

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

MATTHEW DABENIGNO,
Appellant

v.

G1-20-152

TOWN OF STONEHAM,
Respondent

Appearance for Appellant:

Daniel J. Moynihan, Esq.
Mark Russell, Esq.
Law Office of Daniel J. Moynihan, P.C.
221 Main Street
Stoneham, MA 02180

Appearance for Respondent:

Richard F. Massina, Esq.
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Commissioner:

Christopher Bowman¹
Cynthia Ittleman

SUMMARY OF DECISION

The Commission allowed the Appellant's bypass appeal for original appointment as a permanent, full-time Stoneham police officer and ordered his reconsideration based on its findings and conclusion that the Town failed to establish by a preponderance of the evidence the necessary nexus between the Appellant's single serious, but isolated, misconduct as a teenager and the Appellant's current ability to meet the high standards required of police officers as demonstrated by his subsequent unblemished and distinguished record.

¹ Commissioner Ittleman conducted the remote full hearing regarding this appeal, but she retired from the Commission prior to drafting a decision. For that reason, the appeal was assigned to me. I have reviewed the entire record in this matter, including the audio / video recording of the full hearing and all exhibits.

DECISION

On October 21, 2020, the Appellant, Matthew Dabenigno (Appellant), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Stoneham (Town) to bypass him for original appointment to the position of permanent, full-time police officer in the Town's Police Department (Department). On January 19, 2021, I held a remote pre-hearing conference. On April 7, 2021, Commissioner Ittleman conducted the remote full hearing via Webex, which I have reviewed in its entirety.² The hearing was recorded via Webex and both parties received a link to access the recording.³

FINDINGS OF FACT

The Appellant entered eight exhibits (Appellant Exhibits 1-8), the Respondent entered three exhibits (Respondent Exhibits 1-3), and the parties entered five Joint Exhibits (Joint Exhibits 1-5). At the request of Commissioner Ittleman, the Town submitted the following documents which have been marked accordingly as post hearing (PH) exhibits: PH Exhibit 1: Candidate 3's court disposition; PH Exhibit 2: Candidate 3's background report; PH Exhibit 3: Lt. Stefanelli's interview notes of Candidate 3; PH Exhibit 4: Appellant's court disposition; PH Exhibit 5: Appellant's background report; PH Exhibit 6: Lt. Stefanelli's interview notes of Appellant; PH Exhibit 7: Stoneham PD Rules and Regulations; PH Exhibit 8: Lt. Stefanelli's interview notes of Candidate 6; PH Exhibit 9: Lt. Stefanelli's interview notes of Candidate 8A.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

³ Should either party file a judicial appeal of this decision, the plaintiff is 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. If such an appeal is filed, electronic copy of the hearing recording, previously sent to the parties, should be used to transcribe the hearing.

Based upon the evidence and the testimony of the following witnesses:

For the Town:

- James McIntyre, Police Chief, Town of Stoneham;

For the Appellant:

- Ms. B⁴;
- David Pignone, Athletic Director, Stoneham Public Schools;
- Matthew Dabenigno, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

Appellant's Background

1. The Appellant, who was 25 years old at the time of the hearing before the Commission, is a lifelong resident of the Town of Stoneham. While attending Stoneham High School, the Appellant was a member of the varsity football and lacrosse teams and served as captain of both teams. (Testimony of Appellant)
2. Contacted as part of the background investigation regarding his application to be a police officer, his high school football coach stated that he could "... gush about this kid for a long time." He described the Appellant as "honest and dedicated" and that he wished that he

⁴ The testimony of this witness relates to the criminal conduct of her son, who is not a party to this appeal. To avoid identifying the name of her son, the Commission, consistent with its protocols regarding confidentiality and privacy, has opted to identify this witness as Ms. B. and her son as Mr. B.

could coach with him today⁵ “ ... because of the type of person he [the Appellant] is.” (Post Hearing Exhibit 5)

3. The Appellant received a bachelor’s degree in criminology. He was a member of the varsity, Division III football program for three years in college and graduated with a 3.13 GPA. As part of his academic program, the Appellant completed an internship at Framingham / Natick District Court. (Testimony of Appellant)
4. After graduating from college, the Appellant was hired by the Stoneham Public Schools in 2013 as an assistant football coach and, in 2019, was appointed as the head coach of the high school’s varsity lacrosse team. He also serves as a substitute teacher. (Testimony of Appellant and Pignone)
5. David Pignone, the Athletic Director at Stoneham High School, who has known the Appellant for fifteen years, first when the Appellant was a student and now as an employee, speaks glowingly of the Appellant’s character, demeanor and performance. Based on his observations, Mr. Pignone believes that the Appellant would be a valuable addition to the Town’s Police Department. Specifically, he referred to the Appellant as “the quiet man” who has the ability to deescalate stressful situations involving parents and students. He speculated that, if appointed as a police officer, the Appellant would quickly become a trusted advisor and “right hand” to the Police Chief. (Testimony of Pignone)⁶

⁵ As referenced in a subsequent finding, the Appellant is now employed as a coach at Stoneham High School.

⁶ Although Mr. Pignone was elected to the Town’s Select Board just prior to appearing before the Commission, his testimony before the Commission related solely to his observations of the Appellant as a student and employee. He also referenced during his testimony that he respects that the Police Chief is charged with making “tough decisions” regarding the appointment of police officers.

6. The Appellant has also been employed as a contractor since 2011, constructing and installing windows and doors. From 2017 to 2018, he was a security officer for a financial investment company in Boston. (Testimony of Appellant and Appellant Exhibit 1) His supervisor at the contracting company describes the Appellant as an “excellent employee” who is “punctual and friendly.” (Post Hearing Exhibit 5)

The November 2014 Incident

7. In what he now calls “pure stupidity, immaturity” and a misplaced sense of loyalty to a childhood friend, the Appellant, when he was 19 years old and a sophomore in college, along with his friend (Mr. B), broke some windows of a church located next to the family of Mr. B’s house, causing over \$6,000 in damage. (Joint Exhibit 5; Testimony of Appellant)
8. The Appellant, as a child, developed a close friendship with Mr. B and his family who also reside in Stoneham, in a home that abuts the property of a local church (church). (Testimony of Ms, B & Appellant)
9. During the years prior to 2014, the Appellant had heard Mr. B’s family complain about the management of the church property, including that the church had removed a fence and bushes separating the property from the B’s property purportedly causing churchgoers a clear line of sight into their back yard and the back windows of the B’s home and allowing lights from cars parking behind the church to shine directly into the back windows of the home. (Joint Ex. 5; App. Ex. 8; Testimony of Ms. B & Appellant)
10. On November 30, 2014, Mr. B asked his friend, the Appellant, who was 19 years of age and visiting the B’s home, to walk over to the church, directly behind B’s home, to break several windows. (Testimony of Appellant)

11. In the early morning hours of November 30, 2014, the Appellant and Mr. B disguised their faces and clothing before walking to the church where they broke three sets of double-hung windows with hockey sticks. (Joint Exhibit 5; Testimony of McIntyre; Testimony of Appellant)
12. After breaking the windows, the Appellant and Mr. B returned to Mr. B's family house and laughed about what they had just done. (Joint Exhibit 5 at J0055; Testimony of Appellant)
13. Later that morning, the Appellant woke up with a "pit in [his] stomach" due to his remorse for what he had done. (Testimony of Appellant)
14. Also later that morning, a representative from the church contacted the Stoneham Police Department to report the broken windows and provided the Police Department with a video recording of two men breaking the windows. (Joint Exhibit 5; Testimony of McIntyre)
15. After searching the area around the broken windows and watching the surveillance video, the investigating officers learned that there were footprints in the snow leading back to Mr. A's house where they also found hockey sticks that fit the description from the surveillance video. (Joint Exhibit 5; Testimony of McIntyre)
16. Mr. B confessed to an interviewing officer and described the incident in which he and the Appellant had broken the windows. As a reason for committing the crime, Mr. B stated that there was an "ongoing feud" between his family and the church. (Joint Exhibit 5 at J0054).
17. Following his interview, Mr. B called the Appellant, told him about his interview and told the Appellant "they [the Police] know everything." (Testimony of Appellant)
18. The Appellant drove to the Stoneham police station and admitted to his criminal conduct. The Appellant recalls feeling "disgusted" with himself at the time and embarrassed for the harm that his actions had caused to his family, the family of Mr. B and the church community. He

recalls being in disbelief that, despite his lifelong dream of becoming a Stoneham police officer, he was now “on the other side of the table” of a police investigation interview.

(Testimony of Appellant)

19. The Appellant received a summons for an application for a criminal complaint alleging destruction of property and was summoned to a Clerk’s Hearing⁷ at Woburn District Court where the Appellant admitted to his actions and apologized, the Clerk continued the case for 6 months, and after community service was completed and restitution was paid, the complaint was denied. (Joint Ex. 5; Post Hearing Ex. 4 Testimony of Appellant)

20. The Appellant paid \$3700 in restitution to the church and completed community service by helping at a fishing derby directed and supervised by SPD Police Officer B, who is B’s brother, and cleaned up brush and leaves at local baseball parks. (Joint Ex. 5; App. Ex. 2 & 8; Testimony of Appellant and Chief McIntyre)

21. The Appellant also wrote an apology letter to the church. The Appellant’s letter to the church congregation, dated March 18, 2015, states:

“I would like to apologize for my actions and involvement in the vandalism (sic) of your church. It was wrong and I will never have a good reason or excuse for doing it that is worth telling. It was a childish and cowardice act. I should never have gotten involved. My friend was wrong to believe that this was a proper course of action for two adults to do to handle a neighborhood misunderstanding. I was wrong to believe that I had a justifiable reason for helping him. I hope that you can forgive me for what I did, but I know I am undeserving of your forgiveness and undeserving of your congregation’s kindness in dealing with this situation.” (App. Ex. 2 & 8; Testimony of Appellant)”

⁷ The hearing is held before a District Court clerk magistrate to determine if there is probable cause to believe a person has committed a crime. The magistrate will determine whether there is sufficient evidence to issue a complaint. (See [G.L. c. 218, § 26](#); and <https://www.mass.gov/info-details/before-your-arraignment>.) In this matter, the clerk never held the hearing and continued the Appellant’s case for six months, after which point the request for complaint was denied by the clerk.

The Town's Decision to Bypass the Appellant

22. On March 3, 2019, the Appellant took the civil service examination for police officer and received a score of 96. (Stipulated Facts)
23. On September 1, 2019, the Appellant's name was placed on an eligible list of candidates established by the state's Human Resources Division (HRD) for Stoneham Police Officer. (Stipulated Fact)
24. On September 27, 2019, HRD issued Certification No. 06680 to the Town of Stoneham from which the Town was authorized to appoint two candidates from the first five candidates willing to accept appointment. (Stipulated Fact)
25. The Appointing Authority for police officers in Stoneham is the Town Manager. (Testimony of Chief McIntyre)⁸
26. The Town had initially intended to appoint two police officers, but, given the subsequent uncertainty after the pandemic began in the Spring of 2020, the Town decided to appoint only one police officer from the certification. (Testimony of Chief McIntyre)
27. The Appellant was ranked first among those willing to accept appointment on the certification. (Stipulated Fact)
28. Chief McIntyre appointed Det. Patrick Carroll and Det. Sgt. Robert Kennedy to conduct background checks on the Appellant and other candidates. (Supp. Ex. 2 & 5; Testimony of Chief McIntyre)
29. Det. Carroll's report on the Appellant's background documents three references who have known the Appellant between ten (10) and seventeen (17) years. The references emphasized

⁸ The Town Manager was not called to testify before the Commission.

the Appellant's positive character traits including his work ethic; that he is loyal, honest, and dedicated; and his positive attitude toward life. (Post Hearing Exhibit 5)

30. Det. Carroll states in his report under "Legal/Motor Vehicle" that the Appellant was "summonsed to court for the charge of Destruction of Property Over \$250" and notes that the Appellant disclosed "this in his application". Det. Carroll did not contact the church as part of the background investigation. (Supp. Ex. 5)
31. The Appellant was interviewed by Chief McIntyre, Lt. Stefanelli⁹, and Lt. Kranefuss of the SPD (herein "interview committee") on March 10, 2020. (App. Ex. 3a & 3b; Supp. Ex. 6; Testimony of Appellant and Chief McIntyre)
32. The interview committee asked the Appellant about the incident at the church and he admitted his role in causing the property damage and stated it was a mistake, that he had apologized and paid restitution, and that he had embarrassed himself and his family. (App. Ex. 3a & 3b; Supp. Ex. 6; Testimony of Appellant & Chief McIntyre)
33. The interview committee was concerned about the Appellant's exercise of poor judgment by damaging the church property and was concerned about his potential motivation behind such an act. (Testimony of Chief McIntyre)
34. The interview committee mistakenly believed that a criminal complaint had been filed in court against the Appellant, information that was passed on to the Town Administrator. (Testimony of Chief McIntyre)
35. Chief McIntyre met with the Town Administrator, reviewed the concerns of the interviewing team regarding the Appellant's prior criminal conduct and recommended that the Town

⁹ Lt. Stefanelli was an investigator involved in the investigation of the vandalism at the church. (Testimony of Chief McIntyre)

Administrator bypass the Appellant for appointment as a police officer. There is no document that memorializes the conversation between Chief McIntyre and the Town Administrator regarding the decision to bypass the Appellant. (Testimony of Chief McIntyre)

36. The Town Administrator accepted the recommendation passed on to him by the Police Chief and bypassed the Appellant, instead choosing a candidate who was ranked second among those on the certification willing to accept appointment. That candidate failed to meet the minimum physical fitness requirements of the Municipal Police Training Committee prior to starting the Police Academy, resulting in the Town rescinding that candidate's conditional offer of employment. (Joint Ex. 2; Testimony of Chief McIntyre)

37. The Town then issued a conditional offer of employment to the candidate ranked third (Candidate 3) on the certification, who completed the Police Academy and now serves on the Town's Police Department. (Testimony of Chief McIntyre)

38. In 2012, Candidate 3 was charged with possession of marijuana after a traffic stop regarding a vehicle in which he was the passenger. As part of the traffic stop, police found 1.7 ounces of marijuana and a digital scale in a backpack (subsequently determined to belong to the driver of the vehicle.) The criminal charge against Candidate 3 was dismissed as part of the so-called "clean start" program.¹⁰ Separately, in 2013, when Candidate 3 was approximately 20 years old, his driver's license was suspended for failure to pay fines and he had "multiple speeding entries" on his driving record. Candidate 3 was also fired from a restaurant for breaking a computer at work. Detective Sgt. Kennedy of the SPD contacted the restaurant manager who confirmed Candidate 3's termination but, after speaking with fellow employees, Det. Sgt.

¹⁰ Chief McIntyre testified before the Commission that another person in the vehicle ultimately admitted to owning the backpack that contained the 1.7 ounces of marijuana.

Kennedy determined the breaking of the computer was “accidental” and noted that Candidate 3 was 18 years old at the time. (Post Hearing Ex. 2; Testimony of Chief McIntyre)

39. The Town sent the Appellant a bypass letter on September 24, 2020 citing the November 2014 incident at the church and the positive attributes of Candidate 3. (Joint Ex. 2; Testimony of Appellant and Chief McIntyre)
40. The positive reasons associated with Candidate 3 included: a) that Candidate 3 “answered questions from the interview panel appropriately with detail”; b) that Candidate 3 obtained a bachelor’s degree in criminal justice; c) prior experience as an auxiliary and special police officer and d) a brief tenure as a correction officer. (Joint Exhibit 2)
41. The Appellant filed a timely appeal with the Commission on October 21, 2020 and a pre-hearing was held January 19, 2021. (Stipulated Facts) As part of that pre-hearing, I inquired with the parties whether either party had contacted the church regarding whether they harbored any concerns regarding the Appellant’s potential appointment as a Stoneham Police Officer. At that point, neither party had done so.
42. The attorney for each party met, via video conference, with the Elder of the church who, through a Proffer of Testimony, acknowledged that there was a property dispute with the B’s family, that the Appellant committed the property damage, and stated that the church has no objection to the Appellant becoming a police officer for the Stoneham Police Department nor does he foresee any public relations issues between the church and the Town or Police Department should the Appellant be hired as a police officer. (App. Ex. 8)

Legal Standard

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases, by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder *and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.* *Id.* (*emphasis added*)

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder *have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights* notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights. (*emphasis added*)

The fundamental mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31, which command, among other things, “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” 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. A mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority

of a “certification” which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L. c. 31, §§ 6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the “2n+1” formula. G.L. c. 31, § 27; PAR.09.

In order to deviate from the rank order of preferred hiring, and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L. c. 31, §§ 1 and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a “reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and was “reasonably justified”. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006). and cases cited; Beverly v. Civil Service Comm’n 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

Analysis

Although no finding of probable cause was made and no criminal complaint ever issued, it is undisputed that the Appellant, now 27 years old, engaged in serious, unlawful misconduct in 2014, when he was 19 years old. The Appellant’s actions on the night in question are deeply troubling. In the dark of night, he and a friend, after putting on hoodie-sweatshirts and hats to shield their identity, smashed hockey sticks through the windows of a church adjacent to the

friend's home, causing thousands of dollars in damage to the church. Immediately after the incident, the two teenagers retreated to the friend's home and laughed about their inexcusable behavior. There is a tragic irony here that the Appellant would use hockey sticks, used in a team sport which has earned him well-deserved respect and admiration for his accomplishments, to cause such destruction and harm. I give no weight or consideration to the fact that the plot for this unlawful conduct was hatched by the Appellant's friend.

The question before the Commission, however, is whether that singular incident from 2014 provided the Town with reasonable justification to bypass the Appellant for appointment as a police officer in 2020. In a series of prior decisions, the Commission has recognized that, while employers, including public safety agencies, may, after a thorough investigation, take account of a candidate's past criminal history, they must provide the candidate with an opportunity to address it, and weigh any infraction against the candidate's entire life record, as opposed to making hiring decisions based simply on a past snapshot. In order for an appointing authority to rely on a record of prior misconduct as the grounds for bypassing a candidate, they must show that there is a sufficient nexus between the prior misconduct and the candidate's current ability to perform the duties of the position to which he seeks appointment (i.e. – police officer). While the Commission, when there is no evidence of political or personal overtones, owes substantial deference to the judgment of criminal justice Appointing Authorities regarding hiring decisions, that deference is not without limits. See Finklea v. Boston Police Dep't, 30 MCSR 93 (2017) (Commission unanimously concluded that the BPD failed to show a nexus between the Appellant's admission to receiving stolen property 14 years prior and his current ability to serve as a police officer); Finklea v Civil Service Commission and Boston Police Department, Suffolk Superior Ct. (Fahey, J.) 1784CV00999 (Feb. 5, 2018)(affirmed that 14-year-old CWOFF was

insufficient predicate for bypass); Morgan v. Boston Police Dep't, 33 MCSR 131 (2020) (Commission unanimously concluded that the BPD failed to prove a nexus between the Appellant's criminal conduct 16 years prior and his current ability to serve as a police officer); Teixera v. Dep't of Correction, 27 MCSR 471 (2014) (Commission unanimously concluded that DOC failed to show a nexus between the criminal conduct from 21 years prior (solicitation - prostitution) of the Appellant, then 38 years old, with his current ability to perform duties of Correction Officer.) Styllien v. Boston Police Dep't, 31 MCSR 154, 209 (2018) (overturning bypass based on a lack of evidence, and consequent failure to indicate a pattern of criminal behavior or poor driving habits).

As a preliminary matter, it is problematic that the Commission never heard from the Town Administrator, who serves as the appointing authority, and who was responsible for making the final decision on whether to bypass the Appellant for appointment. In fact, there is no documentation memorializing the conversation between the Police Chief and the Town Administrator regarding the decision to bypass the Appellant. The Police Chief's memory was limited, at best, regarding what was actually discussed during his conversation with the Town Administrator. Thus, it is unknown, for example, whether the Town Administrator's decision was improperly influenced by the erroneous conclusion that the Appellant had been criminally charged. Relatedly, it is also problematic, and inexplicable, particularly given the relatively small size of the Town's Police Department, and the fact that only one police officer was being appointed, that the person charged with making the appointment (the Town Administrator), never even met with the Appellant, to hear from him directly, before making an assessment of whether this one incident as a teenager justified his bypass for appointment half a dozen years later. Put another way, the Commission, after hearing live testimony from the Police Chief, the

Appellant, Ms. B, and the Appellant's current employer, has been provided with far more information regarding the Appellant's suitability for employment than the Town Administrator, a somewhat upside-down result that calls into question whether the Town engaged in a reasonably thorough review here.

The actual bypass letter sent to the Appellant by the Town Administrator sheds little or no light on how, or whether, the Town has shown that there is a sufficient nexus between the Appellant's misconduct as a teenager with his suitability for employment as a Stoneham police officer six years later. Rather, the letter simply states that the Appellant has not met the "standards" of the Stoneham Police Department and then offers a summary of the criminal conduct from 2014, followed by a summary of the positive reasons associated with the selected candidate, discussed later in this analysis.

As part of its opening statement before the Commission, the Town argued that the 2014 incident would be "discoverable" in certain situations if the Appellant were called upon to testify as a witness, implying that criminal prosecutions could be compromised by the Appellant's employment as a Stoneham police officer. There was no evidence, in the form of testimony or documentation, to support this argument.

In his testimony before the Commission, Chief McIntyre more squarely sought to address the potential nexus between the Appellant's prior misconduct and his current suitability to serve as a police officer. Specifically, Chief McIntyre testified that he would be "concerned" about having the Appellant respond to a call at the church (located in Stoneham), effectively sending the Appellant back to a church that he had vandalized several years earlier. However, neither Chief McIntyre, nor any other member of the Department, had contacted church officials before jumping to this conclusion. As of the date of the full hearing, Chief McIntyre had also not

reviewed the proffer regarding statements made by the Elder of the church who both parties agree was speaking on behalf of the church's leadership. Specifically, both parties agreed that, had the Elder testified before the Commission, he would have testified that: a) "... on behalf of [the church], there is no objection or opposition to Matthew Dabenigno being appointed to the position of police officer with the Town of Stoneham or any other agency ..." and b) "... it is the opinion of [the Elder] and [the church] that the appointment of Matthew Dabenigno to the position of police officer in the town of Stoneham would not affect the public relationship between [the church] ... and the town of Stoneham Police Department."

In its post-hearing brief, the Town argues that the church Elder was "... speaking only on behalf of the Church as an organization, but not on behalf of the Church's individual patrons ... [and] while the Town takes the Church's opinion into account, Mr. Dabenigno's actions could still be construed by patrons and Town residents as a crime against a place of worship, or more easily put – a 'hate crime' regardless of Mr. Dabenigno's contention that religion had nothing to do with his crime." Most relevant to this appeal, however, is that the Town, as part of the review process here, did not take *any actual* opinions from the Church into account, whether from individual patrons or the Church leadership. In regard to whether the Appellant's actions were motivated by religious discrimination or constituted a "hate crime", neither the Chief or any member of the interview panel explored that issue with the Appellant -- nor was the Appellant ever charged with any crime. Finally, as referenced above, the Town Administrator never met with the Appellant to assess whether he was motivated by religious discrimination and/or hatred. Put another way, it is not appropriate for the Town to speculate that the Appellant may have engaged in a hate crime without ever giving the Appellant the opportunity to address that allegation, particularly when no criminal charges of any kind were ever filed against him.

Also, the Town appears to have taken a divergent approach to reviewing the negative aspects of the selected candidate's application that, if applied to the Appellant, may have resulted in a different outcome. First, the selected candidate had been terminated from his employment at a restaurant for breaking a computer. The background investigator, instead of simply relying on the termination and the undisputed fact that the Appellant had broken the computer, reached out to former co-workers of the restaurant, received additional information, and ultimately reached the conclusion that the damage caused was an accident. Put another way, the Town sought to put the termination in the proper context to determine whether it could serve as a predictor of future performance as a police officer. Second, the selected candidate, unlike the Appellant, was actually criminally charged with possession of 1.7 ounces of marijuana. As part of the arrest, police officers also discovered a digital scale in the vehicle in which the Appellant was a passenger. The criminal matter was resolved upon the selected candidate's completion of the Clean Start drug prevention program. Again, the Town, in regard to the selected candidate, took the necessary steps to place the selected candidate's prior misconduct into the proper context, effectively allowing it to determine if there was a nexus between that prior misconduct and the candidate's ability to serve as a police officer. That stands in stark contrast to the Town's failure to reach out to church officials in regard to the Appellant's prior misconduct and, even after being presented with evidence that the church leadership does not oppose the Appellant's appointment, effectively dismissing that important information as irrelevant.

In summary, in part due to a review process that was not sufficiently thorough, the Town has failed to show, by a preponderance of the evidence, that there is a sufficient nexus between the Appellant's prior misconduct in 2014 as a teenager and his current ability to perform the

duties of the position of Stoneham Police Officer.¹¹ In fact, all of the evidence presented to the Commission appears to show that the Appellant's misconduct in 2014 was an isolated incident that was out of character for a man that has otherwise defined his life by making good judgments, treating others with respect and courtesy and leading by example. That one dark snapshot from November 2014 simply does not define who the Appellant is today, nor has the Town shown that it is a valid predictor of his ability to meet the high standards required of police officers going forward.

I reach this conclusion fully aware of the Appeals Court's precedent-setting decision in Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300 (1997). That case involved a candidate who, at age 20, had

“... admitted to firing a sawed-off shotgun within 500 feet of a residence, in violation of G. L. c. 269, s. 12E. A judge of the Roxbury District Court found her guilty, imposed a \$50 fine, and placed her on probation. In fact, it was the applicant's boyfriend who had fired the shotgun. She had invented her role to protect the boyfriend from a likely conviction of unlawful possession of a firearm, an offense that carried a mandatory penalty of one year of incarceration. In support of that version of events, [the candidate] fibbed to the police and to a judge of the Roxbury District Court.” Id. at 304.

Five years later, the candidate was involved with a domestic incident involving violence. Taken together, these two incidents, including the undisputed fact that she lied (continuously) to police and presumably court officials, caused the City Manager to conclude that this made her a

¹¹ “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” Johnson v. Texas, 509 U.S. 350, 125 (1993). “For most teens, [risky] behaviors are fleeting; they cease with maturity as individual maturity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.” Roper v. Simmons, 543 U.S. 551, 570 (2005) (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty* 58 AM. PSYCHOLOGIST 1009, 1014 (2003)).

poor risk as a police officer. The Appeals Court, in 1997, overturned, the Commission's decision to allow this candidate's bypass appeal, stating in part that: "... It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority."

Several factors distinguish this case from Cambridge. First, the applicant in Cambridge had engaged in brazen untruthfulness, both to police and clearly to court officials, in an attempt to protect her boyfriend from possible incarceration -- a virtually universally-accepted permanent bar from serving as a police officer. Here, the opposite is true. The Appellant has never denied responsibility for his misconduct and has always been forthright to police and court officials about his misconduct. Second, the motivation of the applicant in Cambridge was never in question; she lied to the police and the court to protect her boyfriend from possible incarceration. Here, without ever even broaching the issue with the Appellant, or church officials, the Town relies on the "potential" that members of the church and the Stoneham community could view what the Appellant did as a "hate crime". If that rationale were equally applied to the selected candidate, the Town could have just as easily concluded that there was the potential that the community could view the selected candidate as someone who had been involved in the distribution of drugs or was prone to breaking valuable equipment necessitating dismissal from employment. The Town (appropriately) chose not to jump to such false conclusions about the selected candidate. Rather, as referenced above, the investigator conducted the type of required thorough review, spoke to relevant parties, and reached a well-reasoned conclusion that the selected candidate's prior misconduct did not present a bar to appointment as a police officer. That same type of review was simply never afforded to the Appellant and, in fact, the Town Administrator reached his conclusions about the Appellant without ever even speaking to him.

Finally, the Town has also not shown that the positive attributes of the selected candidate justify the decision to bypass the Appellant. First, the Appellant, like the selected candidate, has a bachelor's degree related to criminal justice. Second, aside from the 2014 incident, the Appellant has a proven track record of leadership and teamwork similar to the selected candidate. Third, in regard to the selected candidate giving "clear" answers at the interview, there is no evidence that the Appellant did not do the same. Finally, after reviewing the entire record, and carefully reviewing the testimony of Chief McIntyre, it is abundantly clear that the Town's decision here hinged on the negative reasons put forth for bypass, as opposed to a comparison of positive attributes between the Appellant and the selected candidate.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. G1-20-152 is hereby **allowed**. Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of permanent full-time police officer in the Stoneham Police Department until he is given one additional consideration for appointment.
- If the Appellant is appointed as a Stoneham Police Officer, he shall receive the same civil service seniority date as the candidate appointed from Certification No. 06680. This date is for civil service purposes only and is not intended to provide the Appellant with any additional compensation or benefits, including creditable service toward retirement.
- Once the Appellant has been provided with the relief ordered above, the Department shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

/s/Christopher Bowman
Christopher Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on July 28, 2022.

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:

Daniel Moynihan, Esq. (for Appellant)
Mark Russell, Esq. (for Appellant)
Richard Massina, Esq. (for Respondent)
Michele Heffernan, Esq. (HRD)
Regina Caggiano (HRD)