, 2018, and disagrees with an unacceptable driving skills rating.

Although P-37 is dated May 12, 2018, the events began on May 11, 2018. Forfa disagrees with Schulhafer's negative assessment of interview skills and decision-making. Forfa highlights that all officers on the scene had difficulty explaining the situation to the parties involved in the domestic incident. No officer on the scene could determine which party was the victim.

Forfa considers Schulhafer's unacceptable ratings unfair about the man carrying the rock on May 18, 2018. See R-45L. Initially, Forfa asserts that Schulhafer threw him into a dangerous situation by parking directly in front of the individual. Instead, Schulhafer should have parked a distance away. Further, Forfa asserts he intended to

use a lower voice as a de-escalation technique. Forfa felt this was effective because the man put the rock down. Notably, the man with the rock turned out to be the victim, not the aggressor. Forfa assisted in getting the man an ambulance. Forfa recalls that Schulhafer and he watched the video of this incident because Schulhafer did not believe Forfa had said anything.

On May 27 and 28, 2018, no FTO issued a DOR because Schulhafer had a scheduling conflict. Still, Sergeant Rivera took him out on a call on May 27, 2018, so that Forfa did not have to sit inside the whole shift. See P-41A.

Forfa felt criticized for being too slow with his questions or too fast during interviews or vehicle stops. Schulhafer critiqued him for not being thorough enough during a motor vehicle stop on June 2, 2018; Turon maintained he rambled.

For the DOR of June 3, 2018, Forfa recalled making Schulhafer review the video for incident report No. 18024568 to obtain a favorable rating under stress control. Schulhafer disagreed that Forfa properly handled multiple parties yelling until watching the video.

Forfa similarly disagreed with Schulhafer's negative assessment of his orientation skills on June 4 and 5, 2018. On June 4, 2018, Forfa blamed the delay in making the stop on Schulhafer, who Forfa states told him not to make the stop. Forfa disagreed, and this conversation delayed the stop. The violation happened far from their location when they did stop the car. However, Forfa maintains he knew where they were. Forfa may have looked at street signs to assist him in determining his location on June 5, 2018. However, Linden has hundreds of streets, and Forfa maintains that no one told him he could not look at street signs for assistance on locations.

Although Forfa acknowledges it took him a little longer to decide what to do on a vehicle stop on June 5, 2018, he was considering whether to give the driver a break. See R-45Q. He described her story as a bit crazy, but he wanted to give her time to explain so that he could assess her truthfulness. Forfa noted the woman had a

paperwork issue and that there is a difference between an unlicensed or never licensed driver and a suspended license. Forfa looked at his statutes' booklet to determine the correct violation. Forfa felt Schulhafer's criticism for not immediately knowing the right violation was unfair and had Schulhafer stopped asking him questions; he would have figured it out sooner.

Forfa describes his overall experience with Turon as good. Indeed, Turon noted Forfa's positive attitude on his first day in headquarters. Forfa recalled that Turon was more precise about what he expected and why. While inside headquarters, Forfa had less of a role in the department. Forfa states Wegrzynek told him that he could not handle calls on the road, so he would be stationed inside and monitored.

Turon, however, wanted quick answers and was unhappy when it took Forfa longer to get to the conclusion. Forfa liked to take his time, so he had all the essential details. In other words, Forfa felt it was a difference of opinion as to the correct way to talk to citizens at the desk. Forfa disagrees that he lacked confidence in his actions. Forfa maintains he was not looking for direction from Turon but instead answering Turon's question, "What have you got?" He also disagrees that he rambled. Instead, Forfa explains that he likes to talk to people and does not like interrupting people, even if it takes longer to get the necessary information. Many people are intimidated by police officers, and Forfa wanted people to feel comfortable talking to him. He believed this resulted in a more positive interaction with the public.

Forfa acknowledges he failed to obtain a John's Law form on June 13, 2018. Yet, Forfa never used John's Law form from an individual before this incident, and he did not remember the requirement. Forfa received training during a DWI training segment very early his career that may have covered the form's use, but he does not recall seeing the form. A patrol officer would not handle this task. However, Forfa did get the phone number of the person who should have signed the document. Forfa immediately called the individual, who stated he would return to complete the form later. Forfa asked Turon what he should do if the person did not return or how to correct the error. Turon teased him about being in trouble which frustrated Forfa, who wanted to fix

the problem. Yet, he was not panic-stricken or unable to perform desk duties following the incident.

Although Forfa was late to work on June 19, 2018, he was still adjusting to the frequent shift changes. He had been working nights with Schulhafer, and the desk shift began at 4:00 a.m. Once called, Forfa hustled to get to her and was clean-shaven, showered, and presentable twenty-five minutes later.

Still, Turon liked that Forfa was prepared and kept a binder with copies of routinely used forms. On June 26, 2018, Turon also reported that Forfa used his free time to study the criminal code. See DOR 67.

Toward the end of June 2018, Linden took Forfa off the desk. Although Forfa worked several four-day tours, Linden did not evaluate Forfa after June 29, 2018. Further, various training Linden was to supply did not take place. Ultimately, Linden advised Forfa that he was fired in July 2018.

Forfa acknowledges that he failed to place any response to the negative comments on the DORs and that he was aware that he could do so. Forfa maintains that he only learned of this capability towards the end of the PIP, and then he considered it too late and that his responses would not matter to the training unit. Instead, Forfa initially believed that he could only discuss the negative rating with the FTO. Forfa was frustrated that the DORs failed to include favorable ratings and, therefore, failed to accurately depict those areas showing his improvement, skewing consideration of the unacceptable ratings. Forfa relays that Turon advised that Wegrzynek told him to focus on negative things Forfa did and recalled that Turon showed him a text message. However, Forfa supplies no copy of the text message.

Additional Findings

Accepting or rejecting the witnesses' testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value a fact-finder assigns to a witness's testimony incorporating an overall assessment

considering its rationality, consistency, and whether it comports with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999).

A fact-finder "is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions . . . [that] excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950). Credible testimony must not only proceed from the mouth of credible witnesses but must be reliable. Id. at 522. In other words, a trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Indeed, rejecting a witness's testimony, in whole or part, rests with the trier and finder of facts and must be reasonable. Renan Realty Corp. v. Community Affairs Dept., 182 N.J. Super 415, 421 (App. Div. 1981).

Based on the testimony provided and my assessment of its credibility, together with the documents submitted, videos reviewed, and my evaluation of their sufficiency, I **FIND** the following additional **FACTS**:

April 24, 2018, Service Weapon Incident

Calleja was a particularly credible witness. He testified straightforwardly, has significant experience in investigations and applicable SOPs, and adhered to appropriate methods in investigating the April 24, 2018, incident. Calleja did not hesitate to explain the conclusions he reached concerning the incident. His demeanor was sincere, and I observed no apparent animosity towards Forfa. The BWC footage confirms Forfa's hand over the gun holster during the first motor vehicle stop. Whether it was Forfa's habit of placing his hand upon his gun holster or not, I **FIND** Forfa would have known that he was without his service weapon on the first motor vehicle stop.

Calleja's explanation that the shape and weight of the handgun would alert the officer to its presence was reasonable and convincing.

As such, I do not **FIND** Forfa's testimony credible that he only became aware of the missing service weapon on the second motor vehicle stop. Notwithstanding, during the second motor vehicle stop and a customer dispute, Forfa acknowledged that he was without his service weapon. Thus, I **FIND** he knowingly placed himself, his partner, and the public at risk of harm. Whether the use of or need for a service weapon is infrequent is irrelevant to the ever-present threat of harm facing police officers.

I also **FIND** Calleja's testimony concerning Forfa's alleged conversation with Lacosta to be more persuasive and compelling. In other words, I **FIND** Forfa's inability to recall details of the discussion during his IA interview to be suspect. Moreover, I **FIND** that a preponderance of the evidence does not exist that he told Lacosta to return to headquarters to retrieve an "important piece of equipment." Even if he had, this was simply not enough and resulted in the continuation of a known dangerous situation for, at a minimum, two police incidents. Indeed, Forfa admits that he did not tell Lacosta that he had left his *service weapon* at headquarters as he should have. While I appreciate that Forfa felt Lacosta was an unnecessarily harsh FTO who would have criticized his being without a gun, that cannot excuse his failure to notify his FTO that he was without his handgun. In sum, I **FIND** that Forfa exercised abysmal judgment in this situation.

FTOs, DORs and the PIP

Overall, I **FIND** that respondent's witnesses were more credible than Forfa. Videos and written materials close in time to their observations support much of the FTOs' testimony about Forfa's performance issues. All FTOs acknowledged that the DOR system does not include all actions they observed Forfa complete, including acceptable behaviors. While Forfa characterizes imprecise FTO comments as falsehoods, they often represent errors that do not significantly diminish the criticisms. For example, Forfa did not use the words "verbal argument" describing the victim's account on April 26, 2018, just "argument." Yet, the criticism focused on Forfa's

incorrect communication and interview skills. See R-45H1 and 2, DOR 45(2). Lacosta used the term "critical incident" for the McManus snapchat incident when "suspicious event" may have been more appropriate given the outcome. Yet, Lacosta's concerns were of Forfa's interview skills, decision-making and report writing. See DOR 43. Indeed, all FTOs admit that the DORs had some errors after watching videos or reviewing the DORs. This acknowledgment lends to their overall credibility, sincerity, and understanding that the DOR system is not perfect. Lacosta openly considered his experience with Forfa negatively and was far more defensive in his ratings than the other FTOs, making his testimony less convincing at times. Shulhafer had clearer errors in his reporting. Still, many of Shulhafer and Lacosta's unacceptable ratings are supported. While I consider some of Forfa's testimony credible, I **FIND** that his testimony about critical concerns, such as the absence of his service weapon, decision-making, orientation, or safety issues, were not.

FTO training included a three-day course offered at or by Penn State, in-house training, and training meetings where FTOs discussed trainees and concerns. In-house training addressed using the DOR system and other issues, such as communication skills or different learning styles. Yet, the DOR instruction primarily covered how to use the computer program, not how to observe or document those observations.

The FTOs received some written materials on the DOR system. Although an FTO manual existed, none of the FTOs evaluating Forfa received or reviewed it. However, each FTO had years of experience as a police officer, and Linden selected these FTOs because of that experience. Wegrzynek did not choose the FTOs in his unit; that decision remained with the Chief.

Still, Wegrzynek created the FTO schedule for Forfa. Forfa takes issue with his pairing with Lacosta or Shulhafer given a more favorable experience on one day with Heston. In other words, Forfa argues that Wegrzynek chose his FTO assignments with little concern for his improvement or personality. Yet, Heston's unavailability required Forfa's assignment to Lacosta on more days, and scheduling would necessarily consider FTO availability. Multiple FTOs worked with trainees during working-test periods and did so during the PIP. Lacosta understandably had concerns continuing

that role after the service weapon incident. Thus, I do **NOT FIND** the evidence supports that Wegrzynek paired Forfa with FTOs designed with Forfa's failure in mind.

Regardless, only Lacosta and Heston had more than a few months of FTO service when paired with Forfa. Turon first received DOR training on June 5, 2018, and learned of his first FTO assignment on June 10, 2018, the day he first began evaluating Forfa. Wegrzynek was in the training unit since 2014 but did not have a trainee assignment as an FTO. In sum, I **FIND** that the training and experience level of Forfa's FTOs were not extensive.

Forfa's retraining under a PIP was unusual, and the PIP was third-phase training. The third training phase required FTOs to observe the trainee performing tasks independently. FTOs would step in when necessary to correct a trainee's course of action. On occasion, Forfa would also watch an FTO, such as on April 17, 2018, when Linden scheduled him for weapons qualification. Still, FTOs reasonably expected Forfa to act without FTO guidance.

The performance-based FNDAs focus on the negative or unacceptable ratings Forfa received. The DOR system's design assists in identifying areas that need improvement. Therefore, Linden understandably used the unacceptable ratings to guide its decision on Forfa's failure to improve adequately. Linden does not suggest that Forfa received mostly unacceptable ratings or that he could not perform all aspects of his job. Indeed, Forfa handled many calls on his own during his career without significant complaints or criticism. Forfa impresses that this case judges his entire career on only a few incidents, many of which FTOs unfairly criticized. Still, those events led to the charges, and Linden considers these incidents sufficient to support its decision to remove Forfa as an officer.

Indeed, Linden considered several areas critical to Forfa's role as a police officer. Notably, Linden found Forfa lacked sufficient competence despite the amount of time on the job and his extensive training. To be sure, Forfa underwent pre-academy training, trained at the police academy, completed the initial six-month FTO training, passed his working test period, and patrolled as a solo officer for nearly six months before the PIP.

Forfa was on the job for a year and a half before the PIP began. Thus, I **FIND** that Linden's expectations of Forfa were understandably high at that point in his career.

While the PIP contemplates specific areas of performance deficiency, the DOR categories offer more comprehensive performance assessments that relate to the PIP concerns but do not mirror the PIP's wording or weaknesses. For example, none of the DOR reports address Forfa's administration of SFSTs. Undeniably, Linden did not provide the training courses contemplated by the PIP in domestic violence or SFSTs. Still, on June 2, 2018, Forfa appropriately administered SFSTs, leading to a DWI arrest of the individual. See R-28. In other words, Forfa improved in this area as required by the PIP. Yet Forfa's limited view of the PIP and assertion that DOR assessments had little to do with identified PIP deficiencies ignore much of the language used to describe the nature of Forfa's problems.

Forfa's July to December 2017 solo patrol performance evaluation, reviewed with him in February 2018, identified several problem areas in which he needed to improve. While the incidents described, or areas of needed improvement during that period are not part of or the basis for the PIP, Forfa knew Linden expected him to work on those areas. Further, Forfa was familiar with issues noted by his supervisors in Guardian in 2018 that they communicated to Wegrzynek, leading to the PIP. Thus, I **FIND** that Forfa's belief that his performance issues were minor before the PIP is unreasonable.

Notably, Linden considered the unacceptable DOR ratings in officer safety, orientation, radio transmissions, report writing, field performance, decision-making, and interview skills particularly concerning. Each unacceptable rating noted training or counseling by an FTO, alerting Forfa to continuing concerns. Monthly performance meetings reiterated these problems.

Differing FTO approaches and demeanor are apparent in the testimony and BWC videos. An NRT rating was frequent on the DORs in categories with repetitive deficiencies. However, in some instances, Schulhafer and Dziadosz used "did not respond to training" the first time they rated Forfa in a DOR category. Yet, they support that rating by highlighting that they observed deficiencies in tasks Linden routinely trains

its patrol officers on issues previously documented on DORs. Lacosta insisted on reviewing the drop-down menu to explain why he may or may not have reported an incident on the DOR. Lacosta provided more of a narrative in his comments than the other FTOs, using less standardized drop-down options. Schulhafer and Dziadosz were quicker than Lacosta to admit an error on the DOR. Further, Schulhafer used more drop-down selections and incident numbers in the DORs, which explained his ratings better than the other FTOs. Turon used no incident numbers in his ratings. In this case, however, multiple videos show interactions between Forfa and the FTOs, which ultimately support most of the unfavorable performance ratings.

Undeniably, the DOR evaluation system has its limitations. While Wegrzynek maintains that all DOR ratings are objective, I **FIND** that some FTO comments are more opinions about performance because many are generalized without reference to a specific event. Since FTOs do not always list an incident number or describe an event, verifying the DOR rating can be difficult. Further, the DOR system highlights common considerations through the drop-down menu options that offer greater standardization to the category ratings, but the FTO's choice of these responses remains. An FTO's determination that action is routine or does not adequately stand out enough to report is also somewhat subjective. Still, the ratings are based on the FTO's knowledge and have a factual basis in their observations of Forfa.

FTOs prepared DORs and rated Forfa using different methods. Whether an FTO should rate a single incident in multiple categories is not clear. Some FTOs would evaluate the same incident in numerous categories, while other FTOs did not. DOR categories overlap, often yielding repetitive unfavorable ratings for the same task. Lacosta testified that he only needed to cover the incident on the DOR, not every area that may apply to the situation. Further still, Lacosta only reported those tasks he observed from start to finish, while Schulhafer and Dziadosz documented events whether observed in their entirety or part. Further, Schulhafer often used the same training comment to report a deficiency in multiple categories for the same incident, although selecting other populated drop-down comments.

Police work often requires an FTO to perform actions separate from the trainee. Thus, an FTO cannot observe all the trainee's actions or record these events on the DOR. Further, FTOs face multiple calls during a particular shift. Most FTOs completed the DORs the same day, but sometimes FTOs finished DORs days after. Although FTOs often take notes, they are unable, and it is unfeasible to document every observation made during the day. Undeniably, however, a DOR reflects what an FTO observes the trainee doing. Therefore, an FTO would not be required to review BWC footage from Forfa's perspective in their assessments.

During the hearing, FTO's were shown Forfa's BWC footage and acknowledged that Forfa handled aspects of calls correctly that they did not document on the DORs. Indeed, rating categories that an FTO could have completed were not. For example, video footage reveals several calls on April 15 and April 17, 2018, from which Lacosta admits Forfa's actions would be "acceptable." See P-8 and P-9A. Yet, Lacosta did not identify these good behaviors on the DOR. Several DORs also described actions that FTOs witnessed, although reported as "not observed."

Although Forfa suggests this skews the results because FTOs missed "acceptable" ratings, unacceptable ratings were also arguably missed. Indeed, after watching BWC video from Forfa's perspective, Dziadosz noted an unreported officer safety issue during a residential alarm call, and Schulhafer noted additional interview deficiencies in connection with the domestic incident on April 26, 2018. See P-4 and R45H-1. Still, that Forfa may have been "acceptable" at other times or should have been graded as "acceptable" instead of "not observed" does not change the "unacceptable" ratings. Nonetheless, this skews averages on the daily performance chart and roll-up report's categorical ratings because "not observed" carries no numerical value, and unrecorded acceptable actions would arguably increase the average category score. See, e.g., P-16. Although the roll-up report and daily performance chart provide an overview of deficiencies, I **FIND** that the numerical averages or number of unacceptable ratings alone are inaccurate in judging Forfa's improvement.

Acceptable ratings were less critical because of Forfa's lengthy job tenure. Linden reasonably expected Forfa to perform acceptably on routine tasks given the amount of Forfa's service, and FTOs plausibly felt rating these tasks was unnecessary. Significantly, FTOs must focus on unacceptable ratings or improperly handled events because they are training opportunities and assist trainees in improving their job performance. Still, I **FIND** the ratings and FTO comments are more valuable to discern Forfa's improvement or lack thereof when tied to specific incidents or videos.

FTO counseling time for each unacceptable rating on patrol days during the PIP, usually five minutes, totaled nearly nine hours. Although no FTO counted the training time, making that number imprecise, Forfa acknowledged that FTOs discussed the negative DOR ratings with him. Undeniably, Forfa had the option to respond to each unacceptable rating before electronically signing the DORs, but he chose not to address any FTO criticism. Although Forfa suggests that he did not know he could respond until later in the PIP, the DOR screenshots indicate otherwise.

A review of DORs also notes that FTOs identified many "acceptable" tasks, usually several more than "unacceptable" ratings each day. For example, Lacosta noted only one unacceptable rating on April 16, 2018, and more than ten acceptable ratings. Even Lacosta's one negative rating for report writing timeliness and grammar on April 16, 2018, also noted some report writing improvement. While Lacosta provided two unfavorable ratings on April 24, 2018, he also listed eight good areas. On May 2, 2018, Schulhafer documented fifteen acceptable and only two unacceptable ratings. Schulhafer noted only favorable ratings on May 20, 2018. Similarly, Dziadosz noted far more acceptable than unacceptable ratings on all three days with Forfa.

Notably, Forfa asserts that Lacosta was too aggressive with a disabled motorist on April 15, 2018, and he told Lacosta to stay in the car. See R-16. Forfa testified that he reported this incident to a supervisor but did not recall to whom or when he made this noteworthy complaint. The incident report for this call notes that the charged individual overheard Forfa and Lacosta discussing the motor vehicle infraction and spoke to them about his living arrangements. The report also states that the individual "began using expletives at us." Regardless, the report does not support that Lacosta

was inside the patrol vehicle during the call, as Forfa states. Further, Wegrzynek denied ever receiving a complaint about Forfa's FTOs, and any issue with an FTO would come to him as the training commander. In other words, I do not **FIND** Forfa's version of this call or the report he made concerning Lacosta's behavior credible.

While Forfa felt many of the FTOs were unfair, too harsh, and primarily focused on improper actions, I **FIND** that the DORs accurately reflected areas of continuing concern. Undeniably, the FTOs did not have extensive FTO training and were new to the role but for Lacosta. Indeed, I **FIND** that this explains their different views on how to rate Forfa and the differing manner they completed DORs. Still, I **FIND** that although FTOs diverged in approach and detail with a necessary focus on unacceptable behaviors, the FTOs appropriately and reasonably documented many observations and DOR ratings in those categories of concern. Yet, I also **FIND** that some FTO errors diminish their critiques.

Notably, the BWC videos show Forfa's positive attributes, consistent with several DORs, including a calm and pleasant demeanor with the public that assists in diffusing stressful situations. Forfa's approach to residents is service-oriented and genuinely kind. Undeniably, Forfa desires to serve his community and did so before becoming a police officer. Indeed, FTOs acknowledged that Forfa was courteous and rated his relationship with fellow officers favorably.

Here, Linden must demonstrate that the unacceptable ratings leading to PIP disciplinary charges are sufficiently supported to conclude that Forfa did not successfully complete his PIP or adequately improve his performance. A single or a few negative ratings in a critical topic, such as officer safety or orientation, may support a failure to improve in that area, but other less critical areas, some not contemplated under the PIP, do not.

General Appearance

For example, FTOs documented Forfa's unacceptable appearance four times during the PIP. Yet, appearance was not a PIP concern or one during his police career,

and Forfa explained why his appearance was justifiably lacking. Thus, I **FIND** that a preponderance of the evidence does not exist to support that this was a persisting problem, a critical concern, or that Forfa did not improve in this area. In other words, the charges related to unimproved general appearance are not adequately supported.

Lateness

Forfa was forty minutes late on June 18, 2018, because he overslept. Once contacted by his supervisor, Forfa arrived at work in under thirty minutes in a presentable fashion. This may violate Linden's rule covering an officer's obligation to timely report to work, but the FNDA's focus was Forfa's failure to improve during the PIP. The PIP does not address tardiness as an area needing improvement, and a single incident hardly suggests a persisting problem or critical concern. Forfa was timely on all other days evaluated.

Report Writing

Although Linden noted problems with Forfa's report writing and the length of time to complete reports, Forfa's explanation was credible and diminished this criticism. Notably, the FNDA addressing Forfa's PIP performance in April and May 2018 did *not* list report writing as an unimproved area. Instead, the FNDA addressing Forfa's June 2018 performance identified report writing as lacking improvement.

Forfa had multiple FTOs during the PIP, and the FTOs used different methods of preparing incident reports. Indeed, Lacosta noted that reports could be written differently. These conflicting styles led to rewriting reports produced according to the FTO's type. Schulhafer rated report writing mostly as "acceptable," frequently noting that Forfa "completes reports accurately with little assistance." Further, Schulhafer only rated report writing as unacceptable for excessive time on April 26, 2018, and June 2, 2018, two days out of sixteen. However, a review of the stated "basic" DWI report from June 2, 2018, and Forfa's testimony supports that the DWI was far more involved than Schulhafer described, supporting that Forfa reasonably needed more time to complete the report. See R-28.

On June 13, 2018, Forfa did not obtain a John's Law form from the person picking up an intoxicated arrestee, leading to Turon's unacceptable report writing rating. Forfa plausibly explained that although he learned of the form's use nearly a year earlier as part of a DWI training segment, he never used this form. Forfa did not spend significant time at the HQ desk as a patrol officer, and the desk sergeant took on this task while Forfa patrolled. Still, Turon's unacceptable rating is supported.

However, for the previous two days, Turon highlighted that Forfa recognized the appropriate *form* for the job and praised Forfa's maintenance of a binder containing routinely used forms. See DOR 60 and 61. Turon later noted that Forfa "used the computerized system in a *timely* manner." (Emphasis supplied.) Forfa received only one unacceptable report writing assessment from Turon for the John's Law form during the ten days Linden paired Forfa with Turon in June 2018. Comparing the progression in Forfa's writing performance shows that no FTO issued an unacceptable rating in May 2018, and Forfa received only two negative ratings in June 2018. Undeniably, the FTOs were familiar with Forfa's workload and could assess "report writing" timeliness, but none addressed waiting times when involved with other tasks. Forfa candidly admitted to struggling with report writing but maintains he improved. Here, I **FIND** that a preponderance of the evidence does not support this charge in the FNDA addressing Forfa's June 2018 PIP deficiencies. Instead, the evidence supports that Forfa's overall report writing improved.

Driving Skills

Schulhafer noted one unacceptable rating in section three, driving skills, on May 11, 2018, for failing to activate lights and sirens and traveling too slowly to a potentially dangerous call. However, Schulhafer admits that this is unclear from the video. Further, Forfa's explanation and the video support that one could hear sirens and that increasing speed or passing another vehicle was not an option for this call. On all other days during the PIP, no FTO rated section three driving skills as unacceptable. Instead, Forfa received acceptable ratings from all patrol FTOs, including six instances of properly activating emergency equipment.

Lacosta acknowledged that Forfa made a U-turn on April 15, 2018, onto a one-way street. Lacosta asserts turning into a one-way street is a traffic violation, but Forfa testified that he did not entirely turn into the street. Instead, Forfa only used the street's entrance to effectuate the U-turn. Forfa maintains that this was always his intention and that he was aware that the road was one-way. Lacosta also incorrectly noted the street name on the DOR. Notably, Lacosta described Forfa's actions with less detail than Forfa for this incident, and I **FIND** Forfa's account more reliable. Notably, all FTOs regularly rated Forfa as acceptable for obeying traffic laws, including Lacosta. Thus, Lacosta's unacceptable rating is without adequate support for this incident.

Schulhafer once rated Forfa as unacceptable for excessive speed on wet roads in section twelve driving skills. Schulhafer does not provide much detail concerning this critique. Forfa maintains that he was operating the vehicle within the speed limit. Even if Forfa drove the car faster than Schulhafer felt was safe, Schulhafer recorded Forfa's appropriate driving speed on six other occasions.

The PIP does not mention issues with Forfa's driving skills, and FTOs addressed driving skills unfavorably on only three occasions during the PIP. Insufficient evidence exists that this was a persisting problem, a critical concern, or that Forfa did not improve in this area. Although the FNDA addressing April and May, 2018 states Forfa showed a lack of improvement in driving skills, the FNDA for June 2018 performance does not indicate driving skills were a concern. Wegrzynek also acknowledged that Forfa's overall driving skills were acceptable during his testimony. Thus, I **FIND** a preponderance of the evidence does not support that Forfa's driving skills did not improve while under the PIP.

Radio Transmissions

Forfa's radio transmissions were a common criticism of FTOs while on patrol. Radio transmission involves receiving calls from Linden Central Communications (dispatch) and communicating to dispatch at various times during a call, from initiating a response or patrol event to reporting your location or other information dispatch

personnel would need. Such transmissions are critical to patrol officer duties and safety. Further, dispatch is unavailable to respond to other calls or officers, if engaged with another officer. Police officers use "pre-planning" to synthesize essential information to avoid holding up dispatch because time is often of the essence.

Although Forfa explains that Lacosta interrupted him on April 15, 2018, slowing his dispatch transmission, other FTOs similarly noted Forfa was hesitant in his communications. See DORs 48 and 49. Multiple instances where Forfa did not pre-plan are supported, despite numerous reminders. Undeniably, FTOs often reminded Forfa to listen to dispatch, despite counseling on its importance. See R-45B, DOR 36; R-45D, DOR 37. Indeed, Forfa admitted to Schulhafer that he did not always listen to dispatch, and Forfa asked Schulhafer to repeat details from transmissions. See DOR 45(2), DOR 47. Forfa's explanation that he was testing himself or that he only meant he disregarded certain communications is not convincing, given the frequency of this deficiency.

The FNDA covering June 2018 performance does not address radio transmissions. However, Forfa was mostly in HQ with Turon then and received no unacceptable ratings in that category. Undeniably, however, listening to and pre-planning radio transmissions while on patrol is a crucial concern, and FTOs frequently highlight this problem while on patrol. While Schulhafer provided several acceptable ratings in May, the notable frequent deficiencies do not support adequate improvement. Although the PIP does not discuss radio communications, the PIP notes Forfa's "failure to coordinate efforts with other employees" and the "failure to perform duties promptly, faithfully, and diligently." Thus, I **FIND** that a preponderance of the evidence exists that Forfa did not adequately improve in listening to or pre-planning his radio transmissions in April and May 2018, despite multiple reminders, and remained deficient, supporting the charges.

Officer Safety and Orientation

The PIP highlighted the need for improved situational awareness and noted that Forfa failed to safeguard his safety and the safety of others. FTOs routinely cited officer

safety and orientation concerns during the PIP period. Indeed, during the PIP, Forfa received six officer safety and seven orientation "unacceptable" ratings. Notably, FTOs only addressed officer safety and orientation while on patrol, which ended on June 5, 2018, or twenty-seven days, making the number of unacceptable ratings even more concerning. Here, FTOs highlighted safety concerns regarding situational awareness and improperly conducted searches.

Orientation is related to officer safety. If an officer is unsure about their location, medical or back-up assistance cannot appropriately respond to that location when needed. Moreover, orientation includes an awareness of your surroundings, which is essential to safety.

Forfa acknowledges making a wrong turn with Dziadosz on April 4, 2018. Forfa's explanation about being in unfamiliar patrol areas does not change his lack of knowledge in this instance.

On April 9, 2018, and April 15, 2018, Lacosta gave Forfa unacceptable ratings in orientation and officer safety, either in failing to tell dispatch his location or being unaware of his location. Indeed, video from the parking violation on April 9, 2018, demonstrates that Forfa did not disclose his location before exiting the vehicle, so Lacosta called dispatch. While Forfa suggests a two-person patrol acts as a team, the retraining period was different because an FTO was to observe Forfa complete tasks independently. Further, Forfa did not ask Lacosta to call dispatch, demonstrating his awareness of its need before exiting the patrol car.

Lacosta provided sufficient detail about his unacceptable orientation rating on April 15, 2018, for two events that day. Forfa suggests he calls out street names as he drives past to learn them, but Lacosta notes he asked Forfa a direct question about their location, and Forfa answered incorrectly. Moreover, Forfa also provided dispatch with an incorrect place for a disabled vehicle. In other words, Forfa's explanations do not mitigate Lacosta's unacceptable orientation ratings or demonstrate that Forfa knew his location.

Lacosta maintains that Forfa failed to observe a passenger pulling up next to a double-parked vehicle with tinted windows for a motor vehicle stop on April 15, 2018. Forfa suggests Lacosta just yelled "stop" as they passed the car, so he had to pull alongside the vehicle first. No video exists for this situation. Still, Lacosta maintains that this was a tactical error because Forfa should have pulled in behind from the start, not after pulling aside and backing up. To be sure, Forfa saw the violation and should have approached the vehicle more safely before passing the car. Thus, I **FIND** that a preponderance of the evidence supports Lacosta's safety criticism of Forfa. Even if one removes the safety concern, accepting that Forfa had to reverse the vehicle following Lacosta's instruction, his version support Lacosta's unacceptable rating for failing to self-initiate field activity on April 15, 2018.

On April 18, 2018, Forfa changed his route to the call after being counseled by Lacosta to travel a different way. Undeniably, more than one route can get you to the same location. Here, I consider that Lacosta expressed a preference rather than Forfa being unaware of his location, and the orientation rating is not supported.

On May 1, 2018, Forfa failed to use a flashlight for several minutes when approaching a vehicle in a dark location. Schulhafer acknowledges that Forfa activated his flashlight after a minute and a half rather than "several," as he documented on the DOR. Still, Forfa should have turned the flashlight on before approaching the car, and Schulhafer's unacceptable rating is supported.

Schulhafer highlights improper and unsafe suspect searches on May 11, 2018, and June 2, 2018. These searches led to both officer safety and prisoner control critiques. Forfa attempts to diminish these criticisms by highlighting that the compliant arrestee was in HQ around other officers on May 11, 2018, and that other officers searched the suspect on June 2, 2018, before Forfa did so. Still, procedures exist for correct and safe suspect searches that Forfa did not follow. On May 11, 2018, Forfa allowed an unsearched suspect without handcuffs or interlocked fingers behind his head to turn and face him. Although no written procedure exists for keeping both hands free when searching a suspect, common sense dictates that officers must fully use their hands during a suspect search. Yet, Forfa kept change in his hand during the search on

June 2, 2018. Thus, a preponderance of the evidence supports Schulhafer's unfavorable officer safety and prisoner control ratings these days.

On May 18, 2018, the video supported Schulhafer's unacceptable DOR safety rating. See R-45L. Linden dispatched the unit to a fight in progress. Forfa lacked an adequately commanding voice to address the man holding a large rock upon arrival at the scene. Notably, Forfa had to ask the man several times to put the rock down before he complied. At that time, the situation was unknown and potentially dangerous. Further, Forfa allowed the man to walk away without attempting to verbally stop him authoritatively or otherwise convince the man to listen to him. Importantly, Schulhafer considered Forfa's failure to exert adequate authority in emotional situations like this one also warrants an unacceptable rating under "field performance in stressful conditions." Forfa correctly highlights that the man dropped the rock after he had asked *several* times and becomes agitated when Schulhafer forcefully asks the man to move away from the rock. Yet, Schulhafer intervened because there was an inadequate distance between the rock and the man, and Schulhafer moved to straddle the rock protectively. The man was a victim, but this information came later. Undoubtedly, the man appreciated Forfa's empathetic demeanor and apologized for getting upset. Indeed, Forfa believes his actions were successful. Still, I **FIND** Schulhafer's safety, and field performance ratings are supported because Forfa's actions were insufficiently authoritative to ensure safety in an unknown situation with possible harm.

On June 3 and 4, 2018, Schulhafer documented orientation issues highlighting Forfa's failure to know major streets in Linden. While Linden does not expect an officer to know every street and Forfa highlighted Lacosta's error on a DOR, Forfa still lacked knowledge of frequently patrolled areas. Video from June 3, 2018, makes clear that Forfa again did not know his location. Further, the June 4, 2018, location was a regularly traveled road in Linden, and Forfa does not demonstrate that he knew his location.

Forfa acknowledges an unrated officer safety concern on April 6, 2018, regarding the residential alarm with Dziadosz, although disputing its significance. However, this rating was not part of Linden's disciplinary decision, and I give it no significant weight.

Regardless, I **FIND** that a preponderance of the evidence exists to support that Forfa's officer safety and orientation concerns persisted throughout the PIP patrol period and that FTOs correctly rated Forfa as unacceptable on nearly all occasions.

Still, while the two suspect searches represent officer safety concerns, at all other times during and preceding the PIP, Forfa used appropriate and safe prisoner control procedures, receiving acceptable ratings. For each FNDA concerning the PIP, Forfa received only one unacceptable rating for prisoner control. Thus, I **FIND** a preponderance of the evidence does not support Linden's charge that Forfa did not improve in prisoner control.

Decision-Making and Interview Skills

Each FTO regularly criticized Forfa's decision-making in stressful and non-stressful situations. The FTOs were shadowing Forfa during the PIP and expected Forfa to act with little or no guidance. Indeed, the PIP advises Forfa "to take charge of the situation and to promptly exercise authority as a police officer." An officer can face a "life or death situation," and the ability to quickly make decisions is critical. See Transcript, June 28, 2021, pp. 39-40.

Several FTOs repeated the same criticism for the same event under interview skills. For example, Lacosta rated Forfa unfavorably in both categories for the McManus School Snapchat incident on April 23, 2018. Similarly, Schulhafer identified decision-making and interviews as deficient for the domestic dispute on April 26, 2018, where Forfa did not obtain complete injury information from the victim.

Dziadosz felt Forfa was frequently confused. Still, Dziadosz only tied this critique to one incident on April 3, 2018. However, Forfa's explanation for the April 3, 2018,'s criticism was not convincing. They responded to HQ to take a walk-in report, and it is illogical to interview the victim while standing outside HQ. This situation differs from the incident involving the visitation dispute on May 11, 2018, where two involved individuals appeared at HQ as Forfa and Schulhafer left HQ to address the complainant's call.

On April 18, 2018, both Forfa and Lacosta acknowledged that the smell of marijuana in the HQ vestibule provided reasonable suspicion to search the two gentlemen. Still, Forfa hesitated in responding to the situation, even though his father alerted him to a strange smell before entering the area. Forfa's plan to bring the party with the warrant into the stationhouse for processing left the other individual free to leave. Notably, Forfa did not tell Lacosta to monitor or search the other person. Significantly, the person without a warrant was carrying marijuana. The videos depict Forfa's hesitation and Forfa turning towards Lacosta, thereby taking his eyes off the gentlemen. While Forfa felt Lacosta took over the job without giving him a chance, Forfa engaged the individuals in conversation without immediately addressing the unmistakable marijuana smell. Thus, I **FIND** that a preponderance of the evidence supports Lacosta's unfavorable rating for not deciding quickly in this situation.

Lacosta's unfavorable ratings on April 23, 2018, encompass Forfa's questions about whether to respond to two calls. While Lacosta considered this indecisiveness, Forfa's explanations were believable, countering those criticisms. Forfa did not think Lacosta heard a fire alarm call because Lacosta was engaged in a task at HQ and did not react to the service call. So, Forfa asked Lacosta whether they were responding before contacting dispatch. Similarly, Forfa recognized that their patrol vehicle was far from another alarm location that day, making their response time long, so he asked Lacosta if they should respond. Given Lacosta's frequent criticism that Forfa failed to act, the question was reasonable and not evidence of indecisiveness.

However, the April 23, 2018, McManus Snapchat incident revealed deficiencies in decision-making and interview skills. Forfa failed to take notes during interviews leading to difficulties and witness misstatements in his incident report that needed numerous corrections. Forfa did not know to contact supervisors after obtaining basic information about the incident and seemed unsure of what actions to take. Even if Forfa's uncertainty came from limited experience addressing potentially critical incidents, contacting a supervisor under the circumstances was clear.

Moreover, Forfa did not obtain a vehicle identification number for a report before leaving the scene on April 24, 2018, supporting an unacceptable rating in interview skills.

Forfa's decision-making and interview skills concerning the DV victim on April 26, 2018, were also unacceptable. Forfa knew that arrests from a DV incident come from the victim's report of pain or an observed injury. Even though other officers did not easily detect the lip laceration before Forfa's interview, his questioning was poor. Forfa did not delve adequately into the nature of the victim's injuries or complaints or ask the victim her name. More importantly, Forfa did not ask follow-up questions to the victim's comments unmistakably suggestive of injury or pain. Forfa's characterization of her dispute with her husband as an argument, regardless that he did not use the term "verbal," fails to appreciate the readily discernible physical nature of the couple's interaction. Thus, the evidence supports Schulhafer's unacceptable ratings, highlighting that Forfa was "unable to comprehend the current situation as a problem," under decision-making and Forfa's poor interview skills.

Schulhafer also questioned the amount of time Forfa took to reach decisions and his need for assurance before acting. On May 11, 2018, Forfa asked irrelevant questions without being able to gear the situation toward timely resolution during the Mother's Day visitation dispute. The videos demonstrate that many questions Forfa asked at the father's home were not pertinent to resolving the visitation dispute. Further, he allowed the mother and grandmother to continue talking beyond relaying that they could do nothing to effectuate visitation. Even though Forfa showed empathy to the mother and grandmother contrary to Schulhafer's suggestion that he did not, Forfa still misjudged the negative impact of allowing them to continue talking in an emotional situation. The videos support Schulhafer's rating that Forfa took too much time on the call and that Forfa's interview skills were poor. See R-45J.

Similarly, although Forfa explains that he wanted to give the violator a break on the motor vehicle incident of June 5, 2018, it took him excessive time to make that decision and to determine a standard suspended license code. See R-45Q. Yet, Schulhafer comments that he asked Forfa multiple questions about the summons he

was issuing. The comment does support Forfa's statement that he may have determined the violation code sooner without interruptions. Still, Forfa waived for some time on how to proceed in this case.

Although Turon does not reference a specific incident, Turon credibly explained that his main concerns about Forfa were his decision-making and interview skills, which he frequently rated as "unacceptable." Turon noted that Forfa had difficulty obtaining pertinent information to the job at hand and often rambled. These complaints are consistent with those of other FTOs. Turon rated Forfa's interview skills as unacceptable four times in June 2018. Despite counseling by other FTOs, Forfa continued to show this deficiency.

Forfa admits that he allows citizens to talk and tell their stories; his style differed from that of his FTOs. Forfa admits that he likes to take his time and not interrupt people, even it held up his ability to obtain necessary information. However, this approach often delayed the resolution of service calls and issues he encountered. Failing to obtain pertinent information promptly was a frequent deficiency noted by FTOs and is contemplated in the PIP. Thus, I **FIND** a preponderance of the evidence exists demonstrating that Forfa was aware that his superiors considered his approach or style ineffective but disregarded this criticism and remained deficient in this area.

Indeed, I **FIND** that a preponderance of the evidence exists to support that Forfa's deficiencies in decision-making and interview skills persisted throughout the PIP period, and FTOs correctly rated Forfa as unacceptable on nearly all occasions.¹⁰

Field Performance in Non-Stress Conditions and Self-Initiated Field Activity

FTOs often negatively rated field performance in non-stressful conditions and self-initiated activities for the same concern. Lacosta often noted that Forfa would attend to parking violations but routinely ignored motor vehicle stops for obvious violations. Lacosta considered this to be Forfa's avoidance of any activity that would

¹⁰ Only the FNDA addressing Forfa's June 2018 performance found interview skills did not adequately improve.

increase his stress level. See DORs 37, 39, 42, 43, and 44. Schulhafer also critiqued Forfa's lack of initiative and failure to act unless directed by an FTO. See DORs 46, 49, 52, and 59.

Forfa acknowledged that he disregarded minor violations in favor of more significant or multiple offenses, despite numerous comments from both Lacosta and Schulhafer that he failed to initiate field activities. Further, Forfa maintains that he had the discretion to stop or not stop vehicles and that the traffic unit could address violations. Forfa also expressed concern about overtime criticisms for report writing if he performed more stops, especially on busy shifts.

Yet, Wegrzynek highlights that the patrol unit is responsible for enforcing motor vehicle laws, not the traffic unit. Further, even if discretion allowed an officer to "pick and choose" violations to enforce, Forfa was consistently advised that he needed to initiate more vehicle stops. Indeed, the PIP highlights Forfa's lack of initiative and confidence. In other words, Forfa knew he should show initiative during the PIP, and FTOs informed Forfa many times that he was not. Further, many of the FTO criticisms reference that Forfa observed violations during periods of inactivity. See DORs 37, 43, and 46. Notably, the discretion Forfa highlights with Lacosta occurred after Lacosta stopped the individual, consistent with Wegrzynek's testimony that officer discretion plays a role after stopping the motorist, not before. See P-21.

In sum, Forfa's attempt to explain his repeated failure to initiate field activity falls short. Thus, I **FIND** that a preponderance of the evidence exists to support many unacceptable ratings for Forfa's failure to self-initiate field activities and that he did not improve adequately during the PIP. This failure also supports that Forfa's related field performance in non-stress conditions did not sufficiently improve. While these categories overlap, one assesses initiating activity while the other focuses on how an officer performs in the field under certain conditions.

New Jersey Motor Vehicle Code, Title 39

On three occasions during the PIP, FTOs rated Forfa as unacceptable in this category. The FNDA noting Title 39 deficiencies addressed Forfa's performance in June 2018, not April or May 2018.

On April 23, 2018, Lacosta attributes Forfa's lack of motor vehicle code knowledge to Forfa's not addressing or recognizing motor vehicle violations, e.g., failure to make motor vehicle stops. Lacosta already rated Forfa's unacceptable behavior in not initiating field activity. Yet, I accept Forfa's explanation. Forfa often chose not to address motor vehicle violations to avoid more reports or because he believed he had the discretion not to address every violation he observed, despite counseling to the contrary. Forfa claims he may not have seen some violations. These reasons are unfavorable to Forfa under a PIP highlighting his failure to initiate field activity. Lacosta surmises Forfa's reason for not making stops is a lack of knowledge of the motor vehicle code. Yet, I do not find Lacosta's belief supported by the evidence. The earlier violation on April 18, 2018, is not tied to an event and only states that Forfa was unfamiliar with common traffic violations.

The only unacceptable rating in June 2018 addressed the June 5, 2018, incident where Forfa was unclear about the difference between an unlicensed individual and a suspended license. Forfa explains that he uses a handbook to refer to commonly used statutory offenses. Schulhafer criticized the time it took Forfa to locate the correct violation. Still, Forfa highlighted that Schulhafer continued to ask Forfa questions while he was reviewing his booklet, delaying his ability to answer Schulhafer's questions or ascertain the correct violation. Schulhafer's comment under "decision-making" notes he repeatedly asked Forfa questions. Further, Forfa was looking up information as required by the PIP. Thus, I cannot contribute Forfa's delay in finding the right violation to a lack of knowledge of the motor vehicle code as reported.

Three earlier ratings from Schulhafer highlighted that Forfa had a working knowledge of commonly encountered offenses. One unacceptable rating in June 2018 does not equate to Forfa's lack of improvement in this area. Thus, I **FIND** a

preponderance of the evidence does not support that Forfa failed to improve his knowledge of Title 39, a deficiency not referenced in the PIP.

Vehicle and Pedestrian Stops

On five dates, Forfa received negative ratings for this category. However, FTOs provided an unacceptable rating for the highlighted issues under another DOR category for specific skills. For example, Lacosta highlighted orientation failures on April 18, 2018, and repeated the subject under this category. Similarly, Schulhafer noted an orientation problem on June 3, 2018, which he again rated negatively under this category.

On June 2, 2018, Schulhafer rated Forfa unacceptable in this category for not using a flashlight, having already identified this as a safety issue. In other words, having already found that Forfa did not sufficiently improve in orientation or safety, I do **NOT FIND** a separate unimproved performance issue for this category. The FTOs rated Forfa unfavorably in this category without referring to a different performance failure.

Patrol Procedures

Forfa's failure to improve in patrol procedures is highlighted only three times in the FNDA covering April and May 2018 performance. The June 2018 performance FNDA fails to identify this as unimproved. Nearly all ratings during this period are acceptable. Still, Dziadosz attributed an unacceptable rating in this category for Forfa's failure to communicate with dispatch on the April 4, 2018, motor theft call. However, for the same deficiency, Dziadosz gave Forfa an unacceptable rating in radio transmissions. Both Lacosta and Schulhafer indicate that Forfa failed to observe suspicious activity or persons without reference to a specific incident. Still, Lacosta and Schulhafer negatively rated Forfa on his failure to initiate field activity and they note the same criticism in both DOR categories. Having already found that Forfa did not sufficiently improve his radio transmissions or appropriately self-initiate field activities, I do **NOT FIND** a separate unimproved performance issue for this category. The FTOs

rated Forfa unfavorably in this category without referring to a different performance failure.

Stress Control and Field Performance in Stress Conditions

Similarly, field performance in stress conditions and stress control implicate safety. Forfa had no unacceptable rating in these categories before the PIP or in officer safety. Yet, the question is whether the unacceptable ratings during the PIP have support in the evidence. Again, however, these assessment categories overlap with others.

Although Lacosta believed that Forfa may become panic-stricken under stress without supervision, he did not observe Forfa panic-stricken, and I give this opinion little weight. Still, several incidents demonstrate that Forfa's performance deteriorated under stress, a critical area of concern, despite counseling. The PIP highlighted Forfa's lack of confidence, failure to exercise authority, and need to take charge of situations. Notably, during the PIP period, Forfa failed to show sufficient command presence or an ability to make proper decisions under stressful conditions, and videos support those FTO criticisms. See R-45G (angry father); DOR 45(2) and DOR 53, Incident No. 18022999, R-45L (man holding a rock upon their arrival).

Turon suggests that Forfa's performance deteriorated after the John's Law form misstep on June 13, 2018, and he rated field performance under stress as unacceptable. Notably, Forfa was not in the "field" but HQ. Forfa rightfully acknowledged the error, seeking Turon's assistance in understanding the correct procedures to fix the problem. While this was an error, and Forfa was understandably intent on fixing the problem, I do not believe that Forfa became panic-stricken. Forfa acted immediately to contact the individual. Turon and Forfa believe the required party returned to sign the form. No video supports Tron's version of this incident. Here, I consider Forfa's explanation convincing.

Forfa highlights that his hands raised in a calming gesture, de-escalating the angry father arriving at the dispute involving his son on April 25, 2018, was successful.

Schulhafer's attempt to speak with the father initially upset him, and Schulhafer acknowledged this. See R-45G. Still, the father approached the scene quickly in his car, slammed his door, and was visibly upset. Schulhafer expected more authority from Forfa under those circumstances. Yet, the video shows that further into the call, Forfa was hesitant, unsure of what to say to the father, and did not provide correct information. That hesitation and lack of clarity made the father more agitated, and Schulhafer needed to step in and correct Forfa. Notably, indecisiveness implicates unacceptable performance in stressful situations where clear authority, decisiveness, and conveying correct information is crucial. See P-56B. Indisputably, Forfa had a less aggressive approach than his FTOs. Yet, an ability to be forceful and decisive in stressful situations is required.

Notwithstanding, Schulhafer later noted Forfa's stress control as acceptable on all five days he rated this category, including Forfa's speaking with authority and using proper communication techniques. The only unacceptable rating in June 2018 related to the John's Law form. In other words, I **FIND** that a preponderance of the evidence supports that Forfa's performance under stress improved overall.

DISCUSSION AND CONCLUSIONS OF LAW

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.

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, In re Phillips, 117 N.J. 567, 575 (1990), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). One can describe preponderance as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

In the case of a police officer, the observations of the Supreme Court in In re Vey, 135 N.J. 306, 308 (1994), are instructive:

Society reposes in police officers responsibilities that are simultaneously weighty, sensitive, and fraught with dangerous consequences to themselves, other police officers, and the public. Police officers are authorized to carry firearms, N.J.S.A. 2C:39-5 to -6a(3), and to use deadly force in justifiable circumstances, N.J.S.A. 2C:3-7. They can engage in high-speed chases with absolute immunity from suit, Tice v. Cramer, 133 N.J. 347 (1993); they are called on, in certain instances, to stop motor vehicles and search passengers without probable cause, State v. Muhammed, 134 N.J. 599 (1994); and they are sometimes required to intervene in domestic disputes, N.J.S.A. 2C:25-17 to -33. Not everyone can do that kind of work. Fresh in our memory is the police brutality that underlay the officer's conviction in State v. O'Donnell, 117 N.J. 210, (1989). That incident serves to remind us that police work is not just another job and that some people should not serve as police officers.

[Ibid.]

Significantly, police officers and correction officers are held to a higher standard of conduct than other citizens due to their roles in the community. In re Phillips, 117 N.J. at 576-77. They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

Further, the Appellate Division routinely notes the importance of maintaining discipline within paramilitary organizations:

Many New Jersey cases indicate the importance of maintaining discipline within the paramilitary organization to a police department. Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department.

[Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div. 1971), certif. denied, 50 N.J. 269 (1951) (citations omitted).]

Conduct unbecoming a public employee has been interpreted broadly as conduct that adversely affects the morale or efficiency of a governmental unit or that tends to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 398 Pa. 35, 43 (1959)). Such misconduct need not “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

A public employee may also be subject to major discipline for “incompetency, inefficiency or failure to perform duties.” N.J.A.C. 4A:2-2.3(a)1. Indeed, sheer incompetency can be grounds for removal without progressive discipline. Further, “there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change.” Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006). Additionally, action may be taken against an employee who demonstrates an “inability to perform duties.” N.J.A.C. 4A:2-2.3(a)3.

Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term “neglect” connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977); N.J.S.A. 4A:2-2.3(a)(7). “Duty” signifies conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term “neglect of duty” is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep’t of Military and

Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

Further, the retention of a police officer with a record of untruthfulness in official matters endangers the effective and efficient direction of public services. Brady v. Maryland 373 U.S. 83 (1963). An officer's dishonesty in an internal affairs investigation is significant because "inconsistent statements during the course of the internal affairs investigation, [call] into question [the officer's] honesty, integrity, and truthfulness, essential traits for a law enforcement officer." Ruroede v. Boro. of Hasbrouck Heights, 214 N.J. 338, 362-63 (2013).

Linden also charged Forfa with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye. Often, this charge addresses violations of policies and procedures established by the employer, such as Linden's Rules concerning performance of duty (3:1.5), work expectation (3:7.5), equipment on duty (3:9.1), truthfulness (3:13.5), and obedience to written directives (3.1.7).

Despite the limitations noted in the DOR evaluation system and, in some respects, overall FTO training and experience, a preponderance of the evidence exists to sustain the charges that Forfa did not adequately improve in several areas under the PIP. Forfa failed to improve despite the additional training and notification that his actions did not adequately change to receive acceptable ratings in categories of concern. Even though a preponderance of the evidence supports not all FTO unacceptable ratings in those categories, many are. Indeed, I found that Forfa continued to exhibit insufficient competence or lacked enough improvement in the areas of officer safety, decision-making, orientation, interview skills, self-initiated activity, and radio transmissions.

Yet, I found that two unacceptable ratings in report writing in June 2018 do not adequately support that Forfa did not improve, especially given the lack of unfavorable ratings in May 2018 and other acceptable ratings in June 2018. Further, the PIP

identified neither appearance nor tardiness issues and was infrequent with understandable explanations. Yet, a violation of Linden's rule about reporting to work is supported. Driving skills were also not a concern in the PIP, and FTOs only rated these skills unfavorably a few times, often without adequate support. Moreover, Forfa improved his handling of stressful situations, especially those faced on patrol. Similarly, prisoner control, although a safety concern, was deficient on only two occasions and not indicative of a separate area where Forfa did not improve. Still further, generic categories of vehicle and pedestrian stops, or patrol procedures similarly repeated unacceptable ratings for the same reasons addressed under other skills categories.

Notably, I also found that a preponderance of the evidence exists that Forfa knowingly failed to carry his service weapon while on patrol and that he was untruthful about when he knew and what actions he took to alert Lacosta to this serious situation.

Thus, I **CONCLUDE** that given Forfa's failure to improve in several areas of concern, Linden sustained the charges for incompetency under N.J.S.A. 4A:2-2.3(a)(1), inability to perform duties under N.J.S.A. 4A:2-2.3(a)(3), and neglect of duty under N.J.S.A. 4A:2-2.3(a)(7). I also **CONCLUDE** that Linden sustained the charges for conduct unbecoming under N.J.S.A. 4A:2-2.3(a)(6) given Forfa's inaction and untruthfulness about not carrying his service weapon. I further **CONCLUDE** that Linden sustained its charges for other sufficient cause under N.J.S.A. 4A:2-2.3(a)(12) because the evidence supports the Forfa violated Linden Police Department rules and regulations regarding obedience to laws and written directives (3:1.7), the performance of duty (3:1.5), work expectation (3:7.5), equipment on duty (3:9.1), truthfulness (3.13.5), and reporting for duty (3:7.1).

PENALTY

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). Thus, an employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense. In re Carter, 191 N.J. 474, 483 (2007).

However, where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Indeed, progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest—such as when the position involves public safety, and the misconduct causes risk of harm to persons or property. In re Herrmann, 192 N.J. 19, 33 (2007).

Initially, I **CONCLUDE** that Forfa should not receive discipline for reporting to work late on one occasion, a minor violation, with a justifiable explanation. Still, since Forfa's misconduct was severe, I also **CONCLUDE** that Forfa is unsuitable for continuation in his position with Linden. Indeed, Forfa had multiple safety issues on patrol that continued without adequate improvement. Most notably, Forfa intentionally failed to carry a service weapon and was untruthful about its absence. Further, Forfa disregarded serious and persisting FTO criticisms unreasonably, believing they only represented stylistic differences.

As a result, I **CONCLUDE** that progressive discipline should be bypassed, and that Forfa should be terminated from his position.

Indeed, application of progressive discipline would be contrary to the public interest.

ORDER

Based upon my findings of fact and conclusions of law, I **ORDER** that Forfa's appeal be and is hereby **DISMISSED** and that Forfa be removed from his position as a police officer with Linden.

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

This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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

August 19, 2022



DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

August 19, 2022

Date Mailed to Parties:

August 19, 2022

ljb

APPENDIX**WITNESSES**For Petitioner:

Michael Forfa

For Respondent:

Lt. Vinnie Wegrzynek

Sgt. Antonio Lacosta

Sgt. James Schulhafer

Ofc. Michael Dziadosz

Sgt. Eric Calleja

Ofc. Daniel Turon

EXHIBITSFor Petitioner:

(P1-51 are video incidents on USB flash drive, with descriptions from counsel)

	<u>Incident No.</u>	<u>Date</u>	<u>Incident Description</u>	<u>FTO</u>
P-1	18-015-264	April 3, 2018	Domestic (mother/son)	Dziadosz
P-2	18-0150350	April 4, 2018	M/V Theft	Dziadosz
P-3	18-015-377	April 4, 2018	Landlord/Tenant	Dziadosz
P-4	18-015-791	April 6, 2018	Alarm Call (open door; secure house)	Dziadosz
P-5	18-016-395	April 10, 2018	M/V Accident	Heston
P-6	18-016-434	April 10, 2018	M/V Accident	Heston
P-7	18-016-448	April 10, 2018	Medical Call	Heston
P-8	18-017-351	April 15, 2018	Welfare Check	Lacosta
P-9a	18-017-355	April 15, 2018	M/V Accident (Forfa Cam)	Lacosta
P-9b	Not in evidence.			

P-10	18-017-362	April 15, 2018	Domestic (man, and pregnant girlfriend in apt building)	Lacosta
P-11a	18-017-471	April 16, 2018	Domestic (Forfa cam) (Denise; colorful victim of assault)	Lacosta
P-12	18-017-494	April 16, 2018	Domestic (18 y/o daughter assaulted father: psych eval)	Lacosta
P-13	18-017-615	April 17, 2018	Domestic (back-up/Lacosta misses radio transmission)	Lacosta
P-14	18-017-623	April 17, 2018	Suspicious abandoned car	Lacosta
P-15	18-017-630	April 17, 2018	Car Hit Dog	Lacosta
P-16	18-017-633	April 17, 2018	Medical call (oxygen deployed)	Lacosta
P-17	18-017-807	April 18, 2018	Landlord/Tenant (landlord in red hat; check utilities)	Lacosta
P-18	18-018-711	April 23, 2018	School Incident (Linden Exhibit 45-F1)	Lacosta
P-19	18-018-743	April 23, 2018	Disturbance (homeless man at convenience store)	Lacosta
P-20	UNK	April 24, 20218	Traffic Stop	Lacosta
P-21	UNK	April 24, 2018	Traffic Stop	Lacosta
P-22	18-019-095	April 25, 2018	Susp. Person	Schulhafer
P-23	18-019-095	April 26, 2019	M/V Accident (on Cranford boarder)	Schulhafer
P-24	18-020-099	May 1, 2018	M/V Accident (in car wash)	Schull after
P-25	18-020-101	May 1, 2018	M/V Accident (in parking lot)	Schull after
P-26	18-020-113	May 2, 2018	Medical Call	Schulhafer
P-27a	18-020-337	May 2, 2018	R.O./Move out (Schulhafer cam)	Schulhafer
P-27b	18-020-337	May 2, 2018	R.O./Move out (move out (Forfa camera part 1)	Schulhafer

P-27c		May 2, 2018	R.O./Move out (part 2)	Schulhafer
P-28	18-020-379	May 3, 2018	Medical Call	Schulhafer
P-29	18-020-526	May 9, 2019	Hit and Run (property damage)	Schulhafer
P-30a	18-021-530	May 9, 2018	Missing Firearm (Investigation Part 1)	Schulhafer
P-30b	18-021-530	May 9, 2018	Missing Firearm	Schulhafer
P-31	18-021-684	May 10, 2018	Unreg. Vehicle (dealer parking cars on street)	Schulhafer
P-32	18-021-699	May 10, 2018	M/V Accident (at 7-11)	Schulhafer
P-33	18-021-701	May 11, 2018	M/V Accident	Schulhafer
P-34	18-021-745	May 11, 2018	Noise call	Schulhafer
P-35	18-021-891	May 11, 2018	Disturbance (drunk man chasing teens)	Schulhafer
P-36	18-021-963	May 12, 2018	Domestic	Schulhafer
P-37	18-021-965	May 12, 2018	Domestic (domestic with elderly couple and family)	Schulhafer
P-37a	18-022-958	May 18, 2018	Domestic	Schulhafer
P-37b	18-022-958	May 18, 2018	Domestic	Schulhafer
P-38	18-023-209	May 20, 2018	Welfare check (suicidal snap chat)	Anderson
P-40a	18-023-264	May 21, 2018	Burglary (part 1) (searching for car burglar)	Schulhafer
P-40b	18-023-264	May 21, 2018	Burglary (pt. 2) (searching for car burglar)	Schulhafer
P-41a	18-024-251	May 27, 2018	Pedestrian Struck (pt 1)	Rivera
P-41b	18-0240251	May 27, 2018	Pedestrian Struck (pt. 2)	Rivera
P-42	18-025-355	June 2, 2018	DWI (Schulhafer's camera) (Linden 45 N is Forfa's camera)	Schulhafer
P-43	18-025-468	June 3, 2018	Domestic (son and father drinking)	Schulhafer

P-44 Not in evidence.

P-45	18-025-504	June 4, 2018	DUI (another officer does field sobriety test)	Schulhafer
P-46	18-025-628	June 4, 2018	Shoplifting at Mall	Schulhafer
P-47	18-025-638	June 5, 2018	Domestic (move out)	Schulhafer
P-48	18-025-652	June 5, 2018	Dog Barking	Schulhafer
P-49	18-025-668	June 5, 2018	Car Stop 7/11 search	Schulhafter
P-50	18-025-673	June 5, 2018	Violation TRO (same victim as P-47)	Schulhafter

P-51 Not in evidence

END OF VIDEOS

P-52	N/A	June 13, 2016	Forfa Background Memo from Toth to Vitrano (Forfa 0156-0161)	N/A
P-53	Not in evidence.			
P-54	N/A	April 23, 2018	Memo from Wegrzynek to Sarnicki	N/A
P-55	N/A	N/A	Google Map of Nora Drive and Union Street	N/A
P-56	N/A	May 12, 2021	Linden's Letter re. Motion for Discovery Sanctions)	N/A
P-56A	N/A	N/A	Daily Observation Report Form (2021 FT Manual) and daily Observation Report Form (2005 Ft Manual)	N/A
P-56B	N/A	N/A	Performance Task List (2021 Ft. Manual) and Performance Task List (2005 FT Manual)	N/A
P-56C	N/A	July 13, 2017	Standard Operating Procedures (SOP) Field Training & Evaluation Program	N/A
P-56D	Not in Evidence			
P-56E	Not in evidence.			

P-56F	N/A	N/A	List of FTO Training Meetings	N/A
			June 2016-June 2018 and Meeting Agenda for FTO Meeting on January 31, 2018	

P-56G Not in evidence

P-56H	N/A	N/A	List of Dates when Turon, Lacosta, Dziadosz, Heston signed on PowerDMS-PTO Manual and PowerDMS printout for each FTO	N/A
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P-56I Not in evidence

P-56J Not in evidence.

P-57	N/A	N/A	CAD numbers for Forfa's daily activities	N/A
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For Respondent:

- R-1 Guardian Tracker Incidents for 2018, 2017 incidents not in evidence
- R-2 Employee Performance Evaluation, 2/15/2018, admitted demonstrating evaluation occurred and led to PIP
- R-3 Professional Improvement Plan
- R-4 DOR's April – June 2018
- R-5 Roll-up Report January 1, 2017 – June 30, 2018
- R-6 Daily Rating/Daily Training Charts
- R-7 FTO Calendar
- R-8 Memo to Forfa- DOR Reports During Re-Training- May 2, 2018
- R-9 Memo to Forfa- DOR Reports During Re-Training- May 31, 2018
- R-10 Memo to Forfa-DOR Reports During Re-Training-July 4, 2018
- R-11 CAD 18-16760, Incident Report 18-15213, April 3, 2018
- R-12 CAD 18-16912, Incident No. 18-15347 – April 4, 2018
- R-13 CAD 18-17373- April 6, 2018
- R-14 CAD 18-17832- April 9, 2018
- R-15 CAD 18-19045 April 15, 2018
- R-16 CAD 18-19048 Incident No. 18 17346- April 15, 2018
- R-17 CAD 18-19184 Incident No. 18-17471- April 16, 2018

- R-18 CAD 18-19561 and Incident No. – 18-17817 and CAD18-19571
and Incident 18-17826 April 18, 2018
- R-19 CAD 18-19624
- R-20 CAD 18-20526 and Incident No. 18-18711/18711-2, April 23, 2018
- R-21 CAD 18-20744; Incident Report 18-18919 – April 24, 2018
- R-22 CAD-20933; Incident No. 18-19100- April 25, 2018
- R-23 CAD 18-21144; Incident No. 18-19300 – April 26, 2018
- R-24 CAD Report 18, 22096, May 1, 2018
- R-25 CAD 18-23917; Incident No. 18-21875- May 11, 2018
- R-26 CAD 18-23971; Incident No. 18-21917 – May 11, 2018
- R-27 CAD 18-25150; Incident No. 18-22999-May 18, 2018
- R-28 CAD No. 18-27712; Incident No. 18-25355-June 2, 2018
- R-29 CAD 18-27685- June 2, 2018
- R-30 CAD 18-28049-June 4, 2018
- R-31 CAD 18-28288 – June 5, 2018
- R-32 Report for IA 18-053 from Det. Sgt. Eric Calleja, June 6, 2018
- R-33 IA Attachment Log for IA – 18-053
- R-34 Internal Reportable Incident Form, 18-053, April 25, 2018 with attached memos
- R-35 Target Letter to P.O. Forfa, May 2, 2018
- R-36 Internal Affairs Advisement Form to P.O. Forfa, May 28, 2018
- R-37 Weingarten Representative Acknowledgement
- R-38 Photo of P.O Forfa from BWC Footage, 18-18919, April 24, 2018
- R-39 SOP- Linden Police Department SOP: Care and Use of Authorized Firearms and
Record of Receipt/Training
- R-40 Linden Police Department Rules and Regulations, November 1, 2016
- R-41 Not in evidence
- R-42 Memo from Wegrzynek to Captain Sarnicki dated June 18, 2018
- R-43 Memo from Wegrzynek to Captain Sarnicki dated June 6, 2018
- R-44 Memo from Wegrzynek to Captain Sarnicki dated July 4, 2018
- R-45 BWC Footage – DOR Incidents (videos on USB Flash Drive)
 - A. Incident No. 18-15213
 - B. Incident No. 18-15347
 - C. Incident No. 18-15350

- D. Incident No. 18-16220
- E. Incident No. 18-17817 and Incident No. 18-17826
- F. Incident No. 18-18711
- G. Incident No. 18-19100
- H. Incident No. 18-19300
- I. Incident No. 18-20192
- J. Incident No. 18-21875
- K. Incident No. 18-21917
- L. Incident No. 18-22999
- M. Incident No. 18-25329
- N. Incident No. 18-25355
- O. Incident No. 18-25467
- P. Incident No. 18-25671
- Q. Incident No. 18-25893

R-46 Firearm IA Footage (IA-18053)

- A. PD 1st Floor Hallway 2018-0424
- B. PD Front Window 2018-0424
- C. Traffic Stop 18-18917
- D. Traffic Stop 18-18918
- E. Dispute 18-18919
- F. PD 1st Floor Hallway 2018-0424
- G. PD Front Window

R-47 Not in evidence

R-48 Not in evidence

R-49 Email Correspondence from/to Lt. Ordonez- February 24, 2018 & February 28, 2018

R-50 Email Correspondence from/to Lt. Ordonez-March 2, 2018 & March 21, 2018

R-51 Email Correspondence from/to Lt. Ordonez-March 20, 2018 & March 21, 2018

R-52 Email Correspondence from/to Lt. Ordonez- March 22, 2018 & March 26, 2018

R-53 FNDAS dated August 10, 2019

R-54 Screenshot DOR system

R-55 Screenshot DOR system

R-56 Screenshot DOR system