

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, SS.

JOHN BOLDUC,
Appellant
v.

D-04-107

TOWN OF WEBSTER,

Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, John Bolduc, (hereinafter "Bolduc" or "Appellant") is appealing the decision of the Appointing Authority, the Town of Webster, (hereinafter the "Town") terminating his employment as a Police Sergeant for the Webster Police Department (hereinafter the

“Department”). The appeal was timely filed.¹ Six days of hearing were held on October 24, 25, 26 and December 5, 6 and 7, 2005 at the offices of the Civil Service Commission. By written request of the Appellant, the hearing was declared to be a public proceeding. A joint motion to sequester the witnesses in this matter was allowed. Fifteen (15) tapes were made of the hearing. Following the hearing, Proposed Decisions were submitted by the parties, as instructed.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits 1-35) and testimony on behalf of the Appointing Authority of: William Keefe, Provisional Chief of Police of the Webster Police Department; Daniel J. DeFusco, Patrol Officer, Webster Police Department; James Young, Sr., Patrol Officer, Webster Police Department; Scott Nelson, former Patrol Officer, Webster Police Department; Michaela Kelley, Sergeant, Webster Police Department (Patrol Officer at time of events); John Smith (a pseudonym), inmate Worcester County House of Correction; Leonard Gevry, Patrol Officer, Webster Police Department; and on behalf of the Appellant of: Robert Miller, Board of Selectman (Chairman at the time of the disciplinary action); Travis Gould, reserve Officer in training; Thomas Pysell, Patrol Officer, Webster Police Department; Thomas Ralph, Patrol Officer (Deputy Chief at time of events), Webster Police Department; Raymond Regis, Board of Selectman Town of Webster; Steven Boudreau, former Interim Town Administrator for Town of Webster; John Bolduc,

¹ The Civil Service Commission held a bifurcated hearing of the claims on G.L. c. 31, s. 41 and G.L. c. 31, s. 43. A full hearing was held on the former on October 4, 2005 at the office of the Civil Service Commission. One tape was made of the hearing. A decision dismissing the G.L. c. 31, s. 41 claim was rendered on October 20, 2005.

Appellant; and William Keefe (recalled by the Appellant), I make the following findings of fact²:

1. The Appellant was employed from March 1996 through March 19, 2004 by the Town of Webster Police Department (the “Department”), beginning his employment as a police officer. On October 22, 2001, Appellant was made a provisional Sergeant, and on June 30, 2002, he was selected as a permanent Sergeant. (Testimony of Appellant)
2. As part of its annual in-service fire arms training, Webster police officers receive training on the use of force. Officers are trained to use the minimum amount of force necessary and that excessive force is prohibited. The Department has adopted and uses the Integrated Force Management Reference Guide to train its officers in the use of force. (Testimony of Keefe and DeFusco and Exhibits 32 and 33)
3. During the relevant time period, the Department was composed of a Chief, Deputy Chief, four (4) sergeants, nineteen (19) full-time officers and thirty-one (31) part-time officers. (Exhibit 34)
4. The Department is under the administrative oversight of the Town Administrator. From January 23, 1993 until April 16, 2003, Mark Stankiewicz was the Town Administrator and Appointing Authority for the Department. Steven Boudreau served as the Interim Town Administrator from April 2003 until October 2003, at which time Robin Leal was appointed Town Administrator. (Exhibit 34)

² The Respondent’s Motion to Exclude the Testimony of Robert Miller and Raymond Regis was denied. The Appellant’s Motion to Exclude the Testimony of Leonard Gevry was denied.

5. In 2001 and 2002, a perception existed within the Department that Chief Richard Bergeron favored Acting Deputy Chief Thomas Ralph, the Appellant and one other officer, and that they composed Bergeron's "inner circle." Keefe testified that Bergeron and Ralph used discipline as a weapon against officers who were not in their favor and that record keeping and rules and regulations were critically lax. Ralph admitted that discipline was "limited" and "sporadic". Kelley testified that Ralph and the Appellant could get away with anything and "ran the show." (Testimony of Keefe, Ralph, Kelley and Young)
6. The Board of Selectmen placed Bergeron on administrative leave on July 15, 2003, and appointed Keefe as Acting Police Chief. Keefe testified that the Department was in disarray and on edge when he became Acting Chief. (Exhibit 34 and testimony of Keefe)
7. On October 16, 2003, the Town of Webster, through its Board of Selectmen and Town Administrator, executed an agreement with the Honorable Judge Robert A. Barton (Retired) "to investigate police operations and the management of the Webster Police Department." The investigation was prompted by factors relating to police operations and conduct which had led to placing Bergeron and Ralph on paid administrative leave. The investigation and resulting report, known as the Barton Report, was issued on December 8, 2003. (Exhibit 34)

8. On December 2, 2003, Keefe learned of an incident in which the Appellant was alleged to have used excessive force on a female detainee during booking on November 30, 2003. (Testimony of Keefe)
9. A Department arrest report indicated that on November 30, 2003, the Appellant was on duty from 11:00 PM to 7:00 AM as Shift Supervisor. Police were called to Second Island Road with the report of a disturbance or domestic incident. Upon arrival and investigation, the officers could not find the woman who was the subject of the reported disturbance. A short time later, the officers were called back upon a new complaint that the son of the subject woman was bothering the neighbors because the police had been called regarding his mother's behavior. Upon arrival for the second call, the mother, Jane Doe (a pseudonym), was present and appeared extremely intoxicated. Officer DeFusco arrested her, charging her with Disorderly Conduct, Disturbing the Peace and Resisting Arrest, and transported her to the station. (Exhibits 7 and 8)
10. In the booking room, DeFusco attempted to photograph Ms. Doe, a required part of the booking process, but she refused to cooperate, looking away from the camera and closing her eyes. The Appellant, wearing his black service gloves, placed his hands on Ms. Doe's forehead and chin and forcibly turned her head toward the camera and instructed Defusco to take the photograph. When the Appellant realized Ms. Doe had had her eyes closed, he pulled her eyelids open

and instructed DeFusco to take another picture. Throughout, Ms. Doe was yelling and crying uncontrollably. (Exhibits 4, 5, and 7 and testimony of DeFusco)

11. DeFusco took two additional pictures, one of which was used as the booking photograph. The suspect was placed in a holding cell and released after bail was set. DeFusco testified that if Ms. Doe had continued to be belligerent, he would have brought her to a cell to “cool down.” He stated that he had never taken this action himself, but had personal knowledge of other officers and superiors who did on other occasions and he believed it to be standard procedure. (Testimony of DeFusco)

12. Officer James Young, Sr., an officer for over sixteen (16) years with the Department, was also present in the booking room. He testified that when Ms. Doe refused to raise her head to have her photograph taken, the Appellant forced her head up, a technique he had never seen employed. Young stated that more force was used than necessary to get the detainee to comply. He testified that it was his understanding that if a prisoner was uncooperative during booking, they were to be placed in a cellblock until they became cooperative. (Testimony of Young)

13. The Appellant admitted in his testimony at hearing that a better solution would have been to place Ms. Doe in a cell, hand cuffed, until

such time as she was ready to voluntarily complete the booking process. (Testimony of Appellant)

14. DeFusco subsequently copied the booking photographs onto a floppy disc, with no alterations or enhancements, and on December 11, 2003, placed the disc in a business envelope on Keefe's desk. (Exhibits 3 and 6 and testimony of DeFusco)
15. Keefe viewed the photographs and on December 12, 2003, showed them to Town Administrator Leal. Later that day, Leal came to Keefe's office with a letter placing the Appellant on Paid Administrative Leave. Leal instructed Keefe to investigate the Ms. Doe incident and prior instances involving the Appellant. (Exhibit 6 and Testimony of Keefe)
16. As part of Keefe's investigation into the Ms. Doe incident, he obtained a statement from Officer Young on December 18, 2003 and a written report on December 23, 2003, in which Young stated he was shocked by the Appellant having grabbed Ms. Doe's head and holding her head up. Young also answered that it appeared the Appellant used more force than necessary and he had never seen this done before. (Exhibits 10 and 11)
17. At Keefe's request, DeFusco wrote a statement on December 17, 2003 and a written report on December 19, 2003 in which he stated he did not feel the Appellant's behavior with Ms. Doe was an appropriate

way to obtain a photograph and he had never seen the Appellant's approach taken with an arrestee before. (Exhibits 8 and 9)

18. Keefe testified that the Barton Report was critical of Ralph's investigation into a November 2002 incident involving allegations that the Appellant punched and kicked a detainee. At that time, as a result of Officer Gevry informally alleging to a Sergeant that the Appellant assaulted the detainee, Ralph conducted an investigation, interviewing Officer Pysell and the Appellant. In a February 26, 2003 letter to Bergeron, Ralph stated that he had determined that disciplinary action was not warranted against Bolduc. The Barton Report criticized Ralph for not interviewing Gevry or the detainee. (Exhibits 18 and 34 and testimony of Keefe)

19. Keefe next undertook an investigation of this incident. A Department incident report showed that on November 9, 2002, Bolduc was on duty as Shift Supervisor. A 911 call came in of a reported house break. The homeowner had detained the suspect, John Smith (a pseudonym), who was placed under arrest after officers found items in his possession belonging to the homeowner. Gevry transported him to the station, where Gevry's difficulty in controlling Mr. Smith resulted in the dispatcher placing a distress radio transmission for all officers to report to the station to assist because of a fight. The Appellant and Pysell entered the booking room and observed that Mr. Smith had Gevry's head and shoulders against the wall. (Exhibit 12)

20. Gevry testified that the Appellant grabbed Mr. Smith and spun him around, causing Mr. Smith to fall to the floor. He stated that the Appellant reached down and grabbed Mr. Smith by the shirt and struck him three times in the left side of the face and then stomped on him with his foot on the right chest area. Gevry testified that he prevented the Appellant from punching Mr. Smith a fourth time. Gevry testified that he did not believe the Appellant needed to use such force. (Testimony of Gevry)

21. The Appellant testified that he grabbed Mr. Smith and “popped” him in the chin with a right handed punch, at which point Mr. Smith released Gevry and fell to the ground. Bolduc stated that with the assistance of Pysell, Mr. Smith was placed in a chair and secured to the metal bar fixed to the wall to assure that he could not get up. Gevry finished the booking process and Mr. Smith was taken to the holding cell, advised of his bail and bailed by family members. (Testimony of Appellant)

22. On November 19, 2003 Officer Pysell submitted a sworn statement relating that the Appellant struck Mr. Smith to make him release his grip on Gevry, but that he did not observe Bolduc beating the suspect and that Bolduc had done nothing wrong. (Exhibit 14)

23. On December 30, 2003, Gevry submitted a statement to Keefe, in response to Keefe’s request, regarding Gevry’s interactions with the Appellant. The statement included an account of the incident with Mr.

Smith in which Gevry stated Bolduc punched Mr. Smith three times below his left eye and, after Gevry hooked elbows with him to stop the punching, kicked Mr. Smith twice on the right side of the chest and stomped him once. (Exhibit 13)

24. At the Commission hearing, Mr. Smith, midway through serving a two-year sentence on a firearms charge, appeared in shackles and a Worcester County House of Correction jump suit. During his testimony before the Commission, Mr. Smith admitted he stole \$40.00 from a purse the evening he was arrested, despite the fact that he maintained he had done nothing wrong at that time. His testimony was not credible.

25. Keefe testified that he reviewed a third incident involving the Appellant in December 2003 to “show a pattern of abuse”. On February 19, 2002, the Appellant was on duty from 11:00 PM to 7:00 AM as Shift Supervisor. While out on patrol, the Appellant received a radio transmission that he was needed at the station to assist with an uncooperative detainee in the booking room. The detainee, Joseph Brown (a pseudonym), had been arrested on an outstanding warrant. The original call to the police which led to his arrest was a fight at the Maple Leaf Bar. It was determined by officers at the scene that Mr. Brown was intoxicated and had been a participant in the disturbance, which had ended. (Exhibits 19-23 and testimony of Keefe)

26. The Department has a practice of removing and inventorying personal belongs such as jewelry from detainees. At the station, Sergeant Kelley, the booking officer, unsuccessfully attempted to unclasp Mr. Brown's necklace. Two other Officers attempted to remove jewelry and items from Mr. Brown's pockets but he was uncooperative and repeatedly asked, "Why am I here?" (Testimony of Kelley)
27. Officer Nelson, an officer in the Department for over seven (7) years, testified that when the Appellant entered the booking room, the detainee was on the ground. He stated that the Appellant put his foot on the back of the detainee's head and used his knife to cut one of his two necklaces off. Nelson testified that he had never seen jewelry removed in this manner and felt uncomfortable witnessing this action. (Testimony of Nelson)
28. The Appellant testified that Mr. Brown was within the suicide profile in terms of age, sex and intoxicant usage and that in the past more than one detainee had attempted suicide and died of causes related to alcohol use while in the holding cells at the Department. The Appellant informed the detainee that he had the choice of removing his jewelry items himself or they would be removed. The Appellant called the Town's Emergency Medical Technicians (EMT's) to request a ring cutter and, after determining it would not be useful, requested a pair of bolt cutters and used them to remove an ear piercing. He used the bolt

cutters to remove a second piercing from Mr. Brown's face. (Exhibit 24 and Testimony of Appellant)

29. The bolt cutters employed by the Appellant during this episode were approximately three (3) feet long and required the user to operate them with both hands. The tool was clearly intended for cutting much larger objects than facial jewelry. The use of this tool to remove Mr. Brown's jewelry was dangerous and blatantly irresponsible. (Administrative Notice)

30. Kelley stated that the Appellant "stormed" into the booking room screaming at the detainee to take off his jewelry or he would do it for him and used bolt cutters to take off jewelry from Mr. Brown's face. She testified that Appellant's action was "outrageous and ridiculous." (Exhibit 25 and Testimony of Kelley)

31. The day following the incident with Mr. Brown, Kelley was upset and reported the incident to then-Sergeant Keefe, who in turn brought the matter to Ralph, who had been present in the booking room, and to Bergeron. Kelley stated that she did not include the bolt cutter action in her report for fear of reprisal from the Appellant. No disciplinary action was taken against the Appellant at that time. (Testimony of Kelley and Keefe)

32. On March 10, 2004, the Appellant's hearing in accordance with the provisions of G.L. c. 31, § 41 was held with the Appointing Authority, Ms. Leal. On March 19, 2004, Leal issued to the Appellant a letter of

termination, effective immediately. In the letter, Leal stated that it was her position that the charges individually or collectively would justify the Appellant's termination. Attached to the letter was Keefe's recommendation for disciplinary action. Keefe stated, "Each of these violations on or about February 19, 2002, November 9, 2003 and November 30, 2003 independently, as well as collectively, provides just cause for serious discipline." He requested that Leal terminate the Appellant. (Exhibit 1)

33. On March 25, 2004, the Appellant appealed his termination to the Civil Service Commission. (Exhibit 2)

34. Throughout his career as a police officer with the Department, the Appellant had no disciplinary record and received numerous awards and commendations for the performance of his duties. (Exhibit 35)

35. At the Commission hearing, the Appellant was professional, respectful and courteous in his vocal tone and his physical appearance. His recall of the events in question was detailed but the words he used to describe his version of these events were carefully chosen and strategically placed. Descriptions such as "tactically" placing his knee on a prisoner's chest and having a "heightened sense of awareness" in a situation where others testified he was clearly hot-tempered detracted from the overall credibility of his testimony. I find that the Appellant's testimony was largely crafted to place him in the best light possible rather than to offer a completely honest assessment of his

actions. Many of his answers under examination left the distinct impression that he was rationalizing his actions after the fact rather than providing a straightforward account.

36. Chief Keefe, Sergeant Kelley, and Officers DeFusco, Young and Nelson offered clear and credible testimony. Testimony that the Appellant and Gevry did not get along and that Pysell and the Appellant were friends, as were the Appellant and Ralph, caused these three witnesses' statements to be assessed and relied on with that knowledge.

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when 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." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of

the City of Boston, 359 Mass. 211, 214 (1971). The 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 under G.L. c. 31, §43, if the 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 issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In the present case, a review of the record reveals that just cause existed for the action taken by the Town of Webster in terminating the Appellant's employment based on the Appellant's conduct on February 19, 2002, November 9, 2003 and November 30, 2003. With regard to the Appellant's treatment of Ms.

Doe, credible testimony established that it was not the policy or practice of the Department for officers to use unreasonable physical force on a detainee to obtain a booking photograph; rather, if a prisoner was uncooperative during booking, the booking process was stopped and the individual was placed in a holding cell until such time as they became compliant. Further credible testimony and written statements offered by DeFusco and Young with regard to the Ms. Doe incident demonstrated that these officers had never witnessed an officer do what the Appellant did to obtain a booking photograph and that he used more force than was necessary or appropriate. With regard to Bolduc's treatment of Mr. Brown, credible testimony by Kelley and Nelson established that the Appellant engaged in inappropriate, dangerous and unnecessarily forceful actions to remove this detainee's jewelry by employing bolt cutters. With regard to Mr. Smith, the Appellant's conduct relating to what occurred in the booking room with this detainee is complicated by conflicting witnesses' statements. Mr. Smith was not credible as a witness and his testimony was easy to disregard, while Pysell, Ralph and Gevry's statements and motivations were more difficult to assess. The Appellant threw at least one punch, apparently to free Gevry from Mr. Smith, and perhaps punched Mr. Smith another two to three times. This fact was not definitely established but, nonetheless, the weight of the evidence demonstrated that the Appellant, a supervisor, acted inappropriately and used more force than was necessary on at least two, and more than likely three, occasions when booking a detainee.

The Appellant asserts that the chain of command changed at the Department and it was not appropriate to bring forward events which occurred and were dealt with by the prior Town and Department leadership, to be judged under the standards of the new regime. This argument is not persuasive. Credible testimony by Keefe, Kelley and Young established that factionalism and favoritism in the Department ran rampant under Bergeron and that members of his “inner circle” - and the accompanying preferential treatment accorded to them - were known throughout the Department. This was neither a reliable nor credible atmosphere for adequate and objective investigations into the Appellant’s conduct in regard to his treatment of Mr. Smith or Mr. Brown.

It is well established that police officers must “comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into the 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.” *See Meaney v. City of Woburn*, 18 MCSR 129, 133 (2005); citing *Police Commissioner of Boston v. Civil Service Commission*, 22 Mass. App. Ct. 364, 371 (1986).

A review of the record reveals that just cause existed for the actions taken by the appointing authority. *See, Generally, Police Commissioner of Boston v. Civil Service Commission*, 39 Mass. App. Ct. 594, 600, 659 N.E. 2d 1190 (1996)

Documentary evidence and credible testimony demonstrate that Appellant, a Sergeant, engaged in conduct unbecoming an officer and conduct which calls into question his ability and fitness to perform his official responsibilities. The Town of Webster has shown, by well more than a preponderance of the evidence, that it was justified in terminating him.

Therefore, for all of the above reasons, the appeal on Docket D-04-107 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.,
Commissioner

By vote of the Civil Service Commission (Bowman, Taylor, Guerin and Marquis, Commissioners) on May 17, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Michael P. Clancy, Esq.
Maria C. Rota, Esq.

