



credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c); Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In the instant matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. The ALJ found that "[t] [was] unlikely that everyone else lied aside from Sgt. Grossman, given his interest and motivation in saving his career." The ALJ rejected the appellant's testimony:

. . . as inherently incredible because it is inconsistent and overborne by the testimony of W.H. and Senior Correction[al] Police Officer (SCPO) [Gloria] Melendez as well as the other evidence in the case, including the investigation report, statements of [former SCPO Robert] McCauley and inmate J.S., and the video surveillance. The consistent theme throughout all of the evidence was that they found three bottles of suspected hooch, Sgt. Grossman made W.H. drink it, he drank it, and as a result W.H. ended up vomiting. Sgt. Grossman also made W.H. do jumping jacks.

While the appellant in this case attempts to rebut the ALJ's credibility findings, his challenge is unsuccessful. Particularly, in his exceptions, the appellant maintains that he did not order the inmate to drink the liquid but that the inmate chose to drink it, nor did he order the inmate to do any physical activity in the yard. The appellant points to the inmate's testimony that he was not ordered to drink the liquid. Even taking this into consideration, the appellant fails to comprehend that his words to the inmate were essentially an order, since, as noted by the ALJ, the inmate testified that he understood that he would be charged if he did not "get rid of the liquid." The ALJ found that:

[a]lthough inmate W.H. indicated in his statements and his testimony that Sgt. Grossman did not specifically 'order' him to drink the bottles, it was implied that if he did not do so, there would be repercussions. This testimony is quite credible given the balance of power between a corrections officer and an inmate, with Sgt. Grossman as the supervisor/authority figure wielding power over the inmates who are instructed to obey corrections officers. SCPO Melendez'[s] very credible testimony was that Grossman told W.H. if it was juice in the three containers as W.H. said it was, then Grossman wanted W.H. to drink it to prove it. When a corrections officer tells an inmate to do something, that is an order.

Moreover, there was sufficient credible evidence that the appellant made the inmate do jumping jacks instead of sending him to the infirmary. Therefore, upon its review, the Commission finds nothing in the record or the appellant's exceptions to question the ALJ's credibility determinations or the findings and conclusions made therefrom.

Regarding the penalty, similar to its assessment of the charges, 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). Moreover, even when correction officers do 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 v. Rahway State Prison, supra*, 81 N.J. at 579-80. The conduct is even more egregious when a supervisory law enforcement officer commits such an offense. In this regard, the Commission emphasizes that Correctional Police Sergeants are supervisory law enforcement officers who, by the very nature of their job duties, are 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, regardless of his lack of a major disciplinary history, the appellant's actions fall well short of what is expected of a Correctional Police Sergeant. His misconduct compromised safety and security; it subverted prison order and discipline; and it was undoubtedly serious. The appellant's continued employment would undermine the public trust. The Commission is also mindful that:

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

Therefore, contrary to the appellant's exceptions, the Commission finds the penalty of removal neither disproportionate to the offenses nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Michael Grossman.

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 22<sup>ND</sup> DAY OF MAY, 2024



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Chairperson  
Civil Service Commission

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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 06932-21

AGENCY DKT. NO. n/a

2020-2238

**IN THE MATTER OF MICHAEL GROSSMAN,  
SOUTHERN STATE CORRECTIONAL  
FACILITY.**

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**Kevin P. McCann**, Esq., for appellant Michael Grossman (Chance & McCann, LLC, attorneys)

**Gary W. Baldwin and Gina Labrecque**, Deputy Attorney General, for respondent Southern State Correctional Facility (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record closed: April 18, 2024

Decided: April 20, 2024

**BEFORE CATHERINE A. TUOHY, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Michael Grossman, a Correctional Police Sergeant, appeals his removal, effective February 18, 2020, arising from an incident that occurred on April 19, 2017, during which it was alleged that an inmate was made to drink suspected homemade intoxicants (hooch) found in Unit 4. Charges presented include: N.J.A.C. 4A:2-2.3(a)(6),

Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause; and violations of the Human Resources Bulletin 84-17 (HRB 84-17), as amended, C(3) Physical or mental abuse of an inmate, patient, client, resident or employee; C(5) Inappropriate physical contact or mistreatment of inmate, patient, client, resident or employee; C(8) Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance or any record, report, investigation or other proceeding; C(11) Conduct unbecoming an employee; D(1) Negligence in performing duty resulting in injury to persons or damage to property; D(7) Violation of administrative procedures and/or regulations involving safety and security; and E(1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

At issue is whether appellant is guilty of the charges presented and if so, whether removal is the appropriate penalty.

### **PROCEDURAL HISTORY**

On January 30, 2020, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against the appellant. Appellant waived a departmental hearing. On February 3, 2020, respondent issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the preliminary notice and removing appellant from employment, effective February 18, 2020. Appellant filed a direct filing removal appeal dated March 4, 2020, to the Office of Administrative Law, where it was filed on June 3, 2021, as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52: 14F-1 to -13. The hearing was conducted in person on February 7, 14, August 30, 31, and December 5, 2023. The record remained open to allow the parties to submit post-hearing submissions and closed on March 5, 2024, following receipt of closing briefs. The record was reopened to obtain a copy of R-20 which was missing from the exhibits and was received April 18, 2024. The record closed at that time.

### **FACTUAL DISCUSSION**

**W.H.** testified on behalf of the respondent. He was an inmate at Southern State Correctional Facility (SSCF) in 2016 until the spring of 2017. He was released from the

system in 2020. He is currently employed by Morris County as a human services specialist in the long-term care Medicaid unit and has been there for one year.

In April 2017 he was at SSCF in Housing Unit 4. He recalls being involved in an incident with Sgt. Grossman on April 19, 2017, after contraband liquid was discovered in his locker. He was brought in to explain what the liquid was, and rather than write a report and send him to detention pending an internal disciplinary hearing and determination for it, Sgt. Grossman instructed him to consume all of it. The contraband was partially fermented fruit juice, which becomes wine that can get you drunk when it is fully fermented. He had three large soda bottles of contraband liquid, not quite two-liter bottles. He believes they were sixteen or eighteen ounces each and were sold in the commissary. W.H. recognized what was depicted in the photo marked R-4 as the three containers he used. W.H. stated he was brought into his area to explain the contraband at the request of Sgt. Grossman. Prior to that, the wing had been cleared, and the inmates were waiting in the day room/dining area.

Surveillance video of Unit 4 at SSCF was played. (R-20). At 11:42:50 a.m. W.H. is seen on the video in a white shirt coming from the day room to the bunk area. He had the top bunk off to the side of the camera, and there was a footlocker and another full-size locker closer to the door. He stored the three bottles in the large, tall locker shown on the bottom left of the video. The video was stopped at 11:43:03 a.m., and W.H. explained that he was being asked what the liquid was. The other individuals in the video are Officer Melendez, who was the unit officer primarily assigned to this unit and standing to W.H.'s left, Sgt. Grossman, who was in front of W.H., and W.H. forgot the name of the officer to his right in the video, but believes it was Officer McCauley. Sgt. Grossman was questioning him about what liquid was in the bottles. The video was stopped at 11:43:19 a.m. The video showed three bottles on top of a footlocker, which were the three bottles that were discovered in his locker. W.H. recalled that Sgt. Grossman was saying that this was a problem, asking what they were going to do about it, and saying that it had to go away. W.H. was at a loss and in a panic because he was still attending college through corrections, and this could have had a negative impact on that. The video was stopped at 11:43:25 a.m. W.H. stated at this point in time, he was instructed to drink it by Sgt. Grossman or go to lockup. The bottles contained partially fermented fruit juice that was

not ready to be consumed. The fermentation process uses yeast to get rid of any bad bacteria and make alcohol. When it is partially fermented, there is other stuff floating around in there that you do not want to drink because it can make you sick. At this point in time, Melendez said something to the effect that she is not being part of this and left. The video surveillance was stopped at 11:43:50 a.m. W.H. was instructed to drink it and took a sip. He took the one bottle, took a sip, and put the cap back on the bottle and put it down. The video was played and stopped at 11:44:02 a.m. W.H. stated that after placing the bottle cap back on, he was told by Sgt. Grossman to keep going, and W.H. proceeded to down the first of the three bottles.

In the video he is seen raising his left hand to his face, and he explained that he was trying not to vomit. Drinking that much bubbly liquid that quick did not sit well with him. Sgt. Grossman said there was still evidence left and to keep going. The video was played and stopped at 11:44:41 a.m. W.H. stated Melendez had left and it was just Sgt. Grossman, Officer McCauley, and W.H. He finished the first bottle, and Sgt. Grossman said, "keep going." Before Melendez left, she stated that she did not want to be a party to what was going on. He didn't recall if she said anything else since it had been six years. He was already in GI distress. The video was played and stopped at 11:45:54 a.m. The second twenty-four-ounce bottle was finished, and he was instructed by Sgt. Grossman to drink the third bottle. He believes he said to Sgt. Grossman or Officer McCauley that he did not think he could do that. The video was played and stopped at 11:47:43 a.m. At this point in time, W.H. felt ill and vomited immediately outside the door on the left in the video which leads to side concrete steps that lead to a grass courtyard area that is restricted to inmates. He was vomiting for quite a bit since he consumed a lot of the liquid. The video was played again and stopped at 11:48:18 a.m. He believes he was instructed to go outside by Sgt. Grossman. He had come back in and finished the last bottle because he had been instructed to do so by Sgt. Grossman. He then went back out the door to the left. The video was played and stopped at 11:58:14 a.m. W.H. was sent outside by Grossman to do jumping jacks and work the stuff off. He was told to do jumping jacks until he was told to stop. He did that and vomited two to four times. He believes McCauley told him to come back in after a while and to have a seat in the day room. He was out in the restricted area for about ten minutes. At some point in the surveillance video between 11:48:18 a.m. and 11:58:14 a.m., Officer Melendez is seen in



the doorway. He believes she asked W.H. if he was okay. He had been vomiting, and he was not okay. Sgt. Grossman appears in the doorway before the 11:58:14 a.m. timestamp, and W.H. believes this was around the time he was told to go back to the day room. W.H. is seen in the video coming back through the doorway at 11:58 a.m. He does not recall what Officer McCauley said to him when he entered the doorway.

During this time while he was in the day room, he believes he overheard Officer Melendez saying she wanted W.H. locked up. He did not recall hearing Officer Melendez refusing to confiscate the three bottles of hooch depicted in the video surveillance. After he was in the day room, he waited for further instructions. W.H. was told by Sgt. Grossman to go to the infirmary and tell them he had an upset stomach and get checked out. He went to the infirmary and told them his stomach hurt, and they told him to get out, so he went back to his unit to take a shower because he was a mess. He was taking a shower and was instructed to go back to the infirmary, which he did, and he was put in segregation.

When W.H. went back to the day area, he did not tell anyone there what had happened. He filled out a disclaimer for medical treatment and signed it saying he had an upset stomach, which is what he was instructed to do by Sgt. Grossman (R-10). After he was initially discharged from the infirmary, he went back to this unit and took a shower because he was covered in vomit. In the middle of his shower, he was told to go back to the infirmary. He was put into a segregation cell, which is a suicide watch cell, and was there less than two days. Special Investigations Division (SID) investigators came, and he told them what happened, and he was transferred to South Woods State Prison on April 20, 2017. He was more formally interviewed again three to four weeks later by SID while he was at South Woods. This interview was recorded with a video camera. He was in the segregation cell for thirty-six hours.

W.H. was transferred from South Woods to Mid-State and worked there as a laborer for about a year. From Mid-State, he opted to transfer back to South Woods because he preferred the facility. While in South Woods, he got into trouble for possession of a tool that he used for his arts and crafts which was deemed contraband as a weapon. He served time in the administrative segregation unit for the first month at

New Jersey State and the rest at Northern state. He was then running down his sentence, and because he had less than a year, he was transferred to the Central Reception and Assignment Facility (CRAF). He was released from CRAF on November 4, 2020. His first year home, he managed a moving company and then left that job and started working for Morris County in February of last year.

On cross-examination, W.H. stated that his employer knows he has a prison record and was a sex offender. He is a Medicaid eligibility specialist and does paperwork and does not deal with people. W.H. entered the prison system in September 2016, seven months before this incident of April 19, 2017.

Day's was the only brand of ginger ale sold at the commissary, and it came in twenty-four-ounce bottles which cost \$1.50 each. He could not recall if he earned \$1.25 a day or a week while working in the jail. The three bottles shown in R-4 contained fermented fruit juice. He had drunk the ginger ale and then replaced it with fruit juice and little chunks of bread from the meal line, which began the fermentation process. The contents of all three of the bottles were red in color, so it may have been cranberry juice that he used. They received orange juice, apple juice, and cranberry juice on the food line. W.H. usually stockpiled juice from the kitchen, or the 'line,' as he referred to it. That morning, he had opened the bottles to let the gas out and resealed them to keep in some of the carbonation. Each of the bottles had juice, sugar, and bread, which gets strained out after two weeks. It would have been less than two weeks he was working on this process. A complete fermentation is a minimum of three weeks to be safe to drink, but four weeks is preferable. W.H. has been brewing beer at home since he was fifteen. He was making wine, but it is the same process. He was making it for personal consumption.

It did not seem that Officer Melendez was doing a random search that day since only his locker was searched. He did not observe her searching anyone else's locker. The three bottles depicted in the picture were sitting on someone else's locker. The last time he saw those bottles was when he left the area. He did not see anybody confiscate them, and none of the officers, Melendez, McCauley, or Grossman, gave him a confiscation slip for them. When he finished drinking them, there was very little residual slime at the bottom.

Melendez found the bottles in his locker. She said the locker was locked, but he never locked his locker so that in case something like this happened he could deny it was his. Three of the bottles contained the fermented juice, and he would usually keep a fourth bottle of soda unopened as a 'dummy' bottle because it was sealed, and nobody would bother with it. W.H. heard Officer Melendez tell Sgt. Grossman that she wanted W.H. arrested. He did not hear Officer Melendez use profanity.

The contents of the bottles smelled like rotting fruit. It was not yet 'hooch,' but it was on its way to becoming 'hooch.' W.H. told Sgt. Grossman it was juice. Sgt. Grossman said to W.H. that if it is just juice to take a sip, and he did and then put it down. He was not given the option of disposing of the bottles' contents in the sink.

W.H. initially filed suit against the State of New Jersey for this incident but did not pursue it, as he wanted to move on. He was requested by the DAG's office to testify in this case, and he appeared voluntarily without a subpoena.

He was not given a confiscation slip when the three bottles were discovered. He knows altering to be an offense, and he did admit to altering the bottles of ginger ale.

W.H. recalls seeing two officers from the Special Investigations Division while he was in lockup. (P-1 at 3.) W.H. handwrote a three-page letter to his mother dated April 29, 2017 (P-3). His letter was in his handwriting, and he does not know how it came to be typed up. He indicated he was being held and questioned by two SID officers from internal affairs, an Inspector Willams and another one whose badge was 112. In his letter he indicates that "after 25 hours naked and cold I was shipped without warning." He explained that he was pretty much naked aside from the Velcro 'turtle suit' that is given to an inmate to wear while in segregation. When he got to South Woods, he was held for three days without contact with anyone aside from the corrections officers dropping off food. He was never given an explanation as to why he was being held. He wrote "4/19 started like any other Wednesday would belly full of disappointment at breakfast, a quick nap, then off to program. By ten a.m. I was back in my bunk napping waiting on my lunch, Chicken patty day. I was awoken at approximately 11:30. B wing, clear out. Take

nothing. Out I went. They never do searches at that time, too close to lunch, logistics and went straight for my upright locker." W.H. was referring to Melendez. "I had a slip dropped on me. Sergeant Grossman was called and I was summoned to my locker area at the far end of unit four B wing, right side which has two cameras aimed at it." "I was questioned about three bottles of semifermented syrup beverage that was found in my upright which I never kept locked at any time." "My lock was kept latched on the outside of the clasp never securing the door." W.H. said if he had a lock, he still did not lock it. "After a brief questioning I was made to drink in very rapid succession all three bottles of the stuff. I was not given a choice and it was implied charges would follow if 'there is still evidence there.'" (Sgt. Grossman). He never received any charges. "At this point the housing officer for right side, Off. Melendez, excused herself as 'I want no part in this.'" "I became ill ½ way through the 3rd bottle, and was then sent outside and made to do jumping jacks till I vomited profusely. I was then sent to wait in the day room where my rough condition was visible to all the residents of B wing. I felt and looked ill and was sent to medical with a cover story about an upset stomach suggested by the sergeant." "I was back in the unit for 30 minutes. Then I was sent back to medical." (P-3.) At that point in time, he was interviewed by Inspector Williams and someone else and was handcuffed the whole time. He was never told how long he was going to be there or what he was being treated for. W.H. tried to get out of there and get back to his unit by saying he was okay. While he was in there, he got some sort of fungal infection which took a couple of weeks to clear up. He was emotionally damaged and physically distressed. W.H. wrote this letter and sent it to his mother (P-3). He then brought a lawsuit against the state alleging all of these things.

When he arrived at Southern State, he went right into the infirmary. "Patient brought into medical DOC and placed in lockup in the infirmary under constant watch as per policy order. Patient denies any injuries, pain or discomfort at this time." (P-4.) W.H. did say that but it was not true; he wanted to get out of there. This document was dated April 18, 2017, but it should have been dated April 19, 2017, at 1:35 a.m. (P-4). The chart notes for April 19, 2017, indicate that "pt denies any medical issues at this time. No nausea or vomiting. Fluids encouraged. Will continue to monitor." (P-4.) W.H. stated at that point in time he was feeling better. By the time he got to South Woods, he was given clothes again. Notes from South Woods on April 20, 2017, electronically signed by Donna

Caudill, R.N. April 20, 2017, 8:00 p.m. under the narrative section indicates that the "IM seen in holding cell in intake at custody request. IM denies any medical issues/illness or injuries and none noted while visualized behind bars at this time with IM lifted shirt sleeves past elbows/pant legs past knees and lifted shir[t] front/back torso/neck/ mouth /head. IM denied any thoughts of wanting to hurt himself or anyone else, denies seeing/hearing anything not present. IM is not on the MH roster. BP 150/84, radial pulse 86, respirations 16. IM medically stable and cleared for housing as Administrative Watch housing as need for custody with no housing restrictions." (P-4.)

W.H. stated that he did tell a psychiatrist at South Woods that he was having trouble sleeping because of what happened to him. He has never seen any records regarding this.

A transcript of a statement of W.H. taken by Investigator Cacicia on April 19, 2017, at SSCF (P-5) was shown to the witness and indicated that W.H. stated that some bottles of unidentified liquid were found in his unlocked locker that belonged to him. When the sergeant asked him what they were, he told the sergeant it was juice, but it had not really begun the fermentation process. It did have an odor but not of alcohol. The sergeant asked W.H. if he would be willing to have a sip of one of them, which he said he did to indulge him. W.H. told Investigator Cacicia that Sgt. Grossman asked him and did not order him. W.H. stated that there was never any outright ordering, although the implied message was to consume it all or there would be other repercussions. W.H. felt that he drank the liquid under duress. W.H. became ill by drinking that much of any fluid in a very short time and threw up. He did not feel intoxicated because the fermentation process had not really taken off yet. (P-5.)

W.H. was also shown a statement taken by Investigators Sesulka and Soltys on May 4, 2017, at Southwood State Prison (P-6). W.H. was instructed by Sgt. Grossman to go outside the fire door and do fifty jumping jacks, which W.H. did, and then Sgt. Grossman told him to keep going and then left. McCauley, the other officer who was there, told him to stop. W.H. said Officer Melendez fabricated her statement that his locker was locked, but it was not. She knew exactly where to go and what she was looking for, so he assumed somebody had informed her about the hooch. When Sgt. Grossman

asked W.H. initially what it was, he said he was unsure, but then said it was fruit juice, which had begun to spoil and begin the fermentation process. The juice was about five days old. Sgt. Grossman told him to have a sip, since he insisted it was juice. W.H. took a sip and put the bottle down, and Sgt. Grossman said that there was still evidence there, so he might want to keep going. W.H. made the assumption that in order to avoid a charge, Sgt. Grossman wanted him to consume the evidence. W.H. was never told by Grossman that there would be no charge, and W.H. was not charged with anything. (P-6.)

W.H. stated that although Grossman did not order him to drink the contents of the three bottles, he understood that he would be charged if he did not get rid of the liquid in the three bottles.

**Otis Truitt** testified on behalf of the respondent. He is currently the Security Major at the Mid-State Correctional Facility in Fort Dix, New Jersey. He was promoted on June 18, 2022. He previously was a lieutenant, having been promoted in 2006. On April 19, 2017, he was the shift commander at Southern State Correctional Facility and became aware of an incident involving an inmate and Sgt. Grossman. He had been relieved by Lt. Tuck to attend a meeting at the time, and when he returned from his meeting, he was advised by Lt. Tuck that there had been an incident in Unit 4 where Sgt. Grossman had an inmate ingest some kind of liquid. Major Rochow was the administrative major at the time. A special custody report is a report where an officer documents what occurred in an incident. On April 19, 2017, Officer McCauley submitted a report to Lt. Truitt, who had asked him to submit a report as to what happened on Unit 4 (R-5). Lt. Truitt wrote and signed a special report dated April 19, 2017, to Major Rochow (R-8). He did not know who relieved Officer Melendez or whether she received any charges.

**Gloria Melendez** testified on behalf of the respondent. She has been a corrections officer for approximately twenty years and currently works at South Woods State Prison. She previously worked for fourteen years at SSCF and left when it closed. She graduated from the Department of Corrections (DOC) academy on March 19, 2003.

On April 19, 2017, she was working at SSCF and was assigned to Unit 4. She and her partner, Officer Robert McCauley, conducted a search in Unit 4 after they received a call from the infirmary saying that inmate W.H. had hooch in his possession. They conducted a search, and she found three twenty-four-ounce bottles of what appeared to be hooch. There was a soda bottle in front that was still sealed and three bottles behind it. All three were a little bit open or loose on top and contained clear liquid. R-4 is a copy of the photographs of the three bottles she found in her search. The three bottles, the tops of which were loose, contained bits of fruit and bread that you could see sitting at the bottom of the bottles. She does not recall if she or Officer McCauley smelled them or not.

Once they found the bottles, Sgt. Grossman was called because he was the area supervisor. The wing was clear at the time because it was count time. The inmates have to be sitting on their bunks during count and then are released to the day room. They waited for Sgt. Grossman to arrive, and when he did, they showed him the bottles they had found. W.H.'s location was Unit 4 Right, B Wing, bed eight. They placed the bottles on top of the locker by bed seven at the bottom bed bunk. Sgt. Grossman requested they call the inmate down to the wing, and she physically went to the day room and verbally told W.H. to come down to the wing. It was only a two-second walk away. When W.H. arrived at the bunk area, Grossman asked him what was in the bottle. W.H. initially did not say anything and then said that "it looks like it's juice." Then Grossman said, "if you think it's juice I want you to get it, have a drink." W.H. said "no." Grossman said: "well is it juice? I want you to have a drink." And that is when W.H. took a sip and put it down. She did not say anything at this point in time. Grossman said, "if you said this is juice, I want you to drink this bottle." Grossman told W.H. to finish the bottle and drink the other two. When W.H. said no, Grossman said: "I want you to drink it now, I want you to finish all three." So when W.H. grabbed the bottle and started drinking, like sipping, Officer Melendez told W.H. no, he did not have to do that and said that she did not want to be a part of this and removed herself.

Before W.H. started sipping the first bottle, Melendez and McCauley did not say anything. The second time W.H. picked up the bottle, he did not take a full sip; he just touched the bottle and put it down because he was a little bit nervous. So he put the

bottle down, and then Grossman requested again, "I want you to finish the bottle now. That one and the two." W.H. started sipping again, and Officer Melendez put her arm out and said "You don't have to do this. You don't have to do this. No." She said, "I don't want to be a part of this."

The video surveillance was played for the witness (R-20). At 11:24:26 a.m. Melendez and McCauley are shown on screen at Unit 4 Right, Wing B. The bottles they found were in the secured tall locker. The video was stopped at 11:24:44 a.m. and showed Melendez showing McCauley the fourth sealed bottle that was in front of the other three bottles that looked like they were being sipped from and contained the hooch. They were not filled all the way to the top like the one that was sealed. The three bottles that are shown on top of the locker are the ones that contained the hooch, had the bread and other ingredients, and were still getting cured. The video was stopped at 11:27:47 a.m. She finished searching the tall locker and was searching the area. The video was stopped at 11:28:07 a.m. Officer Melendez went to her desk in front of wings A&B, which is not far from the bunk area. She went to her desk to call Sgt. Grossman. The video was stopped at 11:29:39 a.m. Officers Melendez and McCauley were back in the bunk area to see if anything else was out of place and to wait for Sgt. Grossman, who said he would be there in a few seconds. The video was stopped at 11:30:47 a.m., and they looked around to see if anything was out of place or if anyone was making anything illegal while they were waiting for Grossman to arrive at the unit. The three bottles of hooch were shown on a chair where she put them because she was going to open the footlocker. The area outside to the left of the door is the emergency fire door in B wing. There is a grassy area back there. She does not recall who opened the door, and it may have been her because this is her area. Inmates are not allowed in this area. The video was paused at 11:33:09 a.m., and they were just waiting for Grossman. She is shown searching another inmate's footlocker because they are supposed to search three areas a day, and since she was already there, she searched this area as well.

The video was stopped at 11:34:45 a.m. On the screen was Sgt. Grossman behind Officer Melendez. She does not know why Officer McCauley was not there. The video was stopped at 11:35:22 a.m. Melendez presented the bottles to Grossman and explained where she found them and which inmate the locker belonged to. Sgt.



Grossman opened one of the bottles and lifted it, appearing to smell it. At 11:35:22 a.m. there was conversation as to what was the next step since after the count was done, they had to run mess hall for them to eat lunch, and she had to be out front. She needed to know what they were going to do about charges. That is when Sgt. Grossman asked for W.H. to come to the scene.

When a corrections officer discovers hooch, they have to call a supervisor and tell them, and they will direct the corrections officer to write the charges and get everything ready. However, in this case, Sgt. Grossman did not give her an answer and just said to give him a few minutes and he would be there.

The video was stopped at 11:36:43 a.m. Melendez explained that Grossman went through everything that she had searched. He is shown with the fourth bottle in his hand, which was the unopened bottle of ginger ale. She had put the three bottles with the hooch in them on the chair and the fourth one at the bottom of the footlocker. That way she could see the difference between the ones with the hooch and the one with the soda. There was no reason she did not put the fourth bottle on the footlocker where she put the other three bottles of hooch. R-20 was stopped at 11:39:59 a.m. Grossman was still going through everything that she had searched. He removed some of the board games, as the supervisors want them to be used in the day space area. That is what he threw on the floor, along with some papers that had been on the bed. At this point in time, they had not called for W.H. Melendez was waiting for Grossman to decide what he was going to do. R-20 was played again and stopped at 11:42:22 a.m. At this time, she believes she was directed by Grossman to call W.H. from the day space. She went out and turned to the right so she could see the day space, and she called him. He followed her back to the bunk area. The video was played again and paused at 11:42:58 a.m. On screen, Melendez, McCauley, Grossman, and inmate W.H. were shown. W.H. did not say anything to Melendez when she called him. The video was played and stopped at 11:44:14 a.m. That is when Grossman questioned W.H. what was in the bottles, and he said it looked like it was juice. Grossman said to W.H. "if you think it's juice I want you to drink it. If you think it's juice, I want you to go and drink the juice." It appeared that Melendez was walking down the hallway. She explained that she was standing at the door and that the second time that W.H grabbed the bottle, she said "you don't have to

do this." After that, she removed herself. She left the area and was walking down the hallway because what Grossman was doing was inhumane. She could not believe what he was doing. In her career, she had never seen something like this, so she removed herself and went to notify somebody over Grossman, which would be a lieutenant. After she walked down the hallway, she went to the sergeant's office to make a phone call because she did not want the inmates that were in the day space to hear what was going on because that would have created a bigger problem. She called center control and was told to call back in a few minutes because Lt. Tuck was busy on another call. So, she went back down the wing, and W.H. had already consumed the three bottles and was outside in the grassy area. Melendez went back to call Lt. Tuck and told him what happened, that they found hooch, and that Grossman told the inmate to drink the three bottles. Lt. Tuck told Melendez he would handle it. Lt. Tuck called Grossman and told him that Melendez informed him of what he did to inmate W.H.

The video was played and stopped at 11:50:52 a.m. Melendez and McCauley are shown standing there. W.H. was in the yard. She had already informed Lt. Tuck what happened. She was just waiting to see what the next step was. All three bottles were empty, and she had asked McCauley, who said "Yeah he drunk [sic] all three." She asked McCauley where W.H. was; that is why she was standing outside the door. W.H. mentioned that he was not feeling well and that he had to throw up. He was just standing there, red, sweating, and shaking. She told him to go ahead if that is what you have to do, just throw up. She was standing in the doorway at this time. She did see him throw up when he said he had to throw up.

The video was paused at 11:53:12 a.m. At this time, she removed herself again to call Lt. Tuck and advise him what was going on with W.H. and that he needed to go to medical. She was in the doorway right before the video paused and said W.H. was saying that he was not feeling well, and he was shaking at that time. She did not see him throw up. Lt. Tuck asked if W.H. could walk to the infirmary, and she replied that she did not know. She was so upset, she asked Lt. Tuck to remove her from the unit. He removed her from the unit, and she went to center control where Lt. Tuck was. She was then told to report to compound B because they called Grossman to center control and did not want her being there with him. She did not return to the unit that day on April 19, 2017, but

finished her shift on compound B writing reports that she was asked to do, and then she was sent home. Melendez identified the copy of the report she wrote that day in her own handwriting and signed (R-6). The standard procedure is to write a report when an incident happens. At some point after this incident, she was interviewed by SID, and an audio video recording of her interview was taken at the SID office in compound B. (R-23C.) After her SID interview, she had no further involvement in this matter.

When she left the unit that day, the ginger ale bottles were on top of the chair. She never saw them after that and does not know what happened to them.

They do routine searches every day and search the day space, office, bathroom, kitchen, outside, and inside. She did a search of W.H.'s area after receiving a call from another officer saying W.H. had hooch in his area but not where in his area, so they searched his whole area. It was during count, which starts at 11:00 a.m. and lasts an hour. During her interview with Investigator Cacicia, Melendez indicated that she was doing a routine search and went into the area seven down, seven up and did eight up and eight down and checked the lockers. When she opened W.H.'s locker, she started checking around and found the three soda bottles. (P-7.) She said it was a routine search as far as bed seven, which is not W.H.'s bed. It was a routine search. W.H. was bed eight.

Anyone in the DOC can confiscate something, but it is supposed to be the person that finds it. She did not do a confiscation report because this incident occurred. McCauley was also present when she found the hooch. Melendez said W.H.'s locker was locked and if you look at the video, you can see her key in the lock.

When she discovered the hooch, she just loosened the cap but did not take the cap off. You could smell it, but she did not put it up to her nose. The liquid was clear in color. She saw Sgt. Grossman look at it and smell it, but he did not shake the bottle. When you looked at the bottle and moved it, you could see a light residue floating in the liquid, not a big chunk.

Melendez did not tell Sgt. Grossman that she wanted W.H. locked up, which meant sending him to detention. She was not trying to get W.H. out of the wing. Sgt. Grossman never told her to confiscate the soda and write a report. She did not say to Sgt. Grossman "F- that." That would not be appropriate to say to your sergeant and would be insubordination. She never said to Sgt. Grossman "I'm not f---ing Shepherd." McCauley was there when the hooch was discovered, and he could have written the confiscation report. She was never told by the Latin Kings that W.H. was a sex offender. Melendez opened the door to the yard to get air because it stunk in there. She heard Sgt. Grossman direct W.H. to drink the hooch because if he did not, he would be charged. Sgt. Grossman never told W.H. to dump it down the sink to avoid any drama.

Her relief was there before she left the unit, and she passed her key to the officer who relieved her. She never saw W.H. again after this incident and has had no contact with him.

**Patrick Sesulka** testified on behalf of the respondent. He is employed by the NJ Department of Corrections, Special Investigations Division as a Principal Investigator. He is currently the supervisor of an office of investigators. He has had this role for two years. Prior to this position, he had been a senior investigator since 2016. They conduct administrative and criminal investigations, including any policy violations within the DOC regarding staff and inmates.

Investigator Sesulka is familiar with Sgt. Grossman, as he was assigned to conduct the investigation after there was an initial interview by Investigator Daniel Caciccia with an inmate that occurred at SSCF, where it was alleged that the inmate was made to drink three bottles of suspected hooch. Sesulka worked in the Internal Affairs Unit, which is currently called the Professional Standards Unit, which deals with more significant cases, and this matter was reassigned to him to be the lead investigator. Investigator Sesulka prepared a report dated January 29, 2020, entitled "Inmate allegations of staff misconduct" as a result of his investigation (R-11). The investigation began in April 2017. He obtained all the information relevant to this matter and reviewed the interview by Investigator Caciccia, the inmate's medical records, and video surveillance of the incident (R-20) and started from there.

During the medical evaluation, W.H. stated to the medical center that he drank three bottles of unfermented juice, which caused him to vomit. 'Hooch' is commonly referred to as homemade alcohol within the prison system. They had received an allegation that Sgt. Grossman made inmate W.H. drink three bottles of suspected hooch. When they viewed the video surveillance, they saw that the video surveillance depicted W.H. drinking the three bottles in the presence of Sgt. Grossman.

Investigator Sesulka reviewed the special custody report of Officer Melendez. She reported that she found three bottles of what appeared to be hooch in W.H.'s footlocker and notified Sgt. Grossman via telephone. He reported to the area and had Officer Melendez call W.H. to the area. Sgt. Grossman asked W.H. what was in the bottles. Officer Melendez reported that W.H. stated it looked like it was juice, and then Sgt. Grossman said to W.H., if you think it's juice let me see you drink it, and according to her report, W.H. said no. Sgt. Grossman stated that you are going to show me it's juice by drinking it, so W.H. subsequently took a sip and put it down. Sgt. Grossman then told W.H. to finish the bottle and drink the other two, so when W.H. began to drink again, Officer Melendez told W.H. that he did not have to drink that, put it down, and Sgt. Grossman said no, you're going to drink it all and finish these two. Officer Melendez stated that she was not going to be part of this and walked away. Officer Melendez stated that when she returned to the area, she noticed all three of the bottles were empty and W.H. was outside on the grass by the fire exit. Officer Melendez reported W.H. appeared to be shaken up, and she asked if he was okay, wherein W.H. stated he needed to throw up. W.H. began to vomit, and Officer Melendez stated she reported the incident to Lt. Tuck. (R-11 at 1-2.) Officer Melendez' report was consistent with the video surveillance footage.

Lt. Truitt submitted a report indicating that he instructed Officer McCauley to write a special report regarding the incident. He also indicated that he did not question McCauley regarding the incident (R-8). They also reviewed Officer McCauley's report, which indicated that W.H. was directed to the infirmary two times, one by order of Lt. Tuck, and one at the request of the infirmary officer (R-5). Officer McCauley did not report W.H.'s vomiting or the events that led up to W.H. vomiting.

Investigator Sesulka summarized Investigator Cacia's interview with W.H. for his report. During his interview, W.H. said that custody staff searched his property and found three twenty-four-ounce bottles of unfinished hooch in his property. W.H. stated that he told Sgt. Grossman there was juice inside the bottles, and W.H. stated Sgt. Grossman asked him if he would have a sip, which W.H. then did. W.H. stated that Grossman gave him a choice to not consume any of it and catch a charge or to consume the total quantity. W.H. said he chose to drink the bottles. He described the liquid as a mix of apple juice, cranberry juice, sugar, and yeast, which he admitted was combined to make an alcoholic beverage. W.H. stated that the fermented bottles were three ginger ale bottles and that he was never specifically ordered to drink them, but that Sgt. Grossman implied there would be other repercussions if he did not. W.H. stated that he vomited after drinking all three bottles but felt fine twenty to thirty-five minutes later, and he did not feel intoxicated because the fermentation process had not been started.

Mr. Sesulka's report indicates that Lt. Christopher Smith located the three ginger ale soda bottles and that Officer Shepperd seized the three ginger ale soda bottles from trash bin gate eight and placed them into the evidence locker for SID pickup. He does not know where this information came from, as it was provided to him by SSCF SID when it was reassigned to his unit. The bottles were retrieved and placed into SSCF evidence by Senior Investigator Elizabeth Adams. He believes she was assigned to be the evidence custodian responsible for receiving, logging, documenting, and storing evidence at a facility. There is one evidence custodian for each facility. The seizure of contraband report for the three bottles of ginger ale confiscated on April 19, 2017, was authored by Officer Sheppard (R-3). The report indicated that the three bottles had visible sediment and smells of a fermented odor.

The next item noted in his investigation report is the receipt of an NJDOC JPAY system inquiry (R-9), which is an email system where another inmate alleged that Sgt. Grossman made an unidentified inmate do jumping jacks and that the unidentified inmate vomited. (R-11 at 2.) Investigator Sesulka interviewed this inmate on May 26, 2017, with Investigator Eric Rodriguez. An audio recording was made of the interview with inmate J.S. (R-23B).

Investigator Sesulka reviewed W.H.'s disciplinary history to see if he was issued a charge for being in possession of contraband, and he was not.

Investigator Sesulka references a report received from Senior Investigator Dennis Gunn from the SID Drug Interdiction Unit concerning his examination of the evidence (R-11 at 2-3). A copy of the report was not produced, but Sesulka copied the findings into his report (R-11 at 3).

A second interview of W.H. was conducted by Investigator Sesulka, and his supervisor, Principal Investigator Edward Soltys, on May 4, 2017. Investigator Sesulka summarized his interview with W.H. in his report. He also interviewed Officer McCauley with Senior Investigator Kurt Rocco and summarized the interview in his report (R-11 at 3-4). Officer McCauley had a union representative present for the interview and executed a Weingarten administrative rights form (R-19 at 1). Officer McCauley's statement during his interview was consistent with the information they had up to that point where they were doing a search and found three bottles of what they suspected to be hooch. Sgt. Grossman arrived at the area, and W.H. ended up drinking three bottles of suspected hooch under his supervision. McCauley reported that Melendez said that "I am not staying here for this crap" and that she was going to tell the Center Keeper. Officer McCauley also reported that Sgt. Grossman told inmate W.H. to do fifty jumping jacks. Officer McCauley said he should have reported all of the events that led up to the incident that day. What McCauley reported appeared to be consistent with what he viewed on the video surveillance.

Sesulka interviewed Officer Melendez on June 5, 2017, and recorded the interview. The information she provided was consistent with her initial report, with what W.H. stated, with the video surveillance, and with Officer McCauley's interview. The main message was that they found three bottles of suspected hooch, Sgt. Grossman made W.H. drink it, he drank it, and as a result, W.H. ended up vomiting. Sgt. Grossman also made W.H. do jumping jacks.

Sesulka interviewed Sgt. Grossman on January 14, 2020, as part of his investigation. Sgt. Grossman was advised of his Weingarten rights and executed the Weingarten administrative rights form, indicating that he did not wish for union representation during his interview (R-19 at 2). It was stipulated that Sgt. Grossman's statement contained in the Investigation report was an accurate statement that Sgt. Grossman made to the investigator during the investigation. Mr. Sesulka noted a few inconsistencies between Sgt. Grossman's statement and what was shown in the video surveillance. The video surveillance shows Sgt. Grossman smelling one bottle, not three bottles, as he said he did in his interview. The video does not show Sgt. Grossman visually inspecting the bottles, although he indicated he did. Sgt. Grossman indicated that Officer Melendez refused to write a confiscation report, which is inconsistent with what she said. In Sgt. Grossman's interview he stated he smelled all three bottles, looked at the bottles in the light to see if there was anything floating around inside the bottles, and did not see anything in the bottles. Mr. Sesulka noted that video surveillance depicts Sgt. Grossman smelling one bottle and does not depict him smelling three bottles. Sgt. Grossman stated he shook the bottles and still did not see anything in them. Mr. Sesulka made an investigator's note that the video surveillance does not depict Grossman visually inspecting the bottles as he described. (R-11 at 6.) Mr. Sesulka discussed these discrepancies with Sgt. Grossman during his interview, and Sgt. Grossman stated that he does not recall it happening that way. Mr. Sesulka notes that "At the conclusion of the interview Sgt[.] Grossman stated Officer Melendez lied, Officer McCauley lied, Inmate W.H. lied and the video surveillance is wrong." "Sgt[.] Grossman stated that he knows it doesn't sound right, but that is what I am saying." (R-11 at 7.) Mr. Sesulka had no reason to doubt the authenticity of the video surveillance.

Sgt. Grossman had indicated that custody staff are not allowed to issue charges to inmates for possession of suspected hooch. Sesulka contacted SSCF Administrator Erin Nardelli via email, who advised that was not the case and provided instances where custody staff had written up inmates for possession of suspected hooch (R-11 at 8). Erin Nardelli is a civilian employee of the DOC and was the assistant administrator of the facility when Grossman was there.



Mr. Sesulka is aware that the person who finds the contraband is required to write a confiscation report. Officer Melendez found the contraband and did not write a confiscation report. He does not know if she was disciplined. Grossman did not find the contraband, so he could not have written a confiscation report. The process is that if a corrections officer finds contraband, they write a confiscation report, and a receipt is given to the inmate. If the officer suspects hooch, they write why they suspect it is hooch and then a disciplinary hearing officer makes a determination. SID does not test for hooch.

Mr. Sesulka noted in his report that on April 20, 2017, SID Drug Interdiction Unit Senior Investigator Dennis Gunn examined said evidence and submitted a written report noting the following:

1. Upon visual inspection of each of the 3 plastic containers, it was noted that the contents were under pressure as all the plastic bottles were fully expanded in spite of each bottle having less than one ounce of liquid in each container. Upon opening each container slowly, there was the sound of escaping gas.
2. The liquid in the bottle was yellowish in color, The insides of each bottle had dried sediment resembling dried bread that smelled sweet.
3. The odor of fermentation and a sweet fruity smell was noted upon smelling the contents of each plastic bottle.

Senior Investigator Dennis Gunn reported that based upon the above aforementioned observations, the liquid recovered from inmate W.H. is a fermented alcoholic beverage/intoxicant (Hooch).

Mr. Sesulka was given this report and included it in his report as another piece of information. He cannot testify as to the accuracy of the report.

Inmates are provided with policy rules and regulations that state they have to obey orders of staff members, so if you disobey an order, there are implied repercussions. Sgt. Grossman has supervisory power as an authority figure over W.H. In Melendez' statement, Grossman told W.H. to drink it, and W.H. said no. Sgt. Grossman then said to W.H. if it is juice then he wants W.H. to drink it. He was told to drink the bottles, so that

is an order. When a staff member tells an inmate to do something, that is an order. Inmates are provided with an inmate handbook that lists all of the rules and regulations and the disciplinary process.

Eventually, Mr. Sesulka referred this investigation to the Cumberland County Prosecutor's Office for endangering an inmate, and they ended up charging Sgt. Grossman.

The ginger ale bottles were tracked down and located via the video surveillance system. On April 19, Major Rochow advised SSCF SID that Christopher Smith located the ginger ale bottles via video surveillance system. It was reported that they were disposed of at approximately 12:25 p.m.

Sgt. Grossman stated that he allowed the inmate to drink the three bottles that day because it was his soda and his cranberry juice.

R-20 is the video surveillance that Mr. Sesulka viewed as part of his investigation. Once he finished his investigation it was forwarded to his supervisor and to the departmental authorities. The report is dated January 29, 2020, and page eight is the last page of the report, although it says it is eight of nine. Aside from testifying here today, that was the extent of his involvement with this case.

**Michael Ryan** testified on behalf of the respondent. He is a major with the NJDOC, South Woods State Prison. He has been a major at South Woods for a little over a year. He has been employed by the DOC for twenty-four and a half years. Prior to becoming a major, he was a lieutenant at Wagner Correctional Facility and Bayside State Prison. He is currently the administrative major in charge of managing policy and procedure and employee discipline. SSCF closed down in August of last year.

Corrections officers are held to a higher standard than non-custody staff, as they are members of law enforcement. The DOC has a zero-tolerance policy for abuse by corrections officers against inmates. There is also a zero-tolerance policy regarding corporal punishment by corrections officers. Corporal punishment is a broad term and

includes hazing, physical abuse, unauthorized punishment, and outside administrative punishment. The DOC provides training to its officers regarding policies on inmate abuse initially when they are in the academy and in their yearly updated training.

Corrections officers have the authority to confiscate contraband from inmates, including homemade intoxicants or "hooch." An officer who finds an inmate in possession of hooch will notify their supervisor, seize the item, and begin paperwork, including contraband seizure reports and contraband receipts. Corrections officers are required to immediately refer inmates to the infirmary if they think they are in need of medical attention. An officer can refer an inmate to the infirmary for medical attention to get checked out or for an evaluation if they think they are under the influence of any substance prior to placement in any sort of disciplinary detention. If an officer sees an inmate choking, they call a code and perform first aid immediately themselves. If an officer sees an inmate vomiting and they are ambulatory and physically able to go to the infirmary, they will send them to the infirmary. If it is significant enough, they can call the appropriate code and have medical staff respond to the area.

When a corrections officer graduates from the academy, they are provided with the Handbook of Information and Rules for Employees of New Jersey Department of Corrections (R-12). This handbook applies to all custody ranks within the DOC. The General Rules and Regulations, Section B states "Every employee of the Department shall be held responsible for the efficient performance of duties assigned and for the proper supervision of any inmate detailed to work under his direction." (R-12 at 3.) Section P states "There shall be no corporal punishment and no employee shall strike or lay hands on an inmate unless it be in defense of himself or necessary to prevent escape or serious injury to person or property, or to quell a disturbance." (R-12 at 6.) This provision refers only to physical contact. Instances of corporal punishment without physical contact can be general hazing, abuse, profane or abusive language towards an inmate, destroying his property, destroying his bed area, or physical intimidation without actual physical force being used.

The Law Enforcement Personnel Rules and Regulations are the specific law enforcement personnel rules for the department (R-13). Officers can be disciplined under

this policy, which applies to all custody staff. They receive a copy of these rules upon the completion of the academy when they start at the jail and in their yearly training log. Section 6 states: "An officer shall promptly report in writing through the chain of command all crimes, misconduct or unusual incidents which come to the officer's attention during the performance of duty. An officer shall not withhold any information on such matters for any reason unless during the course of a formal interrogation the officer was issued Garrity Rights and has been Mirandized." (R-13 at 6). The correctional facility chain of command would start with the officer as the primary person on the floor of the unit. The sergeant would be the first line supervisor over that officer, and the lieutenant would be the supervisor over that sergeant and that officer. The CK, or center keeper, is also known as the shift commander and is the rank of lieutenant. They oversee the entire institution and handle all the operations of the jail for that shift. If a senior correctional police officer observes any crime, misconduct, or unusual incident, they would report that to their sergeant in the chain of command. If the misconduct involved their sergeant, they would report that to their lieutenant or the shift commander.

Section 7 of the Law Enforcement Personnel Rules and Regulations states "No officer shall make, or cause to be made, any false or misleading statements." (R-13 at 6.) This includes to their supervisor or in any of their reporting, including to SID investigators.

Article 3, Professional Conduct, Section 2 states "No officer shall engage in threatening or assaultive conduct." (R-13 at 8.) Assaultive conduct would be using unauthorized physical force on someone. Threatening conduct would include threatening gestures or threatening language used towards someone.

The DOC Human Resources Bulletin lists all employee infractions and their sanctions. (R-15.) Employees receive a copy of this document during their academy training and once they arrive at their assigned facility. They are also provided with copies of it during their yearly block of training. HRB 84-17 is a copy of the Table of Offenses and Penalties (R-15 at 3). The table lists each offense and sets forth the minimum and maximum sanction that could be given for each offense depending on the number of infractions.

The Table of Offenses and Penalties, Section C. Personal Conduct, subsection 3 lists the first infraction for the "Physical or mental abuse of an inmate, patient, client resident, or employee" as an "R", which means removal. (R-15; DOC 154.) Note 5 states "Physical or mental abuse may be defined as a malicious act directed toward an inmate, patient, resident, client or employee with the intent to cause, pain, injury, suffering, or anguish (C-3)." There are no exceptions for removal under a C(3) charge because there is a zero-tolerance policy for that offense.

Subsection 5 under Personal Conduct lists the ranges for a first infraction for "Inappropriate physical contact or mistreatment of an inmate, patient, client, resident or employee" as from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 155.) There is such a wide minimum and maximum penalty for the first infraction because it would be due to the severity or the circumstances surrounding the events. So, if an officer is charged with a C(3) infraction, removal under C(5) would be appropriate because of the zero-tolerance policy for abuse.

Subsection 8 under Personal Conduct lists the ranges for a first infraction for "Falsification: Intentional Misstatement of material fact in connection with work, employment application, attendance, or in any record, report, investigation or other proceeding" as from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 155.) Again, this is because it depends on the circumstances involved or the severity of the offense. If there was a falsification charge for an officer during an SID investigation, that would be a more severe infraction and warrant removal.

Any time the DOC issues a policy or procedure to an employee, they have to sign a policy receipt form to prove they were issued the policy. A policy receipt form dated June 19, 2001, is signed by appellant acknowledging his receipt of the policy and his supervisor acknowledging that policy HRB 84-17 was provided to the appellant. (R-16.)

**Michael Grossman** testified on his own behalf. He is fifty-three years old. He graduated from Wildwood High School and has an associate degree in criminal justice with a minor in psychology from Atlantic County Community College. He graduated in

1998. He had various jobs before being hired by the DOC, including landscaping, driving a cab at night while attending college, and working at Wawa. He lived in Wildwood Crest, and most of the available jobs were seasonal. He entered the academy in 2000 and had been employed by the DOC for sixteen years when this incident occurred. He became a sergeant after nine years on the job. He passed the promotional exam for lieutenant but turned down the promotion because of this incident. His work history set forth in R-18 is accurate. He received an official written reprimand in 2001 when he was new and was backing up a van and backed into a pole.

Most of the instruction concerning what you can or cannot do with inmates was given in the academy, but they receive additional job training three times a year.

He reviewed the SID report prepared by Investigator Sesulka, which was mostly correct. Grossman did write a report about what happened and tried to turn it in but was not allowed to turn it in. The investigation report says he did not attempt to turn it in. The report also states that looking at the video, Grossman did not open the bottles and smell all three of them, which he says is not true, as he did smell and open all three bottles. He said he held up a bottle and showed Officer McCauley the bottle in the light. He did not see anything in the bottle but the red liquid. Grossman did not see that in the video when he watched the video.

Grossman received a call over his radio from Officer Melendez stating to call the landline, Unit 4. He immediately called, and she told him that she found hooch. He said okay and went from center control to Unit 4. He met the officer at the desk, went down 4 Right B Wing, and Officer Melendez was there. He asked her what she had, and she pointed to the three bottles on the footlocker that was on seven down. He looked at the bottles, he picked them up, he opened all three bottles, and smelled all three bottles. He was aware that he was on camera. There are two cameras on that wing, one on each end. Melendez told him she did a routine search and found these three items, and he asked her if she knew what was in them, and she said no. He asked her why she thought it was hooch, and she just shrugged her shoulders.

Grossman asked W.H. about the bottles. Initially he said they were not his and he did not have a lock. Grossman asked Melendez if there was a lock and she just smiled at him. He asked her again was the locker locked and she just shrugged her shoulders. The caps were on the bottles when Grossman arrived. He asked W.H. what was in the bottles, and he said it was cranberry juice. Grossman asked him what else was in it and he said that's it, just cranberry juice. He said they had just had cranberry juice on the line that morning. Officer Melendez verified that they had cranberry juice on the line that morning. They are allowed to take the cranberry juice back with them. It was ginger ale, and W.H. said he added cranberry juice to it. Grossman said he told W.H. to step away, and he asked Officer Melendez what she wanted to do with this, and she said "I want him locked up." Grossman asked her what she wanted him locked up for, as it was very hard to lock anyone up. His ability in this situation was to have her relieved to take the evidence she confiscated to center, and then the sergeant in center would log it into control and put it in the evidence locker. SID would come and determine what it was. That was the procedure in 2017. Prior to that time, the procedure was different. If an inmate was found with hooch or controlled dangerous substances, they would call the Center Keeper and the Center Keeper would be the one to say whether they should lock him up, which meant to put him in pre-hearing detention where he would wait until he had court line in pre-hearing detention.

Melendez told Grossman three times that she wanted W.H. locked up. Grossman told her "Confiscate the items, do a report, give the inmate the receipt and if you want to write him a charge, you can write him a charge." She said, "What do I write him a charge for?" Grossman said, "The only thing I could see is altering, but you write whatever you want, you found it." And she said, "I gotta write reports, I just want him locked up." Grossman said, "Well, you can't just take an inmate's freedom from him, he's in general population, you can't just do that." And she cursed and said, "That's bulls--t, you can do it." Grossman said "No, I cannot do it." He said, "If you want to confiscate it, I'll call the Lieutenant and let him make a determination." And she said, "F--k that, you do it." Then Melendez walked off the unit away from the evidence. McCauley told Grossman that he was not with Melendez when she found the bottles. Grossman did not find the contraband, so he could not write up a confiscation receipt.

After Melendez left, W.H. asked Grossman what was going on. Grossman said he guessed Melendez did not want anything to do with it, and Grossman was going to leave. W.H. said that the second shift is going to set him up and that Melendez was going to get them to set him up. Grossman said that there was some personal grievance between W.H. and Melendez but he did not know what it was. Melendez went to W.H.'s locker and just tore up his locker, threw all of his papers all over the wing, and just trashed all his property. So when W.H. asked Grossman what he was doing, he did not have anything to go on and told W.H. it was over. W.H. said that Melendez was going to set him up. Grossman said to W.H. "Well, avoid all the drama and go dump it." W.H. picked up the three bottles and started walking to the bathroom and then said that he did not want to throw them out, they were his and he bought them. Grossman asked W.H. what he wanted to do with them and W.H. asked him if he could drink them. Grossman replied that it was his property, and he did not care. Grossman did not find anything wrong with it, as all the inmates put juice in their soda, and it is an extremely common thing; you cannot even write an inmate up for altering anymore. Grossman did not threaten W.H. with charges.

W.H. took a sip and then put the bottle down and put his hands behind his back. Grossman asked him what he was doing and W.H. said he thought Grossman was setting him up. Grossman said he was not setting him up and did not care whether he drank it or not, but W.H. thought Grossman was going to lock him up because he was drinking it. W.H. drank all three bottles. At no time did Grossman order W.H. to do any calisthenics. Grossman was present the entire time W.H. was drinking the juice. W.H. went outside once and covered his mouth. Grossman asked him if he was okay and he said yes, he was just burping. W.H. came back in and started drinking more soda. He did go back out again as Grossman was leaving. W.H. had finished all the soda and Grossman told him to go outside and pick up all of his paperwork as Grossman was leaving. When Grossman came back, W.H. was outside running around, flapping his arms, and making noises.

Lt. Tuck called Grossman on the radio and ordered him to call him about the inmate drinking his soda. Lt. Tuck asked Grossman if he made an inmate drink hooch and Grossman told him no. Grossman was gone about five minutes. After he called Tuck,



Grossman returned to the wing, saw McCauley, and asked him where W.H. was, and he said he was outside. Grossman went to see Lt. Tuck at Center, who asked what happened and if the inmate was throwing up. Grossman replied that he did not see W.H. throw up. Lt. Tuck told Grossman to make sure the inmate went to the infirmary. W.H. went to the infirmary and then was sent back to the unit because he denied he was sick. Grossman said the nurse called the shift commander and told him that there was nothing wrong with the inmate and she was sending him back to his unit, which is general population. Grossman met with two unit reps and told them what happened, and then met with SID Investigator Williams and told him what happened. Investigator Williams has since passed away.

Grossman was then called into Major Rochow's office, who did not ask him what happened, but relieved him of duty. She asked him to turn in his badge and any equipment he had and said that he was not permitted back on the property pending further investigation. She told him not to worry about this, it was just an investigation, and Grossman said okay, and he left.

The prosecutor's office eventually charged him with a disorderly person's offense. He was tried and acquitted and then came back and gave a statement to Investigator Sesulka.

As W.H. was drinking the liquid he thanked Grossman at least three times. Grossman did not think there was anything wrong with letting W.H. drink the liquid because W.H. told Grossman that he drinks three to four bottles of soda every day.

Hooch has a pungent, almost rotting smell to it, and Grossman did not smell that at all. He saw a red liquid in the bottles. He picked up one of the bottles and smelled the contents. He told SID during his interview that he smelled more than one of the bottles of the ginger ale containers, but when he watched the video, he only saw him smelling one of the bottles on the video. Grossman testified that the video surveillance was tampered with or altered with since it did not show him checking all of the bottles, holding them up to the light, or having a conversation with McCauley about looking for bread or

fruit floating in the bottles. After seeing the red liquid in the bottles, after smelling the bottles and holding them up to the light, he did not think there was hooch in the bottles.

When W.H. was called to his bunk area, it was Grossman, Melendez, and McCauley present there with him. Grossman was the Unit Supervisor. W.H. drank all of the contents of the ginger ale bottles, which Grossman allowed. Grossman and McCauley were physically present while W.H. was drinking the ginger ale bottles, but Melendez had left. Grossman believed Melendez left before W.H. started drinking them. She left and came back at least two times. Grossman disagrees that W.H. was in any distress as he drank the ginger ale bottles. At no point in time did Grossman try to stop W.H. from drinking the ginger ale bottles.

Grossman stated that Melendez gave a false statement when she reported that Grossman ordered inmate W.H. to drink all three of the ginger ale bottles. Grossman also believed that McCauley gave a statement under duress. Grossman also believed to his knowledge, that McCauley was not disciplined for his part in this incident, but Grossman was shown McCauley's work history, which indicated that he received a 120-day suspension for his conduct in this case (R-24). The Work History for McCauley states that on April 19, 2017, "intoxicants (hooch) was found in Unit 4. You did not report or refer the inmate to Medical until you were ordered to do so. You did not intervene or act to protect the health and well-being of the inmate. The inmate drank the suspected intoxicant at 11:43 hrs. but was not evaluated by Medical until 14:28 hrs. You did not report the unusual incident or confiscate the contraband. 120 workday suspension." (R-24.) Grossman has not spoken to McCauley since the date of this incident, so he was not aware of this.

Officers Melendez and McCauley's statements that Grossman ordered W.H. to drink all three of the ginger ale bottles are false. Officer McCauley's statement that Grossman ordered W.H. to do jumping jacks is false. Inmate J.S. also gave false testimony to SID. Inmate W.H. gave false statements to SID. The video surveillance is mostly accurate but is missing parts.

**Robert McCauley** testified on behalf of the appellant. He was placed on administrative leave for approximately one month following this incident and returned to work. Following the criminal trial against Sgt. Grossman in approximately 2020 and the finding of not guilty, Sgt. Grossman returned to work and was then served with the removal papers. Four days after that, Mr. McCauley was served with charges. The State of New Jersey Department of Corrections Work History for Robert McCauley from January 1, 1985, to March 22, 2021, indicates that as a result of an incident that occurred on April 19, 2017, Mr. McCauley was suspended. The comments section in the report indicated "Intoxicants (hooch) was found in Unit 4. You did not report or refer the inmate to medical until you were ordered to do so. You did not intervene or act to protect the health and well-being of the inmate. The inmate drank the suspected intoxicant at 11:43 hrs. but was not evaluated by medical until 14:28 hrs. You did not report the unusual incident or confiscate the contraband, 120 workday suspension." (R-24.) He testified that despite what it says on the form, he was not suspended.

It was stipulated that Mr. McCauley was removed following an October 29, 2020, positive random drug test. He was represented by Mr. McCann, and the matter is on appeal.

## **Discussion**

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

Sgt. Grossman's testimony was that he let the inmate drink the contents of the three bottles because the inmate requested to and said that it was his soda and he wanted to drink it all. Grossman denied instructing W.H. to drink the bottles. Grossman had

picked up one of the bottles and smelled it, and it did not have the pungent rotting smell of hooch to it. Grossman said that he saw nothing wrong with allowing W.H. to drink the liquid, as the bottles contained soda mixed with juice and all the inmates put juice in their soda. It is an extremely common thing, and you cannot write an inmate up for altering anymore. Grossman did not think there was anything wrong with letting W.H. drink all three bottles because W.H. told Grossman that he drinks three to four bottles of soda every day. Grossman denied making W.H. do jumping jacks and denied that W.H. was in any distress while drinking the contents of all three of the soda bottles. Grossman stated Officer Melendez lied, Officer McCauley lied, inmate W.H. lied, and the video surveillance is wrong.

It is unlikely that everyone else lied aside from Sgt. Grossman, given his interest and motivation in saving his career.

I reject Sgt. Grossman's testimony as inherently incredible because it is inconsistent and overborne by the testimony of W.H. and Senior Corrections Police Officer (SCPO) Melendez as well as the other evidence in the case, including the investigation report, statements of McCauley and inmate J.S., and the video surveillance. The consistent theme throughout all of the evidence was that they found three bottles of suspected hooch, Sgt. Grossman made W.H. drink it, he drank it, and as a result W.H. ended up vomiting. Sgt. Grossman also made W.H. do jumping jacks.

Although inmate W.H. indicated in his statements and his testimony that Sgt. Grossman did not specifically 'order' him to drink the bottles, it was implied that if he did not do so, there would be repercussions. This testimony is quite credible given the balance of power between a corrections officer and an inmate, with Sgt. Grossman as the supervisor/authority figure wielding power over the inmates who are instructed to obey corrections officers. SCPO Melendez' very credible testimony was that Grossman told W.H. if it was juice in the three containers as W.H. said it was, then Grossman wanted W.H. to drink it to prove it. When a corrections officer tells an inmate to do something, that is an order.

The most compelling testimony came from SCPO Melendez, who knew what was happening was wrong. Melendez told W.H. that he did not have to drink the contents in the three bottles, despite her supervisor, Grossman ordering the inmate to do so. She removed herself from the situation, reported it to Lt. Tuck, and reported it in writing in her Special Custody Report (R-6) as required by the Law Enforcement Personnel Rules and Regulations (R-13).

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

On April 19, 2017, appellant Michael Grossman, a Sergeant of Corrections at the SSCF, was working first shift and was the area supervisor in charge of Unit 4.

On April 19, 2017, Senior Corrections Police Officers Gloria Melendez and Robert McCauley were working the first shift and assigned to Unit 4 at the SSCF, and Sgt. Grossman was their supervisor.

W.H. was in inmate at the SSCF on April 19, 2017, assigned to Unit 4-Right, B wing, bed 8U.

On April 19, 2017, at approximately 11:15 a.m., Officer Melendez received a phone call from the infirmary that W.H. was in possession of hooch. Officer Melendez and her partner Officer McCauley conducted a search of W.H.'s bed area and found three twenty-four-ounce bottles of what appeared to be hooch contained in three "Day's" ginger ale bottles in W.H.'s locker. They also found a fourth unopened, sealed ginger ale bottle.

Officer Melendez notified their area supervisor, Sgt. Grossman, by telephone what they found, and Sgt. Grossman reported to Unit 4. He directed Officer Melendez to call W.H. to his bed area where the contraband was found. When inmate W.H. arrived, Sgt. Grossman asked W.H. what was in the bottles. Inmate W.H. stated that it looked like juice. Sgt. Grossman said "If you think it's juice, let me see you drink it." Inmate W.H. said "No." Sgt. Grossman said, "You are going to show me that it is juice by drinking it."

Inmate W.H. took a sip of the bottle and put it down. Sgt. Grossman told inmate W.H. to finish that bottle and drink the other two. When inmate W.H. began to drink again, Officer Melendez told inmate W.H. "You don't have to drink that, put it down." Sgt. Grossman stated, "No, you are going to drink it all and finish these two." Officer Melendez stated that she was not going to be a part of this and walked away. When she returned to the wing, she noticed that the three bottles were empty and that inmate W.H. was outside in the grass by the fire exit. Inmate W.H. appeared to be shaken up. Officer Melendez asked him if he was okay, and inmate W.H. stated that he needed to throw up. Inmate W.H. began to vomit. Officer Melendez reported the incident to Lt. Tuck. (R-6.)

The Special Custody Report of Lt. Tuck indicates that he received a phone call in Center Control at approximately 12:00 p.m. from Unit 4 Officer Melendez stating that Sgt. Grossman had inmate W.H. drink three bottles of an unknown substance. SCPO Melendez stated that this led to inmate W.H. vomiting and that she was not losing her job for anyone. At this time, Lt. Tuck had SCPO Melendez relieved and contacted Sgt. Grossman and ordered him to have inmate W.H. sent to the infirmary for medical evaluation. (R-7.)

A review of video surveillance footage from April 19, 2017, indicated that at approximately 11:24 a.m., Melendez and McCauley began to conduct a search of inmate W.H.'s bed area on Unit 4-Right. At approximately 11:34 a.m. Melendez is observed showing three green soda bottles to Sgt. Grossman, wherein he opens one bottle, brings it closer to his nose, and appears to smell it. At approximately 11:42 a.m. inmate W.H. arrives at his bed area, and also present in the area are Sgt. Grossman, Melendez, and McCauley. Sgt. Grossman points to one of the bottles and it appears he is talking to inmate W.H. At approximately 11:43 a.m., inmate W.H. picks up one of the bottles, takes one sip, puts the bottle cap back on, and places it back down. It appears Sgt. Grossman talks to inmate W.H. after he places the bottle down. Inmate W.H. then picks up the same bottle and starts drinking it. At this point Melendez leaves the area. The video surveillance shows inmate W.H. drinking all three bottles in the presence of Sgt. Grossman and Officer McCauley. At approximately 11:47 a.m. while drinking the third bottle, inmate W.H. is seen placing his hand on his mouth and putting his head outside through the open door leading outside of the building. He is off camera for approximately

ten seconds. Inmate W.H. then comes back inside the building and finishes the rest of the third bottle. At approximately 11:48 a.m. inmate W.H. is observed going outside again through the open door and re-entering at approximately 11:58 a.m., wherein Sgt. Grossman, Officer McCauley, and W.H. are seen walking away from inmate W.H.'s assigned bed area. (R-20.)

W.H. testified that he was making wine for personal consumption. The three bottles in R-4 contained partially fermented fruit juice. He had drunk the ginger ale and replaced it with fruit juice and little chunks of bread from the meal line, which began the fermentation process. The contents of all three bottles were red in color, so it may have been cranberry juice that he used. That morning, he had opened the bottles to let the gas out and resealed them to keep in some of the carbonation. Each of the three bottles had juice, sugar, and bread in them, which gets strained out after two weeks. W.H. stated he had been working on this process for less than two weeks. A complete fermentation is a minimum of three weeks to be safe to drink, but four weeks is preferable.

W.H. was seen in the infirmary for an upset stomach. He refused treatment, as he said he was feeling better (R-10).

Inmate J.S. sent an email on the prison email system JPAY reporting that on April 19, 2017, Sgt. Grossman made an inmate go outside behind Unit 4 during noon count and do jumping jacks until he threw up and had to go to medical. Inmate J.S. said he witnessed this through the window on his wing (R-9).

SCPO McCauley in his SID interview stated that he and SCPO Melendez were conducting a search in inmate W.H.'s locker and found four ginger ale bottles, one of them with the factory seal still in place. McCauley stated the other three were suspected of being hooch, or homemade alcohol. They requested Sgt. Grossman to come to the area and showed him the bottles, wherein Sgt. Grossman requested inmate W.H. to report to the area. Inmate W.H. told Sgt. Grossman multiple times that the three ginger ale bottles contained juice in them. Sgt. Grossman told inmate W.H. if they were just juice then go ahead and drink them. After inmate W.H. began drinking the bottles, Melendez stated "I am not staying here for this crap" and that she was going to tell the Center

Keeper. Inmate W.H. drank all three bottles and subsequently went outside through the fire exit door and began to vomit. Sgt. Grossman told inmate W.H. to do fifty jumping jacks. After Sgt. Grossman left the area, SCPO McCauley told inmate W.H. to stop doing jumping jacks and come back inside. (R-11 at 3)

Investigator Patrick Sesulka of the NJDOC Special Investigations Division conducted an internal affairs investigation into staff misconduct by Sgt. Grossman in connection with this incident with inmate W.H. on April 19, 2017 (R-11). The Investigation Report (R-11) was referred to the Cumberland County Prosecutor's Office, who charged Sgt. Grossman with one criminal complaint for N.J.S.A. 2C:24-7.1(a), Endangering another person, which is a Disorderly Persons Offense. Judge William F. Ziegler found Sgt. Grossman not guilty, and the case was referred back to the DOC for administrative action.

When corrections officers graduate from the academy, they are provided with the Handbook of Information and Rules for Employees of New Jersey Department of Corrections (R-12). This handbook applies to all custody ranks within the DOC.

The General Rules and Regulations, Section B states "Every employee of the Department shall be held responsible for the efficient performance of duties assigned and for the proper supervision of any inmate detailed to work under his direction." (R-12 at 3.)

Section P states "There shall be no corporal punishment and no employee shall strike or lay hands on an inmate unless it be in defense of himself or necessary to prevent escape or serious injury to person or property, or to quell a disturbance." (R-12 at 6.) This provision refers only to physical contact. Instances of corporal punishment without physical contact can be general hazing, abuse, profane or abusive language towards an inmate, destroying his property, destroying his bed area, or physical intimidation without actual physical force being used.



The Law Enforcement Personnel Rules and Regulations are the specific law enforcement personnel rules for the department (R-13). Officers can be disciplined under this policy which applies to all custody staff.

Section 6 states: "An officer shall promptly report in writing through the chain of command all crimes, misconduct or unusual incidents which come to the officer's attention during the performance of duty. An officer shall not withhold any information on such matters for any reason unless during the course of a formal interrogation the officer was issued Garrity Rights and has been Mirandized." (R-13 at 6.)

Section 7 of the Law Enforcement Personnel Rules and Regulations states "No officer shall make, or cause to be made, any false or misleading statements." (R-13 at 6.) This includes to their supervisor or in any of their reporting, including to SID investigators.

Article 3, Professional Conduct, Section 2 states "No officer shall engage in threatening or assaultive conduct." (R-13 at 8.)

The DOC Human Resources Bulletin 84-17, as amended, lists all employee infractions and their sanctions (R-15). Employees receive a copy of this document during their academy training and once they arrive at their assigned facility. They are also provided with copies of it during their yearly block of training. HRB 84-17 is a copy of the Table of Offenses and Penalties (R-15 at 3). The table lists each offense and sets forth the minimum and maximum sanction that could be given for each offense depending on the number of infractions.

Appellant signed an acknowledgment of policy receipt form for the DOC HRB 84-17 on June 19, 2001, (R-16).

The Table of Offenses and Penalties, Section C. Personal Conduct, subsection 3 lists the first infraction for the "Physical or mental abuse of an inmate, patient, client resident, or employee" as an "R", which means removal. (R-15; DOC 154). Note 5 states "Physical or mental abuse may be defined as a malicious act directed toward an inmate,

patient, resident, client or employee with the intent to cause, pain, injury, suffering, or anguish (C-3)." There are no exceptions for removal under a C(3) charge because there is a zero-tolerance policy for that offense.

Subsection 5 of Section C. Personal Conduct lists the ranges for a first infraction for "Inappropriate physical contact or mistreatment of an inmate, patient, client, resident or employee" as from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 155.)

Subsection 8, Section C. Personal Conduct lists the ranges of penalties for a first infraction for "Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance, or in any record, report, investigation or other proceeding." The range is from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 155.)

Subsection 11 of Section C. Personal Conduct lists the ranges for a first infraction for "Conduct unbecoming an employee" as from a "3d – R", which is a three working day suspension up to a removal. (R-15; DOC 156.)

Section D. Safety and Security Precautions, subsection 1 lists the penalties for a first infraction for "Negligence in performing duty resulting in injury to persons or damage to property" as from a "5d – R", which is a five working day suspension up to a removal. (R-15; DOC 160.)

Section D. Safety and Security Precautions, subsection 7 lists the penalties for a first infraction for "Violation of administrative procedures and/or regulations involving safety and security" as from a "OWR – R", which is an official written reprimand to a removal. (R-15; DOC 160.)

Section E. General, subsection 1. "Violation of a rule, regulation, policy, procedure order or administrative decision" lists the ranges for a first infraction as from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 164.)

Sgt. Grossman failed to promptly report in writing through the chain of command all crimes, misconduct, or unusual incidents which came to his attention during his performance of duty on April 19, 2017. Sgt. Grossman failed to file a Special Custody Report concerning the incident involving W.H. on April 19, 2017.

Sgt. Grossman made false and misleading statements in his interview with SID Investigators on January 14, 2020, (R-11 at 5–7).

Sgt. Grossman failed to immediately send W.H. to the infirmary after the inmate consumed the three bottles of suspected hooch on Sgt. Grossman's orders.

Sgt. Grossman did not confiscate the contraband at issue or issue inmate W.H. charges, nor did he, as a supervisor, ensure staff under his supervision did this either.

Sgt. Grossman's Work History indicated that the only discipline he received was an official written reprimand, early on in his career (R-18).

### **LEGAL DISCUSSION AND ANALYSIS**

Appellant's rights and duties are governed by laws, including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.

The appointing authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co, 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co.,

26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant was charged with "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't. of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Appellant's status as a corrections sergeant subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The DOC has a zero-tolerance policy for abuse by corrections officers against an inmate. Sgt. Grossman's conduct on April 19, 2017, caused inmate W.H. to ingest the three bottles of fermenting fruit juice that W.H. was attempting to make into hooch. On

Sgt. Grossman's orders, W.H. drank the three twenty-four-ounce bottles of fermenting fruit juice contained in the Day's ginger ale bottles, became ill, and vomited. Sgt. Grossman recklessly and maliciously placed the inmate under his care and authority in harm's way. His actions put the inmate in medical distress. He directed the inmate to go outside and do jumping jacks. Sgt. Grossman did not refer inmate W.H. to medical. This is abuse and neglect, a violation of Sgt. Grossman's sworn oath as a state Law Enforcement Correctional Police Sergeant, and a violation of the rules and regulations of the NJDOC. Sgt. Grossman's conduct is contrary to relevant rules and regulations, is unbecoming a law enforcement officer and a public employee, violates the public trust, and damages the core mission of the DOC.

Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of N.J.A.C. 4A:2-2.3(a)(6), Conduct Unbecoming a Public Employee, by a preponderance of the credible evidence.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Corrections officers are held to a higher standard than non-custody staff, as they are members of law enforcement. Every employee of the Department shall be held responsible for the efficient performance of duties assigned and for the proper supervision of any inmate detailed to work under his direction. The Department has a zero-tolerance policy for abuse of inmates by corrections officers. As set forth in the findings of facts and as discussed above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a corrections sergeant.

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

Appellant has also been charged with violations of HRB 84-17, as amended, including: C(3) Physical or mental abuse of an inmate, patient, client, resident or

employee; C(5) Inappropriate physical contact or mistreatment of inmate, patient, client, resident or employee; C(8) Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance or any record, report, investigation or other proceeding; C(11) Conduct unbecoming an employee; D(1) Negligence in performing duty resulting in injury to persons or damage to property; D(7) Violation of administrative procedures and/or regulations involving safety and security; and E(1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

As set forth in the findings of fact and as discussed above, Sgt. Grossman's conduct in ordering W.H. to drink the three twenty-four-ounce bottles of the contraband liquid, watching W.H. drink all of the liquid and get ill, and then ordering W.H. to do jumping jacks afterwards and not referring him immediately to the medical unit constitutes physical and mental abuse of an inmate and is a violation of C(3) and C(5). It also is a violation of the DOC's policy on zero-tolerance for abuse of an inmate by a corrections officer and a violation of D(7) Violation of administration procedures and/or regulations involving safety and security; and E(1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

Sgt. Grossman's failure to seize the contraband or order his subordinates to seize the contraband, his order for W.H. to consume it all and become ill as a result, and his failure to refer inmate W.H. to medical are also violations of D(1) Negligence in performing duty resulting in injury to persons; D(7) Violation of administration procedures and/or regulations involving safety and security; and E(1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

Sgt. Grossman's failure to submit a special custody report following this incident is a violation of Section 6 of the Law Enforcement Personnel Rules and Regulations, which requires an officer to promptly report in writing through the chain of command all crimes, misconduct, or unusual incidents which come to the officer's attention during the performance of duty and a violation of D(7) Violation of administration procedures and/or regulations involving safety and security; and E(1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

Sgt. Grossman's intentional misstatement of material facts in connection with the SID investigation is a violation of C(8) Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance or any record, report, investigation, or other proceeding.

Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing violations of HRB 84-17 as amended, sections C(3), C(5), C(8), C(11), D(1), D(7), and E(1) by a preponderance of the credible evidence.

### **PENALTY**

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Sgt. Grossman's work history indicated that the only discipline he received was an official written reprimand, early on in his career (R-18)

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

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), (citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate"

to offense)); see also Herrmann at 33 (Division of Youth and Family Services worker who snapped lighter in front of five-year-old):

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

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Appellant has been found to have violated N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause; and committed violations of HRB 84-17, as amended, including: C(3) Physical or mental abuse of an inmate, patient, client, resident or employee; C(5) Inappropriate physical contact or mistreatment of inmate, patient, client, resident or employee; C(8) Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance or any record, report, investigation or other proceeding; C(11) Conduct unbecoming an employee; D(1) Negligence in performing duty resulting in injury to persons or damage to property; D(7) Violation of administrative procedures and/or regulations involving safety and security; and E(1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

The DOC has a zero-tolerance policy for abuse by corrections officers against an inmate. Sgt. Grossman's conduct on April 19, 2017, caused inmate W.H. to ingest the three bottles of fermenting fruit juice that W.H. was attempting to make into hooch. On Sgt. Grossman's orders, W.H. drank the three twenty-four-ounce bottles of fermenting fruit juice contained in the Day's ginger ale bottles, became ill, and vomited. Sgt. Grossman recklessly and maliciously placed the inmate under his care and authority in harm's way. His actions put the inmate in medical distress. He directed the inmate to go



outside and do jumping jacks. Sgt. Grossman did not refer inmate W.H. to medical. This is abuse and neglect, a violation of Sgt. Grossman's sworn oath as a state Law Enforcement Correctional Police Sergeant, and a violation of the rules and regulations of the NJDOC. Sgt. Grossman's conduct is contrary to relevant rules and regulations, is unbecoming a law enforcement officer and a public employee, violates the public trust, and damages the core mission of the DOC.

The Table of Offenses and Penalties, Section C. Personal Conduct, subsection 3 lists the first infraction for the "Physical or mental abuse of an inmate, patient, client resident, or employee" as an "R", which means removal. (R-15; DOC 154.) Note 5 states "Physical or mental abuse may be defined as a malicious act directed toward an inmate, patient, resident, client or employee with the intent to cause, pain, injury, suffering, or anguish (C-3)." There are no exceptions for removal under a C(3) charge because there is a zero-tolerance policy for that offense.

Subsection 5 of Section C. Personal Conduct lists the ranges for a first infraction for "Inappropriate physical contact or mistreatment of an inmate, patient, client, resident or employee" as from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 155.)

Subsection 8, Section C. Personal Conduct lists the ranges of penalties for a first infraction for "Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance, or in any record, report, investigation or other proceeding." The range is from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 155.)

Subsection 11 of Section C. Personal Conduct lists the ranges for a first infraction for "Conduct unbecoming an employee" as from a "3d – R", which is a three working day suspension up to a removal. (R-15; DOC 156.)

Section D. Safety and Security Precautions, subsection 1 lists the penalties for a first infraction for "Negligence in performing duty resulting in injury to persons or damage

to property" as from a "5d – R", which is a five working day suspension up to a removal. (R-15; DOC 160.)

Section D. Safety and Security Precautions, subsection 7 lists the penalties for a first infraction for "Violation of administrative procedures and/or regulations involving safety and security" as from an "OWR – R", which is an official written reprimand to a removal. (R-15; DOC 160.)

Section E. General, subsection 1. "Violation of a rule, regulation, policy, procedure order or administrative decision" lists the ranges for a first infraction as from an "OWR – R", which is an official written reprimand up to a removal. (R-15; DOC 164.)

The facts of this case are sufficiently severe to warrant removal under HRB 84-17, sections C(3) and C(5) as well as sections C(8), C(11), D(1), D(7), and E(1).

Therefore, I **CONCLUDE** respondent's actions in removing appellant from his position are appropriate and in accordance with the guidelines set forth in HRB 84-17, as amended, Table of Offenses and Penalties.

### **ORDER**

It is **ORDERED** that the charges as set forth above are **SUSTAINED**.

It is also **ORDERED** that the penalty of removal is **AFFIRMED**. Appellant's appeal is **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify, or reject this decision

within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

April 20, 2024  
DATE

  
CATHERINE A. TUOHY, ALJ

Date Received at Agency: April 20, 2024

Date Mailed to Parties: April 20, 2024

CAT/sg/jm

**APPENDIX**

**WITNESSES**

**For appellant**

Michael Grossman

Robert McCauley

**For respondent**

W.H.

Gloria Melendez

Otis Truitt

Patrick Sesulka

Michael Ryan

**EXHIBITS**

**Joint**

J-1 PNDA dated 1/30/20

J-2 FNDA dated 2/3/20

**For appellant**

P-1 Letter from County Prosecutor's Office enclosing Infirmary Logs, pages 138, 139 and 140

P-2 Administrative Caseload Face Sheet Report, W.H.

P-3 Handwritten statement of W.H. (not typed first page)

P-4 Southern State Correctional Facility Inter-Office Memorandum to Center A from Medical A, dated 4/19/17

P-5 Cumberland County Prosecutor's Office Transcript of statement of W.H. taken by Investigator Cacicia on 4/19/17

- P-6 Cumberland County Prosecutor's Office Transcript of statement of W.H. taken by Investigators Sesulka and Soltys on May 4, 2017
- P-7 Cumberland County Prosecutor's Office Transcript of statement of SCPO Gloria Melendez taken by Investigator Caciccia on June 5, 2017
- P-8 Prosecutor's October 5, 2018, letter to Kevin McCann re: preservation of video surveillance footage

**For Respondent**

- R-1 PNDA dated 1/30/20
- R-2 FNDA dated 2/3/20
- R-3 Seizure of Contraband Report
- R-4 Photographs of Bottles
- R-5 Special Custody Report by SCPO McCauley
- R-6 Special Custody Report by SCPO Melendez
- R-7 Special Custody Report by Lt. Tuck
- R-8 Special Custody Report by Lt. Truitt
- R-9 Inmate Form dated 4/20/17
- R-10 NJDOC Health Services Request Form
- R-11 SID Investigation Report
- R-12 NJDOC Handbook of Information and Rules
- R-13 NJDOC Law Enforcement Personnel Rules and Regulations
- R-14 DOC IMP ADM. 010.001
- R-15 HRB 84-17
- R-16 HRB 84-17 Policy Receipt Form
- R-17 Policy Acknowledgment Receipt Form
- R-18 Grossman Work History
- R-19 Weingarten Administrative Rights of SCPO Grossman

R-20 Video Surveillance Footage

R-21 DVD of audio interview Sgt. Michael Grossman

R-22 DVD of video interview Sgt. Michael Grossman

A. 1 of 3

B. 2 of 3

C. 3 of 3

R-23 DVD of surveillance and interviews of:

A. W.H.

B. J.S. (not admitted into evidence)

C. Melendez

D. McCauley

R-24 NJDOC Work History of McCauley