

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA POLICE STANDARDS COUNCIL**

In the Matter of)	
)	
DAVID L. RUSSELL)	OAH No. 20-0182-POC
<hr/>)	Agency No. 2019-16

CORRECTED DECISION

I. Introduction

David Russell resigned from the Alaska State Troopers after an investigation determined that he had failed to follow procedures for logging reports of crimes and mishandled evidence. After learning that Tr. Russell had resigned from a police force under threat of discharge, the Executive Director filed a four-count accusation seeking revocation of Tr. Russell’s police certificate. Tr. Russell requested a hearing to contest the accusation.

At the hearing, the Executive Director proved that Tr. Russell was dishonest during the investigation. In particular, Tr. Russell tried to mislead investigators by alleging that a different trooper was the lead officer on the case—implying that the blame lay with that trooper, not him. That was not true.

Having established that Tr. Russell was dishonest, the Executive Director has proved that a reasonable person would have substantial doubt about Tr. Russell’s moral character. That fact alone is sufficient to warrant revocation of Tr. Russell’s certificate. In addition, the Executive Director has proved that Tr. Russell resigned in threat of discharge for incompetence, and that he engaged in conduct detrimental to the Trooper’s integrity. These issues provide additional grounds for revoking Tr. Russell’s certificate. Accordingly, Tr. Russell’s certificate is revoked.

II. Facts and Proceedings

A. Facts

1. Tr. Russell joined the troopers in 2009

David Russell grew up in Michigan. His first career was as a minister, both in Michigan and in a remote location in Canada. After twelve years, however, he decided to leave the ministry and begin a new career as a state trooper in Alaska.¹

Tr. Russell was hired by the Troopers in August 2009. After attending the Trooper Academy, he was initially assigned to patrol duty in Palmer. He then spent four and a half years

¹ Russell testimony.

in Aniak. He testified that he was very successful in Aniak, where he was able to use his pilot's license on behalf of the troopers.²

In February 2015, Tr. Russell asked to be transferred to a trooper post called "Mat-Su West." Mat-Su West is located in Wasilla. He remained on patrol duty there until he resigned from the Troopers in April 2019.³

Tr. Russell's first marriage did not survive the time in Aniak. Not long after returning to the Matanuska-Susitna area, Tr. Russell briefly dated a woman named Andrea Hill. He ended the relationship because he found Ms. Hill to be a disturbed individual and a user of narcotics.⁴

For Tr. Russell, Ms. Hill turned out to be the proverbial "bad penny" that kept turning up. Not long after their relationship ended, she filed a complaint with troopers against him. The complaint was investigated and dismissed. Then, in 2018, after Tr. Russell had remarried in 2017, he started receiving texts and calls from Ms. Hill, at least some of which pursued a theme of getting back together. Tr. Russell felt like he was being stalked, and blocked Ms. Hill on his personal telephone and computer. He was not able to block her on his work telephone, however, and would receive text messages and calls from her on that phone.⁵

2. Tr. Russell had a conversation with Ms. Hill on October 29, 2018

On October 29, 2018, Ms. Hill came to the Mat-Su West trooper station and asked the front desk staff for a meeting with Tr. Russell. Tr. Russell went out to the antechamber of the station to meet with Ms. Hill. He recorded their conversation.⁶

The purpose of Ms. Hill's visit was to lodge a complaint about her former boyfriend. It appears from the conversation that up until very recently Ms. Hill was living in her former boyfriend's home.⁷ Tr. Russell was familiar with Ms. Hill's former living situation, recognizing the name of the recent boyfriend, and the name of another woman with whom the ex-boyfriend was involved.⁸

The conversation lasted a little over one hour. Ms. Hill was emotional. Her manner made it appear that she was unstable.⁹

² *Id.*

³ PSC Exhibit I at 44, 157, 163, 234.

⁴ Russell testimony.

⁵ *Id.*

⁶ *Id.*; PSC unnumbered exhibit (Oct. 29, 2018, recording of Russell interview with A. Hill).

⁷ PSC unnumbered exhibit (Oct. 29, 2018, recording of Russell interview with A. Hill).

⁸ *Id.*

⁹ *Id.*

During the conversation, Ms. Hill made allegations regarding her ex-boyfriend's involvement in child-pornography. Although her precise allegations are somewhat difficult to discern, she appeared to allege that he both visited child-pornography sites and distributed child pornography. (At one point she alleged that he had a room in a hotel in Anchorage where he "films porn," but that allegation seemed to relate to adult pornography, not child pornography.) She repeatedly stated that she had researched her ex-boyfriend's computer activities and that she had saved material that would prove her allegations.¹⁰

Tr. Russell was a sympathetic listener. He expressed concern. He asked Ms. Hill what her plan was for following up on the allegation. He mentioned that the FBI could track this type of activity. When she first said that she had material that could prove her allegations, he suggested that she make a copy of it and bring it in so that "we can check it out." At the close of the conversation, Tr. Russell again encouraged her to bring material in, and to "shoot me a text or something."¹¹

On a different topic, about halfway through the conversation, Ms. Hill told Tr. Russell that she had seen on a judicial website called "courtview" that her ex-boyfriend had obtained a domestic violence protective order (DVPO) against her. Until she mentioned it, Tr. Russell did not know about the DVPO.¹² As soon as he heard about it, he asked the front desk staff to research the DVPO, obtain it, and print it so that he could serve it on Ms. Hill before she left. While staff was working on the DVPO, the conversation returned to the topic of Ms. Hill's ex-boyfriend. Later, staff provided the DVPO to Tr. Russell, and he served it on Ms. Hill. He advised her to comply with it and to avoid doing anything that "gets you in trouble."¹³ Staff documented the service of the DVPO in the troopers' electronic crime and incident database, called "ARMS."¹⁴

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* Before coming to the police station, Ms. Hill had texted Tr. Russell's work telephone, asking him to "see if [the ex-boyfriend] got the judge to have me leave the house." PSC Exhibit 1 at 76. No testimony was received regarding this text and it is clear from the recording of the conversation that Tr. Russell was not aware of the DVPO (or at least was not thinking about it) until Ms. Hill mentioned it. PSC unnumbered exhibit (Oct. 29, 2018, recording of Russell interview with A. Hill). To the extent that testimony at the hearing or in interviews implies that Tr. Russell's purpose in meeting with Ms. Hill on October 29th was to serve the DVPO, that is not true.

¹³ PSC unnumbered exhibit (Oct. 29, 2018, recording of Russell interview with A. Hill).

¹⁴ Russell testimony; PSC Exhibit 1 at 96. Staff mistakenly entered the name "Chris Russell" instead of "David Russell" as the trooper who served the DVPO. Russell testimony. Tr. Russell corrected that entry on December 16th, immediately after he received notice of the administrative investigation. Russell testimony; PSC 1 at 56. For more information on ARMS, see, e.g., PSC Exhibit 1 at 120-36, 173, 175. Note that at one point during his interview with investigators, Tr. Russell had mentioned an alternative to using ARMS for reporting for lesser crimes, which involves using the computer aided dispatch (CAD) system. PSC Exhibit 1 at 51. Because Tr. Russell had

Tr. Russell did not document in ARMS Ms. Hill's report of a crime. As will be seen, that failure started the ball rolling on the process that led to Tr. Russell's resignation from the troopers.

3. Trooper Viernes took a compact disc from Ms. Hill on November 4th

Six days later, on Sunday, November 4th, Ms. Hill returned to the Mat-Su West station. Tr. Russell was on duty at the station, as was another patrol trooper, Trooper Jeffrey Viernes. Because it was Sunday, no front desk staff were at the office.¹⁵

Tr. Russell learned that Ms. Hill had arrived at the station and was asking for him.¹⁶ Tr. Russell asked Trooper Viernes to meet with Ms. Hill. He explained that an ex-girlfriend of his had brought in evidence and that he did not wish to meet with her. He advised Trooper Viernes that she was not trustworthy. He recommended that Trooper Viernes record the conversation.¹⁷

Trooper Viernes let Ms. Hill into the front area of the station, where he interviewed her. Tr. Russell remained in the office. Trooper Viernes told Ms. Hill that Tr. Russell was out. He followed Tr. Russell's advice and recorded the conversation. It lasted about 18 minutes. Ms. Hill explained that she was handing over a compact disc with about 40 pictures on it. The pictures were of "Apps." In her view, by clicking on the "Apps" one could follow a trail that would lead to child pornography. Trooper Viernes spent time reassuring Ms. Hill, and making inquiries regarding her personal safety. He told her three times that he would deliver the disc to Trooper Russell. He said that Trooper Russell would review the disc. If an indepth investigation was needed, however, that would be done by a specialized unit.¹⁸

After Ms. Hill left, Trooper Viernes returned to the office and handed the disc to Tr. Russell. He said "supp me" to Tr. Russell.¹⁹ By asking Tr. Russell to "supp me," Trooper Viernes meant that Tr. Russell should create a request for a supplemental report to be filed by an assisting officer in the ARMS database.²⁰ A supplemental report is required anytime a trooper helps out on an existing case.²¹ Had Tr. Russell entered a supplemental request in ARMS, it

mentioned this alternative, it was addressed at the hearing. *See* Evans testimony. The CAD reporting regimen is not relevant to the issues in this hearing, however, because it does not apply to allegations of child pornography and Tr. Russell did not use it to document any contact with Ms. Hill. It will not be discussed further in this decision.

¹⁵ Viernes testimony; Russell testimony.

¹⁶ Russell testimony. Tr. Russell does not remember how he learned about Ms. Hill's presence at the station.

Id.

¹⁷ Viernes testimony; Russell testimony.

¹⁸ PSC unnumbered exhibit (Nov. 4, 2018, recording of Viernes interview with A. Hill).

¹⁹ Viernes testimony.

²⁰ *Id.*

²¹ *Id.*; Crockett testimony; Dunn testimony.

would create a task for Trooper Viernes. Although Trooper Viernes could have created a supplemental report on his own, without waiting for a task to be sent to him by Tr. Russell, that approach would have been inconsistent with his usual approach. In his view, it was better practice to have the lead officer, who knew the case number, send the request. The other approach could lead to duplicate entries.²²

Tr. Russell did not send a supplemental request to Trooper Viernes at that time.²³

After receiving the disc, Tr. Russell conducted an investigation by looking at the contents of the disc.²⁴ He determined that the material on the disc did not implicate child pornography. He saw approximately four pictures that were pornographic but, in his view, the participants were adults. He saw no evidence of any criminal activity.²⁵

Tr. Russell did not log the disc into evidence. He took no further steps to investigate the allegation.

4. Ms. Hill dropped off a letter on November 7th that Tr. Russell threw away

On November 7th, Ms. Hill again stopped by the Mat-Su West station. She left a letter with the front desk staff for Trooper Russell. The letter was from a computer company. Staff put the letter on Tr. Russell's desk and documented that Ms. Hill had brought in evidence.²⁶

Tr. Russell reviewed the letter. The letter discussed malware or similar issue with Ms. Hill's computer. He determined that it was not relevant to any investigation. He threw the letter away. He did not log it into ARMS or otherwise create a trail that he had reviewed the letter.²⁷

5. After Captain Leath and Tr. Russell discussed Ms. Hill, Tr. Russell's supervisors started the 2018 Administrative Investigation

In 2018, Rex Leath was a captain with the Troopers. He served in the fish and wildlife division. As a captain, Capt. Leath was a superior officer to a trooper like Tr. Russell, even though he was not in Tr. Russell's chain of command.

Capt. Leath is Ms. Hill's brother. Capt. Leath and Tr. Russell had seen each other at least once in the past, but otherwise were not acquainted.²⁸

²² Viernes testimony; PSC Exhibit 1 at 65. *See also* Crockett testimony (confirming that a supplemental is required and that the lead case officer may create the task in ARMS for the assisting officer to fill out).

²³ Viernes testimony.

²⁴ Russell testimony. Tr. Russell claimed he did not remember Trooper Viernes handing the disc to him. He claimed that he later found the disc on his desk. *Id.*

²⁵ *Id.*

²⁶ PSC Exhibit 1 at 69.

²⁷ Russell testimony; PSC Exhibit 1 at 63.

²⁸ Russell testimony.

On December 10, 2018, Tr. Russell saw Capt. Leath at the Mat-Su West station. He asked him if they could speak privately. They went into the parking garage. Tr. Russell told Capt. Leath that he was concerned about Ms. Hill's state of mind. Although the main point of their brief conversation was Tr. Russell's concern about Ms. Hill's wellbeing, the subject of Ms. Hill's having made allegations of child pornography came up. Apparently, Ms. Hill had told Capt. Leath that she had reported the allegation to a trooper. Capt. Leath asked Tr. Russell if he had "pulled an incident number" (meaning had he entered the allegation of child pornography in the ARMS database, which would create an "incident number"). Tr. Russell said no.²⁹

The next day, Capt. Leath called Lt. Arthur Dunn. Lt. Dunn was a commander at Mat-Su West, and in Tr. Russell's chain of command. Capt. Leath told Lt. Dunn that he had directed Tr. Russell to pull an incident number for the report of child pornography. After researching the issue, and finding no entry in ARMS for the report of child pornography, Lt. Dunn and Tr. Russell's direct supervisor, Sgt. Jason Crockett, determined that an administrative investigation was needed to determine whether Tr. Russell had committed offenses that required disciplinary action. This gave rise to what is called the "2018 Administrative Investigation."³⁰

6. After receiving the complaint, Tr. Russell changed the existing entry in the ARMS database regarding Ms. Hill

To begin the 2018 Administrative Investigation into Tr. Russell's conduct, Sgt. Crockett and Lt. Dunn drafted a complaint against Tr. Russell. The complaint alleged that Capt. Leath had directed Tr. Russell to "pull an incident number" so that Ms. Hill's allegation of a crime could be investigated.³¹ It also alleged that Tr. Russell had not obeyed this order and not followed trooper policies regarding reports of serious crimes.

The complaint was served on Tr. Russell on December 16, 2018, at 9:26 a.m., with a memorandum from Captain Anthony April, the commander of the detachment, and a document called "Notification of Administrative Investigation."³² The memorandum from the captain

²⁹ Russell testimony; *see also* PSC Exhibit 1 at 23. Tr. Russell asserts that Capt. Leath asked about the incident number as part of his attempt to intimidate him. Russell testimony; *see also* Russell closing argument; PSC Exhibit 1 at 48. A more likely explanation for the inquiry, however, is that Capt. Leath was concerned about his duty as a mandatory reporter for allegations of child pornography. His duty to report would be discharged if another trooper had documented the allegation. Capt. Leath's motivation for making the inquiry, however, is not important here—what matters is that he did make the inquiry and his inquiry brought to light Tr. Russell's failure to log Ms. Hill's allegation into ARMS. Yet, although Capt. Leath's motive for making the report is not relevant, Tr. Russell's focus on Capt. Leath's motive, instead of his own mistakes, does contribute to doubt about Tr. Russell's moral character and competence.

³⁰ Dunn testimony; Crockett testimony.

³¹ PSC Exhibit 1 at 23.

³² Dunn testimony; Crockett testimony. PSC Exhibit 1 at 21-24.

included a directive that Tr. Russell “refrain from altering any notes, reports, records, or documentation which already exists as it applies to this event, as it relates to your official position with the Department of Public Safety.”³³

Thirty-one minutes after receiving the memorandum, however, Tr. Russell changed the entry that existed in ARMS for October 29, 2018. That entry had been made by the front-desk staff to document the service of the DVPO on Ms. Hill. In addition to correcting the error regarding his name (which had been mistakenly entered as “Chris Russell), Tr. Russell added comments characterizing Ms. Hill. He described her as “emotional” and “disconnected.” He alleged that she made “statements that seemed to sound like [her ex-boyfriend] had super powers.” He concluded that “[h]er statements made little sense and her emotional acts didn’t fit the discussion she made.”³⁴

Although the entry that he was modifying was an entry for October 29th, he then addressed the compact disc that had been dropped off several days later, on November 4th. He wrote that “Andrea dropped off a disc of photos of misc pictures of travel computer sites and screen shots, non (sic) of which showed any signs of child sexual activities.”³⁵

Tr. Russell had never entered the disc into evidence. Yet, he wrote that “[t]he CD has been entered into evidence.”³⁶ The entry of the disc into evidence had in fact been done on December 11th by an investigator with the general investigative unit who had been assigned by Lt. Dunn to investigate the allegation of child pornography.³⁷ Tr. Russell did not clarify when the entry had been done or who had done it.

Finally, Tr. Russell used the entry to distance himself from the matter and to implicate Trooper Viernes: “Andrea returned later requesting to speak with me and due to conflicting reasons I absolved myself from speaking with her and Trooper Viernes spoke to her regarding her concerns.”³⁸

7. Tr. Russell implicated Trooper Viernes regarding the absence of a report

On December 16th, after receiving the complaint, Tr. Russell asked Tr. Viernes whether he (Tr. Viernes) had completed a supplemental report regarding Tr. Viernes’s assistance with Andrea

³³ PSC Exhibit 1 at 21.

³⁴ PSC 1 at 96.

³⁵ *Id.*

³⁶ *Id.*

³⁷ PSC 1 at 29.

³⁸ *Id.*

Hill back on November 4th. Tr. Viernes did not remember Ms. Hill.³⁹ Upon researching ARMS, he found an entry for Ms. Hill relating to a DVPO on October 29th, but his notebooks and audios had no entries for a Ms. Hill for that day and he would not have expected a supplemental request for service of a DVPO.⁴⁰ With no supporting information, he was unable to write a supplemental at that time. Shortly thereafter, he received an electronic supplemental request from Tr. Russell, but still could not fill it out. A week or two later, Tr. Russell again inquired about the supplemental, telling Tr. Viernes that he (Tr. Viernes) was going to have explain to the investigators why he had not done the supplemental. When Tr. Viernes was finally given the proper date, he was able to review his notebook and the audio recording, and complete the supplemental. Tr. Viernes testified, however, that he was angry that he was being implicated for any failure to document the case when he was not the lead officer.⁴¹

8. Tr. Russell gave inconsistent descriptions of his conversation with Capt. Leath

A major focus of the 2018 Administrative Investigation turned on whether Tr. Russell was insubordinate. The complaint alleged that he had failed to comply with a direct order from a captain to pull an incident number on Ms. Hill's allegation of child pornography.

During an official interview with investigators, Tr. Russell was asked to describe the facts that led to Capt. Leath's complaint about Tr. Russell. Tr. Russell responded with a long explanation that he considered the complaint "nothing more than an intimidation stunt."⁴² When he finally addressed the issue of documenting in ARMS the encounter with Ms. Hill, Tr. Russell said, "I did not start another incident number because she didn't have any substance. There was just nothing there period."⁴³

With regard to whether he had been insubordinate by disobeying an order from Capt. Leath, Tr. Russell first stated, "he never once asked me, he mentioned in our discussion in the garage that I should document it, that maybe I should document the report that she had made."⁴⁴ After Tr. Russell sidetracked to the complaint being "a tactic to create fear," an investigator returned to the subject, asking, "You're saying [Capt. Leath] didn't tell you to do anything?"⁴⁵ Tr. Russell answered, "No. He told me that he would document it, that he would make an

³⁹ Viernes testimony.

⁴⁰ *Id.*; PSC Exhibit 1 at 37.

⁴¹ Viernes testimony; PSC Exhibit 1 at 37.

⁴² PSC Exhibit 1 at 46.

⁴³ PSC Exhibit 1 at 47.

⁴⁴ *Id.*

⁴⁵ PSC Exhibit 1 at 48.

incident for it.”⁴⁶ This new information prompted the investigator to ask, “He told you he would do that?”⁴⁷ Tr. Russell affirmed his testimony, saying “Right.”⁴⁸

Yet, when the investigator responded, “So it’s my understanding he gave you a direct order to do this,” Tr. Russell then reverted to the version that had Capt. Leath suggesting that Tr. Russell should document the allegation, saying “No. He gave a suggestion. It was not a direct order.”⁴⁹

9. The 2018 investigation sustained six violations of policy

On February 14, 2019, the Trooper’s Office of Professional Standards (the division that is responsible for investigations of administrative complaints) issued its investigative report for the 2018 Administrative Investigation. The report sustained six violations of policy, finding that Tr. Russell’s

- Failing to follow a direct order from Capt. Leath was a violation of the policy against insubordination and the policy requiring compliance with directions;
- Altering the entry in ARMS after being directed not to was a violation of the policy requiring compliance with directions;
- Failing to document in ARMS that Ms. Hill had made allegations of a serious crime was a violation of the rules of procedure;
- Failing to properly enter the compact disc and letter into evidence and then secure them in a storage locker was a violation of the policy requiring proper handling of property and the policy requiring temporary storage of property.⁵⁰

10. Evidence is discovered in Tr. Russell’s car and desk leading to the 2019 Administrative Investigation

While the 2018 Administrative Investigation was underway, Tr. Russell was placed on administrative leave on March 11, 2019. He was given an opportunity to remove his personal belongings from his trooper vehicle. He had his belongings in the back of the vehicle in plastic totes. He emptied the totes, took a few objects, and left the rest, which, in his view now included a jumble of some remaining personal items and some work items. He was too upset and emotional to thoroughly inspect or arrange the items.⁵¹

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ PSC Exhibit 1 at 16.

⁵¹ Russell testimony.

When another trooper was assigned to use the vehicle, the trooper was displeased with the condition of the vehicle. In addition, the trooper found many items that appeared to be evidence or confiscated property. The trooper placed the property in an evidence locker and notified his supervisors of the possible mishandling of evidence. The unexplained items found in the vehicle included:

- Two signed medical release forms, one of which, dated 2015, had been scanned into evidence. The other, dated 2017, had not;
- One Alaska operator license and one driver's license;
- Three knives;
- Two keys;
- Two compact discs with photographs. One related to an incident in December 2018. One related to an incident in January 2019. Both had been logged into evidence and had barcodes indicating that they would be in temporary storage in Palmer;
- A copy of a search warrant that had been served in 2015.⁵²

Based on this evidence that Tr. Russell may have mishandled evidence, the troopers initiated another Administrative Investigation.⁵³ This investigation is called the "2019 Administrative Investigation."

Shortly after receiving the report of possible mishandled evidence being in the vehicle, the troopers conducted a search of Tr. Russell's desk. This search also yielded a confusing array of documents, compact discs, and weapons. The unexplained items found in the desk included:

- Brass knuckles with no identification;
- A wallet with a Hawaiian ID, a Quest card, and two Alaska operator's licenses;
- A computer tablet with a note written by Tr. Russell with information regarding the person who had left the tablet in his vehicle;
- A vehicle key with a locking button fob for a vehicle that had been impounded in 2016.⁵⁴

⁵² Evans testimony; PSC Exhibit 1 at 194-95. The inventory of the car also revealed a 12" animal bone. Tr. Russell testified that the bone was personal property that he had kept because he found it interesting. He also testified that the brass knuckles belonged to him but he did not recall how he had acquired them. Russell testimony.

⁵³ Gorn testimony.

⁵⁴ Evans testimony; PSC Exhibit 1 at 193.

The 2019 Administrative Investigation was completed on May 20, 2019. The investigative report found that Tr. Russell was incompetent. The finding was based on his inability to properly handle property and evidence, in spite of having received training and prior discipline on the requirements for proper evidence handling.⁵⁵ As explained next, however, before the 2019 Administrative Investigation was completed, Tr. Russell had resigned.

11. Tr. Russell resigned on April 10th

On April 10, 2019, Tr. Russell signed a “letter of dispute resolution.” The letter resolved a dispute between Tr. Russell’s union, the Public Safety Employees Association, and the State of Alaska. The parties agreed that Tr. Russell would resign effective May 1st. They also agreed that Tr. Russell’s conduct as documented in the 2018 Administrative Investigation “constitute[d] dismissible conduct” but that no discipline would be imposed for either that investigation or the pending 2019 Administrative Investigation.⁵⁶

B. Proceedings

On February 11, 2020, an investigator with the Alaska Police Standards Council filed an accusation seeking revocation of Tr. Russell’s police certificate. The accusation was amended on December 10, 2020.

The amended accusation alleged four grounds for revocation, as follows:

- Count I sought revocation based on Tr. Russell’s resigning under threat of discharge for incompetence.
- Count II sought revocation based on Tr. Russell’s resigning under threat of discharge for conduct detrimental to the reputation, integrity, or discipline of the troopers.
- Count III sought revocation based on Tr. Russell’s lack of good moral character.
- Count IV sought revocation based on Tr. Russell’s resigning under threat of discharge for conduct that would cause a reasonable person to have substantial doubt about his honesty, fairness, and respect for the rights of others.⁵⁷

Mr. Russell requested a hearing to contest the revocation. The hearing was delayed because of the covid-19 pandemic, but a three-day hearing was finally held in December 2020. Both the executive director and Mr. Russell were represented by counsel. The arguments

⁵⁵ Evans testimony; PSC Exhibit 1 at 195-96.

⁵⁶ PSC Exhibit 1 at 163.

⁵⁷ Amended Accusation at 5-6.

regarding whether Mr. Russell's conduct warrants revocation of his police certificate are discussed below.

III. Discussion

The most important issues in this case are Mr. Russell's honesty and fairness. Both of these traits are elements of "good moral character," as that phrase is defined by the Council's regulations.⁵⁸ Both traits are squarely implicated by Mr. Russell's conduct in the 2018-2019 time period under consideration here. Under the Council's regulations, if the executive director proves that a police officer engaged in conduct that would cause a reasonable person to have substantial doubt about a police officer's honesty or fairness, the Council may revoke the officer's certificate.⁵⁹ Because honesty and fairness are the most important and straightforward issues, this decision will address these two questions—which are the basis for Counts III and IV of the accusation—first. We will then turn to the issues of incompetence and the effect of Mr. Russell's conduct on the reputation, integrity, and discipline of the troopers.

A. Does Tr. Russell's conduct raise substantial doubt about his fairness and honesty?

To sum up the facts relating to honesty and fairness, Tr. Russell did not consider Andrea Hill's report of a crime as a serious matter, so he did not process it as he should have. He later tried to cover his tracks and shift the blame to an innocent fellow trooper. That act was both dishonest and unfair. Below, we will discuss honesty first. We will then turn to fairness.

1. Honesty

Several instances of Tr. Russell's conduct during the 2018 administrative investigation demonstrate that Tr. Russell has a tendency to be dishonest when under investigation. This includes his entering data into ARMS after the investigation began, his answers to questions about whether Capt. Leath had ordered him to pull an ARMS incident for the Hill matter, and, most significant, his attempt to put the blame on Tr. Viernes instead of admitting his mistake.

⁵⁸ 13 AAC 85.900(7). Under this regulation, "good moral character" means the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States; for purposes of this standard, a determination of lack of "good moral character" may be based upon a consideration of all aspects of a person's character.

⁵⁹ 13 AAC 85.110(a)(3). Resigning under threat of discharge for conduct that would cause a reasonable person to have substantial doubt about a police officer's honesty or fairness would also be grounds for discretionary revocation. 13 AAC 85.110(b)(3).

a. The December 16th ARMS entry

On December 16th, Tr. Russell added new material to the October 29th entry in ARMS regarding Ms. Hill. The Executive Director argues that by accessing ARMS and adding information about the allegation of child pornography to an entry that previously had mentioned only the DVPO, Tr. Russell was attempting to obfuscate the record. Tr. Russell asserts that by making this entry, he was not hiding anything. The fact that he accessed this entry in ARMS on December 16th was recorded, so no one would be fooled into thinking that the entire entry was made in October.

The fact that the date he accessed ARMS is recorded, however, does not make his act of modifying an existing record less dishonest. In ARMS, an existing entry can be overwritten at a later date, and it is not possible to tell what was written when. Thus, his very act of making this entry was itself a dishonest act.

Moreover, the content of what Tr. Russell wrote was intended to mislead. He wrote that the CD had been entered into evidence as if he had done that on October 29th—the date for which he was modifying the entry. But the CD had not been entered into evidence on that date. Indeed, Tr. Russell had never entered it into evidence—it was entered by an inspector with the general investigative unit in December after Capt. Leath had brought the allegation of child pornography to the attention of Tr. Russell’s supervisors.

The Council has encountered this type of behavior before—a police officer engaging in a subterfuge to allay suspicion, while never actually lying.⁶⁰ True, a person who investigated the facts regarding who had entered the disc into evidence would discover that a different person had entered the disc into evidence at a later date. Yet, the casual reader would assume that Tr. Russell had done all that he was required to do. Accordingly, Tr. Russell’s act of accessing ARMS to change an existing entry raises doubt about Tr. Russell’s honesty.

b. Placing blame on Tr. Viernes

The most dishonest aspect of Tr. Russell’s entry, however, was his claim that he had “absolved” himself from the case. He returned to this claim again in his interview, and also at the hearing, where he claimed that Tr. Viernes was the lead officer on the Hill case. If true, this would mean that the failure to document the case in ARMS was Tr. Viernes’s fault, not Tr. Russell’s.

⁶⁰ *In re Much*, OAH No. 13-0288-POC.

Nothing in this record supports Tr. Russell's claim that Tr. Viernes had taken over the case as lead officer. Tr. Viernes testified that all he was asked to do was to step out and take some evidence from a witness with whom Tr. Russell did not wish to meet at that time. At all times, Tr. Viernes saw himself as an assisting officer. Tr. Viernes was a credible witness and the recording of his 18-minute discussion with Ms. Hill supports his testimony.

Tr. Russell now argues that Tr. Viernes misunderstood. Tr. Russell cites that he explained to Tr. Viernes that Ms. Hill was a former girlfriend. He further advised that Ms. Hill was a drug user who had previously lodged a complaint against him. In his view, by explaining his conflict with Ms. Hill, and asking Tr. Viernes to meet with Ms. Hill, and pick up the evidence, he was communicating that Tr. Viernes was to be the lead officer on the case. He argued that it would be illogical for him to explain the conflict and still retain the case.⁶¹

Tr. Russell's argument is not persuasive. First, the "logic" of his conclusion is not obvious—yes, Tr. Russell was disclosing to Tr. Viernes a former relationship, which could be a conflict necessitating reassignment, but that would not mean to Tr. Viernes (or anyone else) that the case was automatically reassigned by virtue of "logic." Indeed, if Tr. Russell wanted to reassign the case, the "logical" thing for him to do would be to say to Tr. Viernes, "I am recusing myself from this case and asking you to be lead officer on it." He did not make any statement to this effect.⁶² Tr. Russell's assertion that his communication to Tr. Viernes was sufficient to make Tr. Viernes the lead officer on the case is dishonest.

Further, Tr. Russell's conduct does not support his later contention that Tr. Viernes was the lead officer. For example, when Capt. Leath asked about pulling an incident number for Ms. Hill's allegation, he did not tell Capt. Leath that the case was Tr. Viernes's.⁶³ After receiving the complaint, he repeatedly reminded Tr. Viernes to submit a "supplemental" to the entry in ARMS—a duty that Tr. Viernes had as the assisting officer, rather than the lead officer who

⁶¹ The Executive Director cites to Lt. Dunn's testimony that the first officer on the scene (or in this case, to hear the allegation from a witness) would be the lead officer on the case. Although Lt. Dunn agreed that a case involving a former girlfriend should be reassigned, he testified that two officers could not agree to a reassignment—only a sergeant could do that. Dunn testimony. The important takeaway from this testimony, however, is not the need to involve a sergeant—here, if the two officers had clearly agreed among themselves that Tr. Viernes was lead, we would not be overly concerned that they short-circuited their sergeant. The point is that all troopers would understand the protocol for the first officer to be lead, and that any reassignment would have to be overt and clear to avoid this result. As the evidence here proves, in reality, both Tr. Viernes and Tr. Russell understood that Tr. Russell was lead on the Hill matter. As the lead, Tr. Russell chose not to create an incident number for the report of a crime. His assertion that his failure to create an incident number because he understood that Tr. Viernes was lead is false and dishonest.

⁶² Russell testimony; Viernes testimony.

⁶³ Russell testimony; PSC Exhibit 1 at 46-50.

would have had the duty to make the initial entry. Indeed, Tr. Russell's very act of making the misleading entry for the October 29th ARMS report shows that he knew he was the lead officer on the case.

Then, after Tr. Viernes retrieved the disc from Ms. Hill and gave it to Tr. Russell, Tr. Russell reviewed the disc.⁶⁴ He did not give it back to Tr. Viernes—which is what he would have done if he understood that Tr. Viernes was the lead on the case. Instead, knowing that he was the lead officer for the matter, he reviewed the disc to see whether it had evidence of a crime.

In addition, if Tr. Russell believed that Tr. Viernes was lead, when Tr. Russell was given the letter from a computer company brought in by Ms. Hill, he would have given it to Tr. Viernes. What he did, however, was to act as the lead officer for the matter. He reviewed the letter and destroyed it. (Although destroying the letter was a violation of procedure, that is not the issue here. The point here is that if Tr. Russell believed that Tr. Viernes was lead, he would have given the letter to Tr. Viernes.) In short, Tr. Russell's conduct at all times was consistent with his understanding that he was the lead officer on the Hill report of child pornography. His conduct confirms that he knew that Tr. Viernes had acted only briefly as an assisting officer. His later assertions to the contrary are dishonest.

c. False testimony regarding how he acquired the disc

Additional dishonest conduct occurred when Tr. Russell testified about how he acquired the disc. According to Tr. Russell, he “found” the disc on his desk.⁶⁵ Tr. Russell's testimony is false. He admits that he and Tr. Viernes talked when Tr. Viernes returned to the office with the disc after meeting with Ms. Hill.⁶⁶ During that meeting, Tr. Viernes had told Ms. Hill repeatedly that he would give the disc to Tr. Russell.⁶⁷ Tr. Viernes testified that he did, in fact, hand the disc to Tr. Russell.⁶⁸ Given that Tr. Viernes was a credible witness, this decision finds that when Tr. Viernes went back into the office and saw Tr. Russell (as both troopers agree happened), Tr. Viernes gave the disc to Tr. Russell. Tr. Russell's testimony that he found the disc on his desk is false testimony.

The issue of how Tr. Russell acquired the disc is important because it proves that Tr. Russell's story regarding Tr. Viernes is a fabrication. Tr. Russell knows that if he admitted that

⁶⁴ Russell testimony.

⁶⁵ *Id.*

⁶⁶ PSC Exhibit 1 at 52.

⁶⁷ PSC unnumbered exhibit (Nov. 4, 2018, recording of Viernes interview with A. Hill).

⁶⁸ Viernes testimony. Tr. Viernes then left the office and went out to conduct traffic stops. *Id.*

Tr. Viernes handed him the disc, it would prove that Tr. Russell was the lead officer and that Tr. Viernes was the assisting officer. The lead officer would not give the evidence to the assisting officer because the lead officer would be the one to review the disc or send it to the appropriate investigator. To avoid an admission to this inculpatory conduct, Tr. Russell gave false testimony.

That Tr. Russell was being untruthful in his testimony at the hearing was confirmed by his demeanor. When giving the false testimony about finding the disc on his desk, his testimony was halting and unsure. Not only was the testimony not believable, his manner demonstrated that he knew his testimony regarding how he received the disc was false.

d. False answers to the investigators

As described above, when asked about whether Capt. Leath had ordered Tr. Russell to pull an ARMS incident on the Hill matter, Tr. Russell gave two answers. First, he said that Capt. Leath had made a suggestion that Tr. Russell “maybe should document the report that she had made.”⁶⁹ Then he said that Capt. Leath had said that he (Capt. Leath) “would make an incident for it,” and then confirmed that testimony by saying “right.”⁷⁰ Shortly after making this statement, however, he then reverted back to his claim that Capt. Leath “gave a suggestion” that Tr. Russell could document the report.

At the hearing, Tr. Russell spent considerable time suggesting that Capt. Leath lacked credibility so we should not believe Capt. Leath’s report that he had ordered Tr. Russell to document the report. Capt. Leath did not testify, and the issue here is not insubordination, so this decision will not discuss Capt. Leath’s credibility or whether he made a direct order. The point here is that when asked a direct question, Tr. Russell gave a clearly dishonest answer when he said that Capt. Leath had said that he would do the report himself. The dishonesty of that answer is shown by his own recanting of it when he said that Capt. Leath had suggested that Tr. Russell do it. It also shows a further tendency to place blame someone else (here, Capt. Leath) for his own failure to follow procedures.

In sum, Tr. Russell gave false answers to investigators. He knowingly gave false answers when under oath at the hearing. This false testimony conclusively proves that a reasonable person would have substantial doubt about Tr. Russell’s honesty.

⁶⁹ PSC Exhibit 1 at 48.

⁷⁰ *Id.*

2. Fairness

As described above, Tr. Russell shifted the blame to Tr. Viernes for his own failure to follow standards related to documenting a report of a crime and process evidence. The Executive Director alleges that this conduct raises substantial doubt about Tr. Russell's fairness.

Tr. Russell testified at the hearing, however, that he now believes that Tr. Viernes must have had a true, although mistaken, understanding that he (Tr. Viernes) was not the lead officer on the Hill matter.⁷¹ In a roundabout way, Tr. Russell appears to be arguing that he is not unfair because he does not want Tr. Viernes punished. He only wants to have himself exonerated.

Tr. Russell's expression of concern for Tr. Viernes, however, is too little and too late to save Tr. Russell from the taint of unfairness caused by his false shifting of the blame. When asking whether a police officer's conduct has raised substantial doubt about the officer's fairness, the Council has explained that meeting the "fairness" obligation requires conduct "free from self-interest, prejudice or favoritism."⁷² The Council has rejected claims of unfairness, however, when an officer has merely made an error that was not a result of prejudice or favoritism and did not advance the officer's self-interest.⁷³

Here, Tr. Russell's conduct wrongly promoted his self-interest over the interest of a fellow trooper. His later attempt at the hearing to paper over his unfair act by sticking up for the fellow trooper whom he had wronged does not undo the unfair act of assigning blame for his wrongdoing to an innocent colleague. Thus, the Executive Director has proved that a reasonable person would have substantial doubt about Tr. Russell's fairness.

3. Does Tr. Russell's lack of good moral character warrant revocation?

Under the Council's regulations, if Tr. Russell lacked good moral character, or was discharged, or resigned under threat of discharge, for acts, or failures to act, that demonstrated a

⁷¹ Russell testimony.

⁷² *In re Much*, OAH No. 13-0288-POC at 24 (Alaska Pol. Stn'd Coun. 2013) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=4688>. In *Much*, the Council found two instances of unfairness: first, when the respondent wrongly used his position as a police officer to cause an unwarranted welfare check on his girlfriend's child, which was unfair to the child's custodial parent, and second, on a different matter, when he lied on a police report to cover up his errors, which was unfair to the victim who was seeking justice. In an unpublished decision, the Alaska Supreme Court affirmed these holdings and accepted and applied the Council's approach to fairness. See *Much v. Alaska Police Standards Council*, No. S-16225, 2018 WL 1779323, at *6 (Alaska 2018). See also *In re Leggett*, OAH No. 14-0647-POC (Alaska Pol. Stn'd Coun. 2017) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=4690> (holding that police chief's use of lie detector on his son and communication with sergeant in charge of investigation raised substantial doubt about fairness because it lacked "impartiality and [showed a] willingness to use his position and influence to the benefit of a family member").

⁷³ *In re Henry*, OAH No. 16-0135-POC at 19 (Alaska Pol. Stn'd Coun. 2019) ("many police officers make many errors every day, and those errors often result in some diminishment of a third party's interest. That does not mean that the police officer acted unfairly, only that the officer may have acted unfortunately.").

lack of good moral character, the Council would have discretion to revoke his police certificate.⁷⁴ A lack of good moral character is shown by conduct that would cause a reasonable person to have substantial doubt about Tr. Russell's honesty, fairness, respect for the rights of others, or respect for the law.⁷⁵ The Executive Director does not have to prove all four elements of a lack of good moral character—conduct showing a lack of one element is sufficient when the evidence, taken as a whole, proves that the officer lacks good moral character.⁷⁶ Here, as described above, the Executive Director has proved that Tr. Russell lacks good moral character, and resigned under threat of discharge for conduct that demonstrated a lack of good moral character.

In past cases, the Council has explored when the circumstances of a police officer's deficient conduct warrants exercise of the discretion to revoke.⁷⁷ Several police officers have had their certificates revoked at least in part for giving untruthful answers to investigators who were investigating their conduct.⁷⁸ Those cases leave no doubt that dishonesty on the scale exhibited here, coupled with the unfairness that the dishonesty was to benefit himself at the expense of another, will result in revocation.⁷⁹

Tr. Russell argues that he should escape revocation because his record does not reveal prior instances of dishonesty or unfairness. Indeed, the witnesses who had some knowledge of Tr. Russell's working history agreed that in the past he was generally known to be honest and of good moral character.⁸⁰

Although revocation is discretionary, past cases involving the issue of honesty show that the Council employs its discretion in carefully evaluating whether an officer's erroneous statement was an innocent mistake or dishonest. When the evidence proves that an officer's

⁷⁴ 13 AAC 85.110(a)(3); 3 AAC 85.110(b)(3).

⁷⁵ 13 AAC 85.900(7).

⁷⁶ *In re Gilmore*, OAH No. 15-1087-POC at 3 (Alaska Pol. Stn'd Coun. 2016) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=4694>.

⁷⁷ *See, e.g., In re Hazelaar*, OAH No.13-0085-POC at Exec. Dir. Prop. for Action at 5.

⁷⁸ *See, e.g., In re Mattingley*, OAH No. 15-1088-POC at 9 (Alaska Pol. Stn'd Coun. 2016) (holding that police officer's untruthful statements to supervisors regarding circumstances of event during leave that resulted in Canadian law enforcement taking custody of his service weapon raised substantial doubt about his honesty), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=4695>; *In re Much*, OAH No. 13-0288-POC at 19-23 (holding that police officer's evasive and misleading statements in official interview, and untruthful statements in a police report, raise substantial doubt about officer's honesty); *In re Hazelaar*, OAH No.13-0085-POC at Exec. Dir. Prop. for Action at 4-8 (finding substantial doubt about police officer's honesty based on officer's untruthful answer at official investigation, denial of his own admission of events under question, and disregard for truth in recorded conversation with confidential informant); *In re Lee*, OAH No. 16-0555-POC at 4 (Alaska Pol. Stn'd Coun. 2016) (holding that correction officer's four untruthful statements, two of which were under oath, raised substantial doubt about his honesty), available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=4701>.

⁷⁹ *See, e.g., Gilmore*, OAH No. 15-1087-POC at 4.

⁸⁰ Crockett testimony; Viernes testimony; Dunn testimony; *see also* Evans testimony.

conduct was substantially dishonest and unfair, however, the Council will revoke the officer's certificate. Here, Tr. Russell ensnared himself in a tangled web of lies when he started down the path of placing the blame for the failure to document the Hill matter on Tr. Viernes. Although he may have been generally truthful in the past, his conduct here was so far below the standard expected of a police officer that he cannot retain his certificate.

In sum, the Executive Director has proved the accusations in Counts III and IV of the Amended Accusation and that the substantial doubts about Tr. Russell's honesty and fairness warrant revocation of his police certificate.

B. Does Tr. Russell's conduct demonstrate incompetence?

As stated above, the main issue in this case is Tr. Russell's honesty and fairness. The Amended Accusation also alleges, however, that Tr. Russell's certificate should be revoked because he resigned under threat of discharge by his employer for incompetence. Tr. Russell raises two arguments in opposition. First, he asserts that he did not resign under threat of discharge because his resignation was a mistake. Second, he argues that the evidence does not prove incompetence.

1. Did Tr. Russell resign under threat of discharge?

Tr. Russell asserts that he did not resign under threat of discharge. His argument seems to be that he regrets having resigned. He also appears to assert that he was misled—someone told him that by resigning, his actions would not be documented.⁸¹ He cites to the statement in his resignation agreement that “no discipline will be issued for either the current or the pending Administrative Investigation.”⁸² In his view, this means that no adverse consequences could ever follow from his resigning instead of waiting to be discharged. Thus, he concludes, his resignation should not be used or relied upon in this action to revoke his certificate.

Tr. Russell's own testimony, however, confirms that he resigned under threat of discharge. The agreement also confirms that his resignation was under threat of discharge—it clearly states that the findings of the 2018 investigation “constitute dismissible conduct.”⁸³

With regard to his argument that the Council is prohibited from relying on the circumstances of his resignation, the Council's action to revoke his certificate is not an action by his employer. This action is not discipline for his conduct as that term is used by the agreement between the state and the Public Safety Employees Association. This office and the courts have

⁸¹ Russell testimony.

⁸² PSC Ex. 1 at 163.

⁸³ *Id.*

long recognized the distinction between the employer and the Council.⁸⁴ Nothing in the agreement or in Tr. Russell's resignation prevents the Council from relying on the undeniable fact that Tr. Russell resigned under threat of discharge.

2. Does Tr. Russell's incompetence warrant revocation of his certificate?

As the two administrative investigations conducted by the Troopers found, Tr. Russell's conduct in 2018 demonstrated a lack of competence as a police officer, particularly in the core area of handling evidence. The difficult question present here, however, is whether the evidence of incompetence is sufficient to warrant revocation. Here, neither party has provided a framework for analysis of incompetence. The question of when a police officer is so incompetent as to warrant revocation of the officer's certificate is not a simple question because employment and certification involve different issues. Even when (as in this case) a police officer has been sufficiently incompetent on the job to warrant termination, it does not necessarily prove that the officer's certificate should be revoked.

The difficulty of answering that question is presented by the arguments of the parties here. The Executive Director made the case for revocation very well—arguing that Tr. Russell's conduct of failing to document possible evidence of child pornography demonstrates incompetence. As he argued in closing, we should not have to wait for a case in which an actual child pornographer walks because of trooper's incompetence to pull the trooper's certificate.

Yet, the case for not revoking is also raised here. As Tr. Russell showed through cross-examination of witnesses—and as common sense and the past cases of the Council confirm—all police officers make mistakes.⁸⁵ Who gets disciplined or terminated for mistakes, and who gets dubbed incompetent, can rest on many factors. Thus, Tr. Russell's argument is well taken—the Council should be cautious about revoking for incompetence because a broad-brush approach could be wielded haphazardly and result in unwarranted revocations. Further, the Council might want to consider whether a police officer whose conduct falls below standard in one location might be competent in another setting. That issue is at play here, because Sgt. Crockett testified that Tr. Russell might be competent to be a police officer in a different location, such as a rural

⁸⁴ *Much*, OAH No. 13-0288-POC at 25 (finding employer's dilatory reporting irrelevant to revocation because "APD, however, is not a party to this proceeding, and the Council is not bound by APD's processes or findings."); *see also, e.g., Alaska Police Standards Council v. Parcell*, 348 P.3d 882 (Alaska 2015) (upholding revocation by Council even though employer had reinstated trooper after arbitration determined trooper's conduct did not warrant discharge).

⁸⁵ *See, e.g.,* Evans testimony; Crockett testimony; Dunn testimony.

post, where the pace is less rapid (although, as Lt. Dunn noted, the complexity of the demands are greater).⁸⁶

To develop a framework for decisionmaking on the issue of incompetence likely will require a thorough review of the issue. This is best done by briefing and argument from adversarial parties, to give the Council the benefit of hearing all angles. Because we do not have that depth of engagement here, the analysis of the issue of incompetence in this decision is limited to the facts of this case.

Two themes emerge from the case for incompetence that was presented in this hearing. The first was that proof of incompetence requires proof of more than one instance of falling below standard. The second theme is that, although all police officers will make mistakes, an element of competence is that an officer must take responsibility for, and learn from, his or her mistakes. This element is particularly important in the context of whether a policer officer who has admittedly erred should have his or her certificate revoked for incompetence.

Here, the Executive Director showed that Tr. Russell had been disciplined in the past for failing to properly process evidence. In the Executive Director's view, Tr. Russell's past discipline, combined with his failure to process the Hill disc, and the negligent cache of evidentiary items found in Tr. Russell's car and desk (which Inv. Evans testified was "astounding"), shows incompetence in the area of evidence processing. In addition, the evidence proved that Tr. Russell was deficient in handling radio traffic—he missed or ignored calls far more often than normal.⁸⁷ The evidence also proved that Tr. Russell was deficient in decision making—he frequently called in for guidance on matters that a trooper of his experience should be able to handle on his own.⁸⁸ The Executive Director concludes that the record as a whole warrants revocation for incompetence.

Tr. Russell has a different story to tell. In his view, his past episodes of discipline for mishandling evidence were not his fault. In one case, he left evidence at a pawn shop (which sold the items) over the time limit because, in his view, others failed to inform of the time limit. Then, he explained, when some of the evidence was recovered, he relied on a different trooper to transport the evidence to a storage yard, but he was blamed when the other trooper and the manager of the yard mishandled the evidence.⁸⁹ In a different disciplinary matter, he failed to

⁸⁶ Crockett testimony; Dunn testimony.

⁸⁷ Crockett testimony.

⁸⁸ Crockett testimony; Dunn testimony.

⁸⁹ Russell testimony.

safeguard the chain of custody of a cell phone in a significant felony case.⁹⁰ That too, was not his fault, according to Tr. Russell, because the secure storage area did not have charging facilities, and he had been instructed to keep the phone charged.⁹¹ As for his poor responsiveness on the radio, Tr. Russell explained that he did not have a radio in Aniak, so he was not trained to pay heed to the radio.⁹² With regard to his frequent need for advice on routine matters, he asserted that only lasted for a short time, and he did it at the advice of his sergeant as a way to stay out of trouble. On the mishandled evidence in his car and desk, Tr. Russell admitted that his failure to return the car key to the owner of the impounded vehicle was a mistake.⁹³ For all other issues, he considers the evidence trivial, and asserts that he would eventually have correctly disposed of the confiscated licenses, misplaced computer tablet, and what he believes was a duplicate search warrant.⁹⁴

As stated above, this decision agrees with Tr. Russell that the issue of revoking a certificate for incompetence requires a “big picture” approach of looking at the totality of the evidence. In this regard, we must consider facts such as Tr. Russell’s past evaluations. These were not in the record, but Tr. Russell testified that he generally had mid-acceptable evaluations.⁹⁵ Tr. Russell also testified that he had been commended by the colonel for his work during his time in Aniak.⁹⁶

Taking the evidence as a whole, however, the evidence proves that Tr. Russell is not competent to hold a police certificate. In particular, not only was Tr. Russell’s handling of the Hill matter deficient, his defense of his action in the Hill matter demonstrates no ability to admit error, comprehend why his conduct was deficient, or to learn from his errors. His handling of the cell phone incident shows a deficiency in his ability to problem solve. His handling of the pawn shop matter shows a reluctance to take responsibility for his errors.⁹⁷

In sum, this decision does not purport to set forth a comprehensive or exhaustive exploration of the issue of when an officer’s incompetent conduct should result in revocation of a police certificate. Based strictly on the record in this case, however, the Executive Director has

⁹⁰ Dunn testimony.

⁹¹ Russell testimony.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Although Tr. Russell may have been justified to some extent in relying on another trooper to transport the evidence from the pawn shop to a storage yard, he was not justified in failing to research the time limit for leaving evidence at a pawn shop.

proved that Tr. Russell has demonstrated more than one instance of incompetence, and that there is little likelihood that Tr. Russell has learned from his errors or otherwise is a good candidate for rehabilitation. Therefore, the Executive Director has proved the allegations in Count I of the Amended Accusation, and established that Tr. Russell's resignation under threat of discharge for incompetence is a ground for revocation.

C. Was Tr. Russell's conduct detrimental to the reputation, integrity, or discipline of the Alaska State Troopers.

The final issue in this case is raised in Count II, regarding whether Tr. Russell resigned under threat of discharge for conduct that was detrimental to the reputation, integrity, or discipline of the Alaska State Troopers. If true, that would be an additional ground for revocation of his certificate.⁹⁸

Other than honesty, however, the issues raised in this matter are not core issues relating to reputation, integrity, or discipline.⁹⁹ As stated earlier, all police officers will make mistakes or misremember issues from time to time. The public will not take a dim view of the employing police department's reputation or integrity, and the officers within the department will not become undisciplined, merely because the police department tolerates some degree of human error.

Here, however, Tr. Russell's conduct of falsely pinning the blame for his error on a fellow officer implicates integrity. In a previous case, the Council found detriment to an agency's integrity when a certificated officer engaged in conduct that "conflicts with the organization's core values."¹⁰⁰ Because police work is about holding members of the public responsible for their conduct, the integrity of a police department would be undercut by a police officer who does not take responsibility for a significant failure to follow procedure and then falsely blames others for his or her failure. Although Count II is less significant than the other issues in this case, the Executive Director has proved the allegations in Count II and it adds to the grounds for revocation.

⁹⁸ 13 AAC 85.110(a)(2).

⁹⁹ *Cf., e.g., In re Guiterrez*, OAN No. 14-1718-POC at 7 (2015 Alaska Pol. Stn'ds Coun.) (explaining that clearest cases for affecting reputation or integrity of police department would "involve corruption, dishonesty, poor police work, or long-standing pervasive sexual misconduct").

¹⁰⁰ *In re Bowen*, OAH No. 10-0327-POC at 14 (2011 Alaska Pol. Stn'ds Coun.) available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=4683>.

IV. Conclusion

The Executive Director has proved that Tr. Russell's conduct fell below standards required for a police certificate. Accordingly, Tr. Russell's police certificate is revoked, effective the day following adoption of this decision as the final decision of the Alaska Police Standards Council.

DATED: January 8, 2021.

By: Signed

Name: Stephen C. Slotnick

Title: Administrative Law Judge/DOA

Adoption

The Alaska Police Standards Council adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5 day of April,

Signed

Justin Doll _____

Chair, Alaska Police Standards Council

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]