**STATE OF NEW JERSEY**

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| In the Matter of Shamil Davis, William H. Fauver Youth Corrections Facility, Department of Corrections | **FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION** |
| CSC Docket No. 2022-545<br>OAL Docket No. CSR 08029-21 | |

**ISSUED: JUNE 7, 2023**

The appeal of Shamil Davis, Senior Correctional Police Officer, William H. Fauver Youth Correctional Facility, Department of Corrections, removal, effective August 27, 2021, on charges, were heard by Administrative Law Judge Susan L. Olgiati (ALJ), who rendered her initial decision on April 24, 2023. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on June 7, 2023, adopted the ALJ's Findings of Facts and her recommendation to uphold the removal. The Commission notes that it does not adopt the ALJ's conclusion that the appellant violated the appointing authority's policy regarding divulging *confidential* information, as the Commission is unclear as to how the information provided would be considered confidential in nature. Nevertheless, regardless of whether the information was confidential, it agrees that the divulging of that information to inmates was improper and was properly upheld by the ALJ under the conduct unbecoming a public employee charge. Additionally, the Commission agrees that all of the other charges should be upheld, and that based on those infractions, the penalty or removal is appropriate.

Upon its *de novo* review of the ALJ's thorough and well-reasoned initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission, aside from as noted above, agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the witnesses. In this regard, the Commission acknowledges that the

ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.,* 149 *N.J.* 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor,* 158 *N.J.* 644 (1999) (quoting *State v. Locurto,* 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra).* The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A.* 52:14B-10(c); *Cavalieri u. Public Employees Retirement System,* 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. In this regard, the ALJ found the appointing authority's witnesses credible, but notably, as to the appellant's testimony, the ALJ concluded that:

> his testimony concerning his fleeting or incidental contacts with Cromedy and Sherman was internally inconsistent, not fully consistent with his June 6, 2022, certification, and inconsistent with the competent documentary evidence in the record. Thus, I do not accept this portion of his testimony as reasonable, or reliable. Similarly, appellant's explanation that he advised the inmates that he would be returning to complete his cell search because he was concerned he might be accused of planting evidence is not reasonable. Finally, I do not accept appellant's explanation for failing to report that he had again been interviewed and Mirandized by the NBPD and that his phone had been seized/searched. While I appreciate that appellant may have been deeply affected by the loss of grandmother, his failure to report his additional interactions with the NBPD appears not to be an oversight but rather part of a pattern of a lack of candor in connection with the investigation. Thus, overall, I do not accept appellant's testimony as reliable or credible.

The ALJ made numerous detailed determinations based on her assessment of the credible evidence and presented logical and reasonable explanations for each. Upon its review, the Commission finds nothing in the record or the appellant's exceptions, aside from what was noted previously, to question those determinations or the findings and conclusions made therefrom.

Similar to its assessment of the charges, the Commission's review of the penalty is also *de novo.* In addition to its consideration of the seriousness of the

underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown,* 191 *N.J.* 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied,* 47 *N.J.* 80 (1966). *See also, In re Phillips*, 117 *N.J.* 567 (1990).

Clearly, the appellant's egregious misconduct in this matter warrants removal from employment. As indicated by the ALJ:

> the charges here are sufficiently serious to warrant appellant's removal. As set forth herein, appellant's actions, including failing to disclose his relationships with parolees and being unduly familiar with them, advising the inmates of his plan to return and re-search the cell, mocking the inmates in texts with others concerning the contraband he found during the cell search, encouraging the inmates to strike, and texting about being drunk at work, compromised the safety and security of the DOC's operations, its staff, and its inmates and violates the public trust. Further, his actions in failing to notify the DOC of his second interview with the NBPD violated the DOC's rules and regulations. Appellant's actions also demonstrate a pattern of lack of candor and a lack of judgment expected of a law-enforcement officer. Appellant acknowledged that he did not think to report Cromedy and Sherman on his application for renewal of his DOC security clearance; did not think to report his relationship with Cromedy after his release because he believed their relationship had changed; did not advise the DOC that he was again interviewed by the NBPD, that he had been Mirandized, or that his phone was seized; and thought it appropriate to advise the inmates of his plan to return and complete the cell search because he did not want to be accused of planting evidence. These actions demonstrate a serious lack of appropriate judgement and are contrary

to the high standards of good conduct and judgment required of a law-enforcement officer

The Commission wholeheartedly agrees that the appellant's actions in this matter fall well short of what is expected of a law enforcement employee and certainly are likely to undermine the public trust. As such, the Commission finds the penalty of removal neither disproportionate to the offenses nor shocking to the conscious.

## ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeals of Shamil Davis.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF JUNE, 2023

Allison Chris Myers

Allison Chris Myers
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
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Attachment

***State of New Jersey***
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**
OAL DKT. NO. CSR 08029-21
AGENCY DKT. NO. N/A
2022-545

**IN THE MATTER OF SHAMIL DAVIS, NEW JERSEY DEPARTMENT OF CORRECTIONS, WILLIAM H. FAUVER YOUTH CORRECTIONAL FACILITY.**

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**Richard G. Potter**, Esq., for appellant, Shamil Davis (Galantucci & Patuto, attorneys)

**Bryce K. Hurst**, Deputy Attorney General, for respondent, Department of Corrections, William H. Fauver Youth Correctional Facility (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: March 21, 2023 Decided: April 24, 2023

BEFORE **SUSAN L. OLGIATI**, ALJ:

## STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Shamil Davis, a senior correctional police officer, was removed from his position of employment by respondent, the New Jersey Department of Corrections, William H. Fauver Youth Correctional Facility (collectively referred to herein as the "DOC" or respondent), based on disciplinary charges of: (1) conduct unbecoming a public

employee, in violation of N.J.A.C. 4A:2-2.3(a)(6); and (2) other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12), consisting of various violations of the DOC's Law Enforcement Personnel Rules and Regulations and Human Resources Bulletin 84-17. The charges arise out of an investigation of appellant's interactions with parolees and former inmates following the shooting of a parolee outside of appellant's home.

On or about February 2, 2021, appellant was served with a Preliminary Notice of Disciplinary Action (PDNA) seeking his removal. On August 27, 2021, following a departmental hearing, appellant was served with a Final Notice of Disciplinary Action (FNDA) removing him effective August 27, 2021. His appeal was filed at the Office of Administrative Law (OAL) on September 21, 2021, pursuant to N.J.S.A. 40A:14-202(d).

Thereafter, on or about May 23, 2022, the DOC filed a motion for summary decision. Appellant opposed the motion, and following full legal briefing, oral argument was held on July 5, 2022.

By Order dated August 25, 2022, I concluded that appellant's actions in failing to disclose personal relationships with two parolees/former inmates on his DOC renewal application for security clearance and issuance of identification ("ID") cards violated HRB 84-17, as amended, sections C-8, falsification; C-11, conduct unbecoming an employee; D-7, violation of administrative procedures and regulations involving safety and security; and E-1, violation of a rule, regulation, or policy. I further concluded that appellant's actions in sending text messages about being drunk at work, mocking inmates regarding a cell search he conducted, and encouraging inmates to strike over the conditions at the DOC constituted conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12). Accordingly, I granted the motion for summary decision in part as to those issues. I further denied the motion in part as to the issues of:

> Whether appellant was "unduly familiar" with certain parolees and former inmates and whether his actions with regards to these individuals constitute Conduct Unbecoming a Public Employee in violation of N.J.A.C 4A:2-2.3(a)(6) and/or Other Sufficient Cause in violation of N.J.A.C 4A:2-2.3(a)(12);

> Whether appellant's actions in notifying the inmates that he was stopping his cell search and would be returning to complete the search constitute Conduct Unbecoming a Public Employee in violation of N.J.A.C 4A:2-2.3(a)(6) and/or Other Sufficient Cause in violation of N.J.A.C 4A:2-2.3(a)(12); and
>
> Whether appellant's failure to notify the DOC of his second interview with and Miranda warnings given by the [New Brunswick Police Department] constitutes Conduct Unbecoming a Public Employee in violation of N.J.A.C 4A:2-2.3(a)(6) and/or Other Sufficient Cause in violation of N.J.A.C 4A:2-2.3(a)(12).
>
> Finally, I hereby reserve decision on the issue of penalty pending the evidentiary hearing on the remaining charges.
>
> [August 25, 2022, Order on Motion for Summary Decision.]

A hearing on the remaining issues was held on October 27, 2022, and December 2, 2022. The record remained open to allow the parties to obtain a transcript of the proceedings and submit written closing arguments. Following receipt and review of the closing arguments, the record closed on February 6, 2023. Thereafter, the record was reopened on March 20, 2023, to clarify the record, and reclosed on March 21, 2023.

## FACTUAL DISCUSSION AND FINDINGS

### Undisputed Facts/Prior Factual Findings

The following facts have been jointly stipulated (see J-1), have previously been found by me as fact in connection with the August 25, 2022, Order on Motion for Summary Decision, or are otherwise undisputed. Therefore, I **FIND** as **FACT**:

1. Shamil Davis was employed as a senior correctional police officer with the DOC at William H. Fauver Youth Correctional Facility (WHFYCF).

2. Upon completion of his academy training, Davis was hired by the DOC in or around November 2014.

3. The February 2, 2021, Preliminary Notice of Disciplinary Action charged Davis with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of Human Resources Bulletin 84-17 (HRB 84-17), as amended, sections C-8, falsification: intentional misstatement of material fact in connection with work, employment application, attendance, or in any record, report, investigation, or other proceeding; C-10, divulging confidential information without proper authority; C-11, conduct unbecoming an employee; C-17, possession of contraband on State property or in State vehicles; D-4, improper or unauthorized contact with inmate—undue familiarity with inmates, parolees, their families, or friends; D-7, violation of administrative procedures and/or regulations involving safety and security; D-14, engaging in sabotage or espionage; and E-1, violation of a rule, regulation, policy, procedure, order, or administrative decision.

4. The specifications of the PNDA provided:

> On 9/8/2020, you submitted a . . . Special Custody Report . . . to report interaction with . . . [the] New Brunswick Police Department [NBPD]. You reported transporting an individual who had suffered a gunshot wound to the hospital at which time you were questioned by members of [the] NBPD and asked to provide a statement. Further investigation into the shooting by the NBPD . . . led them to contact the NJDOC Professional Standards Unit/Special Investigation Unit regarding your association with the shooting victim. An investigative report submitted by the PSU/SID revealed that you have maintained unreported relationships with NJDOC inmates, parolees, their families and friends. The investigative report also revealed the individuals are members of a known, recognized NJDOC Security Threat Group, specifically the Bloods. You also falsified documents relating to your employment by submitting official documents in which you neglected to report your relationships with inmates and/or former inmates or parolees. You participated in a contact visit with an inmate at GSYCF[1] which you never reported or requested through proper channels. You notified inmates at WHFYCF that you would be searching their cell prior to doing

[1] Garden State Youth Correctional Facility.

> so, then later discovered contraband in the form of [a controlled dangerous substance] and a home-made weapon. A search of your personal locker revealed you were in possession of contraband items that were not authorized for retention in the secure perimeter of the facility. A forensic search of your cell phone revealed conversations in which you admit to encouraging inmates to engage in a group demonstration and also admitted to being under the influence of alcohol while on duty. You violated relevant rules, regulations and procedures and compromised the safety and security of the institution, staff and inmates.

5. The FNDA sustained all charges in the PNDA except HRB 84-17 sections C-17, possession of contraband on State property or in State vehicles;[2] and D-14, engaging in sabotage or espionage.

DOC's Special Investigations Division (SID) Investigation

6. On September 3, 2020, Davis was questioned by NBPD officers, was given Miranda warnings, and provided a statement regarding the (September 2, 2020) shooting of Zaire Cromedy that occurred outside his home.

7. Following the shooting, Davis and another individual transported Cromedy to the hospital.

8. On September 8, 2020, Davis submitted a Special Custody Report related to the shooting.

9. On September 24, 2020, Davis was interviewed by the NBPD a second time, and given Miranda warnings.

10. During this second interview, the NBPD took possession of and searched Davis's personal cell phone.

[2] The parties agreed during post-hearing conferencing that the following portion of the specification was not sustained in the FNDA: "A search of your personal locker revealed you were in possession of contraband items that were not authorized for retention in the secure perimeter of the facility."

11. The SID referred the matter to the Hunterdon County Prosecutor's Office.

12. On December 17, 2020, the Hunterdon County Prosecutor's Office issued a declination letter.

13. The SID began its investigation of Davis after receiving information from the NBPD.

14. At the time of the SID investigation, Cromedy was scheduled to be under parole supervision until February 2022.

15. During its investigation, the SID obtained phone records and text messages from Davis's phone.

16. These phone records include text messages and FaceTime communications between Davis and Cromedy (a.k.a., "Pluck").

17. The phone records also include text messages dated October 5, 2019, between Davis and another individual[3] in which Davis stated, among other things, "ima be drunk at work again" and "tell [the inmates] I'm drunk and keep it down I'm going to sleep."

18. The phone records also include group text messages between Davis and several coworkers, dated November 26, 2019, in which Davis discussed finding a "shank" during a cell search and among other things stated, "Funniest shit about this all is I told those idiots I was searching there [sic] cell. They could have trashed it."

19. The phone records also contain group text messages between Davis and others dated July 20, 2020, in which Davis stated, among other things, "I tried to

[3] Davis identified the other individual as his girlfriend.

start a strike today it was so hot in that prison," and "Told the inmates they should refuse to eat until they get AC."

20. Social-media posts obtained by the SID also show Davis with Lashawn Sherman (a.k.a., "Blu"), a former inmate and known affiliate of the security-threat group the Bounty Hunter Bloods.

21. On January 6, 2021, Davis was interviewed by SID senior investigator Matthew Schlusselfeld.

22. Davis was given his Weingarten rights and had union representation present during the interview.

23. During the interview, the investigator discussed with Davis, among other things, the December 11, 2018, application submitted by Davis to renew his DOC security clearance and ID cards. One of the questions on the application asked, "To your knowledge do you have any business or personal relationships with current or previous inmates within the NJDOC? This includes, but is not limited to, any acquaintances or family members." In response to this question, Davis answered, "No."

24. In his June 6, 2022, certification in opposition to the motion for summary decision, Davis certified in pertinent part to the following:

> . . .
>
> 2. I grew up and have continuously lived in a high crime area of New Brunswick, New Jersey.
>
> 3. I lived in New Brunswick with my father who has been convicted of a crime.
>
> 4. I have never been arrested, but I went to school and grew up with people who have been convicted of crimes, such as Zaire Cromedy and Lashawn Sherman.

5. Since I have been a Corrections Officer, I have had very little contact with any parolee, including Mr. Cromedy and Mr. Sherman. I orally advised my superiors during my interview that I had a close family relationship with these men.

6. I was raised with Mr. Cromedy. He still has close ties with my father. However, during his lengthy incarceration, I had no contact with him. Since his release, I have only had incidental and fleeting contact with him. He occasionally reaches out to me to ask how I am, and I respond in kind. The only time I see him is when he comes to my house to see my father, with whom he is close. This is not often. However, he went to my father's birthday party and got there at least an hour before I did. We were only together briefly. Our picture was taken at that party, but I had only been there for a brief time while Mr. Cromedy was there, and I had limited contact with him at that time.

7. I was down the block from Mr. Cromedy when he was shot. I was not with him and had very limited contact with him before he was shot. I just happened to be outside when he was shot. I took him to the hospital like I would have done for anyone else, even if I didn't know them.

8. The photograph of me with Lashawn Sherman and two other people was taken at a club. Mr. Sherman arrived by chance one hour after I arrived there. I didn't know he would be there, and he didn't know I was there. After this picture was taken, I soon left. We did not sit together or interact except for this picture being taken. Mr. Sherman and I were classmates a while ago.

9. I made a joke to my girlfriend about going to work drunk. I have never gone to work drunk. It is virtually impossible to go to work in a prison while drunk. There are numerous interactions with superiors and other C.O.'s to get through security before work. I have never been charged with being intoxicated at work. My girlfriend knew I was joking.

10. I stared [sic] searching a cell with two inmates. After about two minutes of searching, I was interrupted by a count. I had to stop the search. I told the inmates I was not finished, and I would be back so that I could not be accused of planting evidence. I had to stop the search, but I was concerned that there could be

contraband in the cell. I went back to the cell knowing that the evidence could have been destroyed, but it was my duty to go back and search the cell to make sure that there was no dangerous contraband in the cell. To my surprise, the inmates did not destroy the evidence, and I found drugs and a shiv. I reported the exact details of the first and second searches. My supervisor approved of how I handled this, and the inmates were punished. I was not charged with anything.

11. I did mock these inmates to my C.O. friends on a closed chat. This chat is typically where we share work stories.

12. I took immense pride in my work. I had the ability to keep strict discipline, while at the same time being considered fair, humane, and professional by the inmates. I was never intimate or unduly familiar with an inmate.

Department Policies and Procedures

25. The DOC's Law Enforcement Personnel Rules and Regulations ("Rules and Regulations") state that "No officer shall become unduly familiar with inmates who are incarcerated, on community release, or on parole status within one year of the completion or vacating of all court-imposed sentences or while the former inmate is under any form of criminal justice jurisdiction." (R-15, Art. III, § 4.)

26. The Rules and Regulations require all officers to report "all prior relationships with inmates or parolees in writing to the Administrator." (R-15, Art. III, § 4.)

27. The Rules and Regulations state that "No officer shall act or behave, either in an official or private capacity, to the officer's discredit, or to the discredit of the Department. Officers are public servants twenty-four hours a day and will be held to the law enforcement higher standard both on and off-duty." (R-15, Art. III, § 3.)

28. Human Resources Bulletin 84-17, Disciplinary Action Policy, details the types of offenses and penalties associated with those offenses.

29. HRB 84-17 provides removal as a potential penalty for the violation of C-8, falsification.

30. HRB 84-17 provides removal as a potential penalty for violation of C-10, divulging confidential information without proper authority.

31. HRB 84-17 provides removal as a potential penalty for violation of C-11, conduct unbecoming an employee.

32. HRB 84-17 provides removal as a potential penalty for violation of D-4, improper or unauthorized contact with inmate—undue familiarity with inmates, parolees, their families, or friends.

33. HRB 84-17 provides removal as a potential penalty for violation of D-7, violation of administrative procedures and/or regulations involving safety and security.

34. HRB 84-17 provides removal as a potential penalty for violation of E-1, violation of a rule, regulation, policy, procedure, order, or administrative decision.

## Testimony

For respondent

**Matthew Schlusselfeld** is a senior investigator with the DOC's Special Investigations Division. He has been an SID investigator since 2014. Prior to that he worked as a senior correctional police officer. He conducted the internal investigation of Davis and issued a total of four reports in connection with same.

He believed the Special Custody Report prepared by Davis (R-2) lacked information and specificity. His impression was that Davis was initially not forthcoming. Davis reported that he knew the shooting victim as "Zaire." However, information from the NBPD indicated that Davis knew Cromedy, the shooting victim, by much more than his first name and that they were in fact "very close" and "like family."

The Miranda warnings given by the NBPD signified that Davis was a potential target of a criminal investigation. Davis also signed a consent authorizing the NBPD to search his phone. (R-6.)

Phone records provided by the NBPD revealed several text and phone conversations between Davis and Cromedy ("Pluck"). In these conversations, beginning on November 9, 2019, Cromedy advised that his girlfriend's house had been shot at and referenced a potential retaliatory shooting. During the conversation, the two referenced plans to see each other the next day. (R-8.) Cromedy was a parolee at the time.

Davis and Cromedy also briefly communicated via FaceTime in July 2020 while Cromedy was on parole. (R-9 at #422.)

During the investigation, Schlusselfeld also discovered text messages with Davis and other officers regarding contraband found by Davis. (See R-1 at DOC 046; R-10.)

During Davis's interview, they discussed Instagram photos dated February 27, 2017, picturing Davis with Lashawn Sherman ("Blu"), along with another friend of Davis—Lenny Ballard. (R-11.) Another Instagram photo, dated August 24, 2020, showed Davis pictured with Cromedy, Ballard, and another individual. (R-11.) Sherman had just been released from custody in October 2016. Cromedy and Sherman were confirmed members of the "Bloods" and were on parole at the time of the photos.

Sherman was released from the facility to which Davis was assigned, and that raised questions. The investigation revealed that Davis was associated with members of the Bloods, including Jylear Brantley, Sherman, and Cromedy. Cromedy was shot at a birthday celebration in front of Davis's house.

All correctional police officers receive training regarding security-threat groups because the DOC has a large population of incarcerated persons who are aligned with these groups.

Davis submitted a renewal application for a DOC ID card. (R-13.) All staff are required to submit the renewal application to ensure they remain suitable for employment. The renewal application asks whether the applicant is now or has ever been affiliated with a gang, including the Bloods. Davis responded "no" to this question. His response conflicted with the information learned during the investigation.

On cross-examination, Schlusselfeld noted that although the NBPD advised the DOC of Davis's Miranda warnings and of the consent to search, it remained Davis's obligation to report that information.

Schlusselfeld acknowledged that while Davis did not initially consent to the NBPD's search of his phone, he eventually did so.

Regarding FaceTime messages between Davis and Cromedy ("Pluck") in July 2020 (R-9), Schlusselfeld acknowledged that a FaceTime from Davis to Cromedy was not answered. (See R-9 at #424.) He did not know whether Davis intended to call Cromedy on that occasion.

Regarding the photos of Davis and others including Sherman and Cromedy (R-11), Schlusselfeld acknowledged that he did not know the circumstances of the photos, including how long those individuals were together, where they were, or why they were there together.

Schlusselfeld acknowledged that New Brunswick is a "stronghold" for the Bloods. He also agreed that the area where Davis lived had high criminal and gang activity.

**Brian LaBonne** is a regional major in the DOC. He is familiar with the DOC's policies and procedures and explained that the policy on undue familiarity prohibits the

establishment of "personal relationships" with inmates or individuals who are released offenders and parolees. Correctional officers are not permitted to associate with recently released offenders and parolees because these individuals often reoffend and return to the DOC's custody. Establishing personal relationships could prevent officers from adequately doing their jobs, cloud an officer's judgment and lead to poor decisions, and/or result in manipulation of the officer. These relationships create appearance problems and violate the public trust.

DOC employees are required to report all interactions with outside law enforcement, including when the employee receives Miranda warnings. It is important for the DOC to know when an officer is Mirandized because it means they are involved in a criminal matter. If an employee were Mirandized, the DOC would have to review the situation to determine whether administrative charges or other action such as reassignment was required. Employees are also required to report if they are subjected to multiple police interviews. It is incumbent upon the employee to report any criminal matter or investigation to the DOC, regardless of whether an outside police agency is in contact with the department.

It would "definitely not be appropriate in any way" for an officer to inform inmates that the officer would be returning to complete a search. It would not be appropriate to "tip off" inmates because they could move or get rid of their contraband. Sworn law-enforcement officers are supposed to enhance security. Tipping off inmates about when a search is being conducted would threaten security. Even if a search had to be interrupted, the inmates would not need to know about an officer's plan to return and complete the search.

LaBonne noted that many of the individual charges against Davis would alone warrant removal. Telling inmates about when a search is taking place and telling them to strike constitute serious violations and a potential "serious threat to the safety and security and could put people at risk." (T1 at 145:24–146:12.) Given the totality of the charges against Davis, removal is justified. It would not be appropriate for Davis to return as a sworn law-enforcement officer. His actions violate not only the public's trust but the trust of his fellow officers.

On cross-examination, LaBonne agreed that bumping into someone at a bar would not necessarily violate the policy on undue unfamiliarity, but an officer should err on the side of reporting the contact. If the DOC is aware of a relationship between an officer and an inmate, it may decide to move the inmate.

LaBonne believed that text messages and photos were evidence of undue familiarity with a recently released parolee.

Regarding the interrupted cell search, LaBonne noted that Davis could have reached out to the supervisor and had someone else continue the search. He explained that if an officer must leave the search, he is expected to secure the area and not allow the inmates back until the search is completed. The inmates could be put into another area such as a dayroom until the search is completed. He did not agree that Davis's action in telling the inmates about his plans to return and re-search the cell was necessary to avoid exposure to a possible charge of planting evidence.

For appellant

**Michael Blaha** has been employed by the DOC since 2015. He is currently a lieutenant at Rahway State Prison. When he was a sergeant he frequently requested Davis to work with him. Davis was one of the "strongest officers." He would do his job without fanfare and the inmates listened to him. Davis's unit was one of the calmest and quietest in the compound. He is familiar with the search conducted by Davis that was interrupted by a code that had been called. Officers cannot leave a cell search half finished. Davis had to continue the search after the code. Davis fairly told the inmates that he had to stop the search and would be back. He violated no rules or regulations in doing so.

On cross-examination, Blaha acknowledged that under normal circumstances it is not appropriate to tell prisoners about a search in advance because it would allow them to destroy or alter contraband.

**Shamil Davis** testified that he was born and raised in New Brunswick. His father was incarcerated when Davis was young. He was approximately ten years old when he met his father. Around that time he began living with his father and grandparents. His father was reincarcerated when Davis was approximately fifteen years old. Davis attended school in New Brunswick. The area in which he lived was a high-crime area. In high school, many of his friends became involved in a life of crime. He was never arrested, never joined a gang, and did not affiliate with gang members.

The shooting of Zaire Cromedy occurred on the night of Davis's birthday. He had planned to go to dinner, but friends started showing up to wish him happy birthday, so he remained at home with his friends. It was during the COVID pandemic, so they stayed outside and sat on the porch. Cromedy drove by and saw them outside. Cromedy got out of his vehicle and wished him happy birthday. Cromedy left and came back later. (T2 at 20:13–18.) Davis was standing on the corner where he lived with his best friend, Lenny Ballard. Zaire was a couple of houses away. Davis heard shots and saw Cromedy on the ground. Davis and his brother took Cromedy to the hospital. Davis stayed at the hospital until the police arrived. He spoke with the police. He reported his conversation with the police to the DOC.

Approximately two weeks later he was called back for another interview with the police. His grandmother had passed away on the date of the shooting. During the second interview he was upset over his grandmother's passing and was in a "different space." He had asked for a few days so that he could attend his grandmother's funeral service in Mississippi. The detective was hostile to him and said that he needed to speak with him immediately. During the interview the police redirected the conversation to a party held for his father. Davis originally planned not to attend the party because he did not get along with his father. The police were asking him about an incident for which he was not present. They said that he would get "jammed up" if he lied to them. He stopped the interview and asked for a lawyer. The detective took his phone. Davis explained that he needed his phone because it had his plane tickets for his travel to his grandmother's service. He voluntarily gave the police permission to go through his phone.

He was Mirandized during the second interview. He did not advise the DOC of this because he was dealing with the loss of his grandmother. At that time he was also on Family and Medical Leave Act leave from work because his mother had cancer. He did not advise the DOC that his phone had been seized. He didn't think anything of that because he had consented to the search of his phone.

Davis and Cromedy grew up together. They were close—like cousins. Their dads were close. Cromedy's nickname is "Pluck." Cromedy had some legal problems following a shooting at a barbershop and he went to State prison. When Cromedy came home from prison, Davis felt he had outgrown him. He really didn't do things with Cromedy. After his release he would see Cromedy around but thought nothing of it. (T1 at 24:5–12.) Cromedy was close with Davis's father and uncle. Davis lived with his father and he would sometimes see Cromedy at his house. He would sometimes see Cromedy at family events. Davis denied knowing that Cromedy is a gang member.

Davis texted with Cromedy ("Pluck") on November 9, 2019. (R-8.) Cromedy was concerned about someone shooting at his girlfriend's house. Cromedy looked to him as an older brother and would ask Davis for advice. He did not have many conversations with Cromedy, they would speak every now and then.

In another text message on November 9, 2019, Cromedy told Davis that his younger brother (a.k.a., "Breezy") was hanging around the wrong people, and that he should tell his brother to stay away from certain people.

When Davis was initially hired by the DOC, he advised the DOC of his relationship with Cromedy. He viewed him as a cousin and they were hanging out a lot. Then, when Cromedy got into trouble and Davis became a law-enforcement officer, their "paths started to divide." When Cromedy went to State prison, Davis didn't speak to him for approximately five years. They grew apart.

He briefly spoke with Cromedy via FaceTime on July 12, 2020. He thinks that he also contacted Cromedy via FaceTime on July 5, 2020, but Cromedy did not answer.

Davis was pictured in a photo dated August 24, 2020, with Cromedy and others on his uncle's birthday. (R-11 at 063.) His uncle lived with Davis, his father, and his grandmother. They had a barbeque for his birthday. He did not know Cromedy would be there. Davis was at work and got to the party late.

While growing up, Lashawn Sherman was Davis's best friend. Sherman is Lenny Ballard's cousin. Sherman got into trouble during his last year of high school. Davis went to college, and they grew apart. His relationship with Sherman ended when Sherman was in prison and Davis became a correctional officer.

Sherman would hang out near Davis's house—it was a hangout spot. They are no longer best friends and do not hang out. Davis was photographed with Sherman and others at a club in Elizabeth. Ballard contacted Davis while he was at the club and said he was going to stop by. Ballard brought Sherman. They took a picture together because they were all wearing the same leather jacket. (R-11 at 062.) Ballard and Sherman were there for only approximately thirty minutes. Davis was at the club with a woman and spoke to Ballard and Sherman only briefly.

He acknowledged that the photo with Sherman was "bad." He should not have been in the picture because Sherman had just been released from prison and Davis was a law-enforcement officer. Other than the photo, he did not have much of a relationship with Sherman.

He acknowledged that Sherman is in a gang. He became involved in a gang while he was in prison. Davis applied to the NBPD and the DOC around the same time. During the interview process he told both the NBPD and the DOC about Sherman and Cromedy. During his interview process, the NBPD told him that Sherman was a Bounty Hunter Blood.

Sherman was also like a cousin to him. After his release, Sherman's family would bring him around to events every now and then. Davis would see him around but their relationship was not the best—it wasn't like when they were growing up.

Jylear Brantley is an older person whom Davis knew from town. Brantley was friends with Davis's father. He is a gang member. Davis did not hang around him.

Davis denied tipping off inmates to a search of their cell. While he was conducting a search of a cell an emergency code was called. He had to stop the search, return the inmates from the day room, and lock them into their cells. He advised the inmates that he may possibly return. It wasn't his intention to tip them off. He was concerned how it would look if he came back and found something when completing the search. He didn't want it to look like he had put something in the cell. Once the code had been completed, he returned to complete the search. He searched the entire cell again and found drugs. He called Sergeant Blaha to advise him of his findings. He continued searching and found a knife/shank. Davis was extremely surprised at finding the shank. It was rare they found something like that. He was "ecstatic" because finding it meant that he could have saved someone from getting hurt.

Davis denied that he was unduly familiar with inmates on parole status. He knew inmates and parolees but felt that his relationships were no more than they should be. (T2 at 57:8–18.)

His grandmother had a lot to do with Davis becoming a correctional police officer. He wanted to be a role model. People from the inner city are often stereotyped. He was an effective officer because he understood people from the inner city. The difference between the inmates and him was only a matter of "minutes, seconds, days." It only takes a few minutes for a person's bad decision to put them in a "situation." He took pride in his position as a correctional officer.

On cross-examination, Davis acknowledged that he did not report his relationship with Cromedy after his release because their relationship was different—they had grown apart. He acknowledged that he occasionally texted Cromedy while he was on parole. (T2 at 63:7–13.) The August 24, 2020, Instagram photo was taken after Cromedy had been released from prison.

He also acknowledged that during his February 2017 photo with Sherman, he was aware that Sherman was a gang member. (T2 at 63:17–64:2; see R-11.)

**Robert Carl Rawls, Jr.**, is a New Brunswick firefighter. He testified that he has been a part of Davis's friend group since approximately 2015. They speak almost daily through their chat group. The group consists of all "good career men." He described Davis as being "brutally" honest. Davis found a positive way out of his environment and he was proud of his position as a correctional officer. On cross-examination, Rawls acknowledged that he did not work with Davis, was not familiar with the DOC rules and regulations, and had no personal knowledge of the charges and allegations filed against Davis.

**Malcolm Belvin** has been a Franklin Township police officer for eight years. He testified that he speaks to Davis daily through their group chat. They see each other frequently. He met Davis the summer that Davis was in the training academy. Belvin entered the academy several months later. He described Davis as a man of amazing integrity and a consistent friend. On cross-examination, Belvin acknowledged that he did not work with Davis, was not familiar with the DOC rules and regulations, and had no personal knowledge of the charges and allegations filed against Davis.

**Lenny Ballard** is a truck driver. He has his commercial driver's license. He testified that he and Davis grew up together and are best friends. They see each other frequently. Davis's mother is married to one of his cousins. He described Davis as very honest and a leader. Davis steered him in the right direction.

Sherman is Ballard's cousin. He is in a gang, but Sherman does not do any gang activities when he is with Ballard. The Instagram photo and post of Davis, Sherman, and him was from a night when they ran into Davis at a club. (R-11.) They took the photo because they all had on leather jackets. Davis was at the club with a woman. Ballard and Sherman left after about fifteen minutes. Davis and Sherman were close when they were kids but they are no longer. Davis was proud of being a correctional officer. On cross-examination, Ballard acknowledged that he did not work with Davis, was not familiar

with the DOC rules and regulations, and had no personal knowledge of the charges and allegations filed against Davis.

**Whitney Foster** is a correctional officer working in the central medical unit at Trenton State Prison. She has been in her position for approximately five years. She went to high school with Davis. He was quiet and hung out with the athletes. She and Davis hang out with friends weekly. They talk on the phone nearly every other day. She described him as kind and honest. She agreed that he was proud to be a correctional officer. On cross-examination, Foster acknowledged that she never worked with Davis and had no personal knowledge of the charges and allegations filed against him.

**Lateya Foxx** is Davis's sister. She testified that she works in finance for the Federal Government and has a master's degree in theology. Davis's grandmother had a great influence on him. She was like a mother to him. He was heartbroken after her death. She described Davis as a hard worker, and explained that when he was young he saved thousands of dollars to buy the car he wanted. He is very responsible. She relies on him. He is a man of integrity. He was proud of being a correctional officer and he enjoyed his job. On cross-examination, Foxx acknowledged that she had no direct knowledge of the DOC rules and regulations nor any personal knowledge of the charges and allegations filed against Davis.

**Samad Dickson** is a senior correctional officer and has worked for the DOC for sixteen years. He trained Davis. They worked closely together for approximately four years. They were partners in the housing unit. Davis was not inappropriately familiar with the inmates. He was a good coworker, and he took pride in his position as a correctional officer. They keep in touch and speak every few weeks. He described Davis as a "great guy" and a man of integrity and compassion. On cross-examination, Dickson acknowledged that he had no personal knowledge of the charges and allegations filed against Davis nor was he involved in the investigation or the disciplinary process.

**Rodney Blount** is a New Brunswick fire inspector. He is a former police officer and previously worked in the Middlesex prosecutor's office. He has known Davis for more than fifteen years. He knows his father and grandmother—they were neighbors. He

described Davis as someone with good character and supportive of his family. Davis is from a high-crime area. He is not in a gang and Blount had no knowledge of Davis associating with any gangs.[4] Blount spoke to Davis when he applied for his position as a correctional officer and congratulated him. Davis was proud of his position. Blount was very proud of him too. Davis's reputation in the neighborhood is that of an upstanding person. On cross-examination, Blount confirmed that he never worked with Davis and had no personal knowledge of the charges and allegations filed against him.

## Credibility

In evaluating evidence, it is necessary for me as the finder of fact to assess the credibility of the witnesses. This requires an overall assessment of the witness's story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A trier of fact may reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.'" State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

As to respondent's witnesses, I accept Matthew Schlusselfeld's testimony concerning the DOC's investigation and his role in the investigation as reasonable and rational and without reason for bias or improper motive. Therefore, I accept his testimony

[4] At hearing, appellant sought to offer Blount as an expert witness regarding gang activity and affiliation. However, as he was not previously identified as an expert during discovery, appellant's request was denied.

as credible. Similarly, the testimony of Brian LaBonne concerning the DOC's rules, regulations, and policies was also straightforward, reasonable, and without reason for bias or improper motive. Therefore, I accept his testimony as credible.

As to appellant's witnesses, I accept Michael Blaha's testimony concerning his familiarity with, and opinion of, appellant as a correctional officer, as well as his testimony concerning the manner and reason for which appellant returned and completed the interrupted cell search, as straightforward and reasonable. Thus, I accept this portion of his testimony as credible. However, to the extent that Blaha opined that it was appropriate for appellant to inform the inmates of his plan to return and complete the search, I do not accept this portion of his testimony as reasonable. His testimony on this issue is overborne by that of Major LaBonne, who concluded that although it was appropriate for appellant to return and complete the search, it was not appropriate to inform the inmates of same. LaBonne reasonably and credibly explained that there was no need for Davis to inform the inmates of his intended actions, and that in so doing he created a threat to security.

As to the remainder of appellant's witnesses—Robert Carl Rawls, Malcom Belvin, Lenny Ballard, Whitney Foster, Lateya Foxx, Samad Dickson, and Rodney Blount—I accept their opinion testimony as to appellant's character as credible. However, I recognize that the testimony of these individuals, who are friends, family, and/or neighbors of appellant, is based on their experiences and personal relationships with the appellant. I further recognize that despite their good opinion of appellant, they have no personal knowledge concerning the charges or the factual allegations underlying the charges, nor do they have any personal knowledge as to how appellant's actions in connection with the charges relate to the DOC rules, regulations, and policies. Thus, I give their testimony limited weight.

As to appellant's testimony, I accept as credible that he took pride in his job as a correctional police officer. However, his testimony concerning his fleeting or incidental contacts with Cromedy and Sherman was internally inconsistent, not fully consistent with his June 6, 2022, certification, and inconsistent with the competent documentary evidence in the record. Thus, I do not accept this portion of his testimony as reasonable, or reliable.

Similarly, appellant's explanation that he advised the inmates that he would be returning to complete his cell search because he was concerned he might be accused of planting evidence is not reasonable. Finally, I do not accept appellant's explanation for failing to report that he had again been interviewed and Mirandized by the NBPD and that his phone had been seized/searched. While I appreciate that appellant may have been deeply affected by the loss of grandmother, his failure to report his additional interactions with the NBPD appears not to be an oversight but rather part of a pattern of a lack of candor in connection with the investigation. Thus, overall, I do not accept appellant's testimony as reliable or credible.

## Additional Findings of Fact

1. Appellant lives with his father in New Brunswick, N.J.

2. Appellant and Lashawn Sherman ("Blu") were best friends in high school. Appellant considered Sherman to be like a cousin.

3. Appellant grew up with Zaire Cromedy ("Pluck"). He was very close with Cromedy and considers him like family.

4. In 2014, during his application process with the NBPD, appellant was advised by the NBPD that Sherman was a member of the security-threat group the Bounty Hunter Bloods.

5. DOC records dating back to February 2014 reflect that Sherman was a member of the Bounty Hunter Bloods. (R-12.)

6. Cromedy was also identified as a known member of the Bounty Hunter Bloods. (R-1 at 2.)

7. Both Cromedy and Sherman were convicted of crimes and were incarcerated.

8. DOC records demonstrate that appellant visited Sherman at the Garden State Youth Correctional Facility on June 1, 2014. (R-1 at 3.)

9. Sherman was incarcerated at WHFYCF from July 2016 until October 2016. (R-1 at 3.) Appellant was assigned to WHFYCF during this time period. Ibid.

10. Sherman was released from WHFYCF in October 2016 and placed under parole supervision. Ibid.

11. Appellant was pictured in an Instagram post and photo, dated February 27, 2017, with Lashawn Sherman and Lenny Ballard. The Instagram post was liked by 171[5] individuals. (See R-11 at DOC Supp 062.)

12. During his interview with the DOC SID, appellant acknowledged that in messages with others he discussed a T-shirt depicting the words "Free Blu" in support of Sherman. (R-1 at DOC 038, DOC 048.)

13. Cromedy was placed under parole supervision until February 2022. (R-1 at 8.)

14. During his application process with the DOC, the appellant advised of his relationship with Cromedy—he listed him as a cousin. (R-1 at DOC 035.)

15. Appellant provided the DOC with no notice of his relationship with Sherman. (R-1 at DOC 035.)

16. On November 9, 2019, appellant and Cromedy exchanged a series of thirty-seven text messages, and referenced plans to talk and see each other the next day. (R-8.)

[5] The posting reflects that it was liked by "mr smiggz and 170 others." See R-11.

17. On November 28, 2019, appellant and Cromedy exchanged three text messages in which appellant inquired if everything was okay and indicated he would not be able to hear Cromedy from where he was located. In response, Cromedy inquired "Wya."[6] (R-8.)

18. On July 12, 2020, appellant and Cromedy engaged in a FaceTime call lasting thirty-four seconds. (R-9.) On that same date, appellant placed a FaceTime call to Cromedy. That call was not answered. Ibid.

19. Appellant was pictured in an Instagram post and photo dated August 24, 2020, with Zaire Cromedy, and others. (R-11 at DOC Supp 063.)

20. On September 2, 2020, Cromedy was shot in front of appellant's home. It was appellant's birthday. That evening, friends, including Cromedy, had stopped by Davis's home to extend appellant birthday wishes.

21. In a DOC Special Custody Report, appellant advised the DOC that on September 2, 2020, he heard gunshots and saw an individual lying on the ground. He further reported that he knew the individual as "Zaire" and that he and his brother drove him to the hospital. He reported the location of the incident as "New Brunswick, NJ." (R-8.)

## LEGAL ANALYSIS AND CONCLUSIONS

Having granted partial summary decision in this matter, the remaining issues to be determined are whether appellant was "unduly familiar" with certain parolees and former inmates and, if so, whether his actions with regards to these individuals, his actions in notifying inmates that he would be returning to complete a cell search, and/or his failure to notify the DOC of his second interview with the NBPD and Miranda warnings given by the NBPD constitute conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and/or other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12).

[6] "Wya" is an acronym often used in texting and commonly recognized to mean "where you at?"

Appellant's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and its implementing regulations, N.J.A.C. 4A:1-1.1 to 10-3.2. A public employee protected by the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his/her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). In an administrative hearing, the appointing authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. See In re Polk, 90 N.J. 550, 560 (1982) (noting that "the usual burden of proof for establishing claims before State agencies in contested administrative adjudications is a fair preponderance of the evidence").

As a law-enforcement officer, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990); see also Moorestown Twp. v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

**Conduct Unbecoming**

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J.

Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Here, appellant had close personal relationships with both Cromedy and Sherman and considered them like family. These individuals were known members of a security-threat group. He failed to notify the DOC of his continued relationship with Cromedy after his release from incarceration. He admitted to seeing these individuals at family events/his father's house. Appellant also texted with and had brief phone/FaceTime conversations with Cromedy in November 2019 and August 2020. And he appeared in a social-media post and photo with Cromedy in August 2020, all while Cromedy was under parole supervision. Further, on appellant's birthday—September 2, 2020—Cromedy stopped by Davis's home and was shot in front of his house. Thereafter, appellant drove Cromedy to the hospital. Additionally, in messaging with others, appellant discussed a T-shirt depicting "Free Blu" in support of Sherman's release. In 2017, months after Sherman's release, appellant appeared in a social-media post and photo with Sherman that was "liked" by more than 170 individuals.

Appellant also failed to notify the DOC when he was subjected to a second interview, Mirandized, and had his phone seized by the NBPD in connection with the investigation into Cromedy's shooting.

Finally, appellant also notified inmates that he would be returning to complete a search of their cell.

These actions constitute conduct unbecoming a public employee. Contrary to appellant's claims, his contacts and interactions with Cromedy and Sherman were not merely fleeting. His failure to report these relationships and his ongoing contacts, including interactions posted on social media, reflect a lack of candor and a serious lapse in judgment. Similarly, appellant's failure to notify the DOC of his second interview by the NBPD, in which he was again Mirandized and his phone was seized, further demonstrates a lack of candor and lapse in judgment. Finally, appellant's action in notifying the inmates of his plans to return and re-search the cell also demonstrates a serious lapse in judgment. As a law-enforcement officer, appellant is held to higher standard of conduct.

His actions here failed to meet this higher standard. Rather, his actions are of the type that adversely affect the safety and security of the DOC operations and the safety of its staff and inmates, and violate the public trust and confidence.

Accordingly, I **CONCLUDE** that the respondent has proved, by a preponderance of the credible and competent evidence, that appellant's actions in connection with the remaining charges further constitute conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and that this charge is **SUSTAINED**.

## Other Sufficient Cause

The DOC also charges that appellant's conduct violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, the following DOC rules and regulations:

HRB 84-17, C-10: Divulging Confidential Information Without Proper Authority

Article IX, Section 8, of the DOC's Law Enforcement Personnel Rules and Regulations provides that an officer shall "[n]ot disclose to any person any information received or acquired in the course of and by reason of official duty and not generally available to the public, unless specifically authorized by Competent Authority." (R-15.)

For the reasons previously set forth, appellant's action is advising the inmates that he would be returning to complete his search of the cell constitutes divulging confidential information. Although appellant may have been required to return and complete his interrupted search, there was no legitimate reason to advise the inmates of his plans. For obvious security reasons, such information is generally not shared with the inmates and the disclosure of this information compromised the safety and security of the DOC, its staff, and its inmates. And even though it may not have been appellant's intention to tip off the inmates, his actions nevertheless violate DOC policy.

Accordingly, I **CONCLUDE** that the respondent has proved, by a preponderance of the credible and competent evidence, that appellant's actions constitute other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violation of HRB 84-17, C-10,

divulging confidential information without proper authority, and that this charge is **SUSTAINED**.

HRB 84-17, C-11: Conduct Unbecoming an Employee

Article III, Section 3, of the DOC's Law Enforcement Personnel Rules and Regulations provides that "[n]o officer shall act or behave, either in an official or private capacity, to the officer's discredit, or to the discredit of the Department. Officers are public servants twenty-four hours a day and will be held to the law enforcement higher standard both on and off-duty." (R-15.)

Having concluded that appellant's actions constitute conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), I similarly **CONCLUDE** that his actions also constitute other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violation of HRB 84-17, C-11, conduct unbecoming an employee, and that this charge is **SUSTAINED**.

HRB 84-17, D[7]-4: Improper or Unauthorized Contacts With Inmate—Undue Familiarity With Inmates, Parolees, Their Families, or Friends

Article III, Section 4, of the DOC's Law Enforcement Personnel Rules and Regulations Rules and Regulations provides:

> No officer shall become unduly familiar with inmates who are incarcerated, on community release, or on parole status, within one year of the completion or vacating of all court imposed sentences or while the former inmate is under any form of criminal justice jurisdiction. An officer shall report all prior relationships with inmates or parolees in writing to the Administrator or his or her designee.
>
> [R-15.]

[7] Section D of HRB 84-17 concerns Safety and Security Precautions violations.

In the corrections setting, "undue familiarity" generally means intimate friendships or close personal relationships between prison employees and inmates or parolees. Hansen v. N.J. Dep't of Corr., No. A-3248-99 (App. Div. April 26, 2001) (slip op. at 12). Such relationships are forbidden because "[t]he need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305–06 (App. Div. 1993). Thus, "employee discipline that precludes close personal relationships between prison personnel and inmates or parolees . . . serve[s] the important goal of prison security." Simmons v. New Jersey State, 96 N.J.A.R.2d (CSV) 165.

For the reasons previously set forth herein, I **CONCLUDE** that appellant's relationships and interactions with Cromedy and Sherman, including Instagram photos and posts, text messages, Facetime communication, and seeing them at family-type events while they were under parole supervision of the NJDOC, constitute other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violation of HRB 84-17, D-4, undue familiarity, and that this charge is **SUSTAINED**.

HRB 84-17, D-7: Violation of Administrative Procedures and/or Regulations Involving Safety and Security

For the reasons previously set forth herein, appellant's actions in failing to properly and/or fully disclose his relationships with Cromedy and Sherman, his continued interactions with these individuals while they were under parole supervision of the DOC, and his actions in advising the inmates of his plan to return and complete his interrupted cell search threatened the safety and security of the DOC's operations, its staff, and its inmates. Accordingly, I **CONCLUDE** that appellant's actions constitute other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violation of HRB 84-17, D-7, violation of administrative procedure and/or regulations involving safety and security, and that this charge is **SUSTAINED**.

HRB 84-17, E[8]-1: Violation of a Rule, Regulation, Policy, Procedure, Order, or Administrative Decision

Finally, for the reasons previously set forth herein, I **CONCLUDE** that appellant's actions in connection with the remaining charges constitute other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violation of HRB 84-17, E-1, violation of a rule, regulation, policy, procedure, order, or administrative decision, and that this charge is **SUSTAINED**.

## Penalty

The Civil Service Commission's review of the penalty to be imposed is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority.

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). Typically, numerous factors, including the nature of the offense, the concept of progressive discipline, and the employee's prior record, are considered. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate. Thus, progressive discipline is not a "fixed and immutable rule to be followed without question. Instead, we have recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Carter v. Bordentown, 191 N.J. 474, 484 (2007).

Here, the remaining charges against appellant have also been sustained. Respondent contends that the conduct upon which summary decision was granted alone warrants appellant's removal. Respondent further argues that the additional conduct

[8] Section E of HRB-17 concerns General Violations.

sustained through the remaining charges further justifies removal. Appellant contends that he is a man of good character and that he was an exemplary employee. He concedes that he made certain mistakes, especially in failing to notify his supervisor of his second interview with the NBPD in which he was Mirandized. However, he maintains that his contacts with Cromedy and Sherman were fleeting and not unduly familiar. And he further maintains that his action in notifying the inmates of a return search was appropriate. Appellant therefore argues that the penalty of removal is not appropriate, particularly in light of the fact that during his approximately eight years of employment with the DOC he received only one major discipline, consisting of a five-day suspension.

Despite appellant's arguments to the contrary, and his relative lack of prior disciplinary history, the charges here are sufficiently serious to warrant appellant's removal. As set forth herein, appellant's actions, including failing to disclose his relationships with parolees and being unduly familiar with them, advising the inmates of his plan to return and re-search the cell, mocking the inmates in texts with others concerning the contraband he found during the cell search, encouraging the inmates to strike, and texting about being drunk at work, compromised the safety and security of the DOC's operations, its staff, and its inmates and violates the public trust. Further, his actions in failing to notify the DOC of his second interview with the NBPD violated the DOC's rules and regulations. Appellant's actions also demonstrate a pattern of lack of candor and a lack of judgment expected of a law-enforcement officer. Appellant acknowledged that he did not think to report Cromedy and Sherman on his application for renewal of his DOC security clearance; did not think to report his relationship with Cromedy after his release because he believed their relationship had changed; did not advise the DOC that he was again interviewed by the NBPD, that he had been Mirandized, or that his phone was seized; and thought it appropriate to advise the inmates of his plan to return and complete the cell search because he did not want to be accused of planting evidence. These actions demonstrate a serious lack of appropriate judgement and are contrary to the high standards of good conduct and judgment required of a law-enforcement officer.

Accordingly, I **CONCLUDE** that returning appellant to his position as a correctional police officer would be contrary to the respondent's interest in maintaining order,

discipline, and safety and in maintaining the public's trust and confidence in its operations. Thus, I **CONCLUDE** that the penalty of removal is appropriate and should be upheld.

## ORDER

I hereby **ORDER** that the disciplinary charges are **SUSTAINED**. I further **ORDER** that the respondent's determination removing appellant from employment is **AFFIRMED** and his appeal is **DISMISSED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 24, 2023
DATE

**SUSAN L. OLGIATI,** ALJ

Date Received at Agency: April 24, 2023

Date Mailed to Parties: April 24, 2023

SLO/cb

## APPENDIX

## WITNESSES

**For appellant**

Robert Carl Rawls, Jr.

Malcom Belvin

Lenny Ballard

Whitney Foster

Lateya Foxx

Samad Dickson

Rodney Blount

**For respondent**

Matthew Schlusselfeld

Brian LaBonne

## EXHIBITS

**Joint**

J-1 Joint Stipulations of Fact

J-2 Preliminary Notice of Disciplinary Action

J-3 Final Notice of Disciplinary Action

**For appellant**

None

**For respondent**

R-1 DOC SID, Criminal Investigation Reports (3)

R-2 Davis Special Custody Report

R-3 Not admitted

R-4 Not admitted

R-5 Not admitted

R-6 Middlesex County Prosecutor's Office Waiver of Miranda Rights signed by Davis, September 24, 2020

R-7 Phone Record Extraction Report

R-8 Text messages between Davis and Cromedy, November 9 and 29, 2019

R-9 Phone records of FaceTime communications between Davis and Cromedy

R-10 Text messages between Davis and coworkers and others, November 26, 2019

R-11 Instagram photos/post of Davis and individuals known to be members of a security-threat group, February 27, 2017

R-12 Lashawn Sherman Security Threat Group Record

R-13 Davis's Application for Security Clearance and ID Cards, Renewal, December 11, 2018

R-14 DOC Policy No. ADM. 010.004, Standards of Professional Conduct: Staff/Inmate Overfamiliarity

R-15 DOC Law Enforcement Personnel Rules and Regulations

R-16 DOC Human Resources Bulletin 84-17