

The Commonwealth of Massachusetts

Decision mailed: 6/18/10
Civil Service Commission

YVES DAMBREVILLE,
Appellant

v.

**BOSTON POLICE
DEPARTMENT,**
Respondent

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

Case No.: D-07-354

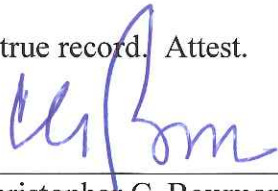
DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on June 17, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 10, 2009. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell and Stein [Marquis, absent], Commissioners) on June 17, 2010.

A true record. Attest.



Christopher C. Bowman
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)(l), 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:

James W. Simpson, Esq. (for Appellant)
Tara L. Chisholm, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
BOSTON, MA 02114

SHELLY L. TAYLOR
Chief Administrative Magistrate

Tel: 617-727-7060
Fax: 617-727-7248

August 6, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Yves Dambreville v. Boston Police Department Newburyport
DALA Docket No. CS-08-147

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Shelly Taylor
Chief Administrative Magistrate

SLT/das

Enclosure

cc: James W. Simpson, Jr., Esq.
Tara L. Chisholm, Esq.

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CIVIL SERVICE COMMISSION

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Suffolk, ss.

Division of Administrative
Law Appeals

Yves Dambreville,
Appellant,

v.

Docket No. D-07-354
DALA No. CS-08-147

Boston Police Department,
Appointing Authority.

Appearance for Appellant:

James W. Simpson, Jr., Esq.
7 Park Street, Suite 209
Attleboro, Massachusetts 02703

Appearance for Appointing Authority:

Tara L. Chisholm, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, Massachusetts 02120

Administrative Magistrate:

Natalie S. Monroe, Esq.

RECOMMENDED DECISION

Yves Dambreville, a detective with the Boston Police Department, is appealing the police department's decision to suspend him for thirty working days for allegedly violating departmental rules and procedures while investigating an armed home invasion. Detective Dambreville appealed the decision in accordance with G.L. c. 31, § 43.

I held a hearing on March 3, 2008, and March 12, 2008, at the offices of the Division of Administrative Law Appeals ("DALA"), 98 North Washington Street, Boston. Because neither party made a written request to open the hearing to the public, the hearing was private.

The Boston Police Department called five witnesses: William Duggan, Susan Dye, Robert Harrington, Daniel Hourihan and Leora Joseph. Detective Dambreville testified on his own behalf and also called three witnesses: Richard Henshaw, Joseph MacDonald and Wayne Williams. Eighteen exhibits (Exhibits 1-18) were entered into evidence during the hearing. There are seven cassette tapes of the hearing.

Detective Dambreville and the Boston Police Department each submitted a post-hearing brief on June 6, 2008. On the same date, Detective Dambreville also filed a motion to supplement the record to admit two grand jury transcripts into the record. I left the record open until June 20, 2008, to allow the Boston Police Department to respond to the motion. The department did not file a response and I admitted the transcripts into the record as follows:

Exhibit 19: March 4, 2003, grand jury testimony of Seth Targete

Exhibit 20: March 13, 2003, grand jury testimony of Patrick Targete

On December 8, 2008, I re-opened the record to admit the Disciplinary Hearing Report, dated October 5, 2007 (the "Report"), that the Chief Administrative Hearing Officer for the Boston Police Department prepared in connection with the disciplinary hearing that was held at the department. Both parties agreed to the admission of the Report and the department submitted it on December 10, 2008. I held the record open for five days to give the petitioner time to review the version of the Report that the department submitted. The petitioner filed no objections. Accordingly, I admitted the Report as Exhibit 21 for the limited purpose of establishing the grounds for the charges that the Boston Police Department brought against Detective Dambreville. Because DALA is required to hold a *de novo* hearing and determine the facts independently, the

document was not admitted as evidence of any of the facts underlying the charges. *See, e.g., Sullivan v. Municipal Court of Roxbury Dist.*, 322 Mass. 566, 572, 78 N.E.2d 618.

620 (1948) (hearing held pursuant to G.L. c. 31, § 43, is *de novo*).

The record re-closed on December 17, 2008.

FINDINGS OF FACT

Based on the documents entered into evidence (Exhibits 1-21), and the testimony of Yves Dambreville, William Duggan, Susan Dye, Robert Harrington, Richard Henshaw, Daniel Hourihan, Leora Joseph, Joseph MacDonald and Wayne Williams, I make the following findings of fact:

1. Yves Dambreville is a detective with the Boston Police Department. He began working as a police officer with the department in 1979 and became a detective in 1986. (Testimony of Yves Dambreville).

2. On January 27, 2003, Detective Dambreville was assigned to an area of Boston that the department refers to as "Area B3." (Testimony of Yves Dambreville).

The Targete Home Invasion and Initial Investigation

3. Norfolk Street in Dorchester is located in Area B3. (Testimony of William Duggan; Exhibit 4).

4. At approximately 11:00 a.m. on January 27, 2003, two men broke into a home located at 506 Norfolk Street in Dorchester. (Exhibits 4, 19).

5. One of the residents, Seth Targete, came downstairs and discovered the two men. (Exhibits 4, 19).

6. One of the assailants was carrying a knife; the other had a long crowbar. (Exhibits 18, 19).

7. The two men forced Seth Targete into a bedroom, made him kneel on the floor, and said they were going to kill him. (Exhibits 18, 19).

8. The man with the crowbar left the bedroom to look for duct tape. (Exhibits 18, 19).

9. As the man was walking towards the kitchen, Seth Targete's brother, Patrick, entered the house through the back door, which opened into the kitchen. (Exhibits 18, 20).

10. When Patrick Targete entered the kitchen, he saw the man with the crowbar. The man saw Patrick and threatened to kill him if he moved. (Exhibits 18, 19, 20).

11. Patrick Targete told the man that he should leave. (Exhibit 19).

12. When Seth Targete heard Patrick, he yelled to his brother and then began struggling with the man with the knife. During the struggle he was stabbed several times in the head, neck, chest, back and leg. (Exhibits 4, 18, 19).

13. As they struggled, the assailant was stabbed in the hip and buttocks with his own knife. (Exhibits 18, 19).

14. While they were struggling, the second assailant came back into the bedroom and hit Seth Targete over the head with the crowbar. (Exhibit 18, 19).

15. Seth Targete fell to the floor and the two assailants then fled. (Exhibits 18, 19).

16. In the meantime, Patrick Targete backed out the back door of the house, ran to the front yard, and called the police. (Exhibits 18, 20).

17. At approximately 11:50 a.m., Boston Police dispatch issued a radio call for police to respond to the home invasion at Seth Targete's house. (Testimony of Joseph MacDonald; Exhibit 4).

18. Sergeant Detective Joseph MacDonald was the Patrol Supervisor for Area B3 on the morning of January 27, 2003. (Testimony of Joseph MacDonald).

19. Sergeant Detective MacDonald was one of several officers who responded to the dispatch call. (Testimony of Joseph MacDonald; Exhibit 4).

20. As the Patrol Supervisor on duty, Sergeant Detective MacDonald took control of the scene. (Testimony of Joseph MacDonald).

21. Because Seth Targete's injuries were life-threatening, Sergeant Detective MacDonald called for an ambulance and also notified the Boston Police Homicide Unit. (Testimony of Joseph MacDonald; Exhibit 4).

22. Lieutenant Detective Robert Harrington, a detective in the Homicide Unit, responded to the crime scene. (Testimony of Yves Dambreville and William Duggan; Exhibit 4).

23. In January 2003, Boston Police Department protocol placed the Homicide Unit in charge of any crime scene involving life-threatening injuries. (Testimony of Yves Dambreville, William Duggan, Joseph MacDonald and Wayne Williams).

24. In January 2003, Boston Police Department protocol provided that the Homicide Unit remained in charge of any investigation involving life-threatening injuries until that unit turned the investigation over to another department or unit. (Testimony of Yves Dambreville, William Duggan, Joseph MacDonald and Wayne Williams).

25. In accordance with Boston Police Department protocol, once Lieutenant Detective Harrington arrived, he was in charge of the crime scene at 506 Norfolk Street until the Homicide Unit transferred responsibility to another unit or department. (Testimony of Yves Dambreville and William Duggan).

26. Photographs were taken of the crime scene, but the crime scene unit did not collect fingerprints, blood samples or other trace evidence. (Testimony of William Duggan).

27. Detective Dambreville arrived at the scene with Detective Wayne Williams. (Testimony of Yves Dambreville and Wayne Williams; Exhibit 4).

28. By the time Detectives Dambreville and Williams arrived, there were at least six other police officers at the scene and Seth Targete had been taken by ambulance to Boston Medical Center. (Testimony of Yves Dambreville; Exhibit 4).

29. Detective Dambreville stayed at the crime scene for approximately ten minutes and then went to Boston Medical Center to see if he could interview Seth Targete. (Testimony of Yves Dambreville and Wayne Williams).

30. While waiting outside Seth Targete's treatment room, Detective Dambreville attempted to interview Patrick Targete. (Testimony of Yves Dambreville).

31. Patrick Targete said he needed a cigarette and to take a walk. He left the treatment area and walked towards the hospital lobby. (Testimony of Yves Dambreville; Exhibits 18, 20).

32. Patrick Targete returned a few minutes later and told Detective Dambreville that one of the men who had broken into his brother's house was in the hospital lobby. (Testimony of Yves Dambreville; Exhibits 18, 20).

33. Detective Dambreville walked to the lobby with Patrick Targete.

(Testimony of Yves Dambreville; Exhibits 4, 20).

34. As they entered the hospital lobby, the suspect saw them and immediately left the hospital. (Testimony of Yves Dambreville; Exhibits 4, 18, 20).

35. Detective Dambreville radioed Boston Police dispatch while two hospital security guards chased after the suspect. (Testimony of Yves Dambreville; Exhibits 4, 18).

36. The hospital security guards caught the suspect a few blocks from the hospital and placed him in custody. (Testimony of Yves Dambreville; Exhibits 4, 18).

37. Boston Police Officers Young and Yanovitch arrived in a police cruiser, took custody of the suspect, and drove him back to the hospital. (Testimony of Yves Dambreville; Exhibits 4, 18).

38. After the suspect was brought back to the hospital, Patrick Targete identified him as the man he had seen in his brother's house earlier that morning. (Testimony of Yves Dambreville; Exhibits 4, 18).

39. Officers Young and Yanovitch placed the suspect, who later was identified as Ernest Edwards, under arrest and took him to the Area B3 police station for booking. (Testimony of Yves Dambreville; Exhibits 4, 18).

40. The police charged Ernest Edwards with assault with intent to murder, assault and battery by means of a dangerous weapon, intent to rob while armed, armed assault in a dwelling, home invasion, and breaking and entering. (Exhibit 4).

41. After Officers Young and Yanovitch had taken Ernest Edwards to the police station, a hospital security guard approached Detective Dambreville and told him

that Ernest Edwards had come into the hospital with two other people: a black woman who had since left and a black man who was in one of the treatment rooms. (Testimony of Yves Dambreville; Exhibits 4, 18).

42. Detective Dambreville went to the treatment room where the man, who identified himself as Jefferson Charles, was being treated for a stab wound. (Testimony of Yves Dambreville).

43. Jefferson Charles told Detective Dambreville that his girlfriend had stabbed him earlier that morning. (Testimony of Yves Dambreville).

44. At the time, Detective Dambreville did not know that Seth Targete had stabbed one of the men who had broken into his home. (Testimony of Yves Dambreville).

45. Jefferson Charles gave Detective Dambreville his alleged girlfriend's name and address. (Testimony of Yves Dambreville).

46. Jefferson Charles also told Detective Dambreville that a close friend, whose nickname was Doug, had brought him into the hospital. He said that although Doug had been his friend for years, he did not know Doug's real name or address. (Testimony of Yves Dambreville).

47. Detective Dambreville suspected that Jefferson Charles had been involved in the Targete home invasion because (a) he had come into the emergency with Ernest Edwards; (b) he fit the general description of one of the men who had broken into Seth Targete's home; and (c) a witness to the home invasion had heard one assailant call the other "Doug." (Testimony of Yves Dambreville).

48. Detective Dambreville did not, however, believe he had probable cause to arrest Jefferson Charles. (Testimony of Yves Dambreville).

49. Detective Dambreville had the Boston Police Department's communications center run a check on Jefferson Charles. (Testimony of Yves Dambreville).

50. The check revealed that Jefferson Charles had an outstanding warrant for trespassing. (Testimony of Yves Dambreville and Daniel Hourihan).

51. Detective Dambreville placed Jefferson Charles under arrest on the trespassing warrant. (Testimony of Yves Dambreville; Exhibit 5).

52. After Jefferson Charles had been treated for his injuries, Detective Dambreville took him to the Area B3 police station and booked him on the arrest warrant for trespassing. (Testimony of Yves Dambreville; Exhibit 5).

53. Later the same day, Detective Dambreville wrote an incident report about Jefferson Charles' arrest. (Testimony of Yves Dambreville; Exhibit 5).

54. At some point after he returned to the Area B3 police station, Detective Dambreville was appointed the lead detective in the Targete home invasion. (Testimony of Yves Dambreville).

The January 28, 2003, Photo Array

55. On January 27, 2003, after booking Jefferson Charles, Detective Dambreville prepared a photo array for Seth Targete to view after he was discharged from the hospital. (Testimony of Yves Dambreville).

56. A photo array is a set of photographs of people who have similar appearances. Police show the photo array to a victim or witness to determine whether the

victim or witness recognizes anyone in the photographs and, if so, in what context (*e.g.*, a neighbor, the perpetrator). (Testimony of Daniel Hourihan).

57. In January 2003, detectives in Area B3 used a computer to generate photo arrays. (Testimony of Yves Dambreville and Robert Harrington).

58. A detective who wanted a photo array to include a particular suspect would locate a photograph of that suspect in the computer database. The computer would then select photographs (usually booking photos) of individuals who resembled the suspect. (Testimony of Yves Dambreville and Robert Harrington).

59. On January 27, 2003, Detective Dambreville used the police station's computer database to prepare a photo array for Seth Targete to view. (Testimony of Yves Dambreville).

60. Detective Dambreville selected Jefferson Charles' booking photograph from earlier that day and had the computer generate a photo array of nine men, including Jefferson Charles. (Testimony of Yves Dambreville).

61. Detective Dambreville printed out the photo array. (Testimony of Yves Dambreville).

62. On January 28, 2003, Seth Targete was released from the hospital and came into the Area B3 police station to view the photo array. (Testimony of Yves Dambreville; Exhibits 7, 11).

63. Detectives Dambreville and Williams witnessed Seth Targete view the photo array. (Testimony of Yves Dambreville; Exhibits 7, 11).

64. Seth Targete did not identify anyone from the photo array. He told Detective Dambreville that he was still on pain medication and was not feeling well. He

said that he would like to come back another day to look at photo arrays. (Testimony of Yves Dambreville; Exhibits 7, 11).

65. Detective Dambreville wrote the date and time on the array and signed his name in the space marked "Investigator." (Testimony of Yves Dambreville; Exhibit 7).

66. After Seth Targete viewed the array, Detective Williams wrote his badge number and signed his name on the array in the space marked "Witness." (Testimony of Yves Dambreville and Wayne Williams; Exhibit 7).

67. On January 28, 2003, after Seth Targete viewed the photo array, Detective Dambreville wrote a report, called a "Form 26," to document the fact that Seth Targete did not identify anyone in the array. The Form 26 included the date and time that Seth Targete viewed the photo array, as well as the identification number – called the "Gallery number" – of the photo array. (Testimony of Yves Dambreville; Exhibit 11).

The January 30, 2003, Photo Array

68. On January 30, 2003, Seth Targete returned to the Area B3 police station to view a second array. (Testimony of Yves Dambreville).

69. When Seth Targete returned to the police station, Detective Dambreville showed him a photo array on a computer screen. (Testimony of Yves Dambreville).

70. The photo array was the same one that Mr. Targete had viewed two days' earlier, except that the photos were arranged slightly differently. (Testimony of Yves Dambreville; Exhibits 7, 8).

71. Detective Richard Henshaw was present when Seth Targete viewed this photo array. (Testimony of Yves Dambreville and Richard Henshaw; Exhibit 8).

72. Seth Targete identified the man in photograph number 7 as the man who had stabbed him in his home on January 27, 2003. (Testimony of Yves Dambreville; Exhibits 8, 12).

73. Detective Dambreville asked Seth Targete how sure he was in his identification, using a scale of one to ten, with one representing the least certainty and ten representing the most certainty. (Testimony of Yves Dambreville; Exhibit 12).

74. Seth Targete told Detective Dambreville that, on a scale of one to ten, his response was a ten. (Testimony of Yves Dambreville; Exhibit 12).

75. The man that Seth Targete identified was Jefferson Charles. (Testimony of Yves Dambreville; Exhibit 8).

76. After Seth Targete identified Jefferson Charles from the photo array, Detective Dambreville printed out the array and drew a small arrow under Jefferson Charles' photograph. (Testimony of Yves Dambreville; Exhibit 8).

77. After printing out the photo array, Detective Dambreville also wrote the date and time on the array and signed his name in the space marked "Investigator." (Testimony of Yves Dambreville; Exhibit 8).

78. After Detective Dambreville had signed and dated the photo array, Detective Henshaw signed his name on the array in the space marked "Witness." (Testimony of Yves Dambreville and Richard Henshaw; Exhibit 8).

79. On January 30, 2003, Detective Dambreville prepared a Form 26 documenting the fact that Seth Targete had identified Jefferson Charles in a photo array. (Testimony of Yves Dambreville; Exhibit 12).

To: Captain Pervis Ryan Commander

From: Detective Yves Dambreville

Subject: Photo Array Gallery # 0300127 (2)

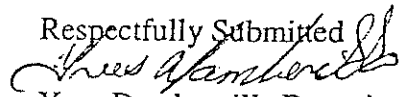
Date: Thursday January 30, 2003

Sir:

I respectfully report that on Thursday January 30, 2003 at about 11:15 a/m victim Seth Target came into Area B3 to view an array of photograph .I showed him Gallery # 03000127 in the computer screen Without hesitation victim ,positively identified suspect by pointing his finger ,in the direction of # 7on the Gallery.

I asked victim on the scale of 1-to 10 , 10 is the highest ,1 is the lowest, how will you score ? He answer 10. Suspect was positively identified on 01/30/03 at 10:20 am photo (#7) Identification was witness by Det Richard Henshaw.

Respectfully Submitted



Yves Dambreville Detective

ID # 8209

80. In the Form 26, Detective Dambreville stated:

I respectfully report that on Thursday, January 30, 2003, at about 11:15 a.m., victim Seth Target (*sic*) came into Area B3 to view an array of photographs. I showed him Gallery #03000127 in the computer screen. Without hesitation victim positively identified suspect by pointing his finger in the direction of # 7 on the Gallery.

I asked victim on the scale of 1 to 10, 10 is the highest, 1 is the lowest, how will you score? He answered 10. Suspect was positively identified on 01/30/03 at 10:20 a.m. photo (#7). Identification was witnessed by Det. Richard Henshaw.

(Exhibit 12).

Boston Police Department Procedure for Documenting Photo Arrays

81. In 2003, a police officer in the Boston Police Department who used a photo array in an investigation had to make a record of the following information: who viewed the photo array, when it was viewed, whether an identification was made and, if so, in what context (*e.g.*, neighbor, assailant). (Testimony of Robert Harrington and Yves Dambreville).

82. In 2003, the Boston Police Department did not have a written policy or a set procedure for documenting the information listed in the previous paragraph. (Testimony of Robert Harrington, William Duggan, Yves Dambreville, Wayne Williams, Richard Henshaw and Joseph MacDonald).

83. In 2003, the information listed in paragraph 81 could be written on the photo array itself or in a separate document, such as a Form 26. The officer also could make an audio recording to document the information listed in paragraph 81. (Testimony of Robert Harrington, Richard Henshaw, Yves Dambreville, Wayne Williams, William Duggan and Joseph MacDonald).

Jefferson Charles' Arrest

84. On January 30, 2003, as a result of Seth Targete's identification of Jefferson Charles from the photo array, Detective Dambreville obtained a warrant for Jefferson Charles' arrest. (Testimony of Yves Dambreville; Exhibit 6).

85. The arrest warrant charged Jefferson Charles with assault to murder and armed assault in a dwelling. (Exhibit 6).

86. On January 30, 2003, Detective Dambreville called Daniel Hourihan, the Assistant District Attorney ("ADA") assigned to the case, and told him that Seth Targete had positively identified Jefferson Charles from a photo array. (Testimony of Daniel Hourihan).

87. During the conversation, ADA Hourihan asked Detective Dambreville to fax him a copy of the photo array that Detective Dambreville had shown to Seth Targete that day. (Testimony of Daniel Hourihan).

88. On January 30, 2003, Detective Dambreville faxed ADA Hourihan the photo array that Seth Targete had viewed that day. (Testimony of Daniel Hourihan; Exhibit 19).

89. Sometime between January 30, 2003, and February 6, 2003, Jefferson Charles was released from custody on the trespassing warrant. (Testimony of Daniel Hourihan).

90. On February 6, 2003, Jefferson Charles was arrested on the warrant that Detective Dambreville had obtained on January 30, 2003, for the Targete home invasion. (Exhibit 6).

Christopher McMorrow and the February Photo Arrays

91. On or about February 13, 2003, ADA Hourihan asked Detective Dambreville to show photo arrays to a witness, Christopher McMorrow, who had seen two men running from Seth Targete's house on the morning of the home invasion. (Testimony of Yves Dambreville and Daniel Hourihan; Exhibits 4, 16).

92. On February 15, 2003, Detective Dambreville and Sergeant Detective Jeanette Atterberry went to the post office where Mr. McMorrow worked and asked to him look at two photo arrays: one that included a picture of Jefferson Charles and another that included a photograph of Ernest Edwards. (Testimony of Yves Dambreville; Exhibits 8, 9, 13).

93. The gallery number for the photo array that included a picture of Jefferson Charles was 03000127. This photo array was identical to the one Detective Dambreville had shown to Seth Targete on January 30, 2003. (Exhibits 8, 10).

94. The gallery number for the photo array containing Ernest Edwards' picture was 03000137. (Exhibit 9).

95. Mr. McMorrow either refused to look at the arrays or he could not identify anyone in them. (Testimony of Yves Dambreville; Exhibit 13).

96. After meeting with Mr. McMorrow, Detective Dambreville wrote the date and time on each array and signed his name in the space marked "Investigator." (Exhibits 9, 10).

97. After the meeting, Sergeant Detective Atterberry signed each photo array in the space marked "Witness," and wrote the date next to her signature. (Exhibits 9, 10).

98. Sometime after the meeting with Mr. McMorrow, Detective Dambreville documented the meeting by writing a report in the department's Detective Management System ("DCM"). (Testimony of Yves Dambreville; Exhibit 13).

99. The DCM is a computer database that supervisors use to track work flow. It typically is not subject to discovery in criminal proceedings. (Testimony of William Duggan).

100. The DCM report described the meeting with Mr. McMorrow as follows:

On Saturday, February 15, 2003, at about 8:50 a.m. Sgt. Detective Atterberry and Det. Dambreville went to the U.S. Post Office at 1608 Blue Hill Ave., Mattapan, to show Mr. Christopher McMorrow two different array[s] of photograph[s] of suspect[s] in the home invasion on Monday, 1/27/03. Mr. McMorrow was not able to identify suspects in those arrays.

(Exhibit 13).

101. The DCM report did not list the gallery numbers of the photo arrays or contain any other information identifying what photo arrays were used at the meeting with Mr. McMorrow. (Exhibit 13).

Jefferson Charles' Alibi Witness

102. In February 2003, Detective Dambreville attempted to find Jefferson Charles' girlfriend, who Mr. Charles claimed had stabbed him on January 27, 2003. (Testimony of Yves Dambreville).

103. Detective Dambreville went to the address that Jefferson Charles had given him, but the address did not exist. (Testimony of Yves Dambreville).

104. Detective Dambreville did nothing else to locate Jefferson Charles' girlfriend. (Testimony of Yves Dambreville).

105. Detective Dambreville could have taken other steps to find Jefferson Charles' girlfriend; he could have re-interviewed Jefferson Charles, searched police databases for information about her, looked for her telephone number in the phone book, or checked with the Registry of Motor Vehicles for her current address. (Testimony of Robert Harrington and William Duggan).

106. It was important for Detective Dambreville to find Jefferson Charles' girlfriend. (William Duggan).

107. If the woman had admitted to stabbing Jefferson Charles, the admission not only would have given Mr. Charles an alibi for the time of the home invasion, it also would have explained his stab wounds, which the police believed he had received when he struggled with Seth Targete. (Testimony of William Duggan).

108. If the woman had denied stabbing Jefferson Charles, the fact that Mr. Charles had lied to Detective Dambreville would have shown consciousness of guilt and an attempt to mislead the police in their investigation. (Testimony of William Duggan).

Detective Dambreville's Case File and the Grand Jury

109. On February 21, 2003, Detective Dambreville went to Haiti for vacation. (Testimony of Yves Dambreville; Exhibit 17).

110. Before Detective Dambreville left for vacation, his supervisor, Sergeant Detective Atterberry, asked him to leave the file for the Targete home invasion on his desk. (Testimony of Yves Dambreville).

111. While Detective Dambreville was on vacation, ADA Hourihan telephoned Sergeant Detective Atterberry and asked her a question about the Targete home invasion. (Testimony of Yves Dambreville and Daniel Hourihan).

112. Sergeant Detective Atterberry retrieved Detective Dambreville's case file and used it to answer ADA Hourihan's questions. (Testimony of Daniel Hourihan).

113. In February or March 2003, ADA Hourihan telephoned Mr. McMorrow to determine whether to call him to testify before the grand jury. (Testimony of Daniel Hourihan).

114. Mr. McMorrow told ADA Hourihan that he could not identify the men he had seen running from Seth Targete's house on January 27, 2003. (Testimony of Daniel Hourihan).

115. ADA Hourihan decided not to call Mr. McMorrow as a witness. (Testimony of Daniel Hourihan).

116. ADA Hourihan did not document his telephone call to Mr. McMorrow and he did not disclose the telephone call to defense counsel for Messrs. Charles and Edwards. (Testimony of Daniel Hourihan).

117. On March 4, 2003, Seth Targete testified before a Suffolk County grand jury. (Testimony of Daniel Hourihan; Exhibit 19).

118. At the grand jury, Seth Targete testified about viewing both the January 28, 2003, and the January 30, 2003, photo arrays (the "January photo arrays"). He did not testify about viewing any other photo arrays. (Testimony of Daniel Hourihan; Exhibit 19).

119. On March 14, 2003, Patrick Targete testified before the grand jury. (Testimony of Daniel Hourihan; Exhibit 20).

120. At the grand jury, Patrick Targete testified that he had identified Ernest Edwards at Boston Medical Center. (Exhibit 20).

121. At the grand jury, Patrick Targete did not testify about viewing any photo arrays. (Exhibit 20).

122. Detective Dambreville returned from vacation in mid-March 2003. (Testimony of Yves Dambreville; Exhibit 17).

123. When he returned, he could not find his case file for the Targete home invasion. (Testimony of Yves Dambreville and Daniel Hourihan).

124. Because Detective Dambreville was scheduled to testify before the grand jury on March 20, 2003, ADA Hourihan wanted a copy of the detective's case file. (Testimony of Yves Dambreville and Daniel Hourihan).

125. In mid-March 2003, Detective Dambreville telephoned ADA Hourihan and told him that his file was missing. (Testimony of Yves Dambreville and Daniel Hourihan).

126. ADA Hourihan told Detective Dambreville to check with Sergeant Detective Atterberry because she had had the file when Detective Dambreville was on vacation. (Testimony of Daniel Hourihan).

127. Detective Dambreville still could not find his case file. (Testimony of Yves Dambreville).

128. ADA Hourihan therefore told Detective Dambreville to re-create the file and send him the reconstituted file. (Testimony of Daniel Hourihan and Yves Dambreville).

129. Detective Dambreville re-created portions of his case file for the Targete home invasion and sent it to ADA Hourihan. (Testimony of Yves Dambreville).

130. On March 20, 2003, Detective Dambreville testified before the grand jury. (Testimony of Daniel Hourihan and Yves Dambreville).

131. At the grand jury, Detective Dambreville testified about the two photo arrays that Seth Targete had viewed and about Patrick Targete's identification of Ernest Edwards at the hospital. (Testimony of Daniel Hourihan and Yves Dambreville).

132. In or about March 2003, the grand jury indicted Jefferson Charles and Ernest Edwards in connection with the January 27, 2003, home invasion and attack on Seth Targete. The charges included assault with intent to murder and armed assault in a dwelling. (Testimony of Daniel Hourihan, Leora Joseph and Yves Dambreville).

Ernest Edwards' Probation Surrender Hearing

133. In April 2003, Detective Dambreville, Seth Targete and Patrick Targete testified at a hearing to determine whether Ernest Edwards, who had been on probation when he allegedly broke into Seth Targete's home, should have his probation revoked. (Testimony of Leora Joseph and Yves Dambreville).

134. At the probation surrender hearing, Seth Targete testified about the two photo arrays of Jefferson Charles that he had viewed in January. (Testimony of Daniel Hourihan, Leora Joseph and Yves Dambreville).

135. At the probation surrender hearing, Seth Targete did not testify about viewing any photo arrays that included pictures of Ernest Edwards. (Testimony of Daniel Hourihan, Leora Joseph and Yves Dambreville).

136. At the probation surrender hearing, Patrick Targete testified about identifying Ernest Edwards at the hospital. (Testimony of Daniel Hourihan, Leora Joseph and Yves Dambreville).

137. At the hearing, Patrick Targete never testified that he had viewed any photo arrays in connection with the home invasion. (Testimony of Daniel Hourihan, Leora Joseph and Yves Dambreville).

138. At the probation surrender hearing, Detective Dambreville testified about the two photo arrays that Seth Targete had viewed and about Patrick Targete's identification of Ernest Edwards at the hospital. (Testimony of Daniel Hourihan and Yves Dambreville).

139. Detective Dambreville never testified that he showed Seth Targete a photo array of Ernest Edwards or that he showed any photo arrays to Patrick Targete. (Testimony of Daniel Hourihan, Leora Joseph and Yves Dambreville).

Detective Dambreville's Case File and the Suppression Hearing

140. In December 2003, ADA Hourihan left the Suffolk District Attorney's Office (the "Suffolk D.A.'s Office"). (Testimony of Daniel Hourihan).

141. When ADA Hourihan left, ADA Leora Joseph took over the prosecution of Messrs. Charles and Edwards for the Targete home invasion. (Testimony of Daniel Hourihan and Leora Joseph).

142. When ADA Hourihan transferred the prosecution of the Targete home invasion to ADA Joseph, he told her about potential problems in the case, including the fact that the police had not taken blood samples or fingerprints at the crime scene. He did not mention any problems with the photo arrays. (Testimony of Leora Joseph).

143. The prosecution of Messrs. Charles and Edwards for the Targete home invasion was dormant from approximately December 2003 to October 2004. (Testimony of Yves Dambreville, Daniel Hourihan and Leora Joseph).

144. In October 2004, Detective Dambreville found his original case file for the Targete home invasion in an unused locker in the hallway of the Area B3 police station. (Testimony of Yves Dambreville).

145. The following documents (among others) were in Detective Dambreville's case file: (a) the two photo arrays that Seth Targete viewed in January 2003 (the "January photo arrays"); (b) the Form 26s for the January photo arrays; and (c) the two photo arrays that Detective Dambreville brought to his meeting with Mr. McMorrow on February 15, 2003 (the "February photo arrays"). (Testimony of Yves Dambreville and Leora Joseph).

146. The DCM report that Detective Dambreville prepared after meeting with Mr. McMorrow was not in the case file. (Testimony of Yves Dambreville and Leora Joseph).

147. In or about October 2004, Ernest Edwards' attorney filed a motion to suppress Seth Targete's identification of Jefferson Charles from the photo array and Patrick Targete's identification of Ernest Edwards at the hospital. (Testimony of Leora Joseph).

148. In October 2004, ADA Joseph telephoned Detective Dambreville several times to prepare for the hearing on Ernest Edwards' motion to suppress. (Testimony of Leora Joseph).

149. ADA Joseph could not reach Detective Dambreville because he was out of the country. (Testimony of Yves Dambreville and Leora Joseph).

150. Because she could not reach Detective Dambreville, ADA Joseph wrote a letter to Sergeant Detective MacDonald, who she thought was Detective Dambreville's

supervisor, asking for Detective Dambreville's cooperation. (Testimony of Leora Joseph).

151. It was unusual for ADA Joseph to contact a superior officer in order to schedule a meeting with a police detective. (Testimony of Leora Joseph).

152. When Detective Dambreville returned from his trip, Sergeant Detective MacDonald gave him the letter from ADA Joseph. (Testimony of Yves Dambreville).

153. When he received the letter, Detective Dambreville telephoned ADA Joseph to arrange a time to meet. (Testimony of Yves Dambreville).

154. Because Detective Dambreville was leaving for Haiti shortly and would not return until after the first day of the suppression hearing, Detective Dambreville and ADA Joseph arranged to meet on December 6, 2004. (Testimony of Yves Dambreville).

155. During the telephone call, ADA Joseph asked Detective Dambreville to fax his entire case file to her. (Testimony of Yves Dambreville and Leora Joseph).

156. Before leaving for vacation, Detective Dambreville sent a copy of his entire case file to ADA Joseph. (Testimony of Yves Dambreville).

157. When ADA Joseph reviewed Detective Dambreville's case file, she saw the two February photo arrays. (Testimony of Leora Joseph).

158. The February photo arrays were not in ADA Joseph's case file for the Targete home invasion. (Testimony of Leora Joseph).

159. With the exception of the witness signatures and the date, the February array containing Jefferson Charles' photograph was identical to the array that Seth Targete had viewed on January 30, 2003. ADA Joseph therefore thought it was a copy of

the photo array that had been shown to Seth Targete. (Testimony of Leora Joseph; Exhibits 8, 9).

160. ADA Joseph had never seen the photo array containing a photograph of Ernest Edwards. (Testimony of Leora Joseph).

161. ADA Joseph did not know which witness or witnesses had viewed the Edwards photo array. (Testimony of Leora Joseph).

162. ADA Joseph assumed that ADA Hourihan had sent the Edwards photo array to defense counsel during discovery, before she took over the case. (Testimony of Leora Joseph).

163. The first day of the suppression hearing was held on November 3, 2004. (Exhibit 18).

164. Before the hearing started, ADA Joseph talked to the attorneys for Messrs. Charles and Edwards about the Edwards photo array. (Exhibit 18).

165. Counsel for Messrs. Charles and Edwards told ADA Joseph that they had never seen the Edwards photo array. (Testimony of Leora Joseph; Exhibit 18).

166. During the hearing, the attorneys for both defendants objected to the fact that the prosecution had a photo array that had not been turned over in discovery. (Exhibit 18).

167. The judge allowed defense counsel to amend the motion to suppress to include the Edwards photo array. (Exhibit 18).

168. Both Seth and Patrick Targete testified at the first day of the suppression hearing. (Testimony of Leora Joseph; Exhibit 18).

169. Over the course of his direct and cross-examination at the suppression hearing, Seth Targete testified as follows concerning his January 28, 2003, visit to the police station: (1) he did not look at any photo arrays because he was on medication and did not feel well; (2) he looked at one photo array; (3) he looked at two photo arrays; (4) he could not identify anyone from a photo array and asked to come back another day; and (5) he identified one person in a photo array and he was “pretty sure” about the identification. (Exhibit 18 at pp. 25-26, 51-53, 78-80, 83).

170. During Seth Targete’s direct and cross-examination, he testified as follows about viewing photo arrays at the police station on January 30, 2003: (1) he viewed one photo array and made a positive identification; and (2) he viewed two photo arrays and positively identified a suspect in each array. (Exhibit 18 at pp. 26-27, 80-82).

171. During the suppression hearing, Patrick Targete testified that when he brought his brother to the police station to view photo arrays, he also viewed a photo array and identified Ernest Edwards out of the array. He did not say when he allegedly had viewed this photo array. (Exhibit 18 at pp. 115-16).

172. After Seth and Patrick Targete finished testifying, the Court and defense counsel believed, incorrectly, that the prosecution had not turned over two photo arrays: (1) the second photo array that Seth Targete allegedly viewed on either January 28, 2003, or January 30, 2003; and (2) the photo array of Ernest Edwards that Patrick Targete said he viewed when he brought Seth Targete to the police station one day. (Testimony of Yves Dambreville; Exhibit 18).

173. Because Seth and Patrick Targete were the principal eyewitnesses to the home invasion, their contradictory and incorrect testimony at the suppression hearing

would make it difficult to convict Messrs. Charles and Edwards. (Testimony of Robert Harrington).

174. ADA Joseph did not know which photo arrays the Targete brothers had or had not viewed and therefore she could not correct the record for the Court or defense counsel. (Testimony of Leora Joseph).

175. After Seth and Patrick Targete completed their testimony, two more witnesses testified. The hearing then was continued to December 8, 2004. (Exhibit 18; Testimony of Leora Joseph).

176. Detective Dambreville returned from Haiti on December 3, 2004, and returned to work on December 5, 2004. (Testimony of Yves Dambreville).

177. While at work on December 5, 2004, Detective Dambreville reviewed his case file for the Targete home invasion, including the two photo arrays that he had brought to his meeting with Mr. McMorro on February 15, 2003 (the "February photo arrays"). (Testimony of Yves Dambreville).

178. Detective Dambreville could not remember to whom he had shown the February photo arrays. (Testimony of Yves Dambreville).

179. Detective Dambreville planned to ask ADA Joseph about the February photo arrays at their meeting the following day. (Testimony of Yves Dambreville).

180. On December 6, 2004, Detective Dambreville went to the Suffolk D.A.'s Office to meet with ADA Joseph. (Testimony of Yves Dambreville).

181. Detective Dambreville believed the purpose of the meeting was to prepare for the hearing on the motion to suppress. (Testimony of Yves Dambreville).

182. When he arrived at the meeting, Detective Dambreville was surprised to see that ADA Joseph had asked Susan Dye, an investigator with the Suffolk D.A.'s Office, to attend the meeting. (Testimony of Yves Dambreville).

183. ADA Joseph had never before asked an investigator to attend a meeting to prepare a police officer to testify at a hearing. (Testimony of Leora Joseph).

184. ADA Joseph had asked Ms. Dye to attend the meeting with Detective Dambreville because she (ADA Joseph) believed Detective Dambreville had not documented the photo arrays properly. She also was upset with Detective Dambreville about the confusion at the suppression hearing concerning the photo arrays. She therefore wanted a witness who could take notes and, if necessary, testify about what happened at the meeting. (Testimony of Leora Joseph).

185. At the start of the meeting, Detective Dambreville gave ADA Joseph and Ms. Dye a summary of his work on the Targete home invasion, including the two photo arrays that he had shown to Seth Targete in January 2003. (Testimony of Susan Dye; Exhibit 14).

186. ADA Joseph then asked Detective Dambreville about the Edwards photo array. (Testimony of Susan Dye).

187. Detective Dambreville told ADA Joseph and Ms. Dye that he could not remember who had viewed the Edwards photo array. He guessed that he had shown it to the Targete brothers in response to a request by Sergeant Detective Atterberry to have them view a photo array that included Ernest Edwards. (Testimony of Yves Dambreville, Leora Joseph and Susan Dye; Exhibit 14).

188. ADA Joseph pointed out that Detective Dambreville had not testified at the grand jury or the probation surrender hearing about showing the Targete brothers a photo array that included a picture of Ernest Edwards. (Testimony of Leora Joseph and Susan Dye; Exhibit 14).

189. ADA Joseph asked Detective Dambreville if, when he testified previously, he had forgotten about the Edwards photo array. (Testimony of Leora Joseph and Susan Dye; Exhibit 14).

190. Detective Dambreville told ADA Joseph and Ms. Dye that he had not forgotten; he “testified to one identification even though there had been two because [he] didn’t want to appear to be a fool.” (Testimony of Susan Dye; Exhibit 14).

191. ADA Joseph was very concerned because she felt that Detective Dambreville had lied to the grand jury and at the probation surrender hearing. (Testimony of Leora Joseph).

192. Because of her concerns, ADA Joseph ended the meeting with Detective Dambreville and consulted with her supervisor, Dave Deacon. (Testimony of Leora Joseph).

193. After speaking with Dave Deacon, ADA Joseph met with Jack Zanini, Chief Appellate Counsel for the Suffolk D.A.’s Office; and Josh Wall, First Assistant District Attorney for the Suffolk D.A.’s Office. (Testimony of Leora Joseph).

**The Investigation of Detective Dambreville and the
Dismissal of the Charges against Jefferson Charles and Ernest Edwards**

194. Shortly after meeting with Detective Dambreville, ADA Joseph complained to the Office of the Legal Advisor for the Boston Police Department that

Detective Dambreville had committed perjury in connection with the Targete home invasion. (Testimony of William Duggan).

195. Detective Dambreville was accused of lying by omission to the grand jury and lying by commission at Ernest Edwards' probation surrender hearing. (Testimony of William Duggan).

196. ADA Joseph's complaint against Detective Dambreville was referred to the Boston Police Department's Corruption Division for investigation. (Testimony of William Duggan).

197. As soon as Detective Dambreville returned to the Area B3 police station after his meeting with ADA Joseph and Susan Dye, he learned that he had been placed on administrative leave because he allegedly had committed perjury in connection with the Targete home invasion. (Testimony of Yves Dambreville and William Duggan).

198. After he was placed on administrative leave, Detective Dambreville consulted with an attorney. (Testimony of Yves Dambreville).

199. The attorney advised him not to testify at the suppression hearing but instead to exercise his Fifth Amendment right against self-incrimination. (Testimony of Yves Dambreville).

200. Detective Dambreville's attorney advised the Suffolk D.A.'s Office that Detective Dambreville would exercise his Fifth Amendment right against self-incrimination if he were called to testify at the suppression hearing. (Testimony of Leora Joseph; Exhibit 15).

201. The second day of the suppression hearing was cancelled. (Testimony of Leora Joseph).

202. On January 20, 2005, the Suffolk D.A.'s Office voluntarily dismissed the indictments against Jefferson Charles and Ernest Edwards. (Testimony of Leora Joseph; Exhibit 15).

203. The notice of dismissal explained the decision to dismiss the cases as follows:

The Commonwealth ... has been notified in writing by counsel for the detective in this case that the detective intends to invoke his rights under the Fifth Amendment to the United States Constitution and Article 12 of the Massachusetts Constitution not to testify in this case. The Commonwealth has reviewed the evidence and has concluded that, without the detective's testimony the Commonwealth would be unable to meet its burden of proof at trial.

(Exhibit 15).

204. In 2005 or 2006, a determination was made that Detective Dambreville had not committed perjury when he testified before the grand jury and at the probation surrender hearing. (Testimony of William Duggan).

205. After it was determined that Detective Dambreville had not committed perjury, his case was transferred from the Corruption Division to the Bureau of Internal Investigation. (Testimony of William Duggan).

206. On November 21, 2006, the Bureau of Internal Investigations brought a complaint against Detective Dambreville in connection with the Targete home invasion. (Testimony of Robert Harrington and William Duggan; Exhibit 2).

207. The complaint charged Detective Dambreville with four violations of the Boston Police Department's rules and procedures. (Exhibit 2).

208. The first two charges, called specifications, alleged that Detective Dambreville had failed to properly investigate the Targete home invasion. These two specifications were based on the following alleged conduct by Detective Dambreville:

- (a) He lost his case file for an extended period of time.
- (b) He did not properly document the two photo arrays that he showed Seth Targete in January 2003 (the "January photo arrays");
- (c) He failed to document the photo arrays he showed to Mr. McMorrow on February 15, 2003 (the "February photo arrays"); and
- (d) He neglected to follow up on the alibi witness.

(Exhibits 2, 21; Testimony of William Duggan).

209. The other two specifications alleged that Detective Dambreville had failed to properly document the photo arrays used in the investigation of the Targete home invasion. These two specifications were based on Detective Dambreville's alleged failure to properly document the January photo arrays and the February photo arrays. (Exhibits 2, 21; Testimony of William Duggan).

210. On June 4, 2007, the Chief Administrative Hearing Officer for the Boston Police Department held a disciplinary hearing on the complaint against Detective Dambreville. (Exhibit 1).

211. On October 5, 2007, the Chief Administrative Hearing Officer issued a report and recommendation regarding the specifications against Detective Dambreville. (Exhibit 21).

212. On October 12, 2007, Police Commissioner Edward Davis found that all four specifications against Detective Dambreville had been proven. (Exhibit 1).

213. As a result, Police Commissioner Davis suspended Detective Dambreville for thirty working days without pay, effective October 13, 2007. (Exhibit 1).

214. Detective Dambreville timely appealed his suspension. (Stipulation).

DISCUSSION

The Civil Service Commission's responsibility is to determine whether the Boston Police Department has proven, by a preponderance of evidence, just cause for the disciplinary action taken. *See* G.L. c. 31, § 43; *School Comm. of Brockton v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 486, 488, 684 N.E.2d 620, 622 (1997). Massachusetts courts have interpreted "just cause" to mean that the disciplined employee must be "guilty of substantial misconduct that adversely affected the public interest by impairing the efficiency of public service." *Murray v. Second Dist. of E. Middlesex*, 389 Mass. 508, 514, 451 N.E.2d 408, 412 (1983). Moreover, the issue for the Commission is not

whether it would have acted as the appointing authority acted, but whether ... there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.

Watertown v. Arria, 16 Mass. App. Ct. 331, 334, 441 N.E.2d 443, 445 (1983).

The charges in this case are based on four alleged acts or omissions by Detective Dambreville:

- He lost his case file for an extended period of time;
- He did not properly document the two photo arrays that he showed Seth Targete (the "January photo arrays");
- He failed to document the photo arrays he took to his meeting with Mr. McMorrow (the "February photo arrays"); and
- He neglected to follow up on Jefferson Charles' alibi witness.

After reviewing all of the evidence, I conclude that the Boston Police Department has not met its burden of proof with respect to two acts or omissions: losing the case file and documenting the January photo arrays. I also conclude that the department has met its

burden of proof with respect two omissions: the failure to properly document the February photo arrays and the failure to investigate a potential alibi witness. Finally, based on all of the evidence, I recommend that the Civil Service Commission uphold the thirty-day suspension that the Boston Police Department imposed on Detective Dambreville.

A. Specification I

Specification I alleges that Detective Dambreville violated Rule 102, § 3, of the Boston Police Department's Rules and Procedures when he failed to properly investigate the Targete home invasion. In its disciplinary hearing, the Boston Police Department alleged that Detective Dambreville had failed to properly investigate the home invasion in the following ways:

- He lost his case file for over a year;
- He did not properly document the January photo arrays;
- He failed to document the February photo arrays; and
- He neglected to follow up on the alibi witness.

I address each in turn.

1. Lost case file.

The Boston Police Department has failed to prove by a preponderance of the evidence that Detective Dambreville lost his case file. I find that Detective Dambreville had his case file before he left for Haiti on February 21, 2003, and that he left it on his desk at the request of his supervisor, Sergeant Detective Jeanette Atterberry. Sergeant Detective Atterberry used Detective Dambreville's case file while he was in Haiti and, as soon as he returned from vacation, his case file was missing.

Detective Dambreville followed his supervisor's order to leave his case file on his desk while he was in Haiti. He should not be held accountable for the fact that his case file was lost while he was on vacation. Moreover, the Boston Police Department did not present any evidence that Detective Dambreville did not properly re-create or search for his file once it was lost. Therefore, the Boston Police Department did not meet its burden of proof on this element of Specification I.

2. The January photo arrays.

The Boston Police Department has not proven by a preponderance of the evidence that Detective Dambreville failed to properly document the January photo arrays. I find that in January 2003, a police officer in the Boston Police Department who used a photo array in an investigation had to record the following information: who viewed the photo array, when it was viewed, whether an identification was made, and if so, in what context (*e.g.*, neighbor, assailant). The information could be written directly on the photo array, tape recorded, or memorialized in a document, such as a Form 26.

In this case, Detective Dambreville fulfilled the documentation requirements for both of the January photo arrays.

a. The January 28, 2003, photo array.

After Seth Targete viewed the photo array on January 28, 2003, Detective Dambreville prepared a Form 26, in which he listed the gallery number of the photo array, the date and time that the photo array had been viewed, who had viewed the photo array, and the fact that the witness (Seth Targete) did not identify anyone in the array. He also described the circumstances in which Seth Targete viewed the photo array:

I respectfully report that on Tuesday January 28, 2003 at about 3:15 p.m. victim Seth Target (*sic*) came into Area B3, from being

discharged from Boston Medical Center. He stated [that] while in route to his house, his brother told him that I have some photographs of possible suspects for him to view. I showed him a photo array. Gallery #03000127.

Victim was unable to make identification at this time. [V]ictim stated that he would like to return another day.

Exhibit 11. In addition, Detective Dambreville wrote the date and time on the photo array and signed the array. He also had Detective Williams witness the photo array. Because the Form 26 references the date, time and gallery number of the photo array, the Form 26 can be linked to the actual photo array that Seth Targete viewed. Finally, Detective Dambreville kept both the photo array and the Form 26 in his case file, meaning that the documents were maintained together.

b. The January 30, 2003, photo array.

On January 30, 2003, Seth Targete viewed a photo array on a computer screen at the Area B3 police station. After Mr. Targete identified Jefferson Charles in the photo array, Detective Dambreville printed out the photo array and drew a small arrow under Mr. Charles' photograph. He signed the photo array, wrote the date and time on it, and asked Detective Henshaw to sign the array as a witness.

Detective Dambreville then prepared a Form 26, in which he listed the gallery number of the photo array, the date and time that the photo array had been viewed, who had viewed the photo array, and the fact that the Seth Targete had identified Jefferson Charles. He also described the circumstances in which Seth Targete made the identification:

I respectfully report that on Thursday, January 30, 2003, at about 11:15 a.m., victim Seth Target (sic) came into Area B3 to view an array of photographs. I showed him Gallery #03000127 in the

computer screen. Without hesitation victim positively identified suspect by pointing his finger in the direction of # 7 on the Gallery.

I asked victim on scale of 1 to 10, 10 is the highest, 1 is the lowest, how will you score? He answered 10. Suspect positively identified on 01/30/03 at 10:30 a.m. photo (#7). Identification was witnessed by Det. Richard Henshaw.

Exhibit 12. Because the Form 26 references the date, time and gallery number of the photo array, the Form 26 can be linked to the actual photo array that Seth Targete viewed on January 30, 2008. Finally, Detective Dambreville kept both the photo array and the Form 26 in his case file, so the documents were maintained together.

c. The Boston Police Department's argument.

The department agrees that in January 2003 a Boston police officer who used a photo array in an investigation had to record the following information: who viewed the photo array, when it was viewed, whether an identification was made, and if so, in what context (*e.g.*, neighbor, assailant). It argues, however, that all of this information had to be written on the photo array itself. It contends that Detective Dambreville did not comply with this policy because he documented each of the January photo arrays in a Form 26.

As set forth above, the evidence does not support the department's argument. Every Boston police officer who testified at the hearing, including those who appeared on behalf of the department, stated that in January 2003, officers in the Boston Police Department were not required to write directly on the photo array. I recognize that both ADA Hourihan and ADA Joseph testified that every Boston Police Department photo array they have seen had a demarcation on it which indicated who viewed the array, when it was viewed, and whether the witness identified anyone in the array. ADA Hourihan

and ADA Joseph could only testify, however, to what they had observed in their roles as prosecutors; they did not have personal knowledge of Boston Police Department policies or procedures. I therefore did not give their testimony the same as weight as I gave to the police detectives' testimony.

I also discount ADA Hourihan's testimony because he did not raise any concerns about the photo arrays while he was at the Suffolk D.A.'s Office. ADA Hourihan received a copy of the January photo arrays on or about January 30, 2003. At the time, he did not object to the manner in which the photo arrays had been documented. This is especially telling because, according to his own testimony, ADA Hourihan repeatedly told Detective Dambreville how to handle the investigation, including when and how to document evidence in the case. Moreover, when ADA Hourihan transferred the case to ADA Joseph, he told her about potential problems with the case, such as the lack of blood and fingerprint evidence. He did not, however, tell ADA Joseph that there was anything wrong with the January photo arrays.

After weighing the conflicting testimony, I credited the detectives' testimony on how Boston police officers were required to document photo arrays in January 2003. Their testimony was based on personal knowledge and, as previously stated, was virtually uniform from witness to witness. I was especially persuaded by testimony from Lieutenant Detective Robert Harrington, who appeared to be unbiased, even-tempered and to have no animus towards any party in this case. I also found Lieutenant Detective Harrington credible because, unlike other witnesses, he admitted when he did not know the answer to a question or when he had no memory of an event.

d. Conclusion.

For the reasons set forth above, I conclude that the Boston Police Department has not proven by a preponderance of the evidence that Detective Dambreville failed to properly document the January photo arrays.

3. The February photo arrays.

The Boston Police Department has proven by a preponderance of the evidence that Detective Dambreville failed to properly document the photo arrays that he showed to a witness, Christopher McMorow, on February 15, 2003 (the “February photo arrays”).

On February 15, 2003, Detective Dambreville attempted to show Mr. McMorow two photo arrays: one that contained a photograph of Jefferson Charles and another that included a picture of Ernest Edwards. Mr. McMorow either could not or would not identify anyone in the photo arrays.

Although Detective Dambreville did prepare a report of the meeting, he nevertheless failed to properly document the photo array. Most significantly, Detective Dambreville did not put the report in his case file. Consequently, when he and others found the February photo arrays in his case file in 2004, it was impossible to tell who had viewed the photo arrays or whether any identifications had been made. Detective Dambreville had forgotten about his meeting with Mr. McMorow and, when he met with ADA Joseph, he guessed – incorrectly – that he had shown the February photo arrays to the Targete brothers.

I also note that the report was incomplete. It did not list the gallery numbers of the photo arrays or contain any other information identifying what photo arrays were used at the meeting with Mr. McMorrow.

4. The alibi witness.

The Boston Police Department has proven by a preponderance of the evidence that Detective Dambreville failed to investigate a potential alibi witness. When the detective interviewed Jefferson Charles in Boston Medical Center, Mr. Charles claimed that his girlfriend had stabbed him. Mr. Charles gave Detective Dambreville the girlfriend's name and alleged address. Sometime later, Detective Dambreville went to the address and found that it did not exist. He did nothing else to find Jefferson Charles' girlfriend.

Detective Dambreville's conduct falls short of his responsibilities because (1) the girlfriend was an important witness; and (2) there was more he could have done to find her. First, the girlfriend was a potential alibi witness for Jefferson Charles. Although perhaps unlikely, the girlfriend could have testified that she had stabbed him on the morning on January 23, 2003. This not only would have given Jefferson Charles an alibi for the morning of the home invasion, it also would have explained the suspect's wounds. On the other hand, if the girlfriend denied stabbing Jefferson Charles, the fact that Mr. Charles lied to Detective Dambreville would have shown consciousness of guilt.

Moreover, Detective Dambreville had other avenues for locating Jefferson Charles' girlfriend. For instance, he could have re-interviewed Jefferson Charles, searched police databases for information on the girlfriend, looked in the telephone book

for her phone number, or checked with the Registry of Motor Vehicles for the girlfriend's current address.

5. Additional grounds for discipline.

At the hearing and in its post-hearing brief, the Boston Police Department presented two more grounds for Specification I: (1) Detective Dambreville's alleged lack of preparation for the suppression hearing; and (2) his decision to invoke his Fifth Amendment rights if called to testify at the suppression hearing. These alleged failings were not raised at the disciplinary hearing before the Boston Police Department. *See* Exhibit 21. As a result, I cannot consider these two alleged deficiencies in evaluating the charges against Detective Dambreville. *See, e.g., Watertown*, 16 Mass. App. Ct. at 334, 441 N.E.2d at 445 (Commission must review the appointing authority's disciplinary decision based on the facts known to the appointing authority at the time it imposed the discipline).

Were I to consider the allegations, I would reject them. First, the Boston Police Department has not proven that preparing to testify at a suppression hearing is part of a police officer's investigation of a crime. The ordinary meaning of the verb "to investigate" is "to observe or study by close examination and systematic inquiry; to make a systematic inquiry; to conduct an official inquiry." *Webster's Ninth New Collegiate Dictionary* (1991). Preparing to testify under oath does not fall into this definition. Indeed, at the time of the suppression hearing, the Targete home invasion was not even an active case. Two suspects had been indicted eighteen months earlier and the police were not looking for other suspects. Nor did the Boston Police Department proffer any evidence tending to show that the department defines the term "investigate" to include

giving testimony at a hearing in a case that already has been solved. Thus, there is no evidence that Detective Dambreville's preparation for the suppression hearing constitutes "investigating" the home invasion. *See id.* *See also Miller v. City of Boston*, 297 F. Supp.2d 361 (D. Mass. 2003) (preparing a witness to testify at a probable cause hearing after the suspect has been identified and arrested is not part of the "investigatory process").

Nor would I sustain a disciplinary charge against Detective Dambreville for invoking his Fifth Amendment right against self-incrimination. I am not aware of any authority to discipline an employee for exercising his constitutional rights, rights that he exercised on the advice of counsel after being charged with lying under oath. In fact, disciplining Detective Dambreville for exercising his constitutional right against self-incrimination may violate the Fifth Amendment. *See, e.g., Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation of New York*, 392 U.S. 280 (1968) (holding that it was unconstitutional to fire New York City sanitation employees for invoking their Fifth Amendment rights and refusing to answer questions that might have implicated them in a corruption scandal).

6. Conclusion.

As previously discussed, Specification I alleges that Detective Dambreville's investigation of the Targete home invasion violated Rule 102, § 3, of the Boston Police Department's Rules and Procedures, which states as follows:

Employees shall conduct themselves at all times, both on and off-duty, in such a manner as to reflect most favorably on the Department. Conduct unbecoming an employee shall include that which tends to indicate that the employee is unable or unfit to continue as a member of the Department, or tends to impair the operation of the Department or its employees.

Exhibit 3. As set forth above, the Boston Police Department has met its burden of proof with respect to the following aspects of Detective Dambreville's investigation: (1) failing to properly document the February photo arrays; and (2) neglecting to follow up on the alibi witness. These two shortcomings "tend[] to impair the operation of the Department" *Id.* Therefore, the Boston Police Department had just cause to discipline Detective Dambreville for improperly documenting the February photo arrays and for failing to further investigate the alibi witness.

The Boston Police Department did not, however, meet its burden of proof with respect to the following elements of Specification I: (1) the loss of Detective Dambreville's case file for the Targete home invasion; and (2) documenting the January photo arrays. Consequently, the Boston Police Department did not have just cause to discipline Detective Dambreville for this conduct.

B. Specification II

Specification II alleges that Detective Dambreville failed to properly investigate the Targete home invasion and that this failure violated Rule 102, § 4, in the Boston Police Department's Rules and Procedures. Section 4, which is titled "Neglect of Duty," states as follows:

This includes any conduct or omission which is not in accordance with established and ordinary duties or procedures as to such employees or which constitutes use of unreasonable judgment in the exercising of any discretion granted to any employee.

Exhibit 3. The grounds for Specification II are the same as for Specification I:

- Detective Dambreville lost his case file for an extended period of time;
- He did not properly document the January photo arrays;
- He failed to document the February photo arrays; and
- He neglected to follow up on the alibi witness.

For the reasons set forth in Section A above, I find that the Boston Police Department has proven by a preponderance of the evidence that Detective Dambreville (1) failed to document the February photo arrays; and (2) neglected to follow upon the alibi witness. Detective Dambreville's conduct in this regard constitutes neglect of duty, as defined in Section 4 of Rule 102. I reject Detective Dambreville's argument that he is not guilty of neglect of duty because he did not violate any written procedures. Section 4, however, also applies to violating unwritten procedures and using unreasonable judgment in exercising discretion. In this case, Detective Dambreville's used unreasonable judgment when he neglected to track down the alibi witness and when he failed to adequately document the February photo arrays. Consequently, the Boston Police Department had just cause to discipline Detective Dambreville for these two transgressions.

Furthermore, for the reasons set forth in Section A above, the Boston Police Department did not have just cause to discipline Detective Dambreville in connection with the lost case file or the January photo arrays. Finally, I cannot consider the additional grounds for discipline – preparation for the suppression hearing and invocation of the Fifth Amendment – because they were not raised at the disciplinary hearing before the Boston Police Department. *See supra* at Section A(5).

C. Specification III

Specification III alleges that Detective Dambreville violated Rule 102, § 3, of the Boston Police Department's Rules and Procedures when he failed to properly document the January and February photo arrays. For the reasons set forth in Section A above, I find that the Boston Police Department had just cause to discipline Detective Dambreville

for failing to properly document the February photo arrays, but not the January photo arrays.

D. Specification IV

Specification IV alleges that Detective Dambreville violated Rule 102, § 4, of the Boston Police Department's Rules and Procedures when he failed to properly document the January and February photo arrays. For the reasons set forth in Section A above, I find that the Boston Police Department had just cause to discipline Detective Dambreville for failing to properly document the February photo arrays, but not the January photo arrays.

E. The Thirty-Day Suspension

The Civil Service Commission has the power to modify disciplinary penalties, but that authority is not without limits. *Police Comm'r of Boston v. Civil Service Comm'n*, 39 Mass. App. Ct. 594, 600, 659 N.E.2d 1190, 1193-94. The Commission cannot substitute its judgment for that of the appointing authority. *City of Cambridge v. Civil Service Comm'n*, 43 Mass. App. Ct. 300, 304, 682 N.E.2d 923, 926 (1997). Rather, when altering a penalty, the Commission

must focus on the fundamental purposes of the civil service system: to guard against political considerations, favoritism, and bias in governmental employment decisions, including, of course, promotions, and to protect efficient public employees from political control. When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.

Id. For the reasons explained below, the penalty in this case – a suspension of thirty working days – should not be modified.

It was clear from the hearing that prosecutors in the D.A.'s Office had a personal bias against Detective Dambreville and that the initial decision to file a complaint against him was motivated by the prosecutors' anger over the collapse of the case against Messrs. Charles and Edwards.¹ Nevertheless, there is no evidence that the Boston Police Department had any biases or political motives for pursuing the charges against Detective Dambreville. Nor is there any evidence that the Police Commissioner's decision to suspend Detective Dambreville for thirty working days was influenced by bias or political considerations. Stated differently, there is no evidence that the suspension imposed against Detective Dambreville "was anything other than a valid exercise of the [Police Commissioner's] discretion based upon proper policy considerations." *Boston Police Dept. v. Dean*, 2002 WL 31686245 (Mass. App. Ct. 2002).

I also considered the fact that the Boston Police Department failed to prove two of the four grounds for disciplining the detective. The charges against Detective Dambreville were based on four alleged acts or omissions: the lost case file, the January photo arrays, the February photo arrays, and the alibi witness. As set forth above, the record does not support disciplining Detective Dambreville for the loss of his case file or the documentation of the January photo arrays. In this particular case, however, a reduction of the penalty is not warranted.

¹ For instance, ADA Joseph blamed Detective Dambreville for all of the problems that arose at the suppression hearing, including the Targete brothers' contradictory testimony, even though their testimony was unrelated to the Detective Dambreville or the February arrays. *See infra* at footnote 2. ADA Joseph believed, even before she met with him, that Detective Dambreville had mishandled the investigation. She even had an investigator attend her first meeting with Detective Dambreville so the investigator could take notes and, if necessary, testify about what Detective Dambreville said at the meeting. Furthermore, either before the meeting or immediately after it ended, ADA Joseph filed a complaint against Detective Dambreville. This is evidenced by the fact that, as soon as Detective Dambreville returned to the police station, he was placed on administrative leave in connection with ADA Joseph's complaint.

First, the Boston Police Department “did not assign particular penalties to separate subsidiary acts or even the separate charges. It simply imposed a [thirty-day] suspension” for conduct unbecoming an officer and neglect of duty. *Town of Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. 796, 802, 814 N.E.2d 735, 740 (2004). The two events that the department has proven – mishandling the February photo arrays and failing to investigate an alibi witness – warrant a thirty-day suspension. They were serious transgressions that both impaired the operation of the police force and constituted neglect of duty. *See* Boston Police Department’s Rules and Procedures, Rule 102, §§ 3, 4. Had Detective Dambreville properly documented the February photo arrays, for example, much of the confusion at the suppression hearing could have been avoided because ADA Joseph would have known that Mr. McMorrow, and not the Targete brothers, had viewed those arrays.² Moreover, as previously discussed, Detective Dambreville’s failure to look for Jefferson Charles’s girlfriend could have seriously jeopardized the prosecution’s case at trial.

Second, Detective Dambreville presented no evidence that Boston Police Department “singled out [him] for punishment more harsh or unusual than otherwise imposed in like circumstances.” *Police Comm’r of Boston*, 39 Mass. App. Ct. at 601, 659 N.E.2d at 1194. *See also Boston Police Dept. v. Collins*, 48 Mass. App. Ct. 408, 412, 721 N.E.2d 928, 931 (2000) (part of Civil Service Commission’s role is to ensure “uniformity and the equitable treatment of similarly situated individuals”) (internal citations omitted).

² The evidence does not support a finding that the Targete brothers would have (or even might have) testified differently had Detective Dambreville properly documented the February photo arrays. During the suppression hearing, the two brothers were not shown the February photo arrays until *after* they gave their incorrect and contradictory testimony concerning what photo arrays they viewed. *See* Exhibit 18. Thus, their testimony was not based on confusion over the February photo arrays.

The Appeals Court's reasoning in *Town of Falmouth* applies here. As the Court stated in that case, a modification of a disciplinary penalty is not be justified where:

(1) there were no findings of political considerations, other improper bias, or inequitable treatment; (2) the [department's] decision involved a discretionary disciplinary decision regarding the enforcement of important standards of conduct; and (3) the charges for which discipline had been imposed were still satisfied by the remainder of the inappropriate conduct [that the department proved]....

Town of Falmouth, 61 Mass. App. Ct. at 802, 814 N.E.2d at 740. Under these circumstances, a thirty-day "suspension was reasonably justified for the offenses charged and established...." *Id.* at 802, 814 N.E.2d at 740. The Commission cannot substitute its judgment for the "valid exercise of discretion" by the appointing authority. *City of Cambridge*, 43 Mass. App. Ct. at 304, 682 N.E.2d at 926.

CONCLUSION

For the foregoing reasons, I recommend that the Commission affirm the thirty-day suspension imposed against Detective Dambreville.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Natalie S. Monroe
Administrative Magistrate

Dated: **AUG 06 2009**