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Case Name: [REDACTED]

ALJ: Kehinde Decision Date: 2/19/21

Case No.: DPSC-IGO-002V-20-25527

Agency Case No. (if applicable): _____

Document Name (CRS): _____

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**MAY 19 2021
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OFFICE OF
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[REDACTED] # [REDACTED]

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* BEFORE ANN C. KEHINDE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DPSC-IGO-002V-20-25527
* IGO No.: [REDACTED]

* * * * *

REVISED PROPOSED DECISION

STATEMENT OF THE CASE
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SUMMARY OF THE EVIDENCE
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DISCUSSION
CONCLUSION OF LAW
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STATEMENT OF THE CASE

On June 12, 2020, the Grievant filed a grievance¹ with the Inmate Grievance Office (IGO).² In referring the matter to the OAH, the IGO prepared a summary of the grievance. At the hearing, I read the IGO’s prepared summary to the Grievant and asked the Grievant to advise if the Grievant agreed with the IGO’s summary. The Grievant agreed with the summary which states as follows:

On March 20, 2020, the Grievant left his cell to go to the yard outside of the tier. While he was gone, another inmate went into the cell and removed several items of personal property including a television, X-Box along with the peripheral items associated with it, and several games. Additionally, toiletries and

¹ A “grievance” is “the complaint of any individual in the custody of the Commissioner [of the Division of Correction] or confined to the Patuxent Institution against any officials or employees of the Division or the Patuxent Institution arising from the circumstances of custody or confinement.” Code of Maryland Regulations (COMAR) 12.07.01.01B(8).

² The IGO is part of the Department of Public Safety and Correctional Services (Department). Md. Code Ann., Corr. Servs. § 2-201(12) (Supp. 2020). The IGO receives complaints from inmates and refers those not found “wholly lacking in merit” to the Office of Administrative Hearings (OAH) for hearings. *Id.* § 10-207(c)(1) (2017).

food items were taken. The property alleged to be missing is contained in Exhibits 1-12 which are attached to the original ARP complaint.

The Grievant immediately reported the loss to his Tier Officer, who reviewed the video surveillance cameras located on the tier. The camera revealed that another inmate did enter the cell while the Grievant was outside. An investigation was undertaken which revealed the presence of the Grievant's television in another inmate's cell. According to the Grievant, the television was seized and has not been returned to him. He seeks \$784.36 as reimbursement for his loss.

On December 9, 2020, I held a hearing via videoconference. Md. Code Ann., Corr. Servs. § 10-207(c)(2) (2017); Md. Code Ann., State Gov't § 10-211 (2014); and COMAR 28.02.01.20B(1)(b). I was located at the OAH, and the parties were at [REDACTED] [REDACTED], a facility of the Division of Correction (DOC). The Grievant represented himself. [REDACTED] Correctional Officer (CO) II, represented the DOC.

The contested case provisions of the Administrative Procedure Act, the IGO's General Regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 12.07.01; and COMAR 28.02.01.

ISSUES

1. Was the Grievant's television, Xbox, games, food, and toiletries stolen from his cell due to the negligence of DOC staff?
2. Did DOC staff negligently investigate the theft of the Grievant's property?
3. Was the Grievant's television improperly destroyed by DOC staff after it was found in another inmate's cell?
4. Is the Grievant entitled to relief?

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire IGO file into the record, which contained the following documents:

- IGO Ex. 1 - Grievant's complaint to the IGO, June 12, 2020, with Grievant's initial ARP (dated March 20, 2020)
- IGO Ex. 2 - Letter from IGO to Grievant, July 14, 2020
- IGO Ex. 3 - Letter from Grievant to IGO, received July 27, 2020
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- IGO Ex. 9 - Transmittal, received November 20, 2020

The Grievant submitted a multipage document, which was admitted as Grievant's Ex. 1:

- Catalog Order form, received by [REDACTED] on November 27, 2019
- Merchandise Invoice Agreement from [REDACTED] date illegible
- Packing Slip from [REDACTED] dated December 30, 2019
- Inmate Package Receipt, dated January 14, 2020

The DOC did not offer any exhibits.

Testimony

The Grievant testified and did not present other witnesses.

CO II [REDACTED] testified on behalf of the DOC.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On March 23, 2020, and at all times relevant to this proceeding, the Grievant was housed at [REDACTED] a DOC facility, in Housing Unit [REDACTED] tier.

2. On or about December 18, 2019, the Grievant placed an order with [REDACTED] [REDACTED] for an Ampd 15-inch clear television in the amount of \$210.69 and a Skyworth remote control in the amount of \$3.00. The Grievant also ordered a six-foot cable, a towel, and clothing.

3. On or about January 14, 2020, the Grievant received the television, remote, cable, towel and clothing.

4. On March 23, 2020, at approximately [REDACTED] p.m., the Grievant was let out of his cell, [REDACTED] to go outside to the yard for recreation.

5. While the Grievant was out of his cell, the inmate from the cell next to the Grievant ([REDACTED]) entered the Grievant's cell. The inmate from the [REDACTED] cell stayed in the Grievant's cell until just before the end of the recreation period.

6. When the Grievant came back to his cell, he noticed some of his personal property was missing and asked to speak to a Sergeant.

7. The Grievant refused to return to his cell. He was given an "adjustment" for refusing his housing assignment and was taken to be stripped search. The Grievant told the officers that he was told by BGF³ gang members that he would be stabbed if he reported his personal property stolen.

8. On March 23, 2020, Officer [REDACTED] inventoried the Grievant's property and signed it. The inventory did not include the television, remote control, coaxial TV cable, Russell

³ Although not defined during the hearing, I know from prior hearings that BGF is the acronym for Black Guerrilla Family, a prison and street gang.

sweatpants and sweatshirts, Xbox 360 slim system with peripherals, Xbox games, mirror, Tide Pods detergent, 70 postal stamps, personal hygiene items, AA batteries, mesh laundry bag, and five bags of Maxwell House coffee. On the inventory, the Grievant signed the statement, "I inmate [signature illegible] have checked the above list of personal property and agree that all the items hereon are mine, [sic] and consist of all my personal property."

9. CO [REDACTED] searched the cells near the Grievant's and found a television set and remote. It was the same brand as the Grievant's and the remote had the Grievant's inmate identification number on it; the inmate identification number on the television was scratched off. There are serial numbers inside the television and the casing of the television is clear.

10. On or about April 10, 2020, the surveillance video of the tier was reviewed and showed the inmate in [REDACTED] cell entering the Grievant's cell as the Grievant was leaving for recreation. The inmate from [REDACTED] stayed in the Grievant's cell for the entire recreation period; he left just before the Grievant returned to his cell.⁴

11. The television was not returned to the Grievant and is presumed destroyed.

DISCUSSION

In an inmate grievance proceeding concerning inmate property that has been alleged to have been lost, damaged, stolen, or destroyed, the burden of proof rests with the Grievant, who must prove his case by a preponderance of the evidence. COMAR 12.07.01.09B. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

⁴ CO [REDACTED] testified that the video does not show the inmate from [REDACTED] taking any items from the Grievant's cell.

The Grievant must prove the following:

- (1) That the property was lost, damaged, stolen, or destroyed through the negligence or other wrongful act or omission of an employee or official of the Division or the Patuxent Institution;
- (2) That the grievant was the owner of the property at the time of the alleged loss, damage, theft, or destruction;
- (3) That the grievant was authorized to possess the property under the rules of the correctional facility in which the grievant was confined at the time of the alleged loss, damage, theft, or destruction; and
- (4) The fair value of the property at the time of the alleged loss, damage, theft, or destruction.

COMAR 12.07.01.09B.

In his original ARP, the Grievant wrote that the officers, and in particular CO [REDACTED] were negligent in not searching the entire [REDACTED] tier, and not thoroughly searching each cell on the tier, after he returned from exercising and reported his belongings missing. (IGO Ex. 1). The DOC agreed that the Grievant was the owner of the property at the time of the alleged theft; however, the DOC maintained that the theft was not due to negligence on the part of the DOC staff but because of the Grievant's failure to follow proper procedures. Specifically, the DOC argued that the Grievant allowed the inmate from the cell next to him (cell [REDACTED]) to come into his cell which gave him an opportunity to take his belongings. The DOC also argued that the video did not show that the inmate in [REDACTED] left with any of the Grievant's items, and that the Grievant failed to report the missing items on his property inventory that was prepared after the items were allegedly stolen from the Grievant.

First, the DOC argued that the Grievant "willingly" allowed the inmate in [REDACTED] to enter his cell. CO [REDACTED] asked the Grievant on cross-examination whether he stood by the door to his cell until it closed and whether he prevented the inmate in [REDACTED] from entering his cell. The Grievant testified that he has not been at [REDACTED] for very long, and that he was transferred to [REDACTED] from an out-of-State facility which has different rules and procedures. He testified that he did not know that he was supposed to wait until the cell door closed before proceeding to the

yard for recreation. The Grievant also argued that he did not willingly let the inmate in [REDACTED] into the cell but he did not prevent him from entering either. He testified that he was told the inmate in [REDACTED] wanted to fight his cellmate and, because he is serving life, he was not interested in interfering with anyone else's business. In retrospect, the Grievant testified, he realized his cellmate and the inmate in [REDACTED] were setting him up so they could steal his property.

The DOC did not present any evidence to support its contention that the Grievant was obligated to stand by his cell door and prevent the inmate in [REDACTED] from entering his cell. Assuming for the sake of argument that the Grievant was under this obligation, it does not relieve the tier officers of their responsibility to ensure security by not permitting inmates to go into other inmates' cells.

CO [REDACTED] also testified that the video surveillance showed the inmate in [REDACTED] leaving the Grievant's cell without any items. CO [REDACTED] testified that if the inmate in [REDACTED] had stolen the Grievant's television, Xbox, and a large tote of clothes, personal hygiene items and food, the inmate in [REDACTED] would not have been able to hide all of those items as he left the Grievant's cell and they would have been visible in the video. The Grievant testified that he does not know who stole which items of his property; he never contended that the inmate in [REDACTED] took everything but thinks his cellmate took some of his belongings. He further testified that the inmate in [REDACTED] took his sweatshirt off and tied it around his waist before leaving the cell. The Grievant argued that the inmate in [REDACTED] could have hidden some of the items under the sweatshirt. This argument is plausible given that the parties are in agreement that the inmate in [REDACTED] had the Grievant's remote. In addition, the television found during the search of the [REDACTED] inmate's cell matched the brand and size of the Grievant's television.

Finally, the DOC argued that when the Grievant's property was inventoried soon after the alleged theft, the Grievant signed it and did not state that the inventory was incomplete. In

carefully reviewing the inventory that the Grievant signed, I note that the preprinted form states that the listed items belonged to him *and* that the inventory listed *all* of his personal property. (IGO Ex. 1). The Grievant did not provide any reasonable explanation for signing the inventory if it was incomplete. Although I understand the Grievant may not have realized some of the smaller personal hygiene items were missing, he clearly would have known the larger items such as his television, Xbox, etc. were missing.

At this point in the process, I conclude that the DOC was not negligent in investigating the theft of the Grievant's property. The Grievant did not bring the specific items to the attention of the DOC staff even though he could have easily done that by refusing to sign the inventory. By the time the Grievant filed his ARP, one week had passed and the Xbox, games, clothing and small personal hygiene products could have been anywhere on the tier. The DOC was not negligent in investigating the theft of those items because the Grievant did not bring them to the DOC staff's attention in a timely manner.

On the other hand, the television and remote are different because they were found. The DOC did not dispute the Grievant's claim that Officer ██████ found a television in ██████ the cell next to him. The Grievant's remote had his inmate identification number on it but the inmate identification number on the television was scratched out. CO ██████ testified that the fact that the Grievant's identification number was on the remote did not prove that the Grievant also owned the television. Although I agree that it might not be conclusive proof, it was strong circumstantial evidence. The Grievant had a television of the same brand and size that was found in the ██████ cell. The Grievant said his television and remote were missing from his cell when he returned from exercise and a review of the video surveillance of the tier showed the inmate in ██████ in the Grievant's cell the entire time the Grievant was out of his cell.

CO [REDACTED] also testified that if the inmate identification number was removed from the television, staff would have no idea who owned the television, and the property officer properly destroyed it. CO [REDACTED] also testified that they do not open televisions to look for serial numbers.

The Grievant testified that the television is housed in a clear case and the serial number was clearly visible. He also testified that the brand and size of his television was not that common at [REDACTED] and that he could have proven the television belonged to him by the serial number. Instead, the Grievant testified, the property officers asked the inmate in [REDACTED] what he wanted done with the television and the inmate in [REDACTED] told the property office to destroy it. Under these circumstances, when the staff knew that the television did not belong to the inmate in [REDACTED] it was illogical to give him the choice to say it should be destroyed without first allowing the Grievant an opportunity to prove that it was his television.

CO [REDACTED] conceded that the Grievant owned a television and remote. The receipt submitted by the Grievant shows that he purchased it and it was delivered to him approximately two months before he alleged it was stolen. Under the unique circumstances of this case, the DOC officers were negligent in destroying the television without giving the Grievant the opportunity to further prove that the television confiscated from the inmate in [REDACTED] was the same television missing from his cell.⁵

Having found the grievance meritorious, I must now decide what type of relief is due. The Grievant is entitled to the "fair value" of his property, meaning the value "at the time of the loss, damage, or theft" that is the lesser of the "[a]ctual cost of the property at the time of acquisition, less any amounts attributable to depreciation, wear, use, and other factors which decrease the value of the property" COMAR 12.07.01.01B(6)(a), (b)(i). The Grievant

⁵ CO [REDACTED] also argued that televisions are frequently traded between inmates within the institution to buy drugs or settle debts. However, CO [REDACTED] did not present any evidence to support his speculation that the Grievant traded or gave his television to the inmate in [REDACTED] to buy drugs or settle a debt.

purchased the television and remote from [REDACTED] in the amount of \$213.69. The Grievant received the package from [REDACTED] on January 14, 2020. The amount of depreciation for wear and use between January 14, 2020 and March 23, 2020 would be minimal. Therefore, I recommend that the Grievant be reimbursed for the cost of the television and remote, that is in the amount of \$213.69.

CONCLUSION OF LAW

I conclude as a matter of law that the Grievant did establish all the elements set forth in COMAR 12.07.01.09B in order to substantiate his claim only as to the television set and remote. The Grievant offered insufficient evidence of negligence or other wrongful act or omission on the part of DOC staff as to the other items he claimed were missing from his property.

PROPOSED ORDER

Having concluded that the grievance is meritorious in part, I **PROPOSE** that it be **GRANTED IN PART** and **RECOMMEND** the Grievant be reimbursed \$213.69, which represents the amount he paid for the television and remote.⁶

March 26, 2021
Date Decision Issued

ACK/ej
#191222

Signature Appears on Original
[REDACTED]

Ann C. Kehinde
Administrative Law Judge

⁶ This Proposed Decision was issued on February 19, 2021. On March 22, 2021, Ms. [REDACTED] Administrative Aide for the IGO contacted me to advise that the amount in the Proposed Order stated \$213.68, whereas in other places in the Proposed Decision, I stated \$213.69. I have corrected the clerical error I made but have made no substantive changes to this corrected Proposed Decision, which is being issued on March 26, 2021. The appeal rights have not changed.

[REDACTED] # [REDACTED]

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* **BEFORE ANN C. KEHINDE,**
* **AN ADMINISTRATIVE LAW JUDGE**
* **OF THE MARYLAND OFFICE**
* **OF ADMINISTRATIVE HEARINGS**
* **OAH No.: DPSC-IGO-002V-20-25527**
* **IGO No.: [REDACTED]**

* * * * *

FILE EXHIBIT LIST

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[REDACTED]

DOC # [REDACTED]

GRIEVANT

v.

THE MARYLAND DIVISION
OF CORRECTION

RESPONDENT

* * * * *

* BEFORE ANN C. KEHINDE
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DPSC-IGO-002V-20-25527
* IGO No. [REDACTED]

ORDER OF THE SECRETARY

The Proposed Decision and Order of Administrative Law Judge Ann C. Kehinde dated March 26, 2021, are AFFIRMED.

It is so ORDERED this 14th day of April, 2021.

Signature Appears on
Original
[REDACTED]

Robert L. Green, Secretary