

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

BRANDON JOSEPH CASTATER,  
*Appellant*

v.

G1-18-027  
E-18-028

BOSTON POLICE DEPARTMENT,  
*Respondent*

Appearance for Appellant:

Bryan Decker, Esq.  
Decker & Rubin, PC  
295 Freeport Street  
Boston, MA 02122

Appearance for Respondent:

David Fredette, Esq.<sup>1</sup>  
Boston Police Department  
Office of the Legal Advisor  
One Schroeder Plaza  
Boston, MA 02120

Commissioner:

Cynthia A. Ittleman

**DECISION**

On February 27, 2018, Brandon Joseph Castater (Appellant or Mr. Castater), pursuant to G.L. c. 31, § 2(b), filed two (2) appeals with the Civil Service Commission (Commission): a bypass appeal, docketed as G1-18-027, and an equity appeal, docketed as E-18-028, contesting the decision of the Boston Police Department (Department). A pre-hearing conference was held on March 20, 2018, after which Commission Chair Christopher Bowman issued a procedural order memorializing the parties' mutual agreement that the matter would go forward as a bypass

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<sup>1</sup> Attorney Katherine Sarmini Hoffman represented the Boston Police Department at the time of the hearing in this case but no longer works at the Boston Police Department.

appeal. I held a hearing on May 30, 2018 at the offices of the Commission.<sup>2</sup> The hearing was digitally recorded and the parties were given a CD of the recording.<sup>3</sup> Both parties submitted proposed decisions. As noted herein, based on the facts and the applicable law, the appeal is denied.

## **FINDINGS OF FACT**

Fifteen (15) Joint Exhibits were entered into evidence at the hearing and one (1) Exhibit was entered into evidence on behalf of the Appellant. Based on the documents submitted, the testimony of the following witnesses:

Called by the Boston Police Department:

- Sgt. Det. Gary Eblan, Boston Police Department
- Superintendent Frank Mancini, Boston Police Department

Called by Brandon Castater:

- Brandon Castater, Appellant
- Ms. A
- Ryan Hewett

and taking administrative notice of all matters filed in the case; pertinent statutes, regulations, policies, stipulations and reasonable inferences from credible evidence; a preponderance of the evidence establishes the following:

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<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR ss 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

### *Prior Hiring Cycles*

1. In 2015, Mr. Castater, after taking and passing a civil service examination, undergoing a background investigation, passing the medical screening and completing the physical abilities test, was appointed as a Boston police officer, subject to completing the Police Academy. (Stipulated Fact).
2. Due to an injury, Mr. Castater withdrew from the 2015 Academy. (Stipulated Fact).
3. On February 22, 2017, HRD, at the request of the Boston Police Department, sent Certification No. 04401 to the Boston Police Department. (Stipulated Fact).
4. Mr. Castater was tied for 71<sup>st</sup> of those who signed the Certification. Of the one hundred twenty (120) candidates that were selected for appointment by the Boston Police Department, sixty-two (62) were ranked below Mr. Castater. (Stipulated Fact).
5. Following a background investigation conducted by Detective Molwyn Shaw, Detective Shaw presented his report of Mr. Castater's background to the "round table" of Department officials. Thereafter, Mr. Castater was given another conditional offer of employment from the Department and was again enrolled in the Police Academy in September 2017. (Stipulated Fact).
6. During the course of discovery in another case (either an arbitration or another civil service appeal) and *after* Mr. Castater had already entered the Boston Police Academy in 2017, the Department re-reviewed Mr. Castater's 2015 and 2017 background investigation and determined that it was necessary to *further* investigate two (2) incidents involving Mr. Castater, which were described in a 2009 Boston Police Incident Report and a 2011 Boston Police Incident Report. (Joint Exhibits 2 and 3; Testimony of Eblan; Testimony of Mancini).

7. Superintendent Frank Mancini testified on behalf of the Department at the hearing of this matter. He leads the Boston Police Department's Bureau of Professional Development, which oversees the Internal Affairs Unit, the Anticorruption Unit, and the Recruit Investigations Unit (RIU). As a result of discovery in another case, referenced above, Superintendent Mancini was directed to conduct a review of the prior (2015 and 2017) background investigations that the Department undertook of Mr. Castater, specifically focused on two incidents of alleged violence that were detailed in the 2009 Incident Report and the 2011 Incident Report. (Testimony of Mancini).
8. Superintendent Mancini ordered Sgt. Det. Gary Eblan (Sgt. Det. Eblan) to undertake the review of Mr. Castater's two prior background investigations in early January 2018. (Testimony of Eblan and Mancini). Sgt. Det. Eblan has been employed by the Department since 1989 and earned his Sergeant Detective rating in 2015. He has been the Recruit Investigations Supervisor since November 2017 and reports to Deputy Superintendent Jeffrey Walcott and Superintendent Mancini of the Bureau of Professional Standards. Sgt. Det. Eblan was not part of the RIU when either of the two previous background investigations were conducted relative to Mr. Castater's candidacy. (Testimony of Eblan).
9. Previously, Sgt. Det. Eblan worked as a patrol officer in Dorchester, the Motorcycle Unit, the Youth Violence Strike Force Unit, and in the Anti-Corruption Division. Additionally, he has worked as an instructor at the Boston Police Academy (Academy), where he taught defensive tactics, use of force, and patrol procedures. He has developed an in-service use of force training for the entire Department. He has also served as the Registrar of the Academy. (Testimony of Eblan).

*The 2009 Incident*

10. As part of his investigation of the 2009 Incident, Sgt. Det. Eblan reviewed the 2009 Boston Police Incident Report, Mr. Castater's Board of Probation (BOP) Record, the court docket, the Computer Aided Dispatch (CAD) sheet which details the 911 call, and he interviewed percipient witnesses. Sgt. Det. Eblan noted that the CAD sheet was a new piece of evidence that the Department had not procured prior to his re-investigation. All other documents had been procured by the 2015 RIU background investigator (Detective Wayne Williams) and the 2017 RIU background investigator (Detective Molwyn Shaw). (Testimony of Eblan; Joint Exhibits 2, 3, 4, 5, 6, 7, 8, 9 and 11).
11. The court docket (#0907CR00532) indicates that Mr. Castater was arraigned in the Boston Municipal Court on September 18, 2009 on two (2) felony charges: Assault and Battery with a Dangerous Weapon and Breaking and Entering in the Nighttime with the Intent to Commit a Felony. The cases were disposed of by the Court on January 11, 2010, on the day of the scheduled jury trial, for want of prosecution. (Joint Exhibit 7).
12. As part of the 2015 RIU background investigation, Detective Williams requested that Mr. Castater provide an explanation about this incident in writing, asking him to explain what happened in his own words. Mr. Castater wrote: "In September 2009 I was summonsed to appear in the Boston Municipal Court for charges of assault and battery with a dangerous weapon and breaking and entering at night. To the best of my recollection I never testified or provided testimony in that instance, but I do vaguely remember being asked to publicly address the presiding judge...." (Joint Exhibit 5; see Fact 23 and Joint Exhibit 7 *infra* regarding the court record of the charges).
13. A police report written by Officer Creavin states that he and Officers Morano and Principe,

“ ... responded to a R/C for a home invasion at [street address in Boston]. Upon arrival officers spoke to Mr. [A], who stated that his daughter, [Ms. A] and his son [son of Mr. A] had an argument earlier. [The son of Mr. A] then stated that [Ms. A’s] ex-boyfriend, suspect Brandon Castater, who the daughter still talks to, barged in the house with 2 unknown friends and began to beat the victim [son of Mr. A] up, [Mr. A] stated that suspect had a small baseball bat that he was using to beat [son of Mr. A] over the head with. [Mr. A] grabbed one of the suspects to break up the fight. Suspects fled in a black Lincoln sedan. Suspect lives in unknown location in West Roxbury. When police and ambulance arrived at [street address] victim had already left the house. Officers searched area for victim and suspect to no avail. [Mr. A] advised to recontact 911 if son returns for medical attention. Officers observed turned over furniture, hole in kitchen wall, and a broken kitchen window with blood drops throughout the house to be further investigated by C-11 detectives. (sic)” (Joint Exhibit 2)(*see also* Joint Exhibit 9 and Testimony of Eblan)

14. Unlike the Recruit Investigations detectives in 2015 and 2017, Sgt. Det. Eblan actually spoke to each and every witness listed in the 2009 Boston Police Incident Report. Specifically, he spoke to the three (3) police officers listed in the report and persons who were at the scene of the alleged crime. (Testimony of Eblan; Joint Exhibit 12).
15. At the direction of Superintendent Mancini, Sgt. Det. Eblan spoke with Ms. A, Mr. Castater’s ex-girlfriend, on January 11, 2018 by telephone about the 2009 incident at her father’s house. Ms. A told Sgt. Det. Eblan that she does not recall calling Mr. Castater to come to her home that evening due to a fight with her brother. She also told Sgt. Det. Eblan that Mr. Castater typically would not let himself into her father’s house, he would ring the bell to be let inside. (Testimony of Eblan; Joint Exhibit 12).
16. After this interview ended, Ms. A called Sgt. Det. Eblan back roughly five to ten minutes later. In this second phone conversation, Ms. A told Sgt. Det. Eblan that she remembered going to court with Mr. Castater but does not remember what happened. She remembered that she went to Mr. Castater’s father’s home after the incident and they took a picture of a

bruise on her head but she did not remember how she got the bruise. (Testimony of Eblan; Joint Exhibit 12).

17. At the Commission hearing, Ms. A confirmed that a Boston Police detective called her in 2018 and asked her about the 2009 incident. She was wary that the detective was calling her out of the blue, asking about her relationship with her father, her brother, and Mr. Castater. After the phone call, she immediately called Mr. Castater and told him that she “wasn’t the most forthcoming with him (Sgt. Det. Eblan) and he [Sgt. Det. Eblan] told me to call him back.” (Testimony of Ms. A).

18. Ms. A admitted not being forthcoming the first time Sgt. Det. Eblan called her and that, when she called him back, she said that this time she was being honest with him. She also admitted in her second phone conversation with Sgt. Det. Eblan that she wants to see Mr. Castater become a police officer. (Testimony of Ms. A).

19. Sgt. Det. Eblan also spoke to Mr. A on the telephone relative to the 2009 Incident on January 12, 2018. Mr. A is Ms. A’s father. Mr. A told Sgt. Det. Eblan that he recalled that his two children were having an argument that evening back in 2009, that he heard a lot of yelling and he went downstairs to calm everyone down. Mr. A said that he remembered seeing Mr. Castater leaving the house. He thought that Mr. Castater had come to his house with two other people but he was unsure. Sgt. Det. Eblan asked Mr. A if he saw Mr. Castater with a bat that night. Mr. A answered that he never saw him with a bat and did not even recall telling the officers that. He did not recall if his son was injured. He also told Sgt. Det. Eblan that when Mr. Castater was dating his daughter, Mr. Castater would often come into the house and would let himself in, that the doorbell didn’t work, and that he rarely locked his door. When asked about damage to the house as a result of the 2009 incident, Mr. A said

that he did not recall any hole in the wall or a broken window in connection with the reported breaking and entering in 2009. During their phone conversation, Mr. A also told Sgt. Det. Eblan that he thought that Mr. Castater would make a good police officer even though Sgt. Det. Eblan had never mentioned anything about Mr. Castater's application to the police Department during his phone call with Mr. A. (Joint Exhibit 12; Testimony of Eblan).

20. Sgt. Det. Eblan also contacted Mr. A's son, who is Ms. A's brother, who was cited in the 2009 Incident Report. During this January 12, 2018 phone call, Mr. A's son told Sgt. Det. Eblan that he had already spoken to a detective and said everything he had to say about this incident and that he did not want to talk about it again. Sgt. Det. Eblan asked Mr. A's son if Mr. Castater had a bat during the 2009 incident, as reported in the 2009 Incident Report. Mr. A's son denied that Mr. Castater had a bat during the 2009 incident. Asked if Mr. Castater entered his home with other people during the 2009 Incident, Mr. A's son said that he could not recall. In addition, Mr. A's son would not answer Sgt. Det. Eblan's question as to whether or not he and Mr. Castater got into a physical confrontation at the 2009 incident. Instead, Mr. A's son said, "I already told the detective what happened", alleging that it was all a big misunderstanding. Without any prompting, Mr. A's son added, "Castater would make a good Boston Police Officer" even though there had been no mention of Mr. Castater's application to the Department for a police officer position. (Joint Exhibit 12; Testimony of Eblan).

21. During the course of Sgt. Det. Eblan's investigation, Mr. Castater was notified on January 8, 2018 of a pending dismissal by the Department based on the incident reported in Boston Police Incident Report #090401300 and Boston Police Incident Report #110523084. Mr.



Castater was given the opportunity to submit an explanation to the Department of those two incidents, which he did. (Joint Exhibits 1, 2, 3, 10 and 11).

22. In response to the notice of a pending dismissal, Mr. Castater provided a written statement dated January 8, 2018 to Department. In his January 8, 2018 written statement, Mr. Castater admitted that he went to his ex-girlfriend's home in the early morning of July 18, 2009, stating that he went there to help his ex-girlfriend because she said she had been hurt by her brother. Mr. Castater wrote that when he got there, he went right in through the front door without ringing the bell because he thought he had permission to do so. Mr. Castater further wrote that his ex-girlfriend's brother and several of his friends began to punch and kick him, causing Mr. Castater to back out of the house and run away. Mr. Castater denied in his written statement that he went to Mr. A's house with friends or that he had a bat with him there. Further, he wrote that he was summonsed to court regarding the 2009 incident but asserted, "When I appeared in court, the charges were dismissed prior to arraignment." (Joint Exhibit 11; *see also* Testimony of Castater).

23. The certified court docket for this 2009 case (#0907CR00532) indicates that the felony charges of (1) Assault and Battery Dangerous Weapon and (2) Breaking and Entering in the Nighttime with the Intent to Commit a Felony were *not* dismissed before arraignment. Mr. Castater was indeed arraigned on the charges on September 18, 2009 at the Boston Municipal Court, wherein he was released on his own personal recognizance. A second court appearance, the Pre-Trial Conference, was held on October 23, 2009. A third court appearance, for a jury trial, was scheduled for January 11, 2010, four (4) months after arraignment. However, on the January 11, 2010 trial date both charges were dismissed for want of prosecution. (Joint Exhibit 7)

24. Following Sgt. Det. Eblan's investigation of this 2009 incident, he discussed his findings with Superintendent Mancini, his supervisor. Thereafter, Superintendent Mancini personally reviewed the 2009 Police Incident Report, Mr. Castater's 2015 and 2017 Department Recruit Files (including the two Privileged Confidential Memoranda (PCM) written by the 2015 and 2017 background investigators), the court dockets, Mr. Castater's supplemental explanation of the 2009 incident, Mr. Castater's written statement in the file from January 2018, and Sgt. Det. Eblan's lengthy and detailed report. (Testimony of Eblan; Testimony of Mancini).
25. Superintendent Mancini met with the Boston Police Commissioner thereafter and discussed the details of Sgt. Det. Eblan's report and informed him of the pertinent facts of the 2009 incident. Superintendent Mancini pointed out to the Police Commissioner that Mr. A initially told the police at the scene in 2009 that Mr. Castater brought two other people with him to enter Mr. A's house that morning and that Mr. Castater had a bat with him. He explained to the Police Commissioner that presently Mr. A cannot recall if Mr. Castater had a bat during the 2009 incident. (Testimony of Mancini).

### *The 2011 Incident*

26. With respect to the 2011 incident, Sgt. Det. Eblan reviewed the incident report, court records, and spoke with percipient witnesses. Specifically, Sgt. Det. Eblan phoned the four (4) police officers listed in the 2011 Incident Report, the victim (Mr. H), a percipient witness (Mr. S), Ryan Howell who was with Mr. Castater that evening, and also two (2) women (Ms. D and Ms. S)<sup>4</sup> who were present with Mr. Castater during the incident.<sup>5</sup> (Testimony of Eblan;

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<sup>4</sup> All parties to this bypass appeal are aware of all of the witnesses' and co-defendant's full names and contact information; however, their identity will remain confidential for purposes of this written Decision and in the recording of this hearing. Those witnesses who testified at the bypass appeal hearing have voluntarily revealed their full identity and are referred to by their full name.

<sup>5</sup> Sgt. Det. Eblan did not interview Mr. Castater or another friend, who was also a co-defendant, relative to this 2011 incident because the charges could be reinstated should the prosecutors so choose.

Joint Exhibit 12). Sgt. Det. Eblan also reviewed the report of a private investigator who had been retained by the attorney who represented one of the people with Mr. Castater at the 2011 incident and who was also criminally charged for the 2011 incident. (Joint Exhibit 11).

27. Sgt. Det. Eblan had a significant and detailed phone conversation with Mr. S about what he witnessed of the 2011 incident. Of his conversation with Mr. S, Sgt. Det. Eblan wrote,

“Interview of Witness [Mr. S], on 1/11/18. Mr. [S] lives in ... Maine. He was contacted at [a Maine phone number]. He remembered the incident and stated the following: On the night of the incident he was working as a doorman at the Cactus Club on Boylston St. when he was outside tending to his cleaning duties at the outside tables. He believed it was after midnight at the time **he observed the incident. The victim in the incident had too much to drink and was stumbling down Boylston St. He went on to say the victim wasn't violent and there were no words exchanged between the parties.** [Mr. S] stated to me there was no dialogue between the group and the victim, and **when the victim stumbled into the group one guy gave him a really big shove to the point that caused both his feet to come off the ground and he landed on his head knocking him unconscious and causing his head to bleed.** He stated all five individuals then **fled on foot.** He stated he held the victim by the head until the police and EMT's (sic) arrived. He didn't think the guy was going to make it. I asked what he meant by that and he said he thought the guy was going to die. He stated **the victim was not looking for a fight and there were no words exchanged between the parties.** I asked him if he spoke to a private investigator about the incident approximately four months later. He stated not in person but he did talk to an investigator on the phone. [Mr. S] thought the person he was talking to was a Boston Police Officer following up on the investigation. I asked if that person told him he was a Boston Police Officer to which he replied 'I don't recall him telling him (sic) me was a Boston Officer but I thought that he was.' **I read the investigators (sic) report to him and asked him if it was accurate from his recollection of talking to this investigator. He stated it was not accurate.** The investigative report indicates [Mr. S] stated that he and the bar manager heard an argument outside and went to see what was happening. The investigative report goes on to say the kid who was alone, kept harassing the three guys and two girls and that he heard the guys ask the drunk kid several times to leave them alone. The report goes on to say the drunk kid wouldn't listen and kept harassing the group. This went on for several minutes. [Mr. S] stated **this is not what he told the investigator and not what happened.** The private investigator wrote that [Mr. S] stated he didn't push him very hard and that the drunk kid was on a portion of the sidewalk that was uneven and on a slight incline. The drunk kid lost his balance and fell back and hit his head. The investigative report indicates [Mr. S] stated if it were not for the defective sidewalk the kid would probably not have fallen down and that he just lost his balance. [Mr. S] told me this is not accurate and that both the guys (sic) feet came off the ground because of being pushed.

The investigative report states the investigator asked [Mr. S] if he had an opinion as to who was the aggressor in the incident and that [Mr. S] replied ‘It was the drunk kid. He just would not leave the people alone. [Mr. S] stated to me that is **not accurate because the victim was not aggressive at all** and he was just stumbling up the street and when he stumbled into the group he was pushed down causing his injuries. He [Mr. S] stated he remembers being brought in a department cruiser to identify the group. He stated he stayed in the m/v and was able to identify the person responsible. He stated it was a female officer driving the cruiser and she drove him back to the Cactus Club. [Mr. S] was asked by the private investigator when the officers brought him to identify the person who pushed the drunk kid **if he recalled having an exchange of words with one of the five people that the police stopped on Haviland St. to which [Mr. S] stated ‘No I was in the back seat of the police car with the windows rolled up.’** Note: There was an initial witness who stopped P.O. Moriarty to report this assault. This witness went down Haviland St. where Moriarty had the five suspects stopped and according to the 1.1 he identified suspect 1, Brandon Castater, and stated ‘yup that’s them right there’. According to the 1.1 the suspects yelled at the witness ‘He started it’ to which the citizen replied ‘You slammed him to the ground’. This witness left the area without giving the officers his information. [Mr. S] did not know there was a second witness who identified the responsible party before he did and the words exchanged between them. **I asked [Mr. S] if he believed the private investigator took liberties with his recollection of the incident as to how his report was written and he stated yes, he did.’**<sup>6</sup> (Joint Exhibit 12)(emphasis added).

(See also Joint Exhibit 3 and Testimony of Eblan)

28. Sgt. Det. Eblan interviewed Mr. H, the victim, on January 15, 2018 via telephone. Mr. H resides in California and indicated that he was in Boston on a business trip on the date of the 2011 incident. He indicated that his memory is not as good as it used to be before the incident. He remembers that he was walking back to his hotel and the next thing he can recall is waking up in the hospital with his head strapped to the bed in a head brace. When the back of his head hit the cement, it caused his brain to hit the front part of his skull, causing bleeding on the brain and severing his olfactory nerve so that he has lost his sense of smell. (Testimony of Eblan; Joint Exhibit 12).

29. Mr. H told Sgt. Det. Eblan that he had been in touch with the District Attorney’s Office and that both the DA’s Office and the victim-witness advocate were very helpful to him. They

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<sup>6</sup> The reference to a “1.1” appears to be the form for filing police incident reports.

told him that his case did not go to trial because the witness was not able to appear because he lived out of state. Mr. H recalled that the witness lived in Maine. He told Sgt. Det. Eblan that he hopes that the person who did this to him will be brought to justice but understands that, without a witness, they probably would not be successful in court. (Testimony of Eblan; Joint Exhibit 12).

30. As noted in the 2011 Court Docket #1101CR00590, Mr. Castater was arraigned on September 27, 2011 in the Dorchester District Court and charged with a felony, Assault and Battery with a Dangerous Weapon, to wit - the sidewalk. After nearly ten (10) scheduled court appearances from 2011-2013, the case was scheduled for trial on January 7, 2013. On the trial date, the prosecution indicated that it was not ready for trial and the case was dismissed by the Court for want of prosecution. (Joint Exhibit 8).

31. In his January 8, 2018 written statement in response to the then-pending Department dismissal action, Mr. Castater wrote that in the early morning of September 26, 2011, he was walking with some friends and they saw a man who was very drunk. A short time later, Mr. Castater alleged in his written statement that he suddenly felt someone throw his arms around his shoulders from behind and that his immediate reaction was to turn around and push the person off of him. Mr. Castater wrote that “the man took one step back and fell off the curb hitting his head on the street as he fell. **He appeared to be unconscious.**” (Joint Exhibit 11)(emphasis added). Mr. Castater reported that a bartender came outside and told him that he called an ambulance. Mr. Castater wrote that he left the area but he was soon stopped by a Boston Police Officer, was identified by a witness as the person who assaulted the drunken man and was placed under arrest along with one of his male friends. (Id.).

32. At the conclusion of his investigation, Sgt. Det. Eblan prepared a final, extensive investigative report describing his investigation of the 2009 and 2011 incidents and presented his report to Superintendent Mancini. (Joint Exhibit 12; Testimony of Supt. Mancini).
33. Superintendent Mancini acknowledged that there was no information “missing” from the prior RIU (2015 and 2017) investigations and that the Department could have gathered additional witness statements prior to 2018 but that the Department now wanted to know who initiated contact in these two violent altercations – was it an issue of self-defense – did Mr. Castater over-react – was he under the influence of alcohol? The Police Commissioner wanted to rely on more recent information and wanted to determine if there were any inconsistencies in the witness’ recollections. The Police Commissioner “wanted to be sure to make the right decision.” (Testimony of Mancini).
34. When Sgt. Det. Eblan’s report was completed, Superintendent Mancini briefed the Police Commissioner regarding Sgt. Det. Eblan’s investigation and findings. The Police Commissioner was deeply concerned by the Appellant’s conduct in both the 2009 and 2011 incidents. Specifically, his concern lay in Mr. Castater’s poor judgment, the level of alleged violence, and the use of excessive force. (Testimony of Mancini).
35. The Police Commissioner found that the witnesses’ 2018 statements about the 2011 incident remained consistent with their prior statements and that the witnesses’ 2018 statements about the 2009 incident were less consistent. The Police Commissioner was troubled by the undisputed fact that Mr. Castater did not stay on scene during the 2011 incident to assist the victim, nor did he identify himself to police officers after exerting an inappropriate level of force against another individual. He was concerned that Mr. Castater may have an anger management issue as well. (Testimony of Mancini; Joint Exhibit 12).

36. The Police Commissioner made the decision to withdraw the Boston Police Department's sponsorship of Mr. Castater at the police academy. Superintendent Mancini agreed with the Police Commissioner's decision and explained that the "Police Commissioner wanted to rely on more recent information," to determine if there were "any inconsistencies," and "wanted to be sure the information was not erroneous, to be sure their stories hadn't changed – he wanted assurance because it is career changing." (Testimony of Mancini; *see also* Joint Exhibits 12, 13 and 14).
37. On or about February 13, 2018, Academy staff served in-hand to Mr. Castater a Separation Notice. The letter explained that Mr. Castater was notified on January 8, 2018 of a pending dismissal action based on the two Boston Police Incident Reports at issue. The Department noted that it had given Mr. Castater an opportunity to submit information relative to these two incidents described in the Incident Reports. The letter further noted that the Department conducted a further investigation into the two incidents. Based on the information Mr. Castater provided and the information in the Department's investigation, the Department withdrew its academy sponsorship of the Appellant effective February 13, 2018. (Joint Exhibits 11,13 and 14).
38. Included in the Commission's hearing record are the criminal records of twenty-three (23) Boston Police Academy recruits who were part of Mr. Castater's 2017 Academy class. (Appellant's Exhibit 1).
39. I have reviewed all of the twenty-three (23) criminal histories. Of the twenty-three, eighteen (18) of those recruits' criminal histories contain charges that do not allege violence and are not felonies.<sup>7</sup> (Appellant's Exhibit 1).

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<sup>7</sup> These eighteen(18) candidates' criminal histories contain misdemeanor charges, such as Operating with a Suspended License, Operating After Suspended Registration, Compulsory Insurance Violation, Disturbing the

40. Five (5) other members of the same Academy class had a criminal history of the following misdemeanor offenses and one (1) felony offense that are generally considered violent offenses:<sup>8</sup>

Candidate 1: 2006 Assault & Battery (Misdemeanor)  
Dismissed (p. 88)

Candidate 2: 2001 Assault & Battery on Police Officer & Resist Arrest (Misdemeanors)  
3 months CWOFF (p. 91)

Candidate 3: 2014 Assault and Battery Dangerous Weapon (Felony)  
Nolle Prosequi (p. 93)

Candidate 4: 2005 Assault & Battery on Police Officer, Resist Arrest, Trespass, Disorderly  
Conduct (Misdemeanors)  
1 year CWOFF (p. 100)

Candidate 5: 2003 Assault & Battery  
1 year CWOFF (p. 102)

(Appellant's Exhibit 1).

#### *Applicable Law*

The core mission of Massachusetts Civil Service Commission is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, §1. *See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259, (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass.App.Ct. 632, 635 (1995), *rev.den.*, 423 Mass. 1106 (1996). A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing

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Peace, Minor in Possession of Alcohol, Attaching Wrong Motor Vehicle Plates, Trespassing, Leaving Scene of Property Damage, and Drinking Alcohol in Public. (Appellant's Exhibit 1).

<sup>8</sup> Although these charges imply violence, there is no evidence in the record, such as police incident reports, regarding the matters that led to the criminal allegations, the candidates' age at the time of the offenses, or the candidates' reports of what occurred in each case.



authority had shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003). “Reasonable justification . . . means ‘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’”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. *See also* Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The Commission “. . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority” but, when there are “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.” City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997) (emphasis added). The Commission’s role, while important, is relatively narrow in scope: to review the legitimacy and reasonableness of the appointing authority’s actions. *See* Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 824-26 (2006). In doing so, the Commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. City of Beverly v.

Civil Serv. Comm'n, 78 Mass. App. Ct. 182,188 (2010). The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct.331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

### *Analysis*

The Civil Service Commission’s mission is to ensure that Appointing Authorities, as part of a fair and impartial hiring process, offer valid reasons for bypassing a candidate in favor of lower-ranked candidates; in this case the analysis requires the determination of whether a municipal police department may withdraw its academy sponsorship of a selected candidate. As part of this review, the Commission must consider whether the Appointing Authority’s actions were the result of personal or political bias against the Appellant. Here, the Commission has found none. Both Sgt. Det. Gary Eblan, Supervisor of the Recruit Investigations Unit, and Superintendent Frank Mancini, commander of the Bureau of Professional Development, were credible witnesses. They had a command of the facts and clearly detailed Mr. Castater’s hiring journey and how the Department’s concerns with his continued candidacy evolved. They were consistent with one another and the concerns they articulated on behalf of the Police Commissioner, the Appointing Authority. I do not find that either of them had any personal animus or political bias against the Appellant.

The Department was not predisposed to bypassing Mr. Castater, as evidenced by the fact that he was given a conditional offer of employment after two (2) prior background

investigations, in 2015 and 2017. The Department witnesses credibly testified that, due to discovery in either an arbitration case or another bypass appeal, the Police Commissioner was made aware of Mr. Castater's criminal history and requested that his background be further investigated due to a deep concern about two prior incidents of alleged violence that resulted in three felony charges. The Commission recognizes that law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct:

“Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”

Police Comm'r v. Civil Service Comm'n, 22 Mass. App. Ct. 364, *rev.den.*, 398 Mass. 1103 (1986).

The Commission recently addressed the interplay of G.L. c. 31 and G.L. c. 151B, §9 (4) in the case of James Kerr v. Boston Police Department, G1-16-096 (2018). Due to the tension between the prohibitions in 151B about the information that employers can request of applicants relating to criminal record information and the need for public safety agencies to conduct a thorough review of candidates, the Commission declined to settle the question of whether (or how) public safety agencies can use an applicant's prior criminal history that did not result in a conviction during the hiring process. The Commission did, however, state that the bypass of a candidate based upon a criminal history short of conviction will not be upheld unless the appointing authority conducted a “reasonably thorough review” which the Commission has consistently ruled should include an opportunity for the applicant to respond to his/her criminal record. This Commission has held that “an appointing authority may rely on information, including allegations of misconduct obtained from third-party sources, as the basis from bypassing a candidate providing it was lawfully obtained and subjected to an

‘impartial and reasonably thorough’ independent review.” Deterra v. New Bedford Police Department, 29 MCSR 502 (2016), *quoting* Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 189 (2010).

Further, although a criminal conviction is not necessarily a prerequisite to taking account of facts that tend to establish that a candidate has a history of misconduct, “the mere nature of charges brought, alone, do not provide the necessary foundation to justify a bypass.” Id. at 20. Use of a criminal record, without a reasonably thorough review of the circumstances behind a criminal record print-out—particularly a single, stale offense that does not suggest a pattern of misconduct—is a problematic reason to bypass an otherwise qualified candidate. Finklea v. Boston Police Dep’t., 30 MCSR 93 (2017), *aff’d in relev. part*, Finklea v. Civil Service Comm’n, 34 Mass.L.Rptr. 657, \*6 (2018); Stylien v. Boston Police Dept, G1-17-194, 12-13 (April 12, 2018).

In its recent decision in Boston Police v. Civ. Serv. Comm’n and Gannon, 483 Mass. 461 (2019), the SJC confirmed that an Appointing Authority must prove, by a preponderance of the evidence, that the Appellant actually engaged in the alleged misconduct used as a reason for bypass. However, the Court also *reaffirmed* that, once that burden of proof regarding the prior misconduct has been satisfied, it is for the appointing authority, not the commission, to determine whether the appointing authority is willing to risk hiring the applicant.

Unfortunately, the Department performed an insufficient and overly cursory review of Mr. Castater’s criminal history as part of the background investigation when he applied in 2015 and 2017. As a result of the insufficient review, Mr. Castater slipped through the cracks and made it through the round table discussions and was given a conditional offer of employment on *two* occasions. After Mr. Castater entered the Boston Police Academy in September 2017, the

Police Commissioner was made aware of additional details of Mr. Castater's criminal history, causing great concern. The Police Commissioner took the appropriate step of having his Department thoroughly re-investigate the multiple criminal offenses with which Mr. Castater was charged. The Police Commissioner, in making that decision, wanted to rely on more recent information, to determine if there were any inconsistencies, and he wanted to be sure that the information contained in the Incident Reports was not erroneous and had not changed. As Superintendent Mancini stated, the Police Commissioner "wanted assurance because it is career changing."

The re-investigation involved interviewing every police officer involved in the 2009 and 2011 incidents, every witness, and every alleged victim, along with obtaining documentary evidence relative to the investigation, to include the newly obtained 911 CAD Sheet, and previously obtained certified court dockets, Mr. Castater's CORI, and the 2015 and 2017 Personal and Confidential Memoranda. Sgt. Det. Eblan undertook a thorough investigation and documented his findings in a lengthy report. Additionally, Mr. Castater was given the opportunity by the Department to refute the allegations made in the Boston Police Incident Reports and he wrote a lengthy memo in his defense. Mr. Castater's written memo, Sgt. Det. Eblan's detailed and thorough report, and all relevant documents were reviewed by Superintendent Frank Mancini, Sgt. Det. Eblan's commanding officer. I find that the Department conducted a thorough review of the Appellant's criminal record and rightfully gave the Appellant an opportunity to address his record. *See, e.g. Finklea v. Boston Police Dept., supra*; and *Rolle v. Department of Correction*, 7 MCSR 254 (2014).

Boston Police Incident Report #09040130, which was written by one of the responding officers, states that Mr. Castater barged into the home of Mr. A, which was also the home of Mr.

Castater's ex-girlfriend, Ms. A, on July 18, 2009 at 3:05 AM. The 2009 Incident Report details that Mr. Castater was armed with a bat and entered Mr. A's house with several his friends and states that Mr. Castater beat Ms. A's brother over the head with the bat. The officers on scene specifically witnessed a hole in the wall, a broken window, and blood drops around the house. Mr. Castater had allegedly fled the scene and was ultimately charged with two (2) felony counts in the Boston Municipal Court, one count of Assault and Battery with a Dangerous Weapon, and one count of Breaking and Entering in the Nighttime with the Intent to Commit a Felony. Mr. Castater told the Department that he believed Ms. A had been injured by her brother and he was there to protect her, although Ms. A subsequently did not recall how she sustained an injury. He denies that he had a bat with him at Mr. A's house or that he was accompanied there by his friends.

When Sgt. Det. Eblan re-investigated this 2009 incident in 2018, key witnesses had either changed their stories or asserted that they did not recall at least parts of the incident. For instance, Mr. A was the person who called 911 about the incident that early morning in 2009. He claimed Mr. Castater had a bat and had broken into his home. When interviewed over the phone in 2018 by Sgt. Det. Eblan, Mr. A was asked whether Mr. Castater had a bat at the 2009 incident. Mr. A told Sgt. Det. Eblan that Mr. Castater did not have a bat and that he does not recall telling the police that he did. Mr. A also told Sgt. Det. Eblan that Mr. Castater would often let himself into his house, that the doorbell did not work, and that he rarely even locked his door – insinuating that Mr. Castater did not “break and enter” his home during the 2009 incident. In contrast, however, Ms. A, Mr. Castater's ex-girlfriend told Sgt. Det. Eblan that Mr. Castater did not typically let himself into her home—he would be let in by someone who lived there. Mr. A, at the end of his interview with Sgt. Det. Eblan, said that Mr. Castater would make a good police

officer – although Sgt. Det. Eblan never told him the purpose of his call was related to Mr. Castater’s candidacy.

Additionally, Mr. A’s son, the alleged victim of the beating with the bat, told Sgt. Det. Eblan in 2018 that Mr. Castater did not have a bat with him during the incident at issue, that he could not recall if Mr. Castater entered his home that day with other people or if he was alone, and said that it was all a “big misunderstanding.” When asked by Sgt. Det. Eblan about whether or not he and Mr. Castater got into a physical altercation in the 2009 incident, Mr. A’s son refused to answer and said that he already told the detective what happened. Without any prompting, Mr. A’s son, like his father, told Sgt. Det. Eblan that Mr. Castater would make a good police officer. Sgt. Det. Eblan never told either Mr. A or his son that he was calling about Mr. Castater’s candidacy. Similarly, Ms. A’s recollection of events (including whether her brother, Mr. A’s son, had hit her head during the 2009 incident) was questionable but not just for the lack of significant information or inconsistent statements (including information that was inconsistent with at least some of what Mr. Castater stated) but also in calling back Sgt. Det. Eblan to say that in this second conversation with him she was being honest, indicating that her initial comments to Eblan when he first called her were untruthful. In this context, the 2018 inconsistent comments of Mr. A, Ms. A, and Mr. A’s son about the 2009 incident, were unreliable and improperly motivated – to shore up Mr. Castater’s Department candidacy by undermining the criminal charges against him for his misconduct in 2009. Thus, the Department raised legitimate concerns regarding the 2009 incident. The events at the 2009 incident, described in the 2009 police report, which included a detailed description of the damage inside the house and the appearance of blood in some places, were quite violent and rightfully concerning to the Department when they re-investigated it. The statements in 2018 of Mr. A,

who had called 911 in connection with the 2009 incident, and Mr. A's son and Ms. A cast doubt on their credibility. As a result, the Department has established valid concerns about Mr.

Castater's misconduct at the 2009 incident by a preponderance of the evidence. The Appellant represented that the two felonies with which he was charged regarding the 2009 incident were dismissed prior to his arraignment. The court record in evidence here indicates that that is untrue and that the charges were not dismissed until four months after he was charged and the trial was scheduled to take place. That the case was dismissed for want of prosecution does not bar the Department from considering his misconduct.

Two years after being arrested for the 2009 incident, Mr. Castater was arrested again and charged with another felony, Assault and Battery with a Dangerous Weapon – to wit, the sidewalk. On September 26, 2011, Mr. Castater came in contact with a man who was highly intoxicated. When the intoxicated man came within steps of Mr. Castater, Mr. Castater pushed him so hard that the man was lifted off both of his feet. When the man landed, he struck his head on the sidewalk so hard that he became unconscious and was visibly bleeding. A witness, Mr. S, ran over to the victim and helped him, holding the victim's head in his hands. Mr. S, who lives in Maine, told Sgt. Det. Eblan in his 2018 phone interview that he believed the victim was going to die. Mr. S's account to Sgt. Det. Eblan of what happened was detailed and vivid and consistent with the brief information provided by another witness.<sup>9</sup> Mr. Castater had fled the scene, even though he admits that he knew the victim was unconscious. Mr. Castater acknowledged in his testimony at the Commission hearing that he should have stayed with the victim that night. The victim, Mr. H, spoke with Sgt. Det. Eblan on the telephone in January 2018 and told Eblan that

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<sup>9</sup> Mr. S was not aware that some of the information that he provided to police on the night of the incident and to Sgt. Det. Eblan in 2018 had been confirmed by the witness who provided information to the police the night of the incident but did not provide his contact information.



he suffered bleeding on his brain that night and suffered a traumatic brain injury as a result. His olfactory nerve was severed when his head hit the sidewalk and he no longer has a sense of smell. The victim told Sgt. Det. Eblan that the key witness to the crime was unable to travel from Maine to attend the criminal trial of this matter so the case was dismissed. A review of the criminal docket (1101CR005090) regarding the 2011 incident reveals that Mr. Castater's case was scheduled for court action no less than ten times, beginning with Mr. Castater's arraignment on September 26, 2011 and ending with a dismissal for want of prosecution in January 2013. On the date of the jury trial, the prosecution indicated that it was "not ready for trial" and the case was dismissed for that reason.

Following the re-investigation by Sgt. Det. Eblan, the Boston Police Department was deeply concerned with the 2011 incident's level of violence, the fact that Mr. Castater left the victim laying unconscious and bleeding on the ground, and the fact that Mr. Castater had fled the scene. The Department ultimately concluded that Mr. Castater showed a lack of judgment, that he used excessive force, and that he exhibited a pattern of anger management issues. The Police Commissioner found that the witnesses to the 2011 incident remained consistent with their prior statements. Further, the Police Commissioner was troubled by the undisputed fact that Mr. Castater did not stay at the scene to assist the victim nor did he remain to identify himself to police officers after exerting an inappropriate level of force against another individual. For these reasons, the Police Commissioner made the decision to withdraw the Department's sponsorship of Mr. Castater at the Boston Police Academy.

I find that the Department has established by a preponderance of the evidence that it had reasonable justification to conclude that Mr. Castater was not suitable for the position of police officer as a result of his misconduct in the 2011 incident, in addition to his misconduct in the

2009 incident, and to withdraw its academy sponsorship of Mr. Castater for those reasons. The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the acts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Commission is mindful of the timeline of events and the fact that Mr. Castater was given a conditional offer of employment in 2015 and 2017. The Department must be afforded the opportunity, if necessary, to reassess a candidate if the Department believes a grave mistake has been made prior to the candidate’s ultimate hiring. The Department believed it had made a mistake and took reasonable actions to correct the mistake in a fair, thorough, and responsible manner, giving Mr. Castater an opportunity to be heard. That this depth of an investigation should have taken place back in 2015, when Mr. Castater first applied for the position, or in 2017 when he reapplied, does not preclude the Department from correcting its course of action.

The Appellant contends that other candidates who were members of the same Academy class have comparable criminal records to Mr. Castater. After a review of each of the twenty-three (23) criminal records the Appellant put into evidence at the hearing of this matter, I do not find any of the criminal records to be comparable based on the information in the record. Of the twenty-three (23), eighteen (18) of those Academy members’ criminal histories consist of misdemeanor criminal charges that do not allege any acts of violence, to include Operating with a Suspended License, Operating with a Suspended Registration, Attaching Wrong MV Plates, Compulsory Insurance Violation, Disorderly Conduct, Trespassing, Leaving the Scene of

Property Damage, etc. These criminal entries are not comparable to the Appellant's arrest for, and circumstances surrounding, three felonies, to include Assault and Battery with a Dangerous Weapon (twice) and Breaking and Entering with the Intent to Commit a Felony.

Five (5) Academy members' criminal histories do contain entries that allege or imply violence. The Commission is unaware of the underlying facts of these five candidates' cases since no evidence was presented other than the criminal history print-out. For example, given that four of the five charges date back more than a decade prior to the candidates' applications to the Department, it is unknown if the holders of those records were juveniles at the time of the charges against them and, if so, whether such information was factored into consideration of those records. Of the five candidates with criminal histories, Candidate 1 was charged with Assault and Battery and the case was Dismissed in 2006. This is a misdemeanor and it was dismissed 11 years prior to this candidate's application to the Department. Candidate 2 was charged with Assault and Battery on a Police Officer and Resisting Arrest and the cases were Continued without a Finding (CWOFF) for three (3) months in 2001. These two charges are misdemeanors and the incident occurred 16 years prior to this candidate's application to the Department.

Candidate 3 was charged with Assault and Battery Dangerous Weapon and case was dismissed via nolle prosequi in 2014. Although Candidate 3 was charged with the same felony that the Appellant was charged with twice, a nolle prosequi was filed by the prosecutor in Candidate 3's case, which is a more advantageous result for a defendant in a criminal case than a simple dismissal for want of prosecution. It is as if the charges should never have been filed against Candidate 3, as opposed to a dismissal for the Appellant in 2011 (which was likely garnered in his 2011 criminal case because the witness, Mr. S, did not appear to testify against

him since he lives in Maine). The prosecution was not prepared to go forward with the trial as scheduled, leading the court to dismiss the 2011 charges against Mr. Castater for want of prosecution. Mr. Castater has been charged with three felonies and Candidate 3 has been charged with one. Thus, it cannot be gainsaid that Candidate 3's criminal record is not the same as or similar to that of Mr. Castater, warranting a different result in this appeal.

Candidate 4 was charged with Assault and Battery on a Police Officer, Resisting Arrest, Trespass, and Disorderly Conduct and the charges were Continued without a Finding for 1 year in 2005. All of these charges are misdemeanors and the events that led to the charges took place 12 years prior to this Candidate 4's application to the Department, distinguishing Candidate 4's criminal record from that of the Appellant. Finally, Candidate 5 was charged with Assault and Battery and received a 1 year Continued without a Finding in 2003. This is a misdemeanor that he was charged with 14 years prior to this candidate's application to the Department in 2017, also distinguishing Candidate 5's criminal record from that of the Appellant.

Based on the evidence in the record, I do not find any of these five candidates' criminal histories to be comparable to the Appellant's criminal history, most especially as they relate to the 2011 case wherein Mr. Castater was charged with a felony just six (6) years prior to his candidacy for the Department and just two (2) years after having been charged with Assault and Battery with a Dangerous Weapon and Breaking and Entering with the Intent to Commit a Felony (both felonies as well). Mr. Castater permanently injured a man in 2011 by pushing him off both feet causing him to hit his head on the ground, rendering him unconscious, ultimately causing a traumatic brain injury and the victim's permanent loss of his sense of smell. I find that the Department has established by a preponderance of the evidence that it had

reasonable justification to determine that the Appellant was unsuitable for the position of Boston Police Officer and to withdraw its sponsorship of the Appellant in the policy academy.

*Conclusion*

For all of the above stated reasons, the bypass appeal and the equity appeal of Brandon Joseph Castater under Docket No. G1-18-027 and E-18-028 are *denied*.

Civil Service Commission

/s/ Cynthia Ittleman  
Cynthia Ittleman  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Ittleman, Stein & Tivnan, Commissioners [Camuso – Not Participating]) on June 17, 2021.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Bryan Decker, Esq. (for Appellant)  
David Fredette, Esq. (for Appointing Authority)  
Jennifer Samson (for Appointing Authority)  
Michele Heffernan, Esq. (HRD)