

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

**SUFFOLK, SS.**

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
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JAMES BRETТА,  
Appellant

v.

D-05-1

DEPARTMENT OF STATE POLICE,  
Respondent

Appellant's Attorney:

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Civil Service Commissioner:

Daniel M. Henderson

**DECISION**

Pursuant to the provisions to G.L. c. 31, § 43, and c. 22C, §13, as amended by Chapter 43 of the Acts of 2002, Appellant filed his appeal claiming that just cause for the Respondent's action did not exist. The Appellant, James Bretta (hereafter "Appellant" or "Bretta"), is appealing the decision of the Department of State Police, (hereafter "Department" or "State Police"), suspending him without pay for two days, and by a

written reprimand placed in his personnel file. The Appellant was found guilty, after an investigation by the Internal Affairs Section (hereafter "IAS") and a Trial Board hearing, of two counts of violating Departmental Rules, one regarding towing procedures, (written reprimand), and one count of unsatisfactory performance, (two day suspension without pay).

The Appellant filed a timely appeal. A hearing was held on August 9, 2007. Two audio tapes were made of the hearing. As no notice was received from either party, the hearing was declared private. Post-Hearing Briefs were filed thereafter.

#### FINDINGS OF FACT

Based upon the documents entered into evidence, exhibits 1 through 13, (Exhibits 3 through 7 and 11 are ordered impounded), and the testimony of Lieutenant John Stuart, Sergeant Robert Leverone, Trooper James Bretta, and Attorney Robert Harland, I find the following:

1. The specific charge for which Bretta was found guilty and received a two (2) day suspension without pay, reads as follows: "In regards to Charge 2, Specification 1 – that Tpr. Bretta on divers dates between 12/04/03 and 1/09/04 failed to take appropriate action on the occasion of a condition deserving State Police attention, in Violation Article 5.8.2, there is evidence to indicate that Tpr. Bretta ignored numerous messages requesting return telephone calls from the vehicle owner's father. The confusion which developed relative to the status of the vehicle and its contents could have been determined and subsequently cleared up, had Tpr. Bretta responded to any one of these several attempts on behalf of the owner. The length of time the vehicle remained unnecessarily at the tow lot exacerbated by the lack

of an inventory, contributed to the inability to account for missing items from the vehicle. Tpr. Bretta's contention that returning a phone call to Mr. Skeldon, representing his daughter, the owner of the crash vehicle, could have or would have compromised the investigation, lacked credibility. The Board finds Tpr. Bretta Guilty." ( Exhibit 1 and testimony)

2. On December 4, 2003, State Trooper James Bretta, then assigned to Troop H-3 (hereafter "Foxboro Barracks") and acting within the scope of his employment as a uniformed member of the Massachusetts State Police, responded to a radio call to report to the scene of a fatal accident involving an automobile, (Honda) and a pedestrian that occurred on Route 295 in North Attleboro. The accident was reported to the State Police at approximately 1:23 AM on Thursday, December 4, 2003. (Testimony of Bretta; & Exhibit 3, Internal Affairs Report, Volume 1-subexhibit 4).
3. Trooper Veronica Dalton was the first State Police representative to arrive at the scene. There were already North Attleboro Police, Fire and EMT vehicles and personnel on the scene when she arrived. She then notified State Police Sgt. Leverone, the Foxboro Barracks Desk Officer, by radio of her assessment of the situation. Sgt. Leverone then dispatched the appropriate State Police personnel to the scene. (Exhibit 3- subexhibit 24, Testimony of Leverone).
4. The accident scene was gruesome and included a seriously damaged vehicle, (Honda), a fatally injured pedestrian laying on the pavement and automobile and human body parts "covered the entire highway". Tpr. Dalton then decided to shut down that section of the highway, as "a crime scene" and reroute it from the

previous exit down Route 1. She directed the North Attleboro Police and State Tpr. Shayne Suarez to accomplish this task. The stopped traffic of approximately 25 vehicles was then reversed in direction, as some vehicles had already dangerously reversed direction over the median. (Exhibit 3, Vol. 4, sub-exhibit 24, testimony of Bretta)

5. Trooper Bretta was one of the troopers to respond to the scene after the radio directive from Sgt. Leverone. When Bretta arrived at the scene of the accident on Route 295, the driver, Holly Wesman (hereafter "Holly") of the vehicle (Honda) involved, had already been taken by ambulance to the Hospital. Holly had been transported to the hospital by ambulance by the time Tpr. Dalton had arrived at the scene. (Exhibit 3, Vol. 4, sub-exhibit 24, testimony and testimony of Bretta)
6. When Bretta arrived at the scene of the accident after the North Attleboro Police Dept., Fire Dept., and EMT personnel and vehicles had already arrived there. State Trooper Veronica Dalton was already at the scene and in charge of the accident scene when Bretta arrived there. Once that highway section had been closed, Troopers Dalton and Bretta basically watched the scene until the State Police specialized teams arrived. Those teams included: the Crime Scene Services (Tpr. David Mackin), Bristol District Attorney's Detectives, (Tpr. Robert Kilnapp) and Collision and Reconstruction Services (Tpr. Deborah Ryan). The Department expected detailed reports to be filed by each of these specialized units. Tpr. Michael Lynch of Foxboro Barracks and Tpr. Shayne Suarez of the Foxboro Barracks also responded to the scene and assisted. (Exhibit 3- subexhibit 24, testimony and testimony of Bretta)

7. Bretta then volunteered to take charge of the scene from Trooper Dalton, thereby allowing Trooper Dalton the opportunity to proceed to the hospital and interview Holly, the driver of the Honda. Tpr. Dalton had been at the accident scene for approximately 45 minutes before she left for the hospital, to interview Holly. (Exhibit 3 IAS Vol. 1, Vol 4- subexhibit 24 and Testimony of Bretta).
8. Tprs. Dalton and Bretta specifically stayed away from the Honda while waiting for the specialized teams to complete their investigations and review of the scene. Bretta also felt that it was not appropriate to thoroughly examine the contents of the Honda due to damaged condition, broken glass and the blood, human tissue and body fluid dispersed on and in the vehicle. (Exhibit 3 IAS Vol. 1, Vol 4 subexhibit 24 and Testimony of Bretta).
9. Tpr. Robert Kilnapp of the State Police Bristol Detectives Unit was notified of the accident at 1:40 AM on December 4, 2003. He arrived at the scene at 2:35 AM and completed his preliminary investigation and report at 9:00 AM of the same day. His final report of this investigation was prepared by him and approved by Lt. Robert Horman on March 3, 2004. (Exhibit 3, Vol. 3 subexhibit 18)
10. Tpr. Deborah Ryan of the State Police Collision Analysis & Reconstruction Section was notified of the accident at 1:45 AM on December 4, 2003. She arrived at the scene at 2:40 AM. She met with Bretta while at the scene. She then proceeded to investigate, measure and evaluate the circumstances of the scene, including the Honda. She noted the damage to the outside of the vehicle. She looked inside the vehicle. She checked the odometer and the seatbelts. She left the scene before it was towed away and before the Tow truck had arrived. She was

not asked what time she left the scene, during her State Police investigative interview of this matter. She completed an undated preliminary incident report and subsequently submitted an undated final report. (Exhibit 3, Vol. 3 subexhibits 19 & 20)

11. The motor vehicle involved in the pedestrian fatality was a Honda with a Rhode Island registration, owned by Keri Skeldon, (hereafter "Keri"), then approximately twenty-seven (27) years old. The Honda was operated by Holly Wesman, ("Holly") then approximately twenty-eight (28) years old. Holly operated the Honda that evening under a Massachusetts Driver's license and used a Massachusetts address (Testimony of Bretta; Exhibit 3, Vol. 3 subexhibit 20)
12. The pedestrian who had been struck and killed by the Honda, had earlier been driving a Volvo sedan with a Rhode Island registration. The Volvo had apparently been abandoned in the median further up on Route 295, by the pedestrian. Then the pedestrian was subsequently struck and killed by the Honda as he walked in a travel lane of Route 295. Trooper Shayne Suarez was assigned to and in charge of the investigation and reporting on the Volvo. (Testimony of Bretta; Exhibit 3-subexhibit 27)
13. On December 4, 2003, the Honda involved in the fatal accident (owned by Keri ) was, by order of Trooper Bretta, towed from the accident scene by Sterry Street Towing, Inc. of Pawtucket, Rhode Island. Trooper Bretta instructed the tow truck driver to be sure the vehicle was towed to a secured lot since the hole in the windshield rendered the vehicle accessible. (Testimony of Bretta; Exhibit 3-subexhibits 1, 3, 4, 5, 28)

14. Bretta admitted that he did not take an inventory of the Honda prior to its towing because (1) he felt that public safety was being jeopardized by a more prolonged road closure; and (2) he was not equipped to enter the contaminated vehicle. Therefore, he did not submit a motor vehicle inventory form. However, Bretta did make a cursory visual inspection of the interior by leaning in and shining his flashlight. (Testimony of Bretta).
15. After clearing the scene, Trooper Bretta went to make notification to the family members of the decedent. While gone, a voice mail message was left in Bretta's voicemail box from "*Sergeant* Albert Skeldon", from the Cumberland, Rhode Island Police Department. He stated that his daughter Keri's Honda was involved in the fatal accident, and he wanted "to talk about the accident". The caller left both his cell phone number, and the Cumberland Police Department phone number for Bretta to return his call. (Testimony of Bretta, Exhibits 3, 4, 5).
16. Sergeant Albert Skeldon knew where his daughter's vehicle had been towed on the day of the accident. The vehicle had been towed by Sterry Street Towing, 24 Hour Emergency Service, of 531 Main St., Pawtucket RI 02860, Tel. (401) 722-8968, Fax. (401) 725-1325. The Honda was towed that night by Sterry Street Towing to one of its several tow lots, apparently to their Dickens St. Lot in Attleboro, Massachusetts. (Testimony of Bretta; Exhibit 3-Vol. 1, p. 4, 30 & Exhibit 3-subexhibit 5).
17. Trooper Veronica Dalton remained at the accident scene for "a good forty-five minutes" assisting with the traffic re-routing. She made a cursory visual examination of the Honda but did not examine or inventory the contents the

vehicle. Dalton left the accident scene as soon as Troopers Ryan and Kilnapp arrived there. Dalton then left the accident scene to interview the driver, Holly Wesman at the hospital. She did interview the driver at the hospital and informed her of the circumstances of the accident and that the vehicle had been towed by Sterry Street Towing. She determined that the Driver had contacted her own mother from the hospital. Dalton also left a written message and telephone number with the nurse on duty. The message to be given to the driver had instructions for the driver to contact either her or Tpr. Bretta at the State Police Foxboro Barracks, if the driver had any questions or needed any further information. Neither Bretta nor Dalton was ever contacted by the driver, Holly Wesman. (Testimony of Bretta; Exhibit 3, sub-exhibit 24).

18. In the days following the accident, Sergeant Skeldon left 2-3 more messages for Bretta, asking in each to contact him at the Cumberland Police Department to discuss the accident. Bretta did not return the Sergeant's calls at that time for the following reasons: (1) he did not want to be influenced while the criminal case was still under investigation; (2) the Sergeant was not the owner of the vehicle; (3) the Sergeant was not a party in the accident; (4) the Sergeant's daughter who owned the vehicle was not a minor (27 years old); and (5) his instincts and intuition after fifteen years as a police officer led him to reasonably believe that contact with, (returning phone calls to) Sergeant Skeldon would not be appropriate at that time. (Testimony of Bretta, exhibits and testimony).
19. The Department concedes the following fact, after its Trial Board hearing, as stated in its Findings and Recommendations, dated December 8, 2004: "... the



owner of the vehicle, Keri Skeldon, was aware of where the vehicle had been towed by 9:00 AM on the morning of December 4, 2003, the morning of the crash. The Board finds Tpr. Bretta Not Guilty” of [ Charge 1, Specification 1 – failing to notify the owner of record of a towed vehicle]. (Exhibit 1, testimony)

20. The father of the Honda’s owner, Sergeant Albert Skeldon of the Cumberland Rhode Island Police Department interjected himself into this matter, almost immediately by telephoning the State Police Foxboro Barracks at approximately noon on the day of the accident, December 4, 2003. Sgt. Skeldon left a voice message for Bretta that day. That voice message from a person identifying himself as “Sgt. Skeldon”, according to Skeldon, asked Bretta “... if he could return my call just so I could find out a little more about the accident.” Skeldon was persistent in his attempt to contact Bretta by telephone leaving a second voice mail message for Bretta on the day following the accident and a third voice message within a week of the accident. Sgt. Skeldon also may have left several (at least one other) voice messages for Bretta, over the next three weeks. (Exhibit 3-subexhibits 2 & 28, testimony of Bretta)
21. In addition to the telephone messages left for Bretta, Sgt. Skeldon testified at the State Police Trial Board, that he spoke with other State Police employees numerous times, in the days following the accident, by phone, regarding the towed Honda and access to it. He also testified to have spoken with employees at Sterry Street Towing, several times during that period, regarding the towed Honda. However Sgt. Skeldon could not identify any of the people he spoke with at the State Police Foxboro barracks or Sperry Street Tow. He could not even

identify the rank or title of the persons he spoke with. However he recollected that an unidentified person at each location said that there was “*a hold*” on the Honda and that his daughter could not have access to the vehicle or its contents until the hold was removed. Sgt. Skeldon testified at the Trial Board hearing, that unidentified State Police employees notified him: “They said that—you know I couldn’t touch the car or anything. Because there was a fatality, that they would put a hold. There would be a hold until the investigation.” Sgt. Skeldon further testified that another unknown employee warned him in very harsh terms: “You can’t touch anything. You can’t go near the car.” (Exhibit 5)

22. It is admitted by Sgt. Skeldon and uncontroverted by the Department that Bretta did not order a hold on the Honda and did not inform Sgt. Skeldon or anyone else that a hold, or a non-access or a non-retrieve order had been placed on the Honda. The Department conducted a thorough investigation into the circumstances of this fatal accident and aftermath. The Department was unable to determine the identity of any person who had informed Sgt. Skeldon that a hold, or a non-access or a non-retrieve order had been placed on the Honda by the State Police or Sterry Street Towing or any other entity. (Exhibits and testimony)
23. Later, on approximately December 29, 2003 when Sgt. Skeldon spoke by telephone with State Police Foxboro Barracks Tow Officer Sgt. McKeon, he informed McKeon that “The Insurance Company was after me (him)” regarding the release of the Honda. McKeon was incredulous at that information and said to Skeldon, “You still didn’t get released on that car?” Thereupon McKeon promptly, after a few calls, authorized release of the Honda to its owner,

Skeldon's daughter Keri. The Insurance Company should not have been after Sgt. Skeldon since his daughter Keri was the registered and insured owner of the Honda. Keri and the driver Holly did obtain access to the Honda at Sperry Street Tow, within a few days thereafter and did then examine its condition and its contents at that time. During his State Police interview, Sgt. Skeldon expressed a strongly held desire to have quickly retrieved the Honda from the tow lot to avoid the payment of storage charges. However he did not pursue the steps to retrieve the Honda's expeditiously, that a person of his knowledge, training and experience could reasonably be inferred to possess. The Honda appeared to be a "total" and was determined as such, later on by the insurance company. (Exhibit 5, Exhibit 3-subexhibit 2, Exhibits and testimony)

24. It is claimed that upon this inspection and examination of the contents of the Honda by Keri and Holly, (on approximately Dec. 30<sup>th</sup>), that certain items of personal property were found missing from the vehicle's interior and trunk. (Exhibits and testimony)
25. Sgt. Skeldon testified at the Trial Board that he and his daughter were trying to gain access to the Honda, immediately after the accident, to retrieve some items from it. He testified: "No. At first, there were belongings that were still in the car. And I understand involving fatalities and serious accidents, you have limited access to the car. Sometimes you release things, sometimes you don't. And we were just trying to determine if some of the items could be retrieved." However Sgt. Skeldon could not identify anyone at the State Police Foxboro Barracks or Sperry Street Tow, with whom he spoke about: a hold on the Honda, retrieving

items from the Honda or denial of access to the Honda. It is clear from the testimony of Sgt. Skeldon at the Trial Board that he only assumed that ***a hold*** had been placed on the Honda. This assumption of a hold and denied access to the Honda is also expressed by State Police Captain Snow who conducted the examination of Sgt. Skeldon, as a witness at the Trial Board. Sgt. Skeldon answered “A. Well I did discover where the vehicle was, yes.” Followed by Captain Snow; “Q. And you understood why there had to be a hold on it?” Whereupon Sgt. Skeldon answered: “A. Absolutely.” The assumption was made by both the examiner, Captain Snow and the witness, Sgt. Skeldon that a hold, with denied access had been placed on the Honda. This assumption was made without any foundation and in error. No credible evidence of the fact of a vehicle hold or non access to the Honda was presented at the Civil Service Commission hearing. The only evidence presented here is the incredible, improbable, unsupported, uncorroborated and unpersuasive claim by Sgt. Skeldon that some unknown State Police employees and some unknown Sperry Street Tow employees gave him that information by telephone, on uncertain dates. (Exhibit 5, Exhibit 3-subexhibit 5, Exhibits and testimony)

26. Sgt. Skeldon immediately and voluntarily involved himself in this matter. He was not the owner or driver of the Honda. His daughter Keri, the owner and the driver Holly, were both adults. Sgt. Skeldon did not have a power of attorney or any other claimed authorization to act as an agent for either adult person. He was not an owner of the claimed missing personal property. He was not a witness or a victim. Sgt. Skeldon testified to his interest in the matter at the Trial Board: “But

obviously, my daughter and Holly were concerned. We were just trying to find out if possibly there were going to be charges.” Sgt. Skeldon also admitted that he had been in contact with Holly’s attorney sometime before January 9, 2004 and that attorney asked him to look into the matter and get a copy of the accident report. Sgt. Skeldon was unsure whether he ever mentioned to the State Police his concern for personal items in the Honda until he spoke with Lt. Stuart, on January 21, 2004. (Exhibit 5, Exhibits and testimony)

27. Sgt. Skeldon is a Detective Sergeant for the Cumberland Rhode Island Police Department, with seventeen and a half years experience at the time he testified at the Trial Board. It is not likely that a police officer of this experience, pursuing information on a matter of great concern to himself, his daughter and his daughter’s friend would not accurately identify and document the source of that important information. It is more probable that he did not actually receive that information from another person. It is also more likely, based on his own statements, that he only assumed that a hold had been placed on the Honda, because it was involved in a fatality and based on his own experience and practice as a police officer. (Exhibit 5, Exhibit 3-subexhibit 5, Exhibits and testimony)
28. It appears from Sgt. Leverone’s testimony that Sgt. Skeldon spoke with Sgt. Lerverone, the Foxboro Barracks Desk Officer within a few days of the accident; yet Skeldon did not then mention to Leverone, that he wanted access to the towed Honda or its contents. Lerverone did not inform Skeldon that a “hold” had been placed on the Honda. It is noteworthy that Skeldon could not remember Leverone’s name or rank but Leverone did remember Skeldon’s call. Leverone

told Skeldon that no accident report had yet been filed and that he should call back later. Leverone also testified that there was no hold on the Honda since there was no entry of a hold in the journal or log. (Exhibit 3-subexhibits 4 & 26, Testimony of Leverone)

29. Keri Skeldon and Sgt. Skeldon were aware, on the day of the accident of the location to which the Honda had been towed. The driver, Holly had received written and verbal instructions, on the day of the accident from Tpr. Veronica Dalton to contact Tpr. Bretta or herself at the Foxboro Barracks, if she had any questions or concerns. Neither the Honda owner, Keri nor the driver, Holly contacted either Tpr. Bretta or Tpr. Dalton, after the accident. It was later learned that Holly did not contact the State Police at all, on the advice of her attorney. (Exhibit 3 Vol. 2-subexhibit 11, Exhibits and testimony)
30. Sgt. Skeldon, Keri Skeldon and Holly Wesman did not file, at any time, any written reports, written requests, applications for complaints or written notice with the Department of State Police, North Attleboro Police Department, Registry of Motor Vehicles or Sterry Street Towing regarding: taking custody of or having access to the Honda; concern for or retrieval of items and eventually finding items missing from the towed Honda. It is also noted that this written correspondence with any of the named Departments could have been accomplished by Fax, E-mail, and regular mail or by personal delivery. (Exhibits and testimony, Exhibit 5)
31. There is no evidence presented to indicate that the Honda's owner or driver initiated any civil or criminal court action regarding the alleged missing personal

items. There is no evidence presented to indicate that the Honda's owner or driver made an insurance claim against either Sperry Street Towing or their own insurance carrier for the alleged loss of personal items from the Honda. Sgt. Skeldon said he did not tell his daughter to file any written complaint or claim for the alleged missing personal items because he was confused about the proper jurisdiction for such a complaint as between the Mass. State Police and the North Attleboro Police and that he did not want to interfere. Assuming that were believed, Sgt. Skeldon's confusion would not explain his daughter's lack of sufficient follow-up on this matter. (Exhibits and testimony, Exhibit 5)

32. The Public Records law, G.L. c.66 §10 (a) outlines the process for the public to make inspection and receive copies of public records upon the "payment of a reasonable fee". The State Police are identified as an agency which is "a custodian of a public record" and the fee of five dollars is to be charged for the preparing and mailing of a "motor vehicle accident report" of up to six pages. Subsection (b) states in relevant part that "a custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such request, the person making the request may petition the supervisor of records for a determination whether the record requested is public." It is clearly stated that the accident report here is a public record, the State Police is the custodian of that public record and that Sgt. Skeldon is obviously a member of the public. However, Sgt. Skeldon did not follow this procedure. Sgt. Skeldon as an

experienced police officer did know or should have known the general requisites of this statute. The State Police, as the custodian of the public record also knew or should have known the statutory requirements. (Exhibits, Exhibit 2, testimony and administrative notice)

33. There are statutory and regulatory restrictions on the release of certain information. Additionally there are common sense restrictions on the release of information that might be confidential or private and personal in nature. For instance the release of an address or telephone number might endanger a person's safety. The Department of State Police could have required Sgt. Skeldon to file a notarized power of attorney from his daughter, to act in her behalf. The power of attorney here seems a good precautionary requirement in this situation, since his daughter is an adult and the potentiality of estrangement or confidentiality issues being involved. Minimally, the Department should have required Sgt. Skeldon to put his request, notice or complaint in writing, dating and signing it. (Exhibits, Exhibit 2, testimony and administrative notice)
34. Under Article 5.23 of the Department's Rules & Regulations, information concerning official State Police business is to be treated as confidential, but may be disseminated...to those whom it is intended...in accordance with established procedures." (Exhibit 2, Article 5 - Rules of Conduct).
35. The non-response by Bretta to Sgt. Skeldon's 3-4 voice messages left in quick succession is in effect of common practice an implied message of - I'm not returning your calls. Bretta had a right to exercise his judgment and discretion and to avoid a direct conversation with Sgt. Skeldon, at that time. Bretta had no



obligation to return a call to an uninvolved party, especially under the unusual circumstances of this case. That being said, Bretta, as a matter of preferred practice could have had a third party respond to the voice messages. Sgt. Skeldon could then have pursued an alternative course, pursuing the matter up the chain of command at the State Police or pursued it through Sterry Street Towing directly or filed a written request with the State Police and paid a fee, pursuant to the Public Records Law, G.L. c.66 §10, but he did not do this.. The Honda's owner, Keri Skeldon was statutorily (G.L. c. 255 § 39A) and practically obligated to contact Sterry Street Towing to retrieve her vehicle immediately or be liable for the enhanced storage charges. Here the total amount of storage charges for the Honda was \$840 or 90% of the total bill of \$941.25. (Exhibits and testimony, Exhibit 3-subexhibit 5, administrative notice)

36. The first written complaint in this matter is the one compiled by Lt. John Stuart from allegations learned during his telephone interview with Sgt. Skeldon on January 21, 2004. This "Formal Complaint" is the subject matter of this appeal and it was not even filed by or signed by Sgt. Albert Skeldon, the alleged complainant. How Sgt. Skeldon could be designated as the "Complainant" so quickly; without being: the owner of either the Honda or its contents, the driver, a witness, holder of a power of attorney, or filing a statutory written request for the report and paying a fee is unusual. This complaint was initiated by and written by State Police Lt. Stuart, after Stuart's telephone consultation with Sgt. Skeldon and Captain Jack Dunn, Executive Officer of Troop H, on January 21, 2004. Skeldon informed Stuart that "they had been denied access to the Honda" and that when

they had finally obtained access “they found items missing.” Lt. Stuart also learned during those telephone consultations with Captain Dunn that Sgt. Skeldon’s son was a friend of the son of State Police Major Charlie Noyes of Troop A. (Exhibit 3-subexhibit 22 and testimony of Stuart)

37. Lt. Stuart hung-up the phone with Sgt. Skeldon and immediately went to look for a copy of the accident report. He could not locate the accident report and found that it had not been signed off in the Accident Log, by the Desk Officer. Lt. Stuart then had another conversation with Captain Dunn regarding what he had learned and Stuart also informed Dunn that the decedent pedestrian’s fiancée had complained about Bretta having been slow to get back to her regarding her call about the missing diamond ring. Stuart and Dunn decided that there seemed to be missing property in both cases. Captain Dunn then directed or ordered Stuart to take out a “formal complaint” against Bretta. Thereupon Stuart called back Sgt. Skeldon and advised him accordingly, took his information, thereby initiating this formal complaint process against Bretta. (Testimony of Stuart, Exhibit 5 and Exhibit 3-sub-exhibit 22)
38. This complaint, written up by Lt. Stuart, was apparently immediately forwarded up the chain of command to Lt. Colonel Caulfield, who sent a letter that same day, January 21, 2004, to Sgt. Skeldon notifying him of the initiation of an investigation of the matter by State Police Internal Affairs Section. This letter also notified Sgt. Skeldon of a State Police contact person and telephone number for this investigation. This process for initiating a formal complaint seems unusually informal and expedited. (Exhibit 3-subexhibits 1, 2 & 22 and testimony of Stuart)

39. Some of the alleged facts that Lt. Stuart relied on in compiling and propounding this written "Formal Complaint", on January 21, 2004, against Bretta are as follows: personal property items later found missing from the Honda, a 3 ½ carat diamond ring missing from the pedestrian fatality or his vehicle (Volvo), Bretta being slow in responding to the pedestrian fatality's fiancée regarding the diamond ring, Bretta putting a "hold" on the Honda, the Honda's owner being denied access to the Honda for a prolonged period and Bretta being neglectful or slow to return 3 or 4 telephone messages left by Sgt. Skeldon. (Exhibits and testimony, Exhibit 3-subexhibits 1 & 22 and testimony of Stuart)
40. However it is found in this matter, that: Bretta did not place a "hold" on the Honda nor did he inform anyone of a hold being placed on the Honda, Bretta did not deny access to the Honda, at anytime, to anyone, nor did he instruct anyone of such denied access, Bretta was not the investigating officer or officer in charge of the fatality's towed Volvo, yet Bretta responded promptly and thoroughly to the fatality's fiancée, when he first learned of the alleged missing diamond ring. Bretta interviewed the fiancée, placed a hold on and searched the Volvo with other Troopers and also searched the accident scene, Bretta did not learn of the allegation of missing items from the Honda until after the Honda had already been retrieved by its owner and immediately prior to this State Police investigation beginning and finally Bretta intentionally refrained from returning Sgt. Skeldon's telephone messages because he "didn't want to be influenced in any way", in his investigation, by a person introducing himself as Sgt. Skeldon. Lt. Stuart even admitted in his testimony that the investigation regarding the potential serious

charges of operating a motor vehicle under the influence of alcohol or drugs involving a fatality, (G.L. c. 90 § 24G) could not be concluded before the operator's hospital "toxicology reports" were in. (Exhibits, testimony, Exhibit 3-subexhibits 22 & 28, testimony of Bretta and Stuart)

41. It is also noted that Bretta consulted with Lt. Stuart several times during this period. He referred by e-mail to Lt. Stuart, a question regarding the return of property of the fatality to either his family or his fiancée. Bretta also referred the fatality's fiancée to Lt. Stuart regarding her request to close down the highway for a more thorough search for the diamond ring at the accident scene. (Exhibits, testimony, Exhibit 3-subexhibits 22 & 28, testimony of Bretta and Stuart)
42. Holly, the Honda driver, was interviewed in this investigation by State Police Lt. Stephen Lowell and Lt. Gerard Regan, on February 12, 2004 at the Cumberland, Rhode Island Police Department. During the interview, inquiry was made of her regarding the items of personal property that she claimed was missing from the Honda when she inspected it at Sperry Street Towing on or about December 30, 2003. She had difficulty answering the inquiry due to the lapse of time and the fact that some items belonged to the Honda's owner, Keri Skeldon and Keri's brother. Holly claimed that there was nothing in the trunk but then she was prompted by the interviewer. [ Q. "Did you have any articles in the trunk?" A. "Nope. There was nothing in the trunk." Q. "Keri did?" A. "Keri did."] Holly was repeatedly prompted in a similar fashion by the State Police interviewers throughout the interview. Holly identified the following items as missing: a cellular telephone and inside a purse was a Kodak camera, prescription eye-

glasses and possibly a twenty dollar bill. She had her wallet in her pant's pocket and that was not missing. Later in the interview, while Holly was still attempting to identify some missing items she volunteered that she had been specifically advised by her attorney not to call the State Police then she was abruptly cut off by the interviewer. [ A. "...I didn't--I'd been in - -intentionally not calling the police station because my lawyer doesn't want me - - didn't want me to." LT. LOWELL: "Right, okay. Lieutenant Regan?" Lieutenant Regan then began his inquiry. Holly also stated during her interview, that the first person who arrived on the scene after the accident was a civilian and that civilian called the police. ( Exhibit 3-Vol. 2 sub-exhibit 11)

43. The interview of Holly by the State Police investigators was typical of the numerous (17) State Police interviews conducted in this case. The questions were leading, redundant and focused on a very limited area, (Bretta and the Honda), while avoiding other obvious and more probative and material lines of earnest inquiry. Answers and lines of inquiry, which were outside this very limited scope were either abruptly interrupted or dropped entirely. One line of questioning should have dealt with Holly's failure to immediately notify the State Police and Sperry Street Towing in writing with a list of the items in the Honda and a request to have access to them. It seems very odd that she would not want to immediately locate her purse, eyeglasses and cell phone, if only for convenience sake. Another obvious line of inquiry could have addressed her mandatory obligation as the operator in a fatality, to file a report of the accident within (5) five days, with the Registry of Motor Vehicles and the police department having jurisdiction,

pursuant to G.L. c.90§ 26. ( Exhibit 3-Vol. 2 sub-exhibit 11 and administrative notice)

44. Sgt. Skeldon's interview was conducted by two State Police Lieutenants on February 9, 2004. Sgt. Skeldon exhibited a very poor memory and was continually prompted, led and rehabilitated by the interviewing Lieutenants. Sgt. Skeldon felt so comfortable and confident during the interview that at one point he reached over and shut off the tape recorder, when he did not like the direction the interview was going. (Exhibit 3-subexhibit 2)
45. Keri, the owner of the Honda was not denied access to it by Bretta. A contributing factor in the inconvenience or delay in obtaining access to the vehicle until sometime after December 29, 2003 is attributed to the failure to promptly and properly address the matter. If either one had filed a written request immediately pursuant to the Public records law, the status of the Honda would have been addressed immediately. If either one had faxed a request to the Desk Officer, the Tow Officer or the Station Commander, the Honda's status would have been resolved immediately. Sgt. Skeldon certainly knew the chain of command and he could have obtained satisfaction by an immediate direct written request to any of the officers named here but he chose to take an unusual, indirect and indefinite approach. However, he was eventually able to secure immediate results when by telephone he contacted through friendship, a high ranking State Police official. (Exhibits and testimony of Stuart, Exhibit 3- subexhibits 2 & 22)
46. Sergeant Robert McKeon, the Foxboro Barracks Tow Officer was interviewed regarding this matter, by two State Police Lieutenants, on March 23, 2004. Sgt.

McKeon seems to be the most knowledgeable officer at the Foxboro Barracks on towing matters. Although he was out on a sick day, on the day of the fatal accident, December 4, 2003, he was generally familiar with the event. He testified at his interview that he probably was the officer who was contacted by Sgt. Skeldon, by telephone, on or about December 29, 2003, regarding retrieving the Honda from Sterry Street Towing. Sgt. Skeldon told Sgt. McKeon on that date, that he (Skeldon), had been informed by Sterry Street Towing, that a hold had been placed on the Honda. Thereupon, Sgt. McKeon placed immediate telephone calls to both Tpr. Bretta and Sterry Street Towing and determined that there was **not a hold** on the Honda and Sgt. McKeon immediately released the Honda to Sgt. Skeldon's daughter Keri. Sgt. McKeon is a no-nonsense officer who immediately addresses problems that come his way. He stated that "Yeah, whenever I get a call regarding anything to do with towing, I try to handle it right away." (Exhibits and testimony, Exhibit 2, Exhibit 3- subexhibit 25)

47. The two interviewing State Police Lieutenants tried to pressure McKeon into stating that a hold had been placed on the Honda but McKeon responded that the Honda's owner, (Sgt. Skeldon) had been informed by Sterry Street Tow that a hold had been placed on it. The interviewing Lieutenants failed to even attempt to establish through McKeon what the practice, procedure or documentation of placing holds on a towed vehicle was at that time. They also failed to inquire into the practice, procedure and rate of compliance for filing inventory or accidents reports by officers at the Foxboro Barracks. (Exhibits and testimony, Exhibit 2, Exhibit 3- subexhibit 25)

48. Sgt. McKeon described in his interview, several instances of his immediate attention to and solution of alleged Sterry Street Towing problems, including missing property. He did not find Sterry Street Towing at fault in either case. McKeon clearly emphasized that any claim regarding missing or stolen property from towed vehicles had to be initiated, only by filing a police report on it. No reports were filed in this matter. Sgt. McKeon stated that Sgt. Skeldon did not inquire of him regarding an inventory report on the Honda, during the telephone call, (Exhibits and testimony, Exhibit 2, Exhibit 3- subexhibit 25)
49. Sgt. McKeon also stated during his interview, that he was always after the officers to file inventory reports but the two Lieutenants interviewing him did not pursue this line of inquiry. The two Lieutenants instead asked where the inventory reports were deposited at the Barracks, by the officers. The depository location of the inventory and accident reports had been a previously well established, secondary fact and uncontested in this case. (Exhibits and testimony, Exhibit 2, Exhibit 3- subexhibit 25)
50. The Department failed to Call Sgt. McKeon, the Barracks Tow Officer as a witness at this Civil Service Commission hearing. Sgt. McKeon would have been a valuable witness on such issues as: establishing whether a hold was placed on the towed Honda; the routine procedure for placing holds on towed vehicles, establishing the fact of property missing from towed vehicles; the procedure and practice, oversight, supervision of and the rate of compliance at the Foxboro Barracks, on filing inventory and accident reports. (Exhibits and testimony, Exhibit 2, Exhibit 3- subexhibit 25)



51. The fatal accident occurred on December 4, 2003 and Bretta received his first voice mail message from Sgt. Skeldon that day. Bretta was out at the time of the voice message, notifying the family of the fatality. Bretta had also made several attempts on that day and subsequent days to contact the fatality's fiancée. On December 8<sup>th</sup>, Bretta in the company of Tpr. Lynch did interview the fiancée at her home in Rhode Island. Bretta produced handwritten notes of that interview. Based on information from the interview, Bretta and Lynch went to Sterry Street Towing, that same day, to search the fatality's Volvo for a diamond engagement ring. They had the Volvo moved inside a garage at the tow lot to search it since it was covered with snow. They were unable to find the alleged missing diamond ring. However, Bretta also arranged for Tpr. Demos to do another search of the Volvo during daylight hours since Demos was on the day shift. Demos was also unable to find the diamond ring during his search. In following days Bretta searched the highway scene of the accident, including the break-down lane for the diamond ring but did not locate it. Bretta exchanged e-mails with Lt. Stuart on an issue of returning the fatality's property to either his family or his fiancée. Bretta also referred the fiancée to Lt. Stuart regarding her request to close down the highway to search the accident scene more thoroughly. (Testimony of Bretta and Stuart, Exhibit 3-subexhibits 28 & 29)
52. Bretta testified that he believed that he filed his accident report in this matter, on or about December 5, 2003 since that is the date on it. On or about December 29<sup>th</sup> he received a call from Sgt. McKeon asking him whether he had placed a hold on the Honda and he replied that he had not. On January 7, 2004 Bretta interviewed

an eye-witness to the circumstances of the fatal accident. This witness had been referred to Bretta by the North Attleboro Police Department. Bretta and the witness had been missing each other in prior attempted contacts. This witness did not provide any new or variable information to the investigation. Bretta determined conclusively, after interviewing this witness that he would not be seeking criminal charges against Holly, the driver of the Honda. On January 9<sup>th</sup> Bretta telephoned Sgt. Skeldon and informed him that he did not believe any criminal charges would be sought against Holly, the driver. Bretta also informed him that he had not done an inventory report on the Honda due to its damage and contaminated condition. Bretta also informed him that the accident report would be submitted the following day and it would take approximately 10 days to be approved by the desk officer, before it was available to Sgt. Skeldon. The accident report was approved by the desk officer, Sgt. Leverone and signed off by him on January 28, 2004. (Testimony of Bretta, Leverone and Stuart, Exhibit 3-subexhibit 28)

53. On January 21, 2004, Lt. Stuart the Foxboro Barracks Commander e-mailed Bretta asking him to drop off a copy of his accident report. Stuart had previously searched for one at the station and was unable to locate it. Bretta did go home that day got a copy of the accident report, copied it and put the copy in Lt. Stuart's mail box. Bretta confirmed this by sending Stuart a return e-mail. (Testimony of Bretta and Stuart, Exhibit 3-subexhibit 28)
54. The following statute or parts thereof, are relevant or applicable under the circumstances of this matter: G.L. Chapter 255 § 39A. Vehicles; sale for storage;

procedure. § 39A addresses the situation of a motor vehicle being removed from the scene of an accident and placed for storage in the care of a garage. This section outlines the obligation of the owner of the garage to notify the registered owner of the vehicle to notify said owner of the storage rates and inquire if he is to continue *to hold* the motor vehicle subject to such storage rates. Based on the owner's assent to the continued storage of vehicle, the vehicle is continued to be *held* by the garage and the garage thereby obtains a lien for the storage charges, as provided in § 25. This section (§ 39) also provides a time table for notice by the garage to the Vehicle's owner and for the owner to claim the vehicle from the garage. The vehicle's owner has an affirmative duty to claim and retrieve the vehicle within (60) sixty days or potentially suffer the loss of the vehicle thereafter by sale by the garage and liability for any balance due for storage charges. No evidence was presented here on the issue of the garage owner's or the vehicle owner's compliance or non-compliance with this section. However the rights and obligations between the garage owner and the vehicle owner regarding the towed vehicle are clearly stated in this section. The State Police are merely obligated by this section to notify both the garage owner and the vehicle owner of the name and address of the other party. The notification requirement was fulfilled in this matter by the State Police. (Exhibits, testimony and Administrative notice)

55. The following statute or parts thereof, are relevant or applicable under the circumstances of this matter: G.L. chapter 90 § 26. Accident reports; supplemental report; penalty for violation. § 26 provides in part that "Every

person operating a motor vehicle which is involved in an accident in which any person is killed or injured or in which there is damage in excess of one thousand dollars to any one vehicle or other property shall, within five days after such accident, report in writing to the registrar on a form approved by him and send a copy thereof to the police department having jurisdiction on the way where such accident occurred;...” Section 26 also states the penalty that “...The registrar may revoke or suspend the license of any person violating any provision of this section.” No evidence was presented to indicate compliance with this section by the Honda’s operator, Holly. (Exhibits, testimony and Administrative notice)

56. The following statute or parts thereof, are relevant or applicable under the circumstances of this matter: G.L. chapter 90 § 24G. Homicide by motor vehicle; punishment (a) provides in part that “Whoever... operates a motor vehicle on a public way with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants, or stimulant substances etc.... and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than two and one-half years or more than fifteen years and a fine of not more than five thousand dollars, or by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years and a fine of not more than five thousand dollars.”...

This section further provides in subsection (c) that “The registrar shall revoke the license or right to operate of a person convicted of a violation of subsection (a) or (b) for a period of 15 years after the date of conviction for a first offense.”

(Exhibits, testimony and Administrative notice)

57. The following statute or parts thereof, are relevant or applicable under the circumstances of this matter. M.G.L. chapter 90 § 29 Investigation of motor vehicle accidents; suspension or revocation of licenses This section mandates that any police department having jurisdiction must notify the Registrar of Motor vehicles forthwith, of any fatal accident or any accident involving serious injury. This section further mandates that the “chief officer” (here the colonel of state police) of the police department supervising the accident investigation or having concurrent jurisdiction, “shall notify the Registrar within fifteen (15) days, in a form prescribed by him, of the particulars of every accident referred to in section twenty-six” occurring within the police department’s jurisdiction. This section further obligates the “chief officer” to ascertain the name of the operator and report same to the Registrar. Based upon the information received by the Registrar, the Registrar may suspend and subsequently revoke the license of said operator. No evidence was presented to indicate compliance with this section by the Colonel of State Police or the Department of State Police. (Exhibits, testimony and Administrative notice)
58. The Department of State Police had several specialized teams and individuals at the accident scene shortly after the fatal accident, to conduct appraisals, measurements and investigations. These teams and individuals included the

following: Tpr. David Mackin of Crime Scene Services, Tpr. Robert Kilnapp of Bristol Detectives Unit, Tpr. Deborah Ryan of Collision & Accident Reconstruction, Tpr. Michael Lynch of Foxboro Barracks, Tpr. Shayne Suarez of Foxboro Barracks and Tpr. Veronica Dalton of Foxboro Barracks. It is presumed, base on the evidence in this matter, that the volume and specificity of the data and information collected by these specialized units and individuals and the reports constructed there from provided a sufficient basis for the Department to file the reports to the Registrar of Motor Vehicles in compliance with G.L. chapter 90 § 29. ( Exhibits, testimony, Exhibit 3-Vol. 1(Case Report) and Testimony of Bretta)

59. Detective Sergeant Albert Skeldon as a Rhode Island police officer, if he so chose, could have sought prompt and accurate information directly from Sterry Street Towing of Pawtucket RI, regarding the towed Honda. Sgt. Skeldon did not testify at the Civil Service Commission hearing and no satisfactory explanation was offered for his failure to immediately contact Sterry Street Towing in person, or in writing regarding the towed Honda. No explanation was offered for Sgt. Skeldon's failure to be called as a witness at this hearing. (Exhibits, testimony and administrative notice)
60. It appears that Sgt. Skeldon was angry with the delay by his daughter's insurance company in retrieving the Honda from storage at Sterry Street Towing. He said that "...The insurance company was after me." He also stated that "...the insurance people ahh—they were calling ahh—trying to find out what was going on. And ahh—they didn't think it was right." It appears that the Honda was determined to be a "Total" loss when it was eventually retrieved by the insurance

company. Sgt. Skeldon also knew the name of the insurance co's claims adjuster since he had been dealing with him right along. Sgt. Skeldon further expressed his discomfort by stating the following: "Ahh—at that point, ahh—I--I'd been in contact with my daughter's insurance company and ahh—they were trying to find out where things would be covered and things like that. Or they -- they informed me that ahh -- they were raising my daughter's rates." Sgt. Skeldon voluntarily acted as his daughter's intermediary with the State Police, Sterry Street Towing and her insurance company. Sterry Street Towing charged Keri Skeldon \$840 for the Honda's storage, which is 90% of the total charges of \$941. 25, for the storage of a vehicle determined to be a "Total". (Exhibits and testimony, Exhibit 5, Exhibit 3-subexhibit 2 & 5)

61. The State Police regulations (TRF-10) also instructs that "a search warrant should be obtained before the search of a locked container (or the glove compartment and trunk if they are locked and the officer does not have a key) unless: consent to open the container is obtained from its owner; or The officer has probable cause to believe that such locked container will put the officer or others in immediate risk of injury or loss of life." Here the driver of the Honda, (Holly), was not the owner and Holly had been removed from the scene by ambulance before Bretta had arrived at the scene. The location of the keys to the Honda were not clearly established but it is believed that they remained somewhere in the vehicle, possibly in the ignition. Bretta did not have probable cause to believe that he or others were in immediate risk of injury or loss of life, due to the contents of the

glove compartment or trunk, while at the scene of the accident. (Testimony of Bretta, Exhibit 2)

62. Bretta did not take an inventory of the Honda prior to towing, for a variety of reasons, instincts and circumstances previously stated. However Bretta also testified that he also generally believed then: (1) he felt that public safety was being jeopardized by a more prolonged road closure; and (2) he was not equipped with protective gear to enter the contaminated vehicle. Therefore, he did not conduct an inventory of the Honda nor did he submit a motor vehicle inventory form on it. (Testimony of Bretta).
63. Trooper Shayne Suarez responded to the accident scene that night and he was the officer charged with the investigation of and reporting on the second vehicle (Volvo) which had been abandoned in the median, further up the highway. Tpr. Suarez had the Volvo towed by Sterry Street Towing that evening. The Volvo was driven to the accident scene by the pedestrian fatality prior to being hit and killed by the Honda. The Volvo did not suffer any damage and it was not contaminated by blood or bodily fluids. There also was an immediate report by the fatality's fiancée that an expensive diamond ring had been in the possession of the fatality at the time and was missing. Despite these circumstances, Tpr. Suarez was not questioned by the State Police investigators about either doing an inventory on the undamaged Volvo, prior to it being towed or completing an inventory report on the Volvo thereafter. (Exhibits and testimony and Exhibit 3-subexhibits 1, 22 & 27)



64. Tpr. Suarez was interviewed by two State Police Lieutenants, regarding this matter, on March 23, 2004. He was not asked during the interview whether he completed an inventory on the Volvo or filed an inventory report regarding it. In fact the interviewers completely avoided the Volvo subject matter and focused entirely on the Honda, a vehicle over which Suarez had no control. Despite his clear and repeated statements that he had nothing to do with the Honda, the interviewers persisted in questioning him about it anyway, all to the complete neglect of the Volvo inventory. However Suarez stated that he only filed one report regarding the Volvo, an accident report. Therefore, the logical deduction is that he did not file an inventory report on the towed Volvo. (Exhibits and testimony and Exhibit 3-subexhibits 1, 22 & 27)
65. The stark contrast of the treatment of Suarez regarding the Volvo inventory with the treatment of Bretta and the inventory of the Honda, despite the circumstances being more conducive to a search and inventory of the Volvo, is a weighty indication of bias against or disparate treatment of Bretta. It is also noted that an alleged but unfound fact that Lt. Stuart relied on in filing a formal complaint against Bretta, was that Bretta was slow in responding to the fatality's fiancée regarding the missing diamond. Ring, from the Volvo. (Exhibits and testimony and Exhibit 3-subexhibits 1, 22 & 27)
66. The Honda suffered major front-end damage with a deployed air-bag. There was glass, body tissue, blood and other contaminants in and on the vehicle. The deceased pedestrian lay on the pavement, with body parts strewn over the highway. (Testimony of Bretta, Exhibit 7)

67. Bretta did make a cursory examination of the inside front seat, driver and passenger area of the Honda. He made this examination by leaning into the vehicle and shining his flashlight around. He did not notice any personal property other than what he described as a tan "beach bag". He did not remove the beach bag or examine its contents. He did not open the glove compartment or the trunk. Bretta had the usual habit, before towing a vehicle, of asking the driver if there were any personal items in the vehicle that needed to be removed. However, the driver had been taken away by ambulance before he arrived on the scene. He ordered the Honda to be removed as soon as the Accident Reconstructionist and other teams had conducted their investigative evaluations. He instructed the tow-truck driver to tow the Honda in a secure tow-lot, due to the extensive damage to the vehicle. (Testimony of Bretta).
68. State Police personnel are cautioned by regulation, General Order (Gen-05), when dealing with a situation of apparent contamination by bodily fluids or potential airborne exposure to viruses or bacteria. The Department is obligated to provide employees "with equipment and up-to-date information on communicable diseases to prevent exposure to dangerous and life-threatening diseases." Regulations state that extra care must be used when handling contaminated sharp objects and that "Employees should assume that all persons are potential carriers of communicable disease." Bretta did not have any protective equipment in his cruiser nor readily available to him at the accident scene that night. Bretta has worked at three (3) different barracks during his employment with the State Police

and has never had any anti-contamination equipment available to him at these barracks. (Testimony of Bretta and Exhibit 2 –General Order Gen-05)

69. The primary purpose of the Department of State Police regulations pertaining to the towing and inventorying of vehicles is the insurance of public safety on the roads and highways under their jurisdiction. Incorporated in this purpose is the aim to “remove such vehicles to a place of safety in order to ensure the safety and well being of the occupants, the security of the vehicle, and efficient flow of traffic.”(Testimony and Exhibits, Exhibit 2)
70. None of the other State Police personnel including members of specialized units, who reported to the scene, conducted any inventory search or filed any inventory of the contents of the Honda. (Testimony and exhibits)
71. The actual Department Rule or regulation that Bretta was charged with violating is: “Article 5.8.2 Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the member’s rank, title, or position; (emphasis added), the failure to take appropriate action on the occasion of a crime, disorder or other condition deserving State Police attention; or absent without leave.” However this section is augmented for assistance in determining “unsatisfactory performance” by the subsequent section, “Article 5.8.3 In addition to other indicators of unsatisfactory performance, repeated infractions of State Police Rules, Regulations, Policies, Orders, Directives or any combination of them shall be considered prima facie

evidence of unsatisfactory performance.”(emphasis added). (Exhibit 2, Article 5 - Rules of Conduct).

72. On the day following the accident, an eyewitness to the fatal accident contacted the North Attleboro Police. The North Attleboro Police then referred the witness to Bretta, as the investigating officer. The witness and Bretta repeatedly missed each other in attempted contact. However, Bretta did eventually interview this eyewitness on January 7, 2004 and he made handwritten notes of the interview.(Testimony of Bretta, Exhibit 3-Vol.5-sub-exhibit 29)
73. The State Police Foxboro Barracks is extremely busy, and accounts for several thousand towed vehicles annually. From January, 2004 through November, 2004, in excess of two thousand vehicles had been towed. (Testimony of Bretta and Leverone, Exhibit 8).
74. There is a file maintained at the Foxboro barracks where Motor Vehicle Inventory Forms are stored for each calendar year. (Testimony of Bretta, Leverone, Stuart, Exhibits 2, 9, 12)
75. In the 2003 folder, there were 12 inventory forms. In the 2004 folder, there were 31 inventory forms, notwithstanding the over two thousand tows. Sgt. Leverone testified that the practice or compliance of the officers was “often times different from the policy.” Sgt. Leverone could not explain the lack of thousands of inventory reports except to say they should have been filed, “unless there was an exception” for them. Sgt. Leverone could not remember any other discipline to another officer, for failing to file an inventory report. (Testimony of Bretta, Leverone; Exhibits 9, 12).

76. State Police Policy TRF-10, requires a Motor Vehicle Inventory Form to be completed and filed in most circumstances. However, in 2003 and 2004, the policy was very loosely adhered to. The actual practice then, at the Foxboro Barracks was mostly non-compliance. (Testimony of Bretta and Leverone, Exhibit 2).
77. The Foxboro Barracks lack of compliance with the TRF-10 requirement of filing towing inventory reports was discussed at Bretta's Trial Board hearing. After Bretta's Trial Board hearing; findings and recommendations were issued on December 8, 2004 and approved by the Department's Executive Office on December 13, 2004. Thereafter, on December 14, 2004, Lieutenant Stuart issued an e-mail directive to remind all personnel to fill out Inventory Forms in all applicable situations. There are no longer problems with compliance in that barracks. Stuart admitted in his testimony that he deliberately waited until after Bretta's disciplinary matter had been disposed of before he issued the directive. (Testimony of Bretta, Leverone and Stuart; Exhibits 1, 10, 4).
78. Sgt. McKeon is the "Station Tow Officer" for the Foxboro Barracks and is experienced and knowledgeable regarding the towing practices and procedures there. However, the Department command staff including Foxboro "Station Commander" Lt. Stuart and the Department's own investigators of this matter failed to inquire from McKeon concerning the Foxboro Station's statistics and compliance with the Department's vehicle towing and inventory reporting regulations. The Department also failed to call McKeon as a witness at the Civil

Service Commission hearing to address the issue of compliance with the relevant regulations. (Testimony and exhibits, Exhibit 2)

79. The duties and responsibilities concerning the implementation and compliance with the Department's vehicle towing and inventory reporting regulations follow up the chain of command from the investigating officer (here Bretta) at the bottom. Above the investigating officer is the "Station Desk Officer" (here Leverone). Above the Desk officer is the "Station Commander" (here Stuart). The Station Commander also appoints the "Station Tow Officer" (here McKeon). The Station Tow Officer generally assists the Station Commander in tow matters. The Station Tow Officer also compiles and qualifies a list of authorized towing companies pursuant to the "state Police Tow Service Agreement". The Station Commander may remove any towing company from the list for non-compliance with this agreement. The "Troop Commander" is above the Station Commander. The Troop Commander is obligated to "ensure the effectiveness of the towing process by monitoring personnel under his command." The Troop Commander also appoints a "Troop Tow Officer" to assist him in his supervisory responsibility. The "Troop Traffic Programs Officer" is charged with the responsibility of ensuring "the timely submittal of accident investigation reports, but may approve extensions in time, for sufficient reasons." The Traffic Programs Officer is also responsible for forwarding a copy of the accident reports to the Records Section and a copy to the Registry of Motor Vehicles. (TRF-12, 4.5.1 and 4.5.2). Bretta is also under the authority and supervision of all other above

named higher ranking officers of the Department of State Police. (Testimony, Exhibits and Exhibit 2-TRF-09 & TRF-12)

80. The Station Commander has the responsibility: to “provide a central location for officers to file motor vehicle inventory forms and periodically review the forms for compliance with this policy. Ensure that property secured during the inventory procedure is returned to the rightful owners, as appropriate, and not kept longer than necessary.” The Troop Commander has the responsibility to “strictly enforce the motor vehicle inventory procedure in order to avoid arbitrary application of the policy.” (Exhibit 2- TRF-10)
81. The Station Commander, Lt. Stuart, did not inquire into, nor did he investigate the general compliance of the Foxboro Station, with the Department’s vehicle towing procedures and inventory reporting regulations for any relevant time period. He did however issue an e-mail reminder, on or about December 14, 2004, to all personnel under his command to comply with the towing inventory regulation. This belated reminder was more than one year after the alleged non-compliance by Bretta. (Testimony of Stuart and Exhibit 10)
82. The authorized Towing Companies (here Sterry Street Towing) on the approved tow list are also obligated to maintain appropriate records for one year and to “comply with all federal, state and local laws, State Police Tow Service Agreement and Department of Public Utilities regulations.”( Testimony and Exhibit 2)
83. Bretta had learned about an eyewitness to the fatal accident from the North Attleboro Police. Bretta was able to eventually interview that witness on January

- 7, 2004 and take a handwritten statement. Based upon this statement, Bretta closed his investigation, and determined that no criminal complaint would be sought against the driver Holly. (Testimony of Bretta, Exhibit 3-subexhibit 29)).
84. Bretta's next shift began at 11:00 p.m. on January 8, and ended at 7:30 a.m. on January 9, 2004. At approximately 7:00 a.m. on January 9th. Bretta returned the call to Sgt. Skeldon, and advised him that no charges would be sought. Sergeant Skeldon requested a copy of the report. Bretta advised Sgt. Skeldon that it had to be approved by a Sergeant before it could be released and he estimated that the approval would take approximately ten days. (Testimony of Bretta).
85. During this conversation with Skeldon, Bretta also learned for the first time that property was claimed to be missing from the Honda while at Sterry Street Towing. Bretta advised Skeldon that he had not completed an inventory of the vehicle due to the circumstances that evening. (Testimony of Bretta).
86. State Police Policy TRF-10 contains exceptions to the requirement that an inventory form be completed, including an exception that "A motor vehicle inventory need not be taken if the vehicle is . . . interfering with the movement of traffic *or* creating a hazard and requires prompt removal for public safety reasons" (emphasis added). (Exhibit 2).
87. Former Assistant District Attorney Robert Harland prosecuted hundreds of criminal matters in which Bretta was the arresting officer. Bretta was an "extremely" active trooper and Harland believed that Bretta was an experienced and effective officer and witness. (Testimony of Harland).



88. Harland discussed a highly publicized and politically charged case with Bretta in 2001. Harland had advised Bretta and other troopers involved, that they should have absolutely no contact with other police officers or attorneys about the case, and not to respond to inquiries other than through Harland and the District Attorney's office. (Testimony of Harland).
89. In Harland's opinion, even contacting a police officer not directly involved in a case to say "I cannot discuss it" would create an impermissible appearance of impropriety and favoritism. (Testimony of Harland).
90. Prior to this incident, Bretta had never been disciplined in his career. In fact, he was a highly productive and decorated veteran of the State Police, including having received the "Hanna Award", which is among the most prestigious honors available to Massachusetts Police officers. He has received numerous positive Employee Evaluations, and letters of commendation. (Testimony of Bretta; Exhibit 13).
91. Bretta is a reliable witness, answering questions in a straight forward manner. I found his answers to be consistent and his explanations to be plausible. I find his memory and recall to be good. It is noted however, that in a few instances he was somewhat limited in his detailed recall as to some facts and his specific state of mind and thought process during these events. However, I attribute this to the fact that the events were remote in time, at the time of his testimony. I find his demeanor and presentation to be calm, reflective and professional. He did not reach to fill in gaps with self serving statements. I find him to be a credible witness. (Testimony and demeanor of Bretta)

## CONCLUSION

### Evidentiary Issues

#### A. Exhibit Four (Tape Recordings)

At the hearing, Respondent entered four tapes into evidence containing an audio recording of the proceeding before the Trial Board. Appellant objected to the entry of this exhibit because a copy of these tapes was not provided to him either before, or at, the hearing. Respondent asserted that the tapes were subject to copyright law, and could not be reproduced. Respondent further indicated that the agency would not pay the expense to order an additional copy of the tapes for the petitioner. The Commission accepted the tapes into evidence *de bene*.

The Commission has adopted the rules for adjudicatory proceedings contained in 801 CMR 1.02. In relevant part, Rule 1.02(10) (h) Evidence, states:

1. General. The Agency or Presiding Officer shall admit and consider evidence in accordance with GL c. 30A, §11(2).
2. Presented at Hearing. Except as the Agency, its designee, or Presiding Officer may otherwise order, any documentary evidence on which a decision is based must be presented either at the hearing or, in cases submitted without a hearing pursuant to section 1.02 (10)(b), before notification that the case is ready for decision. Copies of any evidence shall be provided to all other Parties.

The Commission is, therefore, precluded from considering the Trial Board tapes not provided to Appellant. Accordingly, Appellant's objection to entry of the audio recordings is sustained, and they are stricken from the record, including all references thereto.

When the Commission modifies or reverses an action taken by the Appointing Authority, it must remember that the power to reverse or modify penalties is granted to

ensure that employees are treated in a uniform and equitable manner. “In making that analysis, the commission must focus on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions . . . . When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004), quoting from Cambridge v Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997).

The matter of the Appellant’s failure to file an inventory report in this discipline is addressed in detail here since it is intertwined with other issues and it appears to be the assertion of the Department that this failure to file caused the alleged complainant, much confusion, annoyance and harm. However it is noted that Sgt. Skeldon did not even raise the issue of missing personal property, from the Honda, until after the Honda had been retrieved from the Tow Lot and after Sgt. Skeldon already knew that Bretta had not filed an inventory report. No evidence was presented to show that Sgt. Skeldon, his daughter or Holly ever filed a written notice, report or other document regarding the alleged missing personal property.

It has been found here that under the totality of the circumstances, Bretta acted reasonably within his discretionary prerogative, not to immediately return the telephone messages from Sgt. Skeldon.

However, there is substantial evidence here that the Department initiated disciplinary action against Bretta, solely at the behest of a high ranking state police official. The complaint was expedited and propounded on unsubstantiated bare allegations due to the personal relationship of this high ranking state police official's son with the alleged complainant's son. This friendship tainted the initiation and investigation of the complaint. It was found after hearing here, that most of the factual basis upon which the complaint against Bretta was initiated, was erroneous.

After the expedited complaint was initiated, the Department embarked on a disparate investigation, which focused exclusively on the Appellant, to the exclusion of the many other troopers and high ranking officers who had transgressed the same regulation, which required the filing of inventory reports on towed vehicles. Indeed the Department regulations places a much higher supervisory responsibility for compliance and enforcement of the Department's regulations and statutory obligations, on high ranking officers such the "Station Commander", "Troop Commander"

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). 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 District Court of E. Middlesex, 262 Mass. 477, 482 (1928). 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). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "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). 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 to have existed when the appointing authority made its decision." *citing*, Watertown v. Arria, 16 Mass.App.Ct. 331, 334, 451 N.E.2d 443 (1983).*See*

Commissioners of Civil Service Commission 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, the Commission is asked to review the recommendations of a State Police Trial Board and not the actions of an appointing authority. Credible testimony and documentary evidence showed that the Appellant's actions surrounding the vehicle accident and tow and his responses including his deliberate decision not to immediately return voice messages left by a non involved party were reasonable and appropriate under the circumstances of this case.

The Foxboro Barracks towing statistics viewed in conjunction with the dearth of filed inventory reports supports the conclusion that the usual practice at the Barracks was the non-filing of inventory reports on towed vehicles. The clearly stated regulatory obligation of high ranking and specially designated officers to supervise, review and enforce compliance with the inventory reporting and other obligations supports the conclusion that the Department hierarchy approved of or acquiesced to this non-filing practice. Station Commander Stuart belatedly, (December, 2004) acknowledged this non-filing practice by sending a barracks-wide, e-mail reminder on the inventory, filing requirement, after the Trial Board disciplinary decision in this present matter.

The substantial resources (time and manpower), expended by the Department in the investigation and prosecution of this disciplinary matter seems disproportionate to the charges, considering the totality of the circumstances. The exclusive focus on Bretta and the slanted manner of the investigation also indicate bias and/or favoritism as a

motivating force in these disciplinary charges. Bretta suffered disparate treatment from the Department during the entire disciplinary process. The results of the investigation and disciplinary process were virtually predetermined. It is noted that the Department utterly failed to investigate and/or discipline, any non-compliance with its own rules and regulations by its command staff and line troopers, despite obvious evidence of routine non-compliance. Despite the Department's expenditure of substantial resources on this matter; it was unable to identify the party, if any, who notified Sgt. Skeldon that there was a "hold" on the Honda with a non-access and a non-retrieval order attached to it.

The Department of State Police failed to treat Bretta as an employee in a uniform and equitable manner.

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). 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 District Court of E. Middlesex, 262 Mass. 477, 482 (1928).

As the matter before the Civil Service Commission is *de novo*, credible evidence of misconduct must be presented before the Commission. It is the function of the agency hearing the matter to determine what degree of credibility should be attached to a

witness' testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978); Doherty v. Retirement Board of Medicine, 425 Mass. 130, 141 (1995). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v. Board of Registration in Medicine, 420 Mass 154, 165 (1995).

The Department failed to call Sgt. Skeldon, the alleged complainant in this matter, as a witness. The Department failed to show any excuse for its failure to call him as a witness. The Commission was thereby denied the opportunity to assess the credibility or reliability of Sgt. Skeldon's testimony. The Department did not show by a preponderance of the credible and reliable evidence in the record, that it had just cause to suspend Bretta from employment for a period of two (2) days without pay, or to reprimand him in personnel orders. However, the Commission lacks jurisdiction to address the discipline of a "reprimand", under the provisions of G.L. chapter 31. The Department failed to show that the Appellant was guilty of an unsatisfactory performance, by failing to attend to matters deserving of State Police attention (returning calls to Sergeant Skeldon in a timely manner), or that he violated TRF-10 by failing to submit a motor vehicle inventory form.

With respect to unsatisfactory performance, Bretta was charged with violating Rule 5.8.2, which states that:

Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of law required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the member's rank, title or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving of State Police attention; or absent without leave.



The respondent deemed that Bretta's refusal to return Sergeant Skeldon's calls constituted a failure to take action on a condition deserving of State Police attention, and suspended him without pay for two days.

There is no conclusion that Sgt. Skeldon intended to interfere with an investigation. It appears as if he simply wanted to find some information to help his daughter and his daughter's friend. However, as seen through Bretta's testimony and other evidence before the Commission, Sergeant Skeldon's attempts to contact Bretta while the matter was still a criminal investigation did cause Bretta to become suspicious and reticent to return his voice messages. This conclusion is supported by the following: the Sergeant always addressed himself with his official rank, left the number at the police department as his contact number, sought to "discuss the accident" with Bretta in each of the three to four messages (as opposed to addressing concerns about the contents of the vehicle), and contacted a State Police Major to intervene in his continuing attempts to access official State Police business.

In their totality, Sgt. Skeldon's actions could have reasonably caused an experienced police officer to be generally suspicious and to have believed the contact amounted to interference with an investigation. Bretta's actions or inaction under the circumstances were objectively reasonable, and more likely, prudent. Furthermore, Bretta's contacting Sergeant Skeldon on his first shift after concluding the criminal investigation is further evidence that Bretta was not failing to respond to a matter deserving of State Police Attention.

Similarly, the Department failed to show that, by a preponderance of the evidence, Bretta violated Rule 5.1 by failing to adhere to policy TRF-10. Rule 5.1 states:

“[m]embers shall not commit, nor cause to be committed, any act or omit any act which constitutes a violation of any Massachusetts State Police Rule, Regulation, Policy, Procedure, Directive, or Order.

As noted, *supra*, under the circumstances as described by Bretta, he was not required by TRF-10 to file a Motor Vehicle Inventory Form with respect to Keri Skeldon’s vehicle, because the vehicle was “interfering with the movement of traffic”, as described by policy, and also constituted a “hazard and required prompt removal for public safety reasons.” When these circumstances are present, an inventory “need not be taken” in accordance with TRF-10.

Assuming, *arguendo*, one determines that an inventory should have been taken;<sup>1</sup> the respondent still did not have “just cause” for discipline.

A basic principle underlying most disciplinary procedures is that management must have “just cause” for imposing the discipline.

One definition of “just cause” lists these seven tests or elements for determining whether management had just cause for disciplining an employee: See decision of Arbitrator Carroll Daugherty in Enterprise Wire Co., 46 Lab. Arb. (BNA) 359 (1966)

1. Was the employee adequately warned of the consequences of his conduct? The warning may be given orally or in printed form. An exception may be made for certain conduct, such as insubordination or that is so serious that the employee is expected to know that it will be punishable.
  2. Was the employer’s rule or order reasonably related to efficient and safe operations on the job?
-

3. Did management investigate before administering the discipline? The investigation normally should be made before the decision to discipline is made.
4. Was the investigation fair and objective?
5. Did the investigation produce substantial evidence or proof of guilt?
6. *Were the rules, orders, and penalties applied evenhandedly and without discrimination? If enforcement has been lax in the past, management cannot suddenly reverse its course and begin to crack down without first warning employees of its intent. (Emphasis added)*
7. Was the penalty reasonably related to the seriousness of the offense and the past record?

Evidence submitted showed that, though a Motor Vehicle Inventory Form would be required for most tows, that only 31 forms had been placed in the station file folder, for over 2,000 tows in the first eleven months of 2004. Additionally, for well over one thousand tows in 2003, there were only twelve inventory forms filed.

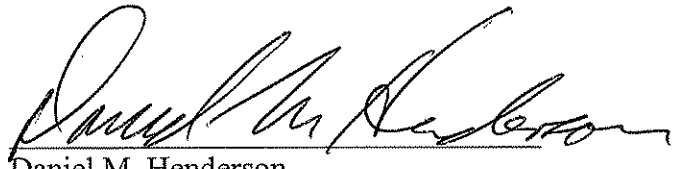
Testimony from Sergeant Leverone confirmed that throughout this period, TRF-10 was not substantially adhered to, though he, as a Sergeant, was one of the officers responsible for monitoring compliance with policies and procedures. Similarly, Lieutenant Stuart testified that given what appeared to be a large discrepancy, that he was ultimately responsible for compliance by officers under his command. Finally, testimony from Stuart, Leverone and Bretta indicated that the Lieutenant issued an order after Bretta's Trial Board in this case, enacting a new policy that accident reports would not be accepted without an inventory. It appears that since that order was issued, there is no longer a problem with compliance with TRF-10.

In accordance with the criteria for just cause noted *supra*, the evidence shows that the policy Respondent sought to enforce in the case at hand, had not been enforced throughout this time period, and there was no evidence that management warned employees that it would be enforced until after Bretta's Trial Board had concluded. Therefore, Respondent lacked just cause for discipline.

For all of the above stated, finding of facts and conclusion, the Commission determines that by a preponderance of evidence there is not just cause for the two (2) day suspension from employment without pay. However, the Commission lacks jurisdiction to address the discipline of a "reprimand", under the provisions of G.L. chapter 31.

The Appellant's appeal on Docket No. D-05-1 is hereby ***allowed***. The Appellant shall be returned to his position without loss of compensation or other benefits.

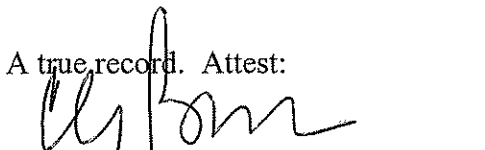
Civil Service Commission



Daniel M. Henderson,  
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman voted No, Henderson voted Yes, Taylor voted Yes, Stein voted Yes and Marquis voted No, Commissioners) on July 31, 2008

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 proceeding 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 commission's order or decision.

**Notice to:** Michael Halpin, Atty.  
Scott W. Dunlap, Atty.

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

JAMES BRETТА,  
Appellant

v.

D-05-1

DEPARTMENT OF STATE POLICE,  
Respondent

**DISSENT OF CHRISTOPHER BOWMAN**

I respectfully dissent.

Although associated with a tragic accident that involved a motorist striking a pedestrian five years ago, the matter before the Commission is straightforward: Did the Department of State Police (hereinafter "State Police") have reasonable justification to impose a 2-day suspension on State Trooper James Bretta for failing to respond to multiple inquiries of a citizen made to him via voicemail messages over a period of approximately one month?

In all such disciplinary appeals, the Commission is not to determine whether it would have acted as the Appointing Authority had acted. Rather, the Commission must determine if the Appointing Authority, at the time it issued the discipline, had reasonable justification based on sound and sufficient reasons for the disciplinary action taken and that their decision was free of any political overtones or personal bias.

In this case, I believe the evidence shows that Trooper Bretta failed to adhere to policy by failing to appropriately respond to the citizen's inquiries. The Colonel of the State Police, upholding the decision of the State Police Trial Board, suspended Trooper Bretta for 2 days for violating this State Police policy.

In its 52-page decision, however, I believe the Commission has embarked on its own independent investigation of the 2003 accident, substituted the Commission's judgment for that of the State Police, used the wrong standard to determine if disparate treatment was involved and, in this Commissioner's opinion, made unfounded implications regarding the actions of a Rhode Island police officer.

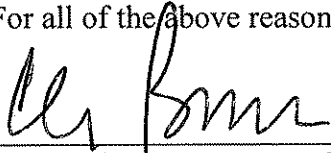
At one point, the Commission, akin to the report a traffic accident reconstruction expert, inappropriately makes its own independent findings regarding whether a vehicle involved in the accident was interfering with the movement of traffic and represented a traffic hazard.

Further, the Commission decision relies heavily on a written warning that Trooper Bretta received for not filing an inventory report to show disparate treatment, when the only issue the Commission has jurisdiction to hear is the two-day suspension. I find nothing in the decision to show disparate treatment in regard to the two-day suspension.

Finally, I am concerned about the findings and conclusions reached in regard to the citizen who filed the complaint against Trooper Bretta, who happens to be a Rhode Island police officer. The citizen was not called as a witness by either party and is likely unaware that a decision is being issued by the Commission regarding this matter. Without ever hearing from this citizen, the Commission concludes that the Appellant could have reasonably believed that the citizen used his position as a Rhode Island police officer to *interfere* with a Massachusetts State Police investigation. As noted by the State Police, no criminal charges were ever seriously contemplated in regard to the accident in question. Further, Trooper Bretta had already ruled out that excessive speed and alcohol were involved when he first began receiving inquiries from the citizen. This conclusion, regarding the citizen's purported interference with a State Police investigation, used by the Commission to justify Trooper Bretta's failure to comply with State Police policies, stretches the bounds of reason and common sense. I respectfully argue that it

should not form the basis of overturning the decision of the Colonel of the State Police in this matter.

For all of the above reasons, I respectfully dissent.

A handwritten signature in black ink, appearing to read "C. Bowman", written over a horizontal line.

Christopher C. Bowman, Chairman  
July 31, 2008