

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 v. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004).

In this matter, the exceptions filed by the appointing authority are not persuasive in demonstrating that the ALJ’s credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. In this regard, the ALJ concluded that testimony of the appointing authority’s witnesses regarding the investigation, departmental policies and procedures, and conclusions, was detailed and consistent with the evidence presented in the matter and found all their respective testimony to make sense and be credible. While their testimony may have differed on the level of training that the appellant may have received, as the appointing authority indicated in its reply to exceptions, the appellant fails to refute that he received regular relevant training on de-escalation, use of force, and OC spray. The ALJ’s lack of addressing the specific difference regarding training presented by the appointing authority’s witnesses does not diminish her conclusions of the testimony based on the totality of the testimony and evidence presented. Similarly, while the appellant claims some of Garrels’ testimony was mischaracterized, the ALJ made specific findings regarding the balance of his testimony which led to her finding that the appointing authority’s expert witness, Bruce Carber’s testimony more persuasive. Specifically, regarding Carber’s testimony in the use of force in law enforcement, particularly in corrections facilities, the ALJ stated:

Carber’s analysis of the video, reports, and departmental protocols, in conjunction with his years of experience in corrections, made sense. His analysis was thorough and lacked any material inconsistencies. His opinion, that insulting words by an inmate does not justify use of physical force by an officer, was supported by the pertinent Rules of Conduct and General Orders, which were applicable in this matter but not limited to General Order #13, There is no question that an officer does not have to wait to be physically assaulted before using physical force against an inmate; however, the decision to use force requires objective, reasonable facts demonstrating that there is an immediate threat or danger to the officer. As succinctly stated by Carber, [the inmate] committed no action that could reasonably be believed to be an

immediate threat against Taylor and certainly no action that required the use of both mechanical and physical force against [the inmate]-more specifically, spraying [the inmate] point-blank in the face with OC Spray and then performing a physical takedown of [the inmate] in his cell, while [the inmate] was holding his hands up to his face and had his back to Taylor.

In comparison, regarding Glenn Garrels, the appellant's use of force expert, the ALJ commented:

I found Garrels' analysis and opinion to be flawed and less persuasive. His findings were undermined by his lack of knowledge of the corrections system, having never worked in it, and reliance upon IA statements and reports that were collectively inconsistent with one another and inconsistent with body camera footage as well as the Ocularis footage.

Further, concerning Garrels, the ALJ stated:

Garrels repeatedly stated in both his report and his testimony that [the inmate] was an active and aggressive resister. He also testified that the Department failed to recognize the possibility that de-escalation was not feasible. Further, he repeatedly testified that [the inmate] was not injured after the "takedown," which infers that the lack of injury meant that the force used was both appropriate and not excessive. When questioned on how he arrived at such conclusions, his responses were specious and lacked foundation in the record. He acknowledged for instance the highlighted statement in his report, which he believed bolstered Taylor's concerns for his safety, that [the inmate's] fists were balled, was inaccurate. He also couldn't say whether Taylor's statement that he (Taylor) backed up before he took the OC spray was accurate based upon the footage, yet he relied upon it in rendering his opinion. Garrels also glossed over the lack of de-escalation commands and actions that Taylor could have given or done if he perceived a threat, but did not. Garrels also lacked an understanding of why the cell door should have been shut after spraying the OC spray, instead insisting that it was violative of the OC spray policy and that it just didn't make sense to him. Again, such comments reflect a lack of understanding of the corrections mores and rationale for the same, and de-escalation techniques that are utilized daily in the prison system.

Therefore, on the whole, Garrels' testimony regardless of any alleged mischaracterization, was flawed and less persuasive than the appointing authority's expert witness.

Moreover, the appellant contends that removal was not proportionate and the ALJ's finding that the conduct was egregious was not reasonable considering the misrepresentations of testimony addressed above. Similar to its review of the underlying charges, the Commission's review of the penalty is *de novo*. In addition to considering the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). Further, 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 principle 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 Correctional Police Officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense occurring in the environment of a correctional facility may, nevertheless, warrant the penalty of removal where it compromises the safety and security of the institution, or has the potential to subvert prison order and discipline.¹ In this regard, the Commission emphasizes that a Correctional Police Officer is a law enforcement officer who, by the very nature of his job duties, is held to a higher standard of conduct than other public employees. *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). Moreover, the Commission is also mindful that:

The appraisal of the seriousness of [the appellant's] offense and degree to which such offenses subvert discipline . . . are matters peculiarly within the expertise of the corrections officials. The appraisal is subject to *de novo* review by the [Commission], *Henry v. Rahway State Prison*, *supra*, but that appraisal should be given significant weight. *Bowden v. Bayside State Prison*, 268 N.J. Super. 301, 306 (App. Div. 1993), *cert. denied*, 135 N.J. 469 (1994).

In the instant matter, the appellant's actions in spraying an inmate without cause and body slamming the inmate to the ground were particularly egregious. In this regard, the Commission notes that the ALJ found that the appellant's actions in this incident were not reasonable. In making her determination as to reasonableness, the ALJ used the standards for law enforcement officers charged with excessive force to be analyzed under the reasonableness standard set forth in the Fourth Amendment and set forth by the Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989) and *Barnes v. Felix* 605 U.S. 73 (2025).

¹ The ALJ noted that the appellant was hired August 6, 2012, and his record evidenced 12 prior disciplinary actions, including written reprimands. Agency records indicate four minor disciplinary actions, two each in 2018 and 2020.

Specifically, the ALJ stated:

[U]nder the totality of the circumstances, there was no reasonable basis for the appellant's actions. There were no reports of [the inmate] acting out from the previous shift and the appellant went on shift an hour before the incident. As set forth in greater detail above in the findings of fact, at no time was [the inmate] an active or threatening assailant. Yet, even assuming [the inmate] was being verbally insulting, which does not rise to the level of a threatening and/or active assailant, without any warning, and without any attempt to de-escalate the situation, appellant sprayed [the inmate] point-blank in the face with OC spray. [The inmate] immediately covered his face and then turned and went to the back of the cell, where the appellant staled up behind him and picked him up from behind and slammed him on the floor. Under the totality of the circumstances, no reasonable officer would have used any force-mechanical or physical-much less the excessive force the appellant used on [the inmate].

Accordingly, given the appellant's egregious behavior, removal is clearly the appropriate penalty.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Nicholas Taylor.

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 10TH DAY OF JUNE, 2026



Mary Cruz
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Shannon L. Dalton
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 12307-25

AGENCY DKT. NO. N/A

**IN THE MATTER OF NICHOLAS TAYLOR,
CAMDEN COUNTY DEPARTMENT OF
CORRECTIONS.**

Brandon Sweeney, Esq., for appellant (Rosenberg, Perry and Associates,
attorneys)

Antonietta P. Rinaldi, Assistant County Counsel, for respondent (Emeshe Arzón,
Camden County Counsel, attorney)

Record Closed: March 16, 2026

Decided: April 29, 2026

BEFORE TAMA B. HUGHES, ALJ:

STATEMENT OF THE CASE

Nicholas Taylor ("Taylor" or "appellant"), a corrections officer with the Camden County Department of Corrections ("Department," "CCDOC," or "respondent"), appeals the Department's Final Notice of Disciplinary Action (FNDA) and decision to terminate his employment.

PROCEDURAL HISTORY

On June 18, 2025, appellant filed an appeal of the Department's FNDA with the Civil Service Commission, which was perfected on June 27, 2025. The matter was transmitted to the Office of Administrative Law for a hearing as a contested case on June 27, 2025. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

An initial call took place on August 6, 2025, with a status call a week later on August 14, 2025, at which time hearing dates of January 13, 2026, January 14, 2026, and January 15, 2026, were set. By letter dated October 28, 2025, appellant agreed to waive the 180-day requirement pursuant to N.J.A.C. 4A:2-2.13(g). See Counsel letter dated October 28, 2025. The hearing took place on January 13, 2026, and January 14, 2026. The record remained open to allow the parties the opportunity to obtain transcripts and submit summation briefs, which were received on March 16, 2026, at which time the record closed.

FACTUAL DISCUSSION

The following facts are not in dispute in this matter, and as such, I **FIND** them as **FACT**:

On February 14, 2025, a Preliminary Notice of Disciplinary Action (PNDA) was filed against Taylor. (R-14.) The charges included violations of:

Violation of N.J.A.C. 4A:2-2.3(a) (General Causes) specifically:

6. Conduct Unbecoming a Public Employee;
7. Neglect of duty; and
12. Other sufficient cause

Violation of CCDOC Rules of Conduct and General Orders, specifically:

- Rule 1.1 Violations in General;
- Rule 1.2 Conduct Unbecoming;
- Rule 1.3 Neglect of Duty;
- Rule 3.2 Security;
- Rule 3.6 Departmental Reports;

Rule 3.8 Use of Force (Non-lethal)

Violation of CCDOC General Orders, specifically:

- General Order #013;
- General Order #073;
- General Order #074

The "Incident giving rise to the charge(s) and the date(s) on which it/they occurred" states:

On or about 10 June 2024, at approximately 0400 hours, you were in 2 South A/block serving breakfast trays. At approximately 0403 hours, you unsecured 2 South A/Block cell #45 to serve the two occupants their breakfast. Inmate [H.W.] (4393463) allegedly engaged you in a verbal confrontation in the cell doorway. Inmate receives the two breakfast trays and places them inside the cell. Inmate [H.W.] returns to the threshold of the cell #45 and again allegedly continues the verbal confrontation with you. At 0403 hours, you failed to give any orders to inmate [H.W.] and de-escalate the situation instead, you administered a burst of Oleoresin Capsicum Spray to inmate [H.W.]'s facial area at close range. Inmate [H.W.] enters the cell and you follow him. While standing behind inmate [H.W.], you wrapped your arms around him, lifted him off his feet, and slammed him to the ground where he struck his upper back on the metal toilet. While inmate [H.W.] is sitting on the floor next to the toilet, you placed your left hand on the right collar bone/neck area to force him onto his back. Inmate [H.W.] is rolled over face down, into the prone position, his hands placed behind his back and secured in handcuffs. Inmate [H.W.] was assisted to his feet and escorted to medical to be decontaminated, at this time, inmate [H.W.] refused medical treatment. During your Internal Affairs interview, you stated that inmate [H.W.] made threats towards you, which you failed to document this alleged threat in your general incident report. As a Correctional Police Officer, your objective is the care and custody of the inmates under your supervision. You displayed a complete disregard to inmate [H.W.]'s safety during this incident. Your unbecoming conduct and actions brings the department into disrepute, reflects discredit upon you as a member of this department, impairs and harms the safe and orderly operations and creates a major security and safety breach.

(R-14)

The disciplinary action sought under the PNDA was removal. The disciplinary hearing took place on April 8, 2025. On June 9, 2025, the Final Notice of Disciplinary Action (FNDA) was issued. The "Sustained Charges" were identical to the charges set forth in the PNDA, as was the incident giving rise to the charges. The disciplinary action taken was removal, effective February 14, 2025.

TESTIMONY

Elvi Tavaréz (Tavarez), an officer/investigator with the Department, testified that he has been with the Department for twelve years, and has been assigned to the Internal Affairs (IA) Unit for the past five years. In this capacity, he was tasked with conducting the IA investigation of Taylor due to an incident (Incident) that occurred on June 10, 2024, between Taylor and inmate H.W. that involved use of force. Upon the completion of his investigation, he generated an Investigative Report (IR) and a Summary and Conclusion report. (R-12; R-13.)

In going through the chronology of events, Tavaréz stated that the matter was referred to IA on June 10, 2024, after concerns were raised by Captain Robert Leithead (Captain Leithead) surrounding the discrepancy between Taylor's use of force report from the Incident that had occurred earlier in the morning in 2 South A #45 and the video footage of the incident. (R-2; R-7.) Upon receipt, an interview was conducted with H.W.'s roommate, H.B. After the interview, the investigation was assigned to him.

As part of the case file, he received a copy of the interview with H.B., the general incident reports generated by Captain Leithead (R-1), Taylor (R-2), Officer Garrett Craig (Craig) (R-3), Officer Daraibel Gonzalez (Gonzalez) (R-4), Officer Shehab Uddin (R-5), and Sergeant Robert Egan (R-6). He did not give credence to H.B.'s interview statements for a couple of reasons, one of which was the fact that he believed H.B.'s statement to be self-serving because H.B. had a personal interest in the outcome of the investigation, believing he would get the cell to himself because of the Incident. He also didn't give weight to H.B.'s statement because it was inconsistent with the videos and other statements/reports that the officers had provided.

Once he reviewed the reports and the videos, he forwarded the matter to the Camden County Prosecutor's Office for criminal review. The matter was held in abeyance at the Department level until the prosecutor's office released the matter on January 15, 2025, for administrative investigation.

As part of his investigation/report, he created a timeline of events based upon his review of both the Ocularis footage and body camera footage. (R-7.) In review of the Ocularis footage, Taylor was observed standing next to Craig, who handed the food tray to H.W. Taylor was then observed extending his right arm which had the OC spray in his hand, and he is then seen entering the cell. The next segment shows other officers arriving at the scene and a handcuffed H.W. being led out of the cell.¹

He also reviewed Craig's body-worn camera footage and went through the timeline of events during his testimony. (R-7.) He pointed out the different individuals that were seen on the footage, particularly Taylor and H.W. Towards the end of the footage, Tavaréz noted that Craig was heard saying "what the fuck dude." (R-7; R-12.) In his IA interview, Craig stated that he made the comment because the whole situation could have been avoided by shutting the door, and there was no reason for Taylor to take H.W. down after he had been sprayed with the OC spray because H.W. was not physically or verbally aggressive.

In going back through the footage, Tavaréz noted that there appeared to be a verbal communication between H.W. and Taylor during which Taylor appeared to be agitated. Taylor is then seen extending his right arm with the OC spray in his hand and spraying H.W. in his face. Taylor then followed H.W. into the cell, coming up behind him and wrapping his arms around him, picking him up, and then slamming him onto the ground. On the way down to the ground, H.W. struck his back on the metal toilet. Taylor then got on top of H.W. and flipped him onto his stomach, and it is at this point that Taylor instructs H.W. to put his hands behind his back. Craig assisted with the handcuffing. According to Tavaréz, he has investigated approximately fifty use of force cases in the past and at no time has he ever seen a takedown such as the one that Taylor did to H.W.

¹ There is also footage of H.B. walking out of the cell, head to a table, and dance in place.

Training on use of force is done on a yearly basis and such a maneuver is not part of the training.

He interviewed Taylor (R-8), Gonzalez (R-10), and Craig (R-9). Taylor stated that H.W. threatened to beat him up, but he never articulated what was threatened or said. Gonzalez's and Craig's statements were not consistent with Taylor's version of events. While H.B. stated in his interview that H.W. had verbally threatened Taylor, Tavarez reiterated that he had disregarded H.B.'s statements as self-serving. Taylor also remarked in his interview that he was not thinking of policy and procedures during the Incident, nor did he follow policy and procedure at that time. He admitted that at no time prior to using the OC spray did he give H.W. a verbal order or command, nor did he attempt to de-escalate the situation before or after he sprayed H.W., despite H.W. no longer verbally threatening him. (1T28:1-4.) The first and only command that he gave to H.W. was not until H.W. was on the ground. Taylor also admitted that the cell door could have been shut.

In her interview, Gonzalez acknowledged that the cell door could have been shut. Craig, in his interview, said the same thing, stating that the whole incident could have been avoided by shutting the cell door. Craig also stated that the way Taylor had taken H.W. down after being sprayed was not warranted because H.W. was not physically or verbally aggressive at that time. Craig also stated that at one point, Taylor gave H.W. a command to take a step back. This statement was contrary to Taylor's, who stated that the only command that he gave H.W. was when H.W. was on the ground.

Upon completion of his interviews/investigation, he wrote his IR and Summary and Conclusion report sustaining the charges. This was the first case in his career that he sustained the allegation of excessive force.

On cross-examination, Tavarez was questioned as to what classification H.W. fell into: a passive resister or an assailant. In response, Tavarez stated that he determined H.W. to be a passive resister, which by definition was a "person who is noncompliant in that they fail to comply in a non-movement way with verbal or other direction from an

officer.”² (R-16.) He was aware that Taylor claimed that H.W. was threatening him and that Craig also stated that H.W. had moved back into the threshold in a threatening manner. He also acknowledged that Gonzalez reported that H.W. had approached Taylor in a threatening manner and that H.B. in his interview stated that H.W. was aggressive towards him and had made alarming threats towards Taylor and the others. Despite these statements, Tavares stood by his earlier classification of H.W. as a passive resister.

When asked whether past experiences of officers are taken into consideration in his review of a case, Tavares stated that they were not. Therefore, Taylor’s prior use of force experience(s) involving OC spray were not a consideration in this investigation. What was considered were the two video footages of the incident. He was aware that 2 South A Block was a mental health block. He also acknowledged that training on use of force for the facility is done through videos, not in-person. He could not recall whether the training touched upon different types of use of force maneuvers or how to handle individuals that were a different height and weight.

In going through the body camera footage, Tavares agreed that when the cell door was opened, H.W. was on the threshold of the door. When Taylor took H.W. to the floor, H.W.’s feet landed first, then his rear and upper back landed simultaneously. (R-7.) Once H.W. was on the ground, securing him and getting medical treatment was paramount, which is what Taylor did. Later in his testimony, he added that at all times, safety was also paramount. He also agreed that up until that point, there was no audio, therefore the alleged threats were not captured on the body camera footage.

He was aware that Taylor had worked on that particular floor in the past, and at the time of the Incident, Taylor was the senior officer. He verified that during Taylor’s interview, Taylor stated that he wasn’t upset at what H.W. was saying to him before dispensing the OC spray. Tavares disagreed with the statement that Taylor could not recall whether he had given de-escalation orders; rather, in his statement, Taylor stated that the first order that he gave to H.W. was after H.W. was on the ground.

² On re-direct, he changed his classification of H.W. to a cooperative person because no orders were ever given to H.W. until he was on the ground, and once on the ground, he followed the order given.

When questioned whether closing the cell door after using the OC spray would have been a safety concern and violative of the policy, he responded yes, if there had been a safety concern.

Bruce Carber (Carber) was qualified and testified on behalf of the Department as an expert in use of force in law enforcement , specifically in corrections facilities. He went through his background in law enforcement, which spanned over twenty-five years in corrections. Throughout his career, he was trained in use of force, and he also taught it for over twenty years. He recertified his instructorship through the State of New Jersey in 2023 and most recently taught use of force to law enforcement in March 2025 and again in September 2025 to security and school personnel. He also described his progression through the ranks in corrections, starting as a floor officer and working his way up to Deputy Warden, and how over the years, he handled/reviewed and/or investigated use of force matters. He also discussed his task force and academy history.

He prepared a report on this matter after reviewing the investigative reports, interviews, and video and body camera footage that was generated as part of the IA investigation. (R-22.) The most important items that he reviewed were the body camera footage and the report and interview of Taylor—the latter two being the closest in time to the Incident. He is familiar with General Order 13—the Department's General Order on Use of Force—and the core principles that apply to the Incident, which is the duty to use the least amount of force that is objectively reasonable, necessary, and proportional as a last resort, and the duty to de-escalate. (R-16.)

Carber went through his findings in his report based upon Craig's body-worn camera footage, which he personally reviewed, and the timeline that Tavarez had put forth in his report. (R-7; R-22.) In walking through the footage, his observations, and perceptions, he stated the following:

- Taylor in the front of the doorway interacting with H.W.
- H.W. is standing with his hands crossed, wearing a suicide blanket under which he is naked having been stripped searched.
- H.W. receives the food tray. At that point, the interaction should have been done, and the door closed.

- H.W.'s hand is wide open and he is talking. H.W. is not flailing his arms or swinging them.
- Taylor deploys OC spray into H.W.'s face
- Taylor enters the cell
- Gonzalez continues to maintain the door
- H.W. is in the back of the cell with his hands on his face
- Taylor lifts H.W. up above his head and slams him to the ground.
- H.W. lands on his back
- H.W. is rolled over and put him into the cuff position.
- Audio on the body camera turns on

(1T70:12 – 1T71:10)

According to Carber, Taylor sprayed the OC spray in H.W.'s face from less than a foot away. This was improper because anything less than three feet increases the risk of injury to the inmate (hydraulic needle effect). Notably, throughout the Incident, there did not appear to be any sense of urgency by either Gonzalez or Craig. Carber also commented on the contents of the cell, which were sparse, and included the inmates' mattresses, their grey gowns/suicide blanket, and their bodies, with no other belongings. Regarding Taylor's "takedown" of H.W., Carber stated that the maneuver was not something that is taught in training and likened the maneuver to something one would see on televised wrestling.

He also did a comparison of what Taylor wrote in his report and the footage, finding multiple discrepancies. One such discrepancy was Taylor's statement that H.W. was aggressive upon opening the door and that H.W.'s hands were balled in fists. None of that was seen on the footage. At no time was H.W. seen in a combative stance. Additionally, the report describes how Taylor lifted H.W. up and took him to the ground but fails to state what orders were given. Nor is there a mention of any de-escalation efforts.

Carber went on to note that if he were in such a situation and became concerned for his safety, he would have shut the door. Similarly, if he had concern for his safety before he opened the door, then he wouldn't have opened the door. He went on to point out that when the body camera footage started, Taylor already had the OC spray in his

hand. Therefore, if he was sensing aggression, to de-escalate the situation, he should have shut the door.

He also compared Taylor's interview to the footage. (R-7; R-8.) What he noted was that in his interview, Taylor admitted that he did not give any orders to H.W. until after he had taken H.W. to the ground. Taylor also stated that H.W. was aggressive, but the footage doesn't show that. When asked in the interview how he felt threatened, Taylor responded with boiler statements such as that he felt threatened, feared for his safety, and that H.W. was combative and aggressive. None of his statements were objective and he failed to describe what the actual threats were. Taylor also admitted that after he sprayed H.W., he was no longer a threat, either verbally or physically. He also made a comment that there was only so far you can go with de-escalation which, according to Carber, was contrary to General Order 13, which requires de-escalation before using force. On this point, Taylor also stated that the way he took H.W. down was how he takes all inmates down, which, again, according to Carber, shows no consideration for proportional force.

In going through steps that Taylor could have taken to de-escalate the situation, Carber stated that if H.W. was aggressive from the start, Taylor could have kept the door closed. If he had a precognition that H.W. was going to be aggressive, he could have kept the door closed and called his supervisor if he believed that force was going to be necessary. He took the OC spray out, but he could have instead closed the door, which is a useful tool in corrections. Also, prior to taking the inmate down, he could have given H.W. orders to cuff up or showed the OC spray in a constructive manner and given H.W. orders to comply or step back. He could have also used calming gestures, and there are other resources that were available but were not used. Instead, Taylor used no de-escalation tools. Carber went on to state that de-escalation starts at the beginning of the interaction, right when the officer walks up to the door. In his interview, Taylor agreed that the door could have been closed, as did Craig and Gonzalez in their interviews.

Regarding Taylor's Incident Report, Carber believed the report itself was lacking. It provided no detail of what happened and contained generalized statements such as "I felt threatened," but there was no detail as to how or why he felt threatened. Based upon

his review of the footage, Carber did not believe that any officer would have a concern of threat. He also reviewed Craig's report, which in his opinion, was equally as lacking in detail. As with Taylor, Craig's actions did not convey a concern for his safety. This is supported by Craig's statement on the footage, where he said "what the fuck," and during his interview when he explained that he made the comment because he thought the Incident could have been avoided. It is also supported by the fact that Craig did not activate his body camera until after Taylor sprayed H.W. in the face and at one point had his back to H.W. Had H.W. made threats or refused orders, he would have activated the body camera sooner. The only officer present at the scene who did articulate a threat was Gonzalez, who stated that H.W.'s hands were fisted. This statement was not supported by the body camera footage.

Carber went on to opine that in a corrections facility, unlike a street setting, which has multiple variables that can affect a situation, the surroundings are contained and controlled. An inmate only has access to an officer when the door is opened. Where H.W. was housed, it was a closed unit, and all inmates are locked in at the same time. In this case, there were two inmates and three officers present. Therefore, there was already built-in backup while serving the trays.

He also reviewed Trooper Glenn Garrels's report and disagreed with his analysis of the Incident for multiple reasons. First, H.W. was not an active or threatening assailant. There was no evidence of a threat; at best, there were insults. (P-1, at 7.)

Second, there was no reasonable basis to use force on H.W., particularly in light of the policy. Officers are required to use the least amount of force that is objectively reasonable, necessary, and proportional, as a last resort. In his opinion, there were plenty of opportunities for Taylor to de-escalate the situation.

Third, closing the door after administering the OC spray would not be in violation of the OC spray policy. The medical examination required under the policy would not take place in the cell, but rather at a separate location. Additionally, once an inmate is sprayed, they are given a chance to comply with orders that had been given. On

numerous occasions during the course of his career, he would use the OC spray and close the cell door or use a wand to dispense the OC spray under the closed door.

Fourth, it would not be dangerous to close the door, leaving the cellmate (H.B.) in the cell with H.W. The two inmates were classified together after the appropriate checks were done on their backgrounds and had no issue with one another. Further, the door did not have to be completely closed all the way to be closed. Officers are trained where to place their foot to effectively secure the door without locking it.

Fifth, jail facilities do not use Benchmark Analytics for use of force reports. This was due to too many use of force reports being filed by corrections, which overwhelmed the system, which in turn resulted in the State imposing a moratorium on corrections use of Benchmark Analytics for use of force cases inside the facility.

Sixth, there are no constitutional charges against Taylor, only policy violations. The Supreme Court cases cited by Garrels helped form the policy that Taylor violated. Additionally, only one of the cases that Garrels cited, Kingsley v. Hendrickson, 576 U.S. 389 (2015), involved a corrections facility. The issue in that case was a claim of violation of the Fourteenth Amendment's Due Process Clause that involved a pre-trial detainee and the standard of force that should have been used on him. Carber went on to opine that there is a system in corrections to ensure that information on an inmate and any issues/concerns/incidents involving the inmate are conveyed to the other officers as well as the next shift. Everything that is done in corrections, which is a closed, controlled environment, is done to mitigate risks to the officers and prevent excessive force from being used.

Seventh, there was a lack of consideration of other alternatives to use of force. Alternatives to use of force are outlined in the policy, such as assessing the situation, calming techniques, active listening, and slowing down the pace of the incident, to name a few. None of them were given consideration in Garrels's report.

Carber went on to state that in his report, he made specific findings about the impermissibility of the use of force used by Taylor. The findings specifically outlined how

Taylor's actions violated General Order #13, from taking the OC spray out in anticipation of use of force without calling his supervisor to failing to de-escalate the situation at multiple points during the Incident. (R-22, at 9–10.) According to Carber, what a reasonable officer who had the same level of training and experience as Taylor would have done would be to close the door after the trays were served, as there was no need for further interaction. Based upon his review of the matter, in his opinion, the force used by Taylor on H.W. was both excessive and unnecessary.

On cross-examination, Carber agreed that some of the definitions in the caselaw cited in Garrels's report were adopted by the Department in some of its policies. He also agreed that any training, not just in-person training, was beneficial. He went on to state that in this case, it would have been beneficial if Taylor had followed the policy guidelines. When asked how an officer is supposed to know how to take an inmate down if they are not taught to do so in-person, Carber stated that defensive tactics are taught at the academy which Taylor attended. He couldn't speculate whether Taylor would have handled the situation better had he had in-person defensive tactics training.

When asked about his report wherein he characterized H.W. as non-threatening, Carber stated that based upon his review of the reports and footage, H.W. was non-threatening. Taylor had been on shift an hour before the incident and there was no report of yelling, screaming, or prior aggression by H.W. While the reports of Taylor, Craig, and Gonzalez talk about aggression and/or balled fists, that is not seen on the video.

He acknowledged that in their statements, Taylor, Craig, and Gonzalez stated that H.W. appeared to be aggressive and that aggression can be shown in multiple ways. He went on to state, however, that just saying that someone was aggressive is not an objective statement of the threat; there must be more, such as how the person was aggressive or assaultive. While one report stated that H.W. had balled fists, it was not borne out by the footage; nor did H.W. have an aggressive stance, therefore the reports were wrong about H.W. having an aggressive stance and balled fists. Carber questioned how, if the reports were wrong, one can accept the statement that H.W. was threatening. Carber went on to state that all three statements failed to identify what the objective threat was. Absent that, one has to look at the video footage. At best, maybe H.W. was using

insulting words, which is not threatening. There is a higher threshold for what is deemed a threat, and if an officer feels threatened, common sense would have the officer closing the door to put more distance himself from the threat.

Carber was also questioned about Finding #5 in his report, wherein he classified H.W. as a passive resister at the time of the incident. In response, he stated that H.W. may have been insulting, but again, that does not make him threatening. He was cognizant of the fact that Craig, in his statement, stated that Taylor told H.W. to back up prior to spraying the OC spray; however, without further detail in the report, it is unclear whether that was a directive or whether H.W. was just being told to step back from the door. Even if H.W., who was at the door threshold, told Taylor that he was going to punch him, Taylor should have just shut the door to de-escalate the situation.

He was also asked if H.B. could have been harmed by H.W. had Taylor shut the door. In response, Carber stated that that assumes that H.W. was a threat to begin with. Second, they were put together after both were vetted and classified to share a cell. Third, the officers did not need to close the door all the way. Additionally, if there was a concern about H.B. remaining in the cell, they could have directed him to leave the cell.

When asked about Finding #8 in his report, specifically, whether closing the door after the OC spray had been dispensed would have been harmful to H.B., he stated that only H.W. was sprayed. Also, as previously stated, the door did not need to be closed all the way. All officers are trained on how to use their foot to keep the cell doors, which are very heavy, partially shut. Further, it is not uncommon to shut the door after OC spray has been dispensed, which gives the spray time to take effect and time for the officer to call for backup and medical assistance.

When shown the body camera footage and questioned as to whether Taylor could see H.W.'s hands after Taylor had sprayed him with the OC spray, Carber indicated that he could see H.W.'s hands by his face, therefore Taylor should have seen them. Additionally, Taylor didn't need to go into the cell; he could have given H.W. an order. Also, H.W. walked back into the cell; he was as passive as he could be. There was no reason for Taylor to go into the cell.

Glenn Garrels (Garrels) was qualified and testified as an expert in the use of force on behalf of the appellant. In going through his background, he stated that he had been a New Jersey State Trooper for twenty-two years, during which he worked his way up through the ranks and in various units within the New Jersey State Police (NJSP). During his time with the NJSP, he received training from all over the country on the use of deadly force and has attended multiple courses on how to investigate use of force and how to understand the standard and apply the standard of force against the totality of the circumstances. He also became a use of force instructor through the Federal Law Enforcement Training Center.

In preparing his report, he reviewed all the investigative reports, interview transcripts, Taylor's training records, Craig's body camera footage, and the surveillance footage of the incident. Additionally, as part of his analysis, he looks to the use of force standards set forth in Graham v. Connor, 490 U.S. 386 (1989), Kingsley v. Hendrickson, 576 U.S. 389 (2015), and Barnes v. Felix, 605 U.S. 73 (2025).

In going through the surveillance footage, Garrels noted that when the cell door was opened, H.W. was at the threshold and close to the officers. H.W.'s body was slightly "bladed" towards Taylor, which, according to Garrels, could be construed as a potential pre-assault indicator. He speculated that the clothes that H.W. had on were a suicide smock and potentially hid some of H.W.'s body language.

According to Garrels, there was no reason for H.W. to come back towards Taylor after being handed the food trays. While there was no audio of the exchange, the reports that he read stated that H.W. was being combative and making threats towards Taylor. Given the close proximity between the two, and the nature of the exchange, H.W. could have very quickly struck Taylor.

In discussing Taylor's actions after he sprayed H.W. with the OC spray, Garrels stated that when Taylor approached H.W. in the back of the cell, he was trying to get H.W. under control because H.W. was an active or "threatening" assailant, and based upon the Department's policy and training, physical force was appropriate. He went on to add that

an officer cannot use OC spray on an inmate and just close the door. Such action makes no sense; not only is such action violative of the Department's own OC spray policy that officers have a duty to decontaminate the inmate after dispensing OC spray, but there was a threatening/active assailant in the cell with another inmate who needed to be secured.

According to Garrels, under the Attorney General Guidelines and the Department's definition of use of force, which were both similar, if someone threatens a police officer, they are considered a "threatening assailant" at which point use of force – be it mechanical or physical, is appropriate. An active assailant is either attacking you or threatening to attack you. In the body camera footage, H.W. was within one or two feet of Taylor while making threats to him. Under the policy, H.W. was either an active assailant or a threatening assailant, and under the Use of Force policy, Taylor was justified in using force.

In this case, the cell area was confined and there was very little room to maneuver. While Taylor's takedown of H.W. was unusual, it did not mean it was inappropriate. The correctness of the action was based on the totality of the situation. He acknowledged that the size and weight of an individual factors into how much force is used. In this case, contrary to the Department's assertion, H.W.'s foot hit the ground first, then his backside, and then his back hit the toilet. Taylor did not pick up H.W. and throw him on the toilet. Garrels went through the timeline of the incident from the trays being handed to H.W. to the OC spray being dispensed, to how Taylor cautiously entered the cell and his actions as he "guides" H.W. to the ground. (1T141:8–11.)

Garrels described how the four factors in determining whether the level of force was reasonable under Graham were relevant in this matter. First, H.W. was making physical threats towards Taylor, which factors into the severity of the crime. Second, there was the immediacy of the threat—how close H.W. was to Taylor when he made the threats. The third factor, resisting, did not really come into play; however, one of the officers stated that Taylor did give H.W. a command to step back. The last factor, evading, was not truly applicable in this matter. What also comes into consideration was Taylor's prior experience with another inmate who had also been on the mental health

unit and the fact that after the OC spray had been dispensed, the inmate pretended to be affected by the spray, but he had not. All of these factors under Graham and Barnes go into the totality of determining the reasonableness of the force used.

He also looked at Kingsley in his analysis, which specifically dealt with the corrections department. Again, similar to Graham, the immediacy and severity of the threat must be considered. In this case, H.W. was on the threshold of the cell door making threats when the cell door was opened and after the trays were handed over. Such action by H.W. is a perceived threat. According to Garrels, even when he followed H.W. into the cell, Taylor still had the right to use force. An officer does not wait to be assaulted to use force. Even at the doorway, Taylor had the right to use force, which he did by using the OC spray – mechanical force, which was a safer and lesser form of force. Garrels went on to reiterate and emphasize that H.W. was a threatening and active assailant and Taylor's actions throughout were reasonable. It is what Taylor perceived at the time that is relevant, not what everyone thinks in hindsight.

In discussing de-escalation and whether that was possible given the situation at the time, Garrels stated that the Department in this case failed to recognize the possibility that de-escalation was not feasible. De-escalation tactics are for individuals who are passive resisters who are not following commands. H.W. was not a passive resister. He was an active resister who was making threats to a law enforcement officer. As such, de-escalation tactics, under the circumstances of this case, were not feasible. Even if Taylor had backed up, H.W. could have stepped over the threshold and closed the gap. Taylor's actions after he had sprayed the OC spray in H.W.'s face were also in accordance with the Departmental policies and federal law. After the takedown, Taylor's job was to quickly secure H.W. and get him out of the cell to get him decontaminated. Had Taylor not immediately taken H.W. out of the cell once H.W. was secure, he would have violated the OC spray policy. While he (Garrels) has never worked in the corrections setting, it didn't make sense to him that Taylor should have just closed the door.

Also looked at was Taylor's training over the course of his career. Aside from the academy, where he would have been taught use of force and defensive tactics techniques, there did not appear to be any further defensive tactics training that would

include how to do a takedown from 2012–2020. Such techniques should be taught once or twice a year to maintain proficiency. Taylor did receive training on use of OC spray every couple of years as well as expandable baton training.

He believed that the use of force utilized by Taylor against H.W. was appropriate under the totality of the circumstances and in accordance with the prevailing caselaw, Attorney General Guidelines, and the Department's policies. The use of lesser force (OC spray) was appropriate because H.W. was an active assailant or threatening assailant. The takedown was also appropriate, and there were no complaints of pain or injury. On this last point, later in his testimony Garrels acquiesced that whether or not an injury occurred was not relevant to the determination of whether the level of force used was appropriate. In his opinion, however, all the force used by Taylor was justified based upon Taylor's belief of imminent danger that he was going to be assaulted.

Garrels disagreed with Carber's findings for several reasons. First, Carber found H.W. to be a passive aggressor, not a threatening assailant. While there was no audio to the body camera footage, such a finding was inconsistent with Taylor's statement that H.W. was making threats towards him, which was confirmed by the two other officers that were present and H.W.'s roommate. He also disagreed with Carber's credibility findings as to Taylor's statement that H.W. was threatening him with bodily harm. While Taylor could have written a better report, he elaborated on H.W.'s actions and statements during his Internal Affairs interview. He also disagreed with Carber's assessment that Taylor should have closed the door after he had dispensed the OC spray in H.W.'s face. Such action would have been violative of the Department policy on use of OC spray, which requires immediate medical attention after the spray is disseminated. Additionally, you can't just close the door after an inmate has threatened an officer; the situation needs to be addressed and the inmate secured.

On cross-examination, Garrels agreed that he has never worked in corrections, never worked in Internal Affairs, and has never investigated a corrections use of force matter other than as a paid expert. He also agreed that he listed several statements of fact in his report which he relied upon in reaching his opinion in the matter. (P-1.)

On this point, when asked whether the statement in his report that “He [Taylor] explained that the things W. was saying were in a threatening manner therefore he backed up and took his spray out” was accurate based upon the body camera footage, Garrels stated that he couldn’t tell. When questioned about his testimony that H.W. took steps (plural) towards Taylor, he stated that H.W. moved his left foot forward. Whether it was one step or more steps, he still moved closer to Taylor. When asked about the accuracy of Gonzalez’s statement, which was highlighted in his report, that H.W.’s fists were balled, Garrels acquiesced that it was not an accurate statement. Also questioned was H.B.’s statement, which he also quoted in his report, that H.W. was “antagonizing Officer Taylor and getting in his face.” In response, Garrels stated that that is what H.B. perceived—H.W. didn’t need to be directly in Taylor’s face. When questioned further as to whether this is what Taylor reported, Garrels acknowledged that Taylor did not say that. In review of the footage, he believes that H.W. was a little too close to Taylor but wouldn’t commit to the statement that H.W. was getting in Taylor’s face. Also questioned in his report was the statement that Taylor did not go right into the cell after spraying H.W. Garrels, after being shown the footage, stated that he believed that there was a slight pause before Taylor entered the cell. He agreed, however, that Taylor’s statement that he was too close to H.W. after spraying him to give him instruction was wrong.

Regarding his earlier testimony that the takedown of H.W. was a small move on Taylor’s part, Garrels reiterated that it was a small move, likening the move to something seen on WWF wrestling. He did not, however, consider the maneuver a body slam. Upon further questioning, he acknowledged that he has never seen such a move taught anywhere.

Also questioned were the inconsistent statements that never reached his report, such as Craig’s claiming that Taylor ordered H.W. to step back, but Taylor stating that he never gave any orders, much less that one. In response, he stated that he would have to question Craig about the inconsistency. He was also questioned about Taylor’s statement that he takes all inmates down the same way and whether that was appropriate. In response, Garrels stated that it depended on the circumstances and how Taylor was trained. Regarding the statement in his report where he said that the other officers (Craig and Gonzalez) confirmed that H.W. was being combative and aggressive, Garrels

justified this finding, stating that verbal threats can fall under the umbrella of combative and aggressive. When asked about his report findings that the Department's use of force reports were outdated and they were not using the Benchmark Analytics forms, he acknowledged that his report was incorrect on this point as he was unaware that the Department was not required to use the form.

Regarding his statement that closing the door after OC spray has been dispensed made no sense, Garrels agreed that he has never worked in corrections. Despite this, he believed that such action of closing the cell door did not make sense. He is familiar with the hydraulic needle effect with OC spray, and the directives on how to use it, and that one of the directives is that it should not be used at a distance of less than three feet.

Garrels was also asked about his reliance on statements made by H.B. and whether he believed H.B. was credible. In response, he stated that he used H.B.'s statements to corroborate Taylor's statements but had no way of determining H.B.'s credibility. Even so, he had no reason to doubt H.B.'s credibility and took his statement at face value. He was aware that during his interview, H.B. stated that H.W. was making sexually aggressive comments, "maybe even rape-like stuff," to himself and Taylor, but Taylor never mentioned such threats. (1T175:9-13.) He was unaware that in his interview, H.B. stated that he believed that as a result of the Incident, he would get the cell back to himself.

In discussing his testimony regarding Taylor's prior experience with OC spray and inmates not being affected, Garrels was asked if H.W. appeared to be affected by the spray. Even after being shown the footage, Garrels indicated that other than closing his eyes and putting his hands up to his face, he could not tell if H.W. was affected by the spray. He acknowledged, however, that H.B. did not appear to be affected by the spray or distressed in any way.

Regarding his earlier testimony that Taylor had to deal with the incident immediately to prevent future incidents, Garrels reiterated that it defied common sense for Taylor to just shut the door without handling the situation.

Robert Leithead (Captain Leithead) testified that he has been with the Department for over twenty-three years, the last five in the position of captain, having worked his way up through the ranks. Over his years of service, as a sergeant and shift commander, he had prepared multiple disciplinary notices against officers and has recommended discipline. Several of the disciplinary actions involved use of force. At the time of the Incident, he as well as other officers (i.e. sergeants, lieutenants, and captains) were members of the Disciplinary Review Board (Board). The Board is tasked with reviewing complaint forms that have been levied against officers and determining if a penalty should be assessed. The determination is then forwarded to the Warden, who makes the final determination on the level of discipline.

This matter came to his attention when he was preparing a spreadsheet for the Warden on use of force incidents. As part of his review, he looks at the incident report and video for consistency in reporting. When he reviewed the incident report in this matter and the surveillance footage—both the Ocularis and Craig's body camera footage—he found a discrepancy in reporting. One such discrepancy was Taylor's reporting that when he gave H.W. his tray, H.W. approached him in an aggressive manner, causing him to fear for his safety, therefore he immediately dispensed OC spray in H.W.'s face. In his review of the footage in this matter, Taylor appeared to be the aggressor, not H.W. Taylor also reported that after spraying H.W., H.W. went to the back of the cell where he (Taylor) followed him, placing his arms around H.W.'s waist and taking him to the floor. He found this concerning because Taylor should have closed the cell door and notified his supervisor after he sprayed H.W. He should have also given H.W. a command for compliance, which he also failed to do. Another concern was the fact that Taylor failed to state in his report that H.W. threatened him and in what way. Such information is important when determining the reasonableness and justification for use of force.

After his review, he referred the matter to IA, prepared a report, and ultimately signed off on the PNDA. (R-1; R-14.) In going through the violations and how Taylor violated the same, Leithead stated the following:

Rules of Conduct [R-15]:

Rule 1.1 – Violations in General – This was based upon any departmental policy that was violated.

Rule 1.2 – Conduct Unbecoming – The use of excessive force.

Rule 1.3 – Neglect of Duty – The use of excessive force

Rule 3.2 – Security – Failure to close and secure any gate or door. As soon as the tray was handed over, Taylor should have closed the door.

Rule 3.6 – Departmental Reports – Knowingly entering or causing to be entered any inaccurate, misleading, false or improper information in departmental report. Taylor's report lacked detail such as de-escalation efforts that he employed; how or why he feared for his safety (i.e. what threats were made).

Rule 3.8 – Use of Force. Taylor used excessive force on H.W.

General Order 013 – Use of Force, Including Deadly Force:

Core Principal #1 – The Sanctity of Human Life and Serving the Community and Core Principal #2(A)(9) (Force as a Last Resort and Duty to De-escalate). Taylor escalated the situation; didn't use force as a last resort; and the force that was used was excessive. Additionally, as soon as the trays were delivered he should have closed the door and called his supervisor.

Core Principal #2(B)(2) (Impermissible Force) by entering H.W.'s cell and using force on him when H.W.'s back was to him. No commands were given – instead Taylor just picked H.W. up and threw him to the ground.

Core Principal #2(C)(1) (Anticipated Force). Taylor was required to notify his supervisor if force was anticipated and the inmate is not an immediate threat. In this case, Taylor should have closed the cell door and notified his supervisor.

Core Principal #2(D)(3) and (6) (Alternates to Force) was violated by failing to de-escalate the situation. Instead of de-escalating the situation, Taylor escalated it. Had he closed the door to begin with the whole situation could have been avoided. He could have originally closed the cell door and call for a supervisor. He did none of that.

Core Principal #3 (Duty to Use Only Objectively Reasonable, Necessary, and Proportional Force):

Section A-1(1) and (3) (Non-Deadly Force) – Taylor not only used force, he failed to use reasonable and necessary force proportional to the situation. Additionally under A-3 (the level of resistance that

on officer encounters is a key factor in determining the amount of force that may be used in response), H.W. appeared to be a cooperative inmate. He wasn't giving Taylor any resistance and his back was also turned. Additionally, Taylor never gave any commands. H.W. was not an active resister.

General Order 73 - Personal Conduct of Employees. [R-17.]

Section 1 (Employees are expected to treat fellow employees, offenders and the public with respect and courtesy at all times) and Section 12 (Employees are responsible to know all departmental policies as well as county policies and act in accordance with them). Taylor violated these sections by using excessive force on H.W.

General Order 074 – Professional Code of Conduct. [R-18.]

Directive - All sworn personnel in the department will conduct themselves in a professional, ethical manner at all times. Taylor received training to reinforce the rules and Departmental orders and passed all of the testing on the same. [R-19.]

On cross-examination, Leithead stated that he was aware that the body camera footage has a thirty-second lag time, further stating that the lag time was taken into consideration when he reviewed the footage and reports in this matter. He agreed that aggression can be perceived and demonstrated through words; however, in this case, Taylor failed to document in his report what threat or aggression H.W. demonstrated.

He believed that H.W. was a cooperative person based upon the footage. He was cooperative in taking the trays that were being handed to him. After he was sprayed, he went to the back of the cell and just stood there. He acknowledged, however, that due to the time lag, he was unable to ascertain the exchange between H.W. and Taylor, which is why it was important for Taylor to thoroughly report the exchange. Had he done so, it would have been easier to understand whether his use of force was necessary under the circumstances. He was aware that both Craig's and Gonzalez's reports used the term "aggression"; however, both officers failed to articulate what the aggression was: physical or verbal. To him, the use of a generic term (aggression) by all three officers raised a red flag and the specter that all three were trying to justify and/or downplay the incident. In his review of the footage, he did not see any aggression on H.W.'s part.

He was also questioned as to whether General Order 13 would have been violated by failing to render medical assistance had Taylor closed the cell door after dispensing the OC spray. In response, he stated that it would be violated only if Taylor had closed the door and left H.W. without getting medical treatment. In this case, he could have closed the door after spraying H.W. and called for a supervisor and medical assistance, which would have arrived within seconds. Additionally, if H.W. was aggressive, a plan would have been formulated for H.W.'s extraction. Last, in accordance with General Order 13, closing the door would have actually created the safest environment for H.W. He went on to note that body slamming after OC spray has been dispensed is not consistent with officer training.

When asked about training, Leithead stated that the officers receive yearly training, some of which is hands on and includes defensive tactics. He could not say for certain when the last defensive tactics course was taught and whether Taylor received it.

Rebecca Franceschini (Warden Franceschini) testified that she has been the Warden at the CCDOC for the past two years, and before that, she was the Deputy Warden for two years. In total, she has been with the Department for almost twenty-five years, having worked her way up through the ranks over the years. She was in her current position when the Incident occurred, and she is the one who had the final authority in deciding the appropriate penalty.

The Incident came to her attention when she was briefed by IA. As part of her evaluation of the case, she reviewed all the incident reports, investigative reports, training and testing records, and footage. She also took into consideration Taylor's twelve years of service. Based upon her review, it was her belief that termination was the appropriate penalty. She was cognizant of prior incidents that Taylor had with inmates in the same unit and his possible perception but was unpersuaded, stating that he should have fallen back on his training tools, such as de-escalation techniques, verbal commands, and assessment of the situation. Given the fact that he did not fall back on his training, it raised a concern that going forward he would be unable to follow policies and procedures, particularly since in his interview, Taylor stated that he would continue to handle situations in the same manner.

With regard to the deploying of OC spray, Warden Franceschini stated that all officers are trained on how to deploy OC spray. Prior to deploying the spray, the officer should give a command to de-escalate the situation. Taylor did not. He never gave H.W. a command; never shut the door prior to dispensing the OC spray; and he shot the OC spray right in H.W.'s face, less than three feet from H.W.'s face, which could have damaged H.W.'s eyes. Under the policy, OC spray should only be used after commands have been given to de-escalate the situation. When H.W. retreated into his cell, Taylor could have shut the door or given a command, but he failed to do so. Instead, he went into the cell, picked H.W. up, and slammed him down on the ground.

She believed termination was appropriate for several reasons. First, inmates are under the care and protection of the Department, and Taylor failed on that score. Second, H.W. was not threatening or resisting, yet Taylor used the OC spray without giving any commands. Third, Taylor picked H.W. up and body slammed him. Fourth, during his interview, Taylor stated that H.W. was threatening him with bodily harm, yet nowhere in any of the reports are any of the threats documented. Fifth, he admitted that after he had deployed the OC spray, H.W. was not physically aggressive. Therefore, body slamming H.W. was not justified. Sixth, at no time did Taylor attempt to de-escalate the situation. He could have given verbal commands or just shut the door. Seventh, Taylor in his interview stated that taking the inmate down the way he did was his way of securing the situation and preclude future threats. He also admitted that he didn't follow the departmental policies and would handle future situations the same way. Given the totality of everything and the fact that Taylor had more than twelve years on the job and should have known better, she believed that termination was the only acceptable penalty.

On cross-examination, when asked whether the multiple-choice testing that is given at training was effective and efficient, Warden Franceschini stated that she believed it was. Later in her testimony, she clarified that training is given by an instructor, some of which is in-person, and then a multiple-choice test is given. She did not know whether Taylor had received in-person defensive training since he graduated from the academy; however, body slamming is not part of the training provided by the County.

FINDINGS OF FACT

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, 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 fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony 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). Similarly, "[t]he 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). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affs., 182 N.J. Super. 415, 421 (App. Div. 1981).

The testimony presented by Warden Franceschini, Captain Leithead, and Elvi Tavaréz regarding the investigation, departmental policies and procedures, and conclusions, was detailed and consistent with the evidence presented in this matter. I found all of their respective testimony to make sense and credible.

Additionally, the record in this matter contains the testimony of two experts on the use of force, Carber and Garrels, both of whom offered differing opinions regarding the appropriateness of Taylor's actions. In weighing the opinions of these experts, it is well

settled that “[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated.” Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted). In this regard, it is within the province of the finder of facts to determine the credibility, weight, and probative value of the expert testimony. State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied, 127 N.J. 321 (1990); Rubanick v. Witco Chem. Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), modified on other grounds and remanded, 125 N.J. 421 (1991).

I found Carber’s testimony and conclusions to be more persuasive than those of Garrels. Carber’s analysis of the video, reports, and departmental protocols, in conjunction with his years of experience in corrections, made sense. His analysis was thorough and lacked any material inconsistencies. His opinion, that insulting words by an inmate does not justify use of physical force by an officer, was supported by the pertinent Rules of Conduct and General Orders, which were applicable in this matter, including but not limited to General Order #13. There is no question that an officer does not have to wait to be physically assaulted before using physical force against an inmate; however, the decision to use force requires objective, reasonable facts demonstrating that there is an immediate threat or danger to the officer. As succinctly stated by Carber, H.W. committed no action that could reasonably be believed to be an immediate threat against Taylor and certainly no action that required the use of both mechanical and physical force against H.W.—more specifically, spraying H.W. point-blank in the face with OC spray and then performing a physical takedown of H.W. in his cell, while H.W. was holding his hands up to his face and had his back to Taylor.

Conversely, I found Garrels’s analysis and opinion to be flawed and less persuasive. His findings were undermined by his lack of knowledge of the corrections system, having never worked in it, and reliance upon IA statements and reports that were collectively inconsistent with one another and inconsistent with body camera footage as well as the Ocularis footage. An example of his lack of knowledge was his finding that the Department did not use the proper Benchmark Analytics form. What he did not realize was that due to the volume of reporting, there was a moratorium on corrections utilizing the form.

Garrels repeatedly stated in both his report and his testimony that H.W. was an active and aggressive resister. He also testified that the Department failed to recognize the possibility that de-escalation was not feasible. Further, he repeatedly testified that H.W. was not injured after the "takedown," which infers that the lack of injury meant that the force used was both appropriate and not excessive. When questioned on how he arrived at such conclusions, his responses were specious and lacked foundation in the record. He acknowledged for instance that the highlighted statement in his report, which he believed bolstered Taylor's concerns for his safety, that H.W.'s fists were balled, was inaccurate. He also couldn't say whether Taylor's statement that he (Taylor) backed up before he took the OC spray out was accurate based upon the footage, yet he relied upon it in rendering his opinion. Garrels also glossed over the lack of de-escalation commands and actions that Taylor could have given or done if he perceived a threat, but did not. Garrels also lacked an understanding of why the cell door should have been shut after spraying the OC spray, instead insisting that it was violative of the OC spray policy and that it just didn't make sense to him. Again, such comments reflect a lack of understanding of the corrections mores and rationale for the same, and de-escalation techniques that are utilized daily in the prison system.

In sum, I give greater weight to Carber's findings than Garrels's.

With the above in mind, in addition to the findings of fact above, after review of the documentary evidence presented in this matter, and having heard the testimony of the witnesses, I **FIND** the following as **FACT**:

On June 10, 2024, Taylor was assigned to 2 South A, which is a mental health unit. At approximately 4:03:14 a.m., while assisting Craig and Gonzalez with delivering food trays, Taylor opened up cell 2 South A #45, where H.W. and H.B. were housed.

Based on a review of Craig's body camera footage (R-7), I **FIND** the following:

- When H.W.'s cell door is opened, H.W. was standing on the threshold wearing nothing but a suicide blanket/smock. His feet were bare. He appears to be rocking

back and forth with his hands cupped together in front of him and saying something to Taylor.

- Within seconds of opening the door, Craig's arm is seen handing over the food trays to H.W., who takes them and puts them in the cell. Once he does this, he turns back to continue talking to Taylor. At one point, H.W., who throughout the exchange never set foot out of the cell, is observed turning slightly sideways and extending his left hand with his fingers spread out as though he is emphasizing a point. At no time during his verbal exchange with Taylor did H.W. make any aggressive moves, nor were his hands balled up into fists.
- Just prior to H.W. turning slightly sideways, Gonzalez moved the food trolley over and held the door open, all the while watching the interaction. Neither Gonzalez or Craig interceded before or during the exchange, nor did they move to assist Taylor, who on his end appeared to be agitated and aggressive.
- Without any warning to H.W. or command to stand down, Taylor raised his right hand, which already had the OC spray in it, and sprayed H.W. point-blank in the eyes from a distance of less than a foot. This distance was in violation of the policy which required dispensing of the spray at a distance of at least three feet. H.W. immediately dropped his head down and turned around, receding into the cell.
- At no time prior to dispensing the OC spray did Taylor call his supervisor, even though he had already pulled the cannister out and had it ready in his hand, which meant that he anticipated using the spray.
- At no time did Taylor shut the door either before the food tray was handed over or immediately after. Neither did Craig or Gonzalez.
- After spraying H.W. in the face with the OC spray, instead of closing the cell door, Taylor, immediately and without hesitation, followed H.W. into the cell. Again, neither Gonzalez nor Craig rushed in to assist Taylor.
- Taylor is seen approaching H.W., who was in the back of the cell with his back turned to him. Taylor is seen partially circling H.W. before grabbing him by the

waist, picking him up off the ground, and physically slamming him to the ground where his upper back hit the metal toilet.

- No de-escalation commands were given by Taylor prior to body slamming H.W. At no time did Taylor retreat from the cell and close the door prior to body slamming H.W. Taylor did not call for a supervisor prior to entering the cell. At no time throughout the entire incident, which took place in a matter of seconds, did H.W. exhibit defiant or aggressive behavior.

In review of Taylor's Incident Report, which was drafted shortly after the Incident, Taylor stated that when H.W.'s cell door was opened, H.W. was aggressive, and when he was handed the food trays, he was in a combative stance. Taylor also stated that H.W. approached himself and Craig in an aggressive manner. His report lacked any detail as to what the aggression was. I find Taylor's report as to H.W.'s physical movements to be inconsistent with the Ocularis footage and body camera footage. (R-2.)

In review of Craig's Incident Report, which was drafted a little over an hour after Taylor filled out his Incident Report, Craig stated that after being handed the food trays, H.W. stepped back to the threshold of the cell in an aggressive manner. Similar to Taylor, Craig's report lacked detail on how and in what way H.W. was aggressive. As with Taylor's report, I find Craig's report to be inconsistent regarding H.W.'s actions compared to his body camera footage. (R-3.)

In review of Gonzalez's Incident report, which was filled out shortly after the Incident, she too uses the phrase "Inmate [H.W.] approached ofc., Tayler [sic] with aggression." Again, as with Taylor's and Craig's reports, Gonzalez's report lacked detail. As with her fellow officers, I find Gonzalez's report to be inconsistent with the body camera footage. (R-4.)

In review of Taylor's IA statement, which was taken eight months after the Incident, Taylor stated that when the cell door was opened, he greeted H.W., who told him not to say hello. Taylor also stated that H.W. was being aggressive, so he backed up a little bit

and took his OC spray out to be on the cautious side. I find that Taylor's statement that H.W. was being aggressive, so he backed up, is inconsistent with the body camera footage. I also find that Taylor pre-emptively took his OC spray out and failed to call his supervisor or make any attempt to de-escalate the situation.

Taylor also stated that while he could not remember what H.W. was saying to him, he recalled that when the cell door was opened, H.W. was in a combative stance. Taylor also stated that he could not recall if H.W.'s fists were balled or whether he was tensed up. I find that none of these statements are consistent with the body camera footage.

When questioned further in his interview, Taylor claimed that H.W. was threatening to beat him up and that H.W. was coming at him and Craig in a threatening or aggressive manner. He also stated that H.W. "leveled up," which was when he sprayed him. (R-8.) These statements were not contained in Taylor's incident report, nor was Taylor's description of H.W.'s body language consistent with the body camera footage.

In his statement, Taylor stated that after he sprayed H.W. with the OC spray, H.W. grabbed his face and walked to the back of the cell. Taylor acknowledged at that point that H.W. was not aggressive either verbally or physically. As noted above, at no time prior to spraying H.W. in the face with the OC spray did Taylor attempt to de-escalate the perceived situation either by command or action (i.e. shutting the cell door), nor did he call his supervisor.

Taylor also stated that prior to taking H.W. to the ground, he studied him, and when he realized that H.W. was grabbing his face and not faking it, he grabbed him around the waste and took him down. I find that even assuming *arguendo* that prior to being sprayed in the face with OC spray, H.W. was acting in an aggressive manner, H.W. was fully incapacitated and a passive resister when Taylor took him to the ground. At no time did Taylor attempt to de-escalate the situation prior to body slamming H.W. to the ground.

I found Craig's statement to IA, which was also taken eight months after the Incident, to be inconsistent with Taylor's. Craig stated that H.W. was standing in at the door in an aggressive manner, words were exchanged, and Taylor issued a command for

H.W. to step back, but H.W. was being non-compliant. Craig did not elaborate on what words were exchanged between Taylor and H.W.

I also found Gonzalez's statement to IA, which was taken seven months after the Incident, to be inconsistent with Taylor's and Craig's statements and inconsistent with the body camera footage. Among other things, Gonzalez stated that H.W. approached the door aggressively and that his hands were balled up in fists, which was when Taylor sprayed him. That is not evident in the body camera footage. Gonzalez also stated that she could not recall if H.W. was saying anything to Taylor. Additionally, it also seemed that she had selective memory loss when asked about the events leading up to and during the Incident.

H.B. also gave a statement to IA the same day as the Incident. His statement for the most part was nonsensical and inconsistent with other statements as well as the body camera footage.

All of these statements and interviews were reviewed and taken into consideration by the IA investigator, and Taylor's superior officers, as well as both experts that testified in this matter in forming the basis of their respective opinions.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee's rights and duties are governed by the Civil Service Act (Act) and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civ. Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971) (citing Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 145, 147 (1965)), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or they engage in misconduct related to their duties. N.J.S.A. 11A:1-2(a). Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

The appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes 'the reasonable probability of the fact.'" Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

Appellant's status as a corrections officer subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576–77 (1990). Law enforcement employees, such as a corrections officer, represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civ. Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

Appellant contends that based upon the totality of the circumstances at the time, the level of force that was used was appropriate and reasonable and consistent with departmental policies as testified to by Garrels, who cited to Graham v. Connor, 490 U.S.

386 (1989) and Barnes v. Felix, 605 U.S. 73 (2025). Appellant further asserts that his recitation of events was also corroborated by the incident reports and IA statements of Craig and Gonzalez, which were consistent with his (appellant) report and IA statement in that H.W. was acting in an aggressive and threatening manner. Because of H.W.'s aggression, he dispersed one shot of OC spray and entered the cell, again in accordance with departmental policies to get the inmate under control, secure him, and get him medical treatment. To close the cell door after spraying OC spray would have been contrary to his training and departmental policy that decontamination must begin immediately following the use of OC spray. Appellant relies upon Garrels's testimony that the totality of the situation warranted the use of both mechanical force and physical force because at all times H.W. was a threatening/active assailant, even after he was sprayed in the face with the OC spray and retreated into his cell.

Last, it is appellant's assertion that he was inadequately trained by the respondent, who failed to provide any hands-on training for defensive tactics, as evidenced by his training logs.

Respondent points to the fact that every witness who testified on their behalf, even their expert, were experienced corrections officers and familiar with the CCDOC policies and protocol. All the witnesses independently reviewed the body camera and Ocularis footage, the incident reports, IA statements, and policies in question, and all of them arrived at the same conclusion: that appellant's use of force was not only unnecessary but also excessive and in direct contravention of the CCDOC Rules and General Orders.

In looking at the totality of the record before me, I concur with the respondent.

The Supreme Court in Graham v. Connor, 490 U.S. 386 (1989) explicitly stated that all claims where law enforcement officers have been charged with use of excessive force, in the course of an arrest, investigatory stop, or other "seizure" of a free citizen, should be analyzed under the Fourth Amendment and its "reasonableness" standard, rather than under a "substantive due process" approach. Graham, 490 U.S. at 395. The Court further found that:

Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake. Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See Tennessee v. Garner, 471 U.S. at 8-9 (the question is "whether the totality of the circumstances justifie[s] a particular sort of . . . seizure").

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, nor by the mistaken execution of a valid search warrant on the wrong premises. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. See also Terry v. Ohio, *supra*, at 21 (in analyzing the reasonableness of a particular search or seizure, "it is imperative that the facts be judged against an objective standard"). An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

[Graham, 490 U.S. at 396–97 (citations omitted).]

More recently, in Barnes v. Felix, 605 U.S. 73 (2025), the Supreme Court further elaborated upon their ruling in Graham, by stating:

[T]he reasonableness of police force requires analyzing the “totality of the circumstances.” Id., at 427-428, 137 S. Ct. 1539, 198 L. Ed. 2d 52; Garner, 471 U. S., at 9, 105 S. Ct. 1694, 85 L. Ed. 2d 1. There is no “easy-to-apply legal test” or “on/off switch” in this context. Scott v. Harris, 550 U. S. 372, 382-383, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007). Rather, the Fourth Amendment requires, as we once put it, that a court “slosh [its] way through” a “factbound morass.” Id., at 383, 127 S. Ct. 1769, 167 L. Ed. 2d 686. Or said more prosaically, deciding whether a use of force was objectively reasonable demands “careful attention to the facts and circumstances” relating to the incident, as then known to the officer. Graham, 490 U. S., at 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443. For example, the “severity of the crime” prompting the stop can carry weight in the analysis. See ibid.; Garner, 471 U. S., at 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1. So too can actions the officer took during the stop, such as giving warnings or otherwise trying to control the encounter. See id., at 12, 105 S. Ct. 1694, 85 L. Ed. 2d 1; Kingsley v. Hendrickson, 576 U. S. 389, 397, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015). And the stopped person’s conduct is always relevant because it indicates the nature and level of the threat he poses, either to the officer or to others. See ibid.; Graham, 490 U. S., at 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443.

Most notable here, the “totality of the circumstance” inquiry into a use of force has no time limit. Of course, the situation at the precise time of the shooting will often be what matters most; it is, after all, the officer’s choice in that moment that is under review. But earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones. Or as the Federal Government puts the point, those later, “in-the-moment” facts “cannot be hermetically sealed off from the context in which they arose.” [citation omitted.] Taking account of that context may benefit either part in an excessive-force case. Prior events may show, for example, why a reasonable officer would have perceived otherwise ambiguous conduct of a suspect as threatening. Or instead they may show why such an officer would have perceived the same conduct as innocuous. The history of the interaction, as well as other past circumstances

known to the officer, thus may inform the reasonableness of the use of force.

[Barnes, 605 U.S. at 80–81.]

With the above in mind, based upon the evidence presented in this matter, even when one looks at the timeline of events which, for argument's sake, was when the appellant went on shift, under the totality of the circumstances, there was no reasonable basis for appellant's actions. There were no reports of H.W. acting out from the previous shift and the appellant went on shift an hour before the Incident. As set forth in greater detail above in the findings of fact, at no time was H.W. an active or threatening assailant. Yet, even assuming H.W. was being verbally insulting, which does not rise to the level of a threatening and/or active assailant, without any warning, and without any attempt to de-escalate the situation, appellant sprayed H.W. point-blank in the face with OC spray. H.W. immediately covered his face and then turned and went to the back of the cell, where the appellant stalked up behind him and picked him up from behind and slammed him on the floor. Under the totality of the circumstances, no reasonable officer would have used any force—mechanical or physical—much less the excessive force that appellant used on H.W.

In looking at the FNDA, there were thirteen sustained charges against the appellant, warranting his removal as a corrections officer, effective February 14, 2025. Each charge is enumerated and addressed below.

The sustained charges against appellant were:

N.J.A.C. 4A:2-2.3(a) - General causes

- (6) Conduct unbecoming a public employee;
- (7) Neglect of duty;
- (12) Other sufficient cause

C.C.C.F. Rules of Conduct:

- Rule 1.1 Violations in General
- Rule 1.2 Conduct Unbecoming

- Rule 1.3 Neglect of Duty
- Rule 3.2 Security
- Rule 3.6 Departmental Reports
- Rule 3.8 Use of Force (Non-lethal)

C.C.C.F General Orders:

#013
#073
#074

N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming a Public Employee

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 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 Emmons, 63 N.J. Super. at 140 (citing Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955))). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

Here, it is undisputed that appellant used unnecessary and excessive force on H.W. not once, not twice, but three times when he improperly sprayed H.W. point-blank in the face with the OC spray; unnecessarily body slammed H.W. to the floor; and forcefully rolled him over and handcuffed him, which would not have been necessary had appellant de-escalated the situation from the start. Appellant also failed to call in a supervisor prior to using force even though it was evident that he anticipated using force when he pulled out his OC spray cannister. On this point, appellant made absolutely no effort, despite multiple opportunities, to de-escalate the situation either by closing the cell

door or giving verbal commands. He also failed to properly document in his Incident Report, which was filed minutes after the Incident, details of what had occurred; instead, he used words such as H.W. being "aggressive" when the door was opened and posturing in a "combative" stance. Notably, in his IA interview that was done months later, appellant, after some questioning, added some detail to his claims of aggression; however, none of it was supported and/or consistent with the other evidence presented in this matter.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in demonstrating that appellant's conduct rises to the level of Conduct Unbecoming in violation of N.J.A.C. 4A:2-2.3(a)(6), CCDOC Conduct Rule 1.2 (Conduct Unbecoming),³ General Order #073 (Personal Conduct of Employees),⁴ and General Order #074 (Professional Code of Conduct).⁵

N.J.A.C. 4A:2-2.3(a)(7) - Neglect of Duty

Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by

³ CCDOC Conduct Rule 1.2 (Unbecoming Conduct) states in relevant part: "Conduct unbecoming an employee shall include that which brings the department into disrepute, reflects discredit upon the employee as a member of the department or which impairs the operation or efficiency of the department or the employee." (R-15.)

⁴ General Order #073 states in relevant part: "All department employees, when on and off duty will conduct themselves in a manner that will not bring discredit or criticism to the department. Common sense, good judgment, consistency and the department's mission will be the guiding principles for the expected employee standard of conduct." (R-17.)

⁵ General Order #074 states in relevant part: "All sworn personnel in the department will conduct themselves in a professional and ethical manner at all times. Conduct which detracts from a professional and ethical manner is prohibited and circumstances suggesting an officer has engaged in unbecoming conduct will be investigated and disciplinary action will be taken when appropriate." (R-18.)

his or her job title or was negligent in its discharge. Avanti v. Dep't of Mil. and Veterans' Affs., 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

In the present matter, appellant failed in his responsibility to protect human life and the safety of all persons. Through his actions, he put H.W.'s safety at risk by improperly and unnecessarily spraying him point-blank in the face with the OC spray and then body slamming H.W. to the floor when it was obvious that H.W. was incapacitated from being sprayed in the eyes. At no time, despite having multiple opportunities to do so, did he attempt to de-escalate the situation prior to using both mechanical and physical force as required under the Departmental guidelines.

For these reasons, I **CONCLUDE** that the respondent has met its burden in demonstrating that the appellant is guilty of Neglect of Duty (N.J.A.C. 4A:2-2.3(a)7) and CCDOC Rule 1.3 (Neglect of Duty).⁶

N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause

Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Corrections officers are held to a higher standard than non-custody staff, as they are members of law enforcement. Every employee of the Department shall be held responsible for the efficient performance of duties assigned and for the proper supervision of any inmate detailed to work under his direction. The Department has a zero-tolerance policy for abuse of inmates by corrections officers. As set forth in the findings of facts and as discussed in great detail above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a corrections officer and is violative of the CCDOC rules and general orders.

⁶ CCDOC Rule 1.3 (Neglect of Duty) states in pertinent part: "Any act of omission or commission indicting the failure to perform or the negligent performance or compliance to any rule, regulation, directive, order or standard operating procedure as dictated by department practice or as published, which causes any detriment to the department, its personnel, any inmate, prisoner, or to any member of the public, shall be considered neglect of duty." (R-15.)

Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, and CCDOC Rule 1.1, by a preponderance of the credible evidence.

CCDOC Rule 3.2 (Security) - Breach of Security

Rule 3.2 states in relevant part: "Personnel shall exercise a scrupulous regard for security in their dealings with inmates with regard to the Correctional Facility in general. Any act of commission or omission tending to undermine security shall constitute a breach of security. Examples include but are not limited to: . . . Failure to close and/or lock any gate or door required to be shut and or locked." (R-15.)

As set forth more fully above, appellant had multiple opportunities to close the cell door to de-escalate the situation. His first opportunity was when the cell door was opened and H.W. was allegedly standing there and acting "aggressive." The second opportunity was after breakfast trays were served. The door could have been shut and locked but instead, appellant continued to engage H.W. The third opportunity was after H.W. was sprayed point-blank in his face with the OC spray. The entire Incident could have been avoided had appellant just shut the door from the start.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of CCDOC Rule 3.2.

CCDOC Rule 3.6 - Departmental Reports

Rule 3.6 states in pertinent part: "Personnel shall submit all necessary reports, whether at the direction of a supervisor or upon the occurrence of circumstances requiring a report . . . Personnel shall not knowingly enter or cause to be entered inaccurate, false, or improper information in any departmental report." (R-15.)

At the time of the Incident, appellant had been with the Department for almost twelve years. He had been trained in report writing and required to be familiar with the

same. (R-15.) His report was not only woefully lacking in detail, it was also inconsistent with Craig's body camera footage.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of CCDOC Rule 3.6.

Rule 3.8 (Use of Force – Non-lethal) - Excessive or improper use of force, and General Order #13

Rule 3.8 states in relevant part: "Personnel shall not inflict corporal punishment on the person of any inmate, prisoner . . . nor shall they strike or lay hands on an inmate, prisoner . . . unless it is in self defense or unless to prevent escape, serious injury to person or property, to quell a disturbance, or effect an arrest where resistance is offered. In all circumstances, only the amount of force necessary to accomplish the desired result is to be used." (R-15.)

General Order #13 states in relevant part:

Core Principal One (The Sanctity of Human Life and Serving the Community) – In serving the community, law enforcement officers shall make every effort to preserve and protect human life and the safety of all persons. Officers shall respect and uphold the dignity of all persons at all times in a non-discriminatory manner.

Core Principal Two (Force as a Last Resort and Duty to De-escalate) – Force shall only be used as a last resort when necessary to accomplish lawful objectives that cannot reasonably be achieved through verbal commands, critical decision making, a tactical deployment or de-escalation techniques. Force shall never be used as a retaliatory or punitive measure.

Core Principal 3 (Duty to Use Only Objectively Reasonable, Necessary, and Proportional Force) – Officers shall use the least amount of force that is objectively reasonable, necessary and proportional to safely achieve the legitimate law enforcement objective under the circumstances.

[R-16.]

As set forth in greater detail above, if anything, appellant is the one who escalated the situation as there was no reason to use force in the first place. Even if the appellant had concern for his safety, he could have shut the cell door and called his supervisor, but he did not despite the multiple opportunities to do so. He could have also given H.W. a command to step back; put his hands behind his back; or turn around and go into the back of the cell, but he did not. Instead, he gave no commands, nor did he make any effort to de-escalate the situation. He could and should have called for his supervisor when he pulled out his OC spray, but instead, he held it at his side until he sprayed H.W. directly in his face and eyes. On this point, spraying H.W. directly in the face at less than three feet away was in violation of General Order #057, which recommends a distance of three feet to prevent the “hydraulic needle effect.” (P-3.)

At no time was H.W. demonstrating resistance or aggression. As succinctly stated by Carber, insults are not threatening and throughout the interaction, H.W., if anything, was a passive aggressor, not a threatening assailant.

To add to the situation, even assuming arguendo that H.W. was acting aggressively when his cell door was opened, after appellant sprayed him with the OC spray, H.W. was utterly incapacitated, standing in the back of his cell holding his hands to his face. There was absolutely no basis for the appellant to enter the cell, much less body slam H.W. to the ground and then forcefully roll him over to cuff him.

In sum, there was absolutely no basis for the appellant to use force, much less the level of force that he used on H.W. For all of the foregoing reasons, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of CCDOC Rule 3.8 and General Order #13.

PENALTY

The remaining issue is penalty. Appellant has twelve prior disciplinary actions. (R-20.) Notably, all the prior disciplinary actions included neglect of duty, and four of them

included conduct unbecoming. The penalties ranged from a written reprimand to a four-day suspension. None of the disciplinary actions resulted in major discipline.

The Civil Service Commission's review of a penalty 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. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007) (citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense)); see also Herrmann, 192 N.J. at 33 (Division of Youth and Family Services worker who snapped lighter in front of five-year-old):

[J]udicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and

the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

I **CONCLUDE** that appellant's misconduct in this case was so severe that it warrants bypassing progressive discipline.

Appellant has been found to have violated N.J.A.C. 4A:2-2.3 - General Causes – (6) Conduct Unbecoming a Public Employee, (7) Neglect of Duty, and (12) Other Sufficient Cause; Rules of Conduct: 1.1 – Violations in General; Rule 1.2 – Conduct Unbecoming; Rule 1.3 – Neglect of Duty; Rule 3.2 – Security; Rule 3.6 – Departmental Reports; Rule 3.8 – Use of Force (Non-lethal); and General Orders #013 – Use of Force, Including Deadly Force, #073 – Personal Conduct of Employees, and #074 – Professional Code of Conduct.

The CCDOC has a zero-tolerance policy for abuse by corrections officers against an inmate. Appellant's use of force against H.W. on June 10, 2024, was not only unnecessary, it was excessive and could have resulted in significant bodily harm to H.W.

Accordingly, I **CONCLUDE** that removal is the appropriate discipline in this matter.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that the charges set forth in the FNDA are **SUSTAINED** and the penalty of removal is **AFFIRMED**. Appellant's appeal is **DISMISSED**.

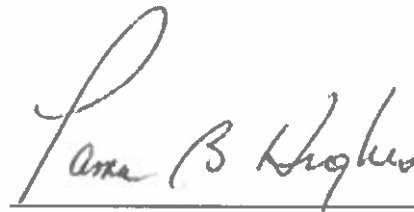
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.A.C. 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 29, 2026
DATE



TAMA B. HUGHES, ALJ

Date Received at Agency: April 29, 2026

Date Mailed to Parties: April 29, 2026

TBH/dc

APPENDIX

Witnesses

For appellant:

Glenn Garrels

For respondent:

Elvi Tavarez

Bruce Carber

Robert Leithead

Rebecca Franceschini

Exhibits

For appellant:

P-1 Expert Report of Glenn Garrels

P-2 Curriculum Vitae Glenn Garrels

P-3 Oleoresin Capsicum Policy

For respondent:

R-1 General Incident Report by Capt. Robert Leithead dated 6/11/24

R-2 General Incident Report, OC Discharge Report, Use of Force Report by
C/O Nicholas Taylor dated 6/10/24

R-3 General Incident Report, Use of Force Report by C/O Garrett Craig dated
6/10/24

R-4 General Incident Report by C/O Daribel Gonzalez dated 6/10/24

R-5 General Incident Report by C/O Shehab Uddin dated 6/10/24

R-6 General Incident Report, Supervisor's Use of Force Summary by Sgt.

Robert Egan dated 6/10/24

- R-7 Ocularis Camera System video and Body-Worn Camera footage
- R-8 Internal Affairs interview with C/O Nicholas Taylor dated 2/7/25
- R-9 Internal Affairs Interview with C/O Garrett Craig dated 2/3/25
- R-10 Internal Affairs Interview with C/O Daribel Gonzalez dated 1/31/25
- R-11 Internal Affairs Interview with Inmate H.B. dated 6/10/24
- R-12 Internal Affairs investigative Report
- R-13 Internal Affairs summary and Conclusion Report
- R-14 Preliminary Notice of Disciplinary Action (31-A) dated 2/14/25
- R-15 Camden County Department of Corrections Rules of Conduct
- R-16 Camden County Department of Corrections General Order #013 Use of Force
- R-17 Camden County Department of Corrections General Order #073 Personal Conduct of Employees.
- R-18 Camden County Department of Corrections General Order #074 Professional Code of Conduct.
- R-19 C/O Nicholas Taylor In-Service Training
- R-20 C/O Nicholas Taylor Chronology of Discipline
- R-21 Use of Force Expert Bruce Carber Curriculum Vitae
- R-22 Use of Force Expert Report by Bruce Carber