

State of New Hampshire
Inter-Department Communication

DATE August 9, 2021

FROM Colonel Nathan A. Noyes

AT (OFFICE) Director's Office

SUBJECT Disciplinary Action: Dismissal from State Service

TO Trooper Haden Wilber
MET

Trooper Wilber,

Per 1002.08(b) the Administrative Rules of the Division of Personnel, an appointing authority may dismiss an employee without prior warning for offenses such as, but not necessarily limited to, the following:

Per 1002.08(b)(7) "Violation of a posted or published agency policy or procedure, the text of which warns that violation of same may result in dismissal," in this case,

Professional Standards of Conduct Chapter 1 Rules and Regulations Sub-section 1.4.0 Obligations, Sub-section 1.4.8 Integrity which in part states: *No Division Member shall, under any circumstances, make any false official statement or intentional misrepresentation of facts. Any Division Member who becomes aware that another Division Member has made a false statement or intentional misrepresentation of facts shall, without delay, inform his or her Commanding Officer. Any Division Member who becomes aware that any person has provided false information to a superior, shall inform the superior as soon as possible.*

Professional Standards of Conduct; Chapter 1 Rules and Regulations Section 1.5.0 Performance Expectations which in part states: *Division Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Division Members shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Division. Unsatisfactory performance may be demonstrated by lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the employee's rank, grade, or position; the failure to take appropriate action on the occasion of a crime, disorder or other condition deserving police attention; or absence without leave. In addition to other evidence of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the Division.*

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Professional Standards of Conduct; Chapter 1 Rules and Regulations; Section 1.4.0 Obligations, Sub-Section 1.4.13 Division Reports which in part states: *Division Members shall submit all necessary reports in proper form, on time and in accordance with established Division Procedures. Reports submitted by employees shall be accurate. No employee shall knowingly enter or cause to be entered any inaccurate, false or improper information.*

Professional Standards of Conduct; Chapter 41-DA; Warrantless Searches which in part states: *Warrantless searches are considered per se unreasonable unless made pursuant to specific exceptions defined by the court. The New Hampshire Supreme Court has held that our state constitution provides greater protections than the US Constitution, therefore constitutional tests look first to the State Constitution, and then to the Federal Constitution only when it provides additional rights. Because of this, the Motor Vehicle Exception {1.2.3.c}, based upon suppositions adopted by the US Supreme Court that there is a "reduced expectation of privacy" in a vehicle and that vehicles are "readily mobile", does not exist in New Hampshire. State v. Sterndale, 139 N.H. 445 (1995). This does not mean that a warrantless search cannot be made of an automobile, it means that one of the other exceptions must exist.*

The following exceptions to the warrant requirement exist in New Hampshire:

1. *Exigent circumstances with probable cause*
2. *Incident to arrest*
3. *Inventory*
4. *Limited search for weapons (Stop and Frisk)*
5. *Community caretaking*
6. *Consent*
7. *Plain view*
8. *Administrative*

The Exclusionary Rule states that any evidence obtained illegally, no matter how incriminating, will generally be held inadmissible in any related criminal proceeding. Mapp v. Ohio, 367 U. S. 643 (1961) In the case of warrantless searches, the burden is placed upon the State to prove by a preponderance of the evidence that one of the recognized exceptions exists. Division members shall document in detail the facts and circumstances justifying the warrantless search.

For purpose of this chapter, the term "vehicle" as written shall also include boats and vessels.

This policy cannot possibly cover every situation that a Division member may face, but it does provide basic guidelines. Every Division member shall use good judgment when making warrantless searches and shall be prepared to justify the circumstances in each case.

Professional Standards of Conduct; Chapter 83-A; Management of Physical Evidence and Possessed Property which in part states: *Upon returning evidence to an owner or representative, the Trooper will document on the DSSP-104A, DSSP-20, or DSSP-48, the type of identification used by the recipient at the time of return. (i.e. driver license with the number of same, etc.); the final disposition of all physical evidence and possessed property, in any given case, shall be accomplished within six months of completion of all legal requirements in that case.*

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Professional Standards of Conduct; Chapter 1 Rules and Regulations; 1.13.0 Discipline, which in part states, "Any Division member found to have violated any provision of these Rules and Regulations may be subject to disciplinary action, up to and including dismissal from the Division of State Police."

In addition, Per 1002.08(b)(23) authorizes an appointing authority to dismiss an employee without prior warning for "violation of a law related to an employee's job duties."

In this case, the relevant facts are as follows:

On or about February 10, 2017, you made an arrest of Robyn White for a drug offense and, as a result, she was subjected to several body searches post arrest. Ms. White alleges that you fabricated evidence and conducted an illegal search and seizure, an illegal detention and a violation of bodily integrity.

On October 8, 2019, Robyn White, through her civil attorney filed a lawsuit in the United States District Court for the District of New Hampshire against you and other named and unnamed Troopers, Corrections Officers and medical staff.

On February 5, 2020, Ms. White, through her civil attorney, filed a second amended lawsuit in the United States District Court for the District of New Hampshire against you and other unnamed Troopers, Corrections Officers and medical staff.

The civil lawsuit alleges that Ms. White's civil rights were violated by the respondents as a result of her arrest by State Police on February 10, 2017 and as a result of subsequent actions against her during her pre-trial detention.

Specifically, Ms. White alleges that she is the victim of an illegal search and seizure, illegal detention, violation of bodily integrity, fabrication of evidence and denial of a fair trial under the U.S. Constitution, among other things.

After being notified of the second amended civil suit on or about February 5, 2020, State Police leadership forwarded Ms. White's complaints to the Attorney General's office for criminal review prior to initiating this administrative internal investigation.

After receiving the final close out letter from the Attorney General's Office dated November 30, 2020, indicating that the formal criminal review had been concluded, I then authorized Sgt. Justin Rowe and the office of the Professional Standards Unit (PSU) to commence your administrative internal investigation on December 8, 2020, and you were notified in writing of this investigation through your supervisor Lieutenant Mark Hall on that same date.

Since these allegations included possible integrity and/or civil rights violations, the Exculpatory Evidence Schedule protocol was followed, and potential EES notification letters were sent on

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December 8, 2020 to the Attorney General's office and other prosecutors who might have cases you were involved with, as well.

Based on this internal investigation the following is a timeline of relevant events and facts:

- You have been with the Division since November of 2012. Prior to that, you were employed with the Exeter, NH Police Department since August of 2009.
- You were assigned to the Mobile Enforcement Team (MET) on January 8, 2016 but still carried a Troop A radio call sign until April 14, 2017, when the MET team received their own unit radio call sign designations.
- On February 10th, 2017, you made a traffic stop on Ms. White for a moving violation (Jessica's Law) for not removing the snow from the vehicle and not based on drug intelligence. According to you, you received verbal consent to search Ms. White's vehicle and were assisted in this consent search by Tr. Locke, but you did not recall exactly where inside of the vehicle the drugs were located, and you did not include that information in your report.
- However, when interviewed, Tr. Locke recalled that when he had arrived on scene of the traffic stop to assist you with the arrest of Ms. White in February of 2017, he recalled seeing Ms. White standing outside of her vehicle and that you were just finishing up with the search of the vehicle. Tr. Locke's time at the scene was brief.
- You arrested Ms. White, and Tr. Locke assisted by transporting her to the Rockingham County Jail, as you were not able to do so due to having a K9.
- While Ms. White was being transported, you contacted the Franklin County Maine Sheriff's Office, since she was from that area of Maine, and spoke with Deputy Stephen Charles. You sent text messages to Deputy Charles writing, "*Hey, I stopped a girl from Phillis Maine. Robyn WHITE 9/27/75; went to mass and was heading north. I arrested her for basically residue but I think she's body carrying so she's being taken to jail. Off the record, her phone said she picked up a "good and a half" have you heard the term "good" up that way?*" The conversation continues about the drug investigation and doing a search warrant for Ms. White's cell phone. On a text message dated April 21, 2017 you made several more notable comments to Deputy Charles. You wrote: *DEA downloaded that phone. I have the entire PDF file. I will send everything to you and if you want the phone too I'll give you that. It's been busy and they did that a week or so back without me. Sorry to not have you down during it but I'll give you everything we got on cellebrite. I haven't even looked yet.*

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- At the arrival to the Rockingham County Jail, corrections officers were then verbally notified by you and Tr. Locke that you believed Ms. White was body carrying further drugs.
- Rockingham County Correctional Officers then transported Ms. White to the Strafford County Jail, where she was subjected to an X-Ray body scan. You received verbal notification from a male corrections employee that Ms. White's scans showed abnormalities, but you failed to record the employee's name in your report.
- You then added another felony charge against Ms. White, for delivery of articles to a correctional facility. At her bail hearing, her original \$250.00 cash bail was increased to \$5000.00 cash bail.
- Rockingham County Correctional Officers then transported Ms. White to the Hillsborough County Jail, where she was subjected to a urine drug test, which came back negative.
- At Ms. White's probable cause hearing, you agreed to drop the transportation of drugs in a motor vehicle charge and the delivery of articles to a correctional facility charge, as well as agreeing to reduce the cash bail back down to \$250.00, in exchange for the probable cause hearing being waived by the defense. You asked for an additional bail condition of Ms. White submitting to a second X-Ray body scan prior to her bail, as you still suspected she had drugs concealed in her body. The defense argued against a second body scan, but the judge ultimately ruled to add that condition in the bail orders.
- Rockingham County Correctional Officers then transported Ms. White to the Strafford County Jail, where she was subjected to a second X-Ray body scan. You received verbal notification from a female corrections employee that Ms. White's scans showed abnormalities again, but you failed to record the employee's name in your report.
- The Rockingham County Jail notes for Ms. White indicate that second body scan, per the bail conditions, showed no abnormalities. (However, as explained further below, it is believed that the date is incorrect in that note in the file.)
- You then applied for and received a search warrant for Ms. White's body search, 13 days after she had been detained, as you still believed she had drugs concealed in her body. She was then taken to the hospital, where a doctor performed both a vaginal and rectal exam of her. As a result of that exam, no drugs or foreign objects were found. After that exam, Ms. White was then released, as she had already posted the \$250.00 cash bail. No Search Warrant return was filed with the court of jurisdiction.

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- You drafted a search warrant to search Ms. White's cell phone. Initially you told PSU investigators that you never filed a search warrant for her phone, as your supervisor Lt. Hall instructed you not to file the warrant.
- After repeatedly asserting that you had not obtained a search warrant for Ms. White's cell phone, you then located and produced the signed cell phone search warrant, contrary to what you initially told PSU investigators. It was also learned that no search warrant return was ever filed with the court of jurisdiction.
- After you applied for a search warrant of Ms. White's cell phone, you retrieved the phone from Troop A evidence according to chain of custody records, and you do not recall where the phone is to this day.
- After removing the cell phone from Troop A evidence you were not sure to whom you gave the phone, or if you had the phone downloaded. However when confronted with investigative facts uncovered by PSU regarding text messages you sent to a Maine Sheriff's Deputy, you walked back your statement of having the phone downloaded. You stated you weren't sure who downloaded the phone, but if it was analyzed you would have possession of the PDF file of the download. You stated you did not, nor do you currently have the PDF download, which is contrary to what you stated in your text messages to the Maine Deputy.
- The final remaining criminal charge against Ms. White, the felony possession of drugs, was subsequently nolle prossed by the Rockingham County Attorney's Office after they reviewed the facts of this case and believed that a suppression of evidence argument would most likely be successful by the defense. They stated that you exceeded the scope of the original traffic stop and did not have reasonable articulable suspicion to ask to search Ms. White's vehicle; therefore, by the fruits of the poisonous tree doctrine, all other evidence subsequent to that would be inadmissible.

You were interviewed numerous times as part of this investigation. When questioned about the search of Ms. White's vehicle, you indicated Tr. Locke was present when asking for consent and you remembered Ms. White giving verbal consent. This is contrary to Tr. Locke's account in his interview on January 12, 2021. Tr. Locke stated that when he arrived on scene, he recalled seeing Ms. White standing outside of her vehicle and that you were just finishing your search of the vehicle. Tr. Locke's time at the scene was brief. Ms. White was taken into custody, and he assisted in transporting her to the Rockingham County Jail because you had a K9 cruiser. When interviewed you also did not recall exactly where inside of the vehicle the drugs were located and did not write it in your report.

In your first interview you indicated that after the arrest of Ms. White, you contacted the Franklin County Maine Sheriff's Office and Spoke with Deputy Charles, who you had met at a drug conference in Rhode Island 4 years ago. You said that it was common for you to follow up

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on drug arrests with local police departments on arrestees who live out of state. You confirmed that the info given to you by the Maine Deputy involved another person and not Ms. White, but you included the info in your report because drug dealers/traffickers share tactics with each other.

During the first interview, you stated that the standard bail practice in 2017 for Rockingham County was minimum \$250 cash only bail for felony drug possession, which was why Ms. White was taken directly to jail. You later clarified that might have only been Portsmouth District court guidance for I-95 arrests. When you arrived at the jail, you relayed your concerns to the jail because it is commonly known that jails do not want drugs coming into their jails. You did not remember any names of any jail guards you spoke with. You hinted to the jail that Ms. White had drugs on her, knowing they would order a body scan.

Rockingham County Jail had a scanner, but not a trained operator, which was why Rockingham County sent Ms. White to Strafford County, as theirs was operational. Rockingham County did her transport for the first scan. You stated that you received a copy of the scans in email. Although you were unable to interpret the scans yourself, you then added the new charge of delivery of articles to a correctional facility based on a phone call with a male guard at the Strafford County Jail, who said that the scan was positive. You stated that you did not remember to whom you spoke, and you did not put that information in your report.

During your first interview, you denied any fabrication of evidence as claimed by Ms. White's civil attorney and stated that you were going on what the jail told you about the positive scans. You stated that you did not know why Ms. White was transported to Valley Street Jail by the Rockingham County Jail and given drug tests. You stated that had nothing to do with State Police that you knew of. You claimed you had nothing to do with that and did not even know that it had happened.

At the Gerstein hearing, the parties agreed to nolle pros two of the complaints and to reduce the cash bail. (It was later discovered through the administrative investigation that the defense did not agree to the bail condition of the second scan, but the judge ended up ordering it.) You stated that Lt. Mark Hall was aware of this whole situation, so they agreed to nolle pros the "delivery of articles prohibited" charge and to reduce bail, since they could not prove that charge now because no drugs were found and it was not fair to her. You stated that both you and the defense attorney agreed to the bail condition of the extra scan. This is not true. The court audio recording from the hearing reflects that the defense was fighting that condition adamantly. The judge ultimately ordered the second scan as a bail condition after argument.

In your first interview, you were asked to provide your copy of your entire case file to the Professional Standards Investigator, which included the body scans from the emails. You indicated that after the second body scan, you spoke with a female guard, who told you it was a positive scan, and you stated that you asked her opinion. She allegedly told you that she thought the placement of the apparent object in the scan was indicative of someone placing something in

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their vaginal cavity. You did not remember whom you spoke with or when you spoke with them, and you did not put that information in your report.

Rockingham County Jail records in connection with the second body scan indicated that the body scans showed no abnormalities. These records indicate that the scan was performed in accordance with bail conditions. The records indicate that the date of the scan was February 10, 2017, the date of Ms. White's arrest, which appears to reference the first scan. However, since the first scan was not related to any bail conditions, the referenced date appears to be incorrect, and the records should have reflected the February 23, 2017 date of the second scan. You were unable to reconcile the Rockingham County Jail records' indication of 'no abnormalities' on the second scan with your interview statements that both scans had been positive, based upon conversations with corrections staff.

On February 23, 2017, the day Ms. White was brought to the hospital for a cavity search under the granted search warrant, you denied having any conversation with her prior to the hospital. You denied her allegations that the search was done with threatened verbal consent, rather than with a search warrant. You stated you were on I-93 doing a drug operation with NIU and DEA that day and were not present at the jail for any of that. You stated that you typed the warrant in your cruiser after consulting with Lt. Hall and getting his approval.

In discussing the serving of the search warrant upon Ms. White, you stated that TFC Alex Davis was assigned by Lt. Hall and a Troop A supervisor, since TFC Davis was the Route 101 patrol car that day. You stated that the request was for TFC Davis to just transport Ms. White to the hospital on your behalf. You stated that TFC Davis would have had to give Ms. White a copy of the search warrant. However, there was no record of TFC Davis doing so and no record that the search warrant return was filed. You stated that you did not recall if TFC Davis returned to you any information or paperwork after. You stated that TFC Davis called you afterward and verbally told you that nothing was found through the exam at the hospital. You further stated that you did not follow up with the hospital for any records of the exam.

Regarding the last charge being nolle prossed by the Rockingham County Attorney's Office, you denied having any verbal discussions with them and stated that you had only received a copy in the mail. This is not true. In speaking with the reviewing Rockingham County Attorney's Office- Attorney Aaron Dristiliaris, who was assigned to that case, he vividly remembered having a phone call with a Tr. Wilber, explaining why they (RCAO) were dropping the charges because of a suppression issue, and he remembered you (Tr. Wilber) disagreeing and being very upset and argumentative with him.

In your second interview on January 12, 2021 regarding Ms. White's cell phone seizure pending a search warrant, you confirmed that you drafted a search warrant on 3-31-17 to gather Intel from the cell phone on what happened to the drugs but were told by Lt. Hall not to pursue it because the case fell apart after the cavity search warrant came up negative. You stated that you never got it signed. This is not true. On March 23, 2021, after your second interview, you

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provided the Professional Standards Unit with a signed copy of a search warrant for Ms. White's cell phone signed by a judge on March 31, 2017.

You also stated you thought Ms. White's cell phone was seized from inside of her vehicle, not from her person. You stated that the common practice back then was if they (MET) made a drug arrest, they seized the phone and got a search warrant to gather drug Intel. You continued to say that you were trained to put the phone in airplane mode, place it in a plastic bag and then enter it into Troop A evidence. You stated that was the *ONLY* manipulation of the phone you did at that time.

You stated that you never asked Ms. White for consent to search her cell phone and that you had just seized it as you had described. You stated that as far as you knew, Ms. White's cell phone was still in the Troop A barracks Evidence. After these statements made by you during the interview, Sgt. Rowe of the Professional Standards Unit then showed you the text message conversation you had with the Maine Sheriff's Deputy on and around the time of Ms. White's arrest. Sgt. Rowe confronted you with the information contained within the text messages and provided you with a chance to answer truthfully.

You were shown the text messages provided by Deputy Charles which in part you wrote, *"Off the record her phone said she picked up a good and a half have you heard the term good up that way?"* Only after being confronted with the messages you then elected to change your response and confirm you had indeed looked in Ms. White's cell phone while searching her car. You stated, *"I was conducting follow up on her phone, I did look at it"*.

During this second interview, you denied that what you read in those text messages was the only reason you believed that Ms. White had been body carrying drugs and why you told that to the jail. You stuck with your original statement that her behavioral indicators and her story led you to believe she was body carrying, based on your training and experience. You denied using that information from the phone to further your investigation, and you never put that information in your report or search warrant affidavit. You stated, *"I would have waited to download the phone and then use that information if that makes sense"*. During the interview, your representative, Attorney Marc Beaudoin asked you if that was a cursory examination or if you went through the phone in some detail? You responded: *"It was a cursory when I clicked on her phone in messages the first text was that she had picked up drugs. It wasn't like I downloaded her phone and used all that information towards probable cause because in my report none of that information is used. Had my search warrant been signed I would have used all that information"*. You stated that all of this transpired while you were waiting for the wrecker and after Ms. White had been transported from the traffic stop by Tr. Locke.

When asked what a "cursory search" meant to you, you replied, *"What I wanted to do, I wanted to make sure that I wasn't going down the wrong path on my drug investigation. I wanted to concrete myself, my own mental state that I wasn't going down the wrong road of the drug investigation. If she goes to jail and if scanned then I have probable cause and ultimately at the*

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end of my investigation the phone will be downloaded and that would be additional information that would be added onto the search warrant. Most of the phone downloads we do are at the end of the investigation, just supportive drug information. I guess the difference between that is intelligence base versus probable cause. When we look in this phone, when we download those, the majority of the time these phones are not even used in court. They're seized and that information is shared throughout the drug community. As far as me looking through her phone, should I have done that? No, I agree with you but I did and it's over with and I didn't use any of that information towards probable cause, it didn't have anything to do with the case at the time. Ultimately I did a search warrant I wrote one up and I was told by my supervisor to let it go, we didn't find the drugs, where they went who knows. I have no clue where they went. So my plan was to do the search warrant to show that there was evidence on the phone and to ultimately concrete that. Most of the time that we do these phones it's for intelligence and even our de-briefs that we do, if we do a celebrite download, celebrite downloads we never release as part of discovery, they're intelligence based only. At no point was I going to use that information and put it in a police report without a search warrant. If that makes sense".

During this second interview, your text messages and content was discussed further. You sent texts to the Maine Deputy about dumping her phone. Your February 21, 2017 text stated: *"I'm gonna dump her phone and will let u know when that done."* Your March 14, 2017 text stated: *"Still working on the warrant- were slow as hell down here."* Your April 21, 2017 text stated: *"DEA downloaded that phone. I have the entire PDF file. I will send everything to you and if you want the phone too I'll give you that. It's been busy and they did that a week or so back without me. Sorry to not have you down during it but I'll give you everything we got on cellbrite. I haven't even looked yet."* When confronted with these text messages, you responded that you didn't know why you said that to the Maine Deputy and that you had probably said those things to him because that was what your original plan of action had been. You also made the statement that this text message must have been a premature text. This reasoning would not make sense. You sent the above statements on April 21, 2017, which is over two months after the arrest date. This was clearly not part of the "original plan of action," nor was it a "premature text." You stated that to the best of your knowledge you never gave Ms. White's cellphone to the DEA, and it was never downloaded, because if it had been downloaded, you would have saved the PDF in your computer under Ms. White's electronic case file. You stated that when you checked your electronic case file for Ms. White there was no such PDF saved there.

When the PSU investigator shared with you his belief that your search of Ms. White's cell phone was an illegal search and asked you for your legal reasoning supporting your interview comments regarding how "we", you and MET, "do this all time", that is "dumping phones for Intel", you stated: *"I agree with you and taking a step back, the Intel, first off the phone was to my recollection which I can ask around, was never downloaded. Why I sent that text that it was downloaded, maybe DEA or somebody sent me a text or seized that phone and said hey we download the phone. I did not authorize that phone to be downloaded and to my recollection it was not downloaded. Why that text message was sent I do not know. But at MET and for in drug investigations we don't download phones without a search warrant, it doesn't happen. Do we-*

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have I looked at a phone and shared and you know if we see a phone number on there and we get somebody trafficking drugs and we see a phone number on there that says that hey um where are you right now or hey are you bringing my drugs here, will we write that phone number down and then de-conflict it, yes we will. That's, that's, how I've been trained. Um, to further investigations. That there's Intel information that doesn't get shared and then there's their criminal side. And in this particular case um me looking on her phone was to share her information for Intel based, um it wasn't used in an affidavit, it wasn't used in our report at any point. If I did do a download it was with a search warrant and I never did one because I never had a search warrant signed. Um, so as far as I'm aware there's no, there should not be a download for that phone and if there is then I will try to find it will gladly hand that over. Um, but it's to my recollection there was never a download done because I never had a search warrant signed because I was told to not do one".

When you were asked if you recalled handing her phone over to the DEA, you stated: *"I, I don't recall ever handing that phone to somebody from DEA. Again, this is me, reading the text 5 years later and trying to remember what happened".* During your interview regarding Ms. White's cell phone, you didn't recall accessing her phone for the purposes of downloading it and you remembered signing the phone over to Troop A as Evidence, which was the last time you saw/dealt with the cell phone. This is not true. According to Troop A evidence records, the phone was signed back over to you on March 21, 2017, which falls between your two separate text messages to the Maine Deputy and would line up in the correct order of an investigatory phone extraction process:

- (1) February 21, 2017 you indicate in text you are going to dump the phone.
- (2) March 14, 2017 you indicate in text you are still working on the warrant.
- (3) March 21, 2017 the phone gets signed back over to you from Troop A for the search.
- (4) March 31, 2017 you apply for and are granted a search warrant on the cell phone.
- (5) April 21, 2017 you indicate in text messages that the phone was dumped by the DEA and you have the entire PDF file.

During your interview, you were asked if the phone had been turned over to the DEA, whether it would have been the NH or MA field office/s that did the extraction, and you stated, *I'm not sure, it could be anybody, it could be a TFO, it could be a local PD who had the phone, I don't recall. It's tons of agencies that have cellebrite, I don't know who did that. I remember turning in the phone and that's it. And if, if I had that PDF, I clearly would have turned it over so that it would show evidence of drug trafficking. But I don't have it".*

During your interview, you asserted that (1) someone else ended up getting the cell phone to the DEA but that it wasn't you, and (2) that the DEA downloaded it on their own because you told them that you'd be getting a search warrant. When confirming this information with the Assistant Supervisory Agent in Charge (ASAC) Ron Bonaventura, he confirmed DEA had no search request record of Ms. White's cell phone from you or anyone else.

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You were also asked in the interview (by Attorney Beaudoin), if you had turned over your entire file regarding Ms. White's case. You stated yes. A follow up question was asked regarding the PDF cell phone dump. Specifically, if you had possession of that file and if you did, would you have turned it over to Sgt. Justin Rowe during the Administrative Investigation. You replied, "Ya, that's all I have, for anything that's associated with the WHITE case". This is not true. On March 23, 2021, a month after this interview, you provided Sgt. Rowe with a signed copy of a search warrant for Ms. White's cell phone, which had been signed by a judge on March 31, 2017. The existence of the signed search warrant goes directly against your prior statements that you did not get a search warrant signed and if you had, it would have been included in the case file and turned over to Sgt. Rowe.

You also indicated during your interview that in 2017 when conducting phone searches on cases you would have only gone to the DEA or the State Forensic Laboratory for a cell phone extraction, but neither location reported having received a phone or cell phone request for Ms. White's phone. The state laboratory only reported having a single piece of drug evidence attached to case number A17-02227.

You stated in your interview that neither the MET unit nor its individual current or past unit members download cell phones without a warrant nor do you download cell phones without a warrant. Furthermore, you stated you do not have any personal knowledge of a current or former MET team member who conducts these same type of cursory searches that you conduct. You stated you were never trained by the State Police nor trained in any drug school on cursory cellphone searches. You estimated you have conducted these cursory searches in your career less than five times and the last cursory search you conducted of a cell phone was Ms. White's cell phone on February 10, 2017.

Per 1002.08(d) requires the appointing authority to offer to meet with the employee to discuss whatever evidence which the appointing authority believes supports the decision to dismiss the employee, offer to provide the employee with an opportunity to refute the evidence presented by the appointing authority and document in writing the nature and extent of the offense. A meeting was held with you on August 6th, 2021 at or about 9:00 a.m. in my office to discuss the reasons supporting the decision to dismiss you from your position. Present for this meeting was me, you, Attorney Marc Beaudoin and Lieutenant Stephen Sloper.

During the meeting you were given the opportunity to provide me with information that would persuade me to pursue an avenue other than dismissal. On your behalf, Attorney Beaudoin indicated you read and understood the two documents that you were served with the day prior. Those documents being, the *Notice of Intent to Dismiss* and the draft document of *Disciplinary Action: Dismissal from State Service*. Attorney Beaudoin indicated that one of the main concerns you have is the allegation of the integrity violation and that you adamantly deny you intentionally misrepresented any facts or circumstances during the investigation. Second, at the time of Ms. White's roadside detention and subsequent search of her phone, you believed you were acting within the law at that time. Otherwise, you were not prepared to refute the

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evidence supporting your dismissal and requested additional time to do so. Ultimately, we agreed that you would have until noon on Monday August 9, 2021 to provide me with all your evidence and arguments that would persuade me to change my mind regarding your dismissal and inclusion on the EES.

After careful consideration of all the relevant facts and issues, including your written submission dated August 9, 2021, I am not persuaded to change my opinion and conclude there are sufficient grounds to sustain the disciplinary charges set forth below. This investigation has revealed disturbing facts regarding your investigatory habits and overall integrity as a law enforcement officer. Your personal conduct as outlined herein reflects negatively upon your character, the law enforcement profession, and is an embarrassment to you, your colleagues and the Division of State Police. Professional integrity is one of the most fundamental and valuable qualities that a State Trooper must possess. Your conduct in particular calls yours into question, and these investigative facts are something that I cannot overlook. As a State Trooper and Peace Officer in the State of New Hampshire, it is your personal integrity that instills, promotes and maintains trust with the public, and in turn the Division of State Police. It is my job to hold my employees accountable for conduct that reflects a lack of personal integrity, the lack of which brings not only disrepute to the individual, but also to the organization as a whole. You alone are in control of your integrity, both by your actions and how you represent yourself. This investigation has exposed your lack of integrity, as well as your unwillingness to apply the law within the correct legal parameters to which you are allowed. As a result, you have lost my trust and confidence.

Your effectiveness as a law enforcement officer and witness has been compromised beyond repair. Your lack of honesty violates the Code of Ethics and Vision Statement of the New Hampshire State Police and would necessitate disclosure pursuant to the *Exculpatory Evidence Schedule Protocol* and RSA 105:13-b, which could detrimentally affect your ability to prosecute criminal cases.

After thoughtful consideration regarding your conduct, it is my determination that you have failed to perform properly as a Division member while employed as a NH State Trooper, from whom I expect the highest personal and professional standards, as do the citizens of this great state. You have exercised poor judgment repeatedly, not only during the original incident but also during this investigation. Your inability to exercise sound judgment, professionalism, accountability, integrity as well as respect for the law is inexcusable. As a result, I have carefully considered all the evidence before me. Your actions constituted violations of Division Policy and Personnel Rules and I believe that you deliberately lied and intentionally misrepresented facts during this investigation. Therefore, I conclude that your actions violated the following rules and policies:

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Administrative Rules of the Division of Personnel, Per 1002.08 Dismissal:

Per 1002.08(b): An appointing authority may dismiss an employee without prior warning for offenses such, but not limited to, the following:

Per 1002.08(b)(7): Violation of a posted or published agency policy or procedure, the text of which warns that violation of same may result in dismissal, namely Professional Standards of Conduct, Chapter 1 Rules and Regulations, Section 1.4.0 Obligations, Sub-Section 1.4.13 Division Reports, Sub-section 1.4.8 Integrity; Professional Standards of Conduct, Chapter 1 Rules and Regulations, Section 1.5.0 Performance Expectations; Professional Standards of Conduct, Chapter 41-DA, Warrantless Searches; and Professional Standards of Conduct, Chapter 83-A, Management of Physical Evidence and Possessed Property;

and

Per 1002.08(b)(23) "violation of a law related to an employee's job duties.." In this case, the violation of law pertains directly to Amendment IV of the U.S. Constitution, which states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" and Part I, Article 19 of the New Hampshire State Constitution, which states, "*Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued; but in cases and with the formalities, prescribed by law;*

Based upon the foregoing, you are hereby **DISMISSED FROM STATE SERVICE EFFECTIVE IMMEDIATELY.**

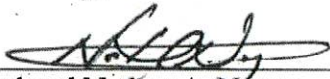
In accordance with Per 1002.08(e)(2), you may appeal this dismissal to the Personnel Appeals Board within fifteen calendar days of the date of this letter if you can allege facts sufficient on their face to support an allegation that your dismissal was arbitrary, illegal, capricious, or made in bad faith. To be considered, your appeal must be made in writing and must be received by the Appeals Board at 25 Capitol Street, Concord, New Hampshire, 03301, within fifteen calendar days of the date of this letter. Copies of the Board's procedural rules are available on-line at <http://www.gencourt.state.nh.us/rules/per-a.html>, or in hard copy through the Division of Personnel.

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Please sign and date this letter in the space indicated below. As noted below, copies of this letter will be placed on file here in the agency and in your personnel file at the Division of Personnel. Pursuant to Per 1002.08(f) of the Rules of the Division of Personnel, "An appeal filed under the provisions of RSA 21-I:58 shall not stay the dismissal decision". If you take exception to this dismissal, you may note that as well. However, a notation that you take exception to the dismissal shall not be deemed an appeal or a request for informal settlement. Your signature does not reflect either your agreement or disagreement with the contents of this letter, simply the fact that you have received the letter on the date indicated. Failing to sign the dismissal will not affect its validity, nor will it delay the deadline for appeal.

I am also taking this opportunity to advise you that I intend to submit your name for inclusion on the Exculpatory Evidence Schedule (EES) in accordance with the New Hampshire Attorney General's Exculpatory Evidence Protocol and Schedule.

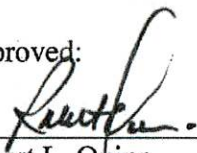
Sincerely,



Colonel Nathan A. Noyes
Director, NH State Police

08/09/21
Date

Approved:

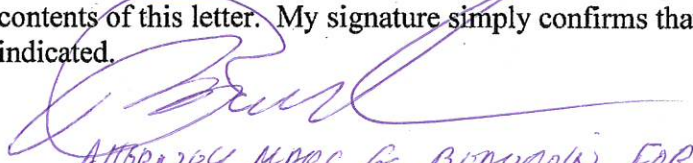


Robert L. Quinn
Commissioner

8/9/2021
Date

Acknowledgement of receipt:

My signature below does not indicate either my agreement or my disagreement with the contents of this letter. My signature simply confirms that I have received this letter on the date indicated.



ATTORNEY MARC G. BERARDINO FOR
Trooper Haden Wilber ID# 1168

8/11/2021
Date

cc: Department of Personnel
Department of Safety H/R File
Division of State Police Personnel File
PSU20-0270