

INDEX NO. 005898/2016

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 41 - SUFFOLK COUNTY

***P R E S E N T :***

Hon. JAMES F. QUINN  
Acting Justice of the Supreme Court

**DECISION AND ORDER AFTER TRIAL**

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GARRETT LAKE,		WICKHAM, BRESSLER & GEASA, P.C.
	Petitioner,	Attorneys for Petitioner
		13015 Main Road
		P.O. Box 1424
- against -		Mattituck, New York 11952
TOWN OF SOUTHOLD,		DEVITT SPELLMAN BARRETT, LLP
	Respondent.	Attorneys for Respondent
		50 Route 111
		Smithtown, New York 11787
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Before this Court is an Article 78 proceeding, which originated by the filing of a Petition on May 19, 2016 as a result of the respondent's termination of the petitioner as a probationary Police Officer for the Town of Southold four (4) days prior to the end of his probationary status.

Petitioner was hired by the respondent on November 24, 2014 and claims he was illegally terminated in retaliation for arresting two (2) politically connected individuals in the community.

The petitioner claims he was an exemplary officer with the most DWI arrests and winner of the Top Cop Award but was terminated for ancillary political reasons.

In particular, petitioner alleges that on July 18, 2015 John Helf, Sr., the Vice Chairman of the Southold Town Republican Party, interfered in Lake's investigation of a DWI arrest involving a fatality of several young women with one Stephen Romeo, the driver of a truck that Helf knew. He also alleged that the pretext of his termination was also the arrest for a DWI of an Assistant Fire Chief for the Jamesport Fire Department.

The respondent terminated the petitioner with no reason stated, which it is entitled to do during the probationary period. It became apparent during the course of these proceedings that the petitioner was terminated by and at the recommendation of Police Chief Flatley allegedly for being overly aggressive in his vehicle and traffic stops as a prelude to conduct search and seizures, for DWI and narcotics arrests.

On July 17, 2017, Hon. William G. Ford rendered a written Decision without a formal hearing, dismissing the Article 78 proceeding and stating that "judicial review of the discharge of a probationary

employee is limited to whether the determination was made in bad faith or for the other improper or impermissible reasons...” “Petitioner has failed to sustain his burden of demonstrating, by capable and competent proof, a triable issue of fact that his dismissal from probationary employee status was motivated by illegal, impermissible or unconstitutional political motivation or retaliation...” The Court concluded, “viewing the administrative record objectively, ample support exists for a reasonable and rational determination that Lake did not take to counseling and retraining and did not perform up to respondent’s standards and as a result he was terminated before the expiration of his probationary period”.

On appeal, the Appellate Division, Second Department reversed the Decision of Hon. William G. Ford on December 30, 2020, stating as follows:

“ORDERED that the judgment is reversed, on the law, on the facts, and in the exercise of discretion, with costs, the petition is reinstated, that branch of the petitioner’s motion which was to compel the disclosure of certain video recordings is granted to the extent that the Town of Southold is directed to disclose all video recordings that are referenced in its answer, the order dated November 17, 2016, is modified accordingly, the order dated July 17, 2017, is vacated, and the matter is remitted to the Supreme Court, Suffolk County, for further proceedings consistent herewith.

Since Lake submitted sufficient evidence to raise a triable issue of fact as to whether the reasons put forth by the Town were pretextual, the Town was not entitled to a summary determination on the petition (*see* CPLR 409[b]; *Watson v. Emblem Health Servs.*, 158 AD3d 179, 184-185; *Delrio v. City of New York*, 91 AD3d 900, 902; *see also* 3 Weinstein-Korn-Miller, NY Civ. Prac: CPLR 409.03). To the contrary, the record presented triable issues of fact as to whether Lake’s employment was terminated in bad faith for reasons unrelated to his job performance (*see Matter of Robinson v. Riccio*, 194 AD2d at 425; *Matter of Miciotta v. McMickens*, 118 AD2d 489, 491; *Matter of Reeves v. Golar*, 45 AD2d 163, 165; *Matter of Ramos v. Department of Mental Health Hygiene of State of N.Y.*, 32 AD2d 925, 925; *Matter of Maynard v. Monaghan*, 284 App Div at 283-284; *Matter of Silverman v. Taylor*, 270 App Div 1040, 1040; *cf. Matter of Cipco Boarding Co., Inc. v. Town of Hempstead*, 164 AD3d 1235, 1236). Under these circumstances, the matter should be remitted to the Supreme Court, Suffolk County, for an immediate trial (*see Matter of Weslowski v. Vanderhoef*, 98 AD3d 1123, 1131-1132).

We also agree with Lake’s assertion that the Supreme Court should not have denied that branch of his motion which was to compel the disclosure of the video recordings that were reviewed by Chief Flatley. Chief Flatley averred that he had determined that Lake had conducted unlawful stops and searches based upon his review of those videos. Given the fact that those videos were affirmatively relied upon by the Town in its answer to show that Lake’s employment was terminated due to his poor performance, the Town’s present contention that those same videos are now irrelevant and unnecessary to the issues presented in this proceeding rings hollow. Inasmuch as those videos were relied upon by a party in the pleadings, they were “necessary to the consideration of the questions involved” in this proceeding (CPLR 409[a]). Under the circumstances, the court improvidently exercised its discretion in denying the subject branch of Lake’s motion to the extent that he sought disclosure of the video recordings that are referenced in the Town’s answer (*see Matter of Georgetown Unsold Shares, LLC v. Ledet*, 130 AD3d 99, 106-107; *Matter of Lonray, Inc. v. Newhouse*, 229 AD2d 440, 44-441; *see also Matter*

*of Shollenberger v. Malara*, 70 AD3d 705, 706; *cf. Matter of City of Glen Cove Indus. Dev. Agency v. Doxey*, 79 AD3d 1038, 1038).

CHAMBERS, J.P., AUSTIN, MILLER AND WOOTEN, JJ., concur” (*Matter of Lake v. Town of Southold*, 189 AD3d 1588, 140 NYS3d 95 (2d Dept. 2020)).

Based upon the Appellate Division’s Decision, this matter was assigned to the undersigned whereupon the Court set this matter down for trial on October 23, 24, 2023, and November 8, 9, 13, 14, 15 and 16, 2023.

On the first day of trial, upon discovery that the respondent was going to introduce more videos in evidence in addition to the seven (7) videos tendered to Justice Ford and the Appellate Division, the petitioner made an oral motion supported by case law to preclude the additional videos. The Court requested proof of what was tendered to the Appellate Division to which respondent had several days to respond, and after considering all the arguments of both counsel, rendered the following Decision and Order:

“Before this Court is an Article 78 proceeding, which originated on May 19, 2016 and which terminated the petitioner’s probationary employment as a Police Officer with the Town of Southold.

The petitioner’s proceeding was dismissed by Hon. William G. Ford by way of a Decision dated August 30, 2017. The petitioner appealed to the Appellate Division, Second Department. In the Appellate Court’s Decision the Appellate Division noted that the Supreme Court directed the Town to produce a copy of the videotapes that petitioner Garrett Lake requested for an *in camera* review. The Court concluded the videos were not relevant.

The Appellate Division reversed and sent the matter to Supreme Court for further proceedings consistent with the Court’s proceeding.

The Decision specifically states:

“We also agree with Lake’s assertion that the Supreme Court should not have denied that branch of his motion which was to compel the disclosure of the video recordings that were reviewed by Chief Flatley. Chief Flatley averred that he had determined that Lake had conducted unlawful stops and searches based upon his review of those videos. Given the fact that those videos were affirmatively relied upon by the Town in its answer to show that Lake’s employment was terminated due to his poor performance, the Town’s present contention that those same videos are now irrelevant and unnecessary to the issues presented in this proceeding rings hollow. Inasmuch as those videos were relied upon by a party in the pleadings, they were “necessary to the consideration of the questions involved” in this proceeding (CPLR 409[a]). Under the circumstances, the court improvidently exercised its discretion in denying the subject branch of Lake’s motion to the extent that he sought disclosure of the video recordings that are referenced in the Town’s answer (*see Matter of Georgetown Unsold Shares, LLC v. Ledet*, 130 AD3d 99, 106-107; *Matter of Lonray, Inc. v. Newhouse*, 229 AD2d 440, 44-441; *see also Matter of Shollenberger v. Malara*, 70 AD3d 705, 706; *cf. Matter of City of Glen Cove Indus. Dev. Agency v. Doxey*, 79 AD3d 1038, 1038).”

In a very non-typical manner the Appellate Division specifically requested the videos to review prior to its determination. The respondent sent the Appellate Division seven (7) videos, not more, not less.

The trial of this matter started on October 23, 2023 and on the day of trial the respondent is attempting to add additional videos, which were not previously tendered to the Appellate Division and Justice Ford, and not tendered to the petitioner's counsel until the day of the trial.

Petitioner objects to these introductions as being untimely and outside the scope of the identifiable dates of the pleadings.

Respondent argues it tendered a list of the dates of all the video recordings but admits it did not realize it did not send the additional videos, and that Chief Flatley alluded to other videos in the pleadings.

The question this Court has is that if this was truly a video of an event that the Chief relied upon in his determination to terminate the petitioner, why didn't he turn that over to the Appellate Division or the underlying Court when requested.

This Court is of the opinion that this back door attempt to expand the basis of the termination is outside the scope of the original pleading and certainly outside the scope of the underlying proceeding.

Furthermore, the respondent's attempts to give this alleged discovery seven (7) years after these proceedings have commenced is certainly prejudicial to the petitioner, and is beyond dilatory.

Accordingly, this Court hereby precludes the introduction of any other videos supplied by the respondent other than those supplied to the petitioner and the Appellate Division pursuant to CPLR §3126. See also *Ward v. Mehar*, 264 AD2d 515, 694 NYS2d 726 (2d Dept 1999).

The foregoing constitutes the *Decision* of this Court.”

### TRIAL TESTIMONY

The trial of this matter was conducted on October 23, 24, 2023, and November 8, 9, 13, 14, 15 and 16, 2023. The attorneys were given thirty (30) days to submit post trial simultaneous legal briefs regarding any and all legal arguments.

The first witness called by the petitioner was the petitioner, Garrett Lake.

Mr. Lake graduated from Mattituck High School, and received an Associate's Degree from Suffolk County Community College in Criminal Justice. He holds credentials as an EMT. He scored 95 on the police exam, successfully graduated from the Suffolk County Police Academy, and was employed by the Town of Southampton as a part-time Patrol Officer.



The petitioner testified that he could not secure a full-time position with Southampton because he was not a resident. He received no complaints while a member of the force.

Mr. Lake started with Southold in and around November 18, 2014 as a probationary Police Officer, which probationary period ran until in or around May 18, 2016.

He testified he completed his field training early because of his prior experience as a part-time Patrol Officer with Southampton.

He was assigned Sector 805, which is the second half of Mattituck, doing patrol work. He worked three (3) different shifts - 8am-4pm; 4pm-12am; 12pm-8pm - which was based on seniority. Accordingly, he commonly worked the 4pm-12am and 12pm-8pm shifts.

Petitioner testified that Southold put in for DWI grant money, which was awarded, and he received approximately 30-40 shifts.

He testified his immediate supervisors were Sgt. Perkins and Tom Hoodard but he rotated through Highway Patrol, Drug Task Force and Crew Unit.

At this time, reference was made to petitioner's Exhibit 1, which was stipulated into evidence, which was his performance evaluation filled out by Sgt. Perkins and signed off by Chief Flatley and dated March 1, 2016. A review of the evaluation shows that it was a positive review and that according to the Sergeant's evaluation, Officer Lake met or exceeded standards in all categories he was rated. All the commentary was positive.

The focus of the petitioner's testimony then shifted to DWI arrests. The petitioner made over forty (40) arrests. Petitioner's Exhibit 4 was referenced (also stipulated into evidence), which are excerpts of Police Procedures. Particular attention was made that the manual directs that DWI arrests are mandatory, not discretionary.

Petitioner testified that he had no evidence suppressed and none of his arrests resulted in dismissal. He received no complaints for his DWI arrests.

He said he was nominated as Officer of the Year and received the Top Cop award for the most DWI arrests. He indicated he received one (1) complaint by Mrs. Beatrice Freeman, a woman who was a resident of a known drug house in Greenport. Petitioner indicated he pulled her over for a license plate unlit and performed a search and found marijuana. His Sergeant reviewed the arrest and found the complaint was unfounded.

Chief Flatley spoke to him about the number of his DWI arrests and indicated he should not be so aggressive in his search tactics. However, Chief Flatley did not tell the petitioner not to make DWI arrests.

The Chief also indicated he was getting pressure from the Town Board.

The petitioner allegedly requested additional training in the drug and alcohol training program because he did not feel confident after his conversation with the Chief.

Allegedly, the Chief stated the Board in executive session commented, "We don't want an aggressive cop here". Petitioner asked his Chief, "Do I need to contact my P.B.A. representative?" Flatley indicated, "No, just make good, solid arrests".

Petitioner also indicated that Chief Flatley was upset with him for disclosing the content of their private conversation to Sergeant Perkins.

He then indicated he started getting denied DWI tours.

Then the inquiry turned to the Consolino arrest. The petitioner indicated he sat parked down the block from a known drug house in Greenport. He knew one of the occupants had a revoked license and saw her driving to the house, and she allegedly had tinted windows. He pulled her over and saw needle caps in plain view as a basis to request a search of the car. Petitioner alleges the occupant gave permission for the search and a small amount of drugs was found, and she was arrested.

Petitioner indicated that the Chief upon review was unsure if there was sufficient probable cause. Petitioner stated the defendant pled out and there was no challenge to the search.

The petitioner indicated he knew of no other problems until one of his last days at work when a car with tinted windows pulled out in front of him and he then initiated a traffic stop. He stated that he smelled marijuana which the Officer claimed at the time gave him the right to search the entire vehicle. He said the driver admitted to having pills in her handbag but no prescription bottle.

Officer Lake spoke with Chief Flatley who indicated he had two (2) Town Board members calling the Chief about the arrest. The arrest occurred in front of the occupant's child in broad daylight in a popular shopping center. The petitioner's microphone was not working, only the video.

The Chief and petitioner disagreed as to the probable cause of the arrest.

"The odor of marijuana does not get you into the car," Officer Lake stated Chief Flatley told him. The petitioner insisted the vehicle exclusion law gives him the probable cause. He was confident in the arrest. He complained that he did not receive training in Southold but received continuous training in Southampton. Mr. Lake complained he received no written memos from the Chief.

Reference was made to petitioner's Exhibit 9 in evidence, a termination memo from the Town Board addressed to the petitioner and dated May 19, 2016, four (4) days before his probation ended.

The Chief indicated the Board did not want an overly aggressive officer.

Petitioner's testimony then switched to complaining about the equipment the Town provided, which was always breaking down. Cars were old, microphones only lasted fifteen (15) minutes, constantly losing power. He said he was constantly reaching out to Tom Zachery, the "I.T. guy". He was allegedly told by his Supervisor to complain directly to the I.T. Department about equipment failure.

Copies of petitioner's records were placed in evidence (Exhibits 14-18). Tom from I.T.'s number was (631) 879-1553. The records indicate the petitioner called Tom Zachery numerous times over several months.

The testimony then addressed the arrest of Mr. Romeo and an accident which resulted in fatality, killing four (4) young women.

Petitioner testified that he was put on traffic control by Lt. Genus where he was eventually relieved by the local fire department.

Lt. Genus lost track of the driver of the truck (Mr. Romeo), which caused the accident, and directed petitioner to find him.

Petitioner indicated he jumped the fence but apprehended the driver and brought him back to the scene of the accident.

Mr. Lake alleges that John Helf, Sr., also a local volunteer fireman who happens to be Vice-Chairman of the Southold Republican Party, and who allegedly knows the driver Mr. Romeo, was at the scene. When petitioner told Lt. Genus he smelled alcohol on Mr. Romeo, Mr. Helf allegedly stated, "You don't smell alcohol on him, you smell it on me" and "You don't have to go this route".

Lt. Genus told Mr. Helf to leave the area and directed the petitioner to perform a field sobriety test. Mr. Romeo failed the test and was subsequently arrested and charged with a DWI.

Petitioner accused Mr. Helf of interfering because Mr. Romeo was a local boat mechanic and that he worked on Helf's boat as well as other members of the Republican Party, including the District Attorney, but could not confirm this.

The testimony of the petitioner then addressed the arrest of the Jamesport Fire Chief after a certain parade in Greenport. Petitioner was advised that a fire department truck was involved with a motor vehicle accident striking some D.O.T. signs and then leaving the scene. While driving he passed the truck and noticed that the windshield and front end were destroyed.

Petitioner indicated there were problems in the past with alcohol and firemen after parades.

He pulled the truck over in a poor spot and then directed the driver to move the vehicle to another location. Petitioner performed field sobriety tests which the driver failed and therefore was placed under arrest for DWI. The driver's brother tried to pull him out of the squad car but he eventually succumbed to the arrest. He alluded, "there was talk that the Republican Party was unhappy about the Chief being arrested". But the source of the commentary was not disclosed.

Petitioner indicated that after he was terminated he started applying to other police agencies on Long Island - Long Beach, Ocean Beach, East Hampton, Sag Harbor - without success.

Petitioner then began introducing the seven (7) videos they were provided by the respondent starting with the Romeo video of July 9, 2015.

In the first video Petitioner identified the driver, Mr. Romeo, Mr. Helf, Sr. of the Southold Fire Department off to the side, and where he then performed a field sobriety test, which Mr. Romeo failed and subsequently registered .0769 at the hospital.

The second video involved an arrest in Mattituck where petitioner recognized a known drug user, shut his lights off trying to evade him, who then allegedly blew through a red light.

Petitioner stated that the driver was driving over 100 miles per hour with a child in the car. The car was abandoned in a field but the driver was apprehended and his car was searched based on the high speed. The Sergeant was called to the scene and a search of the car disclosed one-half (1/2) a pound of marijuana, where the driver was charged with intent to sell and child endangerment.

The third video was the Mrs. Freeman arrest. Mrs. Freeman allegedly had a right side of her tail light out, went into the left lane, and made an improper turn. She was pulled over and subsequently charged with a DWI, to which she eventually pled guilty.

The fourth video was in February 2016 and this was the arrest of the Jamesport Fire Chief.

Petitioner was radioed that a Fire Department vehicle came into contact with three D.O.T. signs and the front of the vehicle was all broken up, and to be on the lookout for same. Greenport had a parade that day and the petitioner had indicated that "they" had problems in the past after parades with intoxicated Fire Department members.

Petitioner saw the Fire Department vehicle with no front windshield and pulled it over. The Fire Chief and Commissioner were in the car so he called his Sergeant. The pull-over was in a poor spot and he told the driver to move to a parking lot out of the roadway for everyone's safety. Petitioner's microphone was broken in his car, so there was no audio.

His Sergeant told him to treat it as any other DWI, so the petitioner did a field sobriety test and then charged the driver with a DWI. The driver's brother attempted to pull his brother out of the back of the squad car but the Officer threatened to place them under arrest for interfering so they succumbed.

The fifth and sixth video was of an arrest that occurred on March 26, 2016, where the petitioner allegedly pulled a gentleman over in a 7-Eleven parking lot because he did not have his seat belt on, crossed a double yellow lane, and had no license plate lamps. Petitioner smelled alcohol and saw a box of beer in the back, and arrested the gentleman for a DWI. Again, there was no microphone, just video.

The seventh video was the video of the Romeo accident, which resulted in the fatality of four (4) young women in a limousine and which was discussed above.

The video review and testimony revealed the following.

#### Video #1

The Romeo video involved a traffic fatality in which Officer Lake responded to the scene and started greeting the driver of the vehicle, Mr. Romeo, who allegedly caused the accident.

Mr. Helf who was a volunteer fireman and whose son was also on the Southold Police force and a Vice Chair of the local Republican Party, knew the driver and intervened while Officer Lake questioned the driver.

Officer Lake testified (11/08/2023 Transcript Page 203, Lines 1-20):

"A: Yep. Right now we are off to the side of my car right now and this is when Mr. Helf was getting loud with me, saying that I didn't have to take it this route, because at this

time I was asking Mr. Romeo how many beers he drank, when is the last time he drank, where he drank, where he was coming from, to the point where Lieutenant Ginat at the time had to get involved and pull him away.

THE COURT: Pull who away?

THE WITNESS: Mr. Helf. He said, you know, come on John. Everybody knows Mr. Helf. You know, he is very known. His son is also a police officer on the job with us. So, he is well-known so I think he was given a little bit more courtesy to be where he was at that time because of who he knew and who he was because typically civilians wouldn't be involved in the conversations of an investigation."

### Video #2

Officer Lake spots a car heading in the opposite direction of someone he recognized that deals drugs in Greenport and he decided to turn and follow him. Officer Lake testified the vehicle shut its lights off and took off, and drove through a red light. He pursued the vehicle until it ran off the road and into a field. The driver had children in the car, so Officer Lake charged him with reckless endangerment and felony possession of marijuana.

11/08/2023 Transcript at Page 211, Lines 1-25, and Page 212, Lines 1-16 reads:

"Q: Can you tell the Court what happened?

A: The subject was doing well over a hundred miles an hour. Like I said, he is known to me, you know, I worked Greenport a lot on the midnights. He was arrested multiple times by multiple officers for drug sales. He is always with young children. So, you know, when his car went by me in Mattituck, it raised a lot of red flags, what are you doing in this part of - - you know, when you are in Greenport. That's what brought my attention to him. And at this point they got out and ran. And the kid that has his hands up was, I believe, 15-years old.

Q: That was not the driver?

A: No. The driver and his passenger are fleeing - - fleeing in the field right now.

Q: Is there more to the video?

A: Yes. What we do - - you know, I believe they said that I - - you know, we searched this car. This was one of the videos that they presented towards me, you know. This was a felony, a felony case. The car was being impounded. So, you know, an inventory search was being conducted on this car. Either way, there was a strong odor of marijuana, that's why the car was searched.

You know, my sergeant was on scene with me and there is two other officers that came but, you know, to me it was a good stop, you know, a good reason to go after this car.



You know, driving without headlights is extremely dangerous. Blowing through red light is extremely dangerous, especially at this time of night. So, I don't know what they saw on this particular video that would have them fire me but to me this was good police work.

THE COURT: Marijuana was illegal at that point in time?

THE WITNESS: It was illegal, yes, your Honor.

Q: The video doesn't show anymore then?

A: It just shows me catching them in the field and bringing them back."

Sergeant Perkins made the call to search the vehicle.

**Video #3 (Mrs. Freeman video)**

11/08/2023 Transcript at Page 215, Lines 2-25, and Page 216, Lines 1-24 reads:

"Q: Could you tell the Court what's going on here, please?

A: Yes, I believe this was Mrs. Freeman. I was sitting on the side of the road monitoring the stop signs leaving Greenport when this car went by me with the right taillight out, brake light, and they rolled through the stop sign.

She did use her signal here but when she made the right turn she also went too far into the left lane and also sideswiped the car to the left.

Q: So, when the person made that right-hand turn, did they turn into the right-hand lane, the left-hand lane or something else?

A: Well, when they made the right turn they went into the left - - the other lane and it was pretty close to striking that car.

Q: They went into the left lane?

A: Yes.

Q: Is that a proper turn or improper turn?

A: Improper turn. And then before that was the taillight out. The brake light.

Q: So, after that, what are we looking at here? Tell the Court what happened.

A: So, she pulled - - Mrs. Freeman pulled into her driveway and I approached her and asked her for her driver's license.

Q: And after that?

A: I brought her out. We - - I performed a field sobriety test. She was - - did not do well on them at all and she was placed under arrest for intoxication, driving while intoxicated, and she was issued the appropriate summonses for the stop.

Q: Now, when you saw this vehicle, you said it made an improper turn. Did you see any other violations of the vehicle and traffic law?

A: Yeah, when it went past me, if you rewind the video, you can see that the right brake light was clearly out and it did a rolling - - like it came to a stop sign and didn't stop. You are supposed to come to a complete stop at the white line and proceed through. This car did not do it. It did a rolling stop.

Q: You said a rolling stop?

A: Yep.

Q: Does that mean it slows down but doesn't come to a stop?

A: Yes.

Q: Is that legal or illegal?

A: Illegal."

**Video #4 (Jamesport Fire Chief, Washington's Birthday Parade in Greenport)**

11/08/2023 Transcript at Page 220, Lines 7-11, reads:

"Q: Do you have the Chief in view?

A: Yes. When he passed me you could clearly see the damage. The video only goes back 30 seconds before I put the lights on. So, the front of the car, the windshield was broken and the bumper was damaged."

11/08/2023 Transcript at Page 221, Lines 15-25, Page 222, Lines 1-25, Page 223, Lines 1-12, reads:

"A: I did call for a supervisor right away because as soon as I got to the car he was highly intoxicated. You could see it right away, and so were all the passengers. And the passenger was also a fire commissioner. So, I knew this was going - - you know, having such a high profile case I just wanted the sergeant there to make sure everything was going well. So, he responded.

Q: Where is the vehicle parked? Is that right on the shoulder of the main road?

A: Yes, it's - - right before that car, the fire chief, there is a turning lane, so we were kind of blocking that turning lane. And a little bit further after Roy Reeve there is a very sharp bend. We have had a ton of accidents during this parade.

So, you know, shortly you will see me have the Chief move his vehicle out of the roadway because I was actually concerned about getting hit. It was not a place to conduct any sort of investigation and I didn't want to have them exit the car on the roadway and get struck by a - - so, if they were going to be hit at all it was going to be in the safety of the car. So, that's why we had the car moved to the parking lot.

Q: What did you determine to do about that safety problem?

A: So, what I did is I had them pull into the parking lot directly across the street there at Roy Reeve and I blocked the lane of traffic. It is common. We did it commonly because we want to keep people that are intoxicated within the vehicle especially if you are moving them off the road because if they get - - and especially the parade just let out. So, there were, in my opinion, probably a ton of intoxicated people driving.

Like I said, pretty much after this parade we have a major accident. Like I said, like, four years prior to this we had a fire department tower ladder roll over right up the street from here. So, it was in our best interest to get everybody into the parking lot. And I had - - behind me I had witnesses that watched the accident and they were in the back behind me yelling, screaming, like, oh, he's drunk. You know, he's drunk. So, I thought it was just best to get into the parking lot.

Q: So, that's a procedure that's commonly employed?

A: Yes. When there is a traffic concern or safety officer - - safety concern, you know, you could pretty much do anything to make sure that you're safe."

11/08/2023 Transcript at Page 224, Lines 8-12, reads:

"Q: Tell the Judge what we are looking at now.

A: There is the Chief's car. You could see the damage in the front clearly. The right headlight is missing. The front push bar is all bent out of shape and there is a hole through the front windshield."

11/08/2023 Transcript at Page 225, Lines 4-7, reads:

"THE COURT: It is totally gone?

THE WITNESS: Yeah, the whole front windshield, there is a huge hole almost the whole length."

11/08/2023 Transcript at Page 226, Lines 17-22, reads:

"Q: Subsequent to that, I think you said you conducted a field sobriety test?

A: Yes. I did say that when Sergeant Santa Croce came to the scene, he said that the Chief is already getting phone calls, has already asked what is going on up here..."

11/08/2023 Transcript at Page 227, Lines 9-11, reads:

“A: That’s Mr. McKillop, the Fire Chief, who was in the driver’s seat when I stopped the car, and the officer to the left is PO Simmons.”

11/08/2023 Transcript at Page 227, Lines 23-25, and Page 228, Lines 1-2, reads:

“A: Yes. This one I did make a phone call to Sergeant Santa Croce because I don’t think he arrived yet and I told him what we had. I told him that the Chief was obviously very intoxicated. He told me to treat it as any other car stop where the driver is drunk.”

11/08/2023 Transcript at Page 235, Lines 10-19, reads:

“Q: After the Chief blew into your device, was a decision made whether or not to place him under arrest?”

A: Yes.

Q: And you make that decision?

A: Yes.

Q: The Sergeant still on scene?

A: Yes.

Q: Did he approve it, disapprove it or something else?

A: He said to treat it as any other traffic stop.”

**Video #5 and Video #6**

Allegedly, the driver had no seat belt and license light plate out, arrested for DWI in a 7-Eleven parking lot. He was hugging the yellow line, had open containers in back beer box, strong odor of alcohol.

11/08/2023 Transcript at Page 245, Lines 3-25, Page 246, Lines 1-2, reads:

“A: So, your license plate light needs to be illuminated (sic). It needs to be visible 50 feet or more to anybody behind it. This particular car had the white lights. You could clearly see them. They are facing backwards, which is a violation, but more importantly is that they are supposed to have caps on them which direct the light onto the plate, which this car didn’t have. This car you could just see the lights are facing reverse, which you are not supposed to have white light facing backwards while operating on a roadway.

Q: As a result of that condition, was there an interference with the ability to observe the license plate?

A: Yes.

Q: Now, the remainder of this video will show us the roadside sobriety test, will they not?

A: Yes.

Q: Anything else shown on the balance of the video?

A: Yes, this video will show a microphone failure midway through the field sobriety test which alluded in the paperwork was they said that I shut it off during the field sobriety test when, in fact, it was just another example of the bad equipment in Southold and how the equipment fails all the time.”

#### Video #7

The parties agreed that Officer Lake was not in but it did involve the vehicular fatality incident referred to in Video #1.

Petitioner put in evidence certain Certificates of Disposition for convictions of the Freeman and Consolino arrests. Also put into evidence was the P.B.A agreement with the Town of Southold, and reference was made specifically to Page 21, Section 17 (Exhibit 12) that a P.B.A. representative was to be present at any meeting involving the petitioner and the Chief.

Then the Police Procedure Manual was placed in evidence (Exhibit 4), specifically Sections 4.01; 4.03; and 6.03, regarding the performance evaluations and specifically referencing that DWI arrests are mandatory, not permissive or discretionary (emphasis added).

Petitioner testified that he normally worked nights and he was normally the first officer to fill in. He stated he never received a copy of Rules and Procedures of the Department for eight (8) months into the job. He claimed he kept his vehicle and maintenance log up to date.

On cross-examination by the respondent's counsel, the questions posed to the petitioner were intended to show the pre-textual nature of many of the stops and subsequent arrests of the videos in evidence.

On the first video (the Romeo arrest), the petitioner admitted that Lt. Genus was at the scene and directed him to arrest the suspect in spite of his allegations of a politician allegedly interfering with the investigation.

On the second video, petitioner admitted he knew that the suspect had a history of drug use.

The third video was of a residential neighborhood, and petitioner used a brake light out and allegedly driving through a stop sign to effectuate a stop with a subsequent arrest.

On the fourth video, petitioner used allegedly no seat belt, plate lights out and double line crossing, again a traffic violation, to effectuate the stop and arrest.

Petitioner stated that Sgt. Santa Croce did the review of the one (1) civilian complaint against him, although he admitted he had a discussion with Chief Flatley regarding the legal limits of searching a vehicle.



Petitioner indicated that he was the one who initiated the refresher course on probable cause with Steven Kuehhas with the District Attorney's Office. He said he attended the course on his own time.

Petitioner stated that Chief Flatley discussed with him that he had too many DWI arrests and the Town Board had problems with probable cause issues on his arrests.

He was questioned why many of his arrests have no audio yet the maintenance logs for the vehicle he was driving do not reflect any issue with a malfunctioning microphone, with the exception of one on May 8, 2016.

Petitioner explained that they had no spare microphones and if an officer took it home by accident they had to do without.

He also indicated that he would contact the I.T. Department directly and report the problem.

He also said that he would not know if a microphone was not working until way into a shift.

Petitioner complained that there was no training in Southold.

He was aware that Supervisor Russell was e-mailing the Chief about complaints received but no specifics or details were given. He even offered to stop making DWI arrests, but Chief Flatley rejected that.

Next to testify was a Christopher Talbot, a former Town Councilman and Chief Building Official for Sag Harbor.

He worked with the petitioner as a volunteer E.M.T. at the Cutchogue Fire Department.

He testified he was aware of the tragic accident that occurred in 2015, involving Mr. Romeo. He testified he was dropping his children off at catechism, and stuck his head in a Republican Caucus Meeting across the street, where John Helf, Sr., the Vice-Chair of the Party, was present.

Mr. Talbot asked Mr. Helf, "How's Garrett doing?". Mr. Helf replied, "F\*\*\* him, he's a f\*\*\*\*\* asshole". Mr. Talbot left and went home.

When he approached Sgt. Perkins, Sergeant assured him, "He's fine".

When he approached Councilwoman Jill Doherty, she indicated it was brought up that day about terminating him but the Chief wanted to keep him. She also admitted she had not seen his employee evaluation.

In the fall of 2016, Mr. Talbot said he went to a Town Board meeting and spoke to the Supervisor Scott Russell, who stated, "He's a liability; he gets into more cars than any other officer does. 20% vs. 52%".

He did not have a conversation with Chief Flatley.

On cross-examination, the witness admitted he did not go inside the Republican Party Caucus, he was in the doorway, talking to John Helf, Sr. He also admitted Mr. Helf is a loud, opinionated person.

Petitioner rested and respondent made a motion for a directed verdict. After hearing oral arguments, the Court reserved its decision and elected to have the respondent put forth its defense before making a decision.

The respondent then put on their first witness, a Jill Doherty, a Town Board member for twelve (12) years, since 2012. She is one of the six (6) members of the Board, who are all considered the Commissioners of the Police Department by way of their position on the Board.

However, she did indicate they rely upon the advice and recommendation of the Chief and other officers in hiring and the evaluation. Ms. Doherty acknowledged that she did receive a complaint about "how robust petitioner was in pulling people over". She indicated she had a family member pulled over by the petitioner and when they asked why they were pulled over, no reason was given.

When she spoke to other Board members, they also indicated they received complaints, in particular from the Supervisor Jim DiNunzio and Bob Ghofio.

In an executive session they asked Chief Flatley to participate and Chief Flatley reported that the petitioner was doing well, had substantial DWI arrests and that the Chief was working with the petitioner to make sure his pull-overs and arrests were good. However, he did suggest more training.

Several months later and close to the end of the petitioner's probationary period, the Chief requested to come before the Board which was common.

Chief Flatley reported that Officer Lake, even after additional training, was not a good fit for the Department. The Chief indicated there were several pull-overs and arrests where he felt Officer Lake went over the line.

Based upon the Chief's evaluation, the Board decided to let Officer Lake go. The vote was unanimous to terminate him.

On cross-examination the witness admitted that complaints are generally handled by way of a form being filled out with the specifics about the incident with the officer. She never asked for a video nor was it passed onto the Chief but perhaps another officer.

Ms. Doherty's son decided not to pursue a complaint as he never received a ticket or a warning, just pulled over.

She also received other complaints but not in writing.

Ms. Doherty testified that Chief Flatley had the formal evaluation but did not share it. She indicated the Chief told them at the first meeting that the petitioner needed more training and he was willing to work with him, but by the second meeting the Chief complained about the petitioner's aggressiveness and that some of his arrests were questionable.

She admitted that Exhibit 1, the Evaluation, was signed by Chief Flatley and no additional training was noted on the evaluation.

She was also aware of the DWI arrests and the award given to the petitioner.

Next to testify was Chief Martin Flatley who has been the Chief of the Southold Police Department since 2011. He testified that he deals with all aspects of civil service for the Department interviews and training with the assistance and oversight of a Captain and two (2) Lieutenants. He reports to the six (6) Town Board members whom are all Police Commissioners of the Police Department. Training occurs over eighteen (18) months, including a field training program and Police Academy.

When positions open up, Chief Flatley makes a recommendation to the Board but ultimately the Town Board makes the determination. Field Training Officers work with Probationary Officers.

He indicated he did not know Officer Lake until he completed the Academy and field training prior to coming to Southold.

The Chief was shown a copy of Officer Lake's personnel evaluation and indicated it was proposed by Officer Lake's immediate supervisor and that he signed it as an acknowledgment he read and reviewed it.

He testified that a civilian by the name of Anderson had made a complaint against Officer Lake that she was being harassed and followed by him. Sergeant Santa Croce investigated the allegations and viewed the video of the stop. The basis for the stop was whether or not the license plate lights were on. The Sergeant said it looked like it was partially illuminated. The complaint was labeled as harassment and as not sustained. However, he testified that Officer Lake's microphone was not on during the entire incident.

Thereafter, Chief Flatley started reviewing Officer Lake's activity reports to see why his audio was not working.

He indicated they received several other complaints that were passed down to him from the Town Board.

He testified that he received a complaint from a fellow officer questioning a DWI arrest Lake made in Greenport which was made in the driveway of a resident. The Chief reviewed the video. The stated reason for the stop was a failure to signal, brake lights out and improper turn.

He could not observe the violation in the video, so he was convinced the infraction never occurred.

The arrest for the DWI took place and the charge was sustained, but he still questioned whether the stop was proper.

After that, the Chief asked Sergeant Perkins to make sure he looks at Officer Lake's arrests and give Lake more supervision.

In October he went over his concerns directly with Lake along with Captain Kruszeski that he was being overly aggressive and that he had to make sure he had "correct stops" as the basis for the DWI arrests.

The Chief testified he started looking more closely into Officer Lake's arrests after the Beatrice Freeman stop. He noticed that some simple stops turned into full blown searches of the vehicle, the driver and occupants.

In March of 2015, there was a video of a stop when a vehicle did not pull over immediately, Officer Lake started questioning the driver on his drug use and if he is still using heroin. The driver admitted to

having one (1) Suboxone pill in the vehicle. The Officer then proceeded to search the entire vehicle and arrested the occupant for the one (1) pill because he did not have the script bottle.

Chief Flatley testified his observations indicated that Lake knew the driver before he pulled him over for speeding.

The Chief arranged for Police Officer training on search and seizures through the District Attorney's Office, in particular ADA Steve Kuehhas, and invited Officer Lake in addition to 8-10 other officers.

Chief Flatley rejected petitioner's testimony that he requested the training.

He acknowledged that Lake won the award for making the most DWI arrests in the Town of Southold.

He testified that normally ten (10) arrests were typical for top arrests, but Officer Lake made thirty-eight (38) arrests in his probationary year.

Another arrest, one (1) month after his training with the District Attorney's Office, Lake was parked in a residential neighborhood and pulled a vehicle over again in front of the motorist's home stating he was driving a little fast but the conversation then switched to the driver's drug use. He asked the motorist to roll up his sleeve for track marks on his arm and the driver admitted to using the day before. Lake requested to search the vehicle to which the driver agreed and he found a used hypodermic needle. The driver's license was suspended or revoked so he was arrested in the end. Officer Lake suggested that the vehicle be left on the street because he heard the vehicle was going to be repossessed.

Chief Flatley sat down with Officer Lake after that arrest and discussed same. Flatley indicated that rubber bands on the gear shift and speeding was inadequate probable cause to conduct a search of the entire vehicle with both occupants outside the vehicle with no risk to the Officer or in a position to destroy evidence.

He testified that while driving to the M.A.D.D. Awards in Nassau County he heard some of the complaints fielded by the Town Board members about Officer Lake's over-aggressive policing. He reminded the Officer that he was not telling him to stop making arrests for DWI but to not base it on following the motorists for an extended period of time waiting for a traffic infraction and instead to base his stops on probable cause.

Flatley did admit that in the bulk of the videos Lake asked permission to search the vehicles.

Then the testimony switched to Lake's microphone not working on many of his arrests and stops. Chief Flatley testified that although there are occasional times when equipment fails, there is an entire procedure in place to report malfunctioning equipment. Exhibit "E" was placed in evidence as to what is required of the officers to report malfunctioning equipment.

Flatley testified he compared the Exhibit "E" with the videos and also made reference to a daily log sheet that the officers must fill out at the end of the day which also has a spot for malfunctioning equipment (see Exhibit "F"). There were many videos with no microphone working and no reports that it was not working.

Chief Flatley testified as to a traffic stop by Lake in the Mattituck-Laurel area where he stopped a young lady with a child in the car for following a car too close but the conversation quickly changed to her drug use, and a request to search her vehicle followed, and he found a narcotic in the back of the vehicle. They had to wait for a family member to pick up the child before the driver was arrested.

The Chief testified about the arrest of Matthew Dellaquila on March 27, 2015 whom Officer Lake stopped and immediately questioned the driver about his drug use. He admitted to having one (1) Suboxone pill in the back and told the Officer exactly where it was. The driver did not have the script bottle so Lake arrested him. The basis for the stop was traveling a little too fast and it took too long to pull over.

Flatley then testified about Victor Perez. Officer Lake turned around to stop him and it turned into a chase when the driver lost control of his vehicle and ended up in a field. The Chief did not view anything that would warrant a stop until the chase started.

He testified about the Steve Sinacore DWI arrest. Lake did not have his microphone on and had Sinacore come out of his car and lean against it so he could do a search of the vehicle and trunk.

The Fischer stop involved four (4) people in the car and Officer Lake smelled marijuana and had all four exit the vehicle so he could perform a search of the entire vehicle. Once the occupants were outside the vehicle and safety of the officer is no longer an issue or destruction of contraband, the search is not ideal.

Then Chief Flatley described the Stephanie Wright stop which he viewed the video of because someone on the Town Board received a complaint about her being stopped and searched in the middle of the Mattituck Plaza in broad daylight and her entire vehicle being searched. The Chief did not see any basis for the stop, and again there was no audio until the arrest. He discussed the arrest with Officer Lake, that had no video backing up the stop and no audio for the search.

Exhibit "H" came into evidence which were notes of Chief Flatley that he took in reviewing the tapes of Officer Lake, his interactions with him and Sgt. Perkins. It memorializes a meeting with Sgt. Perkins on September 4, 2015 about the Chief's concerns about Lake's arrests and concerns of him being too aggressive and reasons for the searches, and asked Sgt. Perkins to monitor Officer Lake.

Another meeting on December 2, 2015 with Officer Lake and Captain Kruszeski to discuss narcotics arrests using a traffic stop as a basis for a full blown search of a vehicle.

April 16, 2016 notes - memorializing their conversation on the way to the M.A.D.D. luncheon.

May 16, 2016 notes - discussion with Officer Lake about the Stephanie Wright arrest and not using his microphone.

The testimony then switched to being called to the Town Board meeting to discuss Officer Lake's performance.

The Board indicated they were receiving complaints Lake was overzealous, too aggressive with many open searches and they wanted Chief Flatley's opinion.

Chief Flatley told the Board he wanted to re-train Officer Lake and try to correct some of his actions, that they had invested a lot of time into his training and would like an opportunity of re-training him.



The Chief testified that he had previously terminated two (2) other probationary officers and could have terminated Lake at that point but requested more time to re-train him.

The Board reluctantly agreed.

After that meeting, Chief Flatley, the Captain and Lieutenants all made efforts to re-train Officer Lake.

At the second Board meeting and after several incidents and complaints Chief Flatley recommended termination. He said that he tried speaking with Officer Lake on four (4) different occasions in addition to Lake's supervisors, had re-training with the District Attorney's Office and it did not seem to affect how Lake was conducting himself.

The Town was attempting to have a community-oriented policing approach and Lake's methods were opposite of what the Town Board wanted.

He testified they rarely get complaints for first-year officers and with Officer Lake they received too many, even with re-training. Chief Flatley was concerned that if Lake was to stay on as a full-time officer, he was at liberty to continue doing what he was doing with little recourse.

An officer making 38 DWI arrests in his first year and the extent of his searches had the Chief concerned.

Upon cross-examination, Chief Flatley admitted that protection of the people of Southold is the primary goal of the Police Department as well as enforcing the Vehicle and Traffic Law and the Penal Code and that DWI arrests are mandatory and not discretionary for an officer. He also testified that Southold had received Federal grant money towards enforcing the DWI laws.

He admitted to going to the Top Cop Award ceremony and the M.A.D.D. luncheon with Officer Lake.

Then there was testimony about the number of Uniform Traffic Tickets (UTTs) an officer issues per month, misdemeanor arrests, felony arrests and central complaints (CC).

Chief Flatley admitted he has a son on the force who was Top Cop one year for 20 DWI arrests.

The Chief was cross-examined as to the preparation of Lake's review which was prepared by his immediate supervisor Sgt. Perkins. He did not add any comments to the evaluation although he could have. The evaluation was picked apart line by line and there is no doubt the report was positive. However, the Chief stated he did not prepare it, just reviewed it.

The report rated Officer Lake above standards by his Sergeant.

It became apparent upon cross-examination that Chief Flatley disagreed with Officer Lake's pre-textual stops to make an arrest. He also disagreed with the extent of his searches with questionable probable cause.

The attorney explored several different pre-textual stops and arrests that the Chief differentiated. Then the attorney went through the stats of DWI arrests over a several year period showing fluctuations

between all the officers. Although Officer Lake had 34 arrests in his first full year and the average was 3 or 4 per officer he had a problem with Lake's aggressiveness in pursuing the arrests.

In September 2015 the Chief asked Sergeant Perkins to review or monitor Lake's arrests.

The attorney then directed Chief Flatley to the several videos and asked him whether there was requisite probable cause for certain searches and for certain stops. It became apparent that on some videos you could not see the vehicle and traffic offense; on others there was no audio recordings substantiating Lake's allegations, and Chief Flatley disagreed with Lake's searching of trunks and glove boxes and other concealed compartments of cars on a "consent" which was sometimes not recorded, or on the basis of seeing rubber bands or syringe caps or alleged drug paraphernalia, or the smell of marijuana.

Chief Flatley indicated they received complaints that Officer Lake would follow cars waiting for a traffic violation of the Vehicle and Traffic Law. Lake had the third most UTTs (Uniform Traffic Tickets) given out.

During cross-examination of Chief Flatley, it became obvious that he could not state that any of Lake's arrests or stops were illegal based upon the information he was given but he was certainly skeptical of the number of pre-text stops and he questioned the extent of the searches based upon the probable cause that allegedly existed.

The next witness to testify was Louisa Evans, Justice of Fisher's Island, but also a Southold Town Board member since 1994. She is a law school graduate and working for an accounting firm in the tax department.

She explained the Town Board are the Police Commissioners and have the Chief reporting to them. They must pass resolutions in order to hire police officers for budgeting reasons. After the Academy they create a numbered list and then they basically accept the Chief's recommendations as long as they are towards the top of the Civil Service list. The same process is used to dismiss or continue with an officer.

The witness testified she heard complaints from other Board members as well as the Chief. The Chief indicated that Officer Lake was over-aggressive in his policing and felt some of his stops were improper and he attempted to talk to Lake about it but it was not working.

Based upon the Chief's comments the Board passed the resolution not to keep Officer Lake.

On cross-examination, the witness was somewhat familiar with the complaint process and the officer evaluation process. However, she never asked to see it or review it.

The cross-examination involved going over every topic in the evaluation dated March 1, 2016, which was obviously contradictory to the Chief's final recommendation. The Board relied on Chief Flatley's final recommendation.

The next witness to testify was a Mr. Scott Russell, Southold Town Supervisor since 2006 and a resident since 1976. He is a graduate of George Washington University and worked for two (2) law firms after college before running for Town Assessor in 1990 and subsequently for Town Supervisor in 2006. As Supervisor, he is also considered a Police Commissioner.

He testified the Police Commissioners hire and fire, and perform the administrative and fiscal aspects of the Police Department. As to complaints, he said Southold is a small town and he would receive complaints orally and in writing, and then he would bring it to the attention of the Department heads, usually by telephone or at a meeting.

He testified he received complaints about Officer Lake quite regularly. Complaints went from overly aggressive policing or being pulled over for driving too slow and other minor traffic infractions, targeting younger women, possibly propositioning them. He brought it to Chief Flatley in executive session and suggested dismissing Officer Lake but the Chief requested additional time to work with the Officer to re-train him since he had already invested a great deal of time with him.

The Board afforded the Chief the opportunity. Several months later the Chief came back and recommended dismissal and the Board went with Chief Flatley's recommendation and terminated Officer Lake.

When complaints came in, they were generally reported to the Chief during executive session.

The first complaint came in in early 2015, and regularly after that, but he never investigated the basis of the complaints, but relied upon the Chief's judgment in these matters. He was not familiar with Officer Lake's evaluation.

The respondent rested and petitioner requested a rebuttal witness Officer Lake. The Court permitted Lake to rebut only the allegations of other stops and instances that Chief Flatley relied on and testified about but was prohibited from introducing video tapes based upon the Court's ruling.

Officer Lake resumed the stand and the witness was asked questions regarding Kaylie Onusaitis and the February 7, 2015 arrest involving possession of a controlled substance - marijuana - based on tailgating. She was arrested and her child was present.

Another arrest involved Debra Anderson because she was doing 78 miles per hour in a 55 mile per hour limit zone and heading to Quannacut in Greenport, which is a day rehab. She had a suspended and revoked license and Officer Lake secured consent to search and found narcotics under the seat.

Officer Lake then testified about the Matthew Dellaquilla stop on March 27, 2015. He knew the family and that their son had a drug problem and they were trying to get him into a drug rehab which he tried and relapsed and they asked Lake to intervene. Lake saw Mr. Dellaquilla on the roadway and turned around to follow him and pulled him over and started questioning his narcotics use. Mr. Dellaquilla admitted to the one (1) pill and upon search of the vehicle Officer Lake found a half (1/2) bundle of heroin. The driver went to jail and ended up overdosing.

Then the testimony switched to the arrest of Thomas Consolino on November 23, 2015 which started with complaints of suspicious activity and suspected drug use by a neighbor. Officer Lake took the complaint, contacted Narcotics who asked him to handle it until he needed a search warrant and then they would pick it up. Lake sat on the house for several nights. He saw a vehicle speeding and recognized Ms. Danoski and Mr. Consolino who he processed the week before for driving under the influence of heroin. So he spun around and stopped the vehicle for tinted windows, speeding and Mr. Consolino's license was still revoked. Officer Lake saw some needle cases and rubber bands, drug paraphernalia and the driver allegedly consented to a search, and Lake found narcotics.

Next was Steven Sinacore's arrest on March 20, 2016, which Lake denied conducting a search, just an arrest for a DWI and speeding, although he did go into the car to help the passenger find keys.

Officer Lake then testified about the Elises Mediano arrest which he denied turning off the microphone and alleged it was a video malfunction.

On April 11, 2016 he witnessed Adolfo Ochoa driving over the line in Greenport and stopped him and then arrested the driver for a DWI.

On May 8, 2016 Robert Wheeler made a quick left which raised Officer Lake's suspicions and he followed the driver, saw him making an illegal lane change and stopped him. Mr. Wheeler smelled of alcohol and Officer Lake arrested him for a DWI.

Then Lake testified about the Robert Fisher arrest on April 15, 2015. He saw a couple of people outside the house smoking marijuana at a known drug house. Later in the day he saw them pull out and followed them driving 45 miles per hour in a 30 miles per hour zone. Officer Lake stopped the driver and smelled marijuana. He did not consent to a search. Officer Lake felt he had probable cause and searched the vehicle and found heroin and marijuana and the driver was charged with driving while impaired by heroin.

Officer Lake testified about the May 24, 2016 event involving Stephanie Wright, driving with tinted windows and following an abrupt pull-out. Lake pulled her over and smelled perfume and then burnt marijuana, and pulled Ms. Wright out of the car and allegedly got her consent to search the car. He found pre-packaged Xanax pills and some marijuana. He then secured the K-9 unit and searched the trunk and arrested the driver.

Petitioner testified he never received a complaint from any of the Town Board members.

Both sides rested and the attorneys prepared their summations orally, followed by legal briefs in writing.

### THE LAW

A probationary employee may be dismissed for almost any reason or for no reason at all (*Matter of Lake, supra; Matter of Venes v. Community School Bd. of Dist. 26, 43 NY2d 520, 373 NE2d 987, 402 NYS2d 807 (1978)*). However, a probationary employment may not be terminated in bad faith for constitutionally impermissible or illegal purposes or in violation of statutory or decisional law (*Matter of Lake, supra; Matter of Lane v. City of New York, 92 AD3d 786, 938 NYS2d 597 (2d Dept. 2012)*). In the context of a proceeding challenging a termination of employment, resort to a pretextual explanation is like flight from the scene of a crime, indicating consciousness of guilt which is, of course, evidence of illegal conduct (*Matter of Lake, supra; Bennett v. Health Mgt. Sys., Inc., 92 AD3d 29, 936 NYS2d 112 (1st Dept. 2011)*).

The Court noted once there is some evidence that at least one of the reasons proffered by the Town is false, misleading, or incomplete, an inference can be drawn that the real reason for the dismissal was impermissible (*Bennett, supra; Matter of Lake, supra*). The Court continued that since the evidence demonstrates that one or more of the reasons given by the Town of Lake's termination of employment was



false, misleading, or incomplete, the inescapable inference is that the real reason for Lake's termination of employment was in bad faith, arbitrary, and impermissible.

It is well settled that in an Article 78 proceeding, a court "cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious'" (*Pell v. Board of Educations*, 34 NY2d 222 (1974); *Nehorayoff v. Mills*, 95 NY2d 671, 675 (2001); *Lyons v. Whitehead*, 2 AD3d 638, 639 40 (2d Dept. 2003)). Administrative action is arbitrary if it is "without sound basis in reason and is generally taken without regard to the facts" (*Pell*, 34 NY2d at 231).

Under the governing standard (irrational, or arbitrary and capricious action), courts examine whether the action taken by the agency has a rational basis and will overturn that action only where it is taken without sound basis in reason or regard to the facts, or where it is arbitrary and capricious (*Suffolk County Ass'n of Mun. Employees, Inc. v. Levy*, 133 AD3d 674, 19 NYS3d 563 (2d Dept 2015); *Harpur v. Cassano*, 129 AD3d 964, 10 NYS2d 638 (2d Dept 2015)). If the agency's determination has a rational basis, it will be sustained, even if a different result would not be unreasonable (*Lemma v. Nassau County Police Officer Indemnification Board*, 31 NY3d 532 (2018); *Fuller v. New York State Dept. of Health*, 127 AD3d 1447, 7 NYS3d 668 (3d Dept 2015)). It is well settled that a probationary employee may be discharged without hearing or statement of reasons, for any reason or no reason at all, in the absence of a showing that the dismissal was in bad faith, for a constitutionally impermissible purpose, or in violation of law (*Lambert v. Kelly*, 78 AD3d 544, 911 NYS2d 59 (1st Dept 2010)).

Judicial review of the determination to discharge a probationary employee is limited to an inquiry as to whether the termination was made in bad faith (*Johnson v. Katz*, 68 NY2d 649, 505 NYS2d 64 (1986)). The court's determination that petitioner failed to sustain his burden of proving bad faith is not challenged by petitioner's misapplication of the proper standard. The Town's decision to terminate petitioner was well founded inasmuch as petitioner's performance was substandard and he failed to respond to retraining (*Cooper v. City of New York, supra*).

A court in an Article 78 proceeding cannot substitute its judgment for that of the official charged with making a determination, even if a different conclusion could be reached (*Flacke v. Onondaga Landfill Systems, Inc.*, 69 NY2d 355, 363 (1987); *Pell*, 34 NY2d ar 231; *Cohen v. State*, 2 AD3d 522 (2d Dept 2003)). If sufficient proof exists to sustain the rationality of the official's decision, the court's review is at an end (*Lieberman v. Gallman*, 41 NY2d 774, 779 (1977)). The law is clear that "[t]he petitioner bears the burden of establishing illegal conduct by competent evidence rather than speculation" (*Williams v. Commr. of Off. of Mental Health of State of N. Y.*, 259 AD2d 624, 623 (2d Dept 1999); *Petkewicz v. Allers*, 137 AD3d 1045, 1045-46 (2d Dept 2016)).

It is blackletter law that "[t]he employment of a probationary employee may be terminated without a hearing and without a statement of reasons in the absence of a demonstration that the termination was in bad faith, for a constitutionally impermissible or an illegal purpose, or in violation of statutory or decisional law (citations omitted). Judicial review of the discharge of a probationary employee is extremely limited - the court may review whether the determination was made in bad faith or for the improper or impermissible reasons set forth above" (*Lane v. City of New York*, 92 AD3d 786, 786 (2d Dept 2012); *Johnson v. County of Orange*, 138 AD3d 850, 851 (2d Dept 2016); *Hirji v. Chase*, 151 AD3d 857, 851 (2d Dept 2017); *Duncan v. Kelly*, 9 NY3d 1024, 853 NYS2d 260 (2008); *Lambert v. Kelly*, 78 AD3d 544, 911 NYS2d 59 (1st Dept 2010); *Bienz v. Kelly*, 73 AD3d 489, 901 NYS2d 199 (1st Dept 2010)). At any time during the probationary period, a probationary employee may be terminated without a pre-termination hearing and without a statement of reasons (*Santoro v. County of Suffolk*, 20AD3d 429, 798 NYS2d 508 (2d Dept 2005)). Judicial review of the determination to discharge a probationary employee is limited to an inquiry



as to whether the termination was made in bad faith (*Johnson v. Katz*, 68 NY2d 649, 505 NYS2d 64 (1986); *Ward v. Metropolitan Transportation Authority*, 64 AD3d 719, 883 NYS2d 282 (2d Dept 2009)).

New York's "long-settled rule" is "that where an employment is for an indefinite term it is presumed to be a hiring at will which may be freely terminated by either party at any time for any reason or even for no reason" (*Murphy v. Am. Home Products Corp.*, 58 NY2d 293, 300, 488 NE2d 86, 461 NYS2d 232 (1983)). This rule applies to the petitioner, inasmuch as an individual who "was a probationary police officer at the time of his dismissal" may "[w]hile in that status", be "dismissed for almost any reason, or for no reason at all" (*Swinton v. Safir*, 93 NY2d 758, 762-63, 720 NE2d 89, 697 NYS2d 869 (1999)).

"In a proceeding to review a determination to terminate a probationary employee's employment, '[t]he burden of presenting legal and competent evidence to show a deprivation of petitioner's rights or bad faith or other arbitrary action... must be borne by petitioner'" (*Matter of Lake v. Town of Southold*, 189 AD3d 1588, 1591 (2d Dept 2020); *Santoro v. County of Suffolk*, 20 AD3d 429, 430 (2d Dept 2005) (in a probationary employee's Article 78 proceeding alleging improper termination, "[t]he petitioner bears the burden of presenting competent proof of the alleged bad faith, the violation of statutory or decisional law, or the unconstitutional or illegal reasons.")). Petitioner bears the burden of proving bad faith, and merely asserting it is insufficient to satisfy that burden (*Brown v. Board of Education of City School District of City of New York*, 156 AD3d 451, 68 NYS3d 38 (1st Dept 2017); *Lambert v. Kelly*, *supra*). A petitioner has the burden of demonstrating bad faith by competent evidence, not speculation (*Deitch v. City of New York*, 90 AD3d 924, 935 NYS2d 79 (2d Dept 2011); *Bonanno v. Nassau County Civil Service Com'n*, 59 AD3d 541, 872 NYS2d 672 (2d Dept 2009); *Negron v. Jackson*, 273 AD2d 241, 709 NYS2d 437 (2d Dept 2000)). A mere belief of bad faith does not satisfy this standard (*D'Aiuto v. Department of Water Resources*, 51 AD2d 700, 379 NYS2d 409 (1st Dept 1976)). Conclusory allegations of misconduct or unlawfulness are insufficient to meet petitioner's burden (*Petkewicz v. Allers*, 137 AD3d 1045, 27 NYS3d 263 (2d Dept 2016); *Robinson v. Health and Hospitals Corp.*, 29 AD3d 807, 815 NYS2d 222 (2d Dept 2006); *Phucien v. City of New York Dept. of Correction*, 129 AD3d 505, 9 NYS 3d 875 (1st Dept 2015); *Che Lin Tsao v. Kelly*, 28 AD3d 320, 812 NYS2d 522 (1st Dept 2006)).

In similar cases, courts have concluded that the record supported dismissal. Where the record demonstrated "that the petitioner's performance was consistently unsatisfactory despite repeated advice and assistance designed to give him the opportunity to improve, and, this, that his discharge was not made in bad faith" (*Triola v. Daines*, 125 AD3d 676, 676-77 (2d Dept 2015), *lv to appeal denied*, 26 NY3d 917 (2016)). In a case with facts quite similar to the instant case, the court upheld the termination of a probationary state trooper, finding that the discharge was made in good faith:

"During his probationary term, ... multiple complaints were lodged against him by members of the public for aggressive, disrespectful and condescending actions while on patrol... The evidence in the record supports the conclusion that the discharge was made in good faith and petitioner failed to establish a material issue of fact indicating that he was discharged for an impermissible reason"

(*Conboy v. Felton*, 68 AD3d 1601, 1602 (3d Dept 2009)).

There is a strong presumption that public officials will discharge their duties in a fair and honest manner and in accordance with reason and the law (*Stephens v. Ward*, 63 AD2d 798, 404 NYS2d 930 (2d Dept 1978); *Magnotta v. Gerlach*, 301 NY 143 (1950)).

“An appointing authority had wide discretion in determining the fitness of candidates, and this discretion is particularly broad in the hiring of law enforcement officers, to whom high standards may be applied” (*Brown v. County of Nassau*, 214 AD3d 793, 795 (2d Dept 2023) (citations omitted); *Matter of Verme v. Suffolk County Dept. of Civil Serv.*, 5 AD3d 498 (2d Dept 2004) (citations omitted)). “This discretion is particularly broad in the hiring of law enforcement officers, to whom high standards may be applied” (*Verme at 498*). “So long as the administrative determination is not irrational or arbitrary and capricious, this Court will not disturb it” (*Brown at 795*) (citations omitted). In determining whether a candidate is qualified to serve as a police officer, the appointing agency is entitled to rely upon the findings of its own personnel, even if those findings are contrary to those of professionals retained by the candidate or how the court would decide (*Id*; *City of New York v. New York City Civil Serv. Commission*, 61 AD3d 584, 584-85 (1st Dept 2009); *Thomas v. Straub*, 29 AD3d 595, 596 (2d Dept 2006)). “It is not for the courts to choose between the diverse professional opinions. That is the function of the proper department heads and as long as they act reasonably and responsibly, the courts will not interfere” (*Id.*) (citations omitted).

“An agency’s determination is entitled to great deference” and, if the reviewing court finds that the determination is supported by a rational basis, “it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency” (*Thompson v. Burns*, 118 AD3d 1276, 1277 (4th Dept 2023) (citations omitted) (Respondent’s determination entitled “substantial deference”). Moreover, it is well settled that law enforcement officers may be “held to higher standards than ordinary civil service employees” and that an administrative determination will be afforded “heightened deference” where a law enforcement agency is concerned (*Thompson at 1277*) (citations omitted).

“An appointing authority has wide discretion in determining the fitness of candidates [citations omitted]. This discretion is particularly broad in the hiring of law enforcement officers, to whom high standards may be applied [citations omitted]. As long as the administrative determination is not irrational or arbitrary, this Court will not interfere with it.” (*Matter of Verme v. Suffolk County Dept. of Civ. Serv.*, 5 AD3d 498, 498-499, 773 NYS2d 106; see *Matter of Mark v. Schneider*, 305 AD2d 685, 759 NYS2d 884; *Matter of Needleman v. County of Rockland*, 270 AD2d 423, 704 NYS2d 887”

(*Thomas v. Straub*, 29 AD3d 595, 596 (2d Dept 2006); *Verme v. Suffolk County Dept. of Civ. Serv.*, 5 AD3d 498, 498-99 (2d Dept 2004)).

### COURT FINDINGS AND DECISION

Pursuant to the Appellate Division’s instructions, the Court held that “the record presented triable issues of fact as to whether Lake’s employment was terminated in bad faith for reasons unrelated to his job performance (see *Matter of Robinson v. Riccio*, 194 AD2d at 425; *Matter of Miciotta v. McMickens*, 118 AD2d 489, 491; *Matter of Reeves v. Golar*, 45 AD2d 163, 165; *Matter of Ramos v. Department of Mental Health Hygiene of State of N.Y.*, 32 AD2d 925, 925; *Matter of Maynard v. Monaghan*, 284 App Div at 283-284; *Matter of Silverman v. Taylor*, 270 App Div 1040, 1040; cf. *Matter of Cipco Boarding Co., Inc. v. Town of Hempstead*, 164 AD3d 1235, 1236). Under these circumstances, the matter should be remitted to the Supreme Court, Suffolk County, for an immediate trial (see *Matter of Weslowski v. Vanderhoef*, 98 AD3d 1123, 1131-1132)” (*Matter of Lake v. Town of Southold*, 189 AD3d 1588, 140 NYS3d 95 (2d Dept 2020)).

Furthermore, the Appellate Division directed that the petitioner was entitled to the videos that they relied upon in making its determination to terminate due to poor performance.

“Under the circumstances, the court improvidently exercised its discretion in denying the subject branch of Lake’s motion to the extent that he sought disclosure of the video recordings that are referenced in the Town’s answer (*see Matter of Georgetown Unsold Shares, LLC v. Ledet*, 130 AD3d 99, 106-107; *Matter of Lonray, Inc. v. Newhouse*, 229 AD2d 440, 44-441; *see also Matter of Shollenberger v. Malara*, 70 AD3d 705, 706; *cf. Matter of City of Glen Cove Indus. Dev. Agency v. Doxey*, 79 AD3d 1038, 1038)”

(*Matter of Lake v. Town of Southold*, 189 AD3d 1588, 140 NYS3d 95 (2d Dept 2020)).

The tapes were in fact tendered and introduced into evidence during the trial. The petitioner was given a full opportunity to present his evidence. In this case, judicial review of the discharge of Officer Lake was limited to whether the determination was made in bad faith or for other improper or impermissible reasons or matters unrelated to his job performance (*Lane v. City of N.Y.*, 92 AD3d 786, 938 NYS2d 597, 598-9 (2d Dept 2012); *see also, Matter of Lake v. Town of Southold*, 189 AD3d 1588, 140 NYS3d 95 (2d Dept 2020)).

Put differently, to succeed petitioner must successfully carry his “burden of raising a material issue as to bad faith or illegal reasons, and conclusory allegations of misconduct or unlawfulness are insufficient to meet this burden” (*Petkewicz v. Allers*, 137 AD3d 1045, 1046 27 NYS3d 263, 264 (2d Dept 2016); *see also, Santoro v. County of Suffolk*, 20 AD3d 429, 430, 798 NYS2d 508, 509-10 (2d Dept 2005) (petitioner bears the burden of presenting competent proof of the alleged bad faith, the violation of statutory or decisional law, or the unconstitutional or illegal reasons); *Johnson v. County of Orange*, 138 AD3d 850, 851, 29 NYS3d 502, 503-04 (2d Dept 2016), *appeal dismissed*, 27 NY3d 1120, 57 NE3d 68 (2016) (petitioner was not entitled to a statement of the reason for the termination of her probationary employment)).

Moreover, it is axiomatic that substandard performance by a public employee provides the public employer with a rational basis for an administrative determination to summarily dismiss that employee, particularly where said employee was given ample opportunity to improve (*Bienz v. Kelly*, 73 AD3d 489, 490, 901 NYS2d 199, 200 (1st Dept 2010)).

Over eight (8) days of trial the petitioner established that Officer Lake was a highly motivated public officer who performed innumerable traffic stops, issued warnings and traffic citations, conducted searches, made successful arrests and convictions, had the highest number of DWI arrests in Southold and was in fact issued an award by Mothers Against Drunk Driving (M.A.D.D.). The testimony at trial together with an excellent review by Sergeant Perkins attests to this.

However, the issue before this Court is not whether I believe he is an excellent police officer for securing the most DWI arrests or issuing the most UTTs (Uniform Traffic Tickets), but whether or not the Town of Southold terminated his employment for an illegal or impermissible reason.

The reason put forth by the Town was that Officer Lake was an overly aggressive police officer who pulled over far too many cars over for little or no reason as a pretext to conduct a search or to observe a driver under the influence to effectuate an arrest. Although not illegal, a community certainly has the right to police its constituents in a manner consistent with the temperament of that community.

This Court found Chief Flatley's testimony credible and consistent. There was more than adequate evidence in the record that Chief Flatley received complaints both in writing from civilians, internal officers, and oral complaints the Town Board (Police Commissioners) received from members of the community about Lake's over-zealousness in pulling vehicles over for little to no reason. A review of the videos unfortunately does not help or hurt either argument because many of the videos do not capture the alleged probable cause for the stop, and in many circumstances Officer Lake's microphone was non-operational, which was also a concern for Chief Flatley. Although petitioner complained about the equipment in Southold, there were many instances in which he failed to report the microphone not working or he simply did not put it on.

There was also substantial evidence that Chief Flatley questioned many of the stops and arrests as to whether or not Lake's searches had adequate probable cause. Flatley contended that the extent of the searches quite often exceeded that which is reasonable and necessary once the motorists are out of a vehicle and the issue of destruction of evidence or the safety of the officer is addressed.

Officer Lake and Chief Flatley certainly had a difference of opinions which surfaced with some complaints that were documented in 2015 in the Chief's notes. Furthermore, this Court gives great weight to Chief's Flatley's decision not to terminate Lake at the questioning by the Commissioners at an Executive Board session which was several months prior to his termination. Chief Flatley requested time to work with Officer Lake to make better arrests by giving him additional training in the areas of search and seizure versus expectation of privacy laws to temper his pre-textual stops and arrests.

Chief Flatley did in fact arrange for that tutorial for Officer Lake and nine (9) other officers with the District Attorney's Office.

The Board agreed to give Chief Flatley more time to work with the petitioner and the training in fact took place.

That action by Chief Flatley and the Board of Police Commissioners is completely inconsistent with a Board that is looking to terminate Officer Lake for political reasons but a community that is trying to give someone an opportunity to train.

Furthermore, this Court found Officer Lake's testimony that he set up the training with ADA Steven Kuehhas incredulous.

This Court found some credible evidence of Officer Lake's aggressive search style and found Chief Flatley's criticism as fair. However, even after the training there was continuing evidence of complaints being made against Officer Lake.

The Court also found the various Board members' testimony that they heard the complaints from local constituents credible and convincing. In a small community where Board members have been serving many years and are integrated in these local towns, an oral complaint by a neighbor is just as credible as one reduced to writing and the Town Board certainly has the right to have peace officers in their community which they believe will fulfill the needs of their community and not necessarily a peace officer with the highest arrests or the most number of tickets issued.

The purpose of this judicial review is not to substitute my judgment for the judgment of the Board of Supervisors/Commissioners who are most in tune with the make-up of their constituents' needs for which they were elected but to make sure no improper or illegal motive was the reason for the termination and in



spite of Officer Lake's high statistics and awards this Court did not find the requisite evidence that Chief Flatley and/or the Board of Commissioners made their decision for an improper or illegal motivation or reason.

As pled in the Verified Petition, Officer Lake surmises that his involvement in two (2) high profile arrests played a large role in the termination of his employment with the Town. First, he alleges that he was the arresting officer of Steven Romeo, an alleged drunk driver of a pickup truck involved in a fatal motor vehicle accident with a limousine on County Road 108 within the Town of Southold, which claimed the lives of four (4) young women. Lake's involvement in the accident entailed being instructed by his supervisor, Lt. James A. Ginas, to locate Romeo, return him to the accident scene, and further investigate. Having complied with his Lieutenant's instructions, petitioner observed Romeo in an alleged inebriated condition and administered a field sobriety examination. The result of that examination provided Officer Lake with probable cause to believe that Romeo was under the influence of alcohol, and he was directed by Lt. Ginas to place Romeo under arrest for the suspicion of DWI. Officer Lake then transported Romeo to Eastern Long Island Hospital for medical treatment once he was formally placed into police custody.

Petitioner claims that Mr. Romeo had a close friendship with local Republican politicians James Helf and Joseph Sawicki, Jr., a local Southold Party Chair and Suffolk County Assistant Deputy Police Commissioner for Finance, respectively. Lake essentially argues that his arrest of Romeo angered Mr. Helf, prompting Helf to intercede and advocate on Mr. Romeo's behalf, interfere and obstruct an ongoing DWI investigation at the accident scene, and to criticize his performance and call for his termination before the Police Department and the Town Board. Petitioner additionally alleges that Mr. Sawicki also questioned the propriety of Lake's arrest of Romeo. Officer Lake contends that Helf and Sawicki's advocacy on Romeo's behalf constituted improper and illegal political influence that created pressure on the Police Department and Town Board forming an unlawful basis for his abrupt departure from the Town Police.

Lake also cites involvement in an additional high-profile arrest as the impetus for being the target of improper or unlawful political retaliation. On February 13, 2016, Officer Lake patrolled the Mattituck sector when he received a call from a fellow police officer in the adjoining Southold sector over the radio to be on the lookout for a damaged Fire Department vehicle, suspected to have fled the scene of a single car motor vehicle accident. Petitioner observed the described vehicle belonging to the Jamesport Fire Department's Assistant Chief and stopped it on suspicion of fleeing an accident scene. He also observed damage to the vehicle's windshield and front grille consistent with coming into contact with traffic signs. In approaching the vehicle, Officer Lake alleged that he observed that the vehicle's operator indicated objective signs of being under the influence of alcohol and he administered a field sobriety examination pursuant to his supervisor's instruction. Finding the vehicle's operator under the influence of alcohol he administered a field sobriety examination pursuant to his supervisor's instruction. Finding the vehicle's operator under the influence, Lake placed him under arrest for suspicion of DWI.

Arising out of this arrest, petitioner alleges that undue influence or additional improper politically motivated pressure was asserted by the Jamesport Fire Department against him on the respondent. Specifically, after the event, Lake claims that Fire Department personnel criticized his arrest of their Fire Chief. Further, Lake asserts that the Department was afforded preferential treatment or special privileges in being permitted access to certain footage of the arrest.

After review of both videos, this Court could not find any evidence of interference with the investigations or arrests, and furthermore, in both instances Officer Lake was directed by his superior officers to conduct the field sobriety examinations and was supported in the arrests of these two (2) incidents. This is contrary to Lake's arguments.

There was only one (1) witness who testified on behalf of the petitioner, Christopher Talbot, who testified he had a single interaction with John Helf, Sr., the Vice-Chair of the Republican Party for Southold when he met him in the vestibule of a Republican Party meeting. The conversation was "How's Garrett doing?". Mr. Helf replied, "F\*\*\* him, he's a f\*\*\*\*\* asshole". Mr. Talbot left and went home.

Mr. Talbot also said he went to a Town Board meeting in the fall of 2016 and spoke to the Supervisor Scott Russell, who stated, "He's a liability; he gets into more cars than any other officer does. 20% vs. 52%".

The single statement by Mr. Helf outside the presence of anyone else is unconvincing that Lake's termination was politically motivated.

In fact, there is more than adequate evidence that the Board with the advice of Chief Flatley made their own determination to terminate Lake based upon their own observations of his arrests, the number of complaints received and the difference in police styles of a community-based approach.

This Court had the opportunity to observe the witnesses in this case and made its own determination of credibility or lack of credibility based upon those observations. Furthermore, this Court had an opportunity to review the videos as well as documentary evidence submitted by both parties and after reviewing it all finds that the petitioner failed to meet his burden of proof and that his termination of employment was not based on an illegal or improper reason.

Accordingly, the Petition is hereby *dismissed* with prejudice.

The foregoing constitutes the *Decision and Order* of this Court.

Dated: January 30, 2024  
Riverhead, New York

  
HON. JAMES F. QUINN, A.J.S.C.