SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4177-19

IN THE MATTER OF VICTOR VAZQUEZ, MARK GUTIERREZ, JOSEPH GONZALES, ROCCO DUARDO, JUSTIN DE LA BRUYERE, and CITY OF HACKENSACK POLICE DEPARTMENT.

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Argued February 14, 2024 - Decided May 23, 2024

Before Judges Currier, Firko and Vanek.

On appeal from the New Jersey Civil Service Commission, Docket No. 2019-3364.

Justin de la Bruyere, appellant, argued the cause pro se.

Raymond R. Wiss argued the cause for respondent City of Hackensack Police Department (Wiss & Bouregy, PC, attorneys; Raymond R. Wiss, of counsel and on the brief; Thomas K. Bouregy, Jr. and Timothy J. Wiss, on the brief).

Levi Malcolm Klinger-Christiansen, Deputy Attorney General, argued the cause for respondent New Jersey Civil Service Commission (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant

Attorney General, of counsel; Dominic Larue Giova, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Justin de la Bruyere appeals from a final decision of the Civil Service Commission (CSC) upholding his dismissal from the Hackensack Police Department (HPD or the City). The sanction was imposed after appellant and several other officers were found to have violated several administrative and department rules and regulations by conducting an unlawful warrantless search of an apartment (the apartment) in Hackensack. It was also determined that appellant approved the filing of a misleading and inaccurate report of the incident.

On appeal, appellant contends he did not violate any administrative or department rules and regulations because the warrantless search was not improper as it came within the exigent circumstances and community caretaking exceptions to the warrant requirement. In a previous appeal involving three of the officers involved in the search, In re Vazquez, Nos. A-4034-18, A-4035-18 (App. Div. Oct. 21, 2021), we rejected those arguments and held that the warrantless search was illegal and provided a basis for the City's disciplinary action. Appellant also appeals from the imposed penalty of termination.

Because we conclude the CSC's decision regarding the charges and the penalty was not arbitrary, capricious, or unreasonable, we affirm.

I.

We derive the following facts from the testimony and evidence presented during the hearing before the Administrative Law Judge (ALJ). Appellant was hired by the HPD in July 2003 and promoted to sergeant in 2013. At the time of these events, he was a Detective Sergeant in the Narcotics Division. The other officers involved in the warrantless search were Mark Gutierrez, and Rocco Duardo, who were also detectives in the Narcotics Division, and Victor Vasquez,[1] who was a patrolman.

On December 27, 2016, Duardo, Gutierrez, and Vasquez arrested two individuals. According to Gutierrez, after he and Vasquez searched the cell phone of one of the individuals, they learned that a sale of a gun was going to take, or had taken, place at the apartment. A subsequent request for a warrant to search the phone was rejected by the prosecutor's office because Gutierrez had already searched the phone.

[1] In this appeal and the prior appeal, Victor Vasquez's surname is misspelled as "Vazquez."

Appellant testified that on December 28, 2016, Captain Vincent Riotto told him and Lieutenant Scott Sybel to go to an apartment building and arrest a certain individual on an outstanding warrant. Appellant stated he was also instructed to question the individual regarding the gun transactions discussed on the cell phone. The individual lived in the apartment on the third floor. Sybel told appellant to take a key that was on Sybel's desk, and appellant used the key to enter the building. Appellant testified that Gutierrez told him there was an arrest the previous day involving illegal drugs, that a cell phone was found, and that the address of the apartment building was provided. He also testified that the officers knew they were proceeding to the apartment on the third floor before they left police headquarters.

After the officers arrived at the third floor, appellant knocked on the door of the apartment but received no response. According to appellant, a neighbor, G.H., came out of his apartment and told him that a family with children lived in the apartment and the "kids are crying and screaming all day long." Neither appellant nor any of the other officers heard any crying or screaming coming from the apartment.

Appellant stated after he heard Duardo say that the door to the apartment was unlocked, he and the other officers entered the apartment but there was no one there. Gutierrez testified that Sybel told them to enter the apartment.

A video from the building's security camera depicted the officers went directly to the apartment on the third floor before they spoke to anyone in the building. The footage showed Duardo pointing to the door of the apartment and placing his ear to the door. Approximately six and a half minutes after arriving at the location, appellant, Vasquez, and Duardo spoke to G.H., who lived in the apartment across the hall, for several minutes. Two to three minutes later, the officers entered the apartment.

Gutierrez prepared an incident report that day, which stated:

> Detective L[ieutenan]t [Sybel], Detective Duardo, Detective Gonzale[s] and [Officer] Vasquez responded to [the apartment building] to check for narcotic activity. Upon our arrival we began walking through the building at which time we were met by a resident who requested to remain anonymous. This individual informed us that he believed that there was an unattended child left in [the] apartment. . . .
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> Upon receiving this information we responded to this apartment and began knocking on the apartment door. After a short time no one answered the door. While standing outside we discovered this door was left [unsecured]. At this time a check of the residence was conducted at which time we discovered there was no

> one home. Upon completion of this check the apartment was secured when we left.

Appellant testified that one of his responsibilities as a sergeant was to review the reports of his officers. He stated he did not read the report from this incident or check it for accuracy but merely looked to see it was completed. He signed off on the report without making any changes. He said Sybel told Gutierrez what Riotto wanted in the report.

On March 28, 2017, an anonymous letter was found in HPD's internal affairs mailbox. It claimed there was a cover-up by "Riotto and his boys" regarding the search of the apartment and that the reports relating to the incident were "full of lies."

Internal Affairs Captain Peter Busciglio then began an investigation, obtaining and reviewing the video footage and speaking with the building superintendent's girlfriend, who stated there was no one home in the apartment at the time of the search because the residents were at work. She also stated she did not believe there was a baby in the apartment.

Busciglio spoke to the person who lived next to the apartment, who said she did not hear a child or any screaming from the apartment on December 28, 2016. He also spoke to G.H., who said that the officers had knocked on his door and asked whether he heard any noises coming from the apartment. G.H. could

not recall his response, but he did not remember hearing any crying or screaming from the apartment that day. Busciglio also spoke with an individual who resided in the apartment, who told him that no one was home that day during the time the search took place.

Busciglio testified that "at one time" the apartment building was known to be a "narcotics building." He concluded from his viewing of the videotape that although the officers tried to obstruct the camera's view, he could see appellant picked the lock to the apartment to get in the door. He stated the officers took a bank statement and traffic summons from the apartment. He believed they fabricated the story about an unattended child so they could claim exigent circumstances to justify their warrantless entry.

II.

The investigation resulted in the issuance of preliminary notices of disciplinary action (PNDA) to appellant and five other officers.[2] The notices alleged that the officers entered the apartment illegally, without a warrant, and

[2] Sybel retired before the charges were brought.

appellant and Gutierrez "knowingly filed a false, misleading and inaccurate police report."[3]

In July 2017, the Bergen County Prosecutor's Office (BCPO) sent a letter to the HPD advising it was dismissing eight criminal actions due to appellant's and the other officers' conduct regarding the apartment, and that any decisions regarding the ability of the officers to provide testimony in future matters would be made on a case-by-case basis. The BCPO stated that the officers' conduct undermined their credibility as law enforcement officers as well as the BCPO's ability to prosecute matters in which the officers were involved.

Following a departmental hearing, final notices of disciplinary action were sent to appellant and the remaining five officers terminating their employment.[4] Appellant and the other officers were charged with "[i]ncompetency, inefficiency or failure to perform duties," contrary to N.J.A.C. 4A:2-2.3(a)(1); "[c]onduct unbecoming a public employee," contrary to N.J.A.C. 4A:2-2.3(a)(6); "[n]eglect of duty," contrary to N.J.A.C. 4A:2-2.3(a)(7); "[o]ther sufficient cause," contrary to N.J.A.C. 4A:2-2.3(a)(12);

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[3] An amended PNDA alleged that appellant and the other officers "illegally seized, or conspired to seize, . . . personal property of the individual residing" in the apartment.

[4] Riotto retired and the charges against him were dismissed.

violating N.J.S.A. 40A:14-147 for not following HPD rules and regulations; and violating multiple HPD rules and regulations. The officers each filed an appeal with the Office of Administrative Law and the matters were consolidated and assigned for a hearing.

III.

After eight days of hearings, the ALJ issued an initial decision on February 8, 2019, upholding almost all of the charges against appellant and imposing a 150-day suspension.[5] The ALJ found the officers did not initially improperly enter the apartment building because they used a key provided by the building's owner. The ALJ then found the officers walked directly to the apartment on the third floor without speaking to anyone. They stood around for six and a half minutes, at which time they spoke to G.H. for approximately six minutes. About two and a half minutes later, the officers entered the apartment, with Vasquez being the first to enter, followed by appellant, and two other officers. However, the ALJ found, that because of an obstructed view, the video evidence was inconclusive as to whether any officer tampered with the lock or whether the door was open. The officers spent about six minutes inside the

[5] The ALJ found appellant not guilty of violating N.J.S.A. 40A:14-147 and 5:2.6 of the HPD rules and regulations ("misconduct observed by police personnel").

apartment before leaving. The ALJ further found that Sybel ordered them to enter the apartment.

The ALJ concluded that the officers' testimony about the report of an unattended child in the apartment was not credible. She noted that the officers' demeanor did not change after speaking with G.H., stating "their behavior did not reflect any sense of urgency or concern that someone could potentially be in danger in" the apartment. Therefore, the ALJ found there were no exigent circumstances to support a warrantless search. However, she also stated there was insufficient evidence to conclude the officers went to the apartment building with a plan to illegally enter the apartment.

In addition, the ALJ found that the incident report prepared by Gutierrez and reviewed by appellant contained misleading and inaccurate information. She rejected appellant's claim that he should not be held responsible because he was not required to, and did not, read the report. The ALJ stated: "[Appellant] had firsthand knowledge of the events, and by indicating on the report that he reviewed it, it is reasonable to assume that he read and approved its content." In addition, the ALJ found that appellant "offered no evidence to support his assertion that he was not required to read the report . . . and check its content for

accuracy." The ALJ stated: "If he did not read it, he certainly should have done so before indicating on the report that he had reviewed it."

The ALJ determined that the City had proven its charges against appellant by a preponderance of the credible evidence. As for the penalty, the ALJ rejected the City's request for removal as excessive, believing that progressive discipline should apply since there was no evidence appellant had any significant prior disciplinary history. She concluded that appellant's "actions were insufficiently severe to render him unsuitable to continue in his position as [a] detective." As a result, she imposed a 150-day suspension.

Appellant appealed to the CSC, which issued a final decision affirming the ALJ's decision regarding the charges but modifying the decision by imposing termination as the sanction. The CSC stated that the illegal entry was "deserving of a severe punishment" because the action eroded the public trust in law enforcement. In addition, the CSC stated that "falsification of a record by a law enforcement employee is a very serious offense." The CSC agreed with the ALJ both "that it was reasonable to assume that [appellant] read the report as he had firsthand knowledge of the incident," and that he had offered no support for "his assertion that he was not required to review the report for accuracy." Therefore,

the CSC found that appellant's "actions were sufficiently egregious to warrant" his removal.

Appellant's subsequent motion for reconsideration was denied. The CSC reiterated the ALJ's conclusion "that there were no exigent circumstances in this matter that would justify a warrantless search based on a review of the video, as well as a lack of corroboration from any witnesses at the apartment building that there was an unattended child." The CSC further agreed that the officers did not act in a manner indicating the existence of any exigent circumstances. In addressing the incident report, the CSC stated that since appellant was present when the search occurred, he "either read the report and signed off on an inaccurate report or should have read the report and checked for the accuracy of its contents."

As to the penalty, the CSC reiterated "that a law enforcement officer is held to a higher standard than a civilian public employee." Thus, "conducting an unjustified warrantless search and approving a report" of the "incident that contain[ed] false and misleading information" was sufficiently egregious to warrant removal.

IV.

On appeal, appellant contends the CSC's decision upholding the charges against him and imposing the penalty of removal was arbitrary and unreasonable because it was not supported by the evidence. Appellant further contends the City violated ethics laws because two of its employees that charged him had conflicts of interest.

A.

We begin with the CSC's determination that the search of the apartment was illegal. Appellant contends the search was objectively reasonable because of the purported presence of a gun and the decision to conduct a "welfare check" regarding the possible presence of a child in the apartment. Thus, there were objectively reasonable exigent circumstances that justified the search.

The scope of review of a final administrative determination is limited; such a determination will not be overturned unless it is shown to have been "arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence." In re Carter, 191 N.J. 474, 482 (2007) (quoting Campbell v. Dep't of Civ. Serv., 39 N.J. 556, 562 (1963)). A reviewing "court may not substitute its own judgment for the agency's even though the court might have reached a different result." Id. at 483 (quoting Greenwood v. State Police Training Ctr.,

127 N.J. 500, 513 (1992)). However, a reviewing court is not bound by an agency's interpretation """of a strictly legal issue."" Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 158 (2018) (quoting Dep't of Child. & Fams. Servs. v. T.B., 207 N.J. 294, 302 (2011)).

Appellant does not dispute that he entered the apartment without a warrant but argues that the entry was justified under exceptions to the warrant requirement. A warrantless search is presumed to be unreasonable and therefore invalid. State v. Valencia, 93 N.J. 126, 133 (1983). "A warrantless search of a person's home 'must be subjected to particularly careful scrutiny,' State v. Bolte, 115 N.J. 579, 583 (1989), because '"physical entry of the home is the chief evil against which the wording of the Fourth Amendment is direct[ed]."" State v. Cassidy, 179 N.J. 150, 160 (2004) (alteration in original) (citations reformatted), (quoting State v. Hutchins, 116 N.J. 457, 463 (1989) (quoting United States v. U.S. Dist. Ct. for the E. Dist. of Mich., 407 U.S. 297, 313 (1972))), abrogated on other grounds by State v. Edmonds, 211 N.J. 117, 131-32 (2012). However, a warrantless search may be found to be reasonable if it """falls within one of the few well-delineated exceptions to the warrant requirement."" State v. Pineiro, 181 N.J. 13, 19-20 (2004) (quoting State v. Maryland, 167 N.J. 471, 482 (2001)).

Thus, "under certain exigent circumstances," warrantless searches may be "both reasonable and necessary." State v. Vargas, 213 N.J. 301, 314 (2013) (quoting State v. Frankel, 179 N.J. 586, 598 (2004), overruled in part by Edmonds, 211 N.J. at 131-32). Exigent circumstances exist when the officers do not have sufficient time to obtain a warrant. State v. Johnson, 193 N.J. 528, 556 n.7 (2008). Such searches must be based on probable cause. State v. Manning, 240 N.J. 308, 333 (2020). A warrantless search also is authorized when the police "have an 'objectively reasonable basis to believe that prompt action is needed to meet an imminent danger.'" State v. Miranda, 253 N.J. 461, 480 (2023) (quoting State v. Hemenway, 239 N.J. 111, 126 (2019)) (internal quotation marks omitted).

Similar exceptions include the community caretaking and emergency aid doctrines. State v. Bogan, 200 N.J. 61, 73 (2009). The community-caretaking doctrine applies where police are engaged in "functions[] totally divorced from the detection, investigation, or acquisition of evidence relating to" a crime. Id. at 73-74 (quoting Cady v. Dombrowski, 413 U.S. 433, 441 (1973)). This function extends to the protection of the welfare of children, such as when there is a report that they are unattended. Id. at 75-77. However, the doctrine is "not

a roving commission to conduct a nonconsensual search of a home in the absence of exigent circumstances." Edmonds, 211 N.J. at 143.

A warrantless search of a person's home by police may also be permitted under the emergency aid exception to the warrant requirement. Cassidy, 179 N.J. at 161. An emergency situation may exist when a police officer is confronted with information that """would lead a prudent and reasonable offic[er] to see a need to act on that information, even if the information is found to be erroneous."'" Ibid. (quoting State v. Castro, 238 N.J. Super. 482, 488 (App. Div. 1990)). The exception requires the existence of an emergency as viewed objectively and a nexus between the search and the emergency. Edmonds, 211 N.J. at 132.

We are unconvinced that any of these exceptions apply to permit the warrantless search. There was no evidence apart from the officers' testimony that they were advised there was an unattended child in the apartment. Moreover, the video showed a lack of urgency by the officers after they purportedly learned of this information. The video showed the officers remained outside the apartment for approximately three minutes after they supposedly learned from the neighbor that there was possibly an unattended child in the apartment.

In addition, there was no mention of a weapon in the report submitted by appellant and Gutierrez, and there were shifting explanations as to the nature of the emergency to justify the warrantless search; a weapon, and an unattended child were both mentioned in the record. Consequently, there was no objective evidence of an emergency.

Moreover, we addressed this issue in a prior appeal. In Vazquez, slip op. at 18-19, we rejected Duardo's and Vasquez's argument that the warrantless search was justified. We stated:

> There is sufficient credible evidence to support the agency's conclusion. . . . [N]one of the witnesses reported hearing a child in distress on December 28, 2016.
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> In addition, the City submitted video from the apartment building's security cameras. In reviewing the video, the ALJ made fact findings regarding the officers' behavior. Although the officers testified that a neighbor informed them of the unattended child, the ALJ did not find this testimony credible. Instead, the ALJ found the "credible evidence" supported a finding that "no exception to the warrant requirement applies here and that, therefore, the warrantless search of the apartment was unjustified and improper." The findings and conclusions of the ALJ and the [CSC] are supported by the credible evidence in the record and are not arbitrary and capricious.
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> [Ibid.]

Appellant presents no reasons to justify a departure from our prior conclusion. The ALJ found appellant was not credible in his testimony regarding the reasons for entering the apartment without a warrant. We defer to the credibility determinations of an ALJ who heard the testimony and observed the witnesses' demeanor during the hearing. H.K. v. State, Dep't of Hum. Servs., 184 N.J. 367, 384 (2005).

B.

Appellant also claims that the CSC's determination is arbitrary and capricious because the City did not pursue disciplinary charges against his superior officers Sybel and Riotto. However, as noted above, Sybel retired before any charges were brought and Riotto retired after the departmental hearing. Therefore, their situations were not comparable. We cannot fault the City for exercising its discretion not to pursue charges against former employees.

In addition, appellant seeks to excuse his actions by claiming they resulted from inadequate training. However, he does not establish what was lacking in his training and how that deficiency led to his actions. Moreover, both the ALJ and the CSC found appellant's entry and search of the apartment were conducted

with knowledge of their illegality. The misconduct did not result from a good faith mistake.

C.

Appellant claims that the CSC erred in determining he read and approved a misleading report of the incident because he was not obligated to read the report for its accuracy, only to confirm it was completed. Appellant offers no support for this assertion. Moreover, he was clearly aware of the facts of the incident; this was not a situation where he was presented with an incident report containing facts with which he was unfamiliar. Either appellant failed to read the report of an incident in which he was a participant before signing his name to it, or he read the report and failed to correct, or ignored, the errors contained therein, which included the failure to mention that he had entered the apartment to conduct the search and the claim that G.H. had approached the officers while they were walking to the apartment. In addition, as noted above, the ALJ found appellant's testimony on this point, and the search in general, not credible. This finding is entitled to deference. H.K., 184 N.J. at 384.

We are satisfied the CSC's determination substantiating the charges against appellant relating to the warrantless search and the ensuing report was not arbitrary, capricious, or unreasonable.

D.

We turn to appellant's assertion that the CSC failed to consider a conflict of interest that tainted the reliability of the evidence against him. Specifically, he claims that Busciglio and City Manager Theodore Ehrenburg had interests that prevented him from receiving a fair hearing.

At the conclusion of the hearing before the ALJ, appellant (and the other officers) moved to dismiss the charges, asserting Busciglio and Ehrenburg had conflicts of interest. Appellant contended that Ehrenburg should not have participated in the internal affairs investigation because, at the time, Ehrenburg was a defendant in an unrelated federal lawsuit brought by three of the officers involved in these events. Appellant was not a plaintiff or involved in the federal lawsuit. In this case, Ehrenburg made the decision to charge and suspend appellant.

Busciglio was also named as a defendant in the federal lawsuit. In addition, he had previously been investigated and suspended as a result of an internal investigation conducted by Sybel. Appellant contended Busciglio and Ehrenburg had conflicts of interest that tainted the investigation of this case.

The ALJ denied the dismissal motions. She concluded "the City . . . and the [Internal Affairs] investigators did not violate the [Attorney General] [g]uidelines in any way that would warrant dismissal of the charges."

One of the bases for disqualification on conflict-of-interest grounds is an indirect personal interest, such as """when an official votes on a matter in which [the official]'s judgment may be affected."" Piscitelli v. City of Garfield Zoning Bd. of Adjustment, 237 N.J. 333, 352 (2019) (quoting Grabowsky v. Twp. of Montclair, 221 N.J. 536, 553 (2015)). An objective of conflict-of-interest laws "is to promote confidence in the integrity of governmental operations." Thompson v. City of Atl. City, 190 N.J. 359, 364 (2007).

Here, Busciglio was conducting an investigation. There was no conflict of interest for him to do so. However, appellant could and did argue Busciglio was biased against him as a result of the federal lawsuit and subsequent repercussions. The means of attacking a witness's credibility is through cross-examination. Appellant had that opportunity during his counsel's extensive cross-examination of Busciglio at the hearing. Ehrenburg did not take part in the actual investigation but testified at the departmental hearing where he was subject to cross-examination. Therefore, appellant was able to test the witnesses for bias, and he has not established he was denied a fair hearing.

E.

We turn to the issue of the imposed sanction of termination from service. Appellant asserts the penalty was arbitrary, capricious, and unreasonable because it was too severe, and "progressive discipline" was warranted since he had no previous infractions. He also argues other officers who were involved in the illegal search received a lesser or no penalty.

We give substantial deference to an agency's imposition of a disciplinary sanction. In re Herrmann, 192 N.J. 19, 28 (2007). We consider "whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." Id. at 28-29 (quoting In re Revocation of the License of Polk, 90 N.J. 550, 578 (1982)) (internal quotation marks omitted). "That standard gives the agency a wide berth of discretion." In re Hendrickson, 235 N.J. 145, 159 (2018). "Only a patently unreasonable sanction would" require a determination that the discretion had been abused. Ibid. We "ha[ve] no power to act independently as an administrative tribunal or to substitute [our] judgment for that of the agency." Herrmann, 192 N.J. at 28 (quoting Polk, 90 N.J. at 578).

"[A] police officer is a special kind of public employee" who "must present an image of personal integrity and dependability in order to have the

respect of the public." Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 206 (App. Div. 1997) (quoting Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965)) (holding that termination was the appropriate penalty for a police officer who went on an unauthorized vacation). Thus, the threshold for termination of a police officer is lower than for most other public employees.

In imposing the penalty of removal, the CSC stated:

> The illegal entry of a law enforcement officer into a member of the public's home is not acceptable and is deserving of a severe punishment. Such actions erode the public trust in the law enforcement community. Further, falsification of a record by a law enforcement employee is a very serious offense. Law enforcement officers are charged with properly maintaining and keeping accurate records. When a public employee falsifies a record, he or she erodes the trust that the general public places on the government to maintain accurate records.

Appellant asserts that progressive discipline should have been applied. The concept of progressive discipline can support "mitigat[ing] the penalty for a current offense" or "the imposition of a more severe penalty for a public employee who engages in habitual misconduct." Herrmann, 192 N.J. at 30-32. The former includes "downgrad[ing] a penalty for an employee who has a

substantial record of employment that is largely or totally unblemished by significant disciplinary infractions." Id. at 32-33.

However, progressive discipline need not be considered

> when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.
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> Thus, progressive discipline has been bypassed . . . when the employee's position involves public safety and the misconduct causes risk of harm to persons or property.
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> [Id. at 33.]

Our Supreme Court has stated "that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Carter, 191 N.J. at 484. "In matters involving discipline of police and corrections officers, public safety concerns may also bear upon the propriety of the dismissal sanction." Id. at 485.

In Vazquez, slip op. at 20, we affirmed the penalty of removal imposed on another officer involved in the warrantless search and in preparing the false and misleading incident report. Deferring to the CSC's expertise, we held that progressive discipline was not applicable because of the public safety position at issue and the erosion of "public trust in the law enforcement community"

resulting from the officer's behavior. Id. at 20-21. As we stated there, we conclude here that appellant's actions were sufficiently egregious "to warrant his removal from the police department." Ibid. Thus, the termination penalty in this appeal was not so disproportionate to the offense as to shock judicial notions of fairness. The CSC did not abuse its discretion in imposing termination as appellant's penalty.

Affirmed.