

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-017

ROBERT COATES

APPELLANT

VS.

FINAL ORDER SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER AS ALTERED

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

* * * * *

The Board, at its regular December 2023 meeting, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order dated November 17, 2023, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** the first page first introductory paragraph and substitute the following:

This matter came on for evidentiary hearing on April 20 and 21, 2023, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

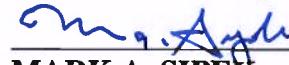
IT IS FURTHER ORDERED that the Recommended Order of the Hearing Officer, as Altered, be approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

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The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 11th day of December, 2023.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
SECRETARY

A copy hereof this day emailed and mailed to:

Robert Coates
Hon. Jesse Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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FINDINGS AND CONCLUSIONS OF LAW
RECOMMENDED ORDER

JUSTICE & PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS

APPELLEE

*** * * * *

This matter came on for evidentiary hearing on April 20 and 21, 2021, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Robert Coates, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Jesse Robbins. Also present on behalf of the Appellee was Deanna Smith, Paralegal Consultant. Present as Agency representative was Warden Kevin Mazza.

BACKGROUND

1. The Appellant, Robert Coates, filed his Appeal with the Personnel Board on February 22, 2021, appealing his termination from the position of Correctional Officer at the Green River Correctional Complex (GRCC). The primary issue for the evidentiary hearing was whether or not there was just cause for the dismissal of the Appellant and whether the penalty was excessive or erroneous. The Appellee had the burden of proof on this issue by a preponderance of the evidence. The Appellee went first in the presentation of proof. An additional issue was the Appellant's challenge to a promotional non-selection with the Appellant having the burden of proof on that issue by a preponderance of the evidence. The final issue to be decided was the Appellant's claim of race discrimination, with the burden of proof on the Appellant by a preponderance of the evidence.

2. Prior to the evidentiary hearing, the parties entered Joint Agreed

Stipulations.¹ These stipulations were reviewed by the Hearing Officer and were acknowledged by all parties on the record at the evidentiary hearing. Some of these Joint Agreed Stipulations include the following:

- A. The following disciplinary actions were listed in the termination letter and were accurately reported and occurred on the dates listed:
 - 1) Written Reprimand issued September 21, 2016, for Poor Work Performance.
 - 2) One (1) - day suspension issued April 11, 2018, for Misconduct.
 - 3) Written Reprimand issued on October 1, 2018, for Misconduct.
 - 4) Three (3) - day suspension issued February 22, 2019, for Poor Work Performance.
 - 5) Fifteen (15) - day suspension issued April 12, 2019, for Poor Work Performance.
 - 6) Thirty (30) – day suspension issued November 30, 2020, for Misconduct.
- B. Either party may introduce any Personnel Action Notifications or request forms that are reasonably relevant to the Personnel Board appeal, including but not limited to, those found at Discovery 0190, 0192, and 0193.
- C. Relevant policies and procedures listed in the December 18, 2020 termination letter and were in effect and should have been followed by all employees, including the Appellant during 2020.
- D. The following exhibits were introduced as Joint Exhibits for use by either party:

¹ See Notice of Stipulations Agreed to By the Parties filed on April 18, 2023.

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- 1) Joint Exhibit 1: Appeal Form filed by the Appellant and the accompanying letters attached as seen in Discovery 0001-0009.
- 2) Joint Exhibits 2 and 3: Dorm 8 photographs of the area leading to Dorm 8 and the Dorm 8 Control Center provided in Discovery 302-317.
- 3) Joint Exhibit 4: Post Order 01, General Post Order.
- 4) Joint Exhibit 5: IPP 03-01-01, General Guidelines for GRCC Employees.

3. There were no other prehearing motions. The rule for separation of witnesses was imposed with the exception of the Appellant and Warden Mazza. The Hearing Officer informed the parties that they would be required to file proposed findings of fact and conclusions of law following the conclusions of the hearing. Both parties waived opening statements and the presentation of evidence began.

4. The first witness called was **James Ward**, Kentucky State Penitentiary, Corrections Unit Administrator II, who previously worked at GRCC. He was a Lieutenant at GRCC during the relevant time period. Since 2009, he worked for the Department of Corrections (DOC) with a brief gap in state employment. He became familiar with policies and procedures during his time with DOC.

5. On December 9, 2020, from 9 a.m. and 9:17 a.m., Ward was asked to escort GRCC employee, Mindy Masden along with Sharon Shaver, to interview an inmate in Dorm 8 as part of a Prison Rape Elimination Act (PREA) audit. Mindy Masden was also the backup (PREA) Compliance Manager. Shaver, a non-state government employee, was an auditor from Georgia. Dorm 8 was acting as a Segregation Unit and is supposed to be the most secured place in the facility. The interview was to be conducted confidentially pursuant to PREA rules.

6. While escorting Mindy Masden and Shaver and, upon entering Dorm 8, Ward immediately realized that an inmate dorm worker was coming out of a door that led to the Dorm 8 housing. **Joint Exhibit 2 at 304**. The door was propped open at the end of the hallway, and he could see the door leading to the inmate day room and the Control Center door was also open. **Joint Exhibit 2 at 306**. All doors are supposed to be secured and never propped open. Normally, a person would have to be buzzed into that area or use a key, but the doors were propped open.

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7. When Ward saw the doors propped open, the inmate dorm worker told him that an officer said they could prop open the doors. (The doors should have been closed because it is against policy to have doors propped open and Dorm 8 was a Segregation Unit.) A person is supposed to go through the first door, wait for the door to close, then press a buzzer to go through the next door into Dorm 8.

8. Ward and the others proceeded through the doorway into the area that had been propped open to retrieve the inmate and clear the Property Room where Shaver was going to interview the inmate. The Appellant was in the Day Room. Ward and Mindy Masden searched and secured the Property Room to make sure there was nothing an inmate could use to threaten Shaver. Inside the Property Room were chairs and a table. They searched for weapons and any other contraband. There was an additional door leading to an officer bathroom, which also connects to the Dorm 8 Control Unit. Ward did not see any keys in the Property Room during his search.

9. The Appellant brought in the restrained inmate and tethered the inmate to the wall and left the area. When the Appellant left the room, he did not give Ward any keys. The door was secured so Shaver could interview the inmate alone. Ward and Mindy Masden were watching the interview outside the Property Room through a window in the door. Ward was watching Shaver during the interview for her safety.

10. After the interview had concluded, Shaver partially opened the door and whispered to Ward and Mindy Masden that a set of keys were on a table. Ward thought it odd that Shaver would have continued the interview if she saw the keys. Ward used the term "table" to describe where Shaver said the keys were and he also wrote "table" in his statement. Shaver also pointed to the keys on the "table." Ward entered the Property Room and retrieved the keys from the table.

11. Ward vividly remembered retrieving only one set of keys and giving the keys to the Appellant. Although he did not remember until cross-examination what kind of keys he grabbed, they were the Dorm 8 keys that are held by the Dorm 8 officer, who was the Appellant. Although not written in his report, Ward confirmed he gave the keys back to the Appellant. He testified that he was probably the one who untethered the inmate and directed the inmate to the Appellant but never entered the Day Room inside Dorm 8.

12. Ward explained the use of the Dorm 8 Control Center, what was stored there, and that no windows were in it. The Control Center connects to the Property Room that the inmate was interviewed in.

13. Ward testified that finding the keys were concerning because lost keys would be a security risk. Although the inmate was handcuffed and shackled, he still

posed a security risk to Shaver because the keys were near the inmate. Post Orders require all employees to maintain custody of keys. If anyone loses their keys, they are supposed to report it. The Appellant should have notified his superiors that he lost his keys. Ward prepared a report but did not know who determined the penalty and never made a recommendation to anyone.

14. Ward testified that he did not give the Appellant two (2) sets of keys. He specifically denied claims made in the Appellant's Appeal Form. He further testified that any statement that said he gave the Appellant more than one (1) set of keys was false.

15. Ward identified the policies in the dismissal letter that applied to the Appellant's actions:

- a) CPP 9.7, Storage, Issue, and use of weapons including Chemical Agents, Section III, Subsection C, item g. "State issued equipment shall not be available to or under the control of anyone other than the Officer that was issued the equipment at any time."
- b) IPP 03-01-01, General Guidelines for GRCC Employees. Section B, Item 2. "Work Habits."
- c) IPP 03-01-01, Section I. "Prohibited Activities and Conduct."
- d) IPP 03-01-01, Section I. "State Property or Tools; Post Order."
- e) Post Order #PO-01, General Post Orders, Item 6, "Correctional staff must maintain their professional demeanor."
- f) Post Order #PO-01, General Post Orders, Item 20, "Maintain control of tools, keys, locks, restraints, and other security related devices or equipment."

Ward's concern with the Appellant's actions were that they violated policies and post orders. He testified that DOC employees were taught in the academy to keep your equipment on your person. He further testified regarding the relevant sections of each policy related to the Appellant's conduct, as contained in **Joint Exhibit 4 and 5**. #PO-01 applies to every employee.

16. Ward testified he has never had a problem with the Appellant and did not

know why the Appellant would claim he discriminated against him. Ward was not aware of anyone who wanted to purposely have the Appellant terminated. Ward had not witnessed any racial discrimination against the Appellant.

17. Ward testified that, while he and Mindy Masden were in the area near the Property Room, they may not have secured the door, and he assumed the door was open. He did not report the unsecured doors while they were waiting. Ward distinguished his action from the Appellant's actions of leaving the keys where an inmate could harm someone and leaving the doors propped open allowing inmates to come and go as they please.

18. Ward testified regarding the following Joint Exhibits:

- a) Joint Exhibit 2: Dorm 8 photos related to the hallway, the Property Room where the inmate was interviewed, and the area outside the room.
- b) **Joint Exhibit 3:** Dorm 8 photos and the entrance to the Dorm 8 Control Center.
- c) **Joint Exhibit 4:** Post Order 1.
- d) **Joint Exhibit 5:** GRCC Policy and Procedure 03-01-01.

Ward also testified to the following party's Exhibits:

- a) **Appellee's Exhibit 6:** Ward's written statement, and confirmed the statement was similar to his testimony.
- b) **Appellant's Exhibit 7:** Mazza and Whitworth statement.
- c) **Appellant's Exhibit 8:** Daily Activity Logs identifying that the Appellant and Jones were the officers on duty December 9 and 10.

19. Ward never saw Officer Robin Jones during the PREA audit.

20. After Ward had testified that he did not speak to anyone after the incident, he read part of Appellee's Exhibit 6 which stated Mazza had interviewed him on December 18, 2020, at 10:35 a.m. He acknowledged that he had forgotten about being

interviewed and that the keys on the table were the "big keys." The exhibit confirmed his original report and also stated that he had told the Appellant to escort the inmate and secure him in the Property Room.

21. The next witness to testify was **Mindy Masden**, GRCC Procedures Development Specialist at GRCC and PREA Compliance Manager. Mindy Masden began working at GRCC in 2014. In 2020, she served as the Warden's Assistant and backup PREA Compliance Manager.

22. Mindy Masden discussed her report, which was introduced into evidence as the **Appellee's Exhibit 9**.

23. At approximately 9:00 a.m., Mindy Masden was in Dorm 8 with Shaver and Ward to interview an inmate for a PREA Audit. Shaver was being escorted because she was not an employee of GRCC. Mindy Madsen and Ward checked the Dorm 8 Property Room for any items of contraband or things the inmate could get hold of. Nothing was in the Property Room but a desk and a couple of chairs.²

24. Mindy Masden and Ward did not find any contraband or other items in the Property Room, nor did they see any keys. Mindy Masden testified that she would have picked up keys had she seen them in the Property Room because keys would not be left around the prison.

25. Mindy Masden testified that the Appellant was waiting with the inmate just outside the door from the Day Room. Ward instructed the Appellant to bring the inmate into the Property Room and secure him to the tether. Mindy Madsen never saw another officer other than the Appellant. She never saw the Appellant hand Ward a set of keys and she would have been able to see the Appellant give Ward a set of keys due to the size of the Sally Port. Once the inmate was secured, Shaver began the interview.

26. Mindy Masden and Ward remained in the hall waiting for the interview to conclude and watching Shaver through the window. She was watching for any inmate aggression or cues that Shaver was finished with the interview. Mindy Masden could only see Shaver. She watched Shaver's mannerisms to make sure she was safe.

27. Mindy Masden testified that, after completing the interview, Shaver came out of the Property Room and whispered to her and Ward. Despite testifying earlier in her testimony that it was a desk, she says that Shaver told Ward to look at the "table" by

² Note that at the beginning of her testimony she called the furniture in the Property Room a "desk" while in Exhibit 9 (her report) called it a "table" as told to her by Shaver.

the inmate. **See 4/20/23 at 12:37:00.** This is consistent with her report where she says that Shaver whispered to them "You may want to look at the table." **Exhibit 7.** It is also consistent when Mindy Masden reported to Warden Mazza and Tina Whitworth that Shaver said that the keys had been left on a "table within reaching distance of the inmate." **Appellant's Exhibit 7.** After hearing this from Shaver, Ward went into the Property Room and returned with a set of keys. She did not watch where Ward retrieved the keys from, but he only picked up one set of keys, which were found on the desk next to the inmate. **See 4/20/23 at 12:38:05.**

28. Mindy Masden did not see who retrieved the inmate after the interview. Nor did she see the exchange of the keys, because she was in shock about the keys lying next to the inmate. Mindy Masden was bothered by the keys because it was an audit. She was further concerned because it was a security risk, since Shaver was in the room with the inmate. She was not thinking about any disciplinary action but was concentrating on the auditor. She wrote a report before her shift was over. The incident was significant because they were trained not to leave their keys around. She did not remember what the keys looked like.

29. Mindy Masden stated she had no negative feelings towards the Appellant. She did not know of any reason someone would want to terminate the Appellant without justification and she saw no discriminatory acts or knew of any discriminatory statements. She reviewed and verified **Joint Exhibit 2**, Dorm 8 photos. She further testified there were two (2) chairs and a desk.

30. Although not in her report, during cross-examination, Mindy Masden said she remembered that the door shown in Joint Exhibit 2 at 306, which led to Dorm 8, was propped open. She does not remember the first door being propped open because she was talking with Shaver when they were walking down the hall. She remembered going through the door even though it was not in her report.

31. Mindy Masden testified it was a security breach that the door was propped open. She agreed it was a failure on her part to not have reported the door being propped open, however, she did not intentionally leave that out of her report. The reasons she remembered about the propped open door was because the Appellant asked her the question.

32. Mindy Masden testified that someone told the Appellant to get the inmate, but she does not remember who. No other staff members were present during the incident underlying this appeal other than Ward, Mindy Masden, and Shaver. She left out of the report relating to who initially retrieved the inmate.

33. On cross-examination, Mindy Masden maintained a desk was in the

Property Room and does not specifically remember what it looked like. The Appellant identified a possible inconsistency in Mindy Masden's testimony as during her direct examination she called it both a "table" and a "desk."

34. Mindy Masden eventually testified that she believed it was a desk. She reaffirmed previous testimony that, when they cleared the Property Room before the search, no keys were found. She also reaffirmed that Ward brought out a set of keys from the Property Room after the interview. On redirect, she acknowledged that a person could lay things on either a desk or a table.

35. Shaver waited until the end of the interview to report the keys. Mindy Masden did not know why Shaver waited but was surprised she waited.

36. Next to testify was **John Mayes**. Mayes began working at GRCC in 2017 and was promoted to Classification Treatment Officer in 2019.

37. On December 10, 2020, sometime between the time of 11:30 a.m. to 11:45 a.m., Mayes walked through Dorm 8 and observed the Appellant outside the Dorm 8 office with the office door opened and unlocked. Mayes testified that every time he goes into Dorm 8, he goes into the office and checks on the officer assigned there. On the morning of December 10, he was unsure if inmates were in or out of their cells and noted that there was also a can of OC spray (oleoresin capsicum or pepper spray) on the desk in the office next to the monitor. The Dorm 8 office had a u-shaped desk, and the office was connected to a bathroom and the Property Room. Referring to **Joint Exhibit 3**, Dorm 8 photos, Mayes identified and described the Dorm 8 office and the location of the OC spray on the desk near the monitor. He knew the Appellant was in the dorm but was unclear if he remembered another officer being in the dorm. During cross-examination, Mayes agreed that there was another officer there based on the Daily Activity Log, **Appellant's Exhibit 8**.

38. Mayes was concerned about the door being opened because inmates could steal items such as cuffs and shackles. They could get also get the OC spray that was on the desk. If left in the office, inmates could open other cells or escape. Everyone was trained to keep their equipment on them because it would be a security risk if inmates took the OC spray. These concerns were severe enough that Mayes felt he needed to write a report.

39. Outside the office, the Appellant was feeding the inmates. While in the office, Mays told the Appellant about the open door and leaving the OC spray on the desk. The Appellant responded, "These guys are not going to do anything as they are going home." Mayes was caught off guard by the Appellant's statement because the Appellant was a seasoned officer. He informed the Appellant that leaving the office

without regard for equipment was not a good idea.

40. Mayes verbally reported to Unit Administrator Ellis and was told to write a report. Before writing the report around 1:00 p.m., Mayes went back and observed the Appellant still leaving the Dorm 8 office door open. After seeing the door open for a second time, Mayes wrote his report. He identified the report, and it was introduced as the **Appellee's Exhibit 10**. He sent the report to his superiors but made no recommendations about discipline.

41. Mayes testified that he had seen those type of actions handled verbally. He did not remember specifics about other incidents but, in this incident, his supervisor told him to write it up. He talked to the supervisor before 1:00 p.m.

42. Mayes had no personal problems with the Appellant. He thought the Appellant was a seasoned employee and was shocked to see the door open and the OC spray left out.

43. Mayes reviewed the Daily Activity Log and confirmed that Officer Jones was there. **Appellee's Exhibit 8**. He did not recall seeing Officer Jones. He made an assumption that she was an officer. She should have been with the Appellant feeding the inmates. As a senior officer, he would have helped Officer Jones train on the job.

44. Mayes confirmed that he made the report on the Appellant because the Appellant was the seasoned officer in the dorm.

45. The next witness to testify was **Chase McRoy**. McRoy is a Captain working in Internal Affairs at GRCC. He was promoted to Lieutenant in 2020. McRoy had been employed for eight (8) years at the time of his testimony.

46. McRoy was told about keys being left in an office by the Appellant and he asked for written reports from Ward, Mindy Masden, and Shaver. He then reviewed and evaluated the reports. He again reviewed the reports while testifying. McRoy testified that the reports matched, because they all described that the doors were propped open and that the keys were left in the Property Room with an inmate. He identified Shaver's report as a fair and accurate copy of the report he reviewed. **Appellee's Exhibit 13**.

47. At McRoy's request, the Appellant also wrote a report that McRoy reviewed. This report was introduced as the **Appellee's Exhibit 11**. The Appellant's statement matched the other reports stating that he took the inmate into the Property Room. The difference, however, was that he stated Ward brought him his keys. McRoy determined that the reports of Ward, Mindy Masden, and Shaver more credible.

48. Pursuant to the chain of command, McRoy sent a memo, along with all the reports, to Major Byron Masden requesting the Appellant's dismissal. The memo was introduced as the **Appellee's Exhibit 12**. McRoy requested the Appellant's dismissal due to the severity of the incident and the Appellant's previous disciplinary history. After he reviewed the reports, he determined that the Appellant took the inmate into the Property Room and left his keys near the inmate.

49. The memo described the events that occurred, and he relied on Post Order #PO-01, which requires staff to maintain control of tools, keys, locks, restraints, and other security devices. Due to these incidents and multiple previous incidents, McRoy recommended that the Appellant be dismissed. McRoy testified that his memo's purpose was so the Warden could make the ultimate decision.

50. Leaving the keys near an inmate is concerning because it gives an inmate the ability to un-restrain himself, open a door, or use the keys as a weapon. Additionally, it is in violation of Post Order #PO-01, Item 20.

51. During cross-examination, McRoy testified that he reviewed video in addition to reading written statements from witnesses. In the video, he saw the Appellant escort the inmate into the Property Room, but the Property Room was not on camera. He did not recall seeing Ward on the video going into Dorm 8 or into the Dorm 8 office. He did see Ward walk through the office. He saw the door was open, which meant it had to be propped.

52. McRoy testified that it would be normal to save the video, however, he was a new supervisor. He did not see the significance of the video because the video did not show the Property Room.

53. The Hearing Officer questioned McRoy regarding factual differences between the Appellant and Mindy Masden's statement. McRoy stated there were not differences, however, **Appellant's Exhibit 7** and **Appellee's Exhibit 9** show that the statements of Mindy Masden and the Appellant agree that the Appellant took the inmate in the Property Room, but the statements contain differences with other facts. Most importantly, the **Appellant's Exhibit 7** and the **Appellee's Exhibit 9** state Ward brought out one (1) set of keys. The Appellant's statement says he gave Ward his set of keys from his key clip and later Ward gave the Appellant two (2) sets of keys after the interview. There were also differences in the statements in that one had information about the doors being propped open or unsecured. McRoy did not see their two (2) statements as conflicting.

54. McRoy said he concluded that they were the Appellant's keys because all

witnesses reported that the Appellant was the last one in the Property Room and the keys were on the table.

55. Mindy Masden or Ward reported the incident to him, and he received the reports. McRoy spoke with Shaver, who told him that the Appellant brought the inmate in, cuffed him to the wall, and left the keys on the table. He spoke with each of them.

56. In reference to the Appellant saying there were two (2) sets of keys, McRoy does not recall if this was verified.

57. **Sharon Shaver** testified via Amazon Chime video teleconferencing. She retired with twenty-five (25) years of experience with the Georgia Department of Corrections with numerous years of experience as a Department of Justice certified Prison Rape Elimination Act (PREA) Auditor. As an auditor, she conducted audits across the nation regarding PREA and corrections operations. In 2020, she had been contracted through the American Correctional Association (ACA) to conduct the PREA audit at GRCC. She was not a GRCC employee.

58. On December 9, 2020, Shaver was conducting a three (3) - day audit at GRCC, which included interviewing inmates privately and confidentially pursuant to PREA audit standards. She went with two (2) GRCC employees to Dorm 8. She could not remember their names, however, in her report admitted into evidence, she had identified these employees as Mindy Masden and Ward. Her purpose at GRCC was to interview an inmate as part of the audit. The inmate would discuss GRCC, PREA, and his experiences in order for Shaver to determine if the inmate knew of any sexual harassment or assault allegations that had occurred and how safe GRCC was.

59. Shaver had to develop trust with the inmate, therefore, the interview was conducted in the Property Room just outside the main door to Dorm 8. She testified that, when she arrived, they had to wait for someone to unlock the door to the Property Room. To the best of her knowledge, they were waiting for the officer on the housing unit, but she was not clear. They did not immediately go into the Property Room.

60. When she entered the Property Room, there were no keys on the table. The last person to enter the Property Room was an African American officer. He brought the inmate into the Property Room and secured the inmate to the tether connected to the wall. The inmate was at a table to her left and the inmate's right.

61. Early in the interview, she noticed a set of what she thought were institutional keys "setting" on a table next to where the inmate was sitting. She did not specifically remember what the table looked like. She did not immediately alert the GRCC employees about the keys because the inmate was secured to the wall. She did

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not believe she was in immediate danger. She testified that, in order to get the keys from the table, she would have had to walk toward the inmate to retrieve the keys.

62. Immediately after the interview concluded, she reported to Mindy Madsen and Ward that she saw the keys on a "table." She did not recall what happened after she left the Property Room. She was not involved with the inmate after that time.

63. She then left the area and wrote a statement about what she observed. She reviewed her report while testifying. Her report was introduced as **Appellee's Exhibit 13**. She described that the keys were placed on a "table."

64. Based on her experience in Corrections and as a PREA Auditor, institutional - or any - keys laying around could allow an inmate to escape or enter a room they are not allowed to access and could potentially place other inmates and staff at risk. Each level of staff is bound to good key control.

65. On cross-examination, she testified that her statement did say 10:15 a.m. When advised that other evidence and reports indicated it was around 9:00 a.m., she responded that she did not know if that was the time that the occurrence occurred or the time she wrote the statement. She would suspect that 10:15 a.m. is when she wrote the statement.

66. On redirect, she testified that the events recorded were what happened, and she most likely used her watch to report the time and her watch would have been on Eastern Standard Time instead of Central Time. She expects that is why she wrote 10:00 a.m. because she does not always change her watch and normally would not have changed her watch for a three (3) - day audit.

67. Regarding her delay of reporting the keys, she testified that she believed it to be a violation and reported it as soon as practicable. She felt her duty was done.

68. The next witness was **Heather Burke**, an Executive Staff Advisor with the Office of the Secretary in the Justice and Public Safety Cabinet (JPSC). In 2020, she worked in Human Resources (HR) for the Department of Corrections (DOC), processing Personnel Action Notifications (PANs). She testified that DOC HR received a request for personnel action for the Appellant to promote him from Correctional Officer (CO) to Classification Treatment Officer (CTO), effective November 16, 2020. By mistake, her office generated a PAN for the Appellant's promotion to CTO, effective November 1, 2020. **Appellee's Exhibit 16**.

69. Thereafter, Burke received an email from GRCC staff requesting to cancel the Appellant's promotion. **Appellee's Exhibit 14**. Upon review, Burke learned that the

correct date for the promotion was supposed to be November 16, 2020. She also learned the Appellant had not physically worked as a CTO, and the PAN regarding his promotion was then voided. **Appellee's Exhibit 15**

70. The next witness was **Byron Masden**. He is a Major at GRCC and is married to Mindy Masden but does not directly supervise her. He began working at GRCC as an officer in 2007 and was promoted through all the levels of security jobs including Major. He was serving as a Major in 2020.

71. Major Masden received the reports from McRoy. Major Masden's role is to review all the reports involved to make sure the discipline was warranted and then take them to the Warden. After reviewing the reports, **Appellee's Exhibits 6, 9, 11, 12, and 13BB**, the main issue he found was leaving the keys on the table. The Dorm 8 keys, or big keys, would have keys to the cuffs, the front door, the red zone, the officer's station, and access to the panel that opens all the doors. The smaller keys would not have had a red zone key and some other keys.

72. Major Masden confirmed that the requirement for keeping keys securely on your person is a post order and in policy. He testified that the Appellant violated PO-01 (**Joint Exhibit 4**) and GRCC 03-01-01 by not keeping the keys secure. Regardless of the policies, all employees should understand the requirement to keep keys secure because they are trained on this in the academy and their supervisors stress the importance of securing keys. After reviewing the reports, he felt that the Appellant violated those policies. The reports were the evidence proving the Appellant's violations.

73. Major Masden further reviewed Mayes report. **Appellee's Exhibit 10**. After reviewing the report, he believed the Appellant's actions as described in the report violated policy. The policy violations were the door being unlocked and the OC spray left on the desk. OC spray was "equipment" and, if laying around, it could be used to assault staff or inmates and could also be used to escape. OC spray should always be secured on the staff employee.

74. Following his review and having determined that he agreed with McRoy, he delivered the reports and recommendation for dismissal to the Warden for review. Major Masden believed termination was warranted because of the issue with the keys and the Appellant's previous disciplinary actions.

75. Major Masden further reviewed the door depicted in **Appellee's Exhibit 2 at 304**. He identified the box on the right as housing internet cables. He further testified that, in 2020, a person had to be let into the doors leading into Dorm 8 because both were secured and should have been secured.

76. Major Masden reviewed video footage but did not see anything pertinent to the disciplinary action. He did not save it because nothing pertinent was on the video related to the Property Room and keys and he did not remember seeing Ward on the video. The institution has thirty (30) days or less to retrieve video before the video is overwritten.

77. Major Masden drew the conclusion that the Appellant left his keys in the Property Room because Ward and Mindy Masden searched the room beforehand and did not see any keys. Shaver entered the room after Ward and Mindy Masden's search and she saw keys on the table.

78. The next witness was **Kevin Mazza**. He is the Warden at Northpoint Training Center and was Warden at GRCC in 2020.

79. In summary, Warden Mazza testified that he gave the Appellant a sufficient number of opportunities and progressive discipline to achieve success at GRCC. The Appellant's actions and previous discipline were the sole reasons the Appellant was dismissed. After hearing the testimony and reviewing exhibits presented during the hearing, Warden Mazza confirmed he would have made the same decision to dismiss the Appellant.

80. If the only discipline instituted was involving the keys, Warden Mazza testified he would have still made the decision to dismiss the Appellant. If the only discipline instituted was involving the OC spray and leaving the Dorm 8 office door open, he would have still made the decision to dismiss the Appellant.

81. Warden Mazza testified that, in general, he practiced progressive discipline for all of his employees. For any discipline, he would review the facts, the potential policy violations, and the employees' disciplinary history.

82. When making his decision to dismiss the Appellant, Warden Mazza reviewed the reports submitted to him by Major Masden, including the Appellant's report. (**Appellee's Exhibits 6, 9, 10, 11, 12, and 13.**) He further considered the Appellant's prior disciplinary actions as indicated in the dismissal letter and exhibits introduced during his testimony. Warden Mazza reviewed the policies that were alleged to have been violated in the dismissal letter, and **Joint Exhibits 2 and 3.** He thoroughly reviewed and relied on the dismissal letter and provided testimony supporting the specific reasons for dismissal, the specific policy violations, and the Appellant's previous disciplinary history. Through Warden Mazza's testimony, the Appellant's previous corrective and disciplinary actions were introduced as **Appellee's Exhibits 18-23.** Most importantly, many of the previous disciplinary and corrective actions were similar violations to the actions that led to Appellant's dismissal.

83. Warden Mazza had the same concerns as many of the witnesses regarding the keys being left on the table, the OC spray not being secured, and the doors being propped open, including the Dorm 8 office door. He was further concerned because the inmate who was escorted into the Property Room had violent convictions. This was a fact that the other witnesses did not know.

84. Warden Mazza issued an Intent to Dismiss Letter to the Appellant along with a letter placing the Appellant on administrative leave. The Intent to Dismiss letter informed the Appellant that his actions on December 9 and 10, 2020, which involved the keys left in the Property Room, the doors being propped open, the Dorm 8 office door being left open, and the OC spray being left in the Dorm 8 office, were the cause for the intent to dismiss. The letter contained the policies violated and the discipline that Warden Mazza considered. These letters were admitted into evidence as **Joint Exhibit 1**, which were originally filed by the Appellant with his appeal form, indicating he received these documents and had proper notice.

85. Following a pre-termination hearing, Warden Mazza issued a dismissal letter on December 18, 2020, which substantially contained the same information as the Intent to Dismiss letter but also included information about the pre-termination hearing. Warden Mazza also considered the Appellant's statement at the pre-termination hearing. He determined that the Appellant did not provide sufficient proof of the Appellant's version of what occurred.

86. After hearing what the Appellant had to say, he followed up with Ward and Mindy Masden as memorialized in **Appellee's Exhibit 7**. Warden Mazza spoke with them as a direct result of hearing the Appellant's version of what occurred. He wanted to make sure that nothing had changed with regard to the staff who made the reports.

87. Based on Warden Mazza's review of the reports and his follow up with Ward and Masden, he discounted the Appellant's statement that the Appellant gave Ward his keys. He reasoned that, if the Appellant gave Ward the keys, then the Appellant would not have been able to retrieve the inmate to bring him into the Property Room. Additionally, Warden Mazza testified that the Appellant's statement was not plausible because Ward might have had a set of yard keys that would have allowed him to get into the Property Room. Further, it is unusual for one (1) correctional officer to have both sets of keys. Each officer would normally have only one (1) set of keys.

88. Warden Mazza testified that he would have liked to have talked with Robin Jones (the other Dorm 8 officer on December 9, and 10, 2020) to see what information she had regarding these incidents, however, he did not have access to her because she had left her position at GRCC. Additionally, in his review of all the statements, Officer Jones

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was never brought up. The Appellant's statement never mentioned Robin Jones. Since no one mentioned her in their reports (including the Appellant's), Warden Mazza thought her statement was irrelevant.

89. Additionally, based on the recommendation of an interview panel, Warden Mazza initially had sent the Appellant's name for promotion to the position of Classification and Treatment Officer I (CTO). However, Warden Mazza voided that action because of further allegations of improper conduct that arose involving the Appellant. The Appellant and another employee inappropriately took items from inmates. He felt that the Appellant's actions were serious enough that the Appellant should not be promoted to the CTO position. Warden Mazza eventually suspended the Appellant for thirty (30) - days based on those allegations. (**Appellee's Exhibit 23**).

90. The **Appellant, Robert Coates**, testified as his only witness. He has not worked since he was dismissed from GRCC on December 19, 2020.

91. The Appellant's testimony was consistent with his report dated December 9, 2020. His report was admitted into evidence as **Appellee's Exhibit 11** and reads as follows:

On December 9, 2020 at approximately 9:00 a.m., I Ofc Coates escorted inmate Christopher Coleman #289323 8AL611 into an adjacent room off dorm 8 to speak with the PREA auditor, and when arriving to the room, I secured inmate Coleman to the cuffs on the wall so that he could speak with the PREA auditor. After I secured inmate Coleman to the wall I secured my set of keys on my key clip and exited the room. I took the keys from my key clip and handed them to Lt. Ward. After the PREA auditor and inmate Coleman finished, Lt. Ward brought me my keys that I had given him along with another set that was left in the room during the questioning time frame. End Entry.

92. The Appellant testified that, on December 9, 2020, he did not know if the door to Dorm 8 was open. He stated Ward came to the Dorm 8 office to get a set of keys to open the Property Room. The Appellant then went to escort an inmate to the Property Room for the PREA interview. The Appellant would have had the big set of keys to remove the inmate from his cell. The Appellant secured the inmate to the tether in the Property Room. He testified he then gave the second set of keys to Ward. When the PREA interview was over, the Appellant testified Ward gave him a set of keys and the other set of keys was on the table. The Appellant testified there was a third set of keys in the Dorm 8 office. He wrote his report (**Appellee's Exhibit 11**) at the request of McRoy.

93. The Appellant testified he was at a disadvantage in defending himself against these charges because he did not have access to the video. He acknowledged that

the video would not have shown who left the keys on the table, however, he argued that the video would show Ward entered the Dorm 8 office and left with a set of keys. He stated leaving the keys on the table is a violation of policy. The Appellant stated Ward left the keys on the table and lied about it.

94. The Appellant testified he did not know anything significant happened on December 10, 2020, until the next day. He was not asked to write a report. He acknowledged Dorm 8 office door was open without an officer present, however, no inmates were out because it was a Segregation Unit. He did not remember any conversation with Mayes. He stated the OC spray may have been out but not where inmates could get to it.

95. The Appellant, who is African American, testified he was discriminated against because of his race.

- a) The Appellant alleged Ward lied and stated the Appellant left the keys on the table because of race discrimination.
- b) The Appellant alleges he was targeted by CTO Mayes who made multiple trips to Dorm 8 and reported him for conduct that the Appellant does not believe violated policy. The Appellant alleged Mayes' report was evidence of race discrimination.
- c) The Appellant alleged that he was blamed for everything in Dorm 8 on December 9 and 10, 2020, while CO Robin Jones and the OJT Officer, who are both white, were not questioned.

96. The Appellant testified he was improperly demoted from the CTO position. He testified he was told verbally that he was demoted from CTO back to CO. He stated he was entitled to written notice that complied with KRS 18A.095(8).

FINDINGS OF FACT

1. The Appellant was a classified employee with status employed as a Correctional Officer (CO) at GRCC. On December 9 and 10, 2020, he was assigned to Dorm 8, which served as a Segregation Unit. As a Segregation Unit, it was the highest level of security within the institution. (Testimony of Ward, McRoy, Major Masden, Warden Mazza, and the Appellant).

2. On December 9, 2020, Sharon Shaver, an independent contractor, was visiting GRCC to conduct a PREA audit. She was there to conduct a confidential interview with an inmate from Dorm 8. She was escorted to the vestibule (also known as

the Sally Port) just outside of Dorm 8 by Lieutenant Ward and Administrative Assistant Mindy Masden. The interview with the inmate was conducted in the Property Room just outside Dorm 8. (Testimony of Ward, Mindy Masden, and Shaver).

3. The Dorm 8 Property Room was locked and had to be opened by a key. The door was opened by either the Appellant or Ward. (There is conflicting testimony on this point, however, it is not necessary to resolve this dispute to decide the appeal). Before Shaver and the inmate entered the Property Room, Ward and Mindy Masden searched the room to make sure there was nothing in the room that would pose a security risk. They completed their search and found nothing. (Testimony of Ward, Mindy Masden, Shaver and the Appellant).

4. Before he searched the Property Room, Ward requested the Appellant to get the inmate out of his cell and bring him to the Property Room for the interview. This required the Appellant to use the "big keys" (also described as the Folger Adam keys). The Appellant had to open the tray slot and cuff the inmate before opening the cell door. The Appellant then escorted the inmate, who was cuffed and shackled, to the Property Room. Once Ward and Mindy Masden were finished securing the Property Room, the Appellant brought the inmate in and tethered the inmate to the wall. (Testimony of Ward, Mindy Masden and the Appellant).

5. At this time, Shaver entered the Property Room to conduct her interview. The Property Room contained a table and two (2) chairs and nothing else. Shaver sat down in one (1) of the chairs. Ward and Mindy Masden were outside the Property Room (to maintain confidentiality) watching through the window (to monitor safety and security). Early in the interview, Shaver noticed a set of "institutional keys" on the table. The keys were out of reach of the inmate, so Shaver did not feel she was in immediate danger. After Shaver concluded her interview with the inmate, she opened the door and alerted Ward and Mindy Masden that keys were on the table. Ward took possession of the big set of Dorm 8 keys left on the table. (Testimony of Shaver, Ward, Mindy Masden, and **Appellee's Exhibits 6, 7, 9 12, and 13**).

6. After consideration of all evidence of record, including, but not limited to, the contemporaneous witness reports and the testimony of the witnesses during hearing, the Hearing Officer finds that the Appellant left the keys on the Property Room table. The Hearing Officer finds the testimony and reports from Ward, Mindy Masden, and Shaver credible. The evidence demonstrates the Property Room was carefully checked by two (2) corrections professionals who found nothing noteworthy in the room before the arrival of the inmate. Then, the Appellant entered the room with the inmate. No one else entered the room until Shaver arrived and saw the keys on the table. Further, the keys were the "big set of keys" that the Appellant would have had to use to retrieve the inmate from his cell. Therefore, the Hearing Officer concludes that the Appellant left the

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keys on the Property Room table. The Hearing Officer further finds that the Appellant leaving his keys on the Property Room table was a serious violation of policy and practice at GRCC and violated GRCC Post Order 1 and General Guidelines for GRCC Employee, GRCC 03-01-01. (Testimony of Ward, Mindy Masden, Shaver, **Joint Exhibits 4 and 5**, and **Appellee's Exhibits 6, 7, 9, 12, and 13**).

7. The Hearing Officer does not find the Appellant's version of events credible. No other witness stated that Ward had two (2) sets of keys. The Appellant did not provide any reason why he would give two (2) sets of keys to Ward. No other testimony or documentary evidence supports the Appellant's version of events.

8. While reviewing this incident, McRoy and Major Masden received the available video and found nothing pertinent. Specifically, they testified - and all witnesses agreed - there was no video from inside the Property Room to specifically show who left the keys on the table. The testimony establishes that the relevant institutional video for that day was not preserved, and the tape was recorded over. The Hearing Officer agrees with Warden Mazza that the video should have been saved because it was part of the investigation. The Hearing Officer finds McRoy and Major Masden's testimony credible and finds the Appellant was not prejudiced by the unavailability of the video recording. (Testimony of McRoy, Major Masden, and Warden Mazza).

9. The Hearing Officer finds Ward's testimony and report credible that both doors were unsecured when he entered Dorm 8 on December 9, 2020. There is no evidence of record that would establish whether the doors were left unsecured by the Appellant or Corrections Officer Jones, the other Dorm 8 officer. Although the Appellant had more seniority than Jones, the evidence does not establish that the doors were left open by the Appellant. (Testimony of Ward and **Appellee's Exhibits 6, 7, and 8**).

10. The Hearing Officer finds that, on December 10, 2020, Mayes entered Dorm 8 between 11:30 a.m. and 11:45 a.m., and observed the Appellant outside the Dorm 8 office, with the door unlocked, feeding inmates. Mayes also observed OC spray (oleoresin capsicum or pepper spray) sitting on the desk in the Dorm 8 office. When confronted by Mayes, the Appellant stated he did not think any of the inmates would try to escape. Mayes observed the Dorm 8 office door was again open around 1:00 p.m., with the Appellant outside the office. The Appellant did not deny this incident. He simply argued it was not a problem because Dorm 8 was a Segregation Unit and the inmates were locked in their cells. He conceded the pepper spray was within his control even though he was outside the office. He stated it was uncomfortable to wear the pepper spray on your side. The Hearing Officer finds this was a serious policy violation and was correctly reported by Mayes. (Testimony of Mayes, the Appellant, and **Appellee's Exhibit 10**).

11. Warden Mazza reviewed the reports from these incidents and issued the Appellant an Intent to Dismiss letter dated December 11, 2020. The Appellant requested a pre-termination hearing. The hearing was conducted by Warden Mazza on December 18, 2020. After hearing from the Appellant, Warden Mazza spoke with Mindy Masden and Ward. After consideration, Warden Mazza then decided to dismiss the Appellant based on his Poor Work Performance on December 9 and 10, 2020, as well as his prior corrective and disciplinary history, which included two (2) written reprimands and four (4) suspensions. The Hearing Officer finds that the Agency established that the termination of the Appellant was taken with just cause and the penalty of dismissal was neither excessive nor erroneous. (Testimony of Warden Mazza, **Joint Exhibit 1**, and **Appellee's Exhibits 7, 18, 19, 20, 21, 22, and 23**).

12. The evidence establishes that the Appellant was recommended for a promotion from CO to CTO to be effective November 16, 2020. Although a PAN was mistakenly prepared with a start date of November 1, 2020, for the promotion, Warden Mazza, the Appointing Authority, authorized the promotion to begin on November 16, 2020. The Appellant was on leave November 1 through November 12, 2020. Warden Mazza requested that the promotion of the Appellant to be withdrawn based on a report of misconduct. Given these events, the Hearing Officer finds that the Appellant was never actually promoted to CTO and was not penalized by this action being rescinded. (Testimony of Warden Mazza, Burke, and **Appellee's Exhibits 14, 15, 16, and 23**).

13. The Hearing Officer finds that the Appellant failed to prove that he was discriminated against on the basis of race. The Appellant did prove that he is African American and that he was dismissed. However, the Appellant failed to prove that he was meeting the reasonable expectations of his employer. He also failed to prove that his race played any role in his dismissal. The proof established that the Appellee had legitimate business reasons to dismiss the Appellant.

CONCLUSIONS OF LAW

1. The Appellee carried its burden of proof to establish Poor Work Performance by the Appellant on December 9 and 10, 2020. The totality of the evidence, including the Appellant's work and disciplinary history, establish just cause for the dismissal of the Appellant. The Appellee also proved that the dismissal was neither excessive nor erroneous. KRS 13B.090(7), KRS 18A.095(1) and (22), and 101 KAR 1:345.

2. The Appellant failed to carry his burden of proof that he was penalized when he was not promoted to Correctional Treatment Officer. KRS 13B.090(7) and KRS 18A.005(24).

3. The Appellant failed to carry his burden of proof that he was discriminated against on the basis of race in either his dismissal or his failure to be promoted to

Correctional Treatment Officer.

- A. In order to establish a *prima facie* case of race discrimination, the Appellant must prove: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was qualified for his position; and (4) a similarly situated employee outside the protected class was not subject to adverse action. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). While the Appellant proved the first two (2) elements, he failed to establish the last two (2) elements.
- B. Even if the Appellant proved a *prima facie* case of race discrimination (which he did not), the Appellee articulated legitimate, nondiscriminatory reasons for its decision to dismiss the Appellant and not promote him.
- C. The Appellant did not present any evidence that the reasons articulated by the Appellee were pretextual.

4. Because all the events associated with this appeal occurred prior to the passage of Senate Bill 153, all references to KRS 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ROBERT COATES V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2021-017)** be DISMISSED.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within fifteen (15) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral

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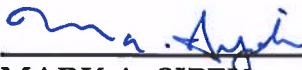
Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of the Hearing Officer this 17 day of November, 2023.

KENTUCKY PERSONNEL BOARD


Mark A. Siper
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Robert Coates
Hon. Jesse Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)