

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street – Suite 200  
Boston, MA 02114  
617-979-1900

**CHRISTOPHER ALVES,**

*Appellant,*

v.

**DEPARTMENT OF STATE POLICE,**

*Respondent*

Docket number:

D1-23-233

Appearance for Appellant:

Joseph P. Kittredge, Esq.  
Lorena Galvez, Esq.  
Rafanelli & Kittredge, P.C.  
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Acton, MA 01720

Appearance for Respondent:

Daniel Brunelli, Esq.  
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Office of Departmental Prosecutor  
Department of State Police  
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Framingham, MA 01702

Commissioner:

Shawn C. Dooley

**SUMMARY OF DECISION**

The Commission voted to partially allow the appeal of a discharged state trooper and modify the discipline meted out to the Appellant—modifying said discipline from termination to a 30-day suspension for conduct unbecoming and for insubordination. Insufficient evidence supports the charges of untruthfulness.

**DECISION**

On November 13, 2023, pursuant to G.L. c. 31, § 43, Trooper Christopher Alves (Appellant)

filed a timely appeal with the Civil Service Commission (Commission), contesting whether the Department of State Police (Department) had just cause to terminate him on November 6, 2023. On December 19, 2023, the Commission held a remote Pre-Hearing Conference. A full evidentiary hearing was held on April 1, 8, and 9, 2024, at the offices of the Civil Service Commission in Boston, Massachusetts, presided over by Commissioner Shawn C. Dooley and Deputy General Counsel Caroline E. De Luca. The hearing was recorded via the Webex videoconferencing platform, and copies were provided to both parties.<sup>1</sup> The Appellant and the Respondent both filed proposed decisions. For the reasons set forth below, the Appellant's appeal is allowed in part.

## **FINDINGS OF FACT**

The Respondent submitted 26 exhibits and one post-hearing exhibit. The Appellant submitted three exhibits and four post-hearing exhibits. Based upon the documents admitted into evidence and the testimony of the following witnesses:

### *Called by the Department:*

- Lt. Gretchen Allen, Barnstable Police Department
- Major Stephen Gabriel, Massachusetts Department of State Police
- Lt. Andrew Popovich, Massachusetts Department of State Police
- Detective Lt. John Goslin, Massachusetts Department of State Police

### *Called by the Appellant:*

- Sgt. Michael Halstead, Massachusetts Department of State Police
- Officer Marcus Cunningham, Barnstable Police Department
- Trooper Christopher Alves, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, case law,

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<sup>1</sup> A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

regulations, policies, and reasonable inferences from the evidence, a preponderance of credible evidence establishes the following facts:

1. The Appellant entered the State Police Academy in January 2020. He completed his training in May 2020. *(Testimony of the Appellant)*
2. The Appellant is of Brazilian and Liberian descent. *(Testimony of Appellant)*
3. The Appellant speaks Portuguese and has a working proficiency in Spanish. *(Testimony of Appellant)*
4. The Appellant served in the Marine Corps for four years and was honorably discharged with the rank of E5 - Sergeant. *(Testimony of Appellant)*
5. Upon completion of the Academy, the Appellant was assigned to SP Yarmouth Barracks for his field training. On or about the beginning of September 2020, the Appellant completed his field training at SP Yarmouth Barracks. *(Testimony of the Appellant)*
6. The Appellant was then stationed at SP Yarmouth Barracks. He was the only trooper of color at that barracks. *(Testimony of the Appellant)*
7. He worked the night shift – four days on and three days off. His patrol area would change every week and would sometime include the Town of Barnstable. During his shifts, the Appellant would typically encounter other local police officers on the Cape. *(Testimony of the Appellant)*
8. In October 2020, the Appellant first met Major Stephen Gabriel.<sup>2</sup> At that time, Major Gabriel was active in mentoring new troopers and, later, in February 2021, this mentorship

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<sup>2</sup> In 2020, Gabriel's rank was Detective Lieutenant. He was promoted to Captain in June of 2021, and Major in January of 2022. Throughout this decision, he will be referred to as Major, the rank he held at the time of the hearing before the Commission.

role was further formalized when Major Gabriel became the Recruitment Diversity Officer for the Department. (*Testimony of Gabriel*)

9. Major Gabriel first met the Appellant in the back parking lot of the headquarters of SP Middleboro. At that time, Major Gabriel introduced himself to the Appellant, wished him luck in his new career in the Department, and exchanged phone numbers with the intent of starting a mentorship relationship. The parties exchanged occasional text messages over the months. (*Testimony of Gabriel; R. Ex. 26*)
10. The Appellant was issued a body-worn camera in the days leading up to the July 4<sup>th</sup> holiday in 2021. He attended a brief standardized training on its operation and had used the camera approximately two or three times before the 2021 July 4<sup>th</sup> holiday. (*Testimony of the Appellant*)
11. The body-worn cameras used by the Department are constantly capturing video without audio. However, this data is not *stored* until a user activates the “record” feature of the camera. At that point, the cameras automatically store the 30 seconds of video, *without audio*, that precedes the activation of the recording, and the camera then begins to store the video, *with audio*, from the moment of the activation of the recording. This demarcation of when the “record” button is pressed on the camera is further noted with an audible “beep” that occurs at the 30 second mark. As a result, when reviewing body camera footage, the moment audio begins to play is the moment when an officer has physically pressed record on the camera. (*R. Ex. 19; R. Ex. 24; Testimony of Goslin*)
12. State Police General Order ADM-35 states that “every member is required to record contact with civilians” in situations including:
  - a. “*when a member reasonably believes a lawful/peaceful crowd control public event that would not otherwise require recording may transition, or does actually*

*transition into unlawful activity.”*

- b. *“Any other civilian contact or official duty circumstance that the member reasonably believes should be recorded in order to enhance policing transparency, increase public trust and police-community relations, or preserve representations of member-civilian interactions.” (R. Ex. 16)*

13. State Police General Order ADM-35 further states “once the BWC is activated, recording should continue uninterrupted until or unless the event has paused or concluded.”

Examples of when an event should be paused or concluded include:

- a. *“all persons stopped have been released or left the scene”*
- b. *“victim and/or witness contact has been paused or concluded” (R. Ex. 16)*

14. ADM-35 states that a trooper **may** (emphasis added) pause the recordings while consulting with other law enforcement members or supervisors, as such discussions

- a. *May be for training purposes; or*
- b. *Could undermine, reveal or disrupt MSP strategy or plan, ongoing investigation; or*
- c. *Could jeopardize the secrecy, safety or security of victims, witnesses, confidential informants, undercover members, sworn members, or members of the public; or*
- d. *For other legitimate law enforcement related reasons.*

15. ADM-35, under the heading of improper recording, states that body-worn cameras should not be used to record:<sup>3</sup>

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<sup>3</sup> This list is a partial list of reasons listed under improper recordings in General Order ADM-35.

- a. *Breaks, meal periods or time when a member is not responding to a call or when not in service;*
- b. *Any personal conversation of or between other department employees without the recorded employee's knowledge;*
- c. *Non-work-related personal activity, especially in places where a reasonable expectation of privacy exists such as locker rooms, dressing rooms, or restrooms;*
- d. *Communication with Department members or other law enforcement agency personnel; or*
- e. *Strip searches.*

16. ADM-35 states that when the body-worn camera is activated, members should make every effort to inform civilians they are being recorded. Further, when pausing or deactivating a body-worn camera, the member should state the reason for doing so. (*R. Ex. 16*)

***Appellant's Prior Encounters with the Barnstable Police Department and with Barnstable Police Lt. Gretchen Allen***

17. Lt. Gretchen Allen had been employed with the Barnstable Police Department (BPD or Barnstable PD) for over 20 years, approximately two and a half of those as a lieutenant, all on the midnight shift, as of the events in question here. As a lieutenant working the midnight shift, she supervised approximately eighteen patrol officers and three sergeants. She retired in January 2022 at the rank of lieutenant. (*Testimony of Allen*)

18. During her time with Barnstable PD, Lt. Allen and her fellow officers encountered and worked alongside Massachusetts State Police personnel and recognized the State Police's jurisdiction over unattended deaths, murders, municipal air crashes, and on highways. For the remainder of police matters in the town of Barnstable, State Police personnel were expected to defer to the local department's authority and provide support to Barnstable PD

as needed. *(Testimony of Allen)*

19. In the months leading up to October 2020, officers in the Barnstable Police Department lodged several complaints that came to Lt. Allen's attention about the Appellant's on-duty conduct, including that the Appellant had been observed speeding in Barnstable, using what they considered to be poor tactics on car stops, and that the Appellant had interfered with an active warrant that had been assigned to Barnstable PD. As these incidents were reported to her, Allen became concerned not only that the Appellant's tactics posed a safety risk to the public and her officers, but also that they jeopardized the health of the relationship between the State Police and Barnstable PD. *(Testimony of Allen)*

20. Lt. Allen was aware in October 2020 that the Appellant was a relatively new member of the State Police, but at the time she did not know how long he had been with the Department. *(Testimony of Allen)*

21. On October 20, 2020, Lt. Allen was on night patrol in an unmarked cruiser when the Appellant conducted a stop in front of her. Lt. Allen pulled up behind the Appellant's car and approached the Appellant's car as he was returning to his cruiser from the stopped vehicle. *(Testimony of Allen)*

22. Lt. Allen had a conversation with the Appellant about his fast driving and his behavior and informed the Appellant that if he wanted to behave in that manner, she did not want him doing so in "her town." The exchange between the parties was tense as Lt. Allen admitted to reading to the Appellant the "riot act." *(Testimony of Allen)*

23. Before this October 2020 incident, the Appellant had not been contacted about or been made aware of any of the above-referenced issues either by Barnstable PD or by the Department. *(Testimony of Appellant)*

24. Immediately after this incident, the Appellant called and informed his supervisor, Lt. Croteau, about his encounter with a female Barnstable lieutenant. Lt. Croteau informed the Appellant to stay out of Barnstable for the rest of the night. The Appellant then asked around and learned the identity of Lt. Allen. *(Testimony of Appellant)*
25. A few weeks after October 20, 2020, Lt. Allen received a call from State Police Lt. Daniel Popovich.<sup>4</sup> Lt. Allen knew Lt. Popovich from their time at the municipal police academy and prior years working together. At the time of this phone call, Lt. Popovich was assigned to the SP Yarmouth barracks, where he supervised the Appellant when they were on the same shift. *(Testimony of Allen and Testimony of Popovich)*
26. Lt. Popovich and Lt. Allen discussed several issues involving the Appellant that touched on safety concerns for the public and fellow officers and that potentially jeopardized the relationship between State Police and Barnstable PD – including not only the Appellant’s reported cruiser driving history and alleged speeding, the interference with a Barnstable PD warrant, and the Appellant’s October 20, 2020 encounter with Lt. Allen, but also an incident where the Appellant had purportedly improperly transferred to the Barnstable PD a domestic violence incident where he had been the responding officer and Barnstable PD had been the assisting department. *(Testimony of Allen and Testimony of Popovich)*
27. As a result of that call, Lt. Popovich checked records relating to the Appellant’s cruiser use history in the Department’s Automated Vehicle Locator (AVL)/Geotab system and confirmed Lt. Allen’s version of events that the Appellant had been operating over 96

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<sup>4</sup> In 2020, and until the first half of 2021, Popovich held the rank of sergeant. Throughout this decision, however, he will be referred to as Lieutenant, the rank he held at the time of the hearing before the Commission.



miles per hour on at least two occasions. Lt. Popovich knew of no calls for service or other emergencies that justified the Appellant's high-speed driving on those occasions. Lt. Popovich relayed this information to the Appellant, and the Appellant acknowledged Lt. Popovich's concerns regarding the operation of his cruiser and changed his behavior accordingly. (*Testimony of Popovich*)

28. In or around February of 2021, months after the October 2020 incident, State Police Sgt. McCarthy authored a Supervisory Observation Report/E.E.S. on the October incident involving the Appellant and Lt. Allen. Sgt. McCarthy **backdated** the report to October 2020. There was no notation that this document was being written four months after the fact and it was filed as if it were written in October 2020. (*Testimony of Popovich; R. Ex. 8; R.P.H. Ex.1; R. Ex. 9*)

29. The Supervisory Observation Report/E.E.S. incorrectly stated that Lt. Allen had *personally* observed the Appellant driving his cruiser in a dangerous manner within the town of Barnstable. Based on these inaccuracies in the Supervisory Observation Report/E.E.S. and based on the Appellant's October interaction with Lt. Allen, the Appellant believed that he was being singled out and targeted by Lt. Allen. (*R. Ex. 8; R. Ex. 9; Testimony of Appellant*)

30. Upon receipt of the Supervisory Observation Report/E.E.S., the Appellant issued a rebuttal letter to the Department raising discrimination and harassment by Lt. Allen based on his race. The Supervisory Observation Report/E.E.S. was then removed from the Appellant's file due to it not being issued contemporaneously with the October incident. (*Testimony of Appellant; R. Ex. 9*)

31. Between October 20, 2020, and July 5, 2021, the Appellant and Lt. Allen did not have any significant interaction. (*Testimony of Allen*)

***Incident on July 5, 2021***

32. On July 4, 2021, Lt. Allen received a report from Barnstable PD Officer Dennis Reddy that there had been an incident in which officers had been required to physically apprehend and place an individual into custody. Officer Reddy further reported to Lt. Allen that the Appellant had been present and, rather than assist them, had used his body-worn camera to film the Barnstable officers. Lt. Allen was not present for this alleged incident, and she never reported this alleged incident to the State Police, nor did she address it directly with the Appellant. (*Testimony of Allen*)

33. This video was reviewed by State Police personnel and it was determined that the Appellant and Trooper Gomes were on scene to assist and “it is State Police policy to have the BWC activated in such an incident.” (*R. Ex. 1*)

34. In the early morning hours of July 5, 2021, the Appellant self-deployed to the scene of a reported stabbing in Barnstable. When he arrived, he observed a very chaotic scene with numerous intoxicated people arguing and yelling. His role was a supporting role to Barnstable Police, who retained primary jurisdiction over the scene and he was obligated to respect the chain of command on scene. (*Testimony of Appellant; Testimony of Allen*)

35. A self-deployment is when an assisting law enforcement officer responds to a scene or call for service without being ordered or dispatched there. (*Testimony of Allen; Testimony of Appellant*)

36. Lt. Allen was familiar with instances of self-deployment by State Police personnel. To “self-deploy” meant that an officer would initiate a response to a call for service or another scene on their own accord. Typically, when such self-deployment occurred by State Police to a scene where Barnstable PD retained primary jurisdiction, the self-deployed State Police personnel would ask Barnstable PD if their assistance was needed. If their

assistance was not needed, Barnstable police would give them a “thumbs up” or say, “we’re all set,” which was law enforcement lingo that caused the self-deployed member to depart from the scene. (*Testimony of Allen*)

37. Shortly after the Appellant arrived, he assisted Barnstable Police with separating individuals engaged in a physical conflict at the scene and with chasing down and apprehending a suspect believed to be armed. (*Testimony of Appellant*)

38. After initially assisting, the Appellant stayed on scene. (*Testimony of Appellant; Testimony of Allen*)

39. At some time after the suspect was apprehended, Lt. Allen arrived and became the senior supervisor on the scene. (*Testimony of Allen*)

40. While on the scene, the Appellant intentionally activated his body-worn camera on two occasions. The first was to capture his initial assistance in apprehending a suspect. The second was sometime after Lt. Allen arrived on the scene. (*Testimony of Appellant; R. Ex. 6; R. Ex. 7*)

41. The second time that the Appellant activated his body-worn camera, the body camera footage shows that, for seven seconds or so before the Appellant activated his camera, the Appellant is approaching a group of five Barnstable officers, including Lt. Allen. The Appellant then activates his camera when he is a few feet away from the group of Barnstable officers. (*R. Ex. 7*)

42. The Appellant did not announce that he was recording. (*R. Ex. 7*)

43. The Appellant did not intend to record the conversation of the BPD officers, and he believed that he was in compliance with Department policy when he muted his conversation with BPD Officer Cunningham. (*Testimony of Appellant*)

44. The body-worn camera has a covert mode that can be activated if the police officer is wanting to record without those being recorded knowing that the camera is on (no red light). This mode was not utilized during the July 5<sup>th</sup> event. (*R. Exs, 6, 7, and 19*)
45. From what is depicted on the *video*, it is inconclusive whether the scene was becoming chaotic and picking up again. The audio does not capture any yelling or screaming from any individual on scene. Neither the Appellant nor any of the Barnstable officers reacted to any individual or event in the body camera footage. The Appellant can be seen turning his back to a group of four individuals who were speaking with a BPD officer outside the home at approximately the 23 second mark, or 7 seconds before he activates his camera. The Appellant did not communicate any concerns about any increased threat assessment to any other officers on scene. (*R. Ex. 7; R. Ex. 15; Testimony of Appellant*)
46. Nonetheless, despite the limitations of what is captured in the body camera, the area remained an active scene. Several male civilians were intoxicated and were actively moving about the area, including entering and exiting the home. They remained agitated from the events that had just transpired and from what they perceived as the suspect receiving favorable treatment from first responders rendering medical aid. (*R. Ex. 14, Testimony of Appellant; Testimony of Cunningham*)
47. The BPD (approximately six officers) were outnumbered by 30 to 40 civilians, five of whom were noticeably agitated and intoxicated males. Given this, BPD Officer Cunningham thought it was wise to keep the Appellant on scene – if for no other reason than for support if needed. (*R. Ex. 14, Testimony of Cunningham*)
48. State Police General Order ADM-35 states: “The Department recognizes that video images cannot always show the full account nor do video images capture an entire visual or auditory scene as experienced by the member. For this reason, variations between a

member's first-hand account and the BWC/CMC recordings may vary. As such, persons reviewing recordings must be cautious about drawing conclusions about what the recordings actually represent.” (*R. Ex. 16*)

49. While on the scene, Lt. Allen spoke with several of her fellow Barnstable officers regarding the current state of the investigation and the apprehension of the apparent perpetrator who was being treated for injuries. During that conversation, Lt. Allen observed Barnstable Officer Liam Loiselle gesture a “thumbs up” to a person she later learned to be the Appellant and tell that person, “We’re all set.” Lt. Allen understood Officer Loiselle to be communicating to the person, whom she later learned to be the Appellant, that he could clear the scene. (*R. Ex. 7, Testimony of Allen*)

50. After this interaction, the Appellant did walk away from the BPD officers but did not immediately go to his cruiser as he interpreted the directive “all set” to mean that the officers were “all set” in that particular location of the scene and did not need his input at this meeting. After being told that BPD was “all set,” BPD Officer Cunningham, who was in the group of BPD officers, appears to gesture to the Appellant to follow him into the street away from the other officers. (*Testimony of Appellant*)

51. BPD Officer Cunningham, with whom the Appellant had a friendly working relationship, then flashes a hand signal on his own chest indicating to the Appellant that the body camera is activated and he should mute it. The Appellant then affirmatively presses the “mute” button on his camera to have a private conversation with the Officer Cunningham. The Appellant does not state the reason for muting the camera. (*R. Ex. 7*)

52. The Appellant was standing in the street speaking with Officer Cunningham and facing away from the group of BPD officers while facing another officer having a discussion with

four civilians who were at the party where the incident occurred. (*R. Ex. 7, Testimony of Appellant*)

53. At some point, Lt. Allen notices the Appellant and gets his attention as she approaches him. Since the camera was muted, we do not have the initial audio but the Appellant releases the mute button as he turns toward her and she says something unintelligible about the filming. She approaches the Appellant aggressively and is pointing at him. Lt. Allen stated that she knew that the Appellant's body-worn camera was activated because she observed an illuminated light from the recording device on his chest indicating that it was turned on even though he was not facing her at the time she approached. (*Testimony of Allen; R. Ex. 7*)

54. When Lt. Allen reaches the Appellant she says, "I know you feel all empowered with this camera" and he responds that "this is policy." Lt. Allen then points her finger in his face and says, "it is your policy, this is our police department -- and you are free to clear the scene." (*Testimony of Allen; R. Ex. 7*)

55. Lt. Allen then states: "you are not assisting in any way and you are just showing up and filming us. OK? I know it makes you feel tough." The Appellant responds that it doesn't make him feel tough; filming is used to protect officers; that he was assisting at the scene, and he tells her that if she has an issue with him having his body-worn camera on, she should contact his supervisor. (*R. EX. 7*)

56. During Lt. Allen's interaction with the Appellant, the Appellant failed to articulate a safety or operational reason justifying his ongoing use of the body-worn camera. He did not express any concern to any of the Barnstable Police Officers about any individuals on the scene or about whether he believed or feared that the scene was escalating again.

Rather, he informed her that use of the camera was in accordance with Department policy and was on for everyone's safety. (*Testimony of Allen; R. Ex. 7*)

57. The Appellant states in the recording that Lt. Allen obviously has an issue with him as she is having this discussion in front of all the civilians standing around. Lt. Allen then suggests that they step out of the street and continue their conversation more privately. The Appellant refuses and says if she wants to speak with him, she can do it at his cruiser. Lt. Allen reminds the Appellant that she is a lieutenant and that he cannot speak to her in that manner, to which he responds, "And I'm on the State Police." The angry confrontation between them concluded with the Appellant eventually walking away and reiterating that he believed Lt. Allen had a personal issue with him based on his race. (*Testimony of Allen; R. Ex. 7*)

58. During the course of the evening, the number of BPD officers grew to 10 (the entire contingent of the department that was on duty that night) due to continued troublesome activity at the scene. A ranking officer determined that the BPD might have the wrong individual in custody, so the person with the weapon (knife) might be still at the party. All of the BPD officers stayed until the scene was cleared, roughly 10 minutes after the confrontation between the Appellant and Lt. Allen. They were ordered to clear the scene by Lt. Allen despite not identifying the other possible assailant. (*Testimony of Cunningham*)

59. The chain of command does not change if a different department is the primary law enforcement agency on scene. In this instance, Barnstable Police Department was the primary responding agency; Lt. Allen was the superior officer to whom the Appellant owed deference in how he addressed her, in his conduct towards her, and in regard to any commands she issued. (*Testimony of Goslin; Testimony of Appellant*)

### ***Events Following the July 2021 Incident***

60. Immediately following the July 5<sup>th</sup> incident, the Appellant was placed on desk duty and informed he was being transferred to the SP Middleboro barracks. While it was not cited as discipline, it was understood to be a de facto punishment. He remained on desk duty until his subsequent transfer to SP Middleboro. *(Testimony of Appellant)*
61. On July 6, 2021, the Appellant went to the Barnstable Police Department and requested from the desk officer a form to file a complaint against a Barnstable police officer. He did not identify himself or wear any identifying clothing that would have revealed him to be in law enforcement, nor did he state whom he was looking to file a complaint against. The Appellant did not submit a completed complaint form to BPD until September 2021. *(Testimony of Appellant)*
62. On July 7, 2021, Major Michael Michno, major for D Troop, which includes the Yarmouth barracks, reviewed the Appellant's body-worn camera footage from July 5-6. Approximately two hours later his superior, Lt. Colonel James Hanlon, in charge of the Division of Field Services and Major Michno's direct superior, reviewed the Appellant's body worn camera footage from July 5-6. Approximately an hour after that, Colonel Chris Mason, the head of the Department of State Police, at the time and Lt. Colonel Hanlon's direct superior, also reviewed the Appellant's body worn camera footage from the day or two before. *(Testimony of Goslin; A. Ex. 1)*
63. Lt. Allen's father, retired Lt. John Allen, had worked in the State Police for approximately thirty-seven years. Colonel Mason had worked for Lt. Allen's father on Cape Cod. *(Testimony of Allen)*
64. On June 21, 2021, two weeks *before* the July 5<sup>th</sup> incident with Lt. Allen, the Appellant sent Major Gabriel a text message requesting to meet in person for further mentorship



discussions. The parties finally met on July 13, 2021, in the parking lot of a Starbucks in Wareham. Despite the Appellant's earlier request for a meeting, Major Gabriel only finalized this date to meet with the Appellant *after* Lt. Colonel Hanlon requested that Major Gabriel meet with the Appellant because the Appellant was having "issues down on the Cape." In preparation for that meeting, and at the recommendation of Lt. Colonel Hanlon, Major Gabriel watched the Appellant's July 5<sup>th</sup> body worn camera footage. (*Testimony of Gabriel; R. Ex. 26*)

65. With respect to the July 13, 2021, meeting, the Appellant believed he was meeting with Major Gabriel as part of their mentorship relationship. Major Gabriel never told the Appellant that he had been informed of the July 5<sup>th</sup> events or that he had viewed the July 5<sup>th</sup> body worn camera footage prior to the meeting. During the July 13, 2021, meeting, Major Gabriel showed the Appellant the body-worn camera footage from July 5<sup>th</sup>. Major Gabriel gave the Appellant positive reinforcement and constructive feedback on his July 5<sup>th</sup> performance and informed him that he should have left the scene when he was informed that BPD was "all set." (*Testimony of Gabriel*)

66. In consultation with Colonel Mason and Major Michno, Lt. Colonel Hanlon made the decision to transfer the Appellant from SP Yarmouth to SP Middleboro. He had concern for the Appellant's "safety" given the "potential" for BPD to not respond timely to support him if he were ever in need for local support in the future as a result of the July 5<sup>th</sup> incident. (*RPH Ex. 1*)

67. Lt. Colonel Hanlon informed Major Gabriel that the Appellant was going to be transferred from the SP Yarmouth barracks to SP Middleboro and requested that Major Gabriel arrange another meeting with the Appellant. On July 14, 2021, Major Gabriel and Detective Lieutenant James Massari, the Department's Ombudsman, met with the

Appellant to discuss the transfer. Major Gabriel informed the Appellant that it would be a good “fresh start” for him. (*Testimony of Gabriel*)

68. The Appellant informed Major Gabriel that he believed he was being treated differently by Lt. Allen because of his race and that he intended on filing a complaint with BPD. Major Gabriel did not attempt to dissuade him from filing such a complaint. (*Testimony of Gabriel*)

69. Despite subsequently being transferred to SP Middleboro, the Appellant never received a transfer personnel order about his transfer to SP Middleboro, adding to the appearance of this being an “off record” punishment. (*Testimony of Appellant*)

70. On or about July 13, 2021, the Appellant filed an Anti-Harassment, Sexual Harassment and Discrimination complaint with the Department alleging his transfer from the SP Yarmouth Barracks to the SP Middleboro Barracks was retaliatory due to his having made a complaint against Barnstable Police Department alleging discrimination by Lt. Allen. (*RPH Ex. 1*)

71. As a result of that complaint, Guillermo Huerta-Serratos, of the Commonwealth’s Human Resources Division (HRD) Investigations Center of Expertise (COE) conducted an investigation. (*RPH Ex. 1*)

72. On September 6, 2021, while the COE investigation was ongoing, the Appellant submitted to the Barnstable Police Department the complaint form that he obtained in July. In that complaint, he alleged that Lt. Allen harassed and discriminated against him because of his race. (*Testimony of Appellant; R. Ex. 10*)

73. After the Appellant filed the BPD complaint regarding racial harassment by Lt. Allen, Alfred Donovan, retired Chief of Police for the town of Tewksbury, conducted an investigation at the behest of BPD. As part of that investigation, Donovan interviewed Lt.

Allen and the Appellant, and he reviewed the body-worn camera footage from the July 5<sup>th</sup> incident. (*Testimony of Appellant; R. Ex. 10*)

74. The Appellant was interviewed prior to Lt. Allen and was not made aware of the breadth or nature of questioning prior to meeting with Donovan. At the beginning of the interview, the Appellant was informed, “You’re not the subject of this investigation. You’re not the target of this investigation.” (*R. Ex. 11*)

75. Donovan went into great detail (13 pages) regarding the State Police General Orders concerning body-worn cameras, instances in which he determined the Appellant to be in violation of these orders, and specific interpretations of the video evidence in which he decided that the Appellant was in the wrong—even though the Appellant was the complainant and the sole purpose of the investigation was purportedly to determine if the claim of racism against Lt. Allen had merit. (*R. Ex. 10*)

76. On December 7, 2021, Donovan issued a report exonerating Lt. Allen of any wrongdoing. (*Testimony of Appellant; R. Ex. 10*)

77. Donovan’s report was forwarded to the Massachusetts State Police. On January 21, 2022, the Appellant received a subject notification letter from Detective Lieutenant John Goslin. The letter informed the Appellant that, as a result of the July 5<sup>th</sup> incident with Lt. Allen, he was the subject of an Office of Professional Integrity and Accountability investigation (IA investigation). Det. Lt. Goslin was charged with conducting the investigation. (*R. Ex. 12*)

78. On May 20, 2022, the Department notified the Appellant that the COE investigation into his July 13, 2021, complaint regarding his transfer had been completed. The COE report concluded that the Appellant’s transfer from SP Yarmouth to SP Middleboro was lawful and proper. (*RPH Ex. 1*)

79. On June 17, 2022, as part of the then-pending IA investigation, Det. Lt. Goslin and Lt. Donald Short interviewed the Appellant in the presence of the Appellant's union attorney and union representative. (*Testimony of Goslin; R. Ex. 15*)
80. While the IA investigation was pending, the Appellant was a member of the MSP Union and received a "Bulldog" award in January 2023 for being extremely proactive in his duties. He had received numerous positive EES's (Employee Evaluations System reports) including: assisting in saving a civilian, taking a gun off the streets, as well as completing several felony arrests in a short period of time. When he received the State Police Bulldog Award, he had already been made aware that he was the subject of a pending internal affairs investigation. (*Testimony of Appellant*)

***Appellant's Versions of His Intention Behind the Second Activation of his Body Worn Camera on July 5, 2021***

81. In his November 1, 2021, interview with Alfred Donovan, the Appellant was asked (1) why he reactivated his body worn camera after having turned it off for approximately 8 or 10 minutes, and (2) why he was seemingly recording the Barnstable officers. He stated that he felt the scene was picking up again and did not intend to record the Barnstable police officers. (*R. Ex. 25; R. Ex. 7*)
82. In his June 17, 2022, interview with the Department's Office of Professional Integrity and Accountability, the Appellant provided varying accounts as to why he reactivated his body-worn camera when he did. (*R. Ex. 15*)
- a. First, he repeatedly justified the reactivation of his body-worn camera due to his belief that the scene was picking up again, stating that the "scene was getting unruly again, chaotic, drunk people coming out – coming out of their house ... a lot was going on." (*R. Ex. 15*)

- b. He was then confronted with the significant fact that he did not in fact activate his body-worn camera at the beginning of the recording, which shows several animated private citizens outside the home. And he then stated that he activated the recording function of the camera at the 30 second mark of the video, which shows him *already* walking towards a group of Barnstable police officers, including Lt. Allen, speaking outside the home. (R. Ex. 15 at R0210-12)<sup>5</sup>
- c. When asked why he started recording *at the 30 second timestamp of the body-worn camera video and not while he initially approached the group of excited individuals who were at the party*, he at first was unable to provide an explanation, stating that he “probably just forgot” and “made a realization ... as I’m walking toward them” (BPD officers) but “it wasn’t my intention to record them.” (R. Ex. 15)
- d. He then adopted Lt. Goslin’s characterization, and said that the activation of his body-worn camera was based on “muscle memory” while further elaborating:

Question by Lt. Goslin: “It was muscle memory that caused you turn the camera back on?”

Answer by Appellant: “yes, essentially it like, the muscle memory that I was like ... I basically didn’t know I was—I had to turn it on, I basically had to turn it on, there was a lot going on at the scene. It was like a lot of adrenalin dumping, fog, a lot was going on ... my sole purpose was not [to] go to that group and record specifically Lieutenant Gretchen Allen.” (R. Ex. 15)

- e. But when pressed by Lt. Short as to how muscle memory could have been established on July 5, 2021, when the Appellant had only possessed the body-worn

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<sup>5</sup> As discussed *supra*, although body-worn cameras are constantly recording, they do not actively store data until a user presses the “record” feature of the camera. At this point, the cameras automatically store the 30 seconds of video (but not audio) that precedes the activation of the recording.

camera for five working days, and where he had not yet had any formal training with the camera, the Appellant stated:

“So, the scene became active again .... The muscle memory is not there at all... there’s a lot going on ... I look down, I’m okay, all right. Gotta turn it back on, the scene’s picking back up again.” (R. Ex. 15)

83. At the full hearing before the Commission, on direct examination the Appellant again insisted that that he did not reactivate his body-worn camera because of the presence of the Barnstable police officers, including Lt. Allen, outside the home. Rather he testified that he reactivated his camera because he believed that the scene was “picking back up,” that the suspect was on a gurney and that there were people coming out of the house and walking on the sidewalk in an “active scene.” (*Testimony of Appellant*)

84. In his full hearing before the Commission, the Appellant was also questioned by Commissioner Dooley and by Deputy General Counsel De Luca. In response to those pointed questions, for the first time the Appellant reflected that the presence of Lt. Allen on the scene, their acrimonious history, and his concern about being “singled out,” as well as his knowledge of race-driven language allegedly employed by members of BPD, might have played a “contributing factor” (albeit subconscious) in his overall anxiety surrounding the scene. He explained that these factors “added to a level of uncertainty also, like a risk factor of mine. That could have been a part, that played a part into my decision making.” When pressed as to why, only at the end of his full hearing and because of these questions posed by the Commission, the Appellant had a difficult time articulating his feelings. The Appellant struggled in a nearly four-minute exchange to articulate a reason, stating initially: “I didn’t know how to describe it ...” and “I want to like make sure this is like not taken out of context. My words have been taken out of context

unfortunately quite a bit . . . .” Then, “I’m like having a hard time like putting this into words. Like a really hard time putting things into words.” This approximate four-minute exchange culminated when, finally, the presiding Commissioner asked: “Would you say it was, you know, more of a conscious part of your decision making or more of a subconscious part of your decision making? Or more . . . you never brought it up until now because you never really thought about it that way until now?” The Appellant responded: “It was either part of my subconscious part of it and probably like . . . when Deputy Counsel brought it up, it was also a way to describe it. . . . It was never brought up before in a way that it was -- could be a potential. . . . So, when you brought it up, it helped bring out almost a subconscious [thought] into the forefront of the mind, where it helped say that that could be that--that helped play a potential factor.” (*Testimony of Appellant*)

85. While the Appellant had difficulty assembling his thoughts into a cohesive statement, he was credible in his sincere attempt to articulate the fact that there were a multitude of factors that could have gone into his overall feeling of anxiety and being potentially at risk at the scene.

#### *Charges, Trial Board, and Discipline*

86. After finishing his IA investigation, Det. Lt. Goslin determined that the Appellant was untruthful during both his interview with Chief Donovan and in his interview with Det. Lt. Goslin; that he conducted himself unfavorably with his interaction with Barnstable Police Department officers on July 5, 2021; and that he violated Department policy on body-worn cameras by recording the conversations of Barnstable Police Department members. (*R. Ex. 1; R. Ex. 2; R. Ex. 16*)

87. Based on Det. Lt. Goslin's investigation, the Appellant was charged with three counts of violations of Rules and Regulations of the Department of State Police. (*R. Ex. 2*)
88. Charge one was for untruthfulness, a class A violation of Department Rules and Regulations, for failing to answer truthfully in his interview with Detective Lt. Goslin and a class B violation for being untruthful during his interview with the Barnstable Police Department's independent investigator. (*R. Ex. 2*)
89. Charge two was for violation of rules, a class B violation, for violating the Department's body-worn camera policy. (*R. Ex. 2*)
90. Charge three was for unbecoming conduct, a class B violation, for unprofessional conduct during his interaction with Barnstable police officers on July 5, 2021. (*R. Ex. 2*)
91. Article 5 of the Department's Rules and Regulations and Appendix A ("Discipline Guidelines") govern the rules of conduct for uniformed members of the Department of State Police and corresponding discipline for violations. (*R. Ex. 3; R. Ex. 6*)
92. The Appellant was terminated from the Department on November 6, 2023, after a Department Trial Board found him guilty on all three counts. (*R. Ex. 20; R. Ex. 21*)
93. Records submitted by the State Police to the POST Commission, through January 1, 2023, reflect multiple instances of discipline imposed by the Department on its members for alleged violations of Article 5.27 – Truthfulness, wherein these Troopers were allowed to retain their employment status. These instances of untruthfulness range from falsifying timesheets to filing a false report and/or committing perjury. Penalties ranged in severity, including: written reprimand, loss of time off, and suspension. (*A.Ex. 3*)
94. Pursuant to Appendix A of the Department's Rules and Regulations, the discipline guideline for a Class "A", first offense is "suspension of not less than thirty (30) days up to and including termination." (*R. Ex. 7*)



## APPLICABLE CIVIL SERVICE LAW

The civil service law provision most applicable here—G.L. c. 31, § 43—provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against [a tenured trooper aggrieved by a finding of a Trial Board per G.L. c. 22C, § 13(a)] ... it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of the evidence establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

An action is “justified” if it is “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.” *Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971). *See also Cambridge v. Civil Service Comm’n*, 43 Mass. App. Ct. 300, 304 (1997); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). The Commission determines just cause 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.” *Doherty v. Civil Serv. Comm’n*, 486 Mass. 487, 493 (2020) (state trooper disciplinary appeal) (emphasis in original). *See also School Comm. v. Civil Service Comm’n*, 43 Mass. App. Ct. 486, 488 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983).

The appointing authority’s burden of proof (by a preponderance of credible evidence) is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” *Tucker v. Pearlstein*, 334 Mass. 33, 35-36 (1956).

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” *Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823 (2006) and cases cited. However, “[t]he commission’s task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly ... . Here the commission does not act without regard to the previous decision of the [appointing authority—here, the Trial Board and Colonel of State Police], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.’” *Id.* at 823-824 (quoting internally from *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983)).

By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. “Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” *Police Commissioner of Boston v. Civil Service Commission*, 22 Mass. App. Ct. 364, 371 (1986). “[H]igh standards of ... truthfulness for police officers ... are critical to the proper functioning of the police force.” *Town of Falmouth v. Civ. Serv. Comm’n*, 61 Mass. App. Ct. 796, 801 (2004).

The Commission has also consistently held, however, that labeling a police officer as untruthful can be an inherently subjective determination that should be made only after a thorough, serious, and well-informed review that is mindful of the likely career-ending consequences that flow from such a conclusion. *E.g.*, *Kerr v. Boston Police Dep’t*, 31 MCSR 35 (2018), citing *Morley v. Boston Police Department*, 29 MCSR 456 (2016).

On December 31, 2020, the Massachusetts legislature passed An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth (“police reform bill”) to “provide justice, equity, and *accountability* in law enforcement ... necessary for the immediate preservation of the public safety.” 2020 Mass. Acts 253 (emphasis added). The Act sets forth provisions on officer untruthfulness, including the requirement that a new state Division of Police Standards maintain a database containing information related to an officer’s untruthfulness. *Id.* and G.L. c. 6E, § 8(e). Further, in a provision that greatly raises the stakes in any untruthfulness inquiry, the Act requires automatic officer decertification if terminated by the appointing authority based on “intentional conduct performed under the color of office to ... create or use falsified evidence, including false testimony or destroying evidence to create a false impression.” *Id.* and G.L. c. 6E, § 10(a).

Separately, the Supreme Judicial Court has repeatedly “held that public policy supports terminating police officers for lying.” *City of Pittsfield v. Loc. 447 Int’l Bhd. Of Police Officers*, 480 Mass. 634, 640 (2018). *See also Diaz v. City of Somerville*, 2019 WL 2083385, at \*9 - \*10 (Civ. Serv. Comm’n) (citing cases, including *LaChance v. Erickson*, 522 U.S. 262, 268 (1998), for the propositions that lying in a disciplinary investigation alone is ground for termination and the discharges of police officers based upon their dishonesty often will be upheld by the Commission).

There is a “public interest in maintaining public trust and confidence in the integrity of law enforcement, and that such public trust would be eroded if police officers are permitted to maintain their employment in the face of demonstrated dishonesty.” *Town of Belmont v. Doe*, 101 Mass. App. Ct. 1122 (2022 rule 23.0 decision) (citation omitted).

## ANALYSIS

The Department did not show by a preponderance of the evidence that the Appellant was deliberately untruthful in his statements surrounding the use of a body-worn camera during the early morning hours of July 5, 2021. This is a situation where a young and inexperienced Trooper is being punished for his inability to fully articulate every thought and feeling that went into his decision to turn on his body-worn camera—following one of his first times being a part of a potentially dangerous takedown and arrest. I found the Appellant to be extremely credible and forthright in his explanation that “adrenaline fog”, as well as his admission that other personal factors may have added to his anxiety, created for him an overall feeling that the scene was not fully secure and his camera should be reactivated. Moreover, the fact that Barnstable Police Officer Cunningham, in his testimony before the Commission as well as to the State Police during their investigation, corroborated the Appellant’s testimony that the scene was becoming active and there were numerous intoxicated and agitated civilians milling about the immediate area, lends further evidentiary support that the Appellant’s statements were subjectively sincere and should not be classified as untruthful.

Further, I find that the training in proper use of a body-worn camera, delivered to the Appellant the prior week, to have addressed only the basic operations of the camera, through videos. Hands-on, scenario-based training had yet to been offered and, while I appreciate this was a new protocol for the State Police as a whole, to hold a new Trooper accountable to the point of termination, without proper guidance and instruction, is unreasonable. While the Appellant did activate his camera as he approached a group of BPD officers, it did not appear that his motive was trying to covertly film them given that he walked away to chat with Officer Cunningham after he was informed they were “all set”. In that the body worn camera had a stealth mode available and said activation process was covered in the training delivered to the

Appellant a few days prior, the fact that he activated his camera in regular mode belies the accusation that he was doing anything surreptitious and untoward.

Seeing as how the training he was given did not address the issue of having the camera on while in the presence of other officers, and the General Order ADM-35 is not clear inasmuch as in one instance it states that a recording *may* be paused for very specific reasons, a misstep on the Appellant's part should not have been a career-ender. I understand that another section of ADM-35 that primarily deals with privacy issues -- including recording during breaks, restrooms, strip searches and the like -- is the section of the General Order that the State Police used (in an absolutist fashion) to conclude that the Appellant violated policy and procedure. But given that the General Order itself is contradictory, there does not appear to have been any ill intent on the Appellant's part and, moreover, without the confrontation with Lt. Allen, there is nothing of any import in the video he captured, I conclude that he cannot be held to have disobeyed ADM-35. It is difficult to understand why this use of the body-worn camera was the basis of a formal police investigation and more so why a determination of policy violation was made by an outside consultant hired by the BPD to investigate alleged racism by one of its officers, and not by the numerous senior State Police officers who had previously viewed this video. While the Appellant did not announce turning on the body-worn camera or state the reason for pausing or turning off the camera, per the regulations, these minor infractions were never brought up in the five months following the July 5 incident. It is my hope that additional training and guidance is now available to members of the Department. It appears that many of these issues arose because body-worn cameras had been introduced just prior to this incident and have since been resolved through on-going training.

Moreover, I decline to make any finding that the Appellant was untruthful in his statements to Mr. Donovan because the Department, which has the burden of proof in this case,

failed to call him as a witness. Without the Appellant being able to confront and cross-examine Donovan, it would not comport with due process to uphold an untruthfulness charge (with all that entails) based on statements he made to a private consultant hired by the BPD who was investigating a claim of harassment and discrimination by one of their own officers. Discussing “the right to confront and examine through counsel persons on whose accounts [the employer] has relied” in determining that an employee has been dishonest, the Appeals Court noted:

If government action puts at stake a person's good name, reputation, honor, or integrity by a charge of dishonesty or immorality, liberty interests of the person so charged become implicated and the level of process due rises to requirements of notice and hearing at which accusers may be confronted and witnesses examined and cross-examined by counsel.

*Smith v. Comm'r of Mental Retardation*, 28 Mass. App. Ct. 628, 634–35, and 637 (1990), *rev'd on other grounds*, 409 Mass. 545 (1991), *citing, inter alia, Regents of State Colleges v. Roth*, 408 U.S. 564, 573–575 (1972); *Stetson v. Selectmen of Carlisle*, 369 Mass. 755, 762–764 and 765 n.14 (1976) (mandating “an opportunity to cross-examine” those who charge a dismissed employee with any wrongdoing on which the employer relies in effectuating the discharge).

All that being said, the Appellant’s behavior on July 5, 2021, was poor and immature. While I appreciate his perception that he was being singled out due to his race, in a paramilitary organization one must put personal feelings aside and behave in a professional, respectful manner and give deference to higher-ups in the chain of command. While Lt. Allen certainly bears some responsibility for initiating a public confrontation and could have done a better job in handling her interaction with the Appellant, the fact remains that she had command of the scene and the Appellant should have respected her authority without question. For his actions during the early morning hours of July 5, 2021, I find the Appellant to have been insubordinate to a superior officer and his overall conduct when dealing with Lt. Allen to be reflective of conduct unbecoming of a State Trooper.

I credit the Appellant for acknowledging that he owes Lt. Allen an apology for disrespecting her rank, for disregarding her direct order, and for contributing to a situation in which a supervisor and a subordinate find themselves in a heated debate in public. He admitted, on questions I posed, that he should have de-escalated the situation, and that he should have addressed and interacted with Lt. Allen as a superior officer. I am confident that he is sincere and now better understands how to act in difficult situations. I commend his eagerness to seek out mentorship and his willingness to take direction. At the time of termination, he was being mentored by a senior trooper and had shown tremendous promise and improvement.

I did find some evidence of inappropriate animus in how the situation played out following the night in question. Immediately after the incident of July 5<sup>th</sup> the Appellant was placed on desk duty and then transferred. While the Respondent states that this move was not punitive, it certainly has the appearance of discipline. What is even more concerning is the close attention that this relatively low-level matter received, right from the outset, by the Colonel of the State Police—who had a long-standing working relationship with Lt. Allen’s father. I find it very telling that the next day after this incident concluded, the head of the State Police spent time viewing body-worn camera video of a mere verbal altercation between the Appellant and Lt. Allen.

Despite multiple senior officers viewing the Appellant’s body worn camera video, having meetings with the Appellant, and being so concerned for his safety that they transferred him to a different barracks, none of these high-ranking officers found it necessary to open an investigation or put a written reprimand in his file. Not until the Appellant filed a discrimination complaint against a retired senior State Police officer’s daughter was there even a mention of conduct unbecoming or improper use of the body worn camera. And even then, it was not until the BPD’s private consultant sent the State Police a copy of his report, in which he determines that

the Appellant (alleged victim in his investigation) improperly used his camera, did the State Police begin an investigation into the Appellant's actions.

This case also appears to reflect disparate treatment of the Appellant as compared to other Troopers with the punishment being uncommonly harsh for a first offense and certainly not progressive. Numerous current State Troopers have been found to have been untruthful in various serious situations and nonetheless remained on the job, despite the apparent zero tolerance approach taken by Colonel Mason in this case.

Furthermore, I find it significant that the Appellant's accusations of racism never seemed to have been given the attention by the State Police that they deserved. While I did not find, nor was I tasked with finding, any actual instances of racial bias or that the Appellant was singled out due to his race, the fact remains that this Trooper was the only person of color in these barracks and the issues he raised were not adequately addressed. Perception can be reality at times and the cavalier way this concern of the Appellant was handled by the State Police added to his assumption that he was being treated differently due to the color of his skin. It seems that proper leadership and better communication could have gone a long way toward preventing any of the issues that brought us to this point.

Nothing in this decision should be read as detracting from the long line of cases holding that *lying*, or *proven* conscious dishonesty, warrants the dismissal of a police officer. I view this case as distinguishable from others in which the Commission has upheld the termination of a police officer fired due to false statements uttered during an investigation. *See, e.g., Diaz v. City of Somerville*, 32 MCSR 156 (2019) (officer's false statement, dealing as it did with core issue of use of force upon civilian, and not minor details of interaction, "cannot be attributed to an innocent lapse of memory"); *Mozeleski v. Chicopee*, 21 MCSR 676 (2008) (lying to cover-up



inappropriate conduct during a late-night traffic stop)<sup>6</sup>; *Meaney v. City of Woburn*, 18 MCSR 129 (2005) (litigious police officer with significant prior discipline terminated *inter alia* for giving false, evasive, or misleading testimony, answers, and statements in official report and during investigative interview).<sup>7</sup> In a leading case in which this Commission articulated the importance

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<sup>6</sup> Although *Mozeleski* similarly started off with a police officer - civilian interaction in the wee hours of the morning, I distinguish the case before me from *Mozeleski* principally for three reasons: (1) Officer Mozeleski's superior first asked him about his questionable actions within three weeks of their occurrence and he was then required to submit a formal written report, plus a follow-up report less than a month after the incidents for which he was disciplined; (2) What Ofcr. Mozeleski omitted from his report (that he had telephoned and left a voicemail for a motorist he had stopped in an effort to arrange a sexual tryst) is something that very few people would ever forget in that time span; and (3) While Ofcr. Mozeleski eventually came clean about certain aspects of his misconduct that he had initially misreported, the Commission concluded that he continued to knowingly misrepresent a certain crucial matter.

<sup>7</sup> The facts in *Meaney* were quite different from this case. Early one morning, the recently departed Mayor of Woburn discovered in his driveway a dingy toilet with derogatory graffiti (featuring appellant Meaney's name) on it, adorned with flowers, and stuffed with a copy of a non-public, internal Woburn Police incident report (itself defaced with derisive remarks) regarding one of his relatives. After initial investigation cast further suspicion on Meaney, internal affairs interviewed him within about a month of this incident and he was ordered to submit a report, which he promptly did. Meaney denied all knowledge or memory of suspicious circumstances. Then his thumb fingerprint was discovered on the non-public, paper-copy report stuffed into the toilet left at the former Mayor's house. Despite being confronted with this forensic evidence, Meaney continued to deny any involvement. Testifying before this Commission after his discharge, Meaney for the first time made several damaging admissions contrary to what he had previously reported during the investigation. The Commission decision concluded that "the evidence adduced during the CSC hearing . . . credibly support the overall finding that Meaney engaged in obfuscation of the Internal Affairs investigation by willingly withholding information as well as creating an irrational and unbelievable scenario whereby his sister-in-law claimed full responsibility and he should have been fully exonerated." 18 MCSR at 134. The CSC hearing officer added: "Meaney's testimony was evasive at times and his demeanor was somewhat agitated when asked probing questions or when it was clear his answers were contradictory to others' testimony[.] Under cross examination, he would answer questions with questions in order to 'size up' or dissect the questions to accommodate his answer. This led this hearing officer to make an inference that Meaney's story was so prefabricated that his answers had to 'fit' regardless of what questions he faced." *Id.* at 133. More need not be stated about why the *Meaney* disposition diverges markedly from my decision in this case.

of a police officer’s obligation to be truthful—*Gonsalves v. Falmouth*, 25 MCSR 231 (2012)<sup>8</sup>—the Commission’s hearing officer firmly declared that the Appellant officer simply was not a credible witness.<sup>9</sup> Obviously, I have reached a very different conclusion with respect to the Appellant’s veracity.<sup>10</sup>

This Commission has repeatedly cautioned that accusations of untruthfulness must be analyzed with care: “[S]ubjective hair-splitting cannot be the basis for the serious charge of untruthfulness, nor can the inability . . . to remember every specific detail of a tumultuous event.” *Grasso v. Town of Agawam*, 30 MCSR 347, 369 (2017). *See also Rodriguez v. Dep’t of State Police*, 37 MCSR 139, 153 (2024). “The serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness require that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings.” *D’Esposito v. City of Malden*, 36 MCSR 368 (2023). *See also Luis v. Town of Dartmouth*, 34 MCSR 335 (2021); *Hall v. Town of Brookline*, 33 MCSR 164 (2020) (context in which statement made can be crucial in assessing truthfulness).

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<sup>8</sup> The Superior Court affirmed the Commission’s *Gonsalves* decision under the name *Gonsalves v. Civil Service Commission and Town of Falmouth*, Suffolk Superior Court, C.A. No. 12-2655G (2014).

<sup>9</sup> “His testimony on nearly every core issue was equivocal, unresponsive and inconsistent.” *Gonsalves, supra*, at 238 (specifying numerous examples). “He left a trail of evasive, incredible and inconsistent statements that began on [the date of an incident giving rise to discipline] with his original denial to [a fellow] Officer [and it then] continued through the [internal affairs] investigation and was on display during his two days of testimony at the hearing before the Commission.” *Id.* at 239.

<sup>10</sup> It is the purview of the hearing officer to determine the credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [Commission] upon which a court conducting judicial review treads with great reluctance.” *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 729 (2003).

The Appellant's inability to fully articulate every subconscious feeling that went into his determination that the scene was not secure, coupled with the use of body-worn cameras being just introduced the week before (with very limited training and contradictory messaging), makes it impossible for me to conclude that there was any deliberate falsehood put forth by the Appellant. Particularly in this era of possible decertification for untruthfulness, tenured police officers must not be branded as dishonest based on misunderstandings, unfair processes, or inadvertent errors. *Marchionda v. Boston Police Dep't*, 32 MCSR 303, 308 (2019); *Owens v. Boston Police Dep't*, 31 MCSR 14, 17 (2018).

In short, the Department was in error by issuing the Appellant a dishonorable discharge based on insufficiently substantiated, subjective assertions of untruthfulness. That this claim of untruthfulness was initiated by an outside consultant hired to investigate a claim of racism against the consultant's third-party employer, and who, instead, put a great deal of time and effort into building a case against the alleged victim (i.e. the Appellant), is problematic. The almost immediate involvement of the Colonel of the State Police in this matter and the severity of the penalty he meted out, given the facts of this case, also confirm my finding that animus, bias or disparate treatment likely were in play here. Given the State Police's past willingness to tolerate trooper untruthfulness associated with the overtime scandal – where there is no question that members of the Department lied in order to personally profit – it is very hard to comprehend how the Department came to the determination that Appellant was deliberately being untruthful and then further determined that his behavior was so egregious that it deserved termination.

### ***Modification of the Penalty***

Section 43 of G.L. c. 31 vests the Commission with the authority to modify a penalty imposed by the appointing authority. The Commission is delegated “considerable discretion” in this regard, albeit “not without bounds”, so long as the Commission provides a rational

explanation for how it has arrived at its decision to do so. *See, e.g., Police Comm'r v. Civ. Serv. Comm'n*, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; *Falmouth v. Civ. Serv. Comm'n*, 61 Mass. App. Ct. 796, 800 (2004); *Faria v. Third Bristol Div.*, 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). To be sure, in the absence of “political considerations, favoritism, or bias,” the same penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Falmouth*, 447 Mass. at 824. As referenced above, my findings differ considerably from those of the Department. The critical difference in my findings is that I find there is no possibility of concluding for certain that the Appellant was lying without him undertaking a detailed analysis of his own psyche. As was noted during the hearing, he had a very difficult time articulating specifics and this lack of ability to communicate clearly was reflected in every aspect of this investigation.

Having reached different findings than the Respondent, in particular regarding the lack of untruthfulness, and based on my conclusion that the Appellant was treated differently than other similarly situated individuals would have been in a like scenario, a modification of the penalty (discharge) is warranted. After carefully considering the level of discipline that can be justified under the facts of this appeal, I conclude that a 30-day suspension is a reasonable level of maximum progressive, remedial discipline that takes into account the Appellant’s acknowledgement of his misconduct. *See* G.L. c. 31, § 41, ¶ 1.

## CONCLUSION

For all the above-stated reasons, I determine that, by a preponderance of the credible evidence, there was no reasonable justification for the Department to terminate Trooper Alves’s employment. The Commission determines, however, that he was insubordinate and his conduct

was unbecoming of a Massachusetts State Trooper and thereby modifies the discipline to a 30-day suspension.

Accordingly, Trooper Christopher Alves's appeal is hereby partially *allowed*. The Department's decision to terminate Alves is vacated forthwith. Except for the 30-day suspension, the Appellant shall be returned to the position of Trooper at the time of discharge without loss of pay or other benefits.

Civil Service Commission

/s/ Shawn C. Dooley  
Shawn C. Dooley  
Commissioner

By 5-0 vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, & Stein, Commissioners) on December 19, 2024.

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)(I), 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Joseph P. Kittredge, Esq. & Lorena Galvez, Esq. (for Appellant)  
Daniel Brunelli, Esq. & Stephen Carley, Esq. (for Respondent)