

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108

JEFFREY GODERE,
Appellant

v.

D1-18-217

CITY OF CHICOPEE,
Respondent

Appearance for Appellant:

Andrew J. Gambaccini, Esq.
Reardon, Joyce & Akerson, P.C.
4 Lancaster Terrace
Worcester, MA 01609

Appearance for Respondent:

Thomas J. Rooke, Esq.
City of Chicopee Law Department
17 Springfield Street
Chicopee, MA 01013

Commissioner:

Christopher C. Bowman

DECISION

On November 8, 2018, the Appellant, Jeffrey Godere (Sgt. Godere), pursuant to the provisions of G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission) contesting the decision of the Respondent, the City of Chicopee (City) to terminate his employment as a police sergeant. I held a pre-hearing conference at the Springfield State Building in Springfield, MA on November 28, 2018. I held a full hearing at the same location on February 27, 2019 and March 13, 2019.¹ On March 14, 2019, a conference call was held to take additional testimony. At the request of Sgt. Godere, the proceedings were declared public. Three

¹ The Standard Adjudicatory Rules of Practice and Procedure; 801 CMR §§ 1.00 et. seq.; apply to adjudications before the Commission, with G.L. c. 31, or any Commission rules, taking precedence.

(3) CDs were made of the hearing, including the conference call.² Both parties submitted proposed decisions to the Commission.

FINDINGS OF FACT:

Based upon the documents entered into evidence (Respondent Exhibits 1-21 and Appellant Exhibits 1-15), stipulated facts, the testimony of:

Called by the City:

- William Jebb, Chicopee Police Chief;
- Mark Wilkes, Chicopee Police Officer;
- The Honorable Mark G. Mastroianni, former Hampden County District Attorney;³

Called by Sgt. Godere:

- Mayor Richard Kos, City of Chicopee;
- Richard Nunes, retired Chicopee Police Lieutenant;
- Thomas Charette, retired Chicopee Police Chief;
- Jeffrey Godere, Appellant;

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

1. Sgt. Godere is forty-seven years old and has lived in Chicopee for most of his life. He is married, with two biological children and two step-children. He received an associate's degree in criminal justice from Quincy College and a bachelor's degree in criminal justice from Curry College. (Testimony of Sgt. Godere)

² Subsequent to the hearing, the parties had the recordings transcribed and a copy of the transcript was provided to the Commission. That transcript is deemed to be the official record of the proceedings.

³ Judge Mastroianni is now a federal district court judge. At the outset of his testimony, he emphasized that his Testimony was solely related to his tenure as a Hampden County District Attorney. To avoid confusion, the decision, at times, simply refers to him as "Mastroianni".

2. Sgt. Godere served as a special police officer in Chicopee from 1994 to 2001 before being appointed as a permanent, full-time police officer in February 2001. He was promoted to the position of sergeant in June 2011. (Testimony of Sgt. Godere)
3. Chief William Jebb has been the Chief of Police for the past five years. (Testimony of Chief Jebb)⁴
4. At approximately 7:00 P.M. on August 26, 2011, over nine years ago, Chicopee officers, including Sgt. Godere, responded to an apartment for a call of an unresponsive person. (Testimony of Sgt. Godere; Exhibit R13)
5. Below is a list of relevant persons and their titles as of August 26, 2011:

<u>Relevant Person</u>	<u>Title</u>
▪ Michael Bissonnette	Mayor
▪ Mark G. Mastroianni	Hampden County District Attorney
▪ John Ferraro	Police Chief
▪ William Jebb	Deputy in charge of internal affairs
▪ Thomas Charette	Police Captain
▪ Jeffrey Godere	Police Sergeant
▪ KL	Police Sergeant
▪ TD	Police Officer
▪ CL	Police Officer
▪ MC	Police Officer

6. Upon arrival at the scene on August 26, 2011, a female was discovered on the floor; once the female was determined to be deceased, apparently as a result of a homicide, Sgt. Godere

⁴ As Chief Jebb held different titles during the relevant time period, the decision refers to him as “Jebb” instead of Chief Jebb to avoid any confusion.

directed responding personnel to clear the apartment and posted Officer TD at the door to maintain a log of persons who entered the scene. (Testimony of Sgt. Godere)

7. Sgt. KL was also at the scene on August 26, 2011. (Exhibit R13)
8. While at the scene, Sgt. KL and Officer TC each used their cell phones to take a photograph of the female. (Exhibit R13)
9. When the Chicopee Police Department Detective Bureau arrived, Sgt. Godere left the scene and eventually returned to the police station sometime after 8:00 P.M. (Testimony of Sgt. Godere)
10. Sgt. KL, who was the officer in charge at the police station that night, also returned to the police station. (Testimony of Sgt. Godere)
11. While at the police station, Sgt. KL showed Sgt. Godere the picture that he (Sgt. KL) had taken of the female on his cell phone, stating words to the effect, “this is why you want to stay out of the scene, not contaminate it.” (Testimony of Sgt. Godere)
12. Sgt. Godere, after looking at the photograph of the female on Sgt. KL’s phone, asked Sgt. KL to send it to him (Sgt. Godere). (Testimony of Sgt. Godere)⁵
13. “Right after” Sgt. KL showed the photograph to Sgt. Godere, Sgt. KL sent the picture to Sgt. Godere’s cell phone. (Testimony of Sgt. Godere)
14. Sgt. Godere subsequently forwarded the photograph of the female that he had received from Sgt. KL to Officer CL. (Exhibit R13)
15. The next day, on August 27, 2011, over a period of several hours, Officer TD sent the photograph that he had taken of the female to nine fellow Chicopee police officers (including Officer MC), via individual text messages. (Exhibit R13)

⁵ Sgt. Godere’s exact testimony was “I might have asked him to send it to me. I don’t remember ... I might have asked him for it as he was showing it to me. I just don’t have a certainty of asking him.” I have found that it is more likely than not that Sgt. Godere did indeed ask Sgt. KL to send him the photograph.

16. Officer CL was involved in youth sports in Agawam. On August 27, 2011, Officer CL showed the picture of the female that he had received from Sgt. Godere to multiple parents whose children were participating in a sporting event at Phelps Field in Agawam that day. (Exhibit R13)
17. Approximately one month later, on October 3, 2011, the Chicopee Police Department became aware of the allegation that Officer CL had shown the photograph of the female to parents at Phelps Field. Jebb, who was then Deputy Chief in charge of internal affairs, commenced an internal investigation. (Testimony of Jebb and Exhibit 13)
18. After the potential existence of crime scene photographs being disseminated became known in the Fall of 2011, the Hampden County District Attorney's Office, then headed by Judge Mastroianni, became apprised of the situation. He was deeply troubled by the allegations for many reasons, including the fact that pictures taken by first responders would be significant in any criminal prosecution related to the case as such images would need to part of the prosecution's discovery production. In both written and verbal exchanges, Mastroianni stressed the serious and consequential nature of this matter to the City's Mayor at the time, Mayor Bissonnette. (Testimony of Judge Mastroianni)
19. Jebb's internal investigation took place over approximately four months, from October 2011 to February 2012. As part of his investigation, he conducted multiple interviews (with citizens and police officers) and reviewed the phone records of various police officers. (Exhibit R13 and Testimony of Jebb)
20. Most relevant to this appeal, as it relates to untruthfulness, are the written statements and interview responses of four individuals: Officer CL; Officer TD; Officer MC; and Sgt. Godere. (Exhibit R13)

Written and Oral Statements of Officer CL

21. As referenced above, Officer CL received a photograph of the female from Sgt. Godere and showed the photograph to parents at a youth sports event.
22. On October 4, 2011, Jebb met with Officer CL. In his interview with Jebb, Officer CL denied receiving a photograph of the female, discussing such a photograph or showing such a photograph to anyone. (Exhibit R13)
23. In a written report dated October 5, 2011, Officer CL again denied ever receiving, possessing, showing or sending a picture of the female. (Exhibit R13)
24. On November 30, 2011, Jebb met with Officer CL again and informed him that he had uncovered information which contradicted Officer CL's denials. Officer CL stood by his previous denials. (Exhibit R13)
25. On January 24, 2012, Officer CL told Jebb that he had not been honest during the investigation and admitted to possessing the photograph and showing it to parents. (Exhibit R13)
26. When asked by Jebb who sent him the photograph, Officer CL stated that he didn't want to get anyone in trouble. When pressed by Jebb, Officer CL told Jebb that it was a supervisor and then showed Jebb his cell phone records in which the name of Sgt. Godere, a supervisor, appeared. (Exhibit R13)

Written and Oral Statements of Officer TD

27. As referenced above, Officer TD, who was at the crime scene, took a photograph of the female and sent it to multiple other police officers, including Officer MC.
28. On October 4, 2011, Jebb interviewed Officer TD.

29. In his interview with Jebb, Officer TD admitted that he took one photograph of the female and sent it to others, but stated that he could not remember who he sent the photograph to. Even after stepping outside the room and discussing the matter with his union representative, Officer TD returned to the interview and told Jebb that he could not remember who he sent the photograph to. (Exhibit R13)
30. In a letter to Jebb dated the same day (October 4, 2011), Officer TD acknowledged taking and sending the photograph, but wrote, “To the best of my knowledge I regretfully do not recall to who or whom I sent the picture to.” (Exhibit R13)
31. Officer TD also denied that the photograph was sent out multiple times, indicating instead that it was sent as a group message, a statement that the investigation later revealed to be false, as multiple messages were sent by Officer TD over a period of hours. (Exhibit R13)

Written and Oral Statements of Officer MC

32. As referenced above, Officer MC was one of the many police officers who received a photograph of the female from Officer TD.
33. On October 5, 2011, Jebb interviewed Officer MC. (Exhibit R13)
34. Officer MC acknowledged that he received the photograph. When asked if he received the photograph from Officer TD, he stated that he was “99% certain” that he did. (Exhibit R13)
35. One day later, on October 6, 2011, however, Officer MC submitted the following written statement to Jebb:
- “On Wednesday, October 5, 2011 I was called into your office in regards to a picture being sent to my phone. On an unknown date, I do recall receiving a picture of the female victim of the homicide ... I do not remember who the message was sent from, or when exactly I received the message ...”. (Exhibit R11)

Written and Oral Statements of Sgt. Godere

36. As referenced above, Sgt. Godere, on the night of the murder, viewed a picture of the female taken by Sgt KL. Sgt. Godere asked Sgt. KL to send it to him. Sgt. KL immediately sent the photograph of the female to Sgt. Godere. Sgt. Godere subsequently forwarded the picture of the female to Police Officer CL.

37. On January 26, 2012, two days after learning from Officer CL that he (Officer CL) had received the photograph of the female from Sgt. Godere, Jebb sent the following email to Sgt. Godere:

“Sgt. Godere,

I thought I had already accomplished this, but I researched my records and discovered that I had not received a report from you or it was misplaced. If I misplaced your response, please resubmit it. If not, I need a report from you answering the following questions:

1. Did you take or receive a photograph of homicide victim [redacted]?
2. If you did not take the photograph, who sent it to you?
3. Did you forward this photograph to anyone?

Please submit your report to me ASAP in a To/From format with signature.” (Exhibit R12)⁶

38. On January 28, 2012, Sgt. Godere submitted a written report to Jebb stating:

“Sir,

On January 27, 2012, I received an email from you asking me to answer three questions. The following are the questions you asked me to answer with my response.

1. Did I take or receive a picture of [redacted]?

I did not take any picture of [redacted]. I do remember receiving a picture through text message.

2. If you did not take a picture, who did you get it from?

⁶ A relevant issue here is whether this January 26, 2012 email (from Jebb to Godere) was the first time that Jebb communicated with Godere about this issue. Jebb testified that, weeks prior to this email, in a one-on-one conversation, Godere denied receiving or sending a photograph of the female. Godere denies that this conversation ever took place. For reasons discussed in the analysis, I believe that Godere has a better recollection of what occurred.

This picture would have been sent to me over five months ago, I receive different pictures, jokes and videos that people send me and I do not recall who sent me the picture.

3. If I sent a picture to anyone, who did I send it to?

Again, I receive different pictures, jokes and videos on my phone. Some of those pictures, jokes and videos I forward to others. I do not recall if I sent this particular picture to anyone.

Respectfully,
Sgt. Jeffrey Godere”
(Exhibit R12)

39. On January 30, 2012, Jebb sent another email to Sgt. Godere that read as follows:

“Sgt. Godere,

It’s unfortunate that you are having problems with your memory. Fortunately for you, I am willing to help with this issue. Therefore, I am requesting that you contact your wireless provider and obtain a copy of your picture/data transactions for 8/26/11 to 9/15/11. Pay particular attention to 8/27/11 at 12:40 hours, if this helps with your memory, submit a report to me with this information, along with a copy of these transactions.

Deputy Chief.” (Exhibit R12)⁷

40. On January 31, 2012, Jebb sent a third email to Sgt. Godere that read as follows:

“Sgt. Godere,

You will have eight hours to refresh your memory at work. Therefore, I am requesting your report to my office at 08:00 hours with a union representative on your first day back to work.

Deputy Chief.” (Exhibit R12)

41. On February 2, 2012, Sgt. Godere reported to Jebb’s office, along with his union

representative. Jebb advised Sgt. Godere that he wanted Sgt. Godere to be truthful and

wanted to know everything regarding the photograph of the female and Sgt. Godere’s

⁷ There was a considerable back-and-forth at the hearing regarding how and when Sgt. Godere retrieved his cell phone records. For reasons discussed in the analysis, I ultimately determined that this information was irrelevant as I have concluded that, even without consulting his cell phone records, Sgt. Godere, when first questioned by Jebb on January 26, 2012, knew who sent him the photograph and who he sent it to, without the need to refresh his memory by reviewing his cell phone records.

involvement from the onset. Sgt. Godere stated that he was concerned about being a “rat”.

Sgt. Godere asked to be excused from Jebb’s office to talk to his union representative. After returning to the Jebb’s office, Sgt. Godere acknowledged that he received the photograph of the female from Sgt. KL and that he had then forwarded it to Officer CL. (Testimony of Chief Jebb and Sgt. Godere)⁸

42. That same day, on February 2, 2012, Sgt. Godere sent a written report to Jebb which read in part:

“ ... Sometime after clearing the scene [on August 26, 2011], between 7:00 P.M. and midnight, I received a picture message from Sgt. [KL] of the murder victim. I am not sure of the exact time I received the picture. On 8/27/11 at 00:40 hours, I forwarded a picture message to Officer [CL] (Exhibit R12)

43. Jebb, who was then Deputy Chief in charge of Internal Affairs, met with then-Chief Ferraro to review his findings. Chief Ferraro informed Jebb that he (Ferraro) did not want to charge any of the above-referenced officers with untruthfulness, but that Officer CL was deserving of more discipline than the other three individuals (Testimony of Chief Jebb)⁹

44. Jebb’s final report does not recommend charging any of the above referenced individuals, including Sgt. Godere, with untruthfulness. Rather, Sgt. Godere, Officer CL and Officer TD

⁸ There were nuanced differences between the testimony of Chief Jebb and Sgt. Godere, including, but not limited to, when, during the interview, Sgt. Godere stated his concern about being a “rat” and whether he expressed that concern once or twice. My finding represents what I believe to be the most probable exchange. Regardless, the parties both agree that Sgt. Godere, prior to providing the information about the text message exchanges regarding the female, first expressed concern about being a “rat” which is the most relevant take-away as it relates to this appeal.

⁹ Chief Jebb testified that, during this meeting with then-Chief Ferraro, he (Jebb) recommended charging Sgt. Godere and Officer CL with untruthfulness. There is no written documentation of this conversation that took place approximately eight years ago and I am unable to find whether that conversation (regarding untruthfulness) took place or not. Regardless, what is most relevant to this appeal is that then-Chief Ferraro did not want to charge any officers with untruthfulness and that Jebb’s report does not recommend charging any of the officers, including Sgt. Godere, with untruthfulness.

were charged with “incompetence” for “failing to conform to work standards established for the officers’ position.” (Exhibit R13)¹⁰

45. Officer MC was not charged with any rule violations. (Exhibit R13)

46. In April 2012, then-Chief Ferraro issued his disciplinary decisions. Officer CL was given three tours of punishment duty; Sgt. Godere and Officer TD received a written warning; Officer MC received no discipline. (Exhibits R13; A5-A7)

47. Then-Chief Ferraro sent a memorandum dated April 12, 2012 to Sgt. Godere which read as follows:

“As a result of a recent Internal Affairs Investigation, information surfaced that your use of a cell phone during an ongoing investigation although it may or may not have done with ill spirit was not consistent with the mission of the Chicopee Police Department. Your duties are to assist in any way possible as requested or directed by those who were conducting the investigation. There has been no information that you were requested or directed to engage in such activity.

It is of the upmost importance that your duties are performed in a professional manner at all times. As you know cell phones are allowed on duty for work related activities or emergencies. This correspondence serves as notice to you that should you fail to meet the duties and responsibilities of your position in the future a more stringent form of discipline will be administered. Hopefully you will meet your duties and responsibilities in the professional manner of which I know you are capable of performing. This letter of reprimand will be placed in your personnel file.”
(Exhibit R13)

48. On May 4, 2012, Jebb sent correspondence to Mastroianni which read in relevant part:

“On [8/26/11], two uniformed officers while in the performance of their duties took a single photograph of the crime scene, which included the homicide victim with their cellular telephone cameras. It was determined that the officers forwarded this photograph to other officers within this department. All recipients of this photograph were contacted, and stated that they deleted the photograph. At this time, I don’t have any information that would indicate that this photograph is still in existence on any cell phone or social media outlet. However during my investigation I was able to retrieve and save this photograph to a disc, which will be maintained with [the internal investigation file].” (Exhibit A12)

¹⁰ Sgt. KL, who took a photograph at the scene and forwarded it to Sgt. Godere, was also charged with incompetence and received a written warning.

49. After imposing his discipline in April 2012, Ferraro retired as Police Chief and Thomas Charette was appointed by Mayor Bissonnette as Provisional Police Chief. Charette served provisionally for approximately one year until he was appointed as Permanent Chief, serving in that role until his retirement in July 2014. (Testimony of Chief Charette)
50. On October 4, 2012, Judge Mastroianni, still serving as District Attorney at that point in time, sent correspondence to Mayor Bissonnette, stating that he had reviewed Jebb's internal affairs report and was "deeply concerned" about the officers' behavior. Relevant excerpts of that correspondence from Judge Mastroianni to Mayor Bissonnette are as follows:
- "You have also made me aware that you are considering further available administration action for these officers, in addition to the sanctions imposed by the Police Department directly."
- "The officers who took a photograph of the victim created the very interference which they were obligated to protect. Additionally, by their behavior and later dissemination of the photographs, they subjected the victim and family of the victim to a great indignity."
- "Turning to the officer's behavior during the internal affairs investigation, there is evidence of more than one officer's reluctance to be candid about his activities relating to these photographs and a prolonged effort to hide the truth by misleading or false statements and/or reports. Such lack of honesty is very troubling. In future court proceedings, I will be ethically obligated, under mandatory discovery requirements, to produce this material when relevant to the question of these officers' credibility."
(Exhibit R8)
51. Mayor Bissonnette forwarded Mastroianni's October 4, 2012 letter to Charette, who was then the City's Police Chief. Neither Bissonnette nor Charette took any further action at that time against the officers referenced in the internal affairs report. (Testimony of Chief Charette)
52. On January 10, 2013, Mastroianni issued a memorandum entitled "Discovery Related to Certain Chicopee Police Officers" to all assistant district attorneys. The memorandum identified only Officer CL and Sgt. Godere as individuals who were determined through an internal investigation to have made false statements and constructed a process that was to be

applied in cases that involved either officer. Specifically, the memorandum indicated that when an assistant district attorney discovers that either officer is a potential witness in a case, the assistant district attorney should notify a supervisor and the assistant district attorney and supervisor then should determine whether disclosure of the material would be “relevant” in that particular case, a consideration that was to occur “on a case-by-case basis.” (Exhibit R9)

53. The memorandum notes the legal proposition, deriving from Brady v. Maryland, 373 U.S. 83 (1963), that exculpatory material in the possession of a prosecutor’s office is to be disclosed to the defense in a criminal prosecution. (Exhibit R9)
54. The memorandum also notes some of the limitations on that generalized notion, including that exculpatory evidence is evidence that may be used to impeach a “key” prosecution witness, that a witness’ “other bad acts generally cannot be used to impeach him/her as a witness on the issue of credibility[]” and that a witness’ “prior false testimony in a collateral matter is not admissible to impeach him/her.” (Exhibit R9)
55. The memorandum concludes by stating that if, upon consideration of those legal principles, the assistant district attorney believes the information is subject to production, notification was to be made in writing to the Chief of Staff, who would follow through on the production subject to the execution of a protective order limiting disclosure either through an agreed upon protective order or motion practice. (Exhibit R9)
56. After reviewing relevant parts of the 2012 Internal Affairs report at the Commission hearing on March 13, 2019, Judge Mastroianni concluded that “clearly it appears” that Officer TD also gave false information during the investigation and that Officer MC was also not forthcoming during the internal affairs investigation. Having not reviewed those parts of the internal affairs investigation in approximately seven years, Judge Mastroianni could not

recall how he made the determination to identify Sgt. Godere (and Officer CL), but not Officer TD or Officer MC. (Testimony of Judge Mastroianni)

57. Judge Mastroianni did recall, however, particular sections of the internal affairs report that concerned him, at the time, about Sgt. Godere, testifying in part that,

“ ... the use of the term not wanting to be a rat led me to the conclusion that his [Godere] not being forthcoming when initially asked about this was an intentional effort to mislead, to avoid having it being the perception that he disclosed something that would get another officer in trouble ... His response to question two was that he does not recall who sent the picture. His response to question three was that ‘I do not recall if I sent this particular picture to anyone.’ I don’t believe that. I didn’t believe that.”
(Testimony of Judge Mastroianni)

58. Judge Mastroianni never thought that his “Brady Letter” regarding Sgt. Godere created an impermeable barrier by which Sgt. Godere never could testify again. Making it clear that he was speaking on his own behalf, and not in any current or former official capacity, Mastroianni testified that, in a situation like this in which there is advance notice to the Department and the District Attorney’s Office, the situation often can be worked around as, in the first instance, the Police Department can assign the officer to duties that would not call upon the officer to testify regularly. For Mastroianni, an assignment to something like patrol duty may limit an officer having to testify regularly. Further, Mastroianni testified that the specific nature and details of the situation also must be considered in order to evaluate whether an officer could be “rehabilitated” in court. (Testimony of Judge Mastroianni)

59. The January, 2013 memorandum from Mastroianni was provided to Charette. (Testimony of Judge Mastroianni and Charette) Charette believes he put a copy of the notice in the personnel files of Sgt. Godere and Officer CL, although he could not say with certitude that he did so. (Testimony of Charette)

60. Sgt. Godere was not provided with a copy of the internal affairs report at the time and he was unaware of the Brady letter. He did not learn about its existence until 2015. (Testimony of Sgt. Godere)
61. Sgt. Godere never was advised, from an assistant district attorney or from any other source, that he was on any so-called Brady list. (Testimony of Sgt. Godere)
62. Then-Deputy Chief Jebb was unaware that a Brady letter had been issued at the time. (Testimony of Jebb)
63. On at least one occasion after receiving his reprimand in 2012, Sgt. Godere recalls testifying in an operating under the influence case. (Testimony of Sgt. Godere)
64. Charette discussed with Mayor Bissonnette the possibility of additional discipline for the officers involved after receiving the Brady letter. He questioned whether it was legal to impose discipline upon already disciplined officers and Charette sought guidance from the Massachusetts Chiefs of Police's attorney who advised against such action as inappropriate. Charette shared his position with Mayor Bissonnette and, despite considering the option, Mayor Bissonnette ultimately took no further administrative action following Chief Ferraro's disciplinary action and following receipt of the communications from the District Attorney's Office. (Testimony of Charette)

2015 Discipline Against Godere Regarding a Separate Matter

65. As of 2015, Richard Kos was the City's new mayor (having defeated Bissonnette); Charette had retired and Jebb had become the Chief of Police. (Testimony of Jebb and Charette)
66. In May 2015, Sgt. Godere was suspended and demoted based upon determinations made by Mayor Kos that Sgt. Godere was untruthful, incompetent and neglected his duty in connection with his response to a call for service in February, 2015. (Respondent Exhibit 2)

It was at this time that Sgt. Godere first became aware of Jebb's 2012 internal affairs report.
(Testimony of Sgt. Godere)

67. Sgt. Godere appealed that decision to the Commission and the Commission issued a decision on that appeal on February 4, 2016. *See Sgt. Godere v. City of Chicopee*, 29 MCSR 65 (2016). The Commission determined that the charge of untruthfulness was not proven, but that Sgt. Godere had failed to meet his responsibilities as a superior officer and thereby engaged in conduct amounting to incompetence and neglect of duty. Sgt. Godere's five day suspension was affirmed, but his demotion in rank was rescinded and he was returned to the position of police sergeant. (Exhibit R4)

2017: Disciplinary Matter Regarding Officer CL that Triggered Discussion Re: Brady Letter

68. In October 2017, Officer CL was suspended for two days for abuse of sick leave. Officer CL appealed the two-day suspension to the Mayor who directed Jebb to provide him with all documentation leading up to the suspension that he could review at the hearing. In the process, Jebb spoke to two detectives who were involved in the 2011 homicide investigation and one of the detectives made a statement that there was a rumor that Officer CL was the subject of a "Brady Letter." Subsequently, Jebb had a conversation with the two sergeants who are the assigned court officers for the Chicopee District Court. He raised the issue of the rumor concerning the "Brady Letter" and both court officers denied having heard anything about it. Jebb contacted the Office of the District Attorney at the Chicopee District Court and they denied having any knowledge about a "Brady Letter" pertaining to Officer CL. Jebb then contacted the First Assistant District Attorney and inquired about a "Brady Letter" pertaining to Officer CL. The First Assistant District Attorney eventually provided Jebb with the Brady letter related to both Officer CL and Sgt. Godere. (Testimony of Jebb)

69. This was the first time that Jebb, who was not the Police Chief in 2012, learned that Judge Mastroianni had issued a “Brady Letter” against Sgt. Godere and Officer CL. (Testimony of Jebb)

70. On November 1, 2017, Captain Lonny Dakin of the Chicopee Police Department sent a letter to then and current District Attorney Anthony Gulluni. That letter, in its entirety, reads as follows:

“Dear District Attorney,

While attending the International Chiefs of Police Conference this month, I spoke with a number of Massachusetts Chiefs of Police. One of the discussions related to Internal Affairs Investigations and the Brady decision. I explained the Sgt. Godere investigation and the Civil Service decision. A Chief recommended making my District Attorney aware of the investigation.

I have enclosed the following items related to Sgt. Jeffrey Godere for your review and awareness:

1. Internal Affairs Investigation completed on 2/26/2015,
2. Chicopee Mayor Richard J. Kos’s Notice of Disciplinary Decision dated 5/18/2015,
3. Civil Service Decision – Jeffrey Godere V. City of Chicopee
4. Brady letter written by Retired District Attorney Mark Mastroianni concerning Jeffrey Godere dated 10/04/2012.

The Internal Investigation concluded that Sgt. Jeffrey Godere violated Rules and Regulations-Truthfulness, Incompetence and Neglect of Duty.

After a hearing before Mayor Richard J. Kos, Mayor Kos concurred with the investigations findings and imposed discipline.

After a Civil Service hearing, Commissioner Christopher C. Bowman wrote a decision. Commissioner Bowman addressed the Truthfulness charge starting on page 26 of his Decision. Commissioner Bowman concluded on Page 35 that the City of Chicopee did not reach the burden of proof for the Untruthfulness charge.

On page 35 Commissioner Bowman starts to discuss the charges of incompetence and neglect of duty. Commissioner Bowman finds that the City of Chicopee has proven these two charges. In his discussion of his findings Commissioner Bowman writes “**Sgt. Godere**

now tries to cloak his failure to perform his duties and responsibilities that day under the guise of deferring to an officer's discretion. No definition of this concept requires a superior officer to accept a police officer's account of events which the superior officer knows, through his own observations, is not true." (emphasis in original)

Lastly, while speaking with Chief William Jebb about notifying you of the above, Chief Jebb provided me with a Brady letter written by Retired District Attorney Mastroianni. Chief Jebb has an upcoming hearing involving [Officer CL], so he obtained the document from the court today. Although Chief Jebb completed the investigation that resulted in the letter, he was never made aware of the fact that the letter dealt with more than [Officer CL]'s dishonesty. The second Officer's dishonesty mentioned in the letter is Sgt. Godere." (Exhibit R16)

71. On November 3, 2017, Jebb penned an email to four members of his command staff stating that, on October 16, 2017, he had received copies of the Brady letter regarding Sgt. Godere and Officer CL. Jebb's email read in part:

"Now that I am aware of the letter and the fact that two of our officers cannot perform one of their most important duties, serving as a credible witness, I must take action to protect the credibility of the Chicopee Police Department and any further investigations ... [Officer CL] and Sgt. Godere will permanently be assigned to administrative duties from this day forward. The officers are not allowed to work overtime or extra details." (Exhibit R11)

72. That same day, Sgt. Godere received a phone call at home from Captain Gawron, a member of the command staff, who advised Sgt. Godere that he had been placed on administrative duty and read Jebb's email to Sgt. Godere. Sgt. Godere was baffled by the development, as he was unaware of the Brady letter. (Testimony of Sgt. Godere)

73. Within a couple of days, Sgt. Godere, along with a union representative, met with Jebb at which time Jebb discussed creating a position in the Traffic Bureau for Sgt. Godere to which Sgt. Godere could be assigned going forward. (Testimony of Sgt. Godere)

74. On January 26, 2018, District Attorney Anthony Gulluni penned a letter to Jebb indicating that, "[h]aving reviewed the materials recently provided to me by your department, including Mayor Richard Kos's recent disciplinary decision, the Civil Service decision, and a letter dated October 4, 2012 from former District Attorney Mark G. Mastroianni to former Mayor

Michael Bissonnette,” the statements of Mastroianni “continue to represent the opinions and current procedures of the Hampden County District Attorney’s Office.” (Respondent Exhibit 10)

75. During the second day of full hearing, counsel for the City advised on the record that, after the first day of hearing, he encountered the First Assistant District Attorney in the courthouse; according to the City’s counsel, he was advised by the First Assistant that District Attorney Gulluni had not reviewed the 2012 internal affairs investigative report of Jebb because it was his position that he could not revoke the prior Brady letter issued by Mastroianni and, therefore, there was no need for him to review the original source material on the issue.

76. On July 30, 2018, approximately nine months after Sgt. Godere was placed on administrative duties within the station, Sgt. Godere was issued a notice of contemplated discipline by Mayor Kos. (Exhibit R5)

77. Mayor Kos’s July 30th letter sites the 2012 Brady letter from Mastroianni and also reads in part:

“Furthermore, on January 26, 2018, current District Attorney Anthony Gulluni reviewed Chicopee Police Internal Affairs investigation report 11-05-IA and former District Attorney Mark Mastroianni’s “Brady Letter” and he reaffirmed the reasonable and appropriate decision to issue the “Brady Letter” and he reaffirmed it stating you ‘were not candid about activities related to the photograph of a murder scene and engaged in a prolonged effort to hide the truth by giving misleading or false statements and/or reports.” (Exhibit R5)

78. On October 15, 2018, a disciplinary hearing was held before Mayor Kos. (Exhibit R7; Stipulated Fact)

79. Via correspondence dated November 2, 2018, Mayor Kos notified Sgt. Godere that he was terminated. The correspondence read in part:

“The requirement and expectation for police officers to be truthful is the lynch pin of every police officer’s credibility and reliability. Based upon your testimony at the October 15, 2018 hearing, as well as reading the exhibits submitted, I agree with the findings of former District Attorney Mastorianni and current District Attorney Gulluni that you were untruthful and impeded this investigation.” (Exhibit R7)

Current Status of Officer CL, Officer TD and Officer MC

80. Officer CL, who faced the same charges as Sgt. Godere, resigned prior to a local hearing being held. (Testimony of Jebb)
81. Officer TD has been assigned to the position of detective in the narcotics bureau. (Testimony of Jebb)
82. Approximately two weeks after Sgt. Godere was terminated, Officer MC was promoted to provisional sergeant. (Exhibit A9)

Applicable Law

G.L. c. 31, § 43 provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against [a tenured civil service employee] ... 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 the 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.”

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 Service Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The

Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” School Comm. v. Civil Service Comm’n, 43 Mass.App.Ct. 486, 488 (1997). See also Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof by a preponderance of the evidence is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. 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’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority” Id., quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. "Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question, their ability and fitness to perform their official

responsibilities." Police Commissioner of Boston v. Civil Service Commission, 22 Mass.App.Ct. 364, 371 (1986).

Analysis

In 2012, multiple Chicopee police officers engaged in egregious misconduct. Two police officers took an unauthorized photograph of a female murder victim at the scene and forwarded those photographs to other Chicopee police officers. Ultimately, a police officer who received one of the photographs, showed the photograph of the female to multiple parents at a youth sporting event.

As stated by the District Attorney at the time: "The officers who took a photograph of the victim created the very interference which they were obligated to protect. Additionally, by their behavior and later dissemination of the photographs, they subjected the victim and family of the victim to a great indignity." There is no excuse for the reckless and distasteful actions of the police officers involved.

Officer CL, who received the photograph from Sgt. Godere and then showed it to parents at the youth event, repeatedly denied that he ever received the photograph and/or that he showed the photograph to the parents, even when told by then-Deputy Chief Jebb that reliable information contradicted his denials. His actions, including his repeated untruthfulness, distinguish him from the other officers referenced in Jebb's internal affairs investigation. His decision to forego a disciplinary hearing and tender his resignation was a prudent one.

That leaves three other officers who were shown to be untruthful in Jebb's investigation and impeded Jebb's ability to determine who had possession of photographs of a murder scene. Officer TD, who took a photograph at the scene and sent it to several police officer in individual text messages, stated that he could not remember who he sent the photograph to and also falsely

claimed that he sent only one group text of the photograph. Officer MC impeded Jebb's investigation by first telling Jebb that he was "99% sure" that he received the photograph from Officer TD, but then, one day later, authored a letter to Jebb stating that he "could not remember" who the message was sent from. Sgt. Godere, in response to written questions from Jebb, initially stated that he could not remember who sent him the photograph or who he sent it to. Although Sgt. Godere eventually provided the information to Jebb during an interview that followed, Sgt. Godere expressed reluctance to provide the names of officers out of fear of being labeled a "rat".

Prior to being notified of his potential termination in 2018, Sgt. Godere had never had the opportunity to dispute the findings of untruthfulness in Jebb's 2012 investigative report, which Sgt. Godere was not even aware of until 2015. Thus, more than eight years after the alleged untruthfulness occurred, the Commission must determine, as part of this de novo hearing, whether those allegations are supported by a preponderance of the evidence.

The City argues that Sgt. Godere's untruthfulness began in November 2011 when, according to the City, then-Deputy Chief Jebb had a one-on-one meeting with Sgt. Godere at which time Sgt. Godere denied that he ever received a photograph of the female. Sgt. Godere adamantly denies that any such meeting took place and/or that he ever denied having received the photograph of the female. The eight-year interval of time here, and the potential of faded memories, makes a finding on this matter challenging. I believe that Sgt. Godere has a better recollection on this point and I credit his testimony that no such meeting occurred in November 2011, in large part because there is no documentation that this conversation occurred, whether in Jebb's internal affairs reports, his multiple emails to Godere regarding this investigation in 2012 or, even more recently, in communications to the District Attorney's Office. There also is no

reference to it in the termination decision and Mayor Kos could not recall Jebb testifying to it during that hearing. If a November, 2011 meeting occurred, it is likely that it would have been included in the Jebb's internal affairs report.

I have found, however, that Sgt. Godere was untruthful in his January 27, 2012 written reply to Jebb when he wrote that he could "not recall" who sent him the photograph or to whom he sent it. Sgt. Godere testified that he was only able to recall who sent him the photograph and to whom he sent it after he was able to retrieve his cell phone records. Jebb did not believe that. Judge Mastroianni did not believe that. Mayor Kos did not believe that. Neither do I.

I listened carefully to Sgt. Godere's testimony at the hearing and reviewed the written transcript of that testimony as well. At a minimum, it is not plausible that, in January 2012, Sgt. Godere was unable to recall who sent him the photograph of the female on the night of August 26, 2011 without first checking his phone records. Sgt. Godere, for the first time in his career, had been called to the scene in which he discovered a murder victim. *That same night*, while back at the police station, a fellow police sergeant, who was the officer in charge that night, showed Sgt. Godere a graphic picture of the murder victim that the sergeant had taken at the scene. Sgt. Godere looked at the photograph on the sergeant's phone and asked the sergeant to send it to him, which the sergeant did almost immediately. In that context, it is inconceivable to me that Sgt. Godere, in January 2012, could not recall who sent him the photograph without first checking his phone records. Rather, the more plausible explanation is that Sgt. Godere, rather than assisting Jebb in his critical investigation, chose to be untruthful in an effort to avoid implicating another police officer. Finally, while he did eventually provide truthful information to Jebb during the February 2, 2012 interview and follow-up correspondence, he needed to be prodded to do so after expressing concerns about being labeled as a "rat". Sgt. Godere's conduct

was a violation of the rules and regulations of the Police Department regarding untruthfulness and constituted substantial misconduct which adversely affected the public interest.

Having determined that Sgt. Godere did engage in the alleged misconduct, I must determine whether the level of discipline (termination) was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814, 823-825 (2006):

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. [31], s. § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) Here 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. citing Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

“Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the ‘equitable treatment of similarly situated individuals.’ citing Police Comm’r of Boston v. Civ. Serv. Comm’n, 39 Mass.App.Ct. 594, 600 (1996). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’ Id. (citations omitted).

--

“Unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation.” Id. at 572. (citations omitted).

Similar to the City, I have found that Sgt. Godere was untruthful as part of an internal investigation in 2012. Several factors, however, warrant a modification of the penalty imposed here. My explanation follows.

The City was aware of Sgt. Godere's untruthfulness in 2012 and, after careful review and consideration, chose not to charge Sgt. Godere with untruthfulness. Rather, they charged Sgt. Godere with incompetence and issued him a written reprimand. As he was not charged with untruthfulness, and was not provided with a copy of Jebb's internal affairs report, Sgt. Godere had no ability at the time to refute the charge at that time. There is something inherently wrong with basing discipline on untruthfulness that the City has been aware of for seven years.

Further, Sgt. Godere has been treated differently than other similarly situated individuals. Two other police officers engaged in the same misconduct as Sgt. Godere. Officer TD took a photograph of the female victim, was not forthcoming about who he sent it to and was also untruthful when he stated that he sent out one group text, as opposed to sending the picture via several separate text messages. Officer MC at first acknowledged that he was "99% sure" that he received the photograph from Officer TD, but then submitted correspondence stating that he could no longer remember who sent it to him. Sgt. Godere has been terminated. Officer TD has been assigned to the position of detective in the narcotics division. Officer MC has been promoted to provisional sergeant. At the hearing, Chief Jebb sought to distinguish their misconduct from Sgt. Godere's by stating that one of those officers was untruthful because he didn't want to share the photographs of a romantic partner that were on his phone and the other didn't want to share the photographs of family members. Even if I were to accept this head-scratching rationale, it ignores the fact that their untruthfulness was based their unforthcoming answers during the interview, as opposed to their reluctance to turn over pictures from their cell phones.

Finally, the City's reliance on the fact that Sgt. Godere was the subject of a Brady letter is problematic for multiple reasons. First, as previously referenced, the City's Mayor (Bissonnette)

and Police Chief (Charette) at the time (2012) were both aware that Sgt. Godere was the subject of a Brady Letter and concluded that no disciplinary action was warranted. Effectively, what the City is arguing here is that the election of a new Mayor or the appointment of a new Police Chief can result in the reversal of prior decisions not to discipline a permanent, tenured civil service employee based on the same information that was available to their predecessors. The civil service system was designed to *prevent* these types of arbitrary decisions.

Second, Sgt. Godere was not informed of the 2012 Brady letter at the time. Over several years, it appears that many people, *except Sgt. Godere*, were aware of the Brady Letter. The District Attorney, with the assistance of the First District Attorney, wrote the letter and forwarded it to the Police Chief in 2012. The Police Chief shared the letter with the Mayor at the time. Years later, the new Police Chief was informed of a “rumor” of such a letter. The new Police Chief receives the letter from the First District Attorney. The Police Chief then notifies his command staff of the letter. Only then, after six years, did Sgt. Godere learn that he was the subject of a Brady Letter, when a Captain called him at home and notified him about the Police Chief’s email. Similar to the City’s failure to provide Sgt. Godere with the internal affairs report in 2012, there is an unfairness in requiring Sgt. Godere to defend allegations the City was aware of six years prior.

Third, the City’s Mayor testified that he principally relied upon the conclusion of the District Attorney’s Office in making his termination decision on Sgt. Godere and stated that, if others had been named in the Brady memorandum, they would be in the same position as Sgt. Godere. As referenced previously, the author of that Brady Letter could not explain why Officer TD and MC were not named in the letter. Mayor Kos also testified that a basis for his determination was his conclusion that no officer, including Sgt. Godere, could effectively serve as a police officer

on a going forward basis if they are the subject of a Brady Letter, as, according to Mayor Kos, the finding would render him either unable to testify or wrecked his credibility. As explained, that is not an opinion shared by the author of the memorandum, then-District Attorney Mastroianni.

For all of the above reasons, a downward modification of the penalty imposed here is warranted. In determining the appropriate level of discipline, I considered other relevant factors, including: the seriousness of the misconduct; Sgt. Godere's prior discipline; and the insights offered by Judge Mastroianni regarding the potential challenges associated with the continued employment of a police officer who is the subject of a Brady Letter.

The appeal is *allowed in part* and the modified penalty is as follows:

1. Sgt. Godere shall be demoted from sergeant to police officer, effective November 2, 2018.
2. Sgt. Godere shall be returned to his position of police officer, effective November 2, 2018, without loss of compensation or other rights.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman; Stein and Tivnan, Commissioners [Camuso – Absent]) on February 13, 2020.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01 (7) (1), 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 the 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:
Andrew J. Gambaccini, Esq. (for Appellant)
Thomas J. Rooke, Esq. (for Respondent)