A-3

STATE OF NEW JERSEY

In the Matter of Michael Denham
Township of Freehold,
Police Department

CSC DKT. NO. 2015-271
OAL DKT. NO. CSR 9801-14

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: JUN 18 2015 BW

The appeal of Michael Denham, Police Officer, Township of Freehold, Police Department, removal effective March 23, 2014, on charges, was heard by Administrative Law Judge Joseph Lavery, who rendered his initial decision on May 4, 2015. Exceptions and cross exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on June 17, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Michael Denham.

Re: Michael Denham

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
JUNE 17, 2015

Robert M. Czech
Chairperson
Civil Service Commission

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and
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 9801-14
2015-271

IN THE MATTER OF MICHAEL DENHAM,
TOWNSHIP OF FREEHOLD.

John Anello, Esq., for appellant Michael Denham (Caruso, Smith & Picini, attorneys)

Robert F. Munoz, Esq., for respondent Township of Freehold (Lomurro, Davison, Eastman & Munoz, attorneys)

Record Closed: March 19, 2015 Decided: May 4, 2015

BEFORE **JOSEPH LAVERY,** ALJ t/a:

Michael J. Denham, appellant, brings this petition to overturn his termination as a police officer, Township of Freehold, for cause.

The Township of Freehold (the Department; appointing authority), contests the appeal, and moves to uphold appellant's dismissal.

Today's Initial Decision, after de novo consideration, upholds the dismissal of appellant.

PROCEDURAL HISTORY

This is an appeal filed in the Office of Administrative Law (OAL) on October 17, 2013, pursuant to L. 2009, c. 16, supplementing Title 40A of the New Jersey Statutes (N.J.S. 40A:14-200 through -212) and amending N.J.S. 40A:14-150 and N.J.S. 40A:14-22.

On, August 12, 2014, the case was assigned for hearing to the present administrative law judge by the Acting Director and Chief Administrative Law Judge. The proceedings convened before the undersigned on December 22, and December 23, 2014. The parties waived the 180-day rule so the obtaining of transcripts and post-hearing submissions could be allowed. The last date-stamped submission was received in Office of Administrative Law (OAL) on March 19, 2015. On that date, the record closed.

STATEMENT OF THE CASE

Background:

Many of the basic facts not in dispute may be outlined through reference to admissions,[1] exhibits or unchallenged testimony:

Appellant, Michael Denham, was a police officer with the Freehold Township Police Department (the Department). He had completed basic recruit training at the Monmouth County Police Academy on or around June 14, 2000, and had been trained

[1] Exh. R-18

in the field while with the Department. He was admittedly familiar with the publication known as "The Report & How To Guide."

On Saturday, November 30, 2013, appellant was on duty. Shortly before 2:00 p.m. during his shift, appellant undertook a traffic stop of a vehicle at Freehold Raceway mall. The car had a suspended registration. It was owned by the driver, a female named G.L., whose license was also suspended, and for whom a superior court warrant was outstanding in Monmouth County due to non-payment of child support. Appellant alerted his dispatcher. He also obtained confirmation of the warrant after reviewing G.L.'s driving credentials. He then arrested G.L., and transported her in his patrol car to the Freehold Police Department for processing.[2] Before doing so, he recovered from her a cell phone and a black purse or "clutch" containing personal items, as well as her house keys and the key to her car[3].

On reaching the Freehold Township Police Department, appellant brought G.L. to the processing room[4] and seated her in handcuffs on a bench across from one of the desks inside, to await arrival of Sheriff's officers. The Monmouth County Sheriff's Office, Warrant Division, had been notified to come to the Department and to take custody. In the meantime, the purse, G.L.'s cell phone and her car and house keys remained in appellant's possession.

While waiting, G.L. asked to use a restroom. Appellant then took her to cell No. 5, which was the nearest female cell, but much farther than the male cells used. The female cell included a bathroom which afforded privacy. Appellant acknowledged that cell block management procedures required a call-in over the radio to give notice of placing someone in a cell, as well as completion of a cell block log[5].

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[2] Exh. R-23

[3] Exh. R-2

[4] Exh. R-3

[5] Exh. R-18, par. no. 5

When the Monmouth County Sheriff's officers arrived, they examined the clutch or purse and its contents, recovered her cell phone from appellant, who had placed it in his coat pocket, then took G.L. into custody, transporting her to the Monmouth County Jail for booking. The personal property in the possession of G.L. was eventually listed in a "Receipt For Personal Property"[6] provided to her by Monmouth County Department of Corrections on release. Although she acknowledged return of money, clothing, personal effects and her cell phone, the Monmouth County receipt did not list her car key or her house keys. Appellant had retained those keys on his person.

The following day, Sunday, December 1, appellant was on duty but did not deliver the keys to the Department. He did so on December 2 only when called at his home by Lt. Robert Brightman, after G.L. and a friend had come to the Department to recover them. On the same day, G.L. filed a complaint against appellant.

Later, it was learned that appellant had patrolled the Stonehurst complex in which G.L. lived, while she was incarcerated. These actions precipitated appellant's discipline and, eventually, the present appeal and proceedings before this tribunal.

Arguments of the Parties:

Respondent Township of Freehold's case:

The Township called numerous witnesses, and introduced documentary exhibits to verify the specifics of the charges it had rendered against appellant:

The first witness was **G.L.** Describing in detail her arrest and the events which surrounded it, G.L. recalled that she had entered Freehold Mall from Route 9, parked, and texted with her children and others. Some of the contacts were with friends. With them, the communication involved, in part, "sexting." This involved digital conversation,

[6] Exh. R-5

which included pictures, all of which was sexual and/or personal in nature. She then left the vehicle, locked it with her key among those keys collected on a rubber bracelet kept on her wrist[7]. She had with her a purse which held personal items, and her cell phone. It was at this point she encountered appellant, whose patrol car was stopped behind her. He asked where she was going, G.L. recalled. When told she was shopping, appellant directed her to wait, since he was checking on a warrant issued for her. When that was confirmed, he arrested her, placed her in the back of his police car and transported her to the Freehold Township Police Department.

Seeing the enlarged photo of the processing room[8], G.L. could not recall if there were more desks present. She did remember that other police officers entered the room after she first arrived, whom she concluded were not involved in her case. G.L. did remember that her cell phone was on the desk visible in Exh. R-3, where marked, and that appellant picked it up to read the incoming texts, which were visible, and to announce to her who they were from. Some of the texts were sexual in nature. He continued to do so despite her insistence that he stop.

Referring to the only time she left the processing room, G.L. said she asked to use a bathroom. Appellant then took her to what seemed a holding cell. It contained a bathroom. He locked the cell when she entered to use it. On the way to the cell, G.L. stated, she had not spoken, but he had remarked to her, "That he could see why these men were texting me," and that she was "tiny" and "cute." G.L. testified that her reaction at the time was that, "It's just not right. You know, it – it's inappropriate to say."[9] She recalled staying in the bathroom for ten to fifteen minutes, after using the facility.

After returning to the processing room, G.L. said, the Sheriff's officers arrived. When they took custody of her and were leaving, she asked for her cell phone. The Sheriff's officers looked in her purse they were taking with them, but did not find a

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[7] Exh. R-2

[8] Exh. R-3

[9] 1Tr.59

phone. When they turned back to the processing room to inquire about it, appellant retrieved the phone from the pocket of his jacket, hanging on a chair. The Sheriff's officers then transported her to Monmouth County Jail.

After her release from the jail on Monday December 2, G.L. stated, in the company of a male friend, she came to the Department seeking her house and car keys, meeting ultimately with Lt. Robert Brightman. He could not locate the keys. This being so, he called appellant at home to ask if he knew their whereabouts. Appellant disclosed that he had them. Saying over the phone that he found them in his jacket pocket, appellant came to the station that afternoon to return the keys. Afterward, on the same afternoon, G.L. returned to the Department, recovered her keys[10] and filed a complaint with the Department describing the conduct by appellant in his dealings with her which she believed had been inappropriate.[11] She maintained that, though Lt. Brightman had discussed the possibility of filing a complaint, she had come to that decision herself, after a three-way discussion including her friend.

G.L. noted that her driver's license apartment number, 31G, but that she was staying at apartment 31F. Further, she could not have been in her apartment until Monday, December 2, the day she was released from Monmouth County Jail.

On questioning, G.L. agreed that she had been convicted of theft in the amount $1,100 from a former employer, for which she was compelled to pay restitution and serve a year's probation. She denied that she had ever been arrested before November 30, 2013. Her offense was clarified by counsel as being a Disorderly Persons offense, not a crime.

To address the circumstances of G.L.'s transfer of custody to Monmouth County Sheriff's Department, **Sheriff's Officer Glen Engelken,** a member of the warrant fugitive unit, was called to testify. He, with his partner on November 30, 2013, had

[10] Exh. R-6

[11] Exhs. R-7 and R-8

picked up G.L. on a warrant. After leaving the processing room, he recalled, G.L. had asked where her cell phone was. It had not been found in her purse. The three returned to the room, and, when asked, appellant looked around, then found the phone in his shirt pocket.

Agreeing that on occasion, cell phones are retained by officers for legitimate reasons, such as drug-dealing investigations, the Sheriff's officer said that the practice is "not common."[12]

Sheriff's Officer Engelken's partner, **Randy Morgan**, was responsible for taking responsibility for personal property when putting G.L. in custody. He searched her pocketbook for contraband. No cell phone was present. After he, his partner and G.L. left the room, the latter asked about her cell phone, so the trio returned to the processing room to find it. When asked, appellant took the cell phone from his pocket, and gave it to him. The phone itself was a "smart" phone, of a brand he could not identify. After leaving, all the way to their vehicle, G.L. questioned why appellant had kept her phone in his pocket. Officer Morgan testified that he could only answer that he did not know why. The officer testified that on the street, in an arrest situation, an officer might put a phone in his pocket. However, he could not think of any reason why a phone would be retained for someone arrested on a support warrant.

Police Officer **William Ketelaar** of the Freehold Township Police Department testified that he ordinarily would have been working with appellant during that afternoon shift on November 30, were it not for a prior duty swap. As it happened, he nevertheless had occasion to enter the processing room to write a crash report while appellant had a female prisoner on the bench. He noticed a phone, not Officer Denham's, near the mouse on the desk the latter was using. He remembered that it was an iPhone in a blue case. Officer Ketelaar saw this placement as being a bad practice. He said it would

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[12] 1Tr. 99

have been more safely placed out of reach, farther toward the desk edge, as other officers would have done.

While working on his report, Officer Ketelaar took time to look up the bail on the computer for appellant, who had no success at the task. He found it set at four million dollars, an amount not seen in the county, which the officer concluded was a typographical error.

Officer Ketelaar recalled that he saw what appeared to be appellant scrolling the phone, though he did not recall any conversation between appellant and the female prisoner. He believed that, "It's against Department policy and it's just wrong."[13] The officer stated that he himself would not search a cell phone because it was illegal. He would have sought a warrant first. He added that Department policy also is that searches of property are done at the scene, before return to the Department building. The only instance of search subsequent to the scene is when an officer is alerted to suspicious movement by in-house camera monitors.

Working with appellant left him uncomfortable based on past incidents, Officer Ketelaar said. Additionally, when asked, he expressed the belief that it was uncommon to place a prisoner in a holding cell prior to transport to another facility. He did not, however, observe appellant engage in inappropriate behavior with the female prisoner while he was in the processing room.

Freehold Township Police Officer Karl White testified as another officer who had been in the processing room with appellant and G.L. He recalled that, while he was passing through, appellant had invited him to look at a cell phone with visible messages on it. At the same time, there was a female sitting on the bench. She complained at the time that she didn't think appellant was supposed to be looking through her phone. Officer White was unsure who owned the phone. When questioned, Officer White

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[13] 1Tr.123

declared that it was uncommon for officers to take in hand the cell phone of a person in custody and to actively search through it. He himself would not engage in showing such a phone to other officers.

On the following day Officer White went on active military duty. He recalled receiving a phone call from a male acquaintance, M.G., while away, asking him how best to retrieve keys taken from a female friend by a police officer. Officer White told him, "Well, for one thing, we don't take keys. You know, it goes with the property."[14] When asked by M.G. whether it was common to search cell phones, Officer White responded, "No." At this point, the officer connected the questioning to the female he saw with appellant, G.L. He suggested that, if there was need for a complaint, it should be brought to the Police Department. There would be no personal repercussions. When questioned by appellant's attorney, Officer White could recall no other behavior by appellant which was inappropriate.

Officer White testified further that he had no knowledge of whether G.L. had been placed in a holding cell. Reflecting on whether placement of an arrestee in a holding cell was common, he responded that, judging from what he had been taught, it would depend on the circumstances. If the officer was called back on to the road, the move would be acceptable. As to the procedure for taking arrestees to a bathroom, he stated that a male would be escorted to the first cell, nearby. A female would be taken along a winding route to a more distant holding cell where the first door would be left open slightly, and the second door to the "facility" would be closed. The officer would then stand aside so as not to observe through glass. Because anything could happen on the march there, it would be necessary first to notify Dispatch. Officer White stated this notice would be required for male or female being taken from the processing area.

As for the legal support necessary to search a cell phone, Officer White believed that a warrant would first be required. He had never had occasion to seek one.

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[14] 1Tr.151

Recounting his own role on November 30, 2013 as day-shift Watch Commander, **Lt. Dean Smith** recalled that he was also de facto shift sergeant, because of an absence. In this latter role, he went to the processing room to clear up the question of bail in this arrest. It had been set extraordinarily high. On reaching the room, he found appellant searching through G.L.'s pocketbook, and because of past issues with appellant's conduct of searches, the lieutenant asked if it had been searched. Appellant answered, "I'm doing it now, sir." Lt. Smith recalled that he told appellant, "That should have been done on the road."[15] The lieutenant stated that searches of purses and containers are incident to arrest, and must be conducted on the scene. Otherwise, searches at headquarters, with the property now separated from the arrestee, would require a search warrant. This process is part of the rules and procedures made known to all police officers. The reference to Police Manual Section 3:7.8, at point 18 is to searches of a person, in recognition of the need for officer safety. Searches by Sheriff's officers when assuming custody are governed by the rules of their agency, not the Police Department, Lt. Smith stated.

Lt. Smith also recalled that rules for appellant regarding searches were made known to him repeatedly, orally, for approximately a year-and-a-half before the incident of November 30, 2013, and finally in writing afterward (Exh. R-11). These rules were effectively orders made necessary by appellant's persistent contention that he did not understand what was required of him, despite thirteen years of service with the Department.

If property is retained following an arrest, Lt. Smith said, it goes into evidence, and a report listing all items kept issues from the Department's officer. Should another agency come to take over custody immediately, all property transfers to it, and the Department does not require a written report of its own officer. Here, however, where

[15] 1Tr.169

keys were retained by appellant and not sent with the Monmouth County Sheriff's officers, a report was required. Appellant did not submit one.

Similarly, where an arrestee would be placed in a holding cell, a cell block report must be written, the lieutenant said. It was not. Bathroom visits for males taken outside the processing room normally would not require a report. For females, given the different treatment accorded them, at the very least Dispatch should be notified. They have camera access inside the room, short of the actual toilet facility. The accompanying officer doesn't. As for length of stay, when it is more than in/out, for example, after remaining in a cell for ten minutes, a cell block "sheet" report is definitely called for, Lt. Smith emphasized. None had been found from appellant.

Lt. Robert Brightman, Departmental Custodian of Records, provided the details of his interaction with appellant and with G.L. when she came to the Department on the late morning of December 2, 2013, to recover her car and house keys.[16] The lieutenant was on duty that day, and had dealt with her request. On searching areas where officers normally place property retained by mistake. Normally, these officers would provide notice, as well, he said. Finding nothing, the lieutenant testified that he took G.L.'s phone number, and promised to contact her after reaching out to appellant.

When Lt. Brightman received a call from appellant the latter told him he had the keys in his coat. When asked if the coat was his work coat, with the thought that he could access the keys for appellant if it was in the building, Lt. Brightman said appellant's reply was only that the keys were in "the coat."

Lt. Brightman said he phoned G.L., and told her he would call again once appellant brought in the keys. Within half-an-hour to an hour, he did. Lt. Brightman testified that appellant came through the public lobby door, not the officers' entrance. He was coatless in just a white T-shirt, unusual for December weather, and presented the

[16] See also, Exh. R-12

keys to Lt. Brightman openly with both hands together. As appellant left, over the shoulder he remarked something to the effect that, "When you see the young lady please get a good address. She doesn't live at the address she gave me over the weekend." Lt. Brightman stated that he was troubled by this comment by a police officer who had retained keys to someone's home, knowing the person was incarcerated. There was no reason for appellant to conduct an investigation. His role ended after processing the arrestee and turning her over to Monmouth County Sheriff's Office. This circumstance prompted the lieutenant to notify Internal Affairs.

That afternoon, G.L. and her friend returned to recover the keys. After some discussion between themselves, G.L. shared with the lieutenant details of appellant's actions during processing which they found objectionable. Lt. Brightman testified that, in response, he gave G.L. the forms necessary to make a complaint, informing her of the steps necessary. He then prepared a form for her to sign, confirming return of her keys.[17] In return, G.L. took the complaint forms with her, and the next day submitted the completed documents to the Department.

When questioned further, the lieutenant recounted the discussion he had with her and her friend in a secure office on November 2. He summarized her recitation of events from the time of arrest, including appellant's search of her phone over her objections, and his sharing of sexting and some images with another officer. He said that she had also reiterated her placement in a cell for a period of time, and had told him of her need to have the Sheriff's officers return to the processing room to recover her missing cell phone. It was retrieved from appellant's personal possession. The lieutenant said that she had been uncomfortable with appellant's treatment of her, in particular through his references to her personal appearance. In sum, in the face of G.L.'s description of what occurred, as he would in any other instance of an officer so criticized, Lt. Brightman offered her the blank Monmouth County Internal Affairs standard statement forms, which she accepted. In his view, under controlling law, G.L.'s

[17] Exh. R-6

description of harassment, intimidation and invasion of the cell phone required intervention to determine whether her charges had a foundation.

Lt. Brightman pointed out that any property of an arrestee transitioning to the custody of an agency, such as Monmouth County in this case, goes with that person. The arresting officer must fill out a property report for anything staying behind. Here, none was submitted for G.L.'s keys.

Discussing the record requirements of cell placement, the lieutenant noted that for even a brief period, a descriptive one-page cell log must be completed. Private property of a prisoner must be placed outside of the cell, in clear view of its owner. The cell door must be locked, and Monmouth County would be called to turn on their cameras for that cell. Notations of cell status would have to continue until removal. The forms, hand-signed by the officer using the cell, are kept on record for yearly New Jersey Department of Corrections' audit. In this case, no cell log could be located in the records to cover the instance of G.L.'s cell occupancy.

Testifying concerning a filming[18] of the areas involved while G.L. was in custody, Lt. Brightman said that he had consulted with Lt. McGowan and both had viewed the films capturing during that time. In views showing the processing room, Lt. Brightman said they observed appellant with a cell phone, touching it. The head of another officer using the computer was visible. Further, jewelry and a small purse were visible on the table. He recalled seeing the Sheriff's officers searching the purse, and after taking custody to leave, turn in the doorway to retrieve G.L.'s cell phone from appellant, who had kept it on his person. He stated that they also observed G.L. in a cell block bench with knees drawn up against her and her head twitching. Appellant was not in sight. The door to the cell was shut on the bottom. The lieutenant declared that the video had since been destroyed, but not by Freehold Township Police Department Records. He did not know who was responsible.

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[18] See also, Exh. R-13

Recounting his part in the investigation, **Detective Sergeant Jerry Kiwit,** who oversees the Detective Bureau, testified stating that he is trained in this skill. In the course of the investigation, he contacted Christopher Klaube, the information technology person at Monmouth County Dispatch. Mr. Klaube provided Det. Sgt. Kiwit with GPS coordinates placing appellant's patrol car at various locales within the Stonehurst complex on December 1, 2013.[19] This placement information was superimposed on a Google earth photo showing the actual scene. The detective also traveled to Stonehurst apartment complex on April 1, 2014, taking photographs from the same GPS-established locations (Exh. R-16 a-j).

Using these photos, Detective Sergeant Kiwit in testimony identified the route taken appellant from the time he entered the complex on December 1, 2013 at 11:28:56 a.m. until he left at 11:46:26 a.m. He showed the outside entrance used by multiple apartments at 31 Manchester Court, including apartments F and G, and relied on photos in R-16 to demonstrate the visibility of that building and entrance at various points throughout appellant's trip with the patrol car.

Agreeing that appellant's route was within his overall sector, the detective sergeant observed that the town is divided into four quadrants over a nearly thirty-seven-square-mile area. Appellant could travel in all sectors, but was assigned on the day in question to quadrant 3. The witness stated further that the record shows appellant had no assignments listed which would have taken him to the Stonehurst complex that day.[20] Moreover, when questioned, he speculated that while the patrol never actually went into the parking lot behind the entrance to Building 31 as pictured, nothing would have prevented him from being there in his private car at another time.

Detective Lieutenant George Baumann stated that he was Commander of Internal Affairs. He was familiar with the complaint from G.L., and had interviewed her.

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[19] Exh. R-15

[20] Exh. R-17

He also had spoken with the officers primarily involved in the case, Lieutenants Brightman, Smith and McGowan and Officers White and Ketelaar, as well as one of the two Sheriff's officers who had taken G.L. into custody. The lieutenant also interviewed appellant. Finally, after reviewing all documents and reports, Lt. Baumann determined whether there had been violations of regulations, and prepared recommended charges.

Addressing the charges against appellant one at a time, Lt. Baumann sought to explain how they encompassed the facts of record:

For Charge No. 1, 2 and 3 the same facts underlie the separate accusations. Lt. Baumann stated that appellant had been "insubordinate" because he had violated the How-To-Guide and any existing guides which in essence were issued as orders. The guides direct the procedures for property maintenance, which includes logging and tracking. Appellant's disposition of G.L.'s property, specifically her house and car keys, which he kept in his possession for two days, violated these orders. Addressing Charge No. 2, "Neglect of Duty," the lieutenant said the same facts disclose violation of 31-7 of the Freehold Township Police Manual. Appellant did not follow the pertinent evidence storage procedures with G.L.'s keys. For Charge No. 3, "Arrests," these same failures with respect to evidence treatment violation violated section 36-1.

For Charges No. 4 and 5, "Neglect of Duty" Lt. Baumann referred to appellant's failure to observe procedures in place for proper cell block management, as reported by Lts. Brightman and McGowan, who saw the monitoring video of G.L.'s processing. The violation occurred when appellant failed to contact Monmouth County Dispatch. This would have triggered a "visual" on the cell occupied by G.L. He also failed to complete a cell log.

For Charges No. 6 and 7, the lieutenant stated that appellant violated case law controlling searches incident to arrest. Lt. Smith confirmed that he had done so. Appellant did not search or inspect G.L.'s property at the scene, which is a basic

procedure taught at Police Academy. He conducted his search at headquarters, a prohibited act without a warrant.

For Charge No. 8, "Prohibited Activities on Duty," Lt. Baumann referred to the comments which G.L. had complained were made by appellant when escorting her to the cell. The charge also refers to the claim by G.L. that appellant had viewed the texts coming in to her phone, which he had searched during processing. She added that he would announce to her from whom the texts, sexual in nature, had originated. This charge was supported by interviews with Officers White and Ketelaar, the lieutenant recalled.

Explaining the segmented portions of Charge No.9, Lt. Baumann testified that "Conduct Unbecoming A Public Employee" referred to the whole complex of appellant's conduct from arrest to turning over keys held two days in his possession, and while within 200 yards of G.L's apartment. He had also relied on the recollections of Lts. Brightman and McGowan, who had viewed the monitoring video that had been by the four-day retention system. Addressing the "Inability To Perform Duties" allegations, the lieutenant referred to a long history of training and retraining afforded appellant because of his repeated errors when carrying out basic police procedures. This included "problems with women." Notwithstanding, he continued to make them, which is proven by prior disciplines.

Appellant's case in reply:

Appellant replied to the Department's case with testimony and exhibits[21]:

Recalling the arrest of November 30, 2013, appellant said G.L.'s car crossed in front of him in the parking lot. He was alerted that her license and/or registration were suspended. He also discovered that a warrant for her arrest existed, which was

[21] Exhs. A-1 through A-4

confirmed once he contacted Monmouth County. This was the reason he arrested her. He conducted a pat-down, recovered her purse, phone and registration, but, in testimony, he could not recall her having a license with her at the mall. Appellant stated further that he knew of her address because she told him[22], incorrectly, both at the scene and during processing.[23] That address in his paperwork was 31 Manchester Court, Apartment F.[24] He acknowledged that in his incident report he asked for G.L.'s "operator's credentials" to confirm the application of the warrant to G.L.[25] This term did not necessarily include her license, appellant stated. Her driver's license number, which was included in this incident report could have been retrieved from the computer. Appellant conceded that in his report, he wrote "Apartment F" and admitted further that he had not compared that address with her registration.

Once G.L. was secured in handcuffs in his patrol car, and he had moved and locked her car, he left the mall. When they returned to the Police Department, he handcuffed her to the bench in the processing room. During processing, he complied with her request to use a bathroom, taking her to female cell No. 5, which had one. At no time during the walk there did he make any remarks about her body. He was unaware of any special procedure for placement in cells of female arrestees, appellant said. However, he did give her precise instructions before when placing her in the cell, informing her that cameras would be focused on the open areas. Appellant insisted that he had locked the door, then called Monmouth County Dispatch to start the video. Appellant agreed that he had not completed a cell block form. He believed this was not appropriate because G.L. had been locked in the cell, and that its use was only for a bathroom break. In his view, Lt. Brightman's statement that the form was necessary was wrong.[26]

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[22] 2Tr.188

[23] Appellant later in his testimony could not recall where he had gotten the address. 2 Tr. 169

[24] 2Tr.159 and 170

[25] Exh. R-23

[26] Appellant had testified in the February 25, 2014 interview that he had not put G.L. in the holding cell. See 2Tr. 145 and Exh. R-20.

He then returned to the processing room, where he inspected G.L.'s purse. He had not done so at the parking lot scene of arrest because of her agitation and the chaotic scene. He had some "concern"[27]for his safety, as well. Appellant conducted the procedure at headquarters also because the search had to be completed before she was released to Monmouth County Sheriffs who were en route. Appellant conceded that he had received training in search and seizure techniques "two to three times in the past five years.[28]

Recalling the interaction with G.L. over her cell phone while in the processing room, appellant said that he had placed the phone on the left corner of the desk in front of her, so it would be in plain view, but beyond her reach.[29] The purse he had placed behind him, near the wall. He discussed the calls coming in on her cell phone with G.L., appellant stated, concerned that dependents or children might be trying to reach her. Should that happen, he would have given her access to a department phone to respond. Appellant noted that he could not read text while looking at the phone. Only the names of the callers[30]. Appellant added that G.L. may have told him she was embarrassed by his intrusive observation of messages on her phone, which were private. He himself could not remember the specifics of their conversation, appellant stated, but her objection was "not something that would be beyond the realm of possibility."[31]

As to her address, appellant said she had told him at the scene she was homeless, living in and out of her car. During processing, she had told him that she was living with a friend in Manchester Court. Appellant found further in the record that she had multiple addresses.

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[27] 2Tr. 136

[28] 2Tr.185-186

[29] See Exh R-3

[30] During his police department interview of February 28, 2014, appellant conceded that he had read the texts, but not the particulars. R-23 at pages 12-13; 2Tr.178-179.

[31] R-19, at Tr. 100

When he learned that bail for G.L. was set at four million dollars, he thought it was a typo. He asked a fellow officer in the processing room to look into it further on the computer for more information, since it was an obvious mistake.

Appellant maintained that the transfer of custody to the Sheriff's officers was informal. Once done, as they were leaving, a Sheriff's officer returned for appellant's phone. When asked, appellant took it from his uniform coat pocket and handed it to him. Appellant testified that he had placed it there to keep it out of sight when he went to bring G.L. back from the cell 5. Her keys were in his coat, as well. They were placed there when he was in the parking lot, moving her car out of the roadway, and into a parking spot, with her permission. However, when the Sheriff's officer asked G.L. if she had all her belongings, once she had the phone, she responded that she did.

Appellant said that he himself only became aware that he had kept the keys when called by Lt. Brightman a couple of days later. He brought them to the station, entering through the public door because he had driven there without his police pass card. Seeing the lieutenant, he passed him the keys and suggested that he get the correct home address from G.L. Because of the variety of addresses she had on record, the exact location could be important for possible future contacts by any agencies throughout the county, including Monmouth County Sheriff's office, appellant contended. Further, it was important that his paperwork be accurate. He did not deny that he did not check the address G.L. told him with that on her registration. His presence in G.L.'s apartment complex in a police vehicle while G.L. was incarcerated was attributable solely to his patrol duties in his assigned sector.

Appellant conceded that he had received repeated training in search and seizure responsibilities, departing from the required search-on-scene which is incident to arrest only because of the irate and agitated state of G.L. His answers during IA interviews of February 25 and 28, 2014, in the Department which might differ from testimony during the instant hearing appellant believed were the consequence of stress and confusion during the questioning, not dissimulation.

Burden of proof

The burden of persuasion falls on the agency in enforcement proceedings, such as those in which it is sought to prove an employee has engaged in violations susceptible to removal as a penalty, under controlling regulations, Cumberland Farms, y Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings, Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to a given conclusion, Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily as dependent on the number of witnesses, but having the greater convincing power, State v. Lewis, 67 N.J. 47 (1975).

In consideration of the **Findings** below, **I CONCLUDE** that the Township of Freehold has satisfied all these judicial standards.

Findings of fact:

To resolve disputes of material fact I make the following **FINDINGS:**

1. G.L. had left her car, which she had parked in a marked slot, carrying her keys, cell phone and purse in hand, when she encountered appellant, whose patrol car had stopped behind hers.

2. Appellant, after arresting G.L., did not search her purse, waiting instead until he had returned to the Department.

3. Appellant for approximately one year-and-a-half prior to G.L's arrest, had on repeated occasions, been orally apprised of his responsibilities related to Department rules and policy regarding searches on arrest.

4. Because appellant, when challenged, had customarily responded to superiors that he was either unaware or lacked understanding of search rules, he was issued personal written instructions and restrictions (Exh. R-11).

5. Appellant knew at the time of G.L.'s arrest that the Department policy for searches on arrest was that they were to be conducted at the scene. Appellant had undergone related training two or three times within the prior five years.

6. Appellant scrolled through G.L.'s cell phone over her objections while she was handcuffed to the bench in the processing room, reading visible texts which had been sent to her. While doing so, he announced to G.L. who the senders were. The texts were personal and sexual in nature.

7. Appellant encouraged Officer White to join him in viewing the foregoing texts while the latter was in the processing room.

8. While escorting G.L. to the female cell, No. 5, appellant made personal comments to G.L. which were unrelated to her arrest or to her custody. Appellant told her that he could see why men would want to text her, and that she was "tiny" and "cute."

9. Appellant locked appellant in Cell No. 5 and left the area. He did not fill out the cell log or notify Monmouth County Dispatch, as required by training and departmental practice. He returned to the processing room and searched through appellant's purse.

10. Lt. Brightman, for some twenty-to-thirty seconds in a video now legitimately erased because a technical automatic time cut-off, observed G.L. seated on a bench outside the toilet area in Cell No. 5, with knees drawn up against her, shaking. The bottom half of the door was closed. Appellant was not visible in the monitoring video.

11. By the time Monmouth County Sheriff's officers had arrived to relieve the Department of custody, appellant had assumed personal possession in his uniform jacket of the set of G.L.'s house and car keys and of appellant's cell phone.

12. Despite placement by appellant of both phone and keys together in his jacket, when he retrieved the phone at the Sheriff's officer's request, he did not hand over the keys.

13. Though the keys remained in his possession until Lt. Brightman called him on December 2, 2013, appellant had not filled out a mandatory property itemization report. Neither had appellant placed the keys in the repository in the records office made available by Lt. Brightman. This arrangement allowed deposit there by police officers of property items which, through oversight, had not been returned to arrestees.

14. Freehold Township covers approximately thirty-seven square miles. On November 30, 2013, appellant, assigned to a full quadrant of the Township area, had not on that day received any assignments which would have taken him into G.L.'s apartment complex specifically.

15. Appellant cruised the complex to the extent and during the times illustrated in Exhs. R-14 and R-15. By design, he followed a course which would allow him to observe and become familiar with Building 31, where appellant's apartment was located.

16. Appellant's professional responsibility for G.L.'s investigation ended with the custody transfer of G.L. to the Monmouth County Sheriff's Office.

17. The decision by G.L. to file a complaint against appellant with the Freehold Township Police Department was taken after discussion with her friend and Lieutenant Brightman on December 2. The complaint was not filed at Lt. Brightman's suggestion.

ANALYSIS AND CONCLUSION

Analysis and Conclusions of Law:

The charges:

Part of the Charges accompanying the Final Notice of Disciplinary Action, CS-31C, dated July 18, 2014, included a narrative ("Incidents and Specifications"), at pages 1-2. These representations are more suitable for an opening statement or as part of a post-hearing submission. The narrative will not be considered a charge in this initial decision.

Charge 1 (insubordination); Charge 2 (neglect of duty); Charge 3 (arrest responsibility)—10 days suspension

Specifics (condensed):

> After an arrest of a female, G.L., Appellant didn't fill out a property report on a prisoner for two days, didn't put her property in an evidence locker; and kept her keys in his residence for two days.

I CONCLUDE that appellant engaged in (1) insubordination; (2) neglect of duty; and, (3) failure to properly carry out his arrest responsibilities.

Appellant does not deny failing to fill out a property report, or failing to put G.L.'s property in an evidence locker, or keeping her keys in his residence for two days. Lt. Brightman, in charge of departmental records, confirmed that he had not submitted the report, and had returned the keys only after the lieutenant phoned him. Officer White confirmed that this was standard procedure. The Township, through Det. Lt. Baumann was persuasive in arguing that this conduct was in violation of existing guides, in disregard of extensive retraining and amounted to those rule contraventions charged, all of which is in essence a refusal to comply with orders. Specifically charged were: violations of Police Manual rule sections 3:1.7, 3:1.10, 3:6.1 and N.J.A.C. 4A:2-2.3(a)(2) and (a)7.

Charge 4 and Charge 5 (neglect of duty)—10 days suspension

Specifics (condensed):

Appellant failed to give proper notification Monmouth County Communications of a prisoner being placed in a holding cell.

Appellant failed to complete a departmental cell log thereafter.

I CONCLUDE that appellant engaged in neglect of duty.

Appellant did not deny that he neither contacted the County nor filled out the cell log, after escorting appellant into female Cell No. 5. He instead took the position that neither act was required. This defense is not believable, in view of the Findings above. In contrast, Lt. Brightman was fully credible when recounting appellant's absence from the monitoring video which the lieutenant had viewed together with Lt. McGowan. His recollection is consistent with a time lapse sufficiently ample to require both County notice and cell log completion by appellant. Officer White confirmed that this was standard policy and procedure followed by officers. These omissions violated Police Manual rules at sections 3:1.7 and Civil Service Rules at Sections 4A:2-2.3(a)7.

Charges 6 and 7 (neglect of duty and performance of duty) – 30 days suspension

Specifics (condensed): Appellant unlawfully searched the female prisoner's handbag at the police station, not the scene of arrest.

I CONCLUDE that appellant engaged in neglect of duty and failed to perform his duty as demanded under the policies, rules and regulations cited by the appointing authority.

Nothing in the legal arguments of either side offering case law on the constitutional parameters of seach and seizure negates one self-evident, straightforward responsibility of police officers, i.e., as public officers in a paramilitary organization they must comply with orders. Appellant well knew the policy and practices of the Department governing search and seizure, having had repeated training in it provided by the Department within the past few years. Special instructions to make certain he understood were issued to him and his supervisors. Appellant could not help but know that, under departmental policy, searches incident to arrest are done at the scene, with rare exception. The arrest of G.L. was not such an outlier. This fact was borne out by all the witnesses from the Department asked, and all were credible.

If appellant believed a legal bar to compliance with such orders existed, his remedy was to first comply, then complain. Appellant had years of opportunity to object, and several explicit training occasions on which to do so. During that time, he could have raised the issue with his superiors. The record does not disclose that he did. Instead, appellant elected to ignore the related policies and rules and instead to rifle through G.L.'s purse at his leisure in the station house, while G.L. was remotely located out of sight in cell No. 5. Appellant's reliance on Police Manual section 3:7.8 is misplaced. The interpretation of the appointing authority was credibly related by Lt. Smith. An interpretation of the Department is entitled to great weight when construing its own regulation. Here, Lt. Smith has declared that the rule applies to searches of the body, not of personal property, such as containers. The rule's substance addresses safety considerations. For these reasons, appellant has violated those Police Manual

and Civil Service Rules cited by the Department: Police Manual section 3:1.8; N.J.A.C. 4A:2-2.3(a)(1).

Charge 8 (prohibited activity on duty) – 10 days suspension

Specifics (condensed):

Appellant read incoming text messages on G.L.'s cell phone of a sexual nature.

Appellant also made related personal remarks to the arrestee, G.L., commenting on her physical appearance, and on her understandable desirability to the "friend" texting and to appellant himself.

I CONCLUDE that appellant engaged in prohibited activity while on duty.

The persuasive testimony is that of Officer Ketelaar and Officer White. They disclosed (a) that the texts were readable, and (b) that appellant was reading them, inviting Officer White to join in. During this interlude, G.L., objected. Officer Ketelaar convincingly stated that he saw appellant scrolling on the phone. He knew it was against Department policy, and in his opinion, "just wrong." Officer White declared that it was uncommon for officers to take in hand the cell phone of a person in custody and to actively search through it. He himself would not engage in showing such a phone, which revealed text to other officers and noted that G.L. objected to appellant's viewing the text. He too was credible. In her testimony, G.L. herself was believable as well. Lt. Smith and his view that such an act required a search warrant credibly reflected the policy in place in the Department.

While no one was present at the time appellant took G.L. to the female holding cell for a bathroom break, G.L.'s credibility emerges as convincing. The remarks quoted above in Findings were on their face reprehensible and of a type prohibited by Police Manual rules (3:2.1, subsection (c)). They were especially so in that setting. Appellant took unlawful advantage of his dominant official authority. In doing so, he subjected a

female arrestee to embarrassment and humiliation. For these reasons, the foregoing specifics prove violations of the rule cited by the Department: Police Manual rule 3:2.1, subsection (c).

Charge 9 (Conduct unbecoming an officer) – no specific penalty listed [but the Department seeks removal].

Specifics (condensed):

> Appellant retained the prisoner's cell phone on his person. On the day following the female prisoner's arrest, while in possession of the female prisoner's house keys, he was within 200 yards of her residence while on duty. The entirety of the foregoing charges warrants a finding of conduct unbecoming an officer and an inability to perform duties, as well as other sufficient cause. However, additionally, appellant has an extensive history of discipline. This history includes stopping women for minor motor vehicle violations and detaining them for excessive periods of time.

I CONCLUDE that appellant engaged in conduct unbecoming an officer.

The prior eight charges taken as a whole proven today do per se deserve that label.

More specifically and in addition, appellant's extended tour of G.L.'s Stonehurst Apartment Complex in his patrol vehicle in itself also qualifies as an example of such prohibited conduct. He did this in the face of all that preceded on November 30, and while realizing that this "patrolling" was undertaken while G.L. was incarcerated.

First, appellant had not been assigned to monitor Stonehurst that day. His assertion of need to place G.L.'s correct address in Department records does have the clarion ring of truth. Appellant's official connection to G.L. ended when she was escorted from the processing room with the Monmouth County Sheriff's officers. Therefore, no further investigation should have followed. Taken together with his earlier

misconduct involving G.L., appellant's lengthy tour could only suggest by a preponderance of evidence that he was up to no good. Whatever may have been his ultimate, exact intent cannot be known from this record. Notwithstanding, the preponderance of evidence cannot be ignored: the focus of appellant during his slow roll through Stonehurst was clearly on tracking G.L. generally, and on becoming familiar in detail with her living environment. He did this while on duty and in a police vehicle. It is clearly conduct unbecoming an officer. Further, the unseemly thread of appellant's behavior weaving throughout the over-all collection of charges upheld today is more than sufficient also for a blanket finding of unbecoming conduct, as well.

However, addressing the Township's next charge, I do not find that the Township has proved its accusation of inability to perform duties. I further do not find that "other sufficient cause" is anything more than a superfluous catch-all charge, too vague to have permitted an informed preparation of defense by appellant[32].

To begin with, inability to perform starts at least with proffers of job-related, personal inadequacy, e.g., medical or psychological impairment. These are absent here. The appointing authority, in essence, wishes to merely equate appellant's history of unbecoming conduct with inability. This is a novel definition. Without specific proffers intended as confirmation of appellant's specifically identified personal limitations, the appointing authority's argument underlying this portion of Charge No. 9 may not be considered. Refusing to obey is not a limitation. It is a punishable choice. The Township argues simply that appellant's disciplinary history and the difficulty attending his supervision demonstrate an inherent inability. The bare claim is not enough.

In contrast, appellant in his testimony presented himself as intelligent, perceptive and well-oriented. He had survived the year's probationary service imposed on all new police officers at the outset of their careers. The Department had retained him for some

[32] But, cf. N.J.A.C. 4A:2-2.3(a)12

thirteen years at the time of the incident with G.L. He made no claim that inability mitigated his actions. His ostensible inability, therefore, is a non-issue.

Despite the foregoing, it is fair to add nonetheless that, though the preponderating evidence is far removed from a showing of some unspecified inability, what the Township has successfully proved is that appellant, though capable of understanding the rules, deliberately chose not to follow them. More probable (and preponderating) is the impression that, in order to behave as he, not the Police Department, saw fit, appellant employed deniability of fault and evasive strategies. As an example, as his record of discipline shows, one such ploy was to avow an inability to understand what was required of him for the performance of his duty. Those strategies emerge as disingenuous. They inevitably evoke a suspicion of conscious wrongdoing, which I find today is justified.

Finally, it is relevant that the Township has not been barred from advancing argument on appellant's past actions. In the penalty phase of administrative proceedings of this type, records of formal and informal disciplinary adjudications as well as of commendations or praise afforded appellant are routinely considered[33]. West New York v. Bock, 38 N.J. 500 (1962). They will be assessed in this case as well.

Penalty:

The appropriate penalty is removal.

It is well settled judicial case law that police officers are special government officers. They operate within wide boundaries of discretion to exercise authority far beyond the reach of the average government employee or the population as a whole. The citizenry relies on the police for protection, but it also must invest a good deal of blind trust in an officer's judgment and disposition to carry out a police officer's duty with

[33] Submitted by agreement of the parties post-hearing, along with records of commendation. They are marked in evidence as Exh. R-25 (history of discipline) and Exh. A-5 (commendations)

fairness and detachment. Police officers are therefore duty-bound to go about their work with detachment, sensitivity, and full adherence to the rules which govern them. A police department in the end is a paramilitary organization.

Misconduct anywhere in public service is objectionable but when it takes place in law enforcement, the courts have made clear that there is a wider dimension of responsibility:

> A police officer is a special kind of public employee. His primary duty is to enforce and uphold the law . . . He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have respect of the public. [Twp. of Moorestown v. Armstrong, 898 N.J. Super. 560, 566, 215 A.2d 775 (App. Div. 1965), certif. denied, 47 N.J. 80, 219 A.2d 417 (1966)]

Removal in circumstances comparable in seriousness to the instant matter is not unusual. In the case of In re Carter, 191 N.J. 474, 485-486 (2007), affirming removal of a police officer who slept while on duty, the Court held:

> In matters involving discipline of police and corrections officers, public safety concerns may also bear upon the propriety of the dismissal sanction. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980) (affirming appellate reversal of Board decision to reduce penalty from dismissal to suspension for prison guard who falsified report because of Board's failure to consider seriousness of charge); In re Hall, 335 N.J. Super. 45, 51, 760 A.2d 1148 (App. Div. 200) (reversing Board's decision to reduce penalty imposed on police officer for attempted theft from dismissal to suspension), certif. denied, 167 N.J. 629, 772 A.2d 931 (2001); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06, 633 A.2d 577 (App. Div. 1993) (holding that it was arbitrary, capricious, or unreasonable to reduce penalty from removal to six months suspension for prison guard who gambled with inmates for cigarettes), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

After his treatment of G.L. and appellant's record of penalties for untoward interaction with women, today's discipline is plainly necessary because of the "public safety concerns" to which the Carter Court was sensitive. The foregoing judicial decisions which that court cited support removal when the public trust is breached by a

police officer. Here, it was breached in the extreme. Appellant, a male officer, through reprehensible personal intrusiveness took advantage of a female arrestee's vulnerability. The experience left her upset and humiliated. Given the overall Findings set forth today at pages 22-23, supra, as well as in consideration of misconduct by appellant during the other events of November 30, 2013, the present charges, No.1 through No. 9, are sufficient to warrant removal.

Nevertheless, if appellant's behavior on that date were to be thought insufficient to cause termination, his history of discipline (Exh. R-25) would render removal unavoidable. That history details numerous instances of failure to follow procedures, including procedures governing searches. Appellant's proffered commendations (Exh. A-5) provide little in the way of serious amelioration. Significantly, the penalties imposed on appellant in the past have likewise involved multiple stops and encounters with females which were undertaken improperly, in violation of Department practices and policies. It is a history disclosing unusually blatant disregard of police duty. With this background, retention of appellant as a police officer would be more than inappropriate. Retaining him would negatively implicate "public safety concerns," which Carter said had bearing.

ORDER

I ORDER, therefore, that the **removal** of appellant, Michael Denham, be, and hereby is, **AFFIRMED.**

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

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

recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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.

May 4, 2015
DATE

Joseph Lavery
JOSEPH LAVERY, ALJ t/a

Date Received at Agency: 5/4/15

Date Mailed to Parties: 5/4/15

mph

LIST OF WITNESSES:

For appellant:

Michael Denham, appellant, testified on his own behalf and called no witnesses

For respondent:

G[redacted]L

Glen Engelken

Randy Morgan

William Ketelaar

Karl White

Dean Smith

Robert Brightman

Jerry Kiwit

George Baumann

LIST OF EXHIBITS:

For appellant:

A-1 Complaint/Summons issued to G.L. by Ocean Township Municipal Court, dated January 22, 2010.

A-2 Certified transcript: Excerpts from Departmental Hearing of Michael Denham, dated May 30, 2010.

A-3 Letter: Rebecca Carvalho to John Anello, Esq., dated December 15, 2014.

A-4 Police Manual, Freehold Township Police Department

A-5 Commendations: Michael Denham.

For respondent:

R-1 Copy of driver's license: G.L.

R-2 Copy of key set with car and house keys: G.L.

R-3 Large picture exhibit: view of Freehold PD Office

R-4 Copy of Summons issued by PO M. Denham, dated 11-30-2013

R-5 Copy of Receipt for Personal Property, issued by Monmouth County Sheriff's Office-Department of Corrections, dated 11-30-13

R-6 Property Release Report for G.L: Police Department, Township of Freehold, dated 12-2-13

R-7 Internal Affairs Report Form, Freehold Township Police Department, prepared by G.L.

R-8 Handwritten notes

R-9 Google Earth computer capture, 31 Manchester Court, Freehold N.J.

R-10 Copy of photograph: G.L.

R-11 Memorandum and e-mails from Lt. T.J. McGowan to appellant and supervisors, outlining duty restrictions on appellant

R-12 Memorandum dated December 3, 2014, from Lt. R. Brightman to Det. Lt. Baumann, outlining interaction with G.L. when recovering personal property and making complaint against appellant

R-13 Administrative Submission from Lt. Robert Brightman to Det. Lt. Baumann, dated February 24, 2014, memorializing his recollection of viewing a video on December 3, 2013

R-14 Aerial view of G.L.'s apartment complex

R-15 Map with notations indicating locations of appellant in relation to 31 Manchester Court, Freehold NJ

R-16 Photos of Stonehurst apartment complex where 31 Manchester Court, Freehold NJ is located

R-17 E-mail Memo: Solowey, Steven to Kiwit, Jerry, dated Tuesday, April 01, 2014, including e-mail from Chris Klaube to Solowey, Steve, of even date.

R-18a Admissions Agreed to by Township/Denham.

R-18b Transcript accompanying proposed admissions

R-19a Township's Proposed Admissions

R-19b Transcript accompanying proposed admissions. [Evidence admission decision had been reserved to post-hearing]

R-20 Certified transcript: Interview of P.O. Michael Denham, Monmouth County Prosecutor's Office, February 25, 2014

R-21 Certified transcript: Interview of P.O. Michael Denham, Monmouth County Prosecutor's Office, dated February 28, 2014

R-22 Computer capture (incomplete) of State v. Bradley, 291 N.J. Super. 501 (1996)

R-23 Computer capture: Freehold Township Police Department: Officer Report for Incident 13 FT26640

R-24 Monmouth County Prosecutor's Office Internal Affairs Advisement Form: Michael Denham, dated 2-25-14

R-25 Disciplinary History: Michael Denham

By Administrative Law Judge:

C-1 Copies of Freehold Township Police Department Rules, instructions and policy memo