

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

**JAMES BAILEY,**  
*Appellant*

v.

**DEPARTMENT OF  
CORRECTION,**  
*Respondent*

**Case No.: D-11-362**

DECISION

The Civil Service Commission (Commission) voted at an executive session on October 18, 2012 to acknowledge receipt of: 1) the Recommended Decision of the Administrative Law Magistrate dated August 14, 2012; 2) the Appellant's Objections to the Recommended Decision; and 3) the Respondent's Response to the Appellant's Objections. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on October 18, 2012.

A true record. Attest.



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Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Regina M. Ryan, Esq. (for Appellant)

Julie E. Daniele, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200  
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August 14, 2012

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: James Bailey v. Department of Correction**  
***DALA Docket No. CS-12-145***  
***CSC Docket No. D-11-362***

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Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Richard C. Heidlage  
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Regina Ryan, Esq.  
Julie E. Daniels

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

**James Bailey,**  
Petitioner

v.

Docket Nos. CS-12-145

(D-11-362 for Civil Service Commission)

**Department of Correction,**  
Respondent

Dated: **AUG 14 2012**

**Appearance for Petitioner:**

**Regina Ryan, Esq.**  
Louison, Costello, Condon & Pfaff, LLC  
101 Summer Street  
Boston, MA 02110

**Appearance for Respondent:**

**Julie E. Daniels**  
Department of Correction  
Human Resources  
1 Industries Drive  
P.O. Box 946  
Norfolk, MA 02056

**Administrative Magistrate:**

**Sarah H. Luick, Esq.**

**Summary of Recommended Decision**

The Department of Correction had just cause for disciplining the Petitioner, a Correction Officer I, with a three day suspension without pay for failing to write a report on use of force and visible injuries on an inmate who was in his care and custody, having transported the inmate to a courthouse and later, picking him up. He was not present when the use of force and injuries occurred, but after receiving notice of the incident, he failed to make sufficient inquiries about the incident involving use of force by court officers, to examine the inmate for injuries, or ask the inmate if he received injuries from the incident.

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### RECOMMENDED DECISION

Pursuant to G.L. c. 31, § 43, the Petitioner, James Bailey, is appealing the December 5, 2011 decision of the Respondent, the Department of Correction (DOC), suspending him without pay for three days in connection with his duties with an inmate on February 23, 2011. (Ex. 3.)<sup>1</sup> The appeal was timely filed. (Ex. 1.) A hearing was held for the Civil Service Commission on April 2, 2012, at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, 4th Floor, Boston, MA 02114.<sup>2</sup>

Various documents are in evidence. (Exs. 1 – 15. Exhibit 13 is a DVD. Exhibit 14 is a CD.) Two chalks were presented.<sup>3</sup> Three tapes were used and the hearing was digitally recorded. The Respondent presented the testimony of Captain James Roberts of the DOC Central Transportation Unit (CTU); Sergeant William Cabino of the DOC CTU; Correction Officer (CO) David Day; DOC Sergeant Gary Berthiaume; CO Robert Badshaw; DOC Sergeant Christopher Hyde; and, DOC Lieutenant Mark McCaw of the Internal Affairs Unit. The Petitioner testified on his own behalf and called no other witnesses. The Petitioner attended but did not testify at his G.L. c. 31, § 41 Appointing Authority (Respondent) hearing. The witnesses were sequestered other than the Petitioner and Lieutenant McCaw. Both parties made closing arguments on the record. The hearing was private as no written request was received for the hearing to be public.

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<sup>1</sup> Following the incident with the inmate, DOC reassigned the Petitioner to MCI-Concord from his assignment with the Central Transportation Unit. There was no contention by the Petitioner in his appeal challenging the reassignment he received.

<sup>2</sup> The Division of Administrative Law Appeals has since moved to One Congress Street, 11th Floor, Boston, MA 02114.

<sup>3</sup> Chalk 1 contains stipulations of facts reached by the parties at the pre-hearing conference on February 7, 2012 held by the Civil Service Commission, and the record of the Petitioner's prior discipline. Chalk 2 lists names of inmates referred to in Exhibits 8 & 10 with their pseudonyms, A, B, C & D. This document is impounded.

### FINDINGS OF FACT

Based on the testimony and documentary evidence presented, and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. James Bailey has been a CO I with DOC for about twenty-eight years. He was working for the CTU in February 2011. He is now working at MCI-Concord. (Chalk 1. Testimony.)
2. CO Bailey is knowledgeable about the responsibilities of a CO working for the CTU. A CO in the CTU has care and custody responsibilities with inmates and transports inmates between various DOC facilities, courthouses, and medical facilities. His duties and responsibilities are set forth in the DOC rules and regulations, in the CTU Inmate Transportation Policy in 103 DOC 530, et seq., in Post Order #3, and in the CTU Special Instructions. (Exs.4, 5, 6 & 7. Testimony.)
3. Courthouses are categorized as either “stay-at-courts” or “drop-off” courts. Stay-at courts have security in place that DOC finds insufficient to satisfy its standards. For example, there may be one or no holding cell, or there may not be enough court officers. When COs in the CTU transport inmates to stay-at-courts, they are expected to stay at the courthouse and help the court officers with the DOC inmates they brought. Drop-off courts have security in place that DOC determines to be adequate. COs in the CTU are allowed to turn over physical custody and care to court officers once they remove the DOC shackles and the court officers place the inmate in their shackles. Once the inmate is secure in the courthouse holding cell, the COs may leave the drop off courthouse to fulfill other assignments they have not at the courthouse. If they have no other assignment, after parking the DOC van, they are to stay in the courthouse and return the

- inmate to his/her facility. The COs stay in the courtroom, the lock up area where the holding cells are, or in the break room until the return trip with the inmate. (Testimony.)
4. There is no written list of drop-off or stay-at courthouses. The designation of the courthouse is usually made at the time of the daily assignment given to the COs in the CTU. (Testimony.)
  5. The Hampden County courthouse in Springfield houses a District Court and a Superior Court. It is treated as a drop-off courthouse by the CTU. (Testimony.)
  6. The COs in the CTU use a DOC van to transport inmates. The van enters the courthouse through a secured area called a trap or sally port. (Testimony.)
  7. The sally port where the DOC van with the inmate(s) arrive, particularly the one at the Springfield courthouse, is not a place to park the DOC van for a long time as it can become busy with vehicles. (Testimony.)
  8. Parking the DOC van behind the Springfield courthouse is possible because there are spaces designated for law enforcement vehicles, but the courthouse is often very busy with parking very difficult even for law enforcement vehicles. After dropping off the inmates the COs transport to the Springfield courthouse, it can take a fair amount of time to drive the van around the courthouse area looking for a parking space. (Testimony.)
  9. DOC vans used by the CTU COs are staffed by two COs most of the time. At a stay-at courthouse, one CO from the CTU parks the DOC van while the other CO stays in the courthouse. At a drop-off courthouse once the inmate is secure in the care and custody of court officers, both COs may return to park the DOC van so that both of them know where the van is parked. There is no clear practice on whether one CO is supposed to

remain in the drop-off courthouse while the other CO parks the DOC van absent some specific assignment to the contrary. (Testimony.)

10. When the CTU COs enter a drop-off courthouse with an inmate, the time the DOC van enters the sally port is recorded in a logbook. When the COs take breaks, they must first call them into the CTU Desk Supervisor. (Ex. 12. Testimony.)
11. On February 23, 2011, CO Bailey was partnered with CO Javier Rosa who was the more senior CO, to transport inmates A and B to the Springfield courthouse in the morning. CO Bailey was the designated van driver for this assignment. CO Bailey drove the van into the sally port at the courthouse, arriving about 9:48 AM. CO Bailey escorted inmate A to the District Court and CO Rosa escorted inmate B to the upstairs Superior Court. Once CO Bailey removed the DOC shackles from inmate A, a court officer placed the court's shackles on the inmate and a court officer escorted inmate A to a holding cell for him to await his court appearance. (Ex. 12. Testimony.)
12. CO Rosa and CO Bailey left the sally port in the van with CO Bailey driving to locate a place to park as near as possible to the Springfield courthouse. February 23, 2011 was a busy court day with many vehicles parked. This is often the case for this courthouse. CO Bailey drove around for awhile and decided on a place to park the van. He was not sure this was an allowable parking place for the van. He and CO Rosa waited awhile, and when they saw a Springfield Police Officer they asked if it was okay for them to park where they were and understood that it was. They had not called their CTU Desk Sergeant, William Cabino, to report the long time they were away from the courthouse to locate parking. (Testimony.)
13. While searching for a place to park the DOC van, inmate A engaged in inappropriate

conduct in the holding cell. He switched sneakers with another inmate. The court officers ordered inmate A to take off and give them the sneakers, but he refused to do this. He was asked a number of times to comply with the order by a number of different court officers. When he continued to refuse, four court officers entered the holding cell. It was about 10:30 AM. Inmate A had no handcuffs on but was in ankle shackles. Nevertheless, he began to physically resist the efforts of the court officers to remove the sneakers. The court officers eventually got inmate A onto the floor and tried to handcuff him. While this incident was playing out in the holding cell, CO Day and CO Cullen were walking by. They saw the incident unfold although they did not participate in it. CO Day offered to spray the inmate with an incapacitating chemical, but the court officers declined that help. The court officers were able to get the sneakers off inmate A. The struggle with inmate A lasted about two minutes. The court officers were able to handcuff inmate A, bring him to his feet, and escort him into a different holding cell. Inmate A quieted down in the new cell, although he was protesting that the court officers had no right to remove his sneakers and use force against him. (Exs. 8, 10 & 14. Testimony.)

14. Right after the incident was over, CO Day went to the courthouse desk in the lock up area, checked the paperwork on inmate A, and learned that CO Bailey had transported inmate A into the courthouse. (Ex. 8, 10 & 14. Testimony.)
15. Just as they were about to leave the van to walk to the courthouse, CO Bailey was called by CO Day who reported that the inmate CO Bailey had escorted into the courthouse was involved in an incident with court officers. CO Bailey did not hear CO Day when he used the word, "bundled" by the court officers as a result of the incident, a word



synonymous with use of force. In any event, the message was short and CO Bailey and CO Rosa did not walk but drove quickly back to the courthouse, entering the sally port within about five minutes of the call and just as CO Day was in a vehicle leaving the sally port. No conversation occurred with CO Day at that time. Instead, CO Bailey and CO Rosa entered the courthouse to learn if they were going to have to return the inmate right away to his DOC facility due to the incident. CO Bailey spoke briefly to court officer "Laurie." He did not know her last name. She had not been one of the court officers involved in the incident with inmate A, but found out for CO Bailey that inmate A had calmed down with no need to remove him from the courthouse. He learned from court officer Laurie that the incident involved inmate A refusing to relinquish some sneakers so the court officers had to get them off of him. CO Bailey did not inquire and court officer Laurie did not volunteer that any use of force had been used against inmate A during the incident. Court officer Laurie did not say and CO Bailey did not ask her, whether inmate A had complained of being injured during the incident. It was about 10:40 AM when CO Bailey and CO Rosa returned to the courthouse. About thirty to forty minutes had elapsed since CO Bailey had left inmate A at the courthouse. (Exs. 8, 10 & 14.

Testimony.)

16. With this information from CO Day and from court officer Laurie, CO Bailey called his CTU Desk Sergeant Cabino. He told Sergeant Cabino that inmate A had caused a verbal commotion or words to that effect, because he resisted removing his sneakers while in the holding cell at the courthouse. He told Sergeant Cabino that inmate A had settled down and he was not asked to take inmate A out of the courthouse as a result of the incident. With this information, Sergeant Cabino did not call for CO Bailey to write a report of the

incident or to do anything else about the incident with inmate A. CO Bailey gave him no indication that inmate A had been “bundled” by the court officers. He gave Sergeant Cabino no information about any kind of physical struggle involving the inmate. He informed Sergeant Cabino that he had learned of the incident from CO Day. (Exs. 8, 10 & 14. Testimony.)

17. CO Day did not report to his supervisor what he had witnessed of inmate A in a physical struggle with the court officers. He did not write a report about what he had seen. He never reported having seen any visible injuries on inmate A. (Exs. 8, 10 & 14. Testimony.)

18. When inmates A and B were done with their court appearances, CO Bailey and CO Rosa began the process of transporting them back to their facilities in the DOC van. After a court officer removed the shackles on inmate A, CO Bailey put on the DOC shackles. He noticed that inmate A’s ankle had a cut on it. He dismissed this as not significant as he had seen this kind of skin irritation or cut on many inmates due to the wearing of ankle shackles. Inmate A did not say he was hurt at all. He cooperated in the transport process back to the DOC van. When CO Bailey put inmate A into the holding area in the back of the van, inmate A said words to the effect that CO Bailey would be his witness when he sues. CO Bailey did not concern himself at all with that statement. He did not ask inmate A what he was talking about. Inmate A did not say anything else to CO Bailey that CO Bailey heard. CO Bailey did not examine inmate A for any injuries as a result of the incident at the courthouse. (Exs. 8, 10 & 14. Testimony.)

19. Upon leaving the courthouse, CO Rosa was handed reports written by the court officers involved in the incident with inmate A. He did not read them. CO Bailey did not read

them. They contained information that the court officers had used force on inmate A.  
(Exs. 8, 10 & 14. Testimony.)

20. CO Bailey had ample opportunities to view inmate A to see any visible signs of bruising or bumps on inmate A's face. He was with inmate A upon getting him at the courthouse after the incident and through the time he escorted him to the van, into the van and then upon removing him from the van and seeing him as he entered his facility, the Souza-Baranowski Correctional Center (SBCC), escorted by CO Rosa. (Exs. 8, 10, 14 & 15. Testimony.)

21. Upon arriving at SBCC, CO Bailey alerted Sergeant Gary Berthiaume at SBCC, that inmate A had been involved in an incident at the courthouse concerning a pair of sneakers. CO Bailey wanted to alert SBCC about inmate A being disruptive and not to indicate that he was injured. Sergeant Berthiaume called the booking officer, CO Bashaw to watch out for inmate A as he entered the facility. (Exs. 8, 10 & 14. Testimony.)

22. As inmate A was brought to the booking area by CO Rosa, CO Bashaw saw bruises on inmate A's head. He also felt he was limping somewhat. Sergeant Christopher Hyde at SBCC was alerted that there might be an issue with inmate A, so he came to the booking area. He saw inmate A being escorted into the booking area by CO Rosa. Sergeant Hyde saw bruises on inmate A's head and had him brought to a back holding cell. He then called for a camera so that photographs of inmate A's bruises could be taken. (Chalk 2. Exs. 8, 10, 14 & 15. Testimony.)

23. Sergeant Hyde took photographs of inmate A's head bruises. (Chalk 2. Ex. 8, 10, 14 & 15. Testimony.)

24. The photographs showed clearly visible head bruises and bumps on inmate A's head. A photograph was taken of his ankle showing cuts. (Chalk 2. Ex. 15. Testimony.)
25. Inmate A was strip searched with CO Rosa present. Inmate A was later taken to be examined by Charles R. Rountree, RN, who detected: "a red area on the right side of his head; a swollen area above his right eye brow; a small raised abrasion on his forehead; a swollen left eye with an inability to open it; abrasions on his left ankle without swelling; and, a complaint of an inability to open his mouth wide." Nurse Rountree notified "Dr. Hicks who saw the inmate in the trauma room and ordered an x-ray." (Ex. 10.) X-rays of inmate A's right orbit, right mandible, and left mandible revealed, "no definitive gross evidence of acute fracture or dislocation." (Chalk 2. Exs. 8, 10 11 & 15.)
26. The next day an investigation was started about the February 23, 2011 courthouse incident involving inmate A and his injuries. The matter was referred to Lieutenant Mark McCaw of the DOC Internal Affairs Unit. Lieutenant McCaw had all the COs and court officers involved produce reports and/or be interviewed. Other than CO Bailey and CO Rosa, all the COs who saw inmate A following the courthouse incident when he was back at SBCC, reported that he had bruises on his head. All the court officers who were involved in the incident reported that there was a physical struggle with inmate A in order to retrieve sneakers that he had taken from a person in the holding cell next to him. (Exs. 8, 10 & 14. Testimony.)
27. CO Bailey and CO Rosa were both reassigned to MCI-Concord pending the outcome of the investigation into the inmate A incident. (Ex. 8. Testimony.)
28. Assistant Deputy Commissioner Hetherson reviewed the Internal Affairs Unit summary of reports and interviews conducted into the incident involving inmate A. The Internal

Affairs Unit and Assistant Deputy Commissioner Hetherson recommended a DOC “Commissioner’s Hearing” to determine if CO Bailey and/or CO Rosa should be disciplined. (Ex. 9.)

29. On October 3, 2011, CO Bailey was issued a “Notice of Charges and Hearing,” for a G.L. c. 31, §41 hearing on possible discipline for his conduct with inmate A on February 23, 2011. He was charged with failing to report that force was used on inmate A, for being away from his post when the incident occurred, for not reporting that inmate A had been injured during the incident, and for not being fully truthful during an investigation of the incident. He was charged with conduct that violated the DOC Rules and Regulations at General Policy I, Rule 7(c), Rule 17(c), and Rule 19(c), and for violating Inmate Transportation Policy 103 DOC 530.08(1)(c), CTU Post Order #3, CTU Special Instructions at Section 1(B)(17)and (18), and at Section V(C). (Exs. 2, 4, 5, 6 & 7.)
30. An Appointing Authority hearing was held before a designated hearing officer on October 26, 2011. CO Bailey chose not to testify at the hearing. He had already been interviewed and wrote a report about his conduct with inmate A on February 23, 2011 in connection with the investigation of the incident. (Exs. 3, 8, 10 & 14.)
31. The hearing officer’s report of November 10, 2011 was reviewed by DOC Commissioner, Luis S. Spencer. On December 5, 2011, Commissioner Spencer imposed a three day suspension without pay on CO Bailey and reassigned him from the CTU to MCI-Concord. Commissioner Spencer found he had violated the rules, regulations, post orders and special instructions he was responsible to fulfill. He was charged with violating Rule 19(c) regarding being responsive “fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or

yourself,” but Commissioner Spencer did not discipline him for his conduct under this rule (Ex. 3.)

32. CO Bailey filed a timely appeal of his three day suspension without pay to the Civil Service Commission on December 14, 2011. (Ex. 1.)

33. CO Day received a letter of reprimand for failing to write a report on the incident involving inmate A when he was aware that force was used by the court officers on inmate A. (Exs. 8, 10 & 14. Testimony.)

34. CO Bailey was found by DOC to have violated DOC Rule and Regulation, General Policy I where it states:

Nothing in any part of these rules and regulations shall be construed to relieve an employee from his/her primary charge concerning the safe-keeping and custodial care of inmates or, from his/her constant obligation to render good judgment [and] full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations and policy issued by the commissioner, the respective Superintendents, or by their authority ... Improper conduct affecting or reflecting upon any correctional institution or the Department of Correction in any way will not be exculpated whether or not it is specifically mentioned and described in these rules and regulations.

(Exs. 3 & 4.) He was found to have violated Rule 7(c) at General Conduct where it states:

Any Department of Correction or institution employee who is found ... flagrantly, wantonly, or willfully neglecting the duties and responsibilities of his/her office shall be subject to immediate discipline up to and including discharge.

(Ex. 3 & 4.) He was found to have violated Rule 17(c) at Medical where it states:

Inmates who are injured, sick, or complaining of ill health should be sent to or otherwise called to the attention of the physician or medical attendant on call. Record complete circumstances of all inmate injuries including the names of witnesses and what the inmate was doing at the time of the injury.

(Exs. 3 & 4.)

35. CO Bailey was found by DOC to have violated DOC Inmate Transportation Policy at Transportation to Court, 103 DOC 530.08(1)(c):

Responsibility for security and custody of the inmates transported to court shall remain with the transportation team until the inmate is returned to the place of original confinement, or until responsibility is removed by the court ....

(Exs. 3 & 5.)

36. CO Bailey was found by DOC to have violated DOC CTU Post Order #3 at General Statement:

Post Orders cannot cover every incident or eventuality, which may occur. However, employees assigned to any post shall use good judgment, tact and pay careful attention to details in the performance of their duties.

(Exs. 3 & 6.) He was found to have violated DOC CTU I. Special Instructions at B(17):

CTU Staff shall contact the Shift Lieutenant before leaving a post for a break. Breaks shall be logged in the unit logbook.

(Exs. 3 & 7.) He was found to have violated DOC CTU I. Special Instructions at B(18):

Unless directed otherwise by the Shift Lieutenant, staff are to remain on site in the building at all assigned destinations.

(Exs. 3 & 7.) He was found to have violated DOC CTU V. Transportation to Court at C.

Searches of Vehicles and Inmates where it states:

You shall be responsible for the security and custody of the inmate(s) transported to court, until the inmate is returned to the institution or until the responsibility has been removed by the court (i.e., remanded or completed service of the habeas corpus).

(Exs. 3 & 7.)

37. CO Bailey has prior discipline. He was suspended on March 31, 1999 for one day for failing to provide medical evidence. He had previously received two letters of reprimand

in 1998 for the same reason. He subsequently received four letters of reprimand for the same reason in 2000, 2002, 2008, and 2010. He received two letters of reprimand for tardiness in 1998 and 2000. (Chalk 1.)

### Conclusion and Recommendation

DOC must satisfy a preponderance of the evidence standard to show just cause for suspending CO Bailey. *Gloucester v. Civil Service Commission*, 408 Mass. 292 (1990). Just cause is found when an employee has engaged in “substantial misconduct which adversely affects the public interest by impairing the efficiency of public service. *Murray v. 2nd District Court of Eastern Middlesex*, 389 Mass. 508, 514 (1983); *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488 (1997). On appeal, the Civil Service Commission determines whether or not the Appointing Authority had a reasonable justification for the action it took. *Watertown v. Aria*, 16 Mass. App. Ct. 331, 334 (1983). This means the Appointing Authority’s action had to be “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997), quoting *Wakefield v. 1st District Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Civil Service Commission v. Municipal Court of Boston*, 359 Mass. 211, 214 (1971). In making this determination, the Civil Service Commission cannot simply substitute its decision for that of the Appointing Authority. *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304; *School Committee of Salem v. Civil Service Commission*, 348 Mass. 696, 699 (1965).

I conclude from the findings made that DOC had just cause to discipline CO Bailey for his conduct in connection with his care and custody of inmate A on February 23, 2011. I



conclude that a three day suspension without pay is warranted because his conduct shows he violated DOC rules, regulations, post orders, and special instructions as set forth in the DOC Commissioner's letter of decision of December 5, 2011. (Ex. 2.)

CO Bailey's defense rests largely on his claim that he had no knowledge that inmate A had been injured by the use of force by court officers at the Springfield courthouse. He also maintains that he never saw any injuries on inmate A's face, and only saw cuts on his ankle that he felt were not out of the ordinary for an inmate wearing ankle shackles. The incident with inmate A occurred while he and CO Rosa were locating a parking space. I conclude those claims do not excuse CO Bailey's conduct in his neglectful handling of information gathering about the incident. Although CO Bailey did not testify at his Appointing Authority hearing, I conclude that nothing in CO Bailey's testimony at this Civil Service Commission, G.L. c. 31, § 43 hearing was at odds with his accounts given in his interview and in his report done in connection with the Internal Affairs Unit investigation of the incident with inmate A.

The findings show that he and CO Rosa were away from the courthouse for at least thirty to forty minutes in their effort to locate a parking spot, so that it would have made sense to notify the CTU Desk Sergeant where they were and why. Because the Springfield courthouse is a drop-off courthouse, CO Bailey and CO Rosa could have been given another transport assignment to go somewhere else after dropping off inmates A and B, but they had no other assignment than to stay at the Springfield courthouse. The thirty to forty minutes with neither of them present at the courthouse ended up being significant time away from the courthouse.

At the core of CO Bailey's misconduct is his failure to determine whether the court officers had used force on inmate A and whether inmate A had injuries in connection with the removal of the sneakers while he was in the courthouse holding cell. Although CO Bailey asked if everything was all right once he and CO Rosa returned to the courthouse, he only determined that inmate A was now not being disruptive and could stay at the courthouse for his court appearance. There is no credible evidence that CO Bailey directly asked court officer Laurie or called back CO Day to inquire whether or not any use of force had occurred. That would have seemed to be a very basic inquiry because he understood the inmate got into a dispute with court officers over a pair of sneakers he did not want to give to them. Whether or not CO Bailey heard CO Day over the telephone use the words "bundled" to indicate a use of force, is not a credible defense to his misconduct in not making this very simple inquiry. I do not find him credible in his testimony that it was at all times very clearly communicated to him by court officer Laurie and by CO Day that only a verbal confrontation occurred between court officers and inmate A.

CO Bailey's misconduct was reinforced by his reaction to seeing cuts on inmate A's ankle upon placing the DOC ankle shackles on inmate A in preparation for removing him from the courthouse into the DOC van for transport. CO Bailey never testified that he had seen the same bruising when he took off the DOC ankle shackles upon arriving at the Springfield courthouse. After seeing the cuts on the ankle, he should have at least suspected that a use of force had occurred during the incident. He did nothing further at that time to learn if there had been any physical resistance by inmate A and a subsequent use of force on inmate A. He never even asked inmate A how he got the cut on his ankle. He never thought

that all this background information about the incident including the ankle cuts and the statement of inmate A to him of being his witness when he sues, should have prompted him to inquire further. His testimony was not persuasive why it did not prompt him to consider whether a use of force had been made on inmate A during the incident and whether he had sustained any injuries at the courthouse.

The evidence is credible in the form of testimony and reports from the SBCC witnesses who saw inmate A upon his return to the facility, that inmate A had visible head injuries, significant enough to have inmate A seen by a nurse and then to have a doctor order x-rays to be taken of his head. The fact that there were visible head injuries is also confirmed by the color photos in the record taken at the time of his return to SBCC during the afternoon of February 23, 2011. (Ex. 15.) The record establishes that CO Bailey was neglectful in failing to pay close attention to how inmate A looked upon picking him up for transport out of the courthouse, especially after seeing the ankle cuts. If he had looked at him with any measure of care, he would have seen what the SBCC witnesses testified and reported they clearly saw of bruises and bumps on inmate A's face.

CO Rosa did not testify. As CO Bailey's partner, his account of the course of events with inmate A on February 23, 2011 would have been at least pertinent. What CO Rosa's report shows, which was done as a result of the investigation process, is that he noticed no injuries to inmate A even as he escorted him inside SBCC to the booking area and observed inmate A once in the SBCC holding cell as viewed on the DVD (Ex. 13.). CO Rosa also received reports from the court officers, which if he had read them or if CO Bailey had read them, would have revealed that a use of force occurred during the incident with inmate A. In light of all the other factors pointing to a possible use of force during the incident, it is not

credible that CO Bailey saw no reason to review those court officer reports to uncover what the court officers directly in contact with inmate A during the incident had to say about what happened. That there was any court officer report about the incident was itself a significant enough factor for CO Bailey to at least question whether there had been a use of force during the incident. Even he must have wondered if there had been a use of force because he pointed out to SBCC Sergeant Berthiaume that inmate A had been disruptive at the courthouse.

The record does not contain sufficient proof of an intentional cover-up of any use of force having occurred with inmate A, or a cover-up that inmate A was injured while at the courthouse. The record does show neglectful conduct by CO Bailey in connection with the incident at the courthouse with inmate A. Against these factual conclusions, I find that CO Bailey engaged in misconduct in his duties with inmate A.

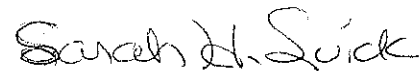
As charged, CO Bailey violated General Policy I because his “primary charge” was to ensure the “safe-keeping and custodial care of” of inmate A, and to “render good judgment,” and to be “prompt” to obey all rules, regulations, post orders and special instructions he had to fulfill on February 23, 2011. He violated Rule 7(c) because he was neglectful in fulfilling his duties and responsibilities on February 23, 2011. He violated Rule 17(c) because inmate A had visible injuries that CO Bailey either saw and neglectfully dismissed as insignificant, or could have seen if he had given the necessary care and attention to his duties on February 23, 2011. Because he was neglectful about examining inmate A and making simple inquiries about the courthouse incident, CO Bailey failed to do what Rule 17(c) calls for: “Record complete circumstances of all inmate injuries including the names of witnesses and what the inmate was doing at the time of the injury.” (Ex. 3.)

As charged, CO Bailey violated DOC Inmate Transportation Policy 103 DOC 530.08(1)(c) that calls for the CTU CO to retain “[r]esponsibility for security and custody of the inmates transported to the court ... until the inmate is returned to the place of original confinement, or until responsibility is removed by the court.” He never reported to his Desk Sergeant that he was not able to be at the courthouse because of trouble finding a parking place in the vicinity of the courthouse after as long as thirty to forty minutes had elapsed. He neglected to make basic inquiries into what occurred during the incident with inmate A at the courthouse while he was gone in order to determine if there had been a use of force against inmate A and if inmate A was injured during the incident. Because of that neglect, he failed to fulfill his reporting obligations concerning inmate A. CO Bailey violated CTU Post Order #3 by not using “good judgment,” and by not paying “careful attention to details” in his dealing with the incident. He violated CTU Special Instructions at (B)(17) by failing to notify Sergeant Cabino with the correct information about what happened to inmate A that he could have easily uncovered before the end of his shift; that there had been a use of force against inmate A and that he sustained injuries during the incident. CO Bailey violated CTU Special Instruction at (B)(18) because he was away from his post inside the Springfield courthouse without reporting to the CTU Desk Sergeant that he was away from the courthouse for at least thirty to forty minutes while trying to locate a parking place. He violated CTU Special Instructions at (V)(c) because he had failed to maintain expected “security and custody” of inmate A from the time inmate A was transported by him to the Springfield courthouse until he was returned to SBCC. This is because of his neglectful conduct in not discovering that inmate A had force used on him by the court officers and had sustained injuries during the incident. When those things occur, the CTU CO must gather

information and satisfy specific reporting requirements.

A three day suspension without pay appears reasonable, based on the facts found and the rules, regulations, post order and special instructions CO Bailey's conduct shows he violated. The list of responsibilities CO Bailey has to fulfill when doing CTU CO transporting of inmates to courthouses is clear from the full set of the rules and regulations, post order #3, and CTU special instructions in the record. (Exs. 4, 5, 6 & 7.) I did not find the prior discipline to be a factor in addressing just cause for a three day suspension. I recommend to the Civil Service Commission that the decision of the Appointing Authority be affirmed.

**DIVISION OF ADMINISTRATIVE  
LAW APPEALS**



**Sarah H. Luick, Esq.  
Administrative Magistrate**

Dated: **AUG 14 2012**