

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

RAPHAEL CINTRON,
Appellant

v. D-07-190

MBTA¹ TRANSIT POLICE DEPARTMENT,
Respondent

Appellant's Attorney: Stephen C. Pfaff, Esq.
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Boston, MA 02110

Respondent's Attorney: Patricia M. Lucek, Esq.
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Hearing Officer: John J. Guerin, Jr.².

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Raphael Cintron (hereafter "Appellant") is appealing the decision of the Respondent, MBTA Transit Police Department (hereafter "MBTA PD") as Appointing Authority, to suspend him via written notice dated March 19, 2007 for three (3) working days, without pay, from his employment as a Police Officer. The appeal was timely filed. A hearing was held on November 16, 2007 at the offices of the Civil Service Commission (hereafter "Commission"). Two (2) tapes were made of the hearing. Witnesses were ordered to be sequestered, except for the Appellant and MBTA PD Deputy Chief Dolores Ford-Murphy (hereafter "D/C Ford-Murphy"). As no notice was received from either party, the hearing was declared private. Proposed Decisions were submitted by the parties

¹ MBTA will serve as an abbreviation for the Massachusetts Bay Transportation Authority.

² John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including the referenced credibility assessments, which were made by Mr. Guerin.

thereafter, as instructed.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits (JE's) 1 - 10 and Respondent's Exhibits (AA's) 1 - 5) and the testimony of William Pratti (hereafter "Mr. Pratti"), Richard DeVasto (hereafter "Mr. DeVasto"), D/C Ford-Murphy and the Appellant, I make the following findings of fact:

1. The Appellant is a tenured civil service employee of the MBTA PD in the position of Police Officer. He had been employed by the Appointing Authority for approximately ten (10) years at the time of the three (3) day suspension. (Testimony of Appellant and JE 4)
2. The Appellant's prior discipline includes a written reprimand for violation of MBTA PD Manual, Chapter 100, Section 5.0, Core Values, and Section 5.5, Treating All Persons with Dignity and Respect; MBTA PD Manual, Chapter 101, Section 2.4, Conduct and Deportment; and MBTA PD Manual, Chapter 71, Section 5.5, Procedures as the result of a citizen complaint. In part, the complainant was found to be credible when he stated that the Appellant "told me to shut the fuck up, and to do as I'm told, because he has been up since 6:00 and he wasn't taking any shit from me." The written reprimand was dated November 3, 2003. (JE 10)
3. On October 26, 2006, the MBTA PD received a citizen complaint about a police officer. (Testimony of D/C Ford-Murphy and JE's 3, 4 and 6)
4. D/C Murphy-Ford is one of three (3) Deputy Chiefs and reports directly to the Chief of the MBTA PD. She is the administrative services Deputy Chief and oversees the Professional Standards Unit which handles citizen complaints against officers. She also handles all discipline against officers and credibly testified that her unit takes citizen complaints seriously in order to preserve and protect the professional image of the MBTA PD. (Testimony of D/C Ford-Murphy)

5. Sergeant Detective Kenneth Sprague (hereafter “Sgt. Det. Sprague”) works in the Professional Standards Unit and was assigned to investigate the complaint. Sgt. Det. Sprague reports to D/C Ford-Murphy. (Testimony of D/C Ford-Murphy and JE’s 3 and 4)
6. The complainant, Mr. Pratti, alleged that, at approximately 5:00 p.m. on October 26, 2006, an unidentified MBTA PD Officer who was driving marked police cruiser #7078 on Canal Street in Boston had verbally and physically abused him. (JE’s 3 and 6)
7. Sgt. Det. Sprague identified and interviewed three (3) witnesses to the events, Mr. DeVasto, Paul Russo (hereafter “Mr. Russo”) and John Tano (hereafter “Mr. Tano”). Sgt. Det. Sprague also interviewed Mr. Pratti. (JE’s 3 and 4)
8. On October 26, 2006, at approximately 5:00 p.m., the Appellant was on duty and, in the course of his patrol duties, the Appellant was driving marked police cruiser #7078 on Canal Street in Boston. (Testimony of Appellant and JE’s 3 and 7)
9. On Canal Street, the Appellant came upon a parking dispute between two (2) motorists. Mr. Russo was standing in an empty parking space, “holding” the space for Mr. Tano while Mr. Tano turned his vehicle around. By standing in the space, Mr. Russo was preventing another vehicle with New Hampshire license plates from backing into the parking space. (Testimony of Appellant, Testimony of Mr. Pratti, Testimony of Mr. DeVasto, JE’s 3 & 7 and AA’s 2 & 5)
10. At first, the Appellant verbally demanded that Mr. Russo relinquish the parking spot so the New Hampshire registered vehicle could park and get out of the middle of the street. Then, the Appellant utilized his cruiser’s air horn but Mr. Russo was still trying to tell the Appellant why he was attempting to “save” the spot for Mr. Tano. The Appellant then exited his police cruiser. Witnesses reported that, after exiting his police cruiser, the Appellant screamed at several persons in an unprofessional manner. He stated to Mr. Russo, “Now you made me get out of my car.” The Appellant threatened to arrest Mr. Russo for preventing the New Hampshire registered vehicle from parking. (Testimony of Mr. Pratti, Testimony of

Mr. DeVasto, JE's 1, 3, 6, 7 & 8 and AA's 1, 2 and 5)

11. Mr. Pratti and Mr. DeVasto were standing nearby in front of 129 Canal Street during the events described above. Neither Mr. Pratti nor Mr. DeVasto knew Mr. Russo or Mr. Tano prior to October 26, 2006. Mr. Pratti is a disabled senior-citizen who was assisting Mr. DeVasto with his vendor business that evening. There was a Boston Bruins hockey game scheduled that evening and Canal Street is in close proximity to the Bruins' arena. Both Mr. Pratti and Mr. DeVasto credibly testified that the street was not very busy at the subject hour of 5:00 p.m. (Testimony of Mr. Pratti, Testimony of Mr. DeVasto and JE 3)
12. All witnesses testifying at the Commission hearing or interviewed prior, including the Appellant, report that the Appellant told Mr. Russo, "Now you made me get out of my car." Mr. Pratti then attempted to speak with Appellant and explain that "saving" a parking spot is a common practice in the area. Appellant stated to Pratti, "Get the fuck back on the sidewalk." Mr. Russo reported seeing the Appellant push Pratti, causing him to stumble. The Appellant then threatened to arrest Mr. Pratti. At that point, Mr. Russo got back on the sidewalk, the New Hampshire motorist parked his car and the Appellant drove away. (Testimony of Mr. Pratti, Testimony of Mr. DeVasto, Testimony of Appellant, JE 3 and AA 1)
13. After the Appellant had resolved the parking dispute in this way, Mr. Russo went across the street to speak with Mr. Pratti. Mr. Russo gave Mr. Pratti his contact information in case Mr. Pratti wished to file a complaint against the Appellant. Mr. Tano had, by then, turned around and picked Mr. Russo up and they left the area. Mr. Russo provided an affidavit confirming that what was in the report of his interview with Sgt. Det. Sprague was true. (AA's 1 and 5)
14. All witness accounts reported that the Appellant was using a loud voice in anger and hostility and that the area was not very busy at the time. The Appellant testified that he was using a "loud and commanding" voice in order to be heard above the din of the area as it was very busy at the time and the scene was somewhat chaotic. He further testified that he never used

foul or abusive language in the conduct of his duties during the subject incident. I do not credit the Appellant's testimony in this regard as all other witness accounts were independently corroborated and are not consistent with his version of events, that I find were crafted to be more favorable to his cause. This is equally true of his official reports filed with the MBTA PD. (Testimony of Appellant, Testimony of Mr. Pratti, Testimony of Mr. DeVasto, JE's 3 & 7 and AA1)

15. Mr. Pratti presented at the Commission hearing as somewhat agitated but was credible in his overall testimony. This Hearing Officer had to caution him once to remain calm in his demeanor. This did not detract from his recollection of events of October 26, 2006, however. I believe it was the reliving of the situation that caused his anxiety at the Commission. (Demeanor of Mr. Pratti)

16. Mr. DeVasto had a very calm and pleasant way about him. He credibly testified that he was a veteran street vendor in the area of the TD Banknorth Garden and, because of his apparent knowledge of the customs and habits of the area, I credited his testimony regarding the saving of parking spots. He, as well as Mr. Pratti, had no reason to make false statements regarding this incident. In fact, Mr. DeVasto testified that, once Mr. Pratti was threatened with arrest by the Appellant, he (Mr. DeVasto) concluded his own participation in the incident, not wishing to become part of the problem. Here, I credit his wisdom. (Demeanor of Mr. DeVasto)

17. Mr. DeVasto testified at the Commission hearing that, while the parking situation "could have been handled easily," the Appellant was "angry and a bit explosive." (Testimony of Mr. DeVasto)

18. All witness accounts reported that the Appellant pushed Mr. Pratti. Mr. Pratti and Mr. DeVasto testified that Mr. Pratti was injured by stumbling into the corner of the license plate on his personal vehicle as a result of being pushed. The Appellant testified that he never pushed Mr. Pratti but only put his hand up to stop Mr. Pratti from advancing toward him.

This, the Appellant claimed, was part of his law enforcement training and could have been misinterpreted as a push by the untrained eyes of the witnesses. I do not credit the Appellant's testimony in this regard as all other witness accounts were independently corroborated and are not consistent with his version of events, that I find were crafted to be more favorable to his cause. This is equally true of his official reports of this incident filed with the MBTA PD. (Testimony of Appellant, Testimony of Mr. Pratti, Testimony of Mr. DeVasto, JE's 3 & 7 and AA1)

19. Mr. Pratti testified at the Commission that he filed the citizen's complaint against the Appellant because the Appellant laid his hands on him. (Testimony of Mr. Pratti)
20. MBTA PD Manual, Chapter 101, Section 2.1, Loyalty and Integrity states in part, "An Officer shall be faithful to his/her Oath of Office, Oath of Honor, Code of Ethics, the principles of professional police work and the goals, objectives and Core Values of the Department." (JE 9)
21. MBTA PD Manual, Chapter 101, Section 2.3, Behavior, states in part, "Officers, while on or off duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit upon himself or herself or the Department." (Id.)
22. The MBTA PD has a discipline policy that follows the principles of progressive discipline. The MBTA PD's discipline policy states that the "steps in the progressive discipline process are a guide and may be bypassed based on the seriousness of the offense and any past discipline." (AA 4)
23. Based upon the Appellant's previous disciplinary record for a similar incident as well as the severity of the infraction, Sgt. Det. Sprague recommended a five (5) day suspension along with anger management counseling. However, D/C Ford-Murphy made the ultimate decision to recommend a three (3) day suspension in order to better adhere to the principles of progressive discipline. This was because the Appellant's only other sustained discipline was

a written reprimand. (Testimony of D/C Ford-Murphy)

24. I found D/C Ford-Murphy to be professional and responsive in her testimony. I credited the fact that she was dedicated to the principles of progressive discipline as a tool to correct behavior and not simply to punish miscreants.

25. The Appellant was issued a three (3) day suspension, without pay, on March 19, 2007 by Deputy Chief John A. Martino. The Appellant subsequently filed this appeal of the suspension with the Commission. (JE 1)

CONCLUSION

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971).

The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). 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 by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. "Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question, their ability and fitness to perform their official responsibilities." Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986).

Police Officers are granted their authority by the Commonwealth in order to maintain an orderly society and to protect the rights of citizens. The power granted to police officers is immense and requires adherence to the highest ethics of office and commitment to follow the principles of law. Both sworn and civilian members of the Department are expected to abide by standards of behavior that are professional and appropriate to the mission of the Department and the integrity of the organization.

In this case, the Appellant had notice of the rules of the MBTA PD through his academy training as well as through his receipt of the Department Manual. Further, the application and enforcement of these rules has been reinforced with the Appellant through his previous discipline. The Appellant was fully aware that his conduct was intolerable and that further violations would result in more severe sanctions.

By using obscenities, losing his temper, and especially, by physically assaulting a disabled senior citizen who was trying to offer assistance, the Appellant brought reproach and discredit upon himself and the MBTA PD. In addition, by making false statements in his statement about the incident, the Appellant was not faithful to his Oath of Office, Oath of Honor or Code of Ethics. An Appointing Authority is well within its rights to take disciplinary action when a police officer has “a demonstrated willingness to fudge the truth in exigent circumstances” because “[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” See Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 801 (2004); citing City of Cambridge, supra at 303.

There is abundant proof that the Appellant violated the MBTA PD’s rules as charged. Both Mr. Pratti and Mr. DeVasto were credible witnesses. The other witness interviews with Mr. Tano and Mr. Russo further bolster that credibility. The witnesses were interviewed separately and all accounts corroborated one another, whereas the Appellant’s account is inconsistent with that of Mr. Pratti as well as of the other three witnesses. The Appellant was not a credible witness. The Appellant also claims that he did not push Mr. Pratti. However, two independent eyewitnesses, as well as Mr. Pratti, all assert that the Appellant did push Mr. Pratti. The Appellant also claims that he did not swear at Mr. Pratti and that he was loud only to bring order to the situation. Again, all other credible accounts refute his statements.

Unfortunately, this is one more example of making a situation worse for oneself by not simply owning up to a mistake. Everyone has an off day. Law enforcement is highly stressful and

officers find themselves in a myriad of situations where they are not dealing with reasonable people or circumstances. Here, however, the Appellant began addressing the instant matter at a heightened level of temperament, thus creating a bad situation out of a relatively minor one.

By a preponderance of the credible evidence presented at this hearing, I find that the MBTA PD has sustained its burden of proving just cause to issue the three (3) day suspension to the Appellant. Therefore, the appeal on Docket Number D-07-190 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on June 26, 2008.

A true record. Attest:

Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Stephen C. Pfaff, Esq. (for Appellant)

Patricia M. Lucek, Esq. (for Appointing Authority)