



STATE OF NEW JERSEY

In the Matter of Robert Mapes  
Morris County Sheriff's Office

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FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-2917  
OAL DKT. NO. CSV 06418-18

ISSUED: OCTOBER 19, 2018 BW

The appeal of Robert Mapes, County Correction Sergeant, Morris County Sheriff's Office, 30 working day suspension, on charges, was heard by Administrative Law Judge Ernest M. Bongiovanni, who rendered his initial decision on September 12, 2018. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on October 17, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Robert Mapes.

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 17<sup>th</sup> DAY OF OCTOBER, 2018



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment



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

**INITIAL DECISION**

OAL DKT NO. CSV 06418-18

AGENCY REF. NO. CSC 2018-2917

**IN THE MATTER OF ROBERT MAPES,  
MORRIS COUNTY SHERIFF'S OFFICE.**

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**Peter N. Gilbreth, Esq., or appellant, Robert Mapes**

**Robert J. Greenbaum, Esq., for respondent, Morris County Sheriff's Office**

Record Closed: August 1, 2018

Decided: September 12, 2018

**BEFORE ERNEST M. BONGIOVANNI, ALJ:**

**STATEMENT OF THE CASE**

Sgt. Robert Mapes (appellant/Mapes) challenges the Final Notice of Disciplinary Action (FNDA) dated January 8, 2018, imposing a thirty working days suspension for failing to interrupt inappropriate or excessive force by a fellow sworn staff member, in violation of the policy on Use of Force (UOF). He is also charged with failure to follow policy and procedure in reporting an incident involving the use of force without mentioning the nature of the use of force or injury to an inmate in the incident report, and for his failure to follow the reporting requirements of the Injury to Inmate reporting procedure.

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13 to the Office of Administrative Law, where it was filed on May 4, 2018. The hearing was held on August 1, 2018 at which time the record was closed.

### **SUMMARY OF FACTS**

The evidence consisted of joint exhibits following an investigation a Use of Force (UOF) incident conducted by the Internal Affairs unit of the Morris County Correction Facility (MCCF). The following facts were not disputed.

Mapes is a Sheriff's officer employed by the Morris County Sheriff's Office at the MCCF. In the early morning of April 4, 2017, Mapes was the supervising officer who, with four other officers, was responsible for transferring an inmate, Michael Utter, from Housing Unit 3A to 3D. The relevant part of the transfer was videotaped in color and with sound, by an officer per Departmental policy. During the transfer, Utter was placed in Cellblock #9. In the process of being uncuffed, a UOF incident against the inmate took place, at which time, fellow Officer Michael Provenzano used excessive force by employing unnecessary punches and a kick to the inmate's facial area while he was being pressed to the ground by Provenzano and three other officers.

Soon after the incident, Mapes completed an incident report (J-3) which did not mention the eight blows to the head/face received by Utter or any subsequent other blows to the inmate's face by Provenzano; nor did the report mention that the inmate had complained immediately of being beat up and struck in the face by the officers or officer. Mapes was supervising investigator of the incident. During that investigation, he failed to seek a witness statement from the inmate. He also signed two "Injury to Inmate" reports which also failed to mention the multiple blows to the face.

As a result of the UOF and the events that immediately followed it, Mapes was charged with failing to interrupt a fellow officer who was using excessive force and

failing in multiple reporting requirements to accurately report these events. (J-4). After a departmental hearing, Mapes received a 30 working days suspension. (J-5).

### EVIDENCE

Corporal Santana Internal Affairs (IA) Investigator for the Morris County Sherriff's Office testified first. He has been employed by the Morris County Sheriff's Office for 22 years. He has worked for Internal Affairs at the Morris County Correctional Facility (MCCF)/ Correctional Facility) since 2012. Before that, he worked in the Intake unit at the Facility for several years. He was the administrative investigating officer for the investigation concerning the UOF Incident that occurred on April 4, 2017. The investigation included interviews of the officers involved in the incident, an interview of inmate Utter, and a review of the video recorded incident. Corporal Santana's detailed report (R-1), also included a summary of relevant policies which he claimed justified the charges against Sgt Mapes. Santana also presented the Video, (J-1) as evidence.

#### The Video

The following explanation of this evidence is a result of multiple examinations of the 16-minute video. For clarity, it is divided by into three sections.

##### 1. The Transfer to cellblock #9

The inmate is first seen in cuffs with hands behind his back and being escorted by four officers, one each holding the arm on either side of him. Two others are close behind, with Mapes directing them, from one corridor on the 3<sup>rd</sup> floor of the MCCF into and out of an elevator to another floor towards what was later described as Cellblock #9 on the first floor. The transfer proceeds without incident for a minute, then Inmate Utter looks toward Officer Provenzano, who is holding the inmates left arm and says, "You have my arm tight." Just before being led into an elevator, the inmate is seen slightly pulling his shoulder away from Officer Provenzano. The transfer process without incident for about a minute, until soon after the inmate and officers enter Cellblock #9.

## 2. The Use of Force (UOF) Incident.

The inmate is guided to face a wall in the cellblock and is made to kneel on a bench while facing the wall. Officer Salonia begins to remove his cuffs. Just after Utter's left hand is freed from the cuffs, without being ordered to, the inmate places his left hand firmly against the wall, while Officer Provenzano remains with his grip on Utter's left side and holds his hand to the wall. Utter is ordered by Mapes to "Stay in that position until you hear the door shut." Although Utter's right arm, still behind his back, cannot be fully seen, Officer Salonia is apparently attempting to remove the cuff when something causes him to shout at Utter to "Stop it, stop!" Utter responds by saying "What are you doing bro?". Almost immediately after, the officers surge toward the inmate who yells in apparent anger or possibly pain and is then pushed to the ground by the combined force of the officers. Mapes almost immediately sounds an alarm by using his body radio and unhooks his "OC" (pepper spray) canister from his holster.

With the inmate's body pressed to the ground, Provenzano, still gripping the inmate, punches Utter's face and head with eight rapid blows with his right fist. Mapes is observed facing Provenzano and Utter just before the blows to the face are delivered. Mapes then goes to the other side of Utter's body, which is now seen to be pinned to the ground by the other three officers. Provenzano, who has now stood up and repositioned himself on the same side as Mapes, delivers another strike with his right fist to Utter's head. He also "knees" the supine inmate just before getting to the other side of him. Sergeant Shawn Johnston who entered the cell, in response to the alarm, directs Utter to "stop resisting". Provenzano then issues two more strikes to Utter's head/upper body. Sgt. Johnson issues another command to "stop resisting." Mapes sprays Utter's face with the OC. Soon thereafter, with some of the officers showing some effect of the spray (e.g. coughing, spitting)<sup>1</sup> the inmate is fully secured.

## 3. Decontamination of the OC and nurse's treatment following the Use of Force

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<sup>1</sup> It is not clear when the pepper spray was first deployed. It may have been deployed soon after Sgt. Mapes is first seen pointing it in the direction of Utter, or while Mapes was going around Provenzano to the other side of Utter. Only one blast of spray is completely shown on camera, right after or just as Provenzano gives a final punch to the inmate. Within a second or two of that blast of OC the inmate and officers seem to show a clear reaction to the spray.

The remaining 13 minutes of the video show Utter being decontaminated in a shower, twice getting drops administered by a nurse, getting changed into dry clothes and slippers, being photographed and being led into another Cell (Cell#2) The relevant portions of the video shows that at various times beginning immediately after the Use of Force, Utter complains repeatedly of "being punched in the face" and questions why the officers they had to do that. Utter asks for the police to be called while repeating the repeated the allegations. After Utter to complains to all those around him "Why did you punch me in the face?", Mapes replies by saying "just be quiet till we get it checked and conned" (meaning decontamination). A few minutes later, during a medical assessment and treatment for the OC Spray near the Intake unit's work station, Mapes asks the Inmate "Claiming any injuries? Besides your face?" Mapes then has photographs taken of Utter's face. A minute later as Utter still complains of being hit in the face, Mapes tells him to "Be quiet."

After presenting the video of the incident, Corporal Santana also testified concerning the interviews he supervised of the inmate and the officers involved in the incident. Interviews of the Officers and the Inmate.

The inmate, interviewed one week after the UOF incident, admitted that during the uncuffing, after his one hand was freed, he tensed up his body because of the aggression used in placing his hand to the wall, and even clenched his fist. However, he believed the officers' actions were instigated not by any resistance by him, but rather by comments made between him and Officer Salonia just prior to the escort. He stated he never resisted nor intended to resist. He noted that during the UOF, his head bounced off the ground because of the blows to the head.

Officer Provenzano claimed the initial blows he delivered to the inmate's head and face were justified because as they both came down to the ground "he (Utter) had my arm." However, he conceded his very last strike to the inmate was not necessary.

R-1, page 16<sup>2</sup> The other officers made somewhat contradictory accounts of the events, none of which are relevant to the issues in dispute and are hence not detailed here.

Sgt. Mape's Interview

He was interviewed October 26, 2017, with his counsel present. His interview was audiotaped (J-2). Appropriate instructions and cautions, including a warning that it was a violation of his oath to fail to give truthful and complete information. Mapes stated:

He was the supervisor in charge of the transfer of the inmate. He reviewed the video after the incident and reviewed it before the interview. He described the inmate, with whom he had prior experience, as a "mouthy type" but who cooperates. When the UOF began, Mapes turned his attention away from the action to sound his body alarm and unholster his OC spray. He claimed he didn't see the first series of blows administered by Provenzano, but he did witness the final series of blows.

He admitted the use of force to the inmate was "excessive" or "borderline excessive." He said that a compliance hold would have been more correct and more effective. He said the strikes to the inmate's face were "questionable" and "weren't the best judgement to control the situation." He also admitted that Inmate Utter had repeatedly alleged to Mapes that he had been punched in the face during the incident.

Mapes claimed to have little experience in use of force incidents as a supervisor. He was unaware of the details of the Morris County Sheriff's Office Use of Force Policy and Procedure. The policy requires the staff officer to whom the allegation is first reported to complete an allegation of force incident report. Mapes admitted he did not make such report. About his unfamiliarity with the policy, Mapes said he was "still learning."

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<sup>2</sup> His words regarding whether he thought that strike was necessary were "I wouldn't say necessary, no."



Similarly, Mapes was questioned about the written incident report he made soon after the event. His incident report, in pertinent part said that:

A UOR 15-17 occurred...Inmate Utter was given numerous orders from me to stop resisting and failed to comply with all orders. This supervisor applied a short burst of OC to the facial area of Inmate Utter. After this was done, Inmate Utter was placed back in handcuffs, and escorted to the shower area to be decontaminated. This was done without further incident.

Thus, in describing the use of force, Mapes never mentioned the multiple blows administered to the inmate's head and face, nor that the inmate immediately thereafter complained of getting punched and kicked in the face. Mapes attributed any failings to being "overwhelmed" and having "lack of experience... I didn't know half what I needed to know."

#### The disciplinary charges and penalty

Corporal Santana stated that. Mapes failed to exercise the command presence required by a supervisor. Specifically, he was charged with failing to follow, MCCF Policy and Procedure, Use of Force, Number 1:8.6 Section II, which states:

C. Sworn staff is expected to interrupt the flow of events to ensure that a fellow sworn staff member does not resort to employing an inappropriate or excessive use of force.

The Guidelines to this policy include:

E. USE OF FORCE TECHNIQUES (NON-DEADLY FORCE) (which states, in pertinent part)

The amount of force shall only be that which is necessary in the circumstances to restrain the inmate and control the situation. For example, blows should not be struck if control holds would be adequate to restrain the inmate. Multiple blows should not be employed if a single blow is adequate to stop the inmate's attack. Unless unavoidable, blows should be directed away from the head and kicks should not be used.

Regarding this charge, Santana stated that Mapes admitted witnessing the second series of blows to the head and face. During the incident, he issued no orders to resist. He failed to tell Officer Provenzano to stop punching the inmate and did not physically intercede in any way.

According to Santana, Mapes, also failed to follow, from the same Policy, IV Procedures E. Allegation of Force, which states:

1. If an allegation of force is made by an inmate, a witness statement will be requested from the inmate and forwarded to the shift commander
2. The staff member the allegation is first reported to shall complete an incident report and forward it to the shift commander.

While Mapes completed an Incident report (J-3) he neglected to state that he observed the blows to the head sustained by the inmate, or that the inmate repeatedly complained of these blows to him. Moreover, Mapes failed to request a witness statement from the inmate, so that it could be forwarded to the shift commander.

Finally, Mapes failed to follow Policy and Procedure, Injury to Inmate Report, Number 3.13.2 which provides:

- A.[A]ny inmate suspected of being injured and who claims to be injured is referred to the medical department for examination and treatment by appropriate medical personnel, accompanied by the Injury to Inmate Report...
- J. [T]he Investigating Supervisor shall ensure all information provided within the report is complete, accurate and concise. All investigations should be structured to answer the following questions:

- a. Where, when, how and who received the injury...

Regarding the injury to Inmate report, two such reports were generated, by officer John Henderson. Mapes signed the reports as Supervisor. The first report said, "OC sprayed to the face" and detailed the eyewash procedure following decontamination and ice pack issued to apply to the eyes. The second, reported an

hour after the incident, stated the inmate complained of pain and a bump to his head behind his left ear, and detailed the medical department's pain protocol that followed which included taking precautionary measures. Neither report mentioned that the bump on the head sustained by the inmate followed upon his receiving multiple punches to the head and facial area.

Warden Christopher Klein also testified. He has been the Warden of the Facility since 2013 and employed there since 1999. He oversees day to day operations at the facility and is the second highest ranking official there, after the Undersheriff for the County. He directed the matter to IA on the same morning of the event, after reviewing the Use of Force reports and the video. After IA completed the investigation and after consulting with the Sheriff and the Undersheriff he made the decision to bring the disciplinary charges against Mapes. He noted that the medical staff was not properly advised by Mapes. Regarding the penalty, he thought it was justified because it was "significant", and in fact "one of the worst uses of force" he has seen since being Warden. Further, Mapes actions and failures to act "could have resulted in significant injury" to the inmate. In issuing the penalty, he considered Mapes' past disciplinary record. He believes the egregiousness of the misconduct warranted going beyond the process of progressive discipline.

### **FINDINGS OF FACTS**

Based on the evidence presented at the hearing, as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following **FACTS**.

1. Mapes was the supervisor in charge of an inmate transfer and was present while excessive force was used on the inmate by another officer.
2. Mapes witnessed the excessive force, which included initial rapid multiple blows to the head and face of an inmate partly cuffed while being held to the ground by three other officers. Mapes admitted seeing an additional three punches to the facial area

administered by a fellow officer. While interviewed later about these events, Mapes admitted the force used was "excessive" or "borderline excessive."

3. During the incident, Mapes remained silent and did not interject in the series of punches to the inmate's facial and facial area. Although supervising the officers involved, he issued no orders during the use of force. He said nothing and did nothing.
4. Soon after the incident, when the inmate complained repeatedly of being punched in the face, Mapes told the inmate to "keep quiet." He also asked if the inmates had any complaint "other than" those involving his face.
5. Mapes filed an incident report soon after the incident and never mentioned the blows to the face sustained by the inmate nor that the inmate complained of having been beaten to his face.
6. Mapes did not request a witness statement from the inmate, which was to be sent to the shift commander once obtained, although he was repeatedly made aware of the allegation of force by the inmate.
7. Mapes signed as an investigating supervisor two Injury to an Inmate reports which failed to state how the inmate was injured, or possibly injured.

### LAW

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 governs a civil service employee's rights and duties. The act is an important inducement to attract qualified personnel to public service. It is to be liberally constructed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1 N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n., 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of New Jersey is to

provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2 (b). To carry out this policy, the Act also includes provisions authorizing the discipline of public employees. Consistent with public policy and civil service law, a civil service employee may be subject to major discipline. N.J.S.A. 11A:1-2(a). Major discipline involves removal or fine or suspension for more than five working days. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. Hearings at the Office of Administrative Law are conducted de novo and determine the appellant's guilt or innocence as well as the appropriate penalty. In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). Ennslin v. Twp. Of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994) cert. den., 142 N.J. 446 (1995).

In an appeal from a disciplinary action, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); Polk, 90 N.J. 550. 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 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del Lackawanna and W.R.R., 111 N.J.L. 487, 490 (E. & A. 1933). Preponderance may be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Maintenance of strict discipline is important in quasi-military settings such as police departments, prisons and correctional facilities. Rivelli v. Civil Serv. Comm'n, 115 N.J. 64, 72 (App. Div.), certif. den. 142, N.J. 446 (1995). City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). In such settings, the primary duty of the officers and supervisors is the safety and security of the facility.

## DISCUSSION AND CONCLUSIONS

In this matter, Mapes' failures to exercise command endangered the safety and security of the Correctional Facility, Mapes' fellow officers, and the inmate. It was argued that that the excessive force used by Provenzano took place under chaotic circumstances, that at a critical point Mapes turned his body so that his back was to Provenzano and Utter, while he sounded his body alarm and grasped for and withdrew his OC spray canister. However, the video shows that Mapes only turned his back for two seconds or less. He immediately (at two minutes 51 seconds on the video) turned back to face Provenzano and Utter and pointed his OC spray toward the action before the first series of head blows (beginning at 2 minutes 53 seconds) by Provenzano were struck.

Moreover, it was argued that Mapes suffered a bad reaction to the OC which affected his judgement. The UOF Policy includes a "Special Note" which he argued required a finding that Mapes had to be "clearly convinced" that another officer is using force in violation of the Use of Force policy and/or state law It was posited that Mapes did not have sufficient time to become "clearly convinced" that the fellow officer was using excessive force.

I found these arguments unpersuasive and at variance with the facts and logical inferences from them. Despite his denial, Mapes was perfectly positioned to see and hear<sup>3</sup> the first series of eight repeated punches to the inmate and admitted seeing the second series of blows. Nearly everything an officer shouldn't do, Mapes' fellow officer Provenzano did while Mapes stood by and watched. Provenzano struck the inmate multiple times to the face when the inmate was on the ground. Once the inmate was on the ground which was almost immediately, none of the officers faced danger which would require strikes to the face, notwithstanding the slight, almost indiscernible struggle by the inmate who had an arm with a handcuff and key in it. The officer employed multiple punches without any concern for whether one punch was adequate.

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<sup>3</sup> Owing to the acoustics in the barren cell, the punches and/or the inmates head being bashed on the floor by them, were accompanied with loud basketball-bouncing-like thuds.

Finally, all the blows were administered to the inmate's face or facial area. During all that, Mapes, the supervising officer, did nothing, not even making a minimal effort to warn the inmate to not resist. This was in marked contrast to Sgt. Johnson, who rushed into the scene after the UOF was underway and quickly yelled twice to Utter to "stop resisting!" Under the circumstances, it is not plausible that Mapes was "overwhelmed" by the events.

Regarding his actions taken after the UOF, Mapes heard all the inmate's many complaints of being punched in the face, including Utter's request to have the police called. Mapes responded twice to Utter's complaints to "Be quiet." He also asked Utter "Do you have any complaints, other than your face?" His incident report left out critical information. He failed to request a witness statement. He signed two Injury to Inmate reports which left out the required information to explain how the inmate was injured or possibly injured and who was responsible. Mapes actions and inaction can be fairly seen and characterized as impeding a required investigation of a Use of Force and Injury to and Inmate allegation, one in which he failed to act.

Additionally, some of Mapes explanations for his actions strain credibility. For example, Mapes went to great lengths to excuse his behavior after the UOF as simple negligence, rather than what can be construed as a "cover up." His first official act, after getting the injured inmate into another cell was to write an incident report that was bare of any essential facts and contained a self-serving inaccuracy. His report states inaccurately stated that the inmate was given "numerous orders by me to stop resisting." The video shows Mapes did not give a single order. Moreover, he admitted in his interview he gave no such order, and feebly suggested that there was no need to re-enforce another officer's command to stop resisting.

Regarding the two Injury to Inmate reports generated by Officer Henderson, Mapes signed the report as the "Investigating Supervisor". Under the policy the "Investigating Supervisor shall ensure all information within the report is complete, accurate and concise." Further the investigation is to be structured so as to answer questions, "where, when how and who received the injury." As there were two such

reports generated, Mapes as investigating supervisor had two opportunities to report the injuries to Utter in the complete and accurate manner as required by the policy. Instead he signed, approved and forwarded two incomplete and inaccurate reports concerning the source of injury to an inmate.

I **CONCLUDE** the charges constituting "other sufficient cause" under N.J.A.C. 4A:2-2.3(a) General cause; (12) other sufficient cause were proved by a preponderance of the credible evidence in that, Sgt. Mapes violated the Morris County Sheriff's Office Bureau of Corrections Standard Operating Policy and Procedures on Use of Force, 1:8.6 subsections II (C) subsection III (B) and subsection IV.(E) and the Morris County Sheriff's Office Bureau of Corrections, Standard Operating Procedure on Injury to Inmate reports, 3:13.2 subsections III (J)

### **PENALTY**

There remains the issue of the imposition of a thirty working days suspension for this infraction. In deciding which penalty is appropriate, the courts have looked toward the concept of progressive discipline. W. New York v. Bock, 38 NJ at 523-524. The New Jersey Supreme Court held that evidence of a past disciplinary record, including the nature number and proximity to prior instances of misconduct can be considered in determining the appropriate penalty. The penalty imposed must not be so disproportionate to the offense and the mitigating circumstances that the decision is arbitrary and unreasonable.

Mapes was the subject of seven prior disciplinary actions, the last being in 2012 (J-6), which resulted in a major discipline, with six days suspension. The parties stipulated that Officer Provenzano, had no prior disciplinary history and received a thirty-day suspension. Mapes seeks a lower penalty. The number of prior disciplines is mitigated somewhat by their apparent minor nature.

Mapes attempted to minimize both the seriousness of the infraction and his own culpability and failed to make a convincing case for a lesser penalty. Progressive



discipline need not be strictly followed considering an egregious violation, as occurred here. Further, a 30-day suspension following a 2012 six-day suspension is not a significant deviation from the goals of progressive discipline.

I **CONCLUDE** by the preponderance of the credible evidence that all the charges were proven, and that the Final Notice of Disciplinary Action should be upheld. I further **CONCLUDE** that the penalty of a thirty working days suspension is appropriate.

**ORDER**

It is hereby **ORDERED** that the appellant's Appeal is **DENIED**.

It is further **ORDERED** that the appellant's thirty working days suspension is hereby **AFFIRMED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

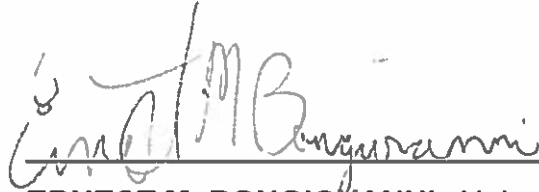
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise 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, P.O. 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.

September 12, 2018

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DATE

  
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**ERNEST M. BONGIOVANNI, ALJ**

Date Received at Agency:

9/12/18

Date Mailed to Parties:

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**APPENDIX**

**LIST OF WITNESSES**

**For Appellant**

Sgt. Robert Mapes (recording)

**For Respondent**

Corporal Edwin L. Santana

Warden Christopher Klein

**LIST OF EXHIBITS IN EVIDENCE**

**For Appellant**

None

**For Respondent**

R-1 Internal Affairs Report

**Joint Exhibits**

J-1 Video of Incident of April 4, 2017

J-2 Video of Robert Mapes interview

J-3 Incident Report, Use of Force report, Inmate witness statement,  
Morris County Injury to Inmate report

J-4 Preliminary Notice of Disciplinary Action

J-5 Final Notice of Disciplinary Action

J-6 History of Employee Disciplinary Actions