

# The Commonwealth of Massachusetts

Decision mailed: 9/18/09  
Civil Service Commission  
CS

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

**DOUGLAS CRONIN,**  
*Appellant*

v.

**TOWN OF ARLINGTON,**  
*Respondent*

Case No.: D-07-307

## DECISION

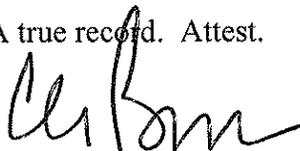
After careful review and consideration, the Civil Service Commission, at an executive session on September 17, 2009, acknowledged receipt of the recommended decision of the Administrative Law Magistrate dated June 5, 2009, in which the Magistrate recommended dismissing the Appellant's appeal, as well as the comments received by both parties. After careful review and consideration of the magistrate's recommended decision and the comments of the parties, the Commission vote to adopt the findings of facts and the recommended decision of the Magistrate was a 2-2 tie vote with 1 Commissioner not participating. As a result, the Appellant's appeal is hereby *dismissed*.

## CORRECTION

The Commission notes a scrivener's error in the recommended decision. Finding of Fact #3 should so state: *On September 7, 2005*, the Appellant received a Letter of Reprimand for unsafe operation of a police vehicle.

By vote of the Civil Service Commission (Bowman, Chairman - yes; Henderson - no, Stein - yes and Taylor - no, [Marquis - not participating], Commissioners) on September 17, 2009.

A true record. Attest.



Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal. Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Jason Powalisz, Esq. (for Appellant)  
Brian Magner, Esq. (for Appointing Authority)  
Richard C. Heidlage, Esq. (DALA)

THE COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
98 NORTH WASHINGTON STREET, 4<sup>TH</sup> FLOOR  
BOSTON, MA 02114

SHELLY L. TAYLOR  
Chief Administrative Magistrate

Tel: 617-727-7060  
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July 27, 2009

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

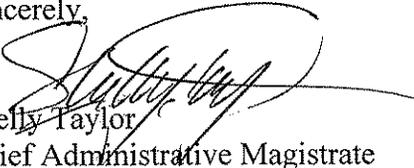
**Re: Douglas Cronin v. Town of Arlington**  
**DALA Docket No. CS-09-39**

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2009 JUL 28 A 9:43  
COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

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,

  
Shelly Taylor  
Chief Administrative Magistrate

SLT/das

Enclosure

cc: Jason Powalisz, Esq.  
Brian Magner, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

**Douglas Cronin,**  
Appellant

Docket No. D-07-307  
DALA No. CS-09-39

v.

**Town of Arlington,**  
Appointing Authority

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**Appearance for Appellant:**

Jason Powalisz, Esq.  
McDonald & Associates  
153 Cordaville Road  
Southboro, MA 01772

**Appearance for Appointing Authority:**

Brian Magner, Esq.  
One Design Center Place, Suite 600  
Boston, MA 02210

**Administrative Magistrate:**

**Joan Freiman Fink, Esq.**

**SUMMARY OF DECISION**

The Appointing Authority has demonstrated just cause to suspend the Appellant for a period of two days from his position as a Police Officer with the Town of Arlington for conduct unbecoming a police officer in light of his unprofessional, condescending, and discourteous behavior during a motor vehicle stop on March 7, 2007.

**RECOMMENDED DECISION**

Pursuant to G.L. c. 31 §43, the Appellant, Douglas Cronin, is appealing the August 29, 2008 decision of the Appointing Authority, the Town of Arlington,

suspending him for a period of two days from his position as a Police Officer with the Town of Arlington. (Exhibit 2.) The Appellant filed a timely appeal of this decision with the Civil Service Commission. (Exhibit 3.)

A hearing in this matter was held on April 2, 2009 at the offices of the Division of Administrative Law Appeals, 98 N. Washington Street, Boston, MA. A second day of hearing was held on April 7, 2009. As no written request was received from either party, the hearing was declared to be private. Various documents were entered into evidence at the hearing. (Exhibits 1– 18.) Two cassette tape recordings were made of the hearing. The record in this case was left open until May 28, 2009 for the filing of written closing memoranda.

Lynn Sheehan, a resident of the Town of Arlington, testified for the Appointing Authority as did the following employees of the Town of Arlington Police Department: Chief Frederick Ryan and Captain Richard Kennefick. The Appellant testified in his own behalf.

The Appointing Authority maintains that just cause exists to suspend the Appellant from his employment as a police officer for violation of Section (I)(C)(2)(d) of the Rules and Regulations of the Town of Arlington Police Department.<sup>1</sup> Specifically, the Appointing Authority alleges that during a routine motor vehicle stop on March 7, 2007, Officer Cronin made derogatory statements to Ms. Lynn Sheehan, a resident of Arlington and a Reserve Deputy Sheriff with the Middlesex County Sheriff's Association. These statements were made in the presence of Ms. Sheehan's teenage daughter. In addition, the Appointing Authority asserts that Officer Cronin had been

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<sup>1</sup> Section (I)(C)(2)(d) of the Rules and Regulations of the Town of Arlington Police Department provides as follows: **Prohibited Conduct:** The following acts by members of the Division are prohibited or restricted: d. **Discourtesy** – Discourtesy, rudeness or insolence to any member of the public or the Division. (Exhibit 4.)

warned that unprofessional conduct towards private citizens while he was on duty was not acceptable and would not be tolerated.

### **FINDINGS OF FACT**

Based on the documents entered into evidence (Exhibits 1 – 18) and the testimony of Lynn Sheehan, Frederick Ryan, Richard Kennefick, and Douglas Cronin, I make the following findings of fact:

1. The Appellant, Douglas Cronin, commenced employment as a police officer with the Town of Arlington Police Department in or about 1998. (Testimony of the Appellant.)
2. On January 5, 2001, the Appellant received a Letter of Reprimand for irresponsible conduct, unsafe driving, and poor use of police discretion. This Letter of Reprimand was reduced to a Verbal Reprimand one year later. (Stipulation of the Parties.)
3. On September 5, 2007, the Appellant received a Letter of Reprimand for unsafe operation of a police vehicle. (Exhibit 10.)
4. Lynn Sheehan is a fifty-two year old woman who is a lifelong resident of the Town of Arlington. She is married with two children. In March of 2007, her daughter was nineteen years old. (Testimony of the Lynn Sheehan.)
5. Since 2001, Ms. Sheehan has been a Deputy Sheriff with the Middlesex Deputy Sheriff's Association, a large non-profit organization that performs charity and volunteer work throughout Middlesex County. Ms. Sheehan's position is a volunteer position and her primary duties involve assisting in charity functions held at various locations including the Chelsea Soldier's Home. (Testimony of Lynn Sheehan.)

6. The requirements for membership in the Middlesex Deputy Sheriff's Association include passing a CORI check, performing a minimum of eight hours of charity work per year, and an annual donation of \$150 to the Sheriff's Association (Testimony of Lynn Sheehan; Exhibits 13A-13B.)

7. Members of the Middlesex Deputy Sheriff's Association are issued a photo identification card and have the option of purchasing a Reserve Deputy Sheriff's badge. The badge is stamped with the letters "RES" signifying that the holder of the badge is a Reserve Deputy Sheriff. The badge is encased in a leather bi-fold wallet that, when opened, holds the badge on one side and the photo identification card on the other side. In March of 2007, Ms. Sheehan possessed both a photo identification card and a badge. (Testimony of Lynn Sheehan.)

8. Several weeks prior to March 7, 2007, Ms. Sheehan had removed her front Massachusetts license plate and had replaced it on a temporary basis with her Sheriff's Association plate in order that she would be permitted to park in a restricted area while performing her charity work. However, after performing this charity work, she forgot to switch the plates back to normal. (Testimony of Lynn Sheehan.)

9. At approximately 6 p.m. on March 7, 2007, Ms. Sheehan was driving with her then nineteen year old daughter in Arlington on their way home when she was stopped by the Appellant who was driving in a police cruiser. (Testimony of Lynn Sheehan; testimony of the Appellant.)

10. Ms. Sheehan said to the Appellant that she did not understand why she was being stopped and Officer Cronin replied that she did not have the proper license plate on the front of her vehicle. (Testimony of Lynn Sheehan; testimony of the Appellant.)

11. Ms. Sheehan responded that she was sorry and acknowledged that she had forgotten to switch the plate. When the Appellant asked her where the proper license plate was, Ms. Sheehan answered that the plate was in the trunk of her car and again apologized for her mistake. (Testimony of Lynn Sheehan.)

12. At this point in time, the Appellant noticed the Sheriff's Association sticker in the corner of her driver's side window and asked Ms. Sheehan what, if any, affiliation she had with the Middlesex County Sheriff's Department. He also asked to see her driver's license and registration. (Testimony of Lynn Sheehan.)

13. At this juncture, Ms. Sheehan turned to the middle console to retrieve her handbag containing her license while her daughter went to the glove compartment to secure the registration form. When Ms. Sheehan opened her purse, the Appellant who had his flashlight fixed on her bag, observed that she had a can of pepper spray in it. He then asked to see her FID card licensing her to carry the spray. (Testimony of Lynn Sheehan.)

14. As Ms. Sheehan handed him her license and registration, the Appellant then repeated his inquiry concerning her affiliation with the Middlesex County Sheriff's Department. Although Ms. Sheehan attempted to respond to him, Officer Cronin kept interrupting her. He then said in a rude and condescending manner: "What are you, a \$50 Deputy? What did you do, have a \$50 breakfast with the Sheriff?" (Testimony of Lynn Sheehan.)

15. Ms. Sheehan tried to explain that she did volunteer work for the Sheriff's Association including working at the annual breakfast, the Appellant again interrupted her and speaking in a disrespectful and offensive manner stated "So you're a \$50 deputy." (Testimony of Lynn Sheehan.)

16. The Appellant then returned to his police cruiser with her license and registration. After discovering that Ms. Sheehan had no prior driving violations, the Appellant issued her a Warning Citation for failure to display a front license plate.

(Testimony of Lynn Sheehan.)

17. Upon receiving the citation, Ms. Sheehan told the Appellant that she would go immediately home and correct the license plate problem. (Testimony of Lynn Sheehan.)

18. The Appellant then stated to her that she “needs to stop flashing ... (her) badge and when ... (she) gets home, it should be displayed on the wall where it belongs.”

\_\_\_\_(Testimony of Lynn Sheehan.)

19. At no time did Ms. Sheehan intentionally flash or display her badge in any fashion during her encounter with the Appellant. (Testimony of Lynn Sheehan.)

20. Ms. Sheehan became extremely upset and distraught as she felt that the Appellant had acted in a rude and disrespectful manner towards her in the presence of her daughter. She asked him for his name and he identified himself to her. (Testimony of Lynn Sheehan.)

21. As soon as she arrived home, Ms. Sheehan went directly to the computer and drafted a complaint to the Arlington Police Department concerning the Appellant’s conduct towards her. Ms. Sheehan’s daughter, who was also very troubled by the Appellant’s behavior towards her mother, assisted in the drafting of the complaint. The two women then sent the complaint directly to the Chief of Police of the Town of Arlington. (Testimony of Lynn Sheehan; Exhibit 5.)

22. As soon as the complaint was received from Ms. Sheehan, Chief Frederick Ryan asked Captain Kennefick to conduct a complete investigation. (Testimony of Chief Ryan.)

23. On June 12, 2007, Captain Kennefick issued a formal Internal Investigation Report in which he concluded that the Appellant's conduct towards Ms. Sheehan was rude and disrespectful. He then recommended that disciplinary action be imposed against the Appellant. (Testimony of Captain Kennefick.)

24. On July 9, 2007, Chief Ryan issued a two day suspension against the Appellant. On August 20, 2007, the Appointing Authority held a hearing pursuant to G.L. c. 31, § 41 concerning this suspension. On August 29, 2007, the Appointing Authority affirmed the suspension and sent written notice to the Appellant. (Exhibits 1 and 2.)

25. On August 31, 2007, the Appellant filed a timely appeal of this decision with the Civil Service Commission. (Exhibit 2).

#### **CONCLUSION AND RECOMMENDATION**

After reviewing all the testimony and evidence in this case, I conclude that the Appointing Authority has demonstrated by a preponderance of the evidence that just cause exists to suspend the Appellant for a period of two days from his position as a Police Officer with the Town of Arlington. The Appointing Authority established that the Appellant violated Section (I)(C)(2)(d) of the Rules and Regulations of the Town of Arlington Police Department when he acted in an unprofessional and discourteous manner by making several derogatory comments to Lynn Sheehan, a Reserve Deputy Sheriff with the Middlesex County Sheriff's Association, during the course of a routine

motor vehicle stop on March 7, 2007. Moreover, these derogatory statements were made by the Appellant in the presence of Ms. Sheehan's teenage daughter.

The Civil Service Commission determines justification for discipline by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." *Murray v. Second Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983); *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488 (1997). In reviewing an appeal brought pursuant to G.L. c. 31 §43, if the Civil Service Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004).

The basis of my conclusion rests with my finding that the testimony of Lynn Sheehan was extremely credible. In *Connor v. Connor*, 77 A.2d 697 (Pa. 1951), the Pennsylvania Appeals Court held that the "opportunity to observe demeanor and appearance of witnesses in many instances becomes the very touchstone of credibility." *School Committee of Wellesley v. Labor Relations Commission*, 376 Mass. 112, 120 (1978); *New England Canteen Service, Inc. v. Ashley*, 372 Mass. 671 (1977).

Lynn Sheehan gave compelling testimony to the effect that on March 7, 2007, the Appellant, during the course of a routine traffic stop, made derogatory and rude statements to her in the presence of her teenage daughter. Specifically, he alluded to her being a Reserve Deputy Sheriff and stated "what are you, a \$50 deputy. What did you do, have a \$50 breakfast with the Sheriff?"

Although Ms. Sheehan at no time attempted to show Officer Cronin her badge, after giving her a warning citation, the Appellant told her that she needs to stop "flashing

... (her) badge and when ... (she) gets home, it should be on display on the wall where it belongs." Ms. Sheehan persuasively testified that she was distraught and humiliated by the Appellant's statements, especially in light of the fact that were made in front of her daughter.

Arguing in his own behalf, the Appellant admitted that during the course of a routine traffic stop, he asked the operator of the motor vehicle, Lynn Sheehan, if she were a "\$50 deputy." The Appellant also admitted that Ms. Sheehan did not take her badge out until he asked her for her license which was in the same billfold as her badge and further that he told her to leave her badge at home. However, the Appellant stressed that he did not speak to her in a derogatory fashion nor did he ever raise his voice or use threatening language towards her. In addition, the Appellant noted that he did not observe Ms. Sheehan's teenage daughter seated in the passenger seat of the vehicle.

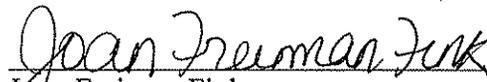
I do not find the Appellant's explanation to be persuasive or convincing. During the entire interaction with the Appellant on the day in question, Ms. Sheehan was fully cooperative and apologized at least two times for her failure to have the proper license plate displayed on the front of her vehicle. The statements that the Appellant admittedly made to Ms. Sheehan in response to her apologies were offensive in nature and were meant to distress her. I also do not find it plausible that, during the encounter with Ms. Sheehan that lasted at least several minutes, the Appellant did not notice the fact that a teenage girl was seated in the passenger seat of the motor vehicle.

In determining the appropriateness of the discipline to be imposed, I reviewed the Appellant's prior disciplinary record which included a verbal reprimand and a written reprimand for irresponsible conduct and unsafe operation of a police vehicle. After due deliberation, I conclude that based on the facts and circumstances of this case, the

Appointing Authority was fully justified in suspending the Appellant for a period of two days from his position as a Police Officer with the Town of Arlington .

Accordingly, I recommend that the Civil Service Commission affirm the action of the Appointing Authority in this matter.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Joan Freiman Fink  
Administrative Magistrate

Dated:

**JUL 27 2009**