



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

**INITIAL DECISION**

OAL DKT. NO. CSR 05571-10

**IN THE MATTER OF MICHAEL PRINS,  
HUDSON COUNTY DEPARTMENT OF  
CORRECTIONS.**

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attorneys)

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Department of Corrections (Donato J. Battista, County Counsel)

Record Closed: November 22, 2010

Decided: January 6, 2011

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

**STATEMENT OF THE CASE**

On October 21, 2009, Michael Prins, a correction officer at the Hudson County Correctional Center, made a ghost mask for a fellow correction officer, nicknamed Ghost, as a joke for Halloween. Ricky Johnson, a civilian employee, thought it was a KKK mask. Based on this mistaken belief, the Hudson County Department of Corrections fired Prins. Should Prins have been fired? No. To be fired for misconduct, a correction officer must have actually engaged in the misconduct.

## PROCEDURAL HISTORY

On October 22, 2009, Hudson County served Prins with a Preliminary Notice of Disciplinary Action. In that notice, Hudson County charged Prins with inefficiency, incompetence, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1) in violation of N.J.A.C. 4A:2-2.3(a)(9); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11). As a result, Hudson County sought his removal and suspended Prins indefinitely pending a departmental hearing.

The specifications are reproduced below exactly as they appear in the notice:

I was approached by Ricky Johnson, Records & Admission Officer and told that Sgt. Prins in the company of Sgt. Lounsberry, officers Valle, Araujo Lumba, Lalama, Young and Clemente; were discussing Obama and health care benefits. During that discussion, Sgt. Prins allegedly makes disparaging racial remarks. He then allegedly, creates a mask which Ricky Johnson describes as a KKK mask, and hands it over to Officer Young to adorn. Once I was told of the incident I responded to intake to discuss it with Sgt. Prins. Sgt. Prins denied having any discussions concerning Obama, and stated that he only made the mask as a joke. I immediately requested reports from all involved parties. In addition, I moved Mr. Johnson to the Records Room, to ensure that his fear of retaliation was allayed.

Upon reviewing the camera, it was evident that there was a political discussion concerning Obama and health care benefits. Sgt. Prins was witnessed in a huddle with approximately four officers. They broke from the huddle laughing, at which time Officer Clemente and Officer Young hurriedly exited the area while Sgt. Prins simultaneously makes a mask from a c-fold napkin. Shortly after Sgt. Prins is seen disposing of the mask.

Once Officers Clemente and Young returns, Sgt. Prins creates yet another mask that he hands to Officer Lalama. Officer Young is heard stating he wants to wear the mask. Ricky Johnson dares him to wear the mask. Sgt. Prins

intercedes denying the mask exists and then enters Intake Control and disposes of the mask.

On November 23, 2009, Hudson County served Prins with an amended Preliminary Notice of Disciplinary Action to include additional specifications. In that notice, Hudson County added another paragraph to the specifications. The additional paragraph is reproduced below exactly as it appears in the notice:

During the political discussion concerning President Obama's health plan, Sgt. Prins as supervisor of receiving in which civilian Ricky Johnson and officers worked in and around inmates of all races, allowed, condoned and/or permitted two officers, i.e., Clemente and Araujo, to make sounds and actions mimicking a monkey and to utter the word "Monkey, Monkey," thus creating and/or fostered an atmosphere and environment hostile and prejudicial to African Americans. Sgt. Prins also condoned, permitted and fostered an atmosphere and environment conducive to the use of symbols which are known to be antithetical to African Americans and to other employees of various social, ethnic and religious backgrounds; i.e. employment of the Nazi arm salute and creation and brandishing of a mask-like visage which reasonably appeared to be a facsimile of a Ku Klux Klan mask.

On December 11, 2009, a departmental hearing was held and all of the charges against Prins were sustained. As a result, Prins was removed from his position as a county correction sergeant effective April 10, 2010.

On April 30, 2010, Prins began the appeal process; on June 2, 2010, he perfected his appeal; and on June 23, 2010, I held the initial scheduling conference.

The hearing was originally scheduled for August 31, September 1, September 2, and September 21, 2010, but was ultimately held on September 21, November 8, November 9, November 16, and November 22, 2010, due to numerous adjournment requests by the parties and other priorities established by the Office of Administrative Law.

## DISCUSSION AND FINDINGS OF FACT

### The Reported Incident

Lieutenant Tish Nalls conducted the investigation. She has been with the Department of Corrections for the past twenty years and was the unit manager for the intake and receiving area on the date of the incident. Her shift had ended and she was already in the parking lot heading to her car when Johnson approached her.

Nalls testified that Johnson was visibly upset when he approached her to complain that Prins had made the mask. More specifically, Nalls said that Johnson told her that Prins, together with Stephen Lounsbury, Carmen Valle, Felix Araujo, John Lumba, Jonas Lalama, Thomas Young, and Armando Clemente, had been discussing President Obama and healthcare benefits when Prins made disparaging racial remarks and created a KKK mask for Young to wear. Nalls also said that Johnson told her he was surprised because he had always enjoyed a professional relationship with Prins.

In his report, Johnson writes that Prins, Valle, Araujo, Lumba, Clemente, and Lounsbury were discussing "President Obama's health care" when Prins made a "KKK mask" and passed it to Lumba, Clemente, Araujo, Lounsbury, and Young:

On [October] 21, 2009, myself, Sgt. Prins, c/o Valle, c/o Araujo, c/o Lumba, c/o Clemente, Sgt. Lundberry, c/o Young were talking about health benefits/payments and President Obama's health care when Sgt Prins took a paper towel and made a KKK mask. He passed it to c/o Lumba, c/o Clemente, and c/o Araujo and Sgt. Lounsbury. He then gave it to c/o Young who was inside receiving intake. C/o Young said I would wear this. I'll put it on. I said put it on and see what happens. Sgt. Prins said Rick that's my bad I'm sorry. I replied I thought you were better than that. You supposed to be a supervisor and lead by example. I then told him that I need to take a break that I need some air. End of report.

[(C-1.)]

Nalls testified that she returned to the intake and receiving area through the control room so she could talk with Prins and have him to write a report about the incident. Nalls noted that she did not talk with anyone else about the incident and simply repeated to Prins what Johnson had told her.

Nalls further testified that Prins denied that he and his colleagues were talking about Obama but admitted that they had been joking around and that Prins had already written a report. She also testified that Prins took responsibility for the incident and handed her his report before she had asked him to write it.

Prins testified that he took responsibility for the incident because he was the highest-ranking officer in the records and receiving area and that he had already written his report because he knew reports were required when anything out-of-the-routine occurred during a shift and he believed something out-of-the-routine had occurred when Johnson got upset and left the records and receiving area.

Prins also testified that Nalls never followed-up his report with an interview. Indeed all of the officers who testified noted that Nalls never followed-up their reports with an interview and that Nalls simply repeated to them what Johnson had told her about the incident.

### The Written Reports

Nalls testified that she did not follow-up any of the reports with an interview; that she simply repeated to the officers whom Johnson identified what Johnson had told her about the incident; and that she had them write reports about it instead.

Although Johnson did not identify Lalama in his report, Nalls identified him from the recording of the incident and had him write a report as well. Except for Valle, Nalls collected all of their reports that night.

Despite the fact that Nalls told the officers to write reports about "Obama, healthcare, and a KKK mask," only Clemente and Lounsbury mention Obama in their

reports. But even then there are no racial overtones. In his report, Clemente gives Obama the same treatment he gives Corzine and Christie; and in his report, Lounsbury writes that he thought the situation had been handled. Moreover, none of the reports mentions a KKK mask.

The reports are reproduced below in the order in which Johnson lists the officers in his report.

Prins

In his report, Prins writes that he had made a Halloween costume for Young as a joke and that he tried to apologize to Johnson about it:

On above date the u/s did jokingly draw a mask on a napkin and stated in writing: "Halloween Costume for Young." It was a tasteless joke. Mr. Johnson did see it. Mr. Johnson took offense to it. Mr. Johnson did state, "I thought you were different from the other ones." I then realized what frame of mind Mr. Johnson took the joke. At no time was I being condescending to anyone or their ethnic background. It was a joke and I was wrong for it. The u/s did try to talk to Mr. Johnson and apologize but he refrained from having any conversation.

[(C-1.)]

Valle

In her report, Valle writes that her colleagues were talking about the upcoming gubernatorial election in New Jersey when Prins was messing around with a napkin and gave whoever was by the door of the control room a Halloween mask for Young:

On the above date and time officers mentioned above were engaged in a conversation about the political figures running for Governor in our State. Sgt. Prins then engages in conversation with Officers Aruajo and Clemente. Sgt. Prins calls c/o Young out of Intake; they engaged in conversation; and Young goes back toward the Intake Control Area. Sgt. Prins then comes by me and is messing around with what appears to be a c-fold napkin. Sgt. Prins then turns around



and goes towards intake area and hands the c-fold to whomever was by the door (at this time I don't know who was standing by control door) and says "here is your Halloween mask" to Officer Young. I then stated if you put that on you will be out of a job tomorrow only after seeing the holes in the napkin. At this time, Civilian Rick states "go ahead, put it on; I dare you to put it on" and walks away. Sgt. Prins at this time walks out of control area and engages in conversation with Civilian Rick. No further incident. U/s was ordered by Lt. Nalls to write a report.

[(C-6.)]

### Aruajo

In his report, Aruajo writes that his colleagues were discussing the upcoming gubernatorial election in New Jersey and the effect it could have on their healthcare benefits when he saw Prins doodling on a napkin:

On above date and time u/s Ofc. F. Aruajo was assigned to receiving when multiple officers were discussing political views regarding the New Jersey governor election on health care benefits. When this officer observed Sgt. Prins drawing and doodling with a "c-fold" napkins. END OF REPORT.

[(C-12.)]

### Lumba

In his report, Lumba writes that he and his colleagues were talking about the upcoming gubernatorial election in New Jersey and the effect it could have on their healthcare, pensions, and contracts when he saw Prins doodle "Officer Young Halloween Costume" on a napkin:

On the above date and time, on the two to ten shift, myself and several officers were talking about the up and coming election in the State of New Jersey regarding healthcare, pensions, and contracts when the u/s officer observed Sgt. Prins doodling on a napkin that said "Officer Young Halloween Costume." U/s officer was ordered to write a report on 10/22/09.

[(C-8.)]

Clemente

In his report, Clemente writes that his colleagues were talking about Obama, Corzine, Christie, and healthcare benefits when he saw Prins draw on a napkin:

On this day I Officer A. Clemente was in the receiving area when I observed Sergeant Prins drawing and doodling with a "C-Fold" napkin. This officer also was present when numerous officers were talking about President Obama, Governor Corzine, and Chris Christie about health care benefits.

[(C-11.)]

Lounsbury

In his report, Lounsbury writes that he and his colleagues were talking about the upcoming gubernatorial election in New Jersey when Lumba mentioned "President Obama's health plan" and how it could affect them when Prins handed Young a napkin:

The u/s was ordered by Lt. Nalls to write a report on an incident that occurred in Receiving on 2-10 10/21/09. The u/s went to receiving to get a set up for an IL on AIE. Sgt. Prins, c/o Lumba, and c/o Clemente were engaging in a conversation about the Governor's race in New Jersey. The u/s joined in on this conversation. C/o Lumba started to talk about President Obama's health plan and what it meant for us and the civilian staff. Sgt. Prins stated, "He can't explain his own health care plan; how are we to know what it is about." Sgt. Prins also stated "I respect the Presidency not the President." Sgt. Prins then handed c/o Young a napkin in intake control. The u/s then heard Mr. Johnson say "I wish you would put that on." Sgt. Prins said to Mr. Johnson "I apologize for that. It's on me. I apologize." The u/s had no knowledge of what was going on with the napkin and what had transpired between Sgt. Prins and Mr. Johnson. The u/s felt that Sgt. Prins had handled the situation and no further action was necessary. E.O.R.

[(C-7.)]



Young

In his report, Young merely writes that he said he did not know what the napkins were that Lalama had put on his desk:

On the above date and time u/s was standing in intake control when Ofc. Lalama walked in intake control and put 2 napkins on my desk. Not knowing what it was u/s said joking around I'll put it on. End of Report.

[(C-10.)]

Lalama

In his report, Lalama writes that Prins handed him two folded towels to give to Young, which he placed on the desk in the control room.

On the above date and time, u/s was handed (2) two folded c-fold towels by Sgt. Prins and was told to give them to Ofc. T. Young. U/s placed both (2) two c-fold towels on the desk in intake control. End of Report.

[(C-1.)]

The Purported Mask

Nalls testified that Young approached her the next day to inform her that he had retrieved the purported mask from the garbage can. Nalls said that she did not even look at the mask—let alone determine whether it was a KKK mask or a ghost mask—and simply allowed him place the mask in an evidence bag and seal it. She also allowed Young to supplement his report.

In his supplemental report, Young writes that he had retrieved the napkin that was placed on his desk from the garbage:

On the above date and time u/s is writing this report to inform Lt. Nalls that APR. 45 mins after turning in my report on 10/21/09 u/s went into the garbage can to see what was on the c-fold that was placed on u/s desk. The c-fold is in

evidence bag # A 422460. U/s is requesting this report be added to my other report. End of report.

[(C-4.)]

When the evidence bag was opened at the hearing, the napkin was in tatters. But it did have the phrase, "Young's Halloween Costume," scrawled across the top in black marker. As Araujo later indicates, this was the phrase the officers reported they saw Prins doodle on the napkin.

### The Unintelligible Recording

The recording of the incident was played numerous times at the hearing, both with and without witnesses, and though some of the witnesses could clarify some of what was said, all of them testified that the recording was unintelligible. Indeed, different conversations take place at different locations in the intake and receiving area, and they take place among different people who speak at different volumes, which makes their recording variable. Thus the piecing together of sentences and conversations is largely guesswork, and listening to them over and over again does not help much.

Although the quality of video is better, the view is still a static one. To set the scene, the intake and receiving area is defined by a large u-shaped desk, known as the receiving desk, which runs along the top of the screen from left to right, down the right-hand side of the screen from top to bottom, and then along the bottom of the screen from right to left. Those sitting behind the desk look out over the desk facing the right-hand side of the screen.

Sitting behind the desk along the right-hand side of the screen from top to bottom are Johnson, Prins, and Valle (with Prins seated at the center).

Standing in front of the desk and facing Prins along the right-hand side of the screen from top to bottom are Lumba (with only his arms and face in view) and Lounsbury (with only his arms in view).

Meanwhile, Araujo is seated at a smaller desk behind Prins. That desk, which is raised slightly, is centered behind the receiving desk. It is also centered between, and bound by, the fingerprint room above it, and more significantly, the intake and control room below it.

Standing next to Araujo, above him and to his left, in front of the fingerprint room, is Clemente.

Other officers, and some inmates, move in and out of the intake and receiving area, and in and out of view, as the scenes unfold.

Parenthetically, the intake and control room is referred to by slightly different names in both the reports that were submitted and the testimony that was provided. All references, however, are clear. Nevertheless, I will refer to the intake and control room as the control room for the sake of brevity and to avoid any confusion.

### The Flawed Investigation

Nalls testified that she based her report on the reports she collected and on her review of the recording. But Nalls admitted that the recording is hard to hear and that she did not interview any of the officers involved to confirm what she thought she heard. She also admitted that she did not interview any of the officers involved to confirm what she thought she saw. As a result, Nalls relied upon her own interpretation of the recording instead.

More significantly, Nalls testified that the administration based its charges on her interpretation of the recording. In fact Kirk Eady, the deputy director, testified that Nalls told him, before she had even completed her investigation, that the incident was a racial one, during which someone had made a KKK mask, so he waited for Nalls to complete her investigation before he reviewed the reports and the recording himself. Thus Nalls is the prism through which the administration viewed the incident—in fact the specifications are a copy of her report.

### The Amended Specifications

Since Nalls believed that the incident was a racial incident from the start, and since Nalls reviewed the recording without interviewing anyone to confirm what she thought she saw and what she thought she heard, it makes perfect sense why Nalls believed the recording contained other racial incidents, and why Nalls amended the specifications to include them.

At the hearing, Nalls was confident about what she thought she saw and heard on the recording. She testified that she saw Clemente scratch the top of his head and the side of his torso like a monkey and heard him say “monkey,” as if there was any doubt.

In addition, Nalls testified that she saw Clemente extend his arm as a “Nazi salute” and heard him say “he-ho,” which she asserted is a known “Nazi saying.” On cross-examination, Nalls explained that “hi-ho, he-ho” is a known “Nazi call” from her “knowledge of history.” Moreover, Nalls offered that there was “consensus” among members of the administration with this assessment.

Yet Nalls had not been so confident of her assessment when she drafted her memorandum—and the administration by extension when it adopted it as its specifications. More pointedly, the memorandum contains numerous qualifications. In particular, the specifications state that Prins “allegedly” made disparaging racial remarks; that he “allegedly” made “what Johnson describes” as a KKK mask; and that Prins allowed the brandishing of a mask “which reasonably appeared to be a facsimile of Ku Klux Klan mask.”

The administration, however, brought these charges anyway. Indeed these charges, and the specifications that give rise to them, are especially egregious given the fact that Valle, Hudson County’s own witness, testified that Clemente did not say “monkey” or “he-ho.” They are also egregious given the fact that Ocasio had cleared up

the monkey business in November 2009 before Nalls had even completed her investigation and amended the specifications.

### The Monkey Business

#### The Call

On November 23, 2009, after reviewing the recording of the incident, Nalls had Ocasio write a report about a statement he supposedly made to Clemente and Araujo during the incident. Since the incident had already occurred more than a month earlier, Ocasio did not recall making the statement. He also did not know who he made the statement to or why:

On the above date and time, I was ordered by Lt. Nalls to write a report about a statement I made on October 21, 2009 to Officers A. Clemente and F. Araujo. At this time I am advising whom it may concern that I do not recall making the statement, whom I made the statement to, or why I made the statement. End of report.

[(P-5.)]

Since Ocasio did not recall making the statement, Nalls had him review the recording. After reviewing the recording, Ocasio explained that Clemente and Araujo made the statement to him. Moreover, he explained that they did not say "monkey" but "co-qui" in reference to a trip he had taken to Puerto Rico:

On the above date and time, I was ordered to submit a supplemental report to attached report after being showed a video clip of about thirty (30) seconds by Director Aviles, Dep. Director Eddy, and Mr. Stalitari who were present. After reviewing the video I did recall said incident. Officers F. Araujo and A. Clemente were commenting on the undersigned Officers Police Benevolent Ass. Trip to Puerto Rico. While watching the video I clearly heard one of them say "coqui coqui" several times, that's how I remembered the incident. End of Report.

[(P-6.)]

At the hearing, Ocasio was more expansive. He said that he works as a convoy officer, moving throughout the facility to pick up prisoners for discharge, and that he serves as the president of the local PBA.

In addition, Ocasio said that he has known both Prins and Valle since he started working at Hudson County eleven years ago; that he trained Araujo; that he has worked with Clemente; but that he has known Johnson for only about a year now.

Nevertheless, Ocasio said that he has no problem with any of them.

Upon reviewing the recording at the hearing, Ocasio said that he had left intake around 7:14:16 and was walking around the receiving desk to leave the area through a door located off-screen when he saw Clemente imitate a monkey and say what Nalls professed was "monkey."

Then Ocasio explained all of this away.

First, Ocasio explained the monkey call. In short, Ocasio again explained that Clemente said "co-qui," not "monkey." More pointedly, Ocasio explained that he is Puerto Rican; that a coqui is a tree frog from Puerto Rico; and that the frog makes the sound "co-qui." In other words, the frog is named for the sound it makes.

In fact, Ocasio pointed out that the frog or coqui is so recognizable that it is a symbol of Puerto Rico. In support of his testimony, Ocasio provided two souvenirs from Puerto Rico: the first was a stuffed animal of a coqui, which bleats "co-qui" when you squeeze it; and the second was a refrigerator magnet, which has the picture of the Puerto Rican flag and a coqui on it. Both the stuffed animal and the refrigerator magnet were admitted into evidence as P-2 and P-3, respectively.

Moreover, Ocasio explained that he had just returned from the PBA convention in Puerto Rico, so Araujo and Clemente, who are his friends and colleagues, were teasing him, by calling out "co-qui" as a joke, and not "monkey" as an ethnic slur or racial epithet.



As such, Ocasio said he was dumbfounded when the Director brought him into his office to tell him that he was the victim of discrimination and that he wanted him to write a report about it even though he told the Director he was mistaken.

Both Araujo and Valle corroborated this testimony at the hearing. Upon listening to the recording at the hearing, and hearing the call "co-qui," Araujo explained that he was the one who said it first and that Clemente was simply trying to repeat it.

Similarly, when asked if she knew what Araujo or Clemente had said on the recording, Valle responded without hesitation that Clemente had said "co-qui," not "monkey," and then provided the same explanation Ocasio had given, that is, a coqui is a frog from Puerto Rico, which makes the sound "co-qui."

Moreover, Johnson himself testified that the sound "co-qui, co-qui" made no impression on him at the time and that it wasn't until Nalls played the recording for him and presented it to him as "monkey, monkey" that he was offended.

### The Gestures

Second, Ocasio explained the monkey gestures. Once more, he said that it was a tease or a joke, not a racial attack.

More specifically, Ocasio recounted that he had run into Clemente at the Bronx Zoo on one of his days off and saw Clemente standing in front of the monkey exhibit wearing his National Gang Intelligence Unit t-shirt. As Ocasio tells the joke, he made fun of Clemente for wearing the t-shirt by asking him, "What are you doing here? Classifying gorillas?"

Then Ocasio explained the joke. As Ocasio explained it, one of the jobs of the National Gang Intelligence Unit is to identify gang members at the correctional facility, so when he saw Clemente wearing the t-shirt in front of the monkey exhibit at the Bronx Zoo, he joked that Clemente was classifying gang members at the zoo. Ever since, he

has had this back-and-forth with Clemente—with Clemente making monkey gestures at him in reference to their chance meeting at the zoo and not in reference to his ethnicity or national origin.

In other words, the monkey gestures are a private joke between Ocasio and Clemente having nothing to do with Obama or healthcare or with Johnson or Prins.

In fact, Johnson testified that he never saw the monkey gestures at the time of the incident and was not offended by them until Nalls showed him the video after-the-fact and presented it to him as a racial attack.

### The Nazi Business

#### The Call

Although Valle testified that she did not recognize or understand the monkey gestures—which makes sense given Ocasio's explanation—she did recognize and understand what the purported Nazi saying meant. When asked on cross-examination what Araujo meant when he said “he-ho” to Ocasio, Valle corrected the questioner and explained that Araujo had said “hijo,” which means “son” in Spanish.

As Araujo later explained, the correction officers at the facility are like a family; that Ocasio trained him; so that he teases Ocasio by calling him “hijo.”

As with the monkey gestures, Johnson testified that he was not offended by the appellation “hijo” until Nalls played the recording for him after-the-fact and presented it to him as an ethnic slur or racial epitaph.

#### The Gesture

Regarding the purported gesture, only Nalls testified that it was a Nazi salute. Given how wrong she had been about the monkey business, her testimony in this

regard is also unreliable. In fact, Clemente could just as easily been extending his arm to adjust his uniform.

Before Clemente extends his arm in the video, he is seen fidgeting with his uniform top. In particular, Clemente can be seen placing his left hand on his left shoulder and his right hand on his right shoulder and then pull up and back on his uniform top with his thumbs and forefingers in an effort to adjust his uniform top. Given this paradigm, such an explanation is just as likely.

### The Mistaken Paradigm

Indeed, this entire case is about paradigms. In adopting Johnson's paradigm that this was a racial incident, Nalls and the administration never gave Prins a chance. Johnson, Nalls, and the administration, however, were mistaken about what they saw and heard. Had they considered another paradigm, perhaps they never would have brought these charges.

### What Johnson Said He Saw and Heard

Johnson testified that he was working the two-to-seven shift at the correctional facility when the incident occurred. He said he had just come back from his meal break at 7:00 p.m. and was discharging inmates from the system when Prins and the other officers were talking about healthcare and what benefits were going to be taken out of their paychecks. He also said that they were talking about furloughs.

Significantly, Johnson described the discussion about healthcare as a discussion about "Obama's healthcare" and repeated an exchange between Lounsbury and Prins as an example. According to Johnson, Lounsbury asked, "How can we talk about Obama's healthcare when Obama can't even describe it?" and Prins answered, "I have to respect the office but I don't have to respect the person."

Following that exchange, Johnson maintained that he saw Prins take a napkin from his desk; wheel his chair over to the small desk behind him; huddle with Araujo,

Clemente, and the other officers who had gathered there; and then wheel back to his desk where he threw out the napkin in the garbage can beneath his desk.

Moreover, Johnson asserted that he saw Prins hand a napkin with holes in it to Lalama and then heard Prins tell Lalama to give the napkin to Young inside the control room. Johnson specified that he was walking jackets down to the bin near the control room when he saw Lalama give the napkin to Young inside the control room and heard Young say from inside the control room, "I'll put it on." Johnson explained that he interjected, "I dare you to put it on," because he thought the napkin was a KKK mask and said he was offended by it.

Johnson, however, did not say why he thought the napkin was a KKK mask. He simply said that he was offended by it because he thought it was one. Other than this circular reasoning, Johnson offered no other explanation. He merely affirmed that it was his opinion.

#### What Johnson Did Not See or Hear

Johnson can be seen and heard participating in the political discussion at the beginning of the recording, but he only participates in it briefly. He can be heard mentioning the furloughs Governor Schwarzenegger had instituted in California, but he turns his chair around and away from the conversation only a few minutes later to continue working at his desk.

Moreover, Obama is never mentioned during the initial discussion. In fact, Obama is not mentioned until much later, approximately ten minutes later, when Lumba, not Lounsbury, mentions him, and he does so off-handedly, in a separate conversation, never to be mentioned again during the remainder of the recording.

Meanwhile, Johnson admitted that he was "in and out of conversation." In particular, Johnson admitted that he did not hear what the officers had said in the huddle; that he did not see the napkin Prins had thrown out in the garbage beneath his desk; and that he only saw the holes in the napkin Lalama gave to Young from the

opposite corner of the intake and receiving area and through the door of the control room.

In fact, Johnson had his back to the officers and his head is down focused on his work for the bulk of the recording, which explains why he did not see the napkin Prins threw in the garbage and why he had trouble describing the napkin Prins gave to Lalama. It also explains why Johnson testified on direct examination that the napkin had two holes and on cross-examination that it had three.

But this poor vantage point did not matter. As Johnson also testified, he interpreted the response Prins gave to the comment Lumba made about Obama to be a negative commentary about Obama. The implication was clear: Prins was a racist because he did not like Obama. Indeed, this explains why Johnson thought the handing of the napkin to Young at the time was "sneaky" and why he thought the napkin with the holes in it was a "KKK mask."

It also explains why he testified after-the-fact that the huddling of officers around the small desk was "sneaky" even though it occurred before Lumba ever mentioned Obama. In fact, this paradigm was so entrenched that Johnson, when asked why the napkin could not have been a ghost mask for Halloween, answered, "Because that is not how you make a ghost mask." This then was Johnson's paradigm and explains why the testimony he provided about the mask is unreliable.

#### More Unreliable Testimony

The testimony Valle provided about the mask is also unreliable, but for different reasons. Valle, who testified nervously on behalf of Hudson County, varied somewhat from her report. Although she did not write in her report the day after the incident that the officers had been discussing Obama, she did testify at the hearing a year later that Prins and Johnson were discussing "Obama's health plan."

Valle, however, admitted that she did not participate in those conversations at the time and that she did not pay attention to them when they occurred. Moreover, when

Valle reviewed those conversations at the hearing, she admitted that she had difficulty hearing them. In fact, Valle testified that she could only hear some of what they said and that she could only understand some of what she saw.

Regarding the first mask, Valle testified that she saw Prins make the mask by drawing three circles on a napkin; that Prins showed her the mask; but that she did not believe the mask was a KKK mask.

Regarding the second mask, Valle testified that she did not see Prins make the mask but saw that it had three holes in it and heard Prins tell Lalama that it was "Young's Halloween mask."

More significantly, Valle testified that she did not believe the second mask was a KKK mask until Johnson reacted to it. But Valle was unsure which mask Prins made when. Indeed, attempts to pin her down on redirect that she was even offended by one of these masks were unconvincing. When asked if she still would have thought the second mask was a KKK mask if Johnson had not reacted to it, Valle answered that she would have without providing any explanation why.

Indeed, Valle acknowledged that she had worked with Prins for the length of her career and offered that he had always treated others with respect. She even noted that no one, including Prins, made any racial remarks the night of the incident. In fact, the only point Valle made clear on this score was that she was uncomfortable about the incident, not because Prins had made a "KKK mask," but because she did not think the incident would end that night.

Given these contradictions, including her uncertain testimony about the masks, I do not believe that Valle would have thought the second mask was a KKK mask if Johnson had not reacted to it.

The Misunderstood Officer



Regarding the first mask, Prins explained that he did not draw three circles on the napkin but "plucked out two eyes and a mouth" and wrote "Young's Halloween Costume" on it instead.

Prins also explained that he threw the first mask in the garbage because Young had left the intake and receiving area and he wanted Young to know he had played a joke on him so he made another one when Young returned.

Prins had been a correction officer for seventeen years. He had served in the Marines before he became a correction officer and has no prior discipline of any significance. Everyone who testified (including Johnson and Nalls) complimented Prins and Patricia Galloway (an African-American woman) volunteered to testify on his behalf.

#### Calms Things Down

Galloway testified that Prins had been her direct supervisor for two years; that she had seen him nearly every day she worked; and that she does not believe Prins is a racist.

To the contrary, Galloway testified that Prins is the type of officer who calms things down. In fact, she said that inmates request Prins when they can because he has this reputation. Indeed, Galloway stated that Prins is a role model and that she would love to have him direct her career. "I respect him dearly," she said.

Hani Elezi, who works in the social services department, testified that she has known Prins for twelve years, ever since she started working at the correctional facility, and that she too does not believe that Prins is a racist. In fact, Elezi said that she has never heard him use an ethnic slur or a racial epithet. Indeed, Elezi noted that Prins received the very first Employee-of-the-Month award by his peers, which Elezi explained is a genuine award based on merit.

Like Galloway, Elezi also testified that Prins is the type of officer who calms things down—explaining on cross-examination that Prins is also the type of officer who takes the blame for something someone else does just to de-escalate a situation.

#### Takes the Blame

In keeping with this testimony, Prins explained that he apologized for the incident right away because he recognized that there was a situation that night and wanted to take the attention away from Young and focus it on himself instead. As Prins further explained, he did not know where Johnson was coming from at the time so he apologized to Johnson on behalf of everyone and accepted responsibility for the incident as the highest-ranking officer in the intake and receiving area.

Prins said that he realized Johnson thought it was a racial incident when Johnson said to him, "I thought you were better than the other ones."

Prins also said that he let the situation calm down before trying to talk to Johnson about it again but that Johnson was not interested in talking to him about it and left the area instead.

Prins offered that he knew where this was going when Nalls returned to the intake and receiving area and asked him to write a report about Obama.

#### Learns his Lesson

Prins testified that he learned his lesson from this incident; namely, that he should take other viewpoints into account when doing something and that he should not put himself in situations where he could be misunderstood.

To make sure that there was no longer any misunderstanding, Prins reiterated that he and his colleagues had been talking about the upcoming gubernatorial election in New Jersey between Corzine and Christie and what would happen to their benefits

should one or the other be elected. In other words, they were not talking about Obama or his health plan.

Prins also reiterated that they had been talking about Halloween; that he made a ghost mask for Young because one of his nicknames is "Ghost"; and that Young was so nicknamed because he never stays at his post. "He's here, he's there, he's everywhere," Prins explained.

Indeed Prins emphasized this is the very same explanation he gave the Hudson County Prosecutor's Office when they investigated these charges and that they had accepted this explanation when they dropped their investigation.

### What Really Happened

The fullest explanation of what happened that night, however, was provided by Araujo at the hearing. At the hearing, Araujo testified that he has been working as a correction officer for nine years; that he has known Prins since he started working at the facility; but that he has only been working under Prins directly for one year now.

### The Political Discussion

Araujo testified that it was a slow night the night of October 21, 2009, and that he and his colleagues were waiting to see if any other inmates would be returning from Superior Court. He explained that there are usually 100-120 inmates on a bus and that the last bus is usually filled with new inmates.

Araujo also testified that they were talking politics while they were waiting. In particular, Araujo explained that their contracts were coming up and they were speculating what would happen if Corzine got re-elected or what would happen if Christie got elected.

Araujo noted that Johnson participated in this conversation but no one—including Johnson—got angry, lost his temper, or got excitable. To put a time stamp on it, this conversation begins at 7:10:21 and ends at 7:13:57.

Araujo also noted that he did not remember anyone mention Obama or his healthcare plan. To put a time stamp on it, no one mentions Obama until 7:17:58, and it is in a separate conversation, which does not include Johnson. Then no one mentions Obama again.

Indeed, there is no discernable thread of conversation in the entire recording that includes Obama or race. To put a time stamp on it, the recording ends only thirteen minutes later at 7:30:30.

### The Ghost Mask

Araujo was also the first witness who could fully explain the misunderstanding about the mask. In short, the mask had nothing to do with Johnson or Obama and had everything to do with Young. According to Araujo, Young is a “knucklehead.” As Araujo explained, many of the officers did not get along with when he came out of the academy a few years ago because Young is still younger than they are and still “parties,” so much so that they call him “Jersey Shore.”

Indeed, “Jersey Shore” is but one of several nicknames the correction officers have for Young. As Araujo further explained, they also call Young “White Boy” (which is a nickname he got at the academy) and “Powder” (which they gave him at the facility) because Young is “really white.” (Indeed, a review of the video reveals that Young is an imposing figure standing more than six-feet-tall with a clean-shaven head and a very pale complexion.)

More significantly, Araujo explained that the correction officers also call Young “Casper” or “Ghost” because Young is a “floater.” As Araujo further explained, a floater is someone who does not stay at his post and floats around the facility like a ghost, which Araujo pointed out was on display in the video:

At 7:15:43, Young enters the intake and receiving area from his post in the control room only to return to his post in the control room moments later.

At 7:16:51, Araujo has the other officers gather around him at his desk in the middle of the intake and receiving area to feign that they are talking about Young in an effort to get to get Young to leave his post again—which he does by joining them in the huddle.

At 7:18:06, Young again enters the intake and receiving area from his post in the control room but does not return to his post and leaves the area instead and does not even ask Prins for permission to do so.

At 7:20:04, Young returns to the intake and receiving area with a cup of coffee—when he said he had to leave the area to go to the bathroom—and enters the control room only to pop his head out the minute he enters it—which is when Prins begins to make the second ghost mask for him out of another napkin.

At 7:21:50, Prins hands Lalama the napkin to give to Young in the control room.

At 7:22:07, Johnson gets up from his chair in front of his station at one end of the receiving desk; walks down the length of the receiving desk; and places the jackets he had been working on in the bin at the other end of the receiving desk near the control room.

During this time, Johnson becomes visibly upset and dares Young to wear the napkin. Although Johnson thinks the napkin is a KKK mask, it is now apparent that the napkin was meant to be a ghost mask. As Araujo had previously explained, he had asked Young, in the presence of Prins, what he was doing for Halloween so Prins, in a failed attempt to make a joke, made a ghost mask for him out of a napkin. As such, the doodling the officers reported they saw was Prins writing “Young’s Halloween Costume” on the napkin, or it was Prins plucking out the eyes and mouth, or it was both.

What is also apparent is that the napkin admitted into evidence at the hearing as C-5 is the second mask.

This is the most sensible and plausible explanation of what happened. It is also in concert with what the other officers reported and testified. Moreover, it provides a residuum for their reports and for their interpretation of the recording.

#### Another Paradigm Considered

Prins also provides a residuum for their reports and for their interpretation of the recording. When asked on cross-examination about certain ambiguous scenes on the video, Prins provided another paradigm and made it plain that he and the other officers had huddled around Araujo at the small desk behind him because they were “busting Young’s chops” and that he had looked around the room before he spoke because he was going to curse.

Indeed, Prins again reiterated that he apologized for the incident as soon as it happened and explained that he denied the existence of the napkin as a defense mechanism to divert the attention from Young to himself. In fact, he thought Valle had done the same—and was proud of her for doing so—when she said to Young that he would be out of a job if he put on the mask.

Prins also added that he followed Johnson down the hall and off-screen in another attempt to talk to him about what happened but Johnson was still not interested in speaking with him.

#### My Consequential Findings

Given the documents submitted and the testimony provided, I **FIND** that a preponderance of the evidence does not exist to prove any of the specifications contained in the Final Notice of Disciplinary Action lodged against Prins. More pointedly, Lounsbury, Valle, Araujo, Lumba, Lalama, Young, and Clemente were not



discussing Obama and healthcare benefits; Prins did not make any disparaging racial remarks; and Prins did not make a KKK mask for Young to adorn.

Although there was a political discussion, I **FIND** that it was a discussion concerning the upcoming gubernatorial election in New Jersey and how it would affect their contract and benefits as correction officers, including their healthcare benefits.

In addition, I **FIND** that Prins, Araujo, Clemente, Lumba, and Lalama huddled to feign that they were talking about Young, after which Prins made a ghost mask for Young as a joke. More specifically, Prins made two ghost masks from white napkins or c-folds but never intended for Young to wear them.

For the first mask, I **FIND** Prins plucked three holes from the napkin to form two eyes and a mouth and wrote "Young's Halloween Costume" on it with black marker. This is the napkin Prins threw out in the garbage can beneath his desk because Young had left his post.

For the second mask, I **FIND** that Prins gave it to Lalama to give to Young when Young returned to his post. This is the napkin Young retrieved from the garbage and was admitted into evidence as C-5.

Finally, I **FIND** that Prins did not allow, condone, or permit Clemente and Araujo to make the sounds and actions of a monkey or to utter the word "monkey" in an effort to create or foster an atmosphere or environment hostile and prejudicial to African-Americans.

Likewise, I **FIND** that Prins did not condone, permit, or foster an atmosphere or environment conducive to the use of symbols, which are known to be antithetical to African-Americans or other social, ethnic, or religious backgrounds. In particular, Prins did not condone, permit, or foster an atmosphere or environment conducive to the use of a Nazi arm-salute or mask-like visage, which could reasonably appear to have been a facsimile of a Ku Klux Klan mask.

**DISCUSSION AND CONCLUSIONS OF LAW**

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483-86 (2007). Significantly, progressive discipline may be bypassed when an officer engages in conduct that goes to the heart of that officer's ability to be trusted and function appropriately in that officer's position. In re Herrmann, 192 N.J. 19, 28-32 (2007).

Since I found that a preponderance of the evidence does not exist to prove any of the specifications contained in its Final Notice of Disciplinary Action, I **CONCLUDE** that Hudson County has not proven by a preponderance of the evidence that Prins violated any of the charges contained in that notice and that his removal as a county correction sergeant should be reversed.

**ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that the charges against Prins be **DISMISSED** and that his removal be **REVERSED**.

I further **ORDER** that Prins be awarded all due back pay, including interest, from the date of his suspension.

In addition, I **ORDER** that Prins be awarded all due benefits and seniority rights from the date of his suspension.

Finally, I **ORDER** that Prins be awarded all reasonable attorney fees and costs incurred in these proceedings, including those at the departmental level.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

January 6, 2011

DATE

  
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**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency:

January 6, 2011

Date Mailed to Parties:

January 7, 2011

**APPENDIX**

**WITNESSES**

**For Appellant:**

Felix Araujo  
Luis Ocasio  
Hani Elezi  
Patricia Galloway  
Michael Prins

**For Respondent:**

Tish Nalls  
Carmen Valle  
Ricky Johnson  
Kirk Eady

**EXHIBITS**

**For Appellant:**

- P-1 Not in evidence
- P-2 Stuffed animal of a Coqui
- P-3 Refrigerator magnet of a Coqui
- P-4 Letter from Director to Prins regarding Employee of the Month
- P-5 Report of Ocasio dated November 23, 2009
- P-6 Report of Ocasio dated December 3, 2009
- P-7 Not in evidence
- P-8 Nomination form for Employee of the Month
- P-9 Memorandum from Director and Deputy Director to Staff announcing start of Employee of the Month
- P-10 Letter from Hudson County to Prins regarding Employee of the Month

For Respondent:

- C-1 Preliminary Notice of Disciplinary Action dated October 22, 2009 (Attached to this notice are the Report of Johnson dated October 21, 2009; Report of Prins dated October 21, 2009; Report of Armando Clemente dated October 21, 2009; Report of Araujo dated October 21, 2009; Report of Thomas Young dated October 21, 2009; and Report of Jonas Lalama dated October 21, 2009)
- C-2 Recording of Incident dated October 21, 2009
- C-3 Memorandum from to Director dated October 22, 2009
- C-4 Supplemental Report of Young dated October 22, 2009
- C-5 "Young's Halloween Costume"
- C-6 Report of Valle dated October 22, 2009
- C-7 Report of Stephen Lounsbury dated October 21, 2009
- C-8 Report of John Lumba dated October 21, 2009
- C-9 Amended Preliminary Notice of Disciplinary Action dated November 23, 2009
- C-10 Report of Young dated October 21, 2009
- C-11 Report of Clemente dated October 21, 2009
- C-12 Report of Araujo dated October 21, 2009
- C-13 Non-Disciplinary Warnings for Pattern of Absence dated October 11, 2007, and September 3, 2008, respectively
- C-14 Receipt for Policies and Procedures Manuals dated January 6, 1995; Receipt for Employee Handbook dated July 17, 2008; Rules and Regulations Manual for Hudson County Correctional Center effective March 1, 1994, revised January 1, 2001, and reissued March 1, 2001
- C-15 Not in evidence
- C-16 Hand-drawn map of intake and receiving area