

As the Commission is not a party to such agreements, it will not impute any negative connotations to either party based on their decision to settle or not settle a matter. Nor will the Commission review the terms of a settlement of another individual to ascertain whether the penalty imposed in a separate matter before it is proper absent actual evidence that the penalty being imposed in the matter before it is unlawfully discriminatory. Such is not the case in this matter.¹ The Commission's role, where disciplinary charges have been upheld, is to ascertain the proper penalty for that particular individual based on its assessment of the severity of the misconduct and any aggravating or mitigating factors. While it could be argued that the settlement referred to in this matter could be used as a mitigating factor, the Commission, as the ALJ, is not persuaded. As previously noted, the appellant, based on the credible evidence in the record, was found to be the most culpable participant regarding the inmate's escape.

Regarding the proper disciplinary penalty to be imposed, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a County 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. *See Henry, supra*. In this regard, the Commission emphasizes that a County 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).

In this case, it is clear that removal is the only appropriate penalty. Notwithstanding the allegations regarding the appellant's training, or the

¹ The Commission notes that the appellant does not claim that the settlement of the other employee or the failure of the appointing authority to impose a similar lesser penalty on him was unlawfully discriminatory under any applicable law or rule based on his membership in a protected class.

culpability of others involved in the incident, he failed at the most fundamental function of a County Correctional Police Officer. That is, to ensure that an incarcerated individual under his custody and control does not escape that incarceration. Such an infraction touches at the heart of the safety and security of correctional facilities and the public. Given the facts of this matter, such an egregious violation clearly warrants the most severe disciplinary penalty without consideration of progressive discipline. Accordingly, the Commission finds that the penalty of removal is proper in this matter.

ORDER

The Civil Service Commission finds that the appointing authority's actions in removing the appellant was justified. Therefore, the Commission affirms that action and dismisses the appellant's appeal.

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 16TH DAY OF FEBRUARY, 2022

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Allison Chris Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 01337-19

AGENCY DKT. NO. N/A

2019-1830

**IN THE MATTER OF JARE D. BROOKS,
CUMBERLAND COUNTY
DEPARTMENT OF CORRECTIONS.**

Arthur J. Murray, Esq., for appellant, Jare D. Brooks (Alterman & Associates, LLC, attorneys)

John A. Charleton, Esq., for respondent, Cumberland County, Department of Corrections (Marmero Law LLC, attorneys)

Record closed: August 5, 2020

Date decided: January 13, 2022

BEFORE **ELAINE B. FRICK, ALJ**:

STATEMENT OF THE CASE

Respondent, Cumberland County Department of Corrections (CCDOC), removed appellant, Jare D. Brooks, (Brooks) from his position of employment as a Corrections Officer (CO). Brooks was terminated for alleged violations of multiple administrative charges, due to the escape of an inmate under his watch, during the transportation of the inmate from another correctional facility in route to a court proceeding. Brooks challenges the discipline imposed and seeks to be reinstated to his employment as a CO at CCDOC.

PROCEDURAL HISTORY

Respondent removed Brooks from his position of employment, effective December 10, 2018. Brooks appealed. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on January 14, 2019, to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13. Hearing dates were scheduled for March of 2019.

The matter was consolidated by consent of the parties with the appeal of IMO Ryan A. Hiles, Cumberland County, Department of Corrections, docket number CSR 01336-2019, by order, entered February 26, 2019. Appellants waived completion of the proceedings within 180 days, by written confirmation of February 25, 2019.

All parties consented to adjourn the pending hearing dates and to reschedule the matters to be heard in August and September of 2019. Those hearing dates were adjourned by consent, as expert reports were being completed, a substitution of counsel was entered for CCDOC, and the parties were working towards resolution of the matters. In September of 2019, the parties advised that the matters were resolved, and that written settlement agreements were anticipated to be executed imminently. Additional hearing dates which had been added in September were adjourned by consent and rescheduled for October of 2019.

Written settlement agreements were not executed, and both appellants reported to the OAL with counsel, for the start of the hearing on October 21, 2019. At that time, the parties requested that the consolidated matters be severed, as the Hiles matter (CSR 01336-2019) was then resolved, and that settlement was placed upon the record. An order was entered on October 21, 2019, severing the cases.

Brooks presented an *in limine* oral motion for interim relief on October 21, 2019, seeking to have his pay reinstated during the pendency of this appeal. CCDOC opposed the motion. An order was entered on November 11, 2019, memorializing the denial of the requested relief.

The Brooks hearing began in person at the OAL in Atlantic City, on October 21, 2019. The hearing continued in person on January 7, 15, 16, 29, 2020, and March 3 and 11, 2020. The final hearing date testimony was heard was on May 4, 2020, via Zoom audio/video technology, by consent of the parties.¹

A schedule for the submission of written summations was set and then extended at the request of counsel. The record closed on August 5, 2020. The time for the completion of administrative decisions was extended, pursuant to Executive Orders by the Governor of the State of New Jersey, due to the continuing COVID-19 public health emergency. Subsequent orders of extension were granted to complete this decision.

FACTUAL DISCUSSION AND FINDINGS

The following facts were undisputed during the hearing as per the testimony of witnesses and documentation entered, and I thus **FIND** as **FACTS**:

Brooks began his employment as a CO with CCDOC in February 2004. He was removed from employment, effective December 10, 2018, pursuant to a Final Notice of Disciplinary Action (FNDA), dated January 3, 2019.

A CCDOC inmate, D.R., escaped on August 10, 2018, from a CCDOC transport van while in route from the Mercer County Correctional Facility, where D.R. was being housed, to a scheduled court proceeding at the Cumberland County Superior Court in

¹ The Governor of the State of New Jersey declared a public health emergency existed due to the COVID-19 pandemic, by Executive Order entered on March 9, 2020. Subsequent Executive Orders issued by the Governor extended the public health emergency and imposed COVID-19 closures and restrictions, which impacted the usual operations of the OAL, resulting in suspension of in person proceedings at the OAL.

Bridgeton. Another CCDOC CO, Ryan Hiles (Hiles), was driving the van when the escape occurred. Brooks was the passenger CO, partnered with Hiles as part of the CCDOC transport team for D.R. on that date.

As a result of a departmental hearing conducted on November 27, 2018, the CCDOC determined that Brooks should be removed from employment due to sustained charges as a result of his actions and inactions on August 10, 2018. The sustained charges as to Brooks, resulting in his termination by CCDOC were listed as follows in the FNDA:

N.J.A.C. 4A:2-2.3 General Causes (a) 1, 3, 6 and 12

CCDOC Discipline Policy 3.02A, aka 84-17:

II-B, II-C, III-H, III-T, IV-A, IV-E

B-2 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to person or property.

B-8 Serious mistake due to carelessness which may result in danger and or injury to persons or property.

B-9 Incompetence or inefficiency.

D-3 Willfully contributing to an elopement or escape.

D-7 Violation of administrative procedures and or regulations involving safety and security.

(R-46.)

The FNDA identified that the incident which gave rise to the charges was:

On Friday, August 10, 2018, you Officer Jare Brooks were assigned to the Transportation Unit along with Officer Ryan Hiles. Together you were sent to Mercer County Corrections Center in Lambertville, NJ to pick up inmate [D.R.], to escort and transport him to Superior Court in Bridgeton, NJ Cumberland County. While at Mercer County, you failed to

conduct a proper and thorough searching of inmate [D.R.'s] person and items in his possession allowing him to secrete a cuff key he utilized to escape his restraints. You reported to failing to properly secure the inmate in a seatbelt or seat him in the van where he could be easily observed. During the return trip, you reported to only having verbal communication with the inmate and failing to make visual contact as well, to assure the inmate was still secure. You failed to properly maintain custody and control of inmate [D.R.], therefore allowing him time and opportunity to effectuate an escape.

(R-46.)

Brooks challenged his removal, and filed this appeal.

Testimony

Ryan Hiles (Hiles) was called to testify on behalf of CCDOC and Brooks. He is employed as a CO by CCDOC. Hiles was the other appellant in the matter previously consolidated with Brooks' matter. His disciplinary matter was resolved, with modification of the discipline of removal to a suspension. Hiles has returned to work as a CO at CCDOC.

Hiles graduated high school and began working at a glass factory for approximately three years. He then worked construction and carpentry jobs for approximately six years. He began working for CCDOC in approximately 2001. Upon his hire, he immediately began working in the CCDOC facility as a CO. He received in-house training for approximately two weeks at the facility from a Sergeant. Approximately one year later, he attended the Camden County Police academy, for approximately eight to ten weeks. Every two years thereafter he has been re-qualified for firearms handling. Most of the training he received for the transport unit at CCDOC was when he would initially work overtime in the department. It was hands on type of training, where he would learn by doing the job. When he was assigned on a regular basis to the transport unit in approximately 2017-2018, there was no other type of training specific to the transportation unit, just basically hands on learning.

The transportation unit is a highly desirable unit within which to work at CCDOC, due to the timing of the shifts. Many senior COs put in bids to be assigned to the unit. In the transportation unit, Hiles' basic duties involved accompanying an inmate to the video conference room for video court appearances; transporting inmates to other court facilities throughout the state; and if there are CCDOC inmates housed at a different facility in the state, they would pick up those inmates and transport them to local court appearances. Transport unit COs also handle transportation of inmates to medical facilities. The inmates could have offenses ranging from traffic offenses through murder. He acknowledged that he and Brooks had transported several "highly dangerous" inmates.

Hiles estimated that he was involved in approximately five hundred vehicle transports of inmates from when he started with the transport unit until the date of the incident of August 10, 2018. He was usually paired with Brooks, estimating he had done approximately seventy-five percent of his transports with Brooks.

Hiles and Brooks usually used the same van, almost every day. He estimated that he drove the van hundreds of times previously. He described the van interior as having a driver and passenger front compartment with a "cage" divider, which is a metal mesh screen with safety glass, which was a thin sheet of plastic, behind the front compartment seats. It is difficult to see through the cage and safety glass, which is somewhat smokey, to the back of the van. The back of the van has three or four rows of seats where the inmates are seated for transport. Behind the last row of seats is a cargo area. There is no cage or screen after the last row of seats to prevent or impede access to the cargo area.

The van does not have internal cameras. The front seats for the driver and passenger are fixed and cannot rotate to look back into the rear passenger area. The van was not equipped with a GPS, but Hiles believed that the county-issued cell phone had GPS. The transport team is given one county-issued cell phone. Hiles and Brooks

were permitted to have their own personal cell phones with them.

Inmates are loaded into the van and taken out of the van via doors on the passenger side of the van. There are doors that open on the rear of the van, to the cargo area. Hiles never used the back doors to load inmates. He presumed the back doors were for emergency exit use.

The view from inside the van from the back inmate area to the front of the van through the screen, was "plain as day." Hiles opined that if the safety glass was meant to see through only one way, it was installed the wrong way. Hiles conceded he never raised an issue with his superiors or CCDOC administration that the view was not clear from the front to the back of the van. He confirmed that the only way to maintain visual sight of inmates in the back of the van during a transport would be to turn around and look back. He indicated that when driving, he could not see into the back of the van using the rearview mirror. He never raised that as an issue to anyone.

On August 10, 2018, Hiles reported for work at approximately 5:00 a.m. He was aware from the night prior that his assignment for August 10, 2018, was to pick up inmate D.R. at the Mercer County Jail and transport D.R. to Superior Court in Bridgeton. (R-5.) He was familiar with D.R., having transported him previously by picking him up at the Mercer County facility. He was paired with a different CO transport office on that occasion. There were no problems with that transport of D.R.

Hiles completed a pre-trip inspection of the van. (R-6.) He did not note any problems with the van as per the checklist, but for a dent/scrape on the passenger's side and an old issue with the driver's side rear bumper. There is no separate area on the form to write in a complaint or concern about lack of visibility inside the van. Hiles explained that the word "glass" on the check list referred to the windshield or windows, to record the condition of the glass of the van. (R-6.) He recalled specifically checking to ensure there were triangle reflectors inside the van if the van were to break down. He filled in the transportation trip sheet assignment. (R-7.)

Hiles did not specifically check to see if any tools were in the cargo area. He did not notice any tools in the back. Neither he, nor Brooks, had inadvertently brought a multi-use tool that day. Hiles is aware that a state police supplemental report indicated that a multi-use tool was in the van, which D.R. used during the transport to facilitate his escape. (R-20.) Hiles denied that he brought such a tool into the vehicle and to his knowledge, Brooks had not brought such a tool into the van.

Brooks was given video recording glasses to wear that day. Inmate D.R. had made previous allegations that he was inappropriately touched. Brooks was given the glasses "to cover" the COs in case D.R. made any such allegations. Hiles has never worn them. Prior to the transport of August 10, 2018, Hiles never saw Brooks wear them. He had previously seen supervisors wearing them if there was a code in the facility and they were going to deal with a combative inmate. Hiles only recalled seeing one transport CO wear the video recording glasses. That was the one prior occasion Hiles was involved in the transport of inmate D.R. and was paired with another CO. The other CO wore the video recording glasses. The only instruction Hiles ever had regarding use of the glasses was from the transport sergeant who showed him the glasses, told Hiles to push the button on the side and when the green light comes on, the video starts recording.

Brooks joined Hiles in the van on August 10, 2018, at CCDOC. Brooks hung his jacket on a knob behind the front seat on the screen between the front and rear compartments of the van. There also was a plastic Wawa bag for trash hanging on a knob on the screen behind the front seat, which Hiles believes he hung there. This was commonly done by each of them. Hiles did not believe that the hanging items hurt any more with the visibility issue through the screen, then already existed.

Hiles drove directly to the Mercer County Jail. They drove up to the sally port, and waited while Mercer County COs loaded some of their inmates into a bus. When that was done and the bus cleared the area, Hiles drove to the doorway of the facility

where they would pick up inmate D.R. Just before he and Brooks went into the facility, he explained to Brooks how to turn the video glasses on by pushing the button and that when he would see the green light, he would know that the glasses were on for recording.

Inmate D.R. was brought down to the pickup area. Hiles observed that he had court paperwork with him and a bible. He advised D.R. he could not take the bible, and D.R. "kind of had an attitude about that, but that was it."

Hiles patted down D.R. He did not find any contraband in his pat down of D.R. He did not run his hands through D.R.'s hair and did not check inside any socks or shoes D.R. may have been wearing. Hiles put handcuffs and shackles on D.R., which Hiles had from the CCDOC transport unit. The handcuffs and shackles were double locked. Hiles has no knowledge as to what Mercer County COs did in terms of searching D.R. before turning him over to Hiles. He has never done a strip search of an inmate before taking them for a transport. He was never trained to do a strip search of an inmate before a transport.

Brooks placed D.R. in the back of the van. He was seated in the second row back in the rear inmate passenger area of the van. Hiles did not believe that Brooks seat belted D.R. in, understanding that Brooks had a concern that he did not want to get close to D.R. due to the allegations D.R. had made in the past about inappropriate touching.

Hiles commenced driving from Mercer County Jail to Cumberland County. He thought the music may have been on from the radio. He and Brooks were talking, so the music would not have been playing loudly. He did not believe he had loud rap music playing from the radio, as inmate D.R. has alleged. He denied that Brooks had earphones in his ears the entire ride. Neither one was listening to music using earbuds. Hiles denied using his personal cell phone during the drive. His cell phone talk activity confirmed that he spoke to his fiancé early in the morning before work and made calls

later in the day, after the escape had occurred. (P-3.) He did not recall sending text messages that day. He could not recall if Brooks used his personal cell phone during the ride. Hiles denied having any hearing issues and believed that Brooks likewise did not have any hearing issues.

Hiles had just gotten onto Route 295 southbound, when a red icon light came on the console, which indicated that something was wrong with the locking mechanism. Hiles pulled over and stopped. He asked Brooks to get out and check the doors to make sure they were not unlocked. Brooks went out and pulled on all the exterior door handles and could not get them to open. Brooks told Hiles that he tried to open the door in the back several times and he could not open it. Brooks told Hiles that he could see from outside of the van through the window that inmate D.R. was sitting inside, in his seat. Hiles did not recall either he nor Brooks alerting their supervisor at that time that there was an issue with the van. That was the first time the icon ever came on during any of the transports Hiles had done. He did not receive any training regarding what the icon represented or what to do if the icon came on during transport.

When Brooks got back inside the van, Hiles continued to drive to take D.R. to court. During the ride, Hiles and Brooks would ask D.R. if he was okay and spoke "a little" to him. Hiles believed that Brooks might have looked back towards D.R. a couple of times along the way. Hiles recalled at one point during the ride he had to hit the brakes hard when traffic came to an abrupt stop. He yelled back to D.R. to make sure he was okay and D.R. responded. At one point during the drive, D.R. requested that the air conditioning be turned on. During any of the verbal communications Hiles had with D.R. during the drive, he did not believe that D.R. had moved to a different location in the back of the van.

Hiles recalled traveling south on Route 55 and when he exited the highway, he was driving on Old Upper Deerfield Pike, headed towards the court. He stopped for a red light at the intersection of Old Upper Deerfield Pike and Cornwell Drive. As he was pulling away they heard a bump coming from the back of the van. In a written

statement Hiles wrote later that day after the incident, he described that both he and Brooks "heard a slight bump noise coming from the back of the van. Officer Brooks had turned around in the seat and was trying to look through the cage to see [D.R.] he said he could not see him. Officer Brooks then began yelling his name but he was not answering." (R-10.) Hiles pulled over and stopped. He denied hearing a horn honking from behind the van at the intersection.

Brooks got out to check on D.R. Brooks opened the side door of the van and yelled to Hiles that D.R. was not there. Hiles got out and checked as well, and they both went to the rear of the van to see if D.R. was in the rear area. He was not inside the van.

Hiles saw the shackles laying in the back of the van. Hiles does not know how D.R. was able to remove the shackles. He saw D.R.'s jumper. Hiles saw that the interior ceiling light was removed. He saw three weird-shaped cuts in the interior panel of the right rear passenger side back door. He thought that D.R. was trying to find a way to manually unlock the door. Hiles never heard D.R. making the holes in the door or removing the interior light. He thought D.R. perhaps used something from the interior light to cut the holes in the door. His understanding now is that D.R. apparently had some type of tool that was found on him, which he used to cut the holes in the door.

Hiles and Brooks got back into the van and continued to drive and turned around, to look for D.R. He recalled a sheriff's officer coming down the street and asking if they had anything belonging to the inmate. Hiles told him they had his jumper. The sheriff's officer told them to go back to where they previously were and wait for the Sheriff's Department K-9 unit so that the jumper could be given to the K-9 unit.

Brooks called transport Sergeant Martinez. Hiles could not recall if he called any other agency to report the situation. He recalled waiting for the other officers to arrive, and approximately ten to fifteen officers from different departments arrived. He recalled that CCDOC internal affairs individuals, from the Special Investigation Unit (SIU) arrived

on scene. He believed the Warden and Deputy Warden also came to the scene. Hiles and Brooks were taken to the state police barracks to give statements. Hiles completed a handwritten statement when he returned to the jail. (R-10.) Hiles completed a report for Captain Joynes, to better explain the route Hiles had traveled. (R-14.)

Hiles denied that he had any physical or mental distractions that day. He was not aware of Brooks having any such distractions. He believed that both he and Brooks did the best job they could with what they had that day, to the best of their ability. He is aware that there are better methods and types of handcuffing, which have now been implemented after the incident. Both he and Brooks maintained communication with D.R. during the ride. They could see D.R. through the back, "you just have to look really close and hard." Pat down searches were the only searches the transport officers did. He denied that D.R. was not properly secured in custody because the seatbelt was not placed on the inmate. Hiles explained that the seatbelt was for safety. It was not a tool for securing the inmate.

He insisted that both he and Brooks did the best they could on the day of the incident, with what they had. He recognized that a prisoner escaping puts the health and safety of the public at risk. He acknowledged that he did settle his disciplinary matter and accepted discipline as a penalty for his actions that day. He has returned to work at CCDOC as a CO.

Jare Brooks testified on his own behalf. He is the father of two boys. He resides with his girlfriend, S.A. He is thirty-eight years old and a high school graduate. He began working at a glass company in Millville upon his high school graduation in 2000. He began his employment with CCDOC in February 2004, as a line CO. He attended the Camden County Correctional Academy in August of 2006, approximately two and a half years after he began his employment with CCDOC. The last day he worked for CCDOC was October 29, 2018.

He was assigned to the transport unit at CCDOC as of September of 2017. Prior to that assignment, he had done some overtime shifts with the transportation unit, which was considered on the job training by working with a CO who was already assigned to the unit. He did not receive any formal training for the transport unit. He did not receive his own copy of the general post orders for the transportation unit. (R-1.) He was never advised that he needed to become familiar with the post orders. He was never told to read the post orders. Brooks had received a DVD or CD disk of general policy and procedures some years prior. He acknowledged he signed a sheet when he was given the disk. (R-3 at 3.) He was not given any training or formal presentation on that date. He believed that CCDOC policy 10.14 entitled "transportation of inmates" was on the disk. He did not receive a hard copy of the policy. (R-2.) He was not advised to review the policy when he was assigned to the transportation unit. He was never given time to read the policy when he started with the transportation unit.

He explained that while on duty doing a transport run, the COs are entitled to take a break and can make a stop for a restroom break such as at the nearest restaurant or a Wawa. They can stop for coffee or for lunch. They are not allowed to make such stops if they have an inmate.

Brooks knew of inmate D.R., but had never transported him, prior to the incident date. He knew of D.R. as being a problematic inmate, being escorted throughout the CCDOC facility by at least two COs and a supervisor with video cam glasses. Brooks is executive vice president of his union, and was aware of D.R.'s accusations against other COs.

On August 10, 2018, Brooks and Hiles were assigned by Sergeant Martinez to transport D.R. from Mercer County DOC to a court appearance at the Cumberland County Superior Court in Bridgeton. (R-5; R-7.) Brooks had been partnered with Hiles hundreds of times before that date and they used the same van, which was used on August 10, 2018, hundreds of times before then. Brooks confirmed there was an

AM/FM radio in the van, for which he never received any training, direction, or instructions from CCDOC governing use of the radio in the transport van.

Brooks arrived for work, clocked in, and went to the rear parking lot where he met Hiles who was doing the pre-trip inspection of the van. Hiles completed the pre-trip inspection sheet. (R-6.) Brooks indicated there normally would be two crates in the back of the van with the emergency reflectors and there would be a jacket or two, used when an inmate would be in transport and might get cold. There were shackles and handcuffs. There was a bag with jumper cables. There was a tote with gloves and hand sanitizer if they had to search someone or go through their property. The white jug depicted in one of the photographs of the rear of the van was diesel exhaust fluid. (R-47.) That was normally in the van as well. He has never seen photographs of the claimed multi-tool used by D.R. that supposedly was inside the van. If there was such a multi-tool in the van, Brooks assumed it would have been in the safety kit.

Nothing in the rear cargo area would have been purchased and carried along by Hiles or Brooks. Only county purchased and owned items were there. They were never instructed on what specifically could or could not be in that cargo area. Supervisors never inspected the vehicles. Some vehicles had different items stored in the back than others.

Brooks did not receive any verbal instructions from Sergeant Martinez regarding the run. Hiles told Brooks that they had to wear the video cam glasses and told him all he needed to do was put the glasses on and press the button. They departed for Mercer County CCDOC, with Hiles driving. Such a trip normally can take one and a half to two hours, depending upon traffic.

They did not make any stops along the way to the Mercer County facility. Brooks recalled listening to sports radio talk in the van with Hiles on their way to that facility. He recalled that the radio was on during the ride when they left Mercer, explaining it could have been sports radio or whatever music station might have been put on. It was just

the normal routine for them, it was nothing out of the ordinary. They kept the radio at a moderate level because they would talk back and forth so there was no reason to have the radio volume turned up loudly. They did not make any stops for a break or stop for any other reason from when they left the Mercer facility, except for when the dashboard icon came on, and then when they realized the escape had occurred.

Hiles and Brooks had one county issued cell phone with them. Brooks described it as an outdated flip phone. It was the same phone the team had always been given for prior trips. Brooks did not know the number. Hiles was the senior CO and had possession of it. Brooks could not recall ever receiving any calls on that phone. He never used that phone to make a call. He thought the phone had the capability to send and receive text messages, but he never used it.

There was no GPS installed in the van. Brooks and Hiles would use their personal cell phones for GPS. Both of them had their personal cell phones with them on August 10, 2018. This was normal protocol. They were never told not to have their personal cell phones. They never received any training or instruction from CCDOC regarding use of the assigned cell phone or their own personal cell phone within the transportation unit.

There were two ports in the van to plug in charging cords. Hiles used one port, with two charging cords. Brooks had his phone charger plugged in on the port on the passenger side. (R-49.) Brooks recalled seeing Hiles use his personal cell phone on August 10, 2018, for GPS purposes to get directions either going up or coming back from Mercer County. Brooks confirmed both he and Hiles have ear buds for their personal cell phones. He does not use his during a transport.

Brooks confirmed he used his personal cell phone. He secured a record of his cell phone use from the incident date of August 10, 2018. (P-1.) He provided a key to match the phone numbers listed in his records with the names of the individuals he called that day. (P-2.) He provided the documentation to his attorney after the PNDA

had issued. The SIU unit from CCDOC had never requested it from him. No other law enforcement agency, such as New Jersey State Police (NJSP) or Cumberland County Sheriff's Office or the prosecutor's office, ever requested his cell phone records. He denied that he ever had his ear buds in his ears during the ride. He did use them post-escape because he was on the side of the road and there were other cars passing by with noise.

Brooks believed that the first call he received at 7:07 a.m. was from the grandfather of his oldest son. (P-1.) The next call at 7:32 a.m. he could not recall who that was from. He only provided a key identifying the phone numbers called and incoming calls he received during the transport time of D.R. in the van, on August 10, 2020. (P-1, P-2.)

Brooks explained that he had to deal with calls regarding his six-year-old son, regarding an illness his son had, on August 10, 2018. At 9:23 a.m., he placed a call to his primary physician's office. (P-1.) At 9:29 a.m. Brooks received a call from his son's mother, T.E. The records indicate the call was twenty minutes in duration. (P-1, P-2.)

At 9:51 a.m., Brooks called Sergeant Govan, at the command center. Brooks recalled the sergeant was requesting whether Brooks or Hiles could work an overtime shift, and that he spoke to Sergeant Martinez about the work shifts as well. The primary care doctor's office line was on call waiting immediately after the Govan call. (P-1.) At 9:53 a.m., Brooks called back Sergeant Govan. That call had a duration of five minutes. (P-1, P-2.)

At 9:59 a.m., Brooks received a call from his girlfriend, S.A., also regarding Brooks' son, with a duration of eight minutes. He explained that the mother of his son and his girlfriend have a great relationship and they were all in communication regarding his son that morning. Brooks asserted that any of the calls he dealt with that day regarding his son were done using the minimal number of minutes to accomplish what he needed to do.

Brooks placed a call to Sergeant Martinez, on the land line at the transportation center at CCDOC at 10:13 a.m., with a duration time of two minutes. At 10:16 a.m. Brooks called the primary care doctor's office. At 10:18 a.m. Sergeant Martinez was calling Brooks from Martinez's cell phone, not the CCDOC landline. Brooks' girlfriend called at 10:19 a.m. through call waiting, then Brooks called Sergeant Martinez back on Martinez's cell phone, at 10:19 a.m. (P-1, P-2.)

According to the records, Brooks placed two calls at 10:21 a.m. and 10:23 a.m. The numbers he called were not listed on the key he provided to determine whom Brooks was calling at those times. (P-1, P-2.) The last call on the records provided by Brooks was a call he placed at 10:25 a.m. to Sergeant Martinez's cell phone. (P-1.)

Hiles and Brooks drove directly to the Mercer County facility from CCDOC, early in the morning. They did not stop along the way. When they arrived at the Mercer County facility, there was a state corrections' bus in the sallyport pick up area and inmates were being loaded onto the bus. They had to wait an extended time for the bus to clear before they could drive up.

D.R. came out in his jumpsuit. Hiles did a pat down of D.R. while Brooks looked through D.R.'s paperwork to ensure it was just his court paperwork. That is the "ordinary" process that is done. Brooks was never trained to do a strip search of an inmate before loading them into the transport van. A pat down is done, starting from the upper body neck and chest area down the waist and legs and arms and up the back. An inmate is not requested to remove shoes and socks during a pat down. Hiles performed the pat down consistent with the training they had received.

Brooks was wearing the video glasses given to him by Hiles, who had indicated Sergeant Martinez told them to wear the glasses. Brooks had only known of supervisors wearing the glasses in the past. Brooks never received any training on how to use the glasses, nor had he previously used them. Hiles explained to him to put the

glasses on and push the button and that is what Brooks did. Brooks put them on at the intake area at the Mercer County facility and took them off after D.R. was placed in the van and the doors were closed. Brooks was surprised to learn later that there was no video footage from the glasses. Brooks did not have any understanding that he was expected to wear the glasses and have them recording from when he first got in the van at CCDOC during the entire drive to and from Mercer County.

Brooks placed D.R. in the van. He did not have prior training as to where inside the back of the van an inmate was to be positioned. He placed D.R. in the second row. There is no room in the front seat of the inmate seating area, directly behind the front compartment of the van and the cage screen, for the inmates to be seated. Brooks did not seat belt D.R. into the seat. Before he loaded D.R. into the van, D.R. was making comments to Brooks that Brooks seemed to be a racist and that he wanted to "kill a white boy." That made Brooks uneasy. He also knew that D.R. made allegations of COs improperly touching him. He was aware of litigation against three other COs for other matters and the County was not backing up the COs since it would not provide county representation for the officers. Brooks felt it seemed like there would be less consequences if he did not seat belt D.R. in, verses D.R. suing him for inappropriate touching.

He was aware of the memorandum requiring inmates to be seat belted in, although he never saw a hard copy of it. He recognized that his admission to not belting D.R. in, was an admission of violating the memorandum. He also recognized that by not seat belting D.R. in, he was exposing himself to discipline.

They drove away from Mercer County and proceeded to Route 295. Traffic was heavy and moving quickly. Approximately twenty-five minutes from when they departed Mercer, while traveling south on Route 295, Hiles stated that a red indicator light for the rear door came on. Hiles pulled the van over onto the right shoulder of the roadway and stopped. They were in a section of Route 295 with at least three lanes of travel. Brooks turned around and looked through the grate and saw D.R. seated. Due to the high seat

backs, he could only see D.R. from the neck up. He had no reason to believe there was anything wrong with D.R. or that D.R. had anything to do with the door sensor icon.

Brooks got out and went along the passenger side of the van to the back. He pulled on the back door handle multiple times and could not get it to open. He yelled out to Hiles to try to unlock the back doors and the doors still would not open in the rear from the outside. There is a power lock button in the front where Hiles was, which would unlock all doors on the vehicle. Brooks was being cautious to watch for the oncoming traffic coming up behind him. He was outside of the van approximately three to four minutes pulling and yanking on the back door, while looking over his shoulder at the oncoming traffic.

Brooks explained that ordinarily, if the doors were unlocked, the rear doors would open from the exterior. The back doors could be opened from inside the van. There was an emergency opening pull cord at the top of the door, which when pulled would open the back doors from the inside. He assumed the emergency pull would be to get the door to release from the latches so people would not be trapped inside the van due to a fire or other emergency. (R-47.) They never used the rear doors to load or unload inmates. The side door was used for that.

Brooks walked back to the front passenger side along the outside of the van. The windows of the van were tinted, so he could not see much of anything looking in from the outside. There also is a thin sheet of metal grate on the windows, making it difficult to see inside unless your face was pressed up to the glass. He did not try to look in from the passenger side. There was "rush" type of traffic at the time, which was a constant flow of traffic at fast speed. Hiles would not have been able to exit the van safely from the driver's side, due to the dangerous location on the side of the road with the oncoming traffic.

Neither Hiles nor Brooks called their supervisor at the time. They agreed to continue on, and would make a report later about the icon light and let their supervisor

know. The door was deemed secure since he could not get it open. They were late for court and on "judge's time" so they wanted to get the inmate to court as quickly as possible. They never discussed as an option returning to Mercer County DOC or to proceed to the nearest police station. They did not consider pulling off of Route 295 to a less dangerous area to get out and inspect the van more thoroughly. It was not in their mindset at the time. The icon had never gone off previously. Looking back after the fact, Brooks indicated it would "have been a wiser choice to do those other options." They were trying to accomplish their mission in getting D.R. to court.

They continued on Route 295 headed to the courthouse. Brooks denied that he was watching YouTube videos the entire ride back from Mercer County. He was "too busy mentally dealing with the concern of my child[.]" He denied using his ear buds while in the van. He believed that Hiles was attentive during the ride and not distracted.

Throughout the ride, both Brooks and Hiles called back to D.R. and spoke to him, checking on him periodically. They asked if he was fine. Just prior to getting onto Route 42, a vehicle in front of them jammed on their brakes and caused Hiles to abruptly brake. They reached out to D.R. to ask if he was okay and he said that he was fine. They proceeded on.

Brooks explained that he could not maintain constant visual contact of D.R. during the approximate two-hour ride. Brooks was in a fixed seat, that could not swivel to look back. There were no cameras inside the van. He was outfitted with his vest, duty belt with his service weapon, handcuffs, and pepper spray, all creating "not an ideal situation to constantly turn around." He asserted he did not have the proper tools to be in constant visual contact with D.R. and denied that he had "relaxed his vigil" by being unable to keep D.R. in constant visual contact under the circumstances. He denied that he failed to have D.R. "under control" asserting that by being in the vehicle, D.R. was under his control and in his care. He could not have constant physical contact with D.R. due to the setup of the van, with inadequate security features and with Brooks in the front, D.R. in the back, and a barrier between them.

Approximately one hour after they had pulled over to the side of Route 295, they were proceeding in the van through the intersection at Old Deerfield Pike and Cornwell Drive. The light had turned green and as they proceeded, they heard a thump and Brooks felt it, thinking it could have been a medical issue for D.R. because it sounded like something hit the floor. Brooks turned around and called out to D.R. and he was not answering. He started to bang on the cage thinking D.R. may have passed out or fell asleep on the floor. Brooks told Hiles to pull over and he checked the van and saw that D.R. was no longer in the van.

At no time during the ride had Brooks observed that D.R. had moved from his seat in the van. He did not hang a bag on the screen to block the view. He confirmed Hiles had a Wawa bag hanging on the latch on the screen but it was "pretty much empty." The photograph of the hanging bag appeared as if the bag may have been moved a little because it would normally be behind the driver's seat. (R-47.) He affirmed that he did hang his jacket on the latch, which was behind his seat and did not obstruct his view. The photograph depicting his jacket appeared as if his jacket had been moved. (R-47.) He normally would tuck his jacket behind his seat.

Hiles and Brooks were never instructed by any superior officers that they were not permitted to hang their jackets or bags as they did. The visibility looking back through the cage screen was not good. The photographs depicting the view from the front of the van to the back were taken on a sunny day with the back doors wide open, and the side door of the van open. (R-35.)

Brooks indicated that it would be difficult to hear activity coming from the back of the van. It was August, and the air conditioning would have been on. The noise from the diesel engine, with roadway travel noise, also made it difficult to hear. He never heard D.R. moving about in the rear of the van. Had he heard any such noise, it would have been a situation, and he and Hiles would not have just "let something like that go." He did not recall hearing any honking horn from behind the van when going through the

intersection.

After realizing the inmate was not in the back of the van, Brooks called Sergeant Martinez and told him what happened. Brooks believes he may have said something to Sergeant Martinez that D.R. may have been leaning or laying on his side, trying to explain what was happening. He was "hysterical" immediately when he realized the inmate was not there.

Martinez told Brooks to call the police. Hiles turned around the van to try and see where D.R. was and to search for him. They were on scene for well over an hour at the side of the road. Brooks took a selfie photograph from inside the van, from the passenger seat, looking into the back of the van, while the van was on the side of the road. (P-7.) He took the photo to show what he could not see from the perspective of the CO. He took another photograph looking into the rear of the van, which showed the reflection and glare that they would see when trying to look back into the inmate area. (P-8.)

Brooks was later driven from the scene to the Bridgeton State Police Barracks, where he was interviewed. He was interviewed at a later date by the CCDOC SIU unit. He authored a written report. (R-9.) He affirmed he was honest and truthful in giving his statements. He was aware that Hiles authored a report about the incident as well. (R-10.) Brooks did not see Hiles' report before he wrote his own. He did not coordinate with Hiles in any way before he was interviewed by the NJSP or before they wrote their statements.

Brooks authored an additional report at the request of Captain Joynes, regarding the route they had traveled in the van on August 10, 2018. (R-14.) Brooks likewise affirmed he was truthful in that statement. Hiles also authored a supplemental statement at the request of the captain. (R-15.) Brooks again affirmed he and Hiles did not consult with one another, nor read the other's supplemental report before writing their own report.

He affirmed that the only prior issue for which he received discipline during his employment with CCDOC, was a written reprimand as of November 21, 2017. (P-4.) He confirmed there were other matters listed on his file, but only that one incident resulted in discipline. He never had the opportunity to appeal or contest the discipline. There was no investigation. He did recognize that the written reprimand is considered part of his disciplinary file. He has been evaluated by senior officers. He never received an evaluation questioning his ability to do his job. He never had to undergo a fitness for duty evaluation for physical or mental health reasons.

Brooks conceded he should be disciplined for his actions on August 10, 2018. He recognized that an escaped inmate creates a very dangerous situation for the public. He does not believe that his discipline should be removal. He denied that he was neglectful of his duties or loafing on the job. He did the best that he could with the circumstances presented to him. He asserted that during his career, the CCDOC never took proactive steps to address security issues, such as with the van. Any action by CCDOC was always reactive, after something occurred, as did here. He was the most junior member coming into transport at the time. Had he complained about the equipment, he would be known as the officer that complains and is problematic.

Brooks has worked for CCDOC since 2004 and this is his career for which he supports his family. His father was a CO as well. He takes his job seriously. He had no prior disciplinary issues up to this point. No CO ever wants to deal with such a serious issue as an escape, and it is something he has been living with since the incident and it has not been easy. Mentally it hurt him, and he is embarrassed and humiliated. Even if he is returned to work, he will still have to deal with the stain of having an inmate escape during his watch for the rest of his career. He is very ashamed of the situation. He loves his job, and it is a career for him. He did work for approximately two months after the escape of August 10, 2018, until he was removed. He did not have any disciplinary issues during that time.

Brandon Brown, a sheriff's officer for Cumberland County, testified. He transports inmates for the Cumberland County Sheriff's Department. He has been so employed for approximately two years.

Generally, when Brown picks up an inmate from another facility, the inmate will be in a prison jumper and may have a white t-shirt and underwear under the jumper. Depending upon the reason for the transport, whether for a court appearance or for extradition, the inmate may be in shackles from the correctional facility, or he will use the Sheriff's Department shackles. Sometimes the DOC officer will pat-down the inmate before he is transported, or Brown will do the pat-down. He is unaware of any facility performing a strip search of an inmate before the transportation pick up.

On August 10, 2018, Brown completed transportation of an inmate to the Superior Court in Bridgeton. He then drove to a local Wawa to pick up lunch. On his return drive to the courthouse, he was traveling on Old Deerfield Pike. He saw a CCDOC transport van coming from the opposite direction, down a hill in the road, with emergency lights on. That was suspicious to Brown because the emergency lights are normally not used during the transport of an inmate.

Brown made a u-turn and when he got to the CCDOC van, it was pulled off to the side of the road with two CCDOC officers, Hiles and Brooks, outside of the van. They were both "a little scrambled." Both officers appeared frantic. Brown spoke to them, and learned that an inmate had been in the van, and now was not there. Brown observed the inmate's discarded jumper and observed there was a square hole cut in the interior panel of the rear van door in the inmate seating area.

A woman in a small SUV vehicle stopped and said that she saw somebody running down Cornwell Drive over Old Deerfield Pike. The woman then left.

Brown returned to his vehicle, radioed his dispatch, and advised what he had come upon. Brown then began to assist in looking for the inmate, with another Sheriff's

Department officer who had arrived. Together they went to area homes asking if anyone saw anything and searching the grounds. After approximately thirty minutes of searching, Brown got called to go back to the original area where he had come upon the van with Hiles and Brooks outside of the van. NJSP representatives had arrived. Brown was told to go wait at a doctor's office location up the road. He was interviewed later that day at the NJSP barracks.

Katharine Eyerman testified. She described herself as a farmer who resided near the area of the intersection of Old Deerfield Pike and Cornwell Drive. On August 10, 2018, she was driving from her home at approximately 10:00 a.m. to 10:30 a.m. in the morning, headed to a local pizzeria at Carl's Corner to get leftover pizza for her chickens. The weather was clear. As she approached the intersection she was behind a van and slowing down. Suddenly, the door opened on the back of the van, and someone rolled out of the van. She beeped her horn several times and the person who rolled out of the van stood up and made a motion with his finger raised to his lips. She assumed he meant everything was okay and he smiled and ran towards the backyard of a home on the corner of the intersection. He had on pants and a shirt, but could not recall specifics about the clothing. She was surprised and scared, as a woman. She did not know what was going on.

The van was moving when the man rolled out of it. The van continued straight on the roadway, up the hill, with the rear door open. It did not stop. She turned left at the intersection, continuing on her errand. She did not have a cell phone with her. She picked up the pizza and on her return drive home, she saw a sheriff's officer on the side of the road near the intersection. She told the sheriff's officer which direction she saw the man run. She continued to her home.

She later gave a statement to an investigator. They located her through her nephew.

Ricardo Martinez testified. He is a shift lieutenant for CCDOC. He is a high school graduate and completed approximately one and a half years of education at a local community college. He was hired by CCDOC in 2009 and attended the academy in 2010. He was promoted to sergeant in approximately January of 2017. He became supervisor of Transportation at CCDOC as of approximately March of 2018, until approximately October or November of 2018. He was promoted to lieutenant in March of 2019.

Martinez was supervisor of Transportation as of August 10, 2018. He oversaw approximately ten COs, who were paired into five teams, who completed the transportation of inmates. He would receive court writs requiring the appearance of inmates at court facilities, and would assign a team to do the transportation of the inmate.

Hiles and Brooks were assigned to the transportation department, and were usually paired together. They were the best team in the department. Martinez believed that Brooks was a good officer and was "one of my best."

Neither Hiles nor Brooks had ever requested additional training or expressed to Martinez that they lacked training. He believed Brooks had proper training to work in the transportation unit. He acknowledged that the only requirement for a CO to work in transportation was to have a normal driver's license. Transport COs receive on the job training. They do not receive specific transport training during the academy. Martinez acknowledged that COs do not receive defensive driving training, nor are they instructed to follow different routes traveling to and from destinations, so that inmates do not get familiar with the routes taken.

Martinez was familiar with inmate D.R. and knew him to be "problematic" for having threatened COs at CCDOC with lawsuits, and having caused problems with all COs at the facility, regardless of race. That is why inmate D.R. was "shipped out" to be housed at Mercer County DOC. Other closer DOC county facilities would not accept

D.R. because of his problems. Martinez was responsible for “moving” D.R. around, and had made efforts to get him into other DOC facilities. He recalled trying to get D.R. housed in Atlantic and Salem County DOC facilities. It was known by the COs at CCDOC that D.R. was a problem.

On August 10, 2018, D.R. was scheduled to appear in Cumberland County Superior Court. Martinez assigned the transport to Hiles and Brooks. (R-5.) They would be required to pick up D.R. from Mercer County DOC, transport him to Cumberland County Superior Court, then return D.R. to Mercer County DOC.

On the morning of the transport, Martinez gave a pair of eye cam video glasses to Hiles. Martinez did not instruction the team as to whom should wear the glasses. He instructed them to record the transportation of inmate D.R. His expectation was that the entire transport would be filmed, even during the drive time from the facility to the court and back. Martinez was aware that both Hiles and Brooks knew how to use the glasses. He previously had to review footage taken by Hiles when he had used them. He had no recordings from Brooks using the glasses on prior occasions. Martinez had no knowledge if Brooks had used the glasses before August 10, 2018. They were very simple to operate. You hold the power button to turn them on, then hold the power button again and the glasses light up and stay lit up the whole time that they are recording. The use of the video glasses would help to protect COs from any false allegations by D.R.

The transport team of Hiles and Brooks was also assigned a transportation cell phone for use that day. Martinez acknowledged that transport COs were permitted to have their personal cell phones with them during a transportation run. Use of the personal cell phone by a CO during transportation is not permitted. Martinez acknowledged that if he needed to call a CO during a transport, he would call them on either the county issued phone or their personal cell phone. He in fact did use his personal cell phone to communicate with Brooks' personal cell phone on August 10,

2018. Martinez learned later from the warden that Brooks had earphones or earbuds during the transportation, which was not proper.

Martinez indicated the transport van was equipped with a radio but did not have a GPS. The COs were permitted to use the radio during a transport. Playing music was not a violation of any rule or regulation, provided it was not so loud that it impeded the COs from doing their job.

Hiles completed the pre-trip van inspection in the morning of August 10, 2018, and did not report any problems regarding visibility inside the van. (R-6.) Martinez did not conduct inspections of any of the CCDOC vehicles. Neither Hiles nor Brooks had ever reported to Martinez that there was an issue with visibility inside the van. Brooks was the passenger CO in the front and was required to turn around and look back at the inmate during the transport. Nothing should have been hanging on the cage between the front seat and the back of the van. (R-47 at 1.) Martinez never saw the latch on the cage being used to hang a jacket. He had seen Wawa bags used as garbage bags within the passenger compartment of a transport van. If Martinez saw a bag hanging on the cage, he would instruct the CO to take it down, and would have to discipline a CO who refused to do so.

When viewing a photograph with items in the back of the cargo area of the van, Martinez indicated those items, such as the diesel fluid jug, should be removed by the transport CO doing the pre-vehicle check, before putting an inmate in the van. (P-10.) Similar fluid type containers seen in a photograph taken of the van after the escape, should have been removed before the transport, if they were there during the pre-trip check. (R-47 at 3.) However, items depicted in the prior photo, believed to be an extra jumper and some spare handcuffs in a milk crate, would stay in the van and were not to be removed before the transport. (P-10.) There would never be tools kept in the back of the cargo area of the van. A first aid kit would stay in the van, but should be in the front passenger compartment.

Martinez learned after the escape, from Brooks, that there was a problem with the back door malfunction during the transportation of D.R. Brooks told Martinez that the door ajar light came on at some point when they were on Route 295. Hiles pulled over and Brooks went out to check that the door was secure. Brooks said the inmate was secure and they thought the door light could have been faulty. Martinez indicated that he should have immediately been notified of this issue. He was not.

At approximately 10:10 a.m., Brooks called Martinez to tell him that D.R. had escaped and that his jumper was on the side of the road. Brooks told Martinez that D.R. had been laying down, prior to Brooks hearing a thump. When Brooks looked back, his view was obstructed by the cage. (R-8.) Brooks stated that D.R. had been patted down at Mercer County DOC and was double locked in the handcuffs and leg shackles. Brooks advised that D.R.'s handcuffs and shackles were taken off, as if a key had been used to unlock them. (R-8.) Brooks indicated that he was already talking to the Cumberland County Sheriff's Department at that time. Martinez told Brooks to call the Bridgeton Police and the NJSP in Bridgeton, and to start looking for D.R.

Martinez confirmed that D.R. should have been seat belted in. There is a CCDOC memorandum from January 22, 2016, by then Warden Balicki, regarding "Transporting Inmates" which indicates "Effective immediately inmates and staff **must** wear a seatbelt when traveling in County owned vehicles." (R-4, emphasis original.) If D.R. was laying down on the seat, he was not seat belted in, and a CO would not be able to see him, because the seat backs are high.

Martinez indicated that transport COs are instructed to pat down an inmate before transporting them. COs would have been trained how to do a strip search through general training as a CO, but were not instructed to do such searches before transporting an inmate. A pat down does not involve taking off the inmate's shoes and socks. After the escape on August 10, 2018, Martinez was instructed by the Assistant Warden, Charles Warren (Deputy Warden Warren), that effective immediately, all inmates were to be strip searched prior to leaving CCDOC or another facility. Martinez

issued a memorandum with this new policy. (P-14.) He was not insinuating the Brooks should have done a strip search. That was not the policy when Brooks picked up D.R. at the Mercer County facility.

Kevin Milbourne testified on behalf of CCDOC. He was first hired in May of 2017, to work in the SIU unit of CCDOC, as an "investigator" but his title was redesignated as "confidential assistant to the Warden" for purposes of civil service classifications, while still being assigned to perform investigative work for the SIU of CCDOC. (P-6.) Prior to his employment with the CCDOC, Milbourne had served in the Army, and worked thereafter in the field of law enforcement, including employment with the Georgia State Police, and for twenty-five years worked as a trooper and detective in the NJSP and thereafter was a school resource officer for Bridgeton Public Schools. He worked in internal affairs with the NJSP for approximately ten years. He holds a master's degree.

Milbourne was tasked with investigating Hiles and Brooks regarding the inmate escape. Milbourne authored an SIU report regarding the allegation that inmate D.R. escaped on August 10, 2018, from a CCDOC van during transport. (R-16.) He concluded that the allegation was substantiated, and that Hiles and Brooks violated CCDOC policies. (R-16 at 2.) Milbourne admittedly did not know every CCDOC policy or procedure, confirming there were "a ton" of such policies and one would need to refer to the policies themselves to recollect them all.

Milbourne was assigned on August 13, 2018, to investigate the August 10, 2018, inmate escape. He authored his report based upon his involvement in the matter from the initial call by transportation Sergeant Martinez to SIU that an inmate had escaped. Milbourne conducted interviews of individuals involved in the matter, including Hiles and Brooks, reviewed pertinent CCDOC policies and documentation regarding the transport of inmate D.R., and reviewed statements completed by or given by various witnesses, including inmate D.R. Milbourne concluded that based upon a preponderance of the

evidence, Brooks and Hiles had violated CCDOC transportation policies. He outlined in his report the information he relied upon to reach his conclusion as follows:

1. During initial interviews of Officer Brooks and Officer Hiles, both stated that they were unable to see inmate [D.R.] in the rear of the van due to low visibility. Both officers admitted inmate [D.R.] was placed in the van on the second seat without a seatbelt.
2. Officer Brooks and Officer Hiles admitted to using their personal cell phones during the transport. Charging cords for each of their cell phones were found in the vehicle.
3. Neither of the officers could remember when they actually saw inmate [D.R.] in the rear of the vehicle. In statements both officer [sic] only remembered communicating with inmate [D.R.] by calling out to him and waiting for him to respond. Officer Brooks admitted banging on the wall in the drivers compartment to get inmate [D.R.'s] attention.
4. When asked about the length of time it took for inmate [D.R.] to remove his handcuffs, shackles, and his orange jump suite [sic]. Then climb to the rear of the van cut two holes in the right rear door, neither officer could respond.
5. Officer Brooks and Officer Hiles Failed [sic] to keep count of inmate during Transport [sic].
6. Officer Brooks and Officer Hiles Failed to use County Cell phone for Official Use [sic].
7. Officer Brooks and Officer Hiles Failed to maintain control over the inmate during transport.
8. Officer Brooks and Officer Hiles Failed to seatbelt inmate when traveling in County owned vehicle [.]

(R-16 at 1-2.)

Milbourne was working in the SIU office on August 10, 2018, when Sergeant Martinez called the unit to advise of the inmate escape. Milbourne drove with his supervisor, Sergeant William Holbrook and the CCDOC Warden, Richard Smith

(Warden Smith), to the scene of the van parked along Old Deerfield Pike by its intersection with Cornwell Drive. They arrived on scene at approximately 10:15 a.m. to 10:30 a.m. It was a bright and sunny day. Milbourne observed approximately fifteen individuals there from various law enforcement agencies. The van was parked on the side of the road, with the back doors open. Some of the people were walking along the roadway and throughout the neighborhood, searching for inmate D.R.

Milbourne saw Brooks walking around the van with earphones in, talking on a phone, which he presumed was Brooks' personal cell phone. Brooks' demeanor at the scene was that he was very upset. He was frantic and erratic.

Milbourne looked into the van. He observed a lot of trash in the driver's compartment of the van, such as water bottles and chargers for cell phones. (R-35 at 1.) It was really dirty. He observed a CCDOC CO's jacket hanging on the front passenger side. Several Wawa bags were inside, including one hanging by the driver's side seat to the right on the screen/cage. (R-47.) Several Wawa cups were in there. He looked from the driver's compartment through the screen to the back of the van and did not have any problem looking into the rear compartment. He asserted that visibility of an inmate would only be a problem if the inmate were laying down in the seat. Neither Hiles nor Brooks ever complained to their supervisor that there was low visibility into the back of the transport vans. Milbourne acknowledged that when he looked into the back of the van, he had stepped up on the passenger side and looked back as the passenger door was open. He was not seated in the passenger seat. One of the rear doors was open when he looked back.

Milbourne looked into the cargo area in the rear of the van and everything was in disarray. He saw a crate, the orange jail jumper, something red, and something that appeared to be a squeegee to clean windows. (R-47 at 3.) He acknowledged that some of the items in the cargo area are Cumberland County materials left in the back of the van, and that no one would suspect that an inmate might actually go into the cargo area. Inmates are loaded in and out of the side door of the van, not the back door. He

assumed that whatever was in the cargo area would be removed each time a CO did a pre-trip check.

He saw holes that were cut into the interior panel of the back door. (R-47 at 2.) The shackles the inmate was alleged to have been placed in were there at the scene. There was talk amongst the various individuals at the scene as to how the inmate could have gotten out of his jumper and the shackles.

Milbourne and his supervisor and the Warden drove around the neighborhood to assist in the search. They walked through a graveyard in the area and walked around the old motor vehicle inspection building. They drove back to the scene where the van was parked, then returned to the CCDOC facility.

Milbourne was concerned about the circumstances, knowing that inmate D.R. was "extremely problematic" and had family in the area and knew the area well. Milbourne was hoping from a safety concern that D.R. would be found as soon as possible. He knew D.R. to falsely accuse officers of accusations ranging from sexual remarks to claims that he was touched by the officers. D.R. was particularly problematic to African American officers. The warden had put out word that if anyone had contact with D.R., at least two or more officers had to always be with D.R. He believed all the COs knew that they had to be careful in dealing with and handling D.R. He was known to be an issue.

Brooks told Milbourne that he did not place the seatbelt on D.R. because he did not want to "cross him" or get too close to D.R. because of the complaints D.R. made in the past about COs. Brooks never raised this issue with his supervisor. Milbourne acknowledged he never raised the issue during his investigation as to why CCDOC would assign an African American CO to transport D.R., when D.R. was known to particularly target African American COs with false allegations. He was aware that there were other non-African American COs in the transportation unit as of the date

D.R. was transported. Milbourne was further aware that this transport was not the first time D.R. had to be transported from the Mercer County facility.

Brooks was using his personal cell phone on the day of the incident, as evinced by the charging cords Milbourne saw inside the van and based upon inmate D.R. stating during his interview that Brooks was constantly on the cell phone, surfing the net, or something like that. Milbourne indicated that would be a violation of what Brooks was supposed to be doing at that time. Sergeant Martinez advised Milbourne that transport COs are given a county cell phone for communication purposes. Milbourne did not believe that transport COs were allowed under CCDOC policy to have their personal cell phones with them during a transport. He acknowledged that the county issued phone given to Brooks and Hiles for the transport was never taken to the Cumberland County Prosecutor's office to "dump" the phone to determine what calls or text messages were made that day from that phone.

Milbourne was not aware if the county issued cell phone had GPS capability, and did not check for same. He was unaware if the van had a GPS system. He was unaware if the van had a tracking system, to ensure employees are not driving to other locations where they are not supposed to be when working. He was unaware if the van was equipped with a tracking device, such as a black box used in airplanes.

Inmate D.R. provided a proffer to the Cumberland County prosecutor's office on December 27, 2018. Milbourne sat in during the interview. (R-30.) Inmate D.R. provided information in his interview, which Milbourne relied upon in his report, although he acknowledged that he signed his report on August 13, 2018, which was reviewed and signed by the supervisor on October 23, 2018, indicating the investigation closed as of that date. Milbourne acknowledged that he made his own determinations as to whether D.R. was telling the truth or not, knowing that D.R. made many false accusations. Some of the things D.R. had said "made sense and added up." He did not re-open the CCDOC SIU investigation after sitting in the December 27, 2018, proffer by D.R.

During his proffer, inmate D.R. indicated that in addition to using his cell phone, Brooks was supposedly distracted by loud music being played from the van's radio. Milbourne had no idea why the van would have a radio and acknowledged that the county could have removed it. D.R. claimed he started to move about inside the van as soon as they left the Mercer County facility. Milbourne admitted that although there should have been video of D.R. being placed into the van at the Mercer County facility, he never was provided any such video.

D.R. explained that he first disabled the interior light, removed his clothing and shackles, then moved to the rear of the van. He allegedly found two box cutters in a crate in the cargo area. Milbourne asserted this was a "huge" safety violation and there should not have been anything stored in the cargo area of the van.

D.R. used the box cutters to cut the panel on the door in the back to gain access to the locking mechanisms inside. Milbourne believed that D.R. did use some type of tool to make the type of cuts he saw in the panel. Hiles had not observed any issues with holes in the interior of the back door during his pre-trip inspection. After making the cuts in the door panel, D.R. started to pull wires out of the door, and realized he set off the dashboard alarm and the van pulled over. D.R. claimed he tried to get back to his seat by going over the backs of the rows of seats, but got stuck. He saw Brooks get out and come back to the door, which Brooks tried to open, but could not. D.R. claimed that had Brooks looked inside, he would have seen D.R. stuck on top of the seats. D.R. never mentioned that Brooks tried to open the side doors of the van. Brooks got back inside the front passenger seat and D.R. made his way back to his seat.

Milbourne recalled D.R.'s description that he left the van when it was stopped at an intersection. On his way out of the van, there was a female driver in a vehicle stopped behind the van. As he jumped out, he claimed to raise his finger to his mouth, motioning in a way to be quiet, then ran to a house nearby and waited for the van to pull away.

Brooks should have maintained some type of visibility of D.R. during the transport, and failed to keep account of D.R. during the transport. Brooks had been asked several times in his interviews if he saw D.R. in the back of the van during the transport, and Brooks responded "no" due to the limited visibility. He communicated with D.R. by calling out to him or by banging on the cage. Milbourne recalled Brooks making a statement that at one point during the transport, when he got out of the van, he could not see inside from the exterior of the van, so when Brooks got back into the passenger seat, he called out to D.R., who supposedly responded to him. Milbourne asserted that Brooks failed to maintain control of D.R. from the beginning of the trip to the end when D.R. escaped. D.R. was able to freely move about inside the van and then exit the van from the rear.

Milbourne confirmed that he completed the SIU investigation. Milbourne was not consulted with, by any members of CCDOC administration, to determine what administrative charges should have issued as to Brooks. He was not consulted with as to what the penalty should be as it related to the charges against Brooks. He admitted he did not see anything in his investigation to lead him to believe that either Hiles or Brooks had intentionally helped D.R. escape. He did not make any affirmative finding of untruthfulness by Hiles or Brooks during their interviews regarding the matter.

William Holbrook is a sergeant for CCDOC. He has been employed by the CCDOC since 2007. He started as a line CO, working in various departments, and in mid-2013 was appointed to the SIU at CCDOC. He was promoted to sergeant in 2016.

He was at work in the SIU office on August 10, 2018, when Sergeant Martinez called at approximately 10:00 a.m. and told him that he had just received a call from the COs on the transport of D.R. and that D.R. had escaped. Holbrook asked Martinez where the COs were located and then told him to stand by as he notified the warden. Holbrook called the warden, told him that the transportation team lost an inmate at the location of Old Deerfield Pike and Cornwell Drive, and that the inmate was still on the

loose. They needed to respond to assist in locating D.R. Holbrook then called the CCDOC search team, and ordered them to meet in front of the facility so they could respond to the area where D.R. had escaped.

Holbrook got Captain Milbourne from SIU to accompany him and the warden. While on the way, Holbrook spoke to Sergeant Martinez again, and told him to notify the NJSP. When they were on scene, Holbrook called the Cumberland County prosecutor's office to advise them of the escaped inmate. They would also be sending out investigators to the scene. The local Police Departments were notified.

Holbrook arrived on scene within approximately ten to fifteen minutes after he received the call from Sergeant Martinez. Holbrook saw that the County Sheriff's Department was on scene and NJSP troopers were there. It was a mass of people. He got out of his car and approached where the CCDOC van was parked on the side of the road. Hiles and Brooks were standing by the van.

Brooks was on the phone talking to someone, walking back and forth, very upset. The warden asked Hiles and Brooks what happened, and they responded that the inmate "got out." Holbrook tried to calm the COs down to get basic information about the inmate such as what he was wearing and in what direction did he travel. Hiles did not say much, appearing to be shell-shocked.

Brooks described that they were at the traffic light at the intersection and heard a thud. They pulled over, got out, looked inside the back and the inmate was not there. They knew he was not wearing the orange jumper because that was on scene. A Sheriff's Department K-9 officer came over to get a scent from the jumper for the K-9, and then proceeded in the direction the inmate was believed to have headed when he exited the rear of the van.

Holbrook went back over to the van and saw the cuts in the interior panel of the right rear door. He saw a black bag where a Sheriff's Department lieutenant found a

Leatherman type multi-tool that had been used to cut the door. The plastic wrapping for the tool was still there. There were jumper cables. He observed the interior light hanging. Brooks stated that the van was not equipped like other vans to handle transport of inmates, and pointed out that the inmate was able to pull the light mechanism down. Brooks was upset and was basically telling Holbrook that the "van's fucked up" since the inmate never should have been able to get out.

Holbrook also saw the shackles that had been left in the van. The various law enforcement representatives were looking at the shackles to see if they had been manipulated or pried open. There were no markings on the shackles, and they operated properly. Holbrook looked into the front driver's area of the van. He observed chargers for phones plugged in and Wawa bags. He saw a book bag.

The NJSP advised that they would be the lead agency in charge. They took control and coordinated sending the various law enforcement agencies out to search for D.R. An NJSP helicopter flew in to assist. A command center was set up at the scene, and was on site until approximately 3:00 p.m. At one point, a neighbor from the area advised that there was an abandoned home nearby and he observed that the screen door was open. A group of law enforcement were called in to search the building and nothing was found.

Holbrook was aware that the CCDOC provided information about the inmate to enable the law enforcement agencies to contact the inmate's family members and the last place he had worked in the area. The inmate was not found that day. Holbrook drove the van back to CCDOC and locked it in the medical yard. The NJSP were going to process the van.

The following day, Holbrook took photographs of the van while it was in the CCDOC yard. His lens kept fogging up. The weather was rainy, muggy, and humid. The lead NJSP detective was there and other officials from the County. Holbrook did get into the van and took photos looking back, since Brooks had said that there was an

issue being able to see into the back of the van. (R-35, R-47, R-49.) Holbrook sat in the front passenger seat and turned to look back into the van through the cage. He was able to see into the back. It was not clear as if looking out a window, but there was visibility where he was able to see into the back.

Holbrook confirmed that the inmate must be seat belted in. He acknowledged the seatbelt may not prevent the inmate from laying down. It is the responsibility of the CO to watch the inmate and command them to sit up or move to a position where they are visible to the CO.

He was aware that D.R. was considered high risk, and confirmed that high risk is not a specific DOC classification. He was aware of the accusations D.R. had made about being inappropriately touched by COs. He considered the credibility of information from D.R. to be "up and down" as some of it was accurate and some was totally false.

Richard Smith (Warden Smith) testified. He is the warden of the CCDOC facility. He became warden in February of 2017. He had previously been employed twenty-five years with the NJDOC, and had retired in 2015.

On August 10, 2018, he first learned of the escape when Sergeant Martinez called his office. Warden Smith, along with Deputy Warden Warren, and other CCDOC representatives, jumped into their vehicles and went to the scene of the incident. He was very concerned about an inmate having escaped as he drove by homes and saw children playing in yards, people working in their yards, and homes with garage doors open. He was concerned that something would happen to someone, and he did not want the situation to get worse, with someone getting harmed or hurt.

When they arrived on scene, Smith saw the van pulled on the side of the road with the back doors open. Hiles was walking around. Brooks was outside of the van on the phone with earphones. Smith asked Brooks what happened and Brooks began to

say there were issues with the van. Smith told him that was not the discussion they were going to have at that time. His main objective was finding out where the inmate was, where and when did Brooks last see the inmate, and in what direction did the inmate travel.

Warden Smith spoke to multiple individuals at the scene, including his staff from CCDOC, and members of the various other law enforcement agencies such as the Cumberland County Sheriff's Department, Bridgeton Police, and NJSP. A K-9 unit was being deployed. He recalled speaking to a member of the Sheriff's Department who advised that a woman had stopped by the scene and told the sheriff's officer that she saw a man open the door of the van and she began to blow her horn to alert the van. She described that a man stepped out, motioned for her to be quiet, and he took off. The van did not stop.

While on scene, Smith did observe the van. He saw the inmate's orange jumper and that the inmate had removed his handcuffs and shackles and left them in the van. He saw a couple of crates in the rear of the van. He saw the holes cut in the back door of the van. When he looked inside the front of the van he saw Wawa bags and coats hanging up between the driver's seat and the passenger's seat. The van was in a "disarray."

Warden Smith joined in the efforts to search the area for the inmate. He drove around in the area with other CCDOC administrators, looking for the inmate or anything that might assist in locating the inmate. They were unsuccessful. He eventually returned to the CCDOC facility and arranged to get the van secured back to the facility and have it photographed. Additional CCDOC teams were put together to continue to search the local area, along with the other law enforcement agencies. Eventually the NJSP fugitive task force was involved and were able to apprehend the inmate in Baltimore on a later date.

Smith confirmed that there are post orders COs are required to follow for CCDOC. There is a general post order for transportation officers. (R-1.) The cover page of the post order specifies that the post orders cannot be expected to cover every type of incident which may arise. "Each employee is expected to use common sense and good judgment when confronted with a new or unusual situation that is not contained by these Post Orders." (R-1.) An employee is directed to immediately consult with their supervisor when there is any doubt as to a course of action the employee should take.

Smith opined that Brooks did not use common sense and good judgment as required by the transportation post orders. Brooks was required to ensure that the inmate was searched and properly secured into the vehicle. The inmate was not properly searched since he had a handcuff key on him and a complete set of clothes under his orange jumper. Brooks did not seat belt the inmate in. The inmate was able to freely move about inside the van, found a crate in the back of the van, which should not have been there, and the inmate used a tool from the crate to cut holes in the door panel. Brooks and Hiles are fortunate the inmate did not use that tool to take their lives.

There was no requirement in the CCDOC post orders for transport COs to conduct a strip search of an inmate before transporting the inmate. (R-1.) Warden Smith was unaware that transport COs were not doing strip searches of inmates. He learned about that from Brooks on the date of the incident. Smith confirmed that he directed Sergeant Martinez to author the memorandum requiring a strip search, to ensure it was part of the post orders. Smith believed that it was common sense, and training a CO would have received in the academy, that if you are transporting an inmate, you did the type of search necessary to ensure the inmate did not have contraband and was safe to transport. He asserted that any transport CO knows that a "complete search" of an inmate is done before taking the inmate into their custody.

Warden Smith indicated that Brooks and Hiles were not in compliance with the post order requiring all employees to be alert and aware, at all times, of their

surroundings and responsibilities. (R-1.) Smith stated that both Brooks and Hiles were inattentive. When the alarm went off in the van, no one properly checked on the inmate when they stopped the van and Brooks went out to check the back door. The inmate disabled the interior light and was able to cut holes in the van door. If the radio was playing loudly, and Brooks had earphones in during the ride and they hung items on the screen, the inmate had "free reign" inside the van. If they had been attentive, either Hiles or Brooks should have heard "the commotion" the inmate was causing in the rear. They should have heard the lady who was blowing her horn behind the van when the inmate escaped.

Warden Smith acknowledged that there is no CCDOC policy or procedure prohibiting use of the van radio during a transport, whether an inmate is in the van or not. He also was unaware of any policy which would have required transport COs to secure their personal cell phones in a locker or other location to ensure they were not carried by the CO during a transport. Transport COs were permitted to have a personal cell phone, yet "common sense" would be that the CO not use their cell phone during the transport, except for times they needed to be reached by a superior officer or if they needed to immediately communicate with a superior officer. Likewise, as to earbuds or earphones, Warden Smith was unaware of any policy prohibiting the use of same. Such use would boil down to "common sense."

All Brooks had to do was turn and look back to see if D.R. was sitting right there, looking in his face. He should not have had any visibility issues with the van. Smith was never told by Brooks of any visibility issues with the van prior to the incident. To Smith's knowledge, Brooks never told any CCDOC staff of issues with visibility into the rear of the van. If there was such an issue, Brooks should have immediately notified his supervisor, as per CCDOC post orders.

Warden Smith personally viewed the van on scene and inspected it the day after the incident. He had the deputy warden, a sergeant, a captain, county administrators and a freeholder director look at the vans in regard to their condition, to determine if

there was anything needed. He determined that the van itself was fine. There were numerous other issues that should have been done by the COs.

It was Smith's belief that Brooks violated other provisions of the transportation post, such as failing to supervise the movement and activities of an inmate under his watch and failing to maintain a proper head count. (R-1.) Smith asserted that neither the inmate, nor the vehicle, were properly searched in accordance with the post order.

The CCDOC has a "transportation of inmates" policy, identified as policy number 10.14, which was promulgated in 2015 and in effect at the time of the incident. (R-2.) Smith asserted that Brooks did not exercise good judgment, relaxed his vigil, did not maintain the inmate under his control, and was responsible for the inmate escaping, in violation of the CCDOC policy. Smith did not believe that the inmate was properly frisked, also in violation of the policy.

Brooks also violated the CCDOC memorandum requiring all inmates to be properly seat belted in during transport. (R-4.) Smith was aware that inmate D.R. had a reputation for being problematic, making allegations that individuals touched him inappropriately and made insensitive racial remarks towards African Americans and Latinos. The seatbelt policy does not get altered if racial remarks or other allegations were made about COs by the inmate.

Smith acknowledged that after the incident, the post orders were updated to ensure that the seatbelt memorandum was part of the post orders. CCDOC has added cameras to many of their transport vehicles. He clearly asserted that he did not believe there was anything wrong with the policies and procedures in place as of the date of the incident. He is always looking to improve things and ways to improve. He acknowledged that such improvements are often done as the result of unfortunate incidents.

He is grateful as to how the situation turned out, but cautiously noted that things could have been “a whole lot worse.” It was disturbing that an inmate was on the run, with no knowledge as to his whereabouts, which placed the community at risk. From a financial standpoint, many resources had to be used from CCDOC, local police, NJSP, the Sheriff’s Department, and the fugitive task force.

Smith discussed with Deputy Warden Warren the administrative charges to be issued as to Hiles and Brooks. The charges they agreed upon were listed in the PNDA. (R-44.) The deputy warden suggested that Brooks’ actions on August 10, 2018, should result in his removal from employment. Smith agreed with that. Smith acknowledged he had reviewed Brooks’ disciplinary background, saw that he did not have an extensive background, and still agreed with the deputy warden to have removal as the recommended discipline of Brooks issued in the PNDA. (P-4, R-44.) He did so based upon the nature and extent of the circumstances of August 10, 2018, and the seriousness of Brooks’ actions.

Smith defended the charge against Brooks for willfully contributing to an elopement or escape of an inmate. He asserted his belief that by Brooks not taking certain action, that was intentionally not doing something. He conceded he did not believe Hiles or Brooks were part of inmate D.R.’s plan to escape. It was “egregious inattentiveness” on their part which resulted in the escape.

Warden Smith acknowledged that there were disturbing allegations by inmate D.R. made during his proffer of December 27, 2018, regarding Mercer County COs and that D.R. was given a handcuff key by a Mercer County CO. Warden Smith confirmed the proffer was after SIU completed its investigation of Brooks and after the PNDA issued as to Brooks in October of 2018. (R-16, R-40.) He was unaware of SIU re-opening its investigation based upon any of the information supplied by D.R. during his proffer. The FNDA issued on January 3, 2019, upholding removal as the discipline to be imposed upon Brooks. (R-46.) Warden Smith acknowledged that he did sign off on

the agreement for Hiles' discipline to be modified from removal to suspension, to allow Hiles to return to work as a CO at CCDOC.

Joseph Lowry testified for CCDOC. He has worked for various law enforcement agencies in Virginia, the Bridgeton Police Department, NJSP, and is a detective in the Cumberland County Prosecutor's Office, Professional Standard's Unit. He is responsible to review any matters where there is a complaint against a law enforcement officer that may have criminal implications.

He became aware of the escape on August 10, 2018, when a call came into their unit that members of the prosecutor's office were requested to assist in the search for the inmate and that his unit may be involved in investigating whether there was any criminal wrongdoing by the COs. Lowry went to the scene and saw the various other members of law enforcement in the area searching for the inmate. Brooks was standing outside of it, with earphones in and holding a cell phone.

Lowry looked inside of the van, first looking for any type of seat posts or rings on the floor to secure a prisoner. As he viewed the inside of the van he saw the dismantled interior light hanging from the ceiling and the holes cut on the inside panel of the rear door. The whole situation was "odd" to him, being hard to image how a handcuffed prisoner got out of the van.

After that day, he was notified there was a potential witness, a female driver of the vehicle behind the van at the intersection of Old Deerfield Pike and Cornwell Drive. He received contact information and pursued getting the witnesses' name and residence information. (R-48.) On October 19, 2018, he spoke to the witness, Katharine Eyerman, at her nephew's residence, and took a brief statement from her. She told him that she was behind the van at the intersection when the inmate came out of the back of the van. She started to blow her horn to get the attention of the van driver and the inmate put his finger to his lips indicating she should stop blowing the horn. The inmate continued away from the van. She continued on her way to drop something

off in Carl's Corner, and returned to the scene a short time later. She reported to a sheriff's officer what she had seen. The officers at the scene were aware of this witness when Lowry and members of his department arrived at the scene on the day of the incident. (R-48.)

Lowry was present during the proffer given by D.R. on December 27, 2018. The proffer was set up by the assistant prosecutor handling the escaped prisoner case. It was not arranged or pursued by the Professional Standards Unit. Lowry acknowledged that the report generated by another detective from the Cumberland County prosecutor's office regarding the proffer, used the same file number as Lowry used on his report regarding the female witness. (R-30, R-48.)

Lowry affirmed hearing the statements made by D.R. which were recorded in the report that was prepared by another detective. (R-30.) He affirmed that D.R. stated he had a handcuff key with him when he was picked up at the Mercer County facility by Hiles and Brooks.

Lowry found D.R.'s statements about the escape consistent with the evidence he observed in the van at the scene. Specifically, the information was consistent regarding D.R.'s description of his movement in the van, removal of the handcuffs and shackles, removal of the interior light, finding the multi-tool, cutting the interior panel of the rear door, and the description of Hiles' and Brooks' actions in the van. He believed Hiles and Brooks were inattentive to D.R., given that it is a tight compartment in the rear of the van to move around and D.R. was able to freely move about after having been seated in the second row, and going back and forth to the rear of the van. He found it credible that there was a bag and a jacket hanging on the screen between the front and rear seating. Lowry acknowledged he did not follow up on questioning Hiles or Brooks as to whether Hiles had loud rap music on, or that Brooks was using his phone to view YouTube videos. Lowry confirmed he did not think all of D.R.'s statements were credible, finding some statements hard to believe. For example, D.R. could not provide

further details about some claimed allegations regarding the Mercer County facility and staff.

Following the proffer, Lowry, nor any other member of the prosecutor's office reopened their investigation of the matter. There was no grand jury convened with respect to the matter. Lowry took no other action as to Brooks.

Anthony Zoppina testified. He has been employed by the NJSP for sixteen years. He is a detective sergeant, assigned to the Intelligence Bureau. As of August 10, 2018, he was a detective sergeant in the NJSP Fugitive Unit, and was a Task Force officer for the United States Marshals Fugitive program. His unit is involved in the apprehension of fugitives. They assist throughout the State of New Jersey to provide such services. A fugitive may be an escaped inmate, an individual who has failed to appear for court, or an individual who has a warrant issued to be taken into custody.

Zoppina first learned of escaped inmate D.R. on or about the night of August 10, 2018. His unit was called in to assist with apprehending the fugitive. He later authored a report, which he started on or about August 11, 2018, and was approved by his supervisor on September 4, 2018. (R-20.)

He utilized investigative methods and gathered intelligence about D.R. It was determined that the fugitive had fled to the state of Maryland. He coordinated with the Maryland State Task Force to apprehend the fugitive. While Zoppina was in route to Maryland, he received word that the Maryland Law Enforcement authorities had apprehended D.R. at a transportation center in Baltimore. A handcuff key that was partially broken off was recovered from the fugitive. The fugitive was taken to the hospital for injuries he apparently had sustained during his escape.

Zoppina did not have much independent recollection of the matter, because his unit apprehends a lot of fugitives, and this was just another typical case. He spoke to inmate D.R. at the hospital in Maryland. He recalled the inmate displayed "arrogance"

and was proud of his escape. The inmate was cleared by the hospital to be incarcerated, and D.R. was transported to the local police department to be interviewed. (R-20.) During Zoppina's conversation with D.R., he invoked his Miranda rights, so they were unable to continue speaking to him. When D.R. learned that his father, who had driven him to Maryland and then returned to New Jersey, had also been taken into custody, D.R. provided additional information. He claimed to have gotten the handcuff key from a correctional officer, indicating that he was able to freely smuggle contraband in the Mercer County Jail. D.R. requested that money the officers had recovered from him be returned to his mother. Zoppina asked D.R. if the money belonged to his mother, and D.R. indicated it did, but then quickly changed his story and said his mother was poor and he wanted her to get the money. D.R. claimed to have gotten the money from someone for whom he previously worked as a mechanic. D.R. continued to make utterances while in Zoppina's presence, including that he got a handcuff key from "Officer Brown" while incarcerated at the CCDOC facility. (R-20.)

Zoppina did not recall ever speaking to Brooks about the matter. His job entails apprehending fugitives, it does not involve engaging in an investigation of the actual escape. He may learn of some specifics of an escape if it is relevant to locating the individual. Once the fugitive is captured, they document the event, and then hand-off the fugitive to the agency where they are to be returned.

Winslow Land testified on behalf of Brooks. Land is a CO for Mercer County Corrections. He is in his twentieth year of such employment. He is a member of PBA Local 167 and a state delegate for the union.

Land was aware that allegations had been made by inmate D.R., as to a female Mercer County CO, as referenced in the proffer report. (R-30.) Land was not aware of the female CO ever receiving a "target letter" from Mercer County DOC's Internal Affairs Department regarding the allegations by D.R. about getting a handcuff key from her or that she supplied D.R. with clothes, or that she had engaged in sexual relations with him, or had supplied drugs or contraband to D.R. That CO is still on the job in Mercer

County and was never interviewed by internal affairs about the allegations. She has not been disciplined for any such allegations. Land had no firsthand knowledge as to the truth of the allegations made by D.R. during his proffer, as to the female CO.

Craig Atkinson testified on behalf of CCDOC. He is the director of Personnel and Human Resources for Cumberland County (the County). He has been so employed for seven years. Prior to this employment, he was employed in personnel and human resources positions for various employers spanning approximately thirty years. Before his employment in the field of human resources and personnel, he was a health and physical education teacher at local high schools.

The County has a policy manual which involves general operating procedures and includes a policy regarding disciplinary procedures under civil service, which is policy number 3.02 (also known as 84-17). (R-40 at 15-19.) The policy applies to all county employees, included CCDOC COs, who are civil service employees. The policy provides a guideline that is followed when an employee is determined to be guilty of an infraction and the policy provides the procedures for discipline, which is a progressive discipline policy that Atkinson refers to as behavior modification. Discipline ranges from a verbal warning to termination. Minor discipline can include up to five days suspension from employment. Major discipline is more than five days suspension from employment through removal. Generally, such discipline is progressively imposed. If the infraction is egregious in nature, an employee may be subject to immediate termination, regardless of any prior disciplinary history.

There is a department head for each department of the approximate eighteen departments within the County administration. The CCDOC department head during the incident in question was Warden Smith. Each department head is permitted to promulgate policies and procedures for their department.

During the time CCDOC's SIU was conducting its investigation of the August 10, 2018, inmate escape, Atkinson was contacted by the Warden Smith, and kept abreast

of the circumstances. When the SIU investigation was completed, Atkinson had conversations with Warden Smith regarding the discipline to be imposed upon Brooks. Atkinson had several conversations with Warden Smith, Deputy Warden Warren, and with County Counsel Theodore Baker, and the County Administrator. As a result of those conversations, it was determined that the discipline to be imposed upon Brooks was termination, taking into consideration the County's policy 3.02 (aka 84-17) regarding discipline.

Removal was imposed due to the seriousness and egregiousness of Brooks' actions. Atkinson conceded he did not see Brooks' disciplinary record to review prior to his input as to what discipline should be imposed, nor was he verbally informed by any of the individuals involved in the conversations as to Brooks' prior disciplinary history. He acknowledged that CCDOC Deputy Warden Warren serves as the hearing officer in the majority of disciplinary hearings for CCDOC employees. It has crossed Atkinson's mind that this may be a conflict of interest when the deputy warden is also consulting with the warden and others as to the type of discipline to be imposed.

Atkinson indicated that the County places a great burden on its transportation officers to ensure that inmates cannot escape. He acknowledged he was "casually aware" of the CCDOC's Transportation Department policies and procedures. Atkinson opined that the COs did not follow proper procedures, and in his experience, termination should result. He could not identify by either policy name or policy number what specific procedures were not followed. Atkinson affirmed he believed that Brooks' discipline of removal was appropriate.

Expert Testimony

Mildred Scholtz testified on behalf of CCDOC. She is a retired warden of Burlington County DOC. (R-42.) She was qualified as an expert in the field of the administration of policy and procedures for County DOC facilities.

Scholtz was requested to author a report on behalf of the County. (R-42 at 1-4.) She reviewed 342 pages of discovery documents, consisting of reports and other materials related to the matter, DVD's and the expert witness report prepared by Warden Edmond C. Cicchi, on behalf of Brooks. She rendered her opinions based upon her review of the documentation and materials, consistent with her training and experience, within a reasonable degree of professional certainty, in her report of September 10, 2019. (R-42.)

Scholtz asserted that Brooks violated verbal orders, memorandums, and CCDOC policies and procedures, which contributed to the escape of D.R. She rendered four specific opinions to support that Brooks committed such violations.

Scholtz first opined that the van used on the day of the incident, and the other equipment provided to Hiles and Brooks, was "secure and sufficient to provide proper inmate transportation." (R-42 at 2.) She acknowledged that there is no written policy or procedure in the industry of corrections, for a standard vehicle for inmate transport which would be deemed secure and sufficient. This opinion is based upon her own training and experiences in the field of corrections and as a warden.

She rendered her opinion that the equipment and van were secure and sufficient, relying upon transportation unit Sergeant Martinez's tape-recorded statement, where he stated that he provided two sets of video recording glasses to Hiles and Brooks, via Hiles, and ordered them to wear the glasses while D.R. was in their custody. Martinez further stated that both Hiles and Brooks had used the glasses previously and had no questions about the operation of the glasses. She stated that Hiles indicated, apparently in a report or interview she reviewed, that Brooks took off the video recording glasses as soon as he returned to the van. Scholtz indicates that this is a violation of the direct order of Sergeant Martinez to Brooks to wear the glasses. Scholtz stated during cross examination that according to Sergeant Martinez, there was one pair of glasses provided to the transportation team, and Hiles was given the glasses, which he

provided to Brooks. She believes that Brooks should have worn the glasses during the entire ride, and should have been recording during the entire transport of the inmate.

She identified that the handcuffs, belt, and shackles used by the officers were "typical in inmate transport." (R-42 at 2.) If they were properly utilized, then the inmate's movement would have been restricted. It was the same type of equipment that was utilized in Burlington County DOC.

The van was reported by Hiles to have a radio in good condition. A County cell phone was provided to the officers for communication with the facility and command staff.

Scholtz did not personally inspect the van. She viewed black and white photographs of the van which were provided to her by the CCDOC. She elaborated in her testimony that the van appeared to her to be a "standard police package" van. It was a newer vehicle and had a security cage between the officer who was driving and the inmate, for protection. There was security screening that covered the windows. It was very similar to what Burlington County DOC had. She believed that the vehicle was proper to provide transportation.

Scholtz's second opinion was that Hiles and Brooks were "trained correction officers." (R-42 at 2.) She asserts this is supported by COs typically attending agency training and correctional academy training when hired; that CCDOC has policies and procedures in place for security and control during the transportation of inmates; and the transportation unit has a supervisor specifically for that unit to give assignments and provide instruction-which instruction was never requested by Brooks. Sergeant Martinez indicated in his taped statement that Brooks "had experience." (R-42 at 2.) She based this opinion upon the years of service each CO had with the DOC. Brooks had fifteen years of service, so he would have attended agency training and a certified training academy, which is mandatory to be a CO. She did not believe there was any lack of training. She conceded she did not have specific knowledge as to the training

Brooks received and did not review training files for Brooks. She asserted that if Brooks did not believe he was trained enough to do his duties, it was his responsibility to advise his supervisor of same.

The third opinion expressed by Scholtz was that Brooks violated the CCDOC seatbelt policy. (R-42 at 3.) She noted that Brooks acknowledged in a taped statement she reviewed that D.R. was not placed in the seatbelt. She opined that had D.R. been belted in, it would have further restricted his movements and prevented him from moving among the seats, in addition to providing safety during the transport.

The fourth opinion expressed by Scholtz was that Brooks violated CCDOC's General Post Orders for Transportation Officers. (R-42 at 3.) Scholtz asserts that when the red icon light came on the dash indicating the back door was ajar, Brooks stated that he checked the back door and it would not open, and that it was "malfunctioning." (R-42 at 3.) He took no other efforts to check the security of the door, nor did he open the side door to check inside the van. Brooks did not immediately consult his supervisor, as per the General Post Orders, that an officer should do so if there is any doubt as to a course of action to be taken. As per the post orders, Brooks was responsible for all security functions and all inmate actions.

Scholtz further asserts that Hiles and Brooks admitted to having and utilizing their personal cell phones during the transport. By using a cell phone, that would be engaging in distracting activity as a CO. Sergeant Martinez indicated in his taped interview that the county cell phone was provided to the transport team and that the team is not authorized to use a personal cell phone.

Based upon her four opinions, Scholtz concluded that Hiles and Brooks violated verbal and written orders and CCDOC policies and procedures, contributing to the escape of D.R. Brooks was aware of D.R. being a "high risk" inmate by having been ordered to use the video glasses and Brooks stating in a taped interview that he knew D.R. to be "unruly." (R-42 at 4.) She further asserted that a strip search of D.R. should

have been done, or at least the request posed to Sergeant Martinez, since Hiles and Brooks were transporting a high-risk inmate. She suggested that since D.R. gave the COs a "problem" when they were picking him up, Hiles and Brooks should have at least thought about contacting their supervisor to determine if a strip search of D.R. was warranted before they transported him. The problem was that he was attempting to bring contraband, some papers, and the Bible, with him for the transport. She conceded she had no knowledge if D.R. had done anything at the Mercer County facility before he was handed over to Hiles and Brooks, that would have warranted a strip search. She acknowledged that the CCDOC policy she reviewed, is mute to the issue of a strip search.

Scholtz knew this was a situation where D.R. had to be transferred from CCDOC to Mercer County DOC under protective custody status, for having made allegations against staff at CCDOC. COs at CCDOC were aware that D.R. was a high risk. She acknowledged that "high risk" was just terminology used, and not the actual CCDOC classification of inmate D.R. She did not know D.R.'s classification, only that he was in protective custody at the Mercer County facility.

Specifically, as to Brooks, he was the CO responsible to pay attention and observe the inmate during the transport. Based upon Sergeant Martinez's report that Brooks told him D.R. was laying down on the seat, prior to hearing the bump, Brooks would not have been able to observe D.R. Since D.R. cut holes in the rear door without either officer hearing any noise, D.R. was not properly observed, which led to his escape.

Scholtz concluded that this evidence supports that Hiles and Brooks were "neglectful and inattentive to their duties." (R-42 at 4.) Since the CCDOC policy states that transport officers are responsible for the security and welfare of all inmates, the officers were required to supervise the movement and activities of inmates under their supervision. Brooks did not exercise common sense and good judgment, by failing to contact the supervisor about a lack of visibility in the van and failing to contact the

supervisor about the issue which arose when the red icon came on, regarding the back door lock. Scholtz specified she was not asserting that Brooks purposely aided inmate D.R. with his escape. Brooks was neglectful and inattentive, which contributed to the escape of the inmate.

Edmond C. Cicchi testified for Brooks. He was qualified as an expert without objection, in the field of county penology and the administration of county correctional facilities, which includes the disciplining of COs. (P-16.) Cicchi was contacted by counsel on behalf of Brooks and Hiles to render an expert opinion regarding the validity and viability of charges in the FNDAs issued to the COs, and assuming the charges were sustained, to render an opinion as to the appropriate disciplinary penalty, in light of Cicchi's findings and other mitigating factors. Cicchi authored his written report, dated July 17, 2019. (P-17.) His opinions were based upon interviews with Hiles and Brooks, separately, without their counsel present, and based upon his review of materials provided to him, as enumerated in his report. (P-17 at 2.)

Cicchi rendered four opinions in the matter, within a reasonable degree of probability and certainty, in his field of expertise, consistent with his education, training and experience set forth in his curriculum vitae. (P-17 at 2; P-16.) He opined that the transportation vehicle and equipment supplied to Hiles and Brooks was inadequate, contributing to the escape of the inmate. He opined that Hiles and Brooks were not adequately trained by CCDOC. He determined that Hiles and Brooks did violate certain administrative code provisions and CCDOC rules and regulations regarding their action and inaction on August 10, 2018. Based upon their disciplinary histories, or lack thereof, and other mitigating factors, Cicchi opined that a twenty-one-day suspension should be imposed and Brooks could resume his job duties upon complete re-training on all new and current policies. Cicchi concluded that termination should not be imposed discipline, without progressive action and considering the mitigating factors in the matter. (P-17 at 4-5.)

Cicchi was critical of the equipment supplied to Hiles and Brooks by CCDOC. He opined the van was not properly equipped for inmate transport. It was a passenger van, at

best, such as used for a church group. It was not properly retrofitted to prohibit inmates from escaping by having the locks inaccessible and other inserts inside to prevent contact with the public. He testified that visibility was an issue inside the van, that an officer would need to be continually turning around to look back into the van, acknowledging he did not state that specifically in his report. Most vans are equipped with video cameras, and this van was not.

There was no radio system for quick and direct communication with CCDOC. The county issued cell phones were insufficient and insecure. The ability to be in constant communication with command staff "is an integral part of the safe and secure operation of a corrections center." (P-17 at 3.) He was not asserting that such a radio would have prevented an escape. It would have provided a better way for Brooks to contact the command center immediately upon the happening of the escape.

Cicchi recognized that every facility faces budget constraints. However, it is the responsibility of the administration to ensure the equipment used is the best possible, to protect the security and safety of the inmates, COs, staff, and the public. An entire new van would not be necessary. This van could have been retrofitted. Cicchi acknowledged that had there been a visibility problem, he would have said something. He was not aware that the COs have to report such a problem on the pre-trip checklist, as that form did not appear to deal with security issues of the van. (R-6.) Such concerns, regarding visibility, locks, should have been part of the checklist form itself. There is no state-wide or county-wide standard form, each facility adopts their own. Some are more specific.

Cicchi further acknowledged that when he served as warden of a county facility, the County's Sheriff's Department handled the transportation of inmates. He acknowledged he never personally transported an inmate in a van such as the one here, during his experience in the field of corrections. He only had transported juveniles.

The handcuffs and shackles provided by CCDOC were substandard for a transport. A belly-chain handcuff system should have been used, which provides more secure

restraint and prevents the inmate from moving hands from their sides, having no ability to remove cuffs.

CCDOC failed to provide adequate training to Hiles and Brooks, which contributed to the inmate's escape. There is no training once a CO is assigned into the transportation unit. There is no pre-training for COs before they bid on the position in transportation, to understand the specifics of the assignment. It is just on the job training. It is a "standard" to have proper training regarding the policies and procedures in transporting inmates and training in the use of all equipment relevant to the assignment. There was no system in place. CCDOC could have provided an in-service training with a newly assigned transport CO accompanying an experienced transport CO.

Brooks should have received strip search training and policy upon taking an inmate for transport. There should have been specific training for securing the inmate in the van properly and training on the type of equipment used to secure the inmate. He understood that more senior COs would receive the bid assignment for transportation, so they would be further removed from the basic academy training they received when first hired. There should have been refresher training. Simply having a post order or departmental policies, is not a substitute for training. Things are being updated constantly in the realm of corrections, and there should have been such training.

Cicchi did not absolve Hiles and Brooks from all responsibility due to the inadequate equipment and lack of training. Cicchi affirmed that Hiles and Brooks violated administrative code and CCDOC rules and regulations. The inmate was not seat belted in, pursuant to CCDOC policy. That created a safety risk, not a security risk. When the officers saw the door icon alert on the dash board, the COs should have pulled off to a safe area and called their command staff at CCDOC for further directions. It would have been prudent for the COs to have immediately contacted the supervisor when the icon came on

Cicchi understood that the COs felt pressured to get the inmate to Superior Court, as they were delayed at Mercer County DOC waiting for that facility to complete a transport before them. Cicchi asserted that even if Brooks and Hiles had done their job properly, the escape still could have occurred given the circumstances. They were presented with a situation that did not allow them to do their job securely, which led to the inmate escape.

Cicchi's final opinion was that removal was inappropriate discipline. Given the mitigating factors of lack of training, inadequate equipment, and lack of any prior significant disciplinary history, and a long career of fifteen years for Brooks, Cicchi opined that a suspension of twenty-one days would be proper under the progressive discipline standard. Major discipline was warranted. Twenty-one days would represent one month of working. Before returning to the position of CO, Brooks would need to be re-trained on the new policy and procedures.

Cicchi did not downplay the severity of the situation of having an escaped inmate. He pointed out that progressive discipline is supposed to make a better employee. He did recognize the impact on the professional and personal lives of Hiles and Brooks, and given the circumstances, removal was not appropriate discipline. He believed Brooks exercised common sense and good judgment, to the best of his ability. He further believed that Brooks was alert to his surroundings and responsibilities. With the circumstances presented to Brooks regarding the condition of the van and the equipment to secure the inmate, he believed that Brooks was supervising the movement and activities of D.R. until he escaped. The inmate still could escape, with Brooks keeping up his guard and being vigil. The inmate was under Brooks' control, to the best of his ability, until D.R. escaped.

Credibility Analysis

A fact finder is obligated to weigh the credibility of witnesses. The fact finder must choose to accept or reject whether a witnesses' testimony is credible. Freud v. Davis,

64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value given to a witness' testimony. It is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950), (citations omitted).

A credibility determination requires an overall assessment of the witness' story "in light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The fact finder should also consider the witness' interest in the outcome, or any motive or bias. The fact finder may reject testimony because it is inherently incredible, improbable, inconsistent with common experience, contradicted by other testimony, or it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

All fact witnesses testified in a direct manner without embellishment, exaggeration, or evasion. The fact witnesses who were on scene at the van after the escape, testified consistently as to their observations and those who gave written statements, testified consistently with their statements.

The inmate, D.R. was not called to testify. Statements made by D.R. to various law enforcement agency representatives were testified to by witnesses, or recorded in their reports. Such statements are clearly hearsay. Pursuant to the residuum rule, hearsay is admissible if there is other competent credible evidence to support the hearsay statements. D.R.'s credibility is sketchy, at best, under the circumstances when he gave his statements as a fugitive and when apprehended thereafter giving his proffer. Every CCDOC representative who testified was familiar with D.R., who was known to make false accusations against COs. He was perceived as arrogant. Hence, little to no weight has been given to D.R.'s statements, unless supported by competent, credible evidence.

The experts, Scholtz for CCDOC, and Cicchi for Brooks, gave differing opinions. Both have extensive experience and qualifications in the administration of correctional facilities. Both testified in a professional and direct manner, and both gave credible opinions based upon their review of the documents and information given. Each was persuasive and helpful in their knowledge of corrections, when having to assess the circumstances of Brooks' actions and inactions, and the charges and penalty to be imposed. Cicchi was critical of the training, or lack thereof, while Scholtz assumed Brooks had received adequate training due to his longevity as a CO.

I found Scholtz's opinion specifically to the adequacy of the equipment, on balance, more persuasive, given the circumstances of the matter, yet with careful consideration of the opinions expressed by Cicchi. Cicchi asserted that the van and equipment were subpar, indicating that there was more up to date equipment and features, such as cameras inside transport vehicles and more restrictive shackles that should have been used. Although the van and equipment may be considered not the "state of the art" for inmate transport, the van and equipment had adequately provided security and retention of inmates hundreds of times prior to this incident and could not be deemed to have been the reason for D.R.'s escape.

Based upon a review of the documentary evidence, and having had the opportunity to observe the witnesses as they testified in person and via Zoom, I **FIND** as further **FACTS**:

There was no specific training for transport unit COs. Hiles and Brooks were considered trained "on the job" by working overtime shifts with a transport CO, prior to being assigned to the transport unit. They learned as they worked.

The van used by Hiles and Brooks on August 10, 2018, was the same vehicle they used on hundreds of prior inmate transports. The van and other equipment, such as the handcuffs and shackles, were adequate on the date and time in question, to

provide secure transport of inmate D.R. Hiles' pre-check inspection failed to detect that there was anything to be reported regarding the operation of the van for the inmate transport that day.

Neither Hiles nor Brooks advised Sergeant Martinez, or any representative of CCDOC, prior to the escape of inmate D.R. on August 10, 2018, that there was a visibility issue in being able to see from the front of the CCDOC van to the rear inmate area. Brooks hung his jacket on the latch of the cage between the front seat and the backseat of the van. A Wawa plastic bag was hanging on the cage immediately to the right of the driver's head.

Brooks was given video recording glasses to use during the transport of D.R. Brooks had never been trained as to how to use the glasses. Brooks did not request training from his supervisor as to how to use the glasses.

Brooks was aware of D.R. being a "problem" inmate. He was aware of allegations D.R. made as to CCDOC COs of inappropriate touching.

Hiles performed a pat down of inmate D.R. at the Mercer County facility. Hiles did not detect any contraband or anything amiss with D.R. Neither Hiles nor Brooks were ever trained that when transporting an inmate from another facility, they had to perform a strip search of the inmate. CCDOC implemented a policy to strip search an inmate before taking them for transport after the inmate escape occurred on August 10, 2018.

While at Mercer County, inmate D.R. took issue with not being allowed to take his bible on the transport, and made derogatory comments to Brooks. D.R. was handcuffed and shackled using CCDOC equipment. Brooks did not seat belt D.R. in his seat in the van when he placed D.R. in the second row of the rear seating area.

Brooks did not maintain regular, expected visual site or communication with D.R. during the ride from Mercer County DOC through his escape.

There is no specific policy regarding transport COs utilizing personal cell phones, but transport COs were permitted to have their personal cell phones with them during a transport. The County issued cell phone to the Hiles and Brooks team had never been used by Brooks. It was routine for Hiles and Brooks to use their personal cell phones for GPS apps, as the van they used was not equipped with GPS.

Brooks utilized his personal cell phone during the ride from Mercer County DOC in route to the Cumberland County Superior Court. Brooks placed calls and took calls regarding an emergency medical condition for his young son. He also engaged in calls on his personal cell phone with supervisors at CCDOC regarding scheduling.

Neither Hiles nor Brooks notified Sergeant Martinez when the dash icon came on inside the van, indicating there was an issue with the rear door. Hiles pulled the van to the side of the road when the dash icon came on. Brooks got out of the van, went to the rear door, pulled on it, and was unable to get it to open. He got back into the van and the team proceeded with the drive to the courthouse, choosing not to notify a supervisor of the circumstances.

D.R. was able to freely move about the rear of the van shortly upon the commencement of the drive from Mercer County DOC. He removed his handcuffs and shackles. He disabled the interior light in the back seating area of the van. He gained access to the rear cargo area of the van. He cut holes in the interior panel of the rear door. He removed his jumper. He escaped the van through the rear door at the intersection of Old Deerfield Pike and Cornwell Road. Brooks did not detect any of these actions, until he heard a thump as the van proceeded from the intersection.

The driver of a vehicle immediately behind the van at the intersection witnessed D.R. roll out of the back of the van, and D.R. gestured with a shush motion with his

finger to his lips to be quiet, and he ran off to the rear of a home at the intersection. The driver honked her horn to gain the attention of the van driver, and proceeded on her errand, as the van continued along the roadway with the rear door open. These actions were not detected by Brooks, but for hearing a thump as the van proceeded from the intersection.

When Brooks heard a thump, he called out to D.R. and banged on the cage, without a response. He turned to look back and did not see D.R. seated in the rear. Hiles then pulled off the road and stopped the van. Brooks got out, opened the side door, and discovered the inmate was gone.

In addition to CCDOC administration and representatives, multiple law enforcement agencies responded to the scene where the van was, and assisted in the efforts to locate and secure D.R. in custody. Such agencies included the NJSP, Cumberland County Sheriff's Department, Bridgeton Police, and the Cumberland County Prosecutor's office. The inmate was a fugitive from the time of his escape at approximately 10:00 a.m. on August 10, 2018, until he was apprehended in Baltimore, Maryland, by the fugitive task force on August 11, 2018.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee's rights and duties are governed by the Civil Service 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. Civil Service Association v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972), citing Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145, 147 (1965).

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; 11A:2-20; N.J.A.C. 4A: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); and 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 Consolidated 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 a given conclusion." Bornstein v. Metro Bottling Company, 26 N.J. 263, 275 (1958).

Appellant's status as a CO 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 CO, 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." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. 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. Civil Service Commission, 115 N.J. Super. 64, 72 (App. Div.), cert. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

N.J.A.C. 4A:2-2.3 is the regulation which outlines general causes for when major discipline may be imposed upon a civil service employee. The regulation specifies the employee may be subject to major discipline for the following:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment;
10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder;
11. Violation of New Jersey residency requirements as forth in P.L. 2011, c.70; and
12. Other sufficient cause.

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

Here, CCDOC alleges that Brooks' actions violated N.J.A.C. 4:2-23(a) subsections:

1. Incompetency, inefficiency, or failure to perform duties;
3. Inability to perform duties;
6. Conduct unbecoming a public employee; and

12. Other sufficient cause.

CCDOC also determined, as per the FNDA, that Brooks violated multiple portions of the CCDOC disciplinary policy 3.02A, AKA 84-17, II-B, II-C, III-H, III-T, IV-A and IV-E, which is reference to Appendix B of the disciplinary policy. (R-40.) Appendix B is a table which lists the offenses and the discipline that may be imposed, depending upon whether it is a first, second, or more infraction of the offense. (R-40 page 11-14.) Utilizing the table, the alleged offenses committed by Brooks, listed in the FNDA from CCDOC disciplinary policy 3.02A, AKA 84-17, would be:

II. Performance of Duties

- B. Incompetency or inefficiency
- C. Neglect of duty

III. Personal Conduct

- C. Inappropriate physical conduct with or physical mistreatment of a coworker, member of the public or customer
- H. Conduct unbecoming a public employee
- T. Violation of a rule, regulation, policy, procedure, order or administrative decision

IV. Safety and Security Precautions

- A. Negligence in performing duty resulting in injury to persons or damage to property
- E. Failure to follow safety and security procedures.

The FNDA further specifies the following was violated:

B-2 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to persons or property;

B-8 Serious mistake due to carelessness which may result in danger and or injury to persons or property;

B-9 Incompetence or inefficiency

D-3 Willfully contributing to an elopement or escape.

D-7 Violation of administrative procedures and or regulations involving safety and security.

Each alleged offense, from the administrative code and the CCDOC policy, will be addressed individually herein.

1. N.J.A.C. 4A:2-2.3(a)1, Incompetency, inefficiency, or failure to perform duties

D.R. was able to move about freely within the van, almost immediately after they departed from the Mercer County facility. Brooks did not seat belt D.R. in his seat. Brooks never detected D.R.'s movements within the van, or his actions in removing handcuffs and shackles, disabling the interior light, getting into the back cargo area of the van where he cut holes in the interior door panel utilizing a tool, and then was able to exit the van, virtually unnoticed, but for a thump sound. Brooks' main responsibility as a transport CO is to maintain custody of the inmate during transport. He admittedly took personal phone calls to handle an emergency medical situation regarding his son. He also made and received calls to the command center and with his supervisor about work scheduling. Such action resulted in his focus on matters other than the location and actions of the inmate in the van. I **CONCLUDE** that Brooks' actions and inactions resulted in his inability to perform his job duties. I thus **CONCLUDE** that the charge of N.J.A.C. 4A:2-2.3(a)1, incompetency, inefficiency, or failure to perform duties has been **SUSTAINED** by CCDOC.

2. N.J.A.C. 4A:2-2.3(a)3, Inability to perform duties

Brooks was unable to maintain appropriate visual contact of the inmate, not due to poor visibility through the screen, but due to his attention being diverted by handling phone calls during the ride. He also chose not to immediately contact or advise his supervisor about the door icon having been displayed on the dashboard, yet he spoke to supervisors about work scheduling. Such actions rendered him unable to properly perform his duties of maintaining control over the inmate. I **CONCLUDE** that Brooks was unable to perform his duties, and thus **CONCLUDE** that the charge of N.J.A.C. 4A:2-2.3(a)3, inability to perform duties, has been **SUSTAINED**.

3. N.J.A.C. 4A:2-2.3(a)6 Conduct unbecoming a public employee

The term "unbecoming conduct" has been broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy the public's respect for public employees and destroy the public's confidence in the delivery of government services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). An inmate escape occurred here, partly due to the inattention, carelessness, and neglect of duties by Brooks. It is noted that there is absolutely no evidence that Brooks intentionally aided D.R. in his escape. However, the escape itself jeopardized the safety of the public while the inmate was a fugitive, and placed all residents in the vicinity of the escape at immediate risk. Multiple other law enforcement agencies had to respond to assist in the search and recovery of the inmate. Multiple resources were diverted to the matter. The fact that the escape occurred from a transport van destroys the public's respect and confidence in the COs tasked with transporting inmates securely and safely. I **CONCLUDE** that Brooks' inattention, carelessness, and neglect of duties while handling calls and otherwise not checking closely on D.R. during the transport, demonstrate unbecoming conduct. I thus **CONCLUDE** that the charge of N.J.A.C. 4A:2-2.3(a)6, unbecoming conduct by a public employee, has been **SUSTAINED**.

4. N.J.A.C. 4A:2-2.3(a)12, other sufficient cause

“Other sufficient cause” is essentially a catchall provision for conduct which is not specified in the eleven listed causes at N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline. Such cause has been described as other conduct, not delineated within the regulation, which would “violate 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.” In re Boyd, Cumberland County Dept. of Corrections, CSC Dkt. No. 2019-1198, OAL Dkt. No. CSR 15990-18, Hon. Catherine Tuohy, ALJ; affirmed in final decision, 2019 N.J. CSC Lexis 621.

I **CONCLUDE** that any substantiated findings of violations of the specific charges from CCDOC disciplinary policy 3.02A, AKA 84-17, as addressed below, shall serve as demonstrating “other sufficient cause.” I thus **CONCLUDE** that Brooks violated implicit standards of good behavior due to his carelessness, inattention, and negligent conduct, and the charge of N.J.A.C. 4A:2-2.3(a)12 has been **SUSTAINED**.

5. CCDOC disciplinary policy 3.02A, AKA 84-17, II. Performance of duties, B. Incompetency or inefficiency and C. Neglect of duty

Brooks failed to perform his ultimate duty to ensure the inmate remained in his custody and was safely and securely transported from the Mercer County facility to D.R.’s scheduled court appearance in Cumberland County Superior Court. D.R. escaped during Brooks’ watch. I **CONCLUDE** that Brooks was inefficient in the performance of this duties and neglected his duties by the distraction of handling phone calls during the transport, and failing to detect any of D.R.’s activities within the van which resulted in D.R. being able to slip out of the back door, virtually undetected. I thus **CONCLUDE** that the charges of violations of CCDOC disciplinary policy 3.02A, AKA 84-1, subsections IIB and IIC, have been **SUSTAINED**.

6. CCDOC disciplinary policy 3.02A, AKA 84-17, III. Personal conduct, C. Inappropriate physical conduct with or physical mistreatment of a coworker, member of the public or customer; H. Conduct unbecoming a public employee; T. Violation of a rule, regulation, policy or procedure, order or administrative decision

I **CONCLUDE** that CCDOC has not sustained, by a preponderance of the evidence, that there was inappropriate physical conduct or physical mistreatment of a co-worker or member of the public. I **CONCLUDE** that the charge of unbecoming conduct, has already been addressed above and is duplicative. Thus, I **CONCLUDE** that the charges of CCDOC disciplinary policy 3.02A, AKA 84-17, subsections IIIC and IIIH shall be **DISMISSED**.

Brooks admittedly did not seat belt D.R. in, as required by the memorandum directive issued by CCDOC. I **CONCLUDE** this action demonstrates that the charge of CCDOC disciplinary policy 3.02A, AKA 84-1, IIIT, has been **SUSTAINED**.

7. CCDOC disciplinary policy 3.02A, AKA 84-17, IV. Safety and security precautions, A. Negligence in performing duty resulting in injury to persons or damage to property and E. Failure to follow safety and security procedures

There have been no proofs asserted that a person was physically injured due to D.R.'s escape. Brooks has conceded that the escape resulted in some damage to the inside rear door of the transportation van. I **CONCLUDE** that the charge of negligence in performing duties resulting in injury to persons or damage to property, subsection IVA, has been **SUSTAINED**, due to the damage to the van.

Brooks failed to seat belt in D.R. That was a policy in place for safety purposes. I **CONCLUDE** that the charge of CCDOC disciplinary policy 3.02A, AKA 84-17, IVE, failure to follow a safety procedure, has thus been **SUSTAINED**.

8. CCDOC disciplinary policy 3.02A, AKA 84-17, B-2 Neglect of duty, loafing, idleness, or willful failure to devote attention to tasks which could result in danger to persons or property; B-8 Serious mistake due to carelessness which may result in danger and or injury to persons or property; and B-9 Incompetence or inefficiency

Brooks' actions, although deemed neglectful, do not align with the intent of the policy subsection referring to actions which would be loafing, idleness, or willful failure to act. I **CONCLUDE** that the charge of CCDOC disciplinary policy 3.02A, AKA 84-17, B-2, has not been sustained and shall be **DISMISSED**.

Brooks' actions were found to be careless, and a serious mistake, particularly when failing to communicate immediately to the supervisor about an issue with the van locking mechanism when the icon came on. Thankfully, neither Hiles or Brooks, nor members of the public, were injured due to D.R.'s escape, but the escape itself could have resulted in such danger or injury. I thus **CONCLUDE** that the charge of CCDOC disciplinary policy 3.02A, AKA 84-17, B8, has been **SUSTAINED**.

As to the charge of CCDOC disciplinary policy 3.02A, AKA 84-17, B-9, incompetency or inefficiency, such charge is duplicative of N.J.A.C. 4A:2-2.3(a)1, which has been sustained, above. I **CONCLUDE** the charge of subsection B-9, shall be **DISMISSED**.

8. CCDOC disciplinary policy 3.02A, AKA 84-17, D-3 Willfully contributing to an elopement or escape, and D-7 Violation of administrative procedures and or regulations involving safety and security

Warden Smith asserted that Brooks was intentional in his behavior by not acting on certain issues on August 10, 2018, which willfully contributed to D.R.'s escape, resulting in the charge of CCDOC disciplinary policy 3.02A, AKA 84-17, D-3. That interpretation is not supported by the preponderance of the evidence. There is

absolutely no evidence of any intentional, willful assistance by Brooks to aide or contribute to D.R.'s escape. I **CONCLUDE** that charge has not been sustained, and D-3 shall be **DISMISSED**.

Brooks' inattention, carelessness, and neglect during the transport of D.R. ultimately resulted in D.R.'s escape from the van. He did not belt in D.R. He chose to engage in telephone calls during the transport with D.R. in the van, who was able to move about, remove his handcuffs and shackles, disable the interior light, and cut holes in the back panel of the van. The icon dashboard light regarding the rear doors was not immediately called in to the supervisor. All such actions and inactions were violative of the transport post orders and policies of the facility. I **CONCLUDE** the charge of CCDOC disciplinary policy 3.02A, AKA 84-17, D-7 has been **SUSTAINED**.

PENALTY

If a determination has been made that a civil service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523-524. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. Consideration should also be given as to the timing of the most recently adjudicated disciplinary history. West New York, 38 N.J. 524.

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. Henry v. Rahway State Prison, 81 N.J. 571 (1980).

Thus, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). “[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.” Id. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one’s sense of fairness. Id. The penalty of removal will be warranted, if the seriousness of the offense compromises the safety and security of the institution, or has the potential to subvert prison order and discipline. Henry, 81 N.J. at 579-580. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Carter, 191 N.J. at 484. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

Sworn law enforcement officers are recognized as a “special” kind of public employee. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). Their primary duty is to enforce and uphold the law, exercise tact, restraint, and good judgment, and to represent law and order to the citizenry. Id. Law enforcement employees, such as COs, must present an image of personal integrity and dependability to garner the respect of the public. Id.

The civil service commission has broad discretion to remove public employees, including COs, such as Brooks. In re Herrmann, 192 N.J. 19, 28 (2007), citing N.J.S.A. 11A:2-6. Progressive discipline manifests in either a gradually increasing penalty for reoffenders or will mitigate the penalty for a current offense if, after considering the mitigating and aggravating factors of the matter, the penalty sought is deemed inappropriate. Herrmann, 192 N.J. at 31-33.

The following charges have been sustained herein as to Brooks regarding the inmate escape of August 10, 2018: N.J.A.C. 4A:2-2.3(a)1, incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)3, inability to perform duties; N.J.A.C. 4A:2-2.3(a)6, unbecoming conduct by a public employee; N.J.A.C. 4A:2-2.3(a)12, other sufficient cause; and CCDOC disciplinary policy 3.02A, AKA 84-17, subsections IIB and

IIC; IVA and IVE; B-8 and D-7. The discipline that may be imposed for a first offense of such charges ranges from official written reprimand to removal.

CCDOC seeks removal as the discipline to be imposed. Brooks concedes he should be disciplined for some of the charges he has acknowledged, and that the discipline should be a suspension for twenty-one days. There are mitigating factors to be considered, when assessing the requested discipline of Brooks, pursuant to the policy of progressive discipline.

Brooks has no appreciable discipline to be considered against him. His disciplinary jacket lists thirteen numbered alleged infractions. (P-4.) The first listed infraction is this matter, regarding the FNDA issued as of October 25, 2018, recommending removal. Ten of the matters were incident reports issued from 2010 through 2014, for Brooks refusing overtime or being late, with no sanction imposed. One matter in 2012 was alleged refusal to work mandatory overtime, which was appealed, and the charge dismissed. There was an oral reprimand in 2005, for refusal to work overtime, which is not even considered minor discipline, as it was not an official written reprimand. Only one matter resulted in minor discipline, on November 21, 2017, which was a written reprimand, due to Brooks having been involved with receiving items from a fake inmate account created with the commissary. (P-4.) He appealed the written reprimand, and was denied. This does not amount to discipline that would weigh against Brooks. His lack of discipline is a strong mitigating factor, given his length of service.

Brooks' candor is appreciated in bringing forth that he was engaged in phone conversations, using his personal cell phone, regarding a medical condition for his child. It had to be extremely stressful and create anxiety for Brooks to be dealing with an emergency medical issue for his young child. Therein lies the downfall of CCDOC permitting transport COs access to their personal cellular devices, even if done so to allow them the ability to access GPS apps. There is no policy delineated by CCDOC, nor training, regarding use of personal cell phones by transport officers. This leaves the

transport CO always accessible if allowed to carry their personal cellular device, even for an emergency purpose unrelated to their employment, which, as occurred here, can be a distraction from their work responsibilities and overseeing an inmate.

Likewise, as a mitigating factor is the fact that CCDOC surprisingly has no specific transport unit training, besides just “on the job” learning when matched up with a senior transport CO, during overtime shifts, before getting assigned to the transport unit. There was no requirement or regular practice or schedule for the Supervisor to inspect the vehicles used for transport. Quite frankly, it was shocking to hear of the lack of academy training before Hiles and Brooks started their CCDOC careers, which training did not occur until nearly a year or more after they were hired. There were no required refresher courses in training for COs at CCDOC, but for having to requalify for firearms handling.

Despite the lack of specific training for COs assigned to the CCDOC transportation unit, it does not take specialized training in “transportation” for a CO to recognize that their overriding responsibility in the transportation unit is to safely transport an inmate from point A to point B, without incident. The basic tenant of being on high alert around inmates and in their presence, is heightened even more so when tasked with the responsibility of removing an inmate from a secured facility, transporting the inmate to a location that is not a secured facility, and returning the inmate to the secured facility, without allowing the inmate any opportunity to be out of custody, or cause harm to themselves, the COs, or anyone else during that process. Brooks has had a lengthy employment with CCDOC, and certainly is aware of the gravity of his responsibility. Brooks has been described as a good officer and he and Hiles were the best team in the transportation unit.

Brooks made a series of unfortunate decisions, resulting in the inmate escape. He received the video recording glasses and did not to ask for training or instructions from his supervisor as to how to use the glasses. He chose to proceed to use the transport van he had been in hundreds of prior times, despite asserting that there was a

lack of visibility into the rear compartment. He chose to hang his jacket on the screen area and did not question allowing the Wawa bag to remain hanging on the screen, despite claimed issues of reduced visibility. Brooks did not seat belt the inmate in. He was aware of D.R. being problematic, and the knowledge that D.R. was being housed in a completely different county's facility was indicative of issues with D.R. Brooks chose to use his personal cell phone for personal issues, and even to communicate with his supervisors regarding scheduling issues, during the transport, which distracted him from his duty to maintain vigilant contact and confirmation of whereabouts of the inmate at all times. He chose to get out of the van, check the handles from the exterior, and not request further assistance or guidance from a supervisor when there was a specific icon alert about the rear door of the van. Brooks never detected any of the movements by D.R. in removing his handcuffs and shackles, removing his jumper, disabling the interior light, gaining access to the rear cargo area, cutting holes in the interior panel of the door, and then slipping out the back door of the van.

I do not deem Brooks' inattention, carelessness, and negligence as being egregious. I reiterate there is absolutely no evidence that Brooks willfully or intentionally aided in the escape of D.R. What is "egregious" is the seriousness of what occurred, as a result of Brooks' inattention, carelessness, and negligence. The overriding issue is the grave and serious risk posed to the public during the time the inmate was a fugitive. A vast amount of resources from multiple law enforcement agencies which were called in to assist with the search and apprehension of the inmate, placed the responding individuals at risk and diverted them from their usual duties.

It is recognized that CCDOC chose to permit Brooks' partner, Hiles, the driver of the transport van, to return to work via a settlement. It is the prerogative of the warden and administration of CCDOC to operate their facility as they see fit, including returning someone to work, where CCDOC had initially removed them. That does not automatically deem Brooks' discipline to be reduced as well.

The escape by D.R. is a worst-case scenario for a transport officer. The utmost responsibility of a CO is to ensure the custody of an inmate. This is heightened when tasked with the responsibility of transporting an inmate, since the inmate is no longer in the secured facility setting. Any deviance from attention to the inmate cannot be tolerated.

The mitigating factors are appreciated and weighted heavily here. Ultimately, the egregiousness of the circumstances of the inmate escaping and posing serious risk of harm to the public, leads me to **CONCLUDE** that imposition of discipline of removal is warranted and **AFFIRMED**.

ORDER

It is **ORDERED** that the discipline of removal imposed by CCDOC upon Brooks is **AFFIRMED**. It is thus **ORDERED** that this appeal is **DENIED**.

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

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

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



January 13, 2022

DATE

ELAINE B. FRICK, ALJ

EBF/tat

APPENDIX OF PROCEEDING

WITNESSES

For petitioner/appellant:

Ryan Hiles
Edmond Chichi
Jare Brooks
Winslow Land

For respondent:

Brandon Brown
Ryan Hiles
Craig Atkinson
Mildred Scholtz
Kevin Milbourne
Ricard Martinez
William Holbrook
Katharine Eyerman
Joseph Lowry
Anthony Zoppina
Richard Smith

EXHIBITS

For petitioner/appellant:

P-1 Brooks' telephone records August 10, 2018
P-2 Legend for Brooks' telephone records
P-3 Hiles' telephone records August 10, 201

- P-4 Summary of counseling disciplinary actions-disciplinary jacket
- P-5 CSC job description - investigator secured facilities
- P-6 CSC job description - senior investigator parole and secured facilities
- P-7 Brooks photograph 1 - "selfie" view in van
- P-8 Brooks photograph 2 - close up of partition
- P-9 Brooks photograph 3 – partition from driver compartment looking to rear
- P-10 Viruet photograph 1 – back of van open
- P-11 Viruet photograph 2 – back of van; both doors open
- P-12 Brooks photograph 4 – interior door panel
- P-13 CCDOC memo August 13, 2018, Sgt Berry assigned supervisor of transportation
- P-14 CCDOC memo August 10, 2018, Sgt Martinez to custody re: strip search
- P-15 Rosenberg closing summation submission re: PBA Local 231 grievances, October 7, 2015
- P-16 Curriculum vitae, Edmond C. Cicchi
- P-17 Report of Edmond C. Cicchi, July 17, 2019
- P-18 Holbrook photograph 1 – partition of van
- P-19 Holbrook photograph 2 – partition of van with hanging jacket
- P-20 Holbrook photograph 3 – partition of van
- P-21 Holbrook photograph 4 – close up partition of van

For respondent:

- R-1 Confidential information general post order, August 28, 2012
- R-2 CCDOC policy transportation of inmates 10.14, June 30, 2015
- R-3 2015 policy and procedure sign-off sheet, 8-4 issued 2015

- R-4 Memo from Warden Balicki, January 22, 2016, re: transporting inmates
- R-5 Superior Court of NJ order to produce I/M DR, August 10, 2018
- R-6 CCDOC vehicle pre-check form by Hiles, August 10, 2018
- R-7 Transportation trip sheet, August 10, 2018
- R-8 Memo report to Captain Palau from Sergeant Martinez, August 10, 2018
- R-9 Handwritten statement by Brooks, August 10, 2018
- R-10 Handwritten statement by Hiles, August 10, 2018
- R-11 Pre-marked, not entered
- R-12 Pre-marked, not entered
- R-13 Pre-marked, not entered
- R-14 Incident/Offense report by Hiles, completed August 15, 2018, regarding August 10, 2018, incident
- R-15 Incident/Offense report by Brooks, completed August 17, 2018, regarding August 10, 2018, incident
- R-16 Special Investigations Unit conclusion report by Kevin Milbourne, August 13, 2018
- R-17 Internal Investigation interview letter for Hiles by Milbourne, August 30, 2018
- R-18 Internal Investigation interview letter for Brooks by Milbourne, August 30, 2018
- R-19 Letters of representation from Alterman & Associates, for Hiles and for Brooks, September 4, 2018
- R-20 NJSP supplemental investigation report by DSG Zoppina, September 4, 2018; NJSP investigation report by Trooper Womack, September 26, 2018
- R-21 Internal interview letter for Brooks by Milbourne, September 14, 2018
- R-22 Internal interview letter for Hiles by Milbourne, September 14, 2018
- R-23 Pre-marked, not entered

- R-24 Pre-marked, not entered
- R-25 Pre-marked, not entered
- R-26 Pre-marked, not entered
- R-27 Pre-marked, not entered
- R-28 Internal investigation Warning for Brooks, signed October 1, 2018
- R-29 Pre-marked, not entered
- R-30 Cumberland County Prosecutors Office memorandum/report by Detective Kanauss, December 27, 2018
- R-31 Pre-marked, not entered
- R-32 Pre-marked, not entered
- R-33 Special Investigation Unit reports, case number SIU18-0006, by Milbourne (multiple)
- R-34 Pre-marked, not entered
- R-35 Copies of nine photos of exterior and interior of van #318
- R-36 Repair orders for van #318, prior to date of incident
- R-37 CCDOC manual table of contents
- R-38 Pre-marked, not entered
- R-39 Pre-marked, not entered
- R-40 CCDOC Employee Discipline DOC, Policy Number 3.02A, (also known as 84-17), effective July 1, 2013
- R-41 CCDOC video recording devices, Policy 10.16 with acknowledgements of receipt of policy
- R-42 Report by Mildred Scholtz, September 10, 2019, with curriculum vitae
- R-43 CCDOC Policy Number 10.15, use of restraints while transporting, June 30, 2015

- R-44 PNDA issued to Brooks, October 28, 2018
- R-45 Pre-marked, not admitted
- R-46 FNDA issued to Brooks, January 3, 2019
- R-47 Three photographs: interior driver compartment van with jacket and bag (black and white); color photograph interior panel of rear door with cut outs; back/cargo area of van with items (black and white)
- R-48 Cumberland County Prosecutor's Office Internal Affairs investigation report by Detective Joseph Lowry, October 29, 2018
- R-49 Thirteen color photographs
 - exterior view closed rear doors of van #318
 - exterior view exterior passenger side of van
 - View of interior of inmate compartment from passenger side door, hanging interior light
 - View inside inmate compartment from passenger side door, looking towards rear
 - View inside inmate compartment from passenger side door, looking towards rear row seats, hanging interior light
 - Compartment division screen
 - Cup holder area interior van inmate area
 - Interior light area, wires hanging
 - Rear door interior panel cuts shown
 - View of cargo area and items (color photograph)
 - Interior console of driver compartment with gear shift view and chargers plugged in
 - View of divider screen with jacket and bag (color photograph)
 - Divider screens close up