

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

**ADAM EMOND,**

*Appellant*

v.

**DEPARTMENT OF STATE POLICE,**

*Respondent*

Docket Number: D1-24-129

Appearance for Appellant: Douglas S. Brooks, Esq.

Appearance for Respondent: Siobhan E. Kelly, Esq.

Hearing Officer: Robert L. Quinan, Jr., Esq.

**Decision**

Pursuant to G.L. c. 31, § 43, the undersigned Chair of the Civil Service Commission (Commission) charged the Commission's General Counsel, Robert L. Quinan, Jr., with conducting a full evidentiary hearing regarding this matter on behalf of the Commission.

Pursuant to 801 CMR 1.01 (11) (c), Presiding Officer Quinan issued the attached Tentative Decision to the Commission on September 12, 2025, recommending that the Commission allow the Appellant's appeal and overturn the decision of the Department of State Police (State Police) to terminate the Appellant's employment as a Trooper.

The State Police submitted objections to the Tentative Decision, and the Appellant submitted responses to the Respondent's objections.

Allegations of inappropriate conduct of a sexual nature, the alleged misconduct which resulted in the Appellant's termination here, is not a new issue for the Commission. The Commission has issued numerous decisions involving allegations of sexual misconduct by a public employee over the years, all of which necessitated witness credibility assessments and an evaluation of evidence related to the legal element of unwelcomeness or lack of consent. For example:

In [Barsalou v. Holyoke Fire Commission](#), 38 MCSR 78 (2025), the Commission, adopting the Tentative Decision of the same hearing officer who issued the Tentative Decision in the instant appeal, upheld the suspension and demotion of a Fire Captain to lieutenant for misconduct involving sexual harassment of a probationary firefighter.

In Miltimore, Boutin and Kennedy v. Westfield Fire Commission, 34 MCSR 190 (2021), the Commission overturned the termination of three firefighters who were terminated in part for cooperating with the State Police regarding allegations of sexual misconduct against the City's then-Deputy Fire Chief.

In Carey v. Holden Police Department, 31 MCSR 311 (2018), the Commission upheld the termination of a police officer whose misconduct included making sexually demeaning comments to a female civilian employee.

In Dagenais v. City of New Bedford, 26 MCSR 223 (2013), the Commission upheld the termination of a public works employee for sexual harassment that included making unsolicited office visits and phone calls to a female employee.

In Toscano v. City of Worcester, 27 MCSR 69 (2014), the Commission upheld the suspension of a public works employee for engaging in sexual harassment of a fellow employee.

In Kinnas v. Town of Shrewsbury, 24 MCSR 67 (2011), the Commission upheld the termination of a police officer for misconduct that included social media posts regarding fellow employees that constituted a violation of the Town's sexual harassment policy.

In Blais v. Town of Framingham, 20 MCSR 642 (2007), the Commission upheld the suspension of a police officer for making demeaning comments about a female police officer that constituted sexual harassment.

Neither the hearing officers nor the full Commission issue these decisions in a vacuum. Rather, the decisions are made after careful review of the entire record and guided by well-established understandings across legal, law enforcement, and clinical fields as they pertain to reporting of sexual harassment and assault allegations. For example, it is well established that alleged victims of sexual misconduct may not immediately report the harm or show outward signs of distress. A delay in reporting does not necessarily undermine the credibility of the alleged victim. Put another way, the Commission does not rely on outdated notions of how an alleged victim "should" behave and instead takes the utmost care to avoid misguided stereotypes when assessing the credibility of alleged victims of sexual assault or harassment.

A full reading of the Tentative Decision shows that the hearing officer made thoughtful, well-informed findings and credibility assessments that are amply supported by the record evidence.<sup>1</sup> Furthermore, the findings address all credible evidence: evidence supporting the decision and evidence that could detract from the weight of supporting evidence. These findings and credibility assessments are often supported by incontrovertible video evidence, particularly involving one of the most serious allegations, *not* proven by credible evidence, that the Appellant

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<sup>1</sup> "Credibility determinations are solely for the hearing officer to make," Massasoit Indus. Corp. v. Massachusetts Comm'n Against Discrimination, 91 Mass. App. Ct. 208, 210 (2017), and must not be rejected solely on the ground that the ultimate agency decisionmaker[s], before whom witnesses did not personally appear, would have made a different credibility assessment. Lighthouse Masonry, Inc. v. Div. of Admin. L. Appeals, 466 Mass. 692, 702 (2013).

placed his hand inside the pants of the alleged victim while others were sitting at the same bar-restaurant table.

Ultimately, the hearing officer found the accounts of certain witnesses, including the Appellant, to be more credible than that of the alleged victim, and that the Appellant's off-duty conduct did not constitute the offenses of sexual harassment or indecent assault and battery.

After careful review and consideration of the hearing officer's findings and conclusions, the objections of the State Police and the responses by the Appellant, the Commission voted to affirm and adopt the Tentative Decision of the Presiding Officer. This Final Decision of the Commission ***allows*** the Appellant's appeal and ***orders*** his reinstatement to the position of Trooper without any loss of pay or benefits forthwith.

#### CIVIL SERVICE COMMISSION

/s/ Christopher C. Bowman  
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and Stein, Commissioners) on November 13, 2025.

Either party may file a motion for reconsideration within ten days of 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:

Douglas S. Brooks, Esq. (for Appellant)  
Siobhan Kelly, Esq. (for Respondent)

**COMMONWEALTH OF MASSACHUSETTS**

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*Respondent*

Docket number:

D1-24-129

Appearance for Appellant:

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Appearance for Respondent:

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Joshua Reilly, Esq.  
Deputy Chief Legal Counsel  
Office of Chief Legal Counsel  
Massachusetts State Police  
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Framingham, MA 01702

Presiding Officer:

Robert L. Quinan, Jr.

**SUMMARY OF TENTATIVE DECISION**

The Presiding Officer recommends that the Commission allow the appeal of a Massachusetts State Trooper who was terminated after an internal investigation concluded that he engaged in indecent assault and battery and sexual harassment of a work colleague while both were off-duty and participating in a voluntary group golfing and bar/restaurant Sunday outing. Upon review of all the evidence, including video recordings of much of the outing, and weighing credibility assessments of witness testimony, the Department of State Police failed to prove by a preponderance of the evidence that the Appellant engaged in the alleged unlawful conduct. In

particular, there was insufficient evidence to establish a lack of consent and unwelcomeness, which are required elements of the principal disciplinary charges.

### **TENTATIVE DECISION**

On July 26, 2024, the Appellant, Adam Emond (Appellant), acting pursuant to G.L. c. 22C, § 13 and G.L. c. 31, §§ 41-43, appealed to the Civil Service Commission (Commission) from the July 19, 2024 decision of the Department of State Police (Department) to discharge him from his position as a State Trooper. The Commission held a prehearing conference on September 10, 2024 via remote videoconference (Webex).<sup>1</sup> I subsequently held a full hearing, which was audio- and video-recorded, on four nonconsecutive dates in January 2025, in Boston.<sup>2</sup> The full hearing was declared private, with all witnesses other than the Appellant sequestered. The Commission received into evidence 66 Appellant exhibits (App. Exhs. 1-66) and 40 Respondent exhibits (Resp. Exhs. 1-40). I admitted a copy of the Appellant's Commission appeal form as App. Exh. 67. After obtaining and reviewing formal transcripts, each party filed a Proposed Decision in May 2025, whereupon the administrative record closed.

For the reasons set forth below, I recommend that the Appellant's appeal be allowed.

### **FINDINGS OF FACT**

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

*Called by the Department:*

- Trooper A, State Police Trooper, Department of State Police

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<sup>1</sup> The Commission follows the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, in its adjudicatory proceedings, with Chapter 31's provisions or any rules promulgated thereunder taking precedence.

<sup>2</sup> I conducted a final conference with the parties' counsel in early February 2025. Previously, a link to the recording of the full hearing had been provided to the parties and they agreed to share the cost of transcribing the hearing. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to furnish an accurate transcript satisfactory to the court, to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

- Mrs. YYY, the mother of Trooper A
- Cory Medeiros, Lieutenant, Massachusetts State Police
- Mr. ZZZ, the husband of Trooper A
- William McSweeney, Sergeant, Massachusetts State Police
- Michelle Mason, Detective Lieutenant, Massachusetts State Police
- Eric Perez, Lieutenant, Massachusetts State Police

*Called by the Appellant:*

- Adam Emond, Appellant
- Brian Anderson, Retired Major, Department of State Police
- John Duggan, Retired Sergeant, Department of State Police

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

*Background*

1. The Appellant was employed as a State Trooper with the Department of State Police (the “Department”) from 2006 to 2024. *(Testimony of Appellant)*.
2. Apart from the matter under appeal, the Appellant experienced no discipline during his approximately 18-year tenure with the Department. *(Stipulated Facts)*.
3. The Appellant had not been the subject of any complaints during his employment with the Department, and he consistently received positive evaluations from his supervisors. Specifically, in 2008-2009 and 2012-2022, his supervisors noted that he displayed “Outstanding” and/or “Exceptional” service, including in the areas of interpersonal skills and compliance with rules and procedures. The Appellant’s personnel record also includes his supervisors’ descriptions of him as being: “above reproach”; professional “at all times”; “extremely conscientious”; and “always courteous and polite.” His personnel record further states that he “actively exhibits and promotes the professional standards of the Department” and “seems to genuinely care about everybody in the

barracks.” (*Testimony of Appellant; Testimony of Medeiros; Testimony of Anderson; Resp. Exhibits 35 – 52*).

4. Trooper A began employment with the Massachusetts State Police in 2018, and she has served as a State Trooper, assigned to the Middleborough Barracks since then, working the 3 to 11 p.m. shift, with four days on and two days off. (*Testimony of Trooper A*).
5. After completing the State Police Academy, new Troopers have a three month “breaking in” period, during which time they are assigned a field training officer at their assigned barracks. In 2018, the Appellant served as Trooper A’s field training officer for one month upon her assignment to the Middleborough Barracks, and during this time they often rode together in a cruiser. The Appellant did not have supervisory responsibilities over Trooper A at any time, however. (*Testimony of Trooper A; Testimony of Appellant*).
6. After Trooper A completed field training, although she and the Appellant were both stationed at the Middleborough Barracks, they interacted only in passing due to the different shifts they typically worked. On such occasions, they spoke briefly about their children and such matters. There has never been a romantic relationship between the two and they did not socialize outside of work. (*Testimony of Trooper A; Testimony of Appellant*).
7. From January 2020 through November 2022, the Appellant served as the Department’s Court Officer for the Brockton District Court. (*Testimony of Appellant*).
8. In November 2022, Sergeant (now Lieutenant) Cory Medeiros sent an electronic invitation to everyone assigned to the Middleborough Barracks, inviting them to participate in a voluntary Sunday golf outing, on November 20, 2022, to build comradery. (*Testimony of Medeiros*).

9. Six employees and one civilian chose to attend: the Appellant; Trooper A; Sergeant Cory Medeiros; Sergeant William McSweeney; Sergeant Medeiros's civilian friend, Kevin L.; Sergeant (now Lieutenant) Eric Perez; and Trooper Jared Hebert. Trooper A was the only female outing participant. *(Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A; Testimony of McSweeney; Testimony of Perez)*.
10. Prior to the outing, the Appellant texted Trooper A that he did not know that she golfed, and he noted that he liked Trooper A's cell phone contact photograph. *(Testimony of Appellant; Testimony of Trooper A)*.

#### *The November 20, 2022 Golf Outing*

11. The golf outing took place on a cold and windy Sunday at a golf club in Rehoboth, Massachusetts. The participants arrived between 10 and 11 a.m. *(Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A; Testimony of McSweeney; Testimony of Perez)*.
12. The participants began drinking alcoholic beverages before beginning to play golf and also drank alcohol while golfing. *(Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A; Testimony of McSweeney; Testimony of Perez)*.
13. At the golf course, the Appellant drank beers that he brought with him, old fashioned made with bourbon, and he had some whiskey from a bottle that the group passed around. *(Testimony of Appellant)*.
14. At the golf course, Trooper A drank beers that she had brought with her, a canned "Long Drink" cocktail, and she also drank whiskey from a bottle that the group passed around. *(Testimony of Trooper A; App. Exhibit 3)*.
15. Trooper A and the Appellant did not ride together in a golf cart. Trooper A rode in a golf

cart with Sgt. Perez. The Appellant rode in a golf cart with Sgt. McSweeney. (*Testimony of Perez; Testimony of Appellant; Testimony of McSweeney*).

16. A group photo was taken on the golf course. In this photograph, the Appellant has his left arm around Trooper Hebert, with his left hand on Trooper Hebert's shoulder, and Trooper A has her left hand draped on top of the Appellant's hand. Everyone depicted is smiling for the photograph. (*App. Exhibit 2; Testimony of Trooper A*).

17. The group golfed for nine holes. (*Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A; Testimony of McSweeney; Testimony of Perez*).

18. After golfing, Trooper Hebert returned home because he was working the midnight shift that night. (*Testimony of Medeiros; Resp. Exhibit 18*).

*First Post-Golfing Venue – Hillside Tavern in Rehoboth, MA*

19. The six remaining participants repaired to a restaurant/bar located at the golf course, the Hillside Tavern (Hillside), arriving at approximately 3:30 p.m. (*Testimony of Medeiros; App. Exhibit 1; Resp. Exhibit 18*).

20. The six participants sat at Hillside's beveled L-shaped bar with three people along the front of the bar, and three on the bar's angled sides. Along the front side of the bar, starting farthest from the bar corner, Sgt. Perez sat with Trooper A on his right; and then the Appellant sat to the right of Trooper A. Along the other side of the bar, starting from where the bar angled around, sat: Sergeant Medeiros; with civilian Kevin L. on his right; and then Sergeant McSweeney to the right of L. and farthest from Sgt. Perez. (*App. Exhibit 1*).

21. Two different Hillside surveillance cameras depicted the group of six in continuous, hours-long video recordings, which were entered into evidence. (*App. Exhibit 1*).

22. Shortly after their arrival at Hillside, at approximately 3:34 p.m., the Appellant briefly rubbed clothing over Trooper A's upper left back with what appears to be a hand warmer. Trooper A rubbed both of her cheeks with her two hand warmers and then briefly put one of her hand warmers on one of the Appellant's cheeks, while keeping the other hand warmer on her own cheek and smiling up at him. (*App. Exhibit 1; Testimony of Appellant; Testimony of Trooper A*).
23. Prior to 3:49 p.m., both of the Appellant's hands remained in view above the bar. (*App. Exhibit 1*).
24. At 3:49, the Appellant's left hand, for the first time, moved underneath the bar in the direction of Trooper A, and then it returned to the top of the bar. (*App. Exhibit 1; Resp. Ex. 18*).
25. Trooper A leaned into the Appellant at 3:53 p.m. to join in a selfie photograph, putting her arm around his back and resting her hand on the top edge of his barstool. (*App. Exhibit 1; App. Exhibit 7*).
26. The Appellant felt Trooper A's breast on his shoulder when she leaned in for the picture. (*Testimony of Appellant*). Video footage indicates that this contact lasted longer than necessary to take a photograph. (*App. Exhibit 1*).
27. The group ordered and had food and alcoholic drinks at Hillside. Over the next three hours Trooper A was served four alcoholic drinks. The Appellant had at least two mixed drinks and one beer. (*App. Exhibit 1; Testimony of Appellant; Testimony of Trooper A*).
28. The group spent their time at Hillside talking, smiling, laughing, eating, drinking, taking photos, watching a sports game on large-screen monitors, and looking at their cell phones. At no time does anyone in the group appear visibly distraught or unhappy.

*(App. Exhibit 1; Testimony of Perez; Testimony of McSweeney; Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A).*

29. Trooper A commenced “leaning into” the Appellant at various times throughout the afternoon. *(Testimony of Appellant)* The Hillside recorded video footage showed Trooper A at times leaning her right arm into the Appellant’s left arm, and, when speaking to Sgt. Medeiros on the Appellant’s opposite side, she leaned across the Appellant’s upper body. *(App. Exhibit 1).*
30. The Appellant testified that Trooper A’s leg was touching against his leg “quite often.” Although Hillside video does not provide either confirmation or contradiction of this, ElMariachi video, as detailed below, shows that Trooper A and the Appellant appear to have their legs touching. *(Testimony of Appellant; App. Exhibit 1).*
31. Beginning at approximately 3:53 p.m., the Appellant’s left hand moved under the bar, possibly in Trooper A’s direction, and back within sight a couple of times in a five-minute span. The camera angle and shadowy quality of the video footage, combined with the Appellant’s dark-colored top and the fact that Trooper A wore black pants and a dark vest, preclude any definitive finding as to whether the Appellant had placed his hand on Trooper A’s leg at any point prior to 4 p.m. *(App. Exhibit 1).*
32. It is undisputed, however, that, while seated at the Hillside bar, the Appellant placed his hand on Trooper A’s knee and just above it on more than one occasion. *(Testimony of Appellant; Testimony of Trooper A; see also App. Exhibit 1).*<sup>3</sup>

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<sup>3</sup> Whether the Appellant’s hand strayed close to Trooper A’s crotch area is hotly contested and this dispute cannot be resolved by resort to surveillance video footage. As discussed in the Analysis, I do not find Trooper A’s testimony on this point credible. Accordingly, I decline to make such a finding.

33. Trooper A checked and texted on her cell phone frequently while at Hillside. Her husband was texting her during and after golf because she had not come home for Sundaydinner with him and their children as expected. She described these texts as “pretty angrytexts.” (*App. Exhibit 1; Testimony of Trooper A, Testimony of Witness ZZZ*).<sup>4</sup>
34. While out with the group, Trooper A informed the others that her husband kept texting her because he wanted her home for dinner, and the group at times joked, in a light-hearted fashion, with Trooper A about this. (*Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A; Testimony of McSweeney; Testimony of Perez*).
35. Trooper A wanted to remain out with the group, rather than go home, because she did not get to go out socially very often. She homeschools her children during the day, works from 3 – 11 p.m., and is also busy on days off because her children play hockey. (*Testimony of Trooper A*).
36. Between 4:23 p.m. and 4:44 p.m., video footage shows the Appellant’s left hand appearing to move under the table towards Trooper A’s leg four times—and each time appearing to remain in that vicinity for at least a few seconds. (*App. Exhibit 1; App. Exhibit 18*).
37. The Appellant testified that he touched Trooper A’s leg at Hillside only on the knee and just above it. However, video footage appears to show his left hand sliding down her thigh to her knee at 4:34:33, 4:37:04, and 4:44:18 p.m. Trooper A’s facial expression does not change at any point; rather than looking at the Appellant, she continues

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<sup>4</sup> Trooper A’s husband texted her every half hour or so as he expected her to be home between 3 and 4 p.m., and he “absolutely” expected her to be home for Sunday dinner at 5:30 p.m. (*Testimony of Witness ZZZ*).

conversing with other group members. Three seconds after the 4:37 p.m. contact, a group member passes immediately behind the chairs occupied by the Appellant and Trooper A. (*App. Exhibit 1; Testimony of Appellant; Testimony of Det. Lt. Mason*).

38. At Hillside, Sgt. Perez, Sgt. Medeiros, Sgt. McSweeney and Mr. L. did not see the Appellant's hand on Trooper A's leg below the bar, and none of them witnessed the Appellant engaging in "inappropriate" contact with Trooper A. (*Testimony of Perez; Testimony of Medeiros, Testimony of McSweeney; Resp. Exhibit 18; Resp. Exhibit 22; Resp. Exhibit 23; Resp. Exhibit 24*).

39. At Hillside, Sgt. Perez, Sgt. Medeiros, Sgt. McSweeney and Mr. L. perceived Trooper A and themselves to be having a good time, and they did not see her usual upbeat demeanor change at any time. (*Testimony of Perez; Testimony of Medeiros, Testimony of McSweeney; Resp. Exhibit 18; Resp. Exhibit 22; Resp. Exhibit 23; Resp. Exhibit 24*).

40. At 4:45 p.m., Trooper A slid out of her bar seat and went to the restroom. (*App. Exhibit 1; App. Exhibit 15; Testimony of Trooper A*).

41. Trooper A returned from the restroom at 4:48 p.m. and stood next to the Appellant, who was then standing, rather than sitting at the bar. She then perched on the Appellant's seat, instead of her original seat, while he remained standing at the bar. (*App. Exhibit 1*).

42. At 4:52 p.m., video footage shows Trooper A leaning her head onto, or just adjacent to, the Appellant's shoulder after a big laugh. (*App. Exhibits 1 and 20*).

43. At 4:55 p.m., the bar video shows Trooper A patting the seat next to her while looking at the Appellant, seemingly gesturing for him to come sit by her again. They both then resumed sitting in their original seats. (*App. Exhibit 1; App. Exhibit 22*).

44. At approximately 4:57 p.m., the Appellant's left hand returned below the bar again.  
*(App. Exhibit 1; Testimony of Trooper A).*
45. At 4:59 p.m., Trooper A texted Sgt. McSweeney: "Call me over for a sec plz." *(Resp. Ex. 31; Testimony of Trooper A; Testimony of McSweeney).*
46. Sergeant McSweeney has been employed with the State Police for twenty years, and he had been assigned to the Middleborough Barracks for approximately 2 ½ years at the time of hearing. He worked the 3 to 11 p.m. shift. *(Testimony of McSweeney).*
47. Sergeant McSweeney supervised Trooper A both in November 2022 and at the time of this hearing. He considers his relationship with Trooper A to be "friendly workwise," but he does not socialize with her outside of work (with the November 2022 golf outing being the one exception). *(Testimony of McSweeney).*
48. Sergeant McSweeney has known the Appellant for approximately 15 years. He considers the Appellant a friend, and he has been to social events with him. *(Testimony of McSweeney).*
49. Sergeant McSweeney called Trooper A over at approximately 5:08 p.m., after he saw her text. *(Testimony of McSweeney; Testimony of Trooper A).*
50. Upon joining Sgt. McSweeney at the far end of the bar, Trooper A privately voiced words to the effect of: "[The Appellant] is touching my leg." *(Testimony of McSweeney)* Sergeant McSweeney credibly testified that she also immediately added "but it's OK . . . we're friends," which aligns with Trooper A's testimony that she was nonchalant when revealing this; and all of this aligns with their visual expressions in the Hillside video footage. One of those videos clearly depicts Trooper A and Sgt. McSweeney at the time both state that this conversation occurred. Trooper A can be seen telling Sgt.

McSweeney something, after which he laughs, and Trooper A then also laughs.

*(Testimony of McSweeney; Testimony of Trooper A; App. Exhibit 1).*

51. Trooper A admitted that she made light of what was occurring when she spoke to Sgt.

McSweeney, testifying that she did so because she did not want “it to blow up.”

*(Testimony of Trooper A).*

52. At Hillside, Trooper A did not inform Sgt. McSweeney that anything sexual had

occurred. *(Testimony of Trooper A; Testimony of McSweeney).*

53. Sergeant McSweeney’s perspective at that time was: “She didn’t seem that worried

about it ... it didn’t raise any alarms to me.” *(Testimony of McSweeney).*

54. After this brief conversation, Trooper A and Sgt. McSweeney moved on to other topics.

*(Testimony of McSweeney; Testimony of Trooper A).*

55. For the remainder of the group’s stay at Hillside, from 5:08 to 6:55 p.m., Trooper A

remained at the far end of bar, on the right side of Sgt. McSweeney. She did not return to

her seat next to the Appellant. *(App. Exhibit 1; Testimony of Trooper A; Testimony of*

*McSweeney).*

56. Trooper A did not tell the Appellant at Hillside that any of his touching of her leg was

unwanted.<sup>5</sup> *(Testimony of Trooper A; Testimony of Appellant).*

57. Trooper A did not remove the Appellant’s hand from her leg at any time while at

Hillside. *(Testimony of Trooper A; Testimony of Appellant).*

58. The Appellant’s stated perspective was that he and Trooper A were engaging

in “harmless flirtation” that was “100 % mutual.” *(Testimony of Appellant).*

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<sup>5</sup> Trooper A denied on cross-examination that she ever felt the Appellant caress her backside at Hillside. *(Testimony of Trooper A).*

59. Trooper A's stated perspective was that by leaving her bar seat, first for the bathroom, and then to sit next to McSweeney for the duration of their stay at Hillside, she would besending the Appellant a message, in a discreet manner, that his touching was unwanted. (*Testimony of Trooper A*).
60. Despite internalizing this perspective, Trooper A also acknowledged on cross-examination that she did not give the Appellant any direct indication at Hillside that shedid not want him to touch her. (*Testimony of Trooper A*).
61. At the Commission hearing, Det. Lt. Michelle Mason testified regarding what she observed upon later viewing the extensive Hillside Tavern video footage. Det. Lt. Mason became a State Trooper in December 2000 and became a Detective in 2012. She has engaged in Basic, Extended and Advanced Forensic Interviewer training. While working in the Berkshire District Attorney's Office, as an embedded state police detective, she investigated major crimes for approximately seven years, which included investigating approximately 30 sexual assaults. (*Testimony of Mason; Resp. Exhibit 38*)
62. Det. Lt. Mason opined that, based on her experience of investigating approximately 30 sexual assault allegations, it is not unusual for the alleged victim to "freeze like a fawn," because they do not know how to handle the situation, and that it does not defy common sense for an alleged victim to not exhibit a "fight or flight" response. (*Testimony of Det. Lt. Mason*).

#### *Second Post-Golfing Venue - El Mariachi in Taunton*

63. Around 7 p.m., five of the six participants then drove, each in their own cars, to another establishment, El Mariachi in Taunton, to continue the outing. Sergeant Perez chose to head home from the Hillside tavern. (*Testimony of Medeiros; Testimony of Appellant;*

*Testimony of Trooper A; Testimony of McSweeney; Testimony of Perez).*

64. Trooper A chose not to go home. While driving from Hillside to El Mariachi, she did not contact anyone (family, friend, or colleague) to report any unwanted touching by the Appellant. *(Testimony of Trooper A).*

65. Trooper A arrived first at El Mariachi, at 7:19 p.m. *(App. Exhibit 1).*

66. The group of five is depicted throughout their entire stay at this bar-restaurant in two continuous video recordings (taken from two different El Mariachi surveillance cameras), which were entered into evidence. *(App. Exhibit 1).*

67. At El Mariachi, the group sat at a high-top table located next to a window. As the first to arrive, Trooper A took a seat against a wall beside the window. Sergeant Medeiros, who arrived around 7:21 p.m., took the seat directly across from her. Trooper A did not ask Sgt. Medeiros to sit next to her, and she did not say anything to him about the Appellant or unwanted touching while they were alone together before the others arrived. *(App. Exhibit 1; Testimony of Medeiros; Testimony of Trooper A).*

68. Sergeant (now Lieutenant) Medeiros has been employed with the State Police for approximately 19 years. He obtained Sergeant rank in July 2021.

69. Sergeant Medeiros was a classmate of the Appellant's during the Police Academy, and he and the Appellant know one another "on a personal level." *(Testimony of Medeiros).*

70. Sergeant Medeiros directly supervised the Appellant while he was a day-shift supervisor at the Middleborough Barracks. *(Testimony of Medeiros).*

71. Before that, Sgt. Medeiros supervised Trooper A directly when he worked the evening shift at the Middleborough Barracks. *(Testimony of Medeiros).*

72. Kevin L. and the Appellant then walked in together around 7:24 p.m. When Trooper

A saw the Appellant, she called out to him, clapped twice, and raised her hand, gesturing him to where she was seated. The Appellant then sat next to Trooper A while Kevin L. sat next to Sgt. Medeiros. (*App. Exhibit 1*).

73. Sergeant McSweeney arrived last, at 7:28 p.m., and sat at the head of the table. (*App. Exhibit 1*).

74. Before Sgt. McSweeney took his seat, from 7:24 to 7:28 p.m., Trooper A's left leg can be seen on video hanging straight down below her with her right leg off to the right side of her chair, which was the side on which the Appellant was seated. Their legs appear to be touching. Both had ample space, on the sides farthest from one another, in which they could have positioned their legs apart. (*App. Exhibit 1; Resp. Exhibit 29*).

75. Everyone in the group continued to drink alcoholic beverages (in Trooper A's case, a beer and a margarita drink) at El Mariachi. They also ordered chips and guacamole. (*App. Exhibit 1; Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A; Testimony of McSweeney*).

76. Universal witness testimony held that no one in the group appeared intoxicated to any of the other group participants at any point during this outing. (*Testimony of Medeiros; Testimony of Appellant; Testimony of Trooper A; Testimony of McSweeney*).

77. The Appellant admitted that he touched Trooper A's leg, just above the knee, at El Mariachi, and that his touching began "when her leg started to rub against mine." (*Testimony of Appellant*).

78. The Appellant denied that he touched Trooper A "up high on her leg or up closer to her private area," on her vagina, on her lower back, or on her buttocks inside of her pants. (*Testimony of Appellant; Testimony of Trooper A*).

79. Precisely where on Trooper A's leg or body the Appellant placed his hand cannot be seen on El Mariachi video. Unlike the video from Hillside, the video from El Mariachi is shot from such an angle that it does not depict at any time the Appellant's left hand when it is beneath the table. However, it does show that the Appellant puts his left forearm and hand below the table for various periods of time, quite possibly in the direction of Trooper A, similar to his positioning at Hillside. (*App. Exhibit 1*).
80. Throughout their time at El Mariachi, all group members, including Trooper A, are seen talking, smiling, and laughing on the video. At certain moments (e.g., 8:02 p.m.), video footage shows Trooper A resting her arm and hand on the Appellant's shoulder. No video footage from El Mariachi shows the Appellant placing his hand on or down Trooper A's back or in her crotch area. (*App. Exhibit 1*).
81. While they were at El Mariachi, Trooper A's husband regularly continued to send her "angry" texts, approximately every half-hour, because she had not come home for the family Sunday dinner. (*Testimony of Trooper A; Testimony of Witness ZZZ*).
82. Witnesses, including Trooper A, recall light-hearted group laughter about the stereotypical role reversal, since it was the husband contacting his wife to get her to come home for dinner while she was out having fun. (*Testimony of Trooper A; Testimony of Witness ZZZ; Testimony of McSweeney; Testimony of Medeiros; Testimony of Perez*).
83. When Trooper A got up to visit the restroom at 8:20 p.m., the Appellant immediately stood so that she could easily pass by him. (*App. Exhibit 1; Testimony of Trooper A*).
84. Trooper A returned from the restroom at 8:22 p.m., again passing the Appellant without difficulty, and sat in her original seat. Trooper A did not contact anyone (family or friend) while away from the table to report unwanted touching by the Appellant. (*App. Exhibit 1; Testimony of Trooper A*).

85. At 8:39 p.m., Trooper A leaned her upper body into the Appellant while they were speaking. (*App. Exhibit 1; App. Exhibit 18*).
86. Trooper A did not tell the Appellant at El Mariachi, or at any time on November 20, 2022, that any of his touching was unwanted. (*Testimony of Trooper A; Testimony of Appellant*).
87. Trooper A did not remove the Appellant's hand from her leg at any time. (*Testimony of Trooper A; Testimony of Appellant*).
88. At 8:55 p.m., Trooper A texted Sgt. Medeiros: "Can you call or distract Adam quick?" (*Resp. Ex. 32; Testimony of Trooper A*).
89. Also at 8:55 p.m., Sgt. McSweeney coincidentally texted Trooper A, "You alright?" His explanation for sending this text was that he had seen Trooper A put her cell phone down hard after looking at it, and he assumed she was bothered by her husband's ongoing texts. (*Resp. Ex. 31; Testimony of McSweeney*).
90. Trooper A responded by text to McSweeney, "haha no," but did not elaborate, either via text or verbally. (*Resp. Ex. 31; Testimony of McSweeney*).
91. The Appellant left the table for the restroom at 9:00 p.m., at which time Trooper A spoke to Sgt. Medeiros. (*App. Exhibit 1*). Trooper A did not explain why she sought a distraction or had sent him a text.<sup>6</sup> Trooper A indicated to Sgt. Medeiros that she would be leaving soon and would prefer not to pass by the Appellant. (*Investigative interview of*

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<sup>6</sup> Sergeant Medeiros testified that he assigned no significance to Trooper A's text when he read it later that evening. (*Testimony of Medeiros*).

*Sgt. Medeiros, Resp. Exh. 22*). Sgt. Medeiros got the sense that the Appellant somehow had been annoying Trooper A but thought nothing further of it at the time. (*Testimony of Medeiros*)

92. Sgt. Medeiros subsequently denied noticing any tension between the Appellant and Trooper A. He explicitly denied witnessing or hearing that the Appellant had touched Trooper A in a sexual fashion. He thought, however, that the Appellant might have been pestering Trooper A (perhaps by touching her) to remain at the bar for another drink. (*Investigative interview of Sgt. Medeiros, Resp. Exhibit 22; Testimony of Medeiros*).

93. In his investigative interview and at the hearing in this matter, Sgt. McSweeney couldnot recall hearing, at El Mariachi, anything about the Appellant being “touchy” with Trooper A, or that Trooper A did not want to walk by the Appellant, or that there had been any kind of problem between Trooper A and the Appellant at El Mariachi.<sup>7</sup> (*Testimony of McSweeney; Resp. Exhibit 24*).

94. Between 9:00 and 9:02 p.m., Trooper A’s right leg was positioned off of the right side of her chair when the Appellant left his seat to go to the restroom, and it remained there until she stood up. This is the same location where her right leg can be seen between 7:24 and 7:28 p.m. (*App. Exhibit 1 – El Mariachi bar video footage*).

95. Subsequently, at 9:02 p.m., Trooper A left her seat with her belongings, and slid over to the Appellant’s seat, continuing to talk and laugh with the group. She then stood at 9:03 p.m. at the corner of the table by the Appellant’s seat until, moments later, the Appellant returned from the bathroom. (*App. Exhibit 1*).

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<sup>7</sup> Similar to Sgt. Medeiros and Mr. L., Sgt. McSweeney remained seated within 3-4 feet of both the Appellant and Trooper A for almost the entire duration of the latter’s stay at El Mariachi and was an active participant in all group exchanges. (*App. Exh. 1; Testimony of McSweeney*)

96. At 9:03 p.m., Trooper A walked away from where she was standing, toward both the Appellant and the door, and she playfully swatted the Appellant with her jacket, while smiling, before engaging in conversation with Sgt. McSweeney. (*App. Exhibits 1 and 33*).
97. Trooper A then stood by McSweeney's right side, talking with him and the group, and the Appellant returned to his seat. (*App. Exhibit 1*).
98. During part of this time, Sgt. McSweeney and Trooper A had their arms around one another while they and the rest of the group continued to engage in casual banter. (*App. Exhibit 33*).
99. The group members, including Trooper A and the Appellant, were talking and laughing at this point as they watched kids riding bikes outside of the restaurant window. (*App. Exhibit 1; Testimony of Trooper A*).
100. After standing and talking with the group for approximately three minutes, Trooper A, still smiling and laughing and looking back at the group, casually walked out of El Mariachi alone at 9:06 p.m. (*App. Exhibit 1*).
101. Trooper A's facial expressions at El Mariachi throughout the evening were aligned with the jovial demeanor of the rest of the group. She was smiling, laughing, and engaging in conversations throughout. When she left El Mariachi, her visible demeanor remained the same. (*App. Exhibit 1; App. Exhibit 27; App. Exhibit 29*).
102. After Trooper A left El Mariachi, the four remaining participants stayed at the table, continuing to enjoy each other's company, until approximately 9:53 p.m., when they all departed. (*App. Exhibit 1; App. Exhibit 66; Testimony of Medeiros, Testimony of McSweeney*).

### *Trooper A's Subsequent Actions*

103. Trooper A and her mother, Mrs. YYY, first started exchanging texts while Trooper A was driving home around 9:10 p.m. As part of a very mundane text exchange, Trooper A referenced the social outing she had just attended but made no mention of any unwanted touching or anything else amiss. (*Resp. Ex. 39*).
104. When Trooper A arrived home around 9:30 p.m., her husband, Mr. ZZZ, remained quite angry with her for missing dinner and staying out late. He had previously made his anger known to her through his texting throughout the afternoon and night. Trooper A started crying in her first encounter with her husband. (*Testimony of Trooper A; Testimony of Witness ZZZ*).
105. According to Trooper A's testimony at hearing, she immediately told her husband "that [the Appellant] wouldn't stop touching me ... that he kept touching my leg and he kept creeping up, going further up, and then that he put his hand on my back." (*Testimony of Trooper A*).
106. Witness ZZZ's recollection at hearing, of what he was told by Trooper A when she came home, was that the touching was "like on the inner thigh, like in between her legs, and then down the back of her pants and other – those are the two that stuck with me the most because I think they are the most egregious." (*Testimony of Witness ZZZ*).
107. Neither Trooper A nor Mr. ZZZ, when describing their conversation about the alleged touching, stated that Trooper A's vaginal area had been touched or rubbed through her clothing. (*Testimony of Witness ZZZ; Testimony of Trooper A*).
108. While home, Trooper A's mother texted her. Trooper A's text response to her mother stated: "Just got home and [my husband] is mad at me but I'm not in the best

mood because I got sexually assaulted a couple of times and it's not sitting well." (*Resp. Ex. 39*).

109. This late-evening text exchange continued as follows:

Trooper A's mother: What You Omg call me

Trooper A: Hold on I'm talking with kids. Just a drunk guy who thinks he can touch and feel legs and creep up and whatnot but I didn't feel comfortable I got two other people involved trying to distract him but didn't work well.

Trooper A's mother: Call me when you can. I can come over.

(*Resp. Exhibit 39*).

110. Trooper A and her mother spoke by phone that night. Trooper A told Mrs. YYY words to the effect of: "I fought him off all day, Ma. I kept my hand in front of my crotch the entire time and fought."<sup>8</sup> (*Testimony of Witness YYY*).

#### *Formal Complaint and Investigation*

111. Trooper A's husband wanted to file a formal complaint about the alleged touching of his wife, but Trooper A did not want to do so, and she told him this. (*Testimony of Witness ZZZ; Testimony of Trooper A*).

112. Nonetheless, Trooper A's husband and his father went to the Middleborough Barracks the next morning and filed a formal complaint, without Trooper A, and against her stated wishes. (*Testimony of Witness ZZZ; Testimony of Trooper A; Resp. Ex. 39*).

113. As a result of the formal complaint, Lieutenant Eric Swenson (then Station

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<sup>8</sup> Video evidence and eyewitness testimony directly contradict and wholly undermine this statement made by Trooper A to her mother. (*Testimony of Trooper A, Perez, McSweeney, Medeiros; Investigative interview statement of Kevin L.; App. Exhibit 1*).

Commander of the Middleborough Barracks) filled out a Form SP387, entitled “Unlawful Harassment, Sexual Harassment and Discrimination Complaint Form,” with the Department’s Harassment Investigation Unit (HIU). The extent of the narrative on this report regarding the alleged touching is as follows: “[Trooper A] told [her husband] that [the Appellant] touched her on her leg and back. She stated that he tried to put his hands down the back of her pants.” Lieutenant Swenson’s report contains no reference to an allegation that there had been any touching or rubbing of Trooper A’s crotch area. (*Resp. Exhibit 7*).

114. The Deputy Division Commander of the Massachusetts State Police Division of Standards and Training then filed a formal request for investigation into the allegations of sexual harassment and sexual assault of Trooper A by the Appellant on November 21, 2022. This document notes that Mr. ZZZ initiated the complaint and states: “This incident involved allegations of unwanted touching of his wife by another Department member.” (*Resp. Exhibit 6*).

115. An investigation led by the Department’s Office of Professional Integrity and Accountability (OPIA) into these allegations commenced that same day, conducted by: Detective Lieutenant Michelle Mason, OPIA; Detective Lieutenant Kathryn Downey, OPIA; and Lieutenant Brendan Finn, HIU. (*Testimony of Mason; Resp. Exhibit 18*).

116. The following individuals were interviewed as part of the internal investigation: Trooper A; Sgt. Perez; Trooper Hebert; Mrs. YYY; Mr. ZZZ; Sgt. Medeiros; Sgt. McSweeney; and the Appellant. (*Resp. Exhibit 18*).

117. The investigative team reviewed cell phone texts, still photographs, and surveillance video from both Hillside and El Mariachi, all of which I also admitted into

evidence at this hearing. (*Resp. Exhibit 18*).

118. Trooper A's description of the alleged touching at Hillside, when she was interviewed by Det. Lt. Mason, was that the Appellant "kept putting his hand on my knee, which it just-- it just started as like, here and there. He'd just put his-- his hand on my knee. And ahmm-- over time he kept moving it up. And then he was like, caressing my thigh. Ahmm-- and then a few times he went further. And he was just like, rubbing my vagina with his pinky." Trooper A made no allegations in this interview (or at any time thereafter) that the Appellant touched her on the "lower back and buttocks area on the inside of her clothing" at Hillside. (*Resp. Exhibit 19*).

119. When Det. Lt. Mason interviewed Trooper A, she described the alleged touching at El Mariachi as "Ahmm-- almost the same thing." She continued: "So he's sitting to my right. He again is like, just holding my thigh. And just over time, he just slowly, like, he's like, probably testing to see how far up he can go. Ahmm--and he does the same thing with his-- his is like, thi-- his hand's like, this, with his pinky. And then he like, turns and is more like, facing me now. And he's just rubbing my lower back. And over time he just gets lower and lower, until he's in my pants. But he like, doesn't stay there. He like brings it up and he'll feel my back and then he'll like, goes lower and lower until -- and I had two pairs of pants on cause it's so cold out, but I -- he was in my spandex pants. Like, they're under pants." (*Resp. Exhibit 19*).

120. When interviewed by Det. Lt. Mason, the Appellant admitted to touching Trooper A "on the knee" and "on the leg," and stated that Trooper A had her leg against his and had also leaned into him. He denied touching Trooper A in the vaginal area or on her lower back or buttocks. (*Resp. Exhibit 18*).

121. Due to the nature of the complaint, a criminal investigation also commenced. At the end of this investigation, the State Police Unresolved Cases Unit filed a report noting, in part: “Although [the assigned ADA] found that [Trooper A] did not consent to the unwanted touching, her failure to directly communicate this to [the Appellant] would present challenges prosecuting the matter. [The ADA] credited [Trooper A’s] explanation that she had texted others present to avoid further contact with [the Appellant] and to avoid disruption to the occasion which was supposed to be a morale booster for the barracks. During the meeting, [Trooper A] indicated that she did not wish to pursue this matter any further and hoped the matter could be put behind her. Upon consideration of [Trooper A’s] request as well as the legal challenges presented by the circumstances, [the ADA] indicated that the Bristol County District Attorney’s office would not be seeking criminal charges and its criminal investigation [wa]s closed.”  
*(Resp. Exhibit 9).*

122. The Department’s OPIA investigation report, dated March 29, 2024, found that:

There is sufficient evidence to prove that [the Appellant] touched Trooper A on the leg, upper thigh, and lower back area. The touching does not appear to be welcomed or reciprocated and Trooper A made attempts to remove herself from the situation by texting other people in an attempt to distance herself from [the Appellant]. This occurred at both Hillside Country Club in Rehoboth and at El Mariachi restaurant in Taunton.

*(Resp. Exhibit 18).*

123. The internal investigation concluded that there was sufficient evidence to determine that the Appellant’s actions, at both Hillside and El Mariachi, of “touching Trooper A without legal justification, on the upper thigh area, the vaginal area outside of her clothing and/or the lower back and buttocks area on the inside of her clothing,” constituted a violation of M.G.L. c. 265, Section 13H (Indecent Assault and Battery).

*(Resp. Exhibit 18).*

124. The internal investigation concluded that there was sufficient evidence to determine that the Appellant's actions, at both Hillside and El Mariachi, of "making sexual advances and physical contact of a sexual nature with Trooper A, without her consent," constituted a violation of Massachusetts State Policy and Procedure, ADM-18 (Unlawful Harassment, Sexual Harassment, and Discrimination). *(Resp. Exhibit 10).*

*Duty Status and Discipline of the Appellant*

125. On November 21, 2022, the Appellant was relieved of duty. *(Resp. Exhibit 18; Testimony of Appellant).*
126. On November 28, 2022, a duty status hearing was conducted regarding the Appellant's duty status. After the hearing, the Appellant was placed on a duty status of suspended without pay. *(Resp. Exhibit 18).*
127. On December 14, 2022, a second duty status was conducted regarding the Appellant's duty status. After the hearing, the Appellant was placed on a duty status of suspended with pay. *(Resp. Exhibit 18).*
128. A Trial Board hearing was conducted on June 26 – 27, 2024. The Appellant faced the following charges:

Charge I – Conformance to Laws (M.G.L. c. 265, Section 13H)

Specification I: Rehoboth (Hillside)

Specification II: Taunton (El Mariachi)

Charge II – Violation of Rules (Article 5.1; Policy and Procedure ADM-18)

Specification I: Rehoboth (Hillside)

Specification II: Taunton (El Mariachi)

Charge III – General Conduct (Article 5.3)

Specification I: Rehoboth (Hillside)

Specification II: Taunton (El Mariachi)

*(Resp. Exhibit 5; Resp. Exhibit 13).*

129. The Appellant was found Guilty on all charges other than Charge I, Specification II, which was the charge of Indecent Assault *at El Mariachi*. In making this one Not Guilty finding, the Trial Board noted: “While the board believes [the Appellant] did make contact with Trooper A’s leg, we found a lack of sufficient evidence to prove this contact arose to the level to support a charge of sexual assault.”

*(Resp. Exhibit 14).*

130. The Department has established Rules and Regulations, effective December 31, 2001, which sets out “Discipline Guidelines” for each “Class” of offense (A, B, C, D) broken down by first, second and third offense. For a Class A offense, the range of discipline noted is as follows: First Offense: suspension of not less than 30 days, up to and including termination; Second Offense: suspension of not less than 90 days, up to and including termination; Third Offense: Termination. *(Resp. Exhibit 4).*

131. The “Discipline Guidelines” state that one’s “complete and entire disciplinary history, including all offenses, if any committed before March 19, 1997, shall be considered as aggravating or mitigating factors, as the case may be, when recommending discipline.” *(Resp. Exhibit 4).*

132. Charge I (Specification I and II) is a Class A violation. *(Resp. Exhibit 4).*

133. Charge II (Specifications I and II) is a Class A violation. *(Resp. Exhibit 4).*

134. Charge III (Specifications I and II) is a Class B violation. *(Resp. Exhibit 4).*

135. The Trial Board recommended termination of the Appellant for the Guilty finding of Charge I (Specification I) and periods of suspension without pay for the Guilty findings of Charge II (Specification I and II) and Charge III (Specification I and II).

*(Resp. Exhibit 4).*

136. The Appellant was terminated and dishonorably discharged, effective July 19, 2024. (*Resp. Exhibit 15; Resp. Exhibit 16; Resp. Exhibit 17*).

137. The Appellant filed an appeal with this Commission on July 26, 2024. (*App. Exhibit 67*).

#### **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce “basic merit principles,” which include: “retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating from employment employees whose inadequate performance cannot be corrected,” 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.

Section 41 of G.L. c. 31 states, in part: “Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period more than five days ....” A tenured civil service employee aggrieved by a disciplinary decision of an appointing authority, made pursuant to G.L. c. 31, § 41, may appeal to the Commission under G.L. c. 31, § 43, which provides:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

The Appointing Authority bears the burden of proving “just cause” for the discipline imposed by

a preponderance of the evidence. G.L. c. 31, § 43.

Under § 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006). However, “[t]he commission’s task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.’” *Id.* at 823-24 (quoting internally from the bypass appeal case of *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983)).

The Commission is guided by “the principle of uniformity and the equitable treatment of similarly situated individuals [both within and across different appointing authorities], as well as the “underlying purpose of the civil service commission – to guard against political considerations, favoritism, and bias in governmental employment decisions.” *Falmouth* at 824. An action is “justified” if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” *Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971). *See also Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 304 (1997); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). When evaluating whether evidence is credible, a witness’s testimony may be “impugned” by their prior inconsistent testimony. *See Wearry v. Cain*, 577 U.S. 385, 393 (2016); *Olivia v. Garland*, 120 F.4th 1, 6 (1st Cir. 2024) (noting that “a number of inconsistencies and instances of contradictory testimony ... cumulatively persuaded [the factfinder] of the petitioner’s lack of credibility.”)

The Commission determines if there was just cause for discipline by inquiring whether

the employee has been guilty of “substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *See School Comm. of Brockton v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983). By virtue of the powers conferred by their office, employees holding public safety positions, such as police officers, are held to a higher standard of conduct than other public service employees. They “must comport themselves in accordance with the law that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.” *Police Comm’r of Boston v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 371 (1986).

In addition, off-duty behavior by a public employee must bear a direct and significant nexus to the employee’s ability to perform the official duties of the position in order for it to be subject to discipline. *See, e.g., Baldassaro v. City of Cambridge*, 50 Mass. App. Ct. 1, 4, *rev. den.*, 432 Mass. 1110 (2002) (reinstating heavy motor equipment operator terminated for “reprehensible” verbal abuse of meter maid who issued him a parking ticket); *School Committee of Brockton v. Civil Serv. Comm’n*, 43 Mass. App. Ct. at 491-492 (reinstating custodian who committed sexual act in a public park). *See also Fuertes v. City of New Bedford*, 25 MCSR 485 (2012) (reinstated paramedic previously terminated after charge of motor vehicle homicide later dismissed for lack of probable cause); *Burke v. Lynn School Committee*, 10 MCSR (1997) (reinstated school custodian guilty of involuntary manslaughter due to negligent discharge of firearm); *O’Donnell v. Newton Police Dep’t*, 11 MCSR 227 (1998) (reinstated police captain terminated for “conduct unbecoming” arising out of an off-duty drinking incident).

The public policy underlying the “nexus” requirement is firmly embedded in the civil service statute. Specifically, G.L. c. 31, § 43 provides that if an employee establishes that the

appointing authority's action was based "upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained." As the Massachusetts Appeals Court has cautioned, "without such a [nexus] test, the natural tension between municipal managerial discretion and commission statutory oversight too frequently might be resolved by giving undue judicial deference to local political or nonemployment considerations in the name of protecting 'the efficiency of public service.'" *Sch. Comm. of Brockton*, 43 Mass. App. at 491.

Section 43 of G.L. c. 31 also vests the Commission with the "considerable discretion" to affirm, vacate or modify discipline, although that discretion is "not without bounds" and requires sound explanation for doing so. *See, e.g., Police Comm'r v. Civil Service Comm'n*, 39 Mass. App. Ct. 594, 600 (1996). Modification is warranted, for example, when the Commission finds "political considerations, favoritism, or bias," or "findings of fact [that] differ significantly from those reported by the town." *Falmouth*, 447 Mass. at 824. Finally, a basic tenet of civil service law merit principles is that discipline must be remedial, not punitive, designed to "correct[] inadequate performance." G.L. c. 31, § 1.

#### *Applicability of Massachusetts Gen. Laws c. 265, section 13H*

Section 13H of G.L. c. 265 sets out the criminal penalties for indecent assault and battery. The required elements to prove the crime of indecent assault and battery are set out in case law and in Massachusetts Model Jury Instruction 6.500 (revised June 2008). The elements are: (a) an intentional touching of another person, without legal justification or excuse; (b) the touching was "indecent"; and (c) the alleged victim (when aged 14 or older) did not consent to the alleged indecent touching.

The first element of "intent" requires proof that "the defendant intended – had a conscious purpose . . . – to commit an indecent or offensive touching without [the victim's]

consent.”” *Commonwealth v. Kennedy*, 478 Mass. 804, 810 (2018), quoting *Commonwealth v. Marzilli*, 457 Mass. 64, 67 (2010).

The second element, “indecent,” is defined as follows: “A touching is indecent [within the meaning of § 13H] when, judged by the normative standard of societal mores, it is violative of social and behavioral expectations, in a manner which is fundamentally offensive to contemporary moral values and which the common sense of society would regard as immodest, immoral, and improper.” *Commonwealth v. Lavigne*, 676 N.E.2d 1170, 1172 (Mass. App. Ct. 1997) (citations, alterations and internal quotation marks omitted). Case law further notes that society would regard [the touching] as “immodest and improper because of its sexual overtones.” *Commonwealth v. Cruz*, 93 Mass. App. Ct. 136, 139 (2018) (quotations and citation omitted). Indecent touches include “the intentional, unjustified touching of private areas such as ‘the breasts, abdomen, buttocks, thighs, and pubic area of a female.’” *Commonwealth v. Mosby*, 30 Mass. App. Ct. 181, 184-185 (1991) (quoting *Commonwealth v. De La Cruz*, 15 Mass. App. Ct. 52, 59 (1982)). These areas have been “classified as sexual parts of the body.” *Commonwealth v. Cruz*, 93 Mass. App. Ct. at 139 (quoting *Commonwealth v. Rosa*, 62 Mass. App. Ct. 622, 625 (2004)). Courts “consider all of the circumstances” when deciding whether a touching was “indecent,” including but not limited to “any disparity in age and sophistication between the parties.” *Cruz*, 93 Mass. App. Ct. at 139.

That the alleged victim “did not consent” is the third necessary element to establish the charge of indecent assault and battery when the victim is 14 years old or older. The Supreme Judicial Court has affirmed that mistake of fact “may be an appropriate and fair defense to charges of indecent assault and battery on a person age fourteen or older,” under G.L. c. 265, § 13H. *Id.* (citing *Commonwealth v. Lopez*, 433 Mass. 722, 732 (2001)). Technically, mistake of fact is not an affirmative defense; instead it is evidence that an element of the crime of

indecent assault and battery was not proven. *Lopez*, 433 Mass. at 725, n.3.

Evaluating whether there was a mistake of fact as to consent requires consideration of the accused's state of mind from both a subjective and objective viewpoint. *See Commonwealth v. Grant*, 391 Mass. 645, 651 (1984). For the subjective viewpoint, courts look to determine if the accused had an "actual honest (sometimes called good faith) belief regarding the victim's consent." *Commonwealth v. Butler*, 97 Mass. App. Ct. 223, 232–34 (2020). For the objective viewpoint, courts look to determine whether the accused's "belief [is] reasonable in the circumstances." *Grant*, 391 Mass. at 651.

*Applicability here of the Department's General Order ADM-18:*  
*Unlawful Harassment, Sexual Harassment, and Discrimination*

Excerpts from the Department of State Police General Order ADM-18 include the following regarding sexual harassment:

Sexual Harassment Defined: Unwelcome sexual conduct such as: sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature, when:

- (a) Submission to or rejection of such advances, requests or conduct is explicitly or implicitly made a term or condition of employment or as a basis for employment decisions;
- (b) Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance; or
- (c) Such advances, requests or conduct have the purpose or effect of creating an intimidating, hostile, humiliating, or sexually offensive work environment.

It is not necessary to meet the threshold of sexual harassment as defined by law to be considered a violation of this policy.

Examples of sexual harassment, may include but are not limited to:

- Direct sexual advances or assaults;
- Sexual inquiries, jokes, and epithets;
- Derogatory comments about a person's sex, sexual orientation or gender identity or expression;
- Other forms of verbal abuse of a sexual nature, such as whistling or

catcalling;  
Offensive or unnecessary touching, pinching, patting, etc.;  
The display of sexually suggestive posters, photographs, or objects; or  
An employee receiving job benefits contingent on sexual favors (quid pro quo).

(*Resp. Exhibit 10*).

## ANALYSIS

The seriousness of the allegations Trooper A articulated shortly after leaving El Mariachi must not be understated. The Appellant stood accused of engaging in criminal behavior—Indecent Assault and Battery—as well as sexual harassment, both involving a female trooper. If true, such behavior, even if it occurred off-duty, could furnish just cause for discipline, up to and including termination. But following a comprehensive *de novo* review of the facts, including careful credibility assessments of various percipient witnesses, I conclude that the Department of State Police has *not* shown, by a preponderance of credible evidence, that the Appellant engaged in any criminal conduct or that he violated any rules that the Department charged him with transgressing.

First, while a preponderance of the evidence establishes that the Appellant took liberties in touching Trooper A on her knee and thigh, the Department has not established, by a preponderance of the evidence, that Trooper A did not consent to the Appellant's touching of her, at the time that the touching was occurring. Without this critical evidence of Trooper A's lack of consent under G.L. c. 265, § 13H, and "unwelcomeness" under ADM-18 (the Department's anti-sexual-harassment policy), the Department's legal conclusion that the Appellant violated G.L. c. 265, § 13H, ADM-18, or Article 5.3 (General Conduct Rules) is unsupported. Additionally, the Department has not established, by a preponderance of credible

evidence, that the Appellant (as charged) actually did touch “Trooper A’s vaginal area outside of her clothing or the lower back and buttocks area on the inside of her clothing.”

### Overview

The discipline in this case arose from incidents alleged to have occurred while the Appellant and Trooper A were off-duty and voluntarily participating in recreational activities organized by Sgt. Medeiros. All employees at the Middleborough Barracks were invited to play golf on a Sunday. Everyone who chose to participate did so at their own expense, of their own free will, and while off-duty. A civilian joined the group. The group first played nine holes at a golf course, then repaired to the golf course tavern (Hillside) and then, four hours later, to a bar-restaurant in Taunton (El Mariachi). Participants could and did leave at any time throughout the day and evening.

The Department concluded that the Appellant committed Indecent Assault and Battery at Hillside, but not at El Mariachi. The Department concluded that the Appellant engaged in sexual harassment at both locations. The Department also concluded that the Appellant violated the Department’s “General Conduct” standards at both locations. The General Conduct violations are based wholly on the Department’s conclusions that the Appellant “made sexual advances on and physical contact of a sexual nature with Trooper A without her consent.”

### Lack of Consent and Unwelcomeness

Indecent Assault and Battery and sexual harassment have a required element of lack of consent or unwelcomeness, respectively, which the Department had the burden to establish here. I have carefully reviewed all the record evidence that could provide relevant information about the issue of lack of consent/unwelcomeness, including witness testimony at this hearing, prior statements by eyewitnesses, video surveillance from Hillside and El Mariachi, photographs from

the outing, and cell phone texts. I note that in considering evidence, it is the role of the Commission's hearing officer to determine the credibility of testimony presented. *Dion v. New Bedford School Dep't*, 23 MCSR 517, 519 (2010) citing *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 729 (2003); see also *Correia v. Department of Correction*, 22 MCSR at 370, 374 (2009) ("It is the function of the hearing officer to determine the credibility of the testimony presented[.]"). After accounting for all pieces of material evidence, I credit the Appellant's consistent testimony under oath and to investigators that he and Trooper A were engaging in "low-level harmless flirtation" that day, and that it was "100% mutual."

The Department's conclusion that the Appellant lacked consent and that his actions were unwelcome is materially undermined by significant inconsistencies and omissions appearing in Trooper A's prior reporting of the alleged events of November 20, 2022, as well as by video evidence that materially contradicted her description of occurrences on that day. See *Wearry*, 577 U.S. at 393; *Olivia*, 120 F.4th at 6 (noting that prior inconsistent statements can undermine witness credibility); *Commonwealth v. Parent*, 465 Mass. 395, 401 (2013) (finding that "evidence that [alleged victim's] description changed from one telling to the next is probative of whether [their] story is true"); *Commonwealth v. Pickles*, 364 Mass. 395, 402 (1973) (deeming a prior statement inconsistent "if its implications tend in a different direction.")

In her conversations with her husband and mother late on November 20, 2022, and with Detective Lieutenant Mason the next afternoon, Trooper A did not disclose that she initiated some flirtatious touching of the Appellant during and throughout the Sunday outing. A preponderance of the evidence establishes that Trooper A did, in fact, repeatedly touch the Appellant in somewhat intimate ways at the golf course, Hillside, and El Mariachi. Only upon cross-examination, when confronted with video and photograph evidence, did Trooper A

acknowledge that she initiated the following touching of the Appellant: (1) when a group selfie was taken on the golf course, Trooper A placed her hand on top of the Appellant's hand (in a pose reflective of intimacy), while he did not have either his hand or his arm touching her; (2) shortly after arriving at Hillside, and after the Appellant briefly rubbed Trooper A's upper back with one hand warmer, Trooper A turned to the Appellant and placed one of her hand warmers on his cheek, while keeping a second hand warmer on her own cheek and looking into his eyes; (3) at approximately 3:53 p.m., a few minutes after the Appellant appears to have first put his hand under the table (at 3:49 p.m.), possibly in Trooper A's direction, Trooper A leaned her upper body into the Appellant's upper body for another group photo, with her arm around his back (her hand resting on his chair back), resulting in the Appellant being able to feel Trooper A's breast on his shoulder; and (4) Trooper A leaned her right arm and upper body into the Appellant's left arm and side at various points while engaging in conversation with others at both Hillside and El Mariachi. Additionally, while Trooper A did not directly admit at hearing that that she pressed her leg against the Appellant's leg,<sup>9</sup> there is video evidence that shows that Trooper A and the Appellant each positioned a leg close to each other's leg under the table at El Mariachi, such that it is more likely than not that their legs were touching, even though they both had ample space to sit without their legs touching at all.

In addition to omitting her own touching of the Appellant in her reports to her mother, husband, and Det. Lt. Mason, which is hardly trivial since her reciprocal touching of the Appellant is a contextual fact that relates to the core issue of lack of consent and unwelcomeness, Trooper A also provided inaccurate information to Detective Lieutenant Mason, which she

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<sup>9</sup> When asked whether her leg was "right up against" the Appellant's leg, Trooper A's sworn testimony was: "It could've [been]. I don't remember." Tr. vol. I at 108.

recanted at hearing when shown contradicting video evidence. Specifically, Trooper A told Det. Lt. Mason that at the end of the night when the Appellant was in the restroom, she told the entire group that the Appellant “wouldn’t stop touching me,” and “he keeps putting his hand in my pants,” and they said “oh my god - that’s awful” and they told her to “go, go,” and she then “ran” out of El Mariachi while the Appellant was still in the restroom.

While a preponderance of the evidence does establish that the Appellant informed Sgt. Medeiros in vague terms at the end of the night that the Appellant had been bothering her, it does *not* establish that she told the entire group that “he keeps putting his hands in my pants.” In fact, there is no other record evidence corroborating Trooper A’s claim that she disclosed any activity of a sexual nature to any other member of the El Mariachi party. Furthermore, Trooper A’s description of events to Det. Lt. Mason the next day painted a picture of an individual dramatically “fleeing” from the situation they are in, which stands in stark contrast to irrefutable video evidence. Video evidence shows that Trooper A calmly remained at and near the head of the table, in the Appellant’s presence from 9:03 to 9:06 p.m., with her arm around Sgt. McSweeney at times, talking and laughing with the entire group. Moreover, prior to her departure, Trooper A swatted the Appellant playfully with her jacket, she hugged Sgt. McSweeney, she was smiling, and she casually walked out of the restaurant door. The outward demeanor of the entire group during and after Trooper A’s departure continued to be just as jovial as it had been throughout the course of the night.<sup>10</sup>

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<sup>10</sup> Additionally, while outwardly quite distraught about the preceding day’s events in her interview with Det. Lt. Mason the next afternoon, the video footage captured less than 24 hours earlier, in sharp contrast, displays consistent indicia of Trooper A enjoying herself (and she *herself* acknowledged as much subsequently) throughout the entire time that she was taking part in the approximately 10-hour voluntary outing at the golf course, Hillside Tavern, and El Mariachi. (*App. Exhibit 18; Testimony of Trooper A*).

In yet another example of Trooper A painting a different picture of her conduct during that outing than what video evidence and eyewitness testimony of others present (and even Trooper A's own later testimony) depicts, Trooper A informed her mother that "I fought him off all day, Ma. I kept my hand in front of my crotch the entire time and fought." But Trooper A's hands can be seen above the bar/tabletop throughout the course of her time at both Hillside and El Mariachi and at no point can she be seen resisting the Appellant's presence. Rather, I give full credence to Kevin , 38 & n.'s investigative interview statements (recorded within a week of the outing and before any outing participant had learned the details of Trooper A's allegations) to the effect that, given his close proximity to Trooper A and the Appellant, he would have picked up on any harassment had it occurred.<sup>11</sup> See App. Exh. 66.

In Trooper A's eventual testimony, after facing herself on video and in photographic evidence, she readily acknowledged that she was smiling, laughing, and conversing with everyone present throughout the entire outing. She testified that she was "talking to [the Appellant] and smiling at him" as he was caressing her leg (R. Exh. 26 at R0440) and that she was "laughing" while "disclosing [alleged] sexual abuse" to a superior (*Id.* at R0541). I find the latter no more believable than Trooper A's misstatements discussed above and I credit instead the testimony of Sergeants Medeiros and McSweeney that at no point on November 20, 2022, did Trooper A make any disclosure to them that she was being harassed sexually.

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<sup>11</sup> Kevin L., although a good friend of Sgt. Medeiros, had no other disclosed connection to the Department; he had only met the Appellant twice before November 20; and as the parent of three girls, he would "definitely have noted and intervened" had anything inappropriate occurred in his presence. (*App. Exhibit 66*) Mr. L. was "blown away" upon hearing of Mr. ZZZ's complaint and firmly stated that it would have been impossible for the Appellant to have held his hand on Trooper A's back for any length of time without Mr. L., seated directly across a small table, having noticed. (*Id.*) Because he could not possibly have known what Trooper A specifically told investigators, his contradiction of certain details Trooper A had alleged (*see App. Exhibit 66*) carries particular weight with me in my overall credibility assessments.

I also deem telling Trooper A's voluntary choice to remain at the Hillside tavern for at least two hours after the Appellant started physically flirting with her, as well as her subsequent choice to join the Appellant and others at El Mariachi for an additional two hours of socializing.<sup>12</sup> As Trooper A drove her own car, she had the freedom to depart at any time. Not only did she not "fight" the Appellant, she chose to stay with the group and remain away from home from approximately 10:30 a.m. to 9:30 p.m., despite her husband's perturbed ongoing texts for her to come home for the family Sunday dinner.

The Department's proposed decision references "cell phone evidence from Trooper A contemporaneous to this incident, which relayed the unwanted nature of the contact with [the Appellant]" as indicative of Trooper A's lack of consent to the touching. At Hillside, Trooper A sent a text to Sgt. McSweeney at 4:59 p.m., writing: "Call me over for a sec plz." When Sgt. McSweeney saw the text and called Trooper A over to him at 5:08 p.m., she recounted, according to both Sgt. McSweeney and Trooper A, something to the effect of "[the Appellant] is touching my leg." Sergeant McSweeney credibly testified that she also quickly added "*but it's OK, we're friends.*" He stated that "she didn't seem that worried about it ... it didn't raise any alarms to me."<sup>13</sup> Trooper A herself acknowledged that she was nonchalant in this conversation,

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<sup>12</sup> By contrast, two others in the original golfing group of seven parted company either just before or after the rest spent time at Hillside tavern.

<sup>13</sup> I do *not* credit Trooper A's statement that she used the word "creepy" in speaking with Sgt. McSweeney. She was inconsistent in recounting—first to investigators and then on the witness stand—what exactly she said to Sgt. McSweeney right after he called her over around 5:08 p.m. *Compare* Resp. Exh. 9 at R0041, ¶ 7 with Tr. vol. 1 at 25. Moreover, I find that had Trooper A described the Appellant's behavior to her supervisor as "wicked creepy," as she claimed the next day, Sgt. McSweeney clearly would have reacted quite differently (than laughing mirthfully as video shows) and the phrase surely would have stuck in his memory. State police investigators themselves concluded, however, that Sgt. McSweeney "could not have been aware of the severity" of the misconduct Trooper A later alleged (in clearing him of charges of failure of supervision). Resp. Exh. 18 at R0101.

because she “didn’t want it to blow up,” and much laughing ensued by both of them, as seen on video during their brief conversation on this topic. She remained at the bar by Sgt. McSweeney until they all departed at approximately 6:55 p.m.

She then chose to go to El Mariachi, where she waved to the Appellant to signal where they were seated, clapping when he saw them and approached. She and the Appellant sat together for approximately 90 minutes before she decided to send a text to Sgt. Medeiros (oddly, not Sgt. McSweeney who was seated next to the Appellant) at 8:55 p.m., writing: “Can you call or distract [the Appellant] quick.” She then spoke with Sgt. Medeiros, at 9:00 p.m., after the Appellant had left the table. It is at this time that, a preponderance of the evidence establishes, she told Sgt. Medeiros that the Appellant was bothering her (perhaps being “touchy”) and so she did not want to walk by him when she left. Their communication, on video, again was clearly jovial, and the atmosphere remained that way through and after her departure. To the extent that Trooper A has argued that she made “light of” the situation when talking to Sgt. McSweeney at Hillside and Sgt. Medeiros at El Mariachi because she did not want to “ruin” the outing, that approach cannot itself justify a finding of lack of consent as it would put the Appellant (or anyone similarly accused of unwanted touching) in an impossible bind. Because the Appellant genuinely believed that his flirtatious touching was not unwelcome and Trooper A did not communicate anything to him to the contrary, low-key (and, frankly, mixed) signals to third parties cannot cure a failure of direct communication.<sup>14</sup> Therefore, the two texts relied upon by the State Police Trial Board, which were directed to individuals other than the Appellant, do not

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<sup>14</sup> In discussing a charge of indecent assault and battery, the Supreme Judicial Court has declared: “The key question is what a defendant understood about another’s wishes in the absence of clear, objective indicia of consent or non-consent.” *Commonwealth v. Kennedy*, 478 Mass. 804, 811 (2018).

serve to establish that Trooper A did not in fact consent to the Appellant's touching while he was allegedly touching her in an overly familiar fashion.

These two cell phone texts, in any event, must be viewed in connection with all of the additional evidence relevant to lack of consent and unwelcomeness. A summary of critical relevant evidence in the record includes: (1) Trooper A's initial complete failure to acknowledge her own touching of the Appellant, in a markedly familiar way, throughout the course of the outing, at all three venues; (2) Trooper A's ongoing reciprocal friendly gestures towards the Appellant, depicted on video and in photographs, right up to the moment of her departure from El Mariachi; (3) Trooper A's misrepresentations to Det. Lt. Mason and her mother about her alleged responses to the surreptitious touching by the Appellant; (4) Trooper A's outward appearance in all of the photograph and video evidence, in which she is smiling, laughing and conversing with the others; (5) Trooper A's own admission that she did not remove the Appellant's hand from her body at any time, she did not tell the Appellant to remove his hand from her body at any time, and that, based on her outward appearance throughout the outing, she did not give the Appellant any direct indication that she was not consenting to his touches;<sup>15</sup> and (6) credible testimony by Sgt. Perez, Sgt. McSweeney, Sgt. Medeiros, and Mr. L., all of whom accompanied both Trooper A and the Appellant throughout the day and evening, that they perceived the entire outing to be one that was enjoyed by all, and did not perceive Trooper A to be in distress at any time (save fleetingly at the end of the evening when she appeared to have a

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<sup>15</sup> While Det. Lt. Mason testified that, based on her experience and training, it is not unusual for victims of sexual assault to "freeze like a fawn," there is no evidence that Trooper A, a seasoned state trooper presumably accustomed to stressful situations, "froze like a fawn" at any point throughout the outing. Instead, video evidence plainly depicts her, as even she admits, actively engaging in conversation with the group, smiling, laughing, and clapping throughout her time at both Hillside and El Mariachi.

negative reaction to repeated angry texts from her husband).

The Appellant has stated that he thought that Trooper A and he were engaging in “100% mutual ... harmless flirtation.” Given the evidence referenced above, I credit the Appellant’s perception as being both his subjective good faith belief, as well as an objectively reasonable belief, in these circumstances.

Therefore, the record as a whole does not establish, by a preponderance of the evidence, that there was a lack of consent by Trooper A to the Appellant’s touching, at the time that any touching was occurring, as required for a determination of indecent assault and battery. Nor is there a preponderance of evidence that this touching, at the time that it occurred, was “unwelcome,” as required for a determination of sexual harassment.<sup>16</sup>

#### *The Timing of Any Overly Familiar Contacts*

The Department’s case is not strengthened measurably by Trooper A’s testimony that the Appellant put his hand on her knee shortly after they arrived at Hillside because the record contains little corroboration that he initiated any such forwardness then. As noted in Finding no. 31, *supra*, the surveillance video does not yield confirmation of actual hand-to-leg contact during the parties’ first 50 minutes in the tavern.<sup>17</sup> Moreover, as noted in Findings nos. 16 and 22, clear

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<sup>16</sup> Although the lack of sufficient evidence of unwelcomeness is outcome-determinative for the charge of sexual harassment, I find further that this off-duty conduct also did not have the requisite “purpose or effect of unreasonably interfering with an individual’s work performance; or ... the purpose or effect of creating an intimidating, hostile, humiliating, or sexually offensive work environment.” ADM-18. (*Resp. Exhibit 10*). Trooper A and the Appellant did not work during the same shift, had infrequent interactions in the barracks and, moreover, Trooper A stated at hearing her own expectation that there would have been no repercussions at work had her husband not lodged a formal complaint: “I just wanted it to end right there and then. I don’t see him often and, if I made a formal complaint, then we would be here today and I didn’t want all of that, to go on the stand over and over. To relive it, [when] it could have just ended November 20, 2022[.]”

<sup>17</sup> My viewing (multiple times) of the key video segments cited by the Department in its proposed decision occurred on a jumbo-sized screen and another (affiliated with the

evidence *does* establish familiar (if not liberty-taking) touches of the Appellant's person by Trooper A before the two ever sat together in the Hillside tavern.

What the Hillside video footage later shows of note are three or four very brief instances (in the space of about 20 minutes from 4:23 to 4:44 p.m.) of the Appellant sliding his left hand over what appears to be Trooper A's thigh, presumably to her knee (which remains out of sight under the bar counter). In no instance does the visible hand movement last more than two or three seconds. What is notable about this is that there is *no* discernable reaction from Trooper A. Each time hand movement is visible, she carries on conversations with others or eating her late lunch—seemingly without pause. This leads me to credit the Appellant's testimony that Trooper A was pressing her leg into his at or around this time. I also find it perplexing (if Trooper A's full account is to be believed) that within 60 seconds of the last such visible touch Trooper A leaves her seat and walks right past Sgt. McSweeney but does not comment on what has just happened. It is not until 10 minutes later, after she has returned to her seat (and invited the Appellant by gesture to sit by her again), that she sends Sgt. McSweeney a cryptic text asking to be called over to him.

At El Mariachi, although Trooper A's upper body is clearly visible in video footage at all times that the Appellant sat next to her there, the bar surveillance video does not provide evidence of any touching that might have occurred below tabletop height—except for their first few minutes seated together (7:24 to 7:28 p.m.) when their legs are visible. But given that the video evidence depicted the Appellant's hand on Trooper A's thigh at Hillside, coupled with the evidence that Trooper A and the Appellant appear to have their legs together when initially

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Commission) assisted me in reviewing the entirety of the more than five hours of video-camera footage from the Hillside tavern and El Mariachi restaurant.

seated at El Mariachi, I have drawn a reasonable inference that the Appellant's admitted touching of Trooper A at El Mariachi likely mirrored his actions at Hillside—meaning that he touched her on the thigh again. But there is *no* video evidence corroborating Trooper A's claim that he turned and was facing her as he slid his left hand down the back of her outfit to her buttocks. Video evidence from 9:00 to 9:03 p.m. does align with Trooper A's testimony that she told Sgt. Medeiros that the Appellant had been bothering her. However, given the laughter and visible joviality of all of the parties, including Trooper A, at that exact time, a preponderance of evidence does *not* establish that Trooper A told him or any of the others that any sexual touching had occurred—or that, as she later alleged, that she told the group that the Appellant kept “putting his hand down her pants.” Instead, a preponderance of the evidence demonstrates that she continued to make light of the Appellant's flirtatiousness, as she had done at Hillside, and provided no details beyond that the Appellant was being “touchy” and, for that reason, she did not wish to walk past him.

#### *The Specific Body Parts Alleged to Have Been Touched*

In addition to a lack of consent, Indecent Assault and Battery requires proof of “indecent” touching. Therefore, where on Trooper A's body any touching occurred is a critical piece of evidence. To recap, the Department made a finding of Guilty of Indecent Assault and Battery at Hillside, and a finding of Not Guilty of Indecent Assault and Battery at El Mariachi. A significant flaw in the Department's Charge I Guilty finding at Hillside is that the Department adopted, *verbatim*, language used in Det. Lt. Mason's Investigative Report. The Department made a specific determination in its Trial Board Findings and Recommendations that the Appellant touched Trooper A, at Hillside, “*without legal justification, on the upper thigh area,*

*the vaginal area on the outside of her clothing and/or the lower back and buttocks area on the inside of her clothing.*”

As a threshold point, Trooper A *did not even allege*, at any time, that the Appellant touched her—at Hillside—*on the lower back and buttocks area on the inside of her clothing*. Nor was there any evidence introduced on the touching of Trooper A’s lower back and buttocks area on the inside of her clothing at Hillside. Indeed, even Trooper A herself denied that this occurred. Therefore, the Department’s inclusion of this “and/or” finding—regarding events at Hillside—is inexplicable<sup>18</sup> and wholly unjustified, particularly in light of its resulting severe disciplinary consequence of termination and dishonorable discharge. An appointing authority presumably could, in any case, create a lengthy list of “and/or” violation findings, but to do so thwarts the expectation and requirement that a fair hearing will result in *specific findings based on the evidence*. The body locations alleged to have been touched are a crucial element of any charge of Indecent Assault and Battery, yet the Department’s above finding suggests a very “loose” approach to making its determination.

Furthermore, it is undisputed that video evidence shows the Appellant’s hand only on Trooper A’s thigh, and this video evidence is available from Hillside only, not at El Mariachi. There is no video evidence, or corroborating eyewitness testimony, that the Appellant touched Trooper A, at either location, “on the vaginal area on the outside of her clothing and/or the lower back and buttocks area on the inside of her clothing.” The discrepancy in the Department’s findings between the Appellant’s alleged touching at Hillside (Charge I, Specification I: Guilty) and the Appellant’s alleged touching at El Mariachi (Charge I, Specification II: Not Guilty)

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<sup>18</sup> The most likely “explanation” for the “and/or,” as noted above, is the Department’s verbatim adoption of language appearing in Det. Lt. Mason’s report.

cannot be reconciled based on the comparable quantum of evidence available at both establishments. The Department found the Appellant to be Not Guilty of Indecent Assault and Battery at El Mariachi, due to “inconclusive” evidence: “Reviewing the video evidence here, the board found it to be inconclusive in supporting the allegations of sexual assault. While the board believes that [the Appellant] did make contact with Trooper A’s leg, we found a lack of sufficient evidence to prove this contact arose to the level to support a sexual assault.”

Paradoxically, despite the fact that there is also no video evidence or corroborating testimony to support a finding that the Appellant touched Trooper A anywhere other than Trooper A’s leg and thigh at Hillside, the Department made a finding that the Appellant touched Trooper A “on the upper thigh area, the vaginal area on the outside of her clothing and/or the lower back and buttocks area on the inside of her clothing”<sup>19</sup> at Hillside and found the Appellant Guilty of Charge I, Specification I.

Without corroboration from video or photographic evidence, a determination that the Appellant touched Trooper A in any spot other than her right thigh is necessarily dependent on a weighing of the credibility of the witnesses. It is reasonable for me to give less credence to Trooper A on this issue, due to her unsupported statements and important omissions noted above. Indeed, it can at times be reasonable for a factfinder to discount a witness’s entire testimony when the factfinder determines that a component of their testimony has been discredited. *See City of New Bedford v. Civil Service Comm’n et al.*, No. 2373CV0860, slip. op. at 10 (Bristol Super. Ct. June 24, 2025) (stating that “the Commissioners were entitled to” find that a witness was not credible overall); *Ducharme v. Holyoke S. R. Co.*, 203 Mass. 384, 397 (1909) (“It is true that we do not adopt the maxim *falsus in uno falsus in omnibus*, as a rule

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<sup>19</sup> Again, Trooper A did not even allege, at any time, that the Appellant touched her on the “lower back and buttocks area on the inside of her clothing” while at Hillside.

of law. But it is also true that a (factfinder) may apply it so as to disregard entirely the testimony of any particular witness if they are convinced that they ought so to do.”)

I did not, however, discount Trooper A’s entire testimony, and I have noted throughout this decision several instances where her testimony was supported by other evidence. However, in light of Trooper A’s diminished credibility stemming from her reporting relevant to the issue of lack of consent, detailed above, coupled with her inconsistent reporting as to where on her body she was touched, set out below, and problems with *other* statements she has made in formal settings,<sup>20</sup> I find her credibility on the issue of where on her body she was touched also to be diminished.

Trooper A’s first report of any alleged touching was made in her conversation with Sgt. McSweeney at Hillside at approximately 5:08 p.m. and, in this conversation, she said that the Appellant was touching her “leg.” She had previously texted Sgt. McSweeney at 4:59 p.m., writing, “Call me over for a sec plz.” Both Trooper A and Sgt. McSweeney credibly described this as an extremely brief verbal exchange, and video evidence shows them laughing when this conversation is almost certainly occurring. Both credibly reported that

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<sup>20</sup> I will not attempt here to discuss every legitimate question that has been raised about the accuracy of Trooper A’s testimony or statements made in the course of investigation that do not expressly relate to the charges against the Appellant. It suffices here, as an example, to point to Trooper A’s statement to Det. Lt. Mason in the “day after” (November 21, 2022) investigative interview in response to the detective’s question about the alcoholic beverages she and others had consumed on the golf course. Trooper A admitted only to consuming the three beers she had brought from home. (*Resp. Exh. 19 at R0111*) When asked about other alcohol being consumed there, Trooper A replied that she “do[es]n’t do whiskey.” (*Id.*) But photographic and other evidence shows that, in addition to three beers, Trooper A was drinking whiskey from a bottle and holding a canned cocktail called a “Long Drink” while the group was golfing. (*App. Exh. 3*) On the witness stand, Trooper A did not deny taking a swig from the whiskey bottle, although she then claimed it was only a tiny taste. (*Tr. vol. 1 at 86*).

Trooper A nonchalantly told Sgt. McSweeney that the Appellant was touching her leg and, also, that Trooper A did not reference or report any sexual touching. There is no time after 5:08 p.m. at Hillside when the Appellant and Trooper A are re-seated together, so any alleged touching that occurred at that venue would have occurred prior to this statement to Sgt. McSweeney—that the Appellant was touching her “leg.”

As to how Trooper A described any alleged touching when she was at El Mariachi, the preponderance of the evidence establishes that, at most, she stated that the Appellant was “touchy” and that she “did not want to walk by him” when she departed. She said this to Sgt. Medeiros at approximately 9:00 p.m., after the Appellant left for the restroom, and after having previously texted Sgt. Medeiros, at 8:55 p.m.: “can you call or distract [the Appellant] quick?” As at Hillside, three independently interviewed percipient witnesses unanimously stated that she did not tell anyone at El Mariachi that the Appellant had touched her in a sexual manner. As at Hillside, video evidence shows smiling and laughter by all of the parties throughout the evening at El Mariachi, including from 9:00 p.m. on after Trooper A made her cryptic comment.

Next, while driving home from El Mariachi between approximately 9:06 p.m. and 9:30 p.m., Trooper A texted with her mother, with whom she has a very close relationship. The content of their communication was about a turkey that her mother wanted to donate and attendance at a graduation. In the texts, Trooper A referenced that she had been out at the golf outing, yet made no mention to her mother that she had just been subjected to unwanted touching—on any part of her body.

At approximately 9:30 p.m., Trooper A’s prior reports that the Appellant was “touching my leg” at Hillside, and “being touchy” at El Mariachi expanded when she arrived home to her husband, who indisputably was

upset that she had stayed out late and missed the family dinner, despite his constant texting for her to come home. While no one else became privy to that conversation to corroborate exactly what Trooper A told her husband at that point, one can reasonably infer from the husband's formal complaint that he filed the very next morning, against the will and stated wishes of Trooper A, that what he was told by Trooper A is what he reported to the police. The formal complaint states: "[Trooper A] told [her husband] that [the Appellant] touched her on her leg and back. She stated that he tried to put his hands down the back of her pants." Based on a preponderance of evidence, this is the first time that a description of the alleged touching extended to Trooper A's "back" and an attempt "to put his hands down the back of her pants." No other body parts are mentioned in the formal complaint.

Subsequently, due to her husband's filing of this formal complaint, a formal investigation commenced and police investigators promptly interviewed Trooper A. During this interview, on November 21, 2022, Trooper A again expanded her description of the location of the alleged assault and claimed that the Appellant was "rubbing my vagina with his pinky." Based on a preponderance of evidence, this is the first time that a description of the allegedly unwanted touching extended to a sexual touching of her vagina.

I find that the Appellant's explanation of events, which is that he touched Trooper A only on the leg and thigh, and that when he did so, he thought they were engaging in "harmless mutual flirtation" is more likely than not to be accurate. There is a preponderance of evidence that the Appellant touched Trooper A on her leg and thigh. That can be discerned on video at Hillside, and the Appellant admitted that he engaged in this touching. There is no video evidence or corroborating testimony that the Appellant touched Trooper A in "the vaginal area on the outside of her clothing and/or the lower back and buttocks area on the inside of her

clothing.” The Appellant denied that this occurred. Trooper A, when informing Sgt. McSweeney at Hillside that the Appellant was “touching her leg” and Sgt. Medeiros at El Mariachi that the Appellant was “touchy,” made no reference that any sexual touching had occurred. Nor did she tell her mother, while they communicated on her drive home from El Mariachi, that any unwanted sexual touching had occurred.

Only after being confronted by her angry husband, at 9:30 p.m., and then when interviewed as a result of the formal complaint that her husband filed, without her consent and against her wishes, did Trooper A’s allegations turn into unwanted sexual touching. Only after an emotional exchange with her husband did she text her mother: “Just got home and [husband]mad at me but I’m not in the best mood because I got sexually assaulted a couple of times and it’s not sitting well.” Again, she and her mother had just been texting while Trooper A was driving home from El Mariachi, during which time she communicated absolutely nothing about any unwanted sexual touching—or even about having a bad time at the outing.

Based on video and photo evidence, testimony, and credibility assessments, I therefore conclude that the only touching of Trooper A that was established by a preponderance of evidence was the Appellant’s touching of Trooper A’s leg and thigh, at Hillside and at El Mariachi. I further find that Trooper A reciprocated the Appellant’s touching of her in other ways, throughout the outing and at each venue, including by placing her hand on his hand, putting her hand-warmer on his cheek, and repeatedly leaning her upper body and right leg into the Appellant, all while smiling, laughing and conversing with him.

While a woman’s “thigh” has been found to constitute a sexual body part in case law interpreting G.L. c. 265, Section 13H, any assessment of whether touching is “indecent” must be made with consideration of “all of the circumstances” and the context in which the touching

occurred, including but not limited to “any disparity in age and sophistication between the parties.” *Commonwealth v. Cruz*, 93 Mass. App. Ct. 136, 139 (2018). Temporarily setting aside that I have determined that a lack of consent was not established in this case, which in itself is outcome determinative, I consider the following evidence as relevant context to whether the touching of Trooper A’s “thigh” was “indecent”: (1) Trooper A and the Appellant are both adults capable of giving, withholding or retracting consent in unmistakable ways; (2) there is no meaningful disparity between Trooper A’s and the Appellant’s “age and sophistication”; (3) they were both voluntarily engaging in an off-duty recreational and social outing, at which both chose to drink copious amounts of alcohol throughout the day; (4) the Appellant does not have any actual or *de facto* supervisory authority over Trooper A; (5) Trooper A reciprocally touched the Appellant in arguably overly-familiar ways, of her own volition, throughout the course of the day and evening, at each venue, with her hand on his hand, her leg leaning into his, her upper body and head leaning into his, and by holding her hand warmer on his cheek. In sum, given this context, I find that the Appellant’s discreet (albeit repeated) touching of Trooper A’s thigh during this outing did not rise to actions that are “violative of social and behavioral expectations” and “fundamentally offensive to contemporary moral values, and that society would regard as immodest and improper because of its sexual overtones.” *Lavigne*, 676 N.E.2d at 1172; *Cruz*, 93 Mass. App. Ct. at 139.

In conclusion, without a preponderance of evidence showing a “lack of consent” or “indecent” touching, the Department’s Guilty finding of Indecent Assault and Battery is not justified. Without a preponderance of evidence showing “unwelcomeness,” the Department’s Guilty findings of sexual harassment are not justified. And since the violations of Article 5.3 of the Department’s Rules and Regulations were based on the findings that the Appellant

engaged in Indecent Assault and Battery and sexual harassment, the Article 5.3 Guilty findings are also not justified. As such, the Appointing Authority has failed to show just cause for the serious discipline meted out to the Appellant.<sup>21</sup>

## CONCLUSION

For all the above reasons, I recommend that Adam Emond's appeal under Docket D1-24-129 be allowed. If endorsed by the full Commission, the Appellant shall be reinstated to the Massachusetts State Police, without loss of other compensation or benefits. In that event, he shall also receive back pay from July 19, 2024 to the date of his reinstatement.

/s/ Robert L. Quinan, Jr.

Robert L. Quinan, Jr.  
General Counsel and Presiding Officer  
Civil Service Commission

September 12, 2025

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<sup>21</sup> There is even a question in my mind as to whether the nexus test for off-duty disciplinable misconduct could be satisfied given the facts I have found. *Cf. Branco v. Methuen Public Schools*, 30 MCSR 116 (2017). *See Baldassaro v. City of Cambridge*, 50 Mass. App. Ct. 1, 4, *rev. den.*, 432 Mass. 1110 (2002), and other cases cited on page 29, *supra*.