

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

ANTHONY GRASSO and
JOHN MOCCIO,
Appellants
v.

D1-16-175 (GRASSO)
D1-16-176 (MOCCIO)

TOWN OF AGAWAM,
Respondent

Appearance for Appellants:

John D. Connor, Esq.
Connor & Morneau LLP
273 State Street, Second Floor
Springfield, MA 01103

Appearance for Respondent:

Russell Dupere, Esq.
Dupere Law Offices
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Westfield, MA 01085

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Town's decision to terminate Officer Moccio was justified. Officer Moccio engaged in excessive force by twice striking a prisoner in red (vital) target areas with his baton and by striking the prisoner after the prisoner was no longer assaultive. Further, he made multiple omissions and misstatements regarding the incident that, taken together, constitute untruthfulness. Finally, Officer Moccio failed to properly secure his firearm in the booking room, walking past a dangerous, un-cuffed prisoner with a loaded firearm.

The Town's decision to demote Sergeant Grasso to police officer was justified. Sergeant Grasso failed to intervene when excessive force was being used; he failed to ensure that officers had secured their firearms in the booking room; and he failed to provide immediate medical attention for a prisoner with visible injuries, including self-inflicted wounds to his head and injuries sustained by the baton strikes of Moccio.

DECISION

On October 24, 2016, the Appellants, Anthony Grasso and John Moccio (Grasso, Moccio or Appellants), 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 Town of Agawam (Town) to terminate their employment from the Town's Police Department (APD). The two cases were consolidated as they relate to the same incident. On November 30, 2016, I held a pre-hearing at the Springfield State Building in Springfield, MA. I held a full hearing at the same location over a period of four (4) days on January 9, 2017, January 10, 2017, January 31, 2017, and February 14, 2017.¹ On February 2, 2017, after the third day of hearing before the Commission, the Town rescinded the termination for Grasso and converted his discipline to a demotion from sergeant to police officer. As no written notice was received from either party, the hearing was declared private. All witnesses, with the exception of the Appellants, were sequestered. Four (4) CDs were made of the hearing and the hearing was transcribed by the parties. The transcript is the official record of the hearing. Both the Appellants and the Town submitted post-hearing briefs on April 14, 2017.²

¹ The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

² The Town's post-hearing brief was forty-six (46) pages and the Appellants' post-hearing brief was one-hundred thirty-four (134) pages in length. To the extent that I have not addressed all of the parties' contentions, they "have not been overlooked. [I] find nothing in them that requires discussion." McCormack v. Department of State Police and another, Mass.App.Ct 16-P-269 (2017) (1:28), citing Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

FINDINGS OF FACT:

Based upon the documents entered into evidence (Joint Exhibits 1-54)³, stipulated facts, the testimony of:

Called by the Town:

- APD Lieutenant J.B.;
- Alfred Donovan, Investigator;
- APD Sergeant M.P.;
- David O'Laughlin, Use of Force Expert;
- APD Chief Eric Gillis;
- Mayor Richard Cohen;

Called by the Appellants:

- APD Officer Anthony Grasso, Appellant;
- APD Officer John Moccio, Appellant;
- G.O., former APD Officer;
- R.P., EMT;
- M.N., EMT;
- Charles Key, Use of Force Expert;

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. Officer Anthony Grasso is 50 years of age and has been employed as a full-time police officer with the APD since December 1, 1997. He was promoted to the rank of sergeant in May 2008. (Testimony of Grasso) He has no prior discipline. (Stipulated Facts)

³ Subsequent to the close of the hearing, I re-opened the record for the purpose of accepting a settlement agreement regarding a two (2)-day suspension of Mr. Moccio in 2014. I have marked it as Exhibit 55 after making appropriate redactions.

2. Officer John Moccio is 46 years of age and, until his termination, was employed as a full-time police officer with the APD since December 1, 1997. (Testimony of Moccio) He received a two (2)-day suspension in 2014. (Stipulated Facts)
3. On June 19, 2016, Moccio and an Agawam Special Police Officer were assigned to Six Flags, an amusement park in Agawam, as detail inside the park. (Testimony of Moccio)
4. While on detail duty, the two (2) police officers responded to a call related to a disorderly male citizen (Doe) at the Tiki Bar, which is just inside the water park. Doe was upset after being shut off from the further sale of alcohol at the Tiki Bar. (Testimony of R.P, M.N. and Moccio)
5. Moccio subsequently filed an arrest report regarding the incident. Moccio's report contained the following information regarding what occurred at Six Flags, which, for the purposes of this decision, I credit in its entirety:

“On 6/19/16 at approx. 17:40 hrs [Special Police Officer] and I were dispatched to the Tiki Bar at the water park at Six Flags for a disorderly gest (sic) refusing to leave. Upon our arrival [Special Police Officer] and I spoke with Six flags security who stated the bartender at the Tiki Bar shut a male party off who had to (sic) much to drink and is now causing a scene. It was at this time [Special Police Officer] and I made contact with the male party [Doe] the male party in question. I approached [Doe] and advised him that Six Flags was asking him to leave the park due to his level of intoxication. It was at this time [Doe] refused to leave and stated I'm staying and having a beer. I again advised [Doe] it was time to go and I placed my hand on his right shoulder. It was at this time [Doe] turned and spun attempting to strike me in the face with his right elbow. It was as this time I pushed [Doe] against the bar and attempted to place him in custody. [Doe] began to resist and starting throwing punches at [Special Police Officer] and I. [Doe] was then brought to the ground to gain control over him. It was at this time [Doe] began kicking and placed [Special Police Officer] in a headlock attempting to punch him in the face. As [Special Police Officer] was struggling with [Doe] I drew my OC spray and delivered a one second burst to [Doe]'s face. [Doe] continued to kick and punch at [Special Police Officer] and I. The OC spray had no effect on [Doe]. After several minutes of wrestling with [Doe] [Special Police Officer] and I were able to gain control over him and place him in custody. Upon placing [Doe] in custody he was escorted to the back gate of the

water park to a wait (sic) cruiser transport. While waiting for the transport [Doe] began acting out again kicking at me in an attempt to strike mein (sic) the legs. [Doe] was advised to stop kicking and stay seated which he refused. I again advised [Doe] to stop kicking or he was going to be struck with my baton. It was at this time transport arrived and [Doe] attempted to again kick at me in the chest. I delivered two baton strikes to his right leg in an attempt to gain control over him so I could place him in the cruiser. [Doe] was placed in the cruiser for transport to Hq.”

(Exhibit 33, Attachment 1)

Booking Room

6. Upon arrival at the police station, Doe was removed from the police cruiser; decontaminated at the eye wash station in the “Sally Port” and then brought to the booking room where his handcuffs were removed by Agawam Police Officer Edward Connor. (Exhibits 30 & 31)

7. Grasso was the officer in charge for the APD this night. (Testimony of Grasso)

8. Grasso observed that Doe was initially “nice and calm” and “going along with the program” in the booking room. (Testimony of Grasso)

9. APD Policy 3.013, Paragraph IV, Section A, states the following:

“Detainees who are violent, intoxicated or uncontrollable may be placed directly into a holding cell until such time as they are calm enough to process.

Officers shall not remove restraints of the detainee if the behavior of the detainee poses an excessive risk of injury to the officers or the detainee.” (Exhibit 22)

10. APD Policy 3.03, Paragraph IV, Section C, Subsection 3 (Handcuffs) further provides:

“The transportation handcuffs shall remain on the detainee until the booking officer instructs that they are to be removed.

Detainees shall generally be handcuffed to the cuffing bar which is specifically designated for that purpose.

Handcuffs may be removed:

For the purpose of conducting a booking inventory;

For the purpose of fingerprinting; or

At the discretion of the booking officer.

In making the decision to remove handcuffs from a detainee, the booking officer should consider the conduct of the arrestee, the offense for which the arrest has been made and the recommendations of the arresting and/or transporting officers.”

(Exhibit 22)

11. Grasso’s decision to allow Doe to initially remain in the booking room without handcuffs did not violate the above-referenced APD policies. The policies, as written, require the officer to make a judgment call regarding whether the detainee poses an excessive risk of injury to the officers or the detainee. Based on a review of the booking room video, the testimony of Grasso, the testimony of the Town’s expert witness, and the testimony of APD Police Lieutenant JB, I find that Grasso could have reasonably concluded that Doe, at the time, did not pose such a risk; and that the removal of handcuffs was appropriate.
12. On at least two (2) occasions while Doe was in the booking room without handcuffs, Moccio walked in close proximity to Doe with his firearm in his holster. (Exhibit 30)
13. During the entire time that Doe was in the booking room without handcuffs, Connor also had his firearm in his holster and, for part of this time, the firearm was loaded. (Exhibit 30)
14. Connor eventually disabled his weapon by removing the ammunition clip. (Exhibit 30)
15. Moccio eventually secured his firearm outside of the booking area and returned to the booking room. (Exhibit 30)
16. APD Policy and Procedure No. 3.03 (Detainee Processing) states in relevant part:

“2. POLICE FIREARMS [72.4.1]

- a. The transporting officers shall remove and secure their firearms in the weapons lockers located in the sallyport, or outside of the booking area prior to handling detainees.
- b. All persons, including but not limited to assisting officers, booking officers, detectives, and supervisors shall secure their firearms prior to entering the booking area.
- c. No firearms are allowed in the booking room or holding facility during the processing or detention of detainees.”

(Exhibit 22, Page 2)

17. By failing to secure his firearm before entering the booking room, I find that Moccio violated APD Policy and Procedure No. 3.03.

18. APD Rules and Regulations under Section G (Prohibited Conduct), #10

(Incompetence), define incompetency, in part, as:

“the failure to conform to work standards established for the officer’s rank, grade, or positions.” (Exhibit 35)

19. By failing to ensure that Moccio and Connor secured their firearms before entering the booking room, I find that Grasso, who was the officer in charge, violated APD Rules and Regulations under Section G (Prohibited Conduct), #10 (Incompetence)

20. When Moccio re-entered the booking room, Doe was sitting on a bench wearing only his underwear; and Grasso was standing behind the counter looking at a desktop computer screen. Moccio was standing on the other side (in front of) the counter next to Police Officer Edward Connor (Connor) and the Special Police Officer was standing behind Moccio and Connor. (Exhibit 30)

21. As referenced above, Grasso observed that Doe was initially “nice and calm” and “going along with the program” while in the booking room. (Testimony of Grasso)

22. At the 6:11:28.725 mark in the booking room video, Doe appears to say something that gets the attention of all four (4) police officers present as they all turn their heads to look at Doe. Whatever Doe said at this point did not prompt any action (i.e. – his removal from the booking area) at that time. (Exhibit 30)
23. Approximately sixteen (16) seconds later, at the 6:11:44.728 mark in the booking room video, it appears that Moccio and Doe are having a verbal exchange. That exchange is brief and Moccio then looks down at his cell phone. (Exhibit 30)
24. Approximately seven (7) seconds later, at the 6:11:51.030 mark in the booking room video, Grasso, who was previously looking at the desktop monitor behind the counter, looks away from the desktop monitor, turns his body, looks directly at Doe and starts speaking to him. Although there is no audio, it is clear that Grasso, who has both hands slightly raised in front of him, is responding to remarks being made by Doe. (Exhibit 30)
25. Immediately thereafter, at 6:11:56.330, Grasso begins walking around the counter and toward Doe, who was sitting on the bench in his underwear. (Exhibit 30)
26. Connor, who was standing on the other side of the counter, takes a couple of steps toward Doe and appears to observe the interaction between Grasso and Doe. At this point, Grasso was standing directly over Doe, who was seated on the bench. Moccio and the Special Police Officer remain standing in the same location they were in prior to Grasso coming behind the counter to speak to Doe. (Exhibit 30)
27. At 6:12:02.145, Grasso, with one hand raised in front of him, was talking to Doe, with Connor standing nearby. (Exhibit 30)

28. At 6:12:05.675, Doe, while sitting on the bench, raised his right hand and appeared to point at the chest of Grasso, who is standing over him. There was no physical contact at this moment; and Doe's finger never touched Grasso's chest and/or badge. (Exhibit 30)

29. Grasso subsequently filed a report describing the above-referenced sequence of events as follows:

“ [Doe] was brought into the booking room for processing upon entering the booking room it was apparent [Doe] was under the influence of alcohol, his speech was slurred, eyes glossy and blood shot. As I was preparing to begin the process [Doe] started to become belligerent towards Officer Moccio. I attempted to intervene by coming around the booking ... desk to explain to [Doe] I needed him to cooperate. However, he immediately started with his belligerent behavior toward me and I knew any reasoning with [Doe] in his intoxicated condition was not going to work. I advised Connor we would be placing [Doe] in the cell until he sober (sic) up and (sic) more cooperative. It was apparent to me based on my experience from previous bookings [Doe] was not going to go with the program and I wanted to prevent us from fighting any further with him.” (Exhibit 33, Attachment 1)

30. I credit the above-referenced portion of Grasso's report and find that these written statements were truthful.

31. When interviewed several weeks later by an investigator, on July 29, 2016, Grasso made the following statement which I also credit in its entirety:

“ ... The guy was calm, but, uh, you could ... but as soon as when Officer Moccio came in, he looked at Officer Moccio and then things started to turn wrong. He just ... his demeanor changed right there.”
(Exhibit 33, Page 15)

32. Later during that same interview, the following exchange took place between Grasso and the Investigator:

Grasso: “He turned on me, he said something and he started poking at my chest. I think you could see him looking at my badge. I said, ‘that’s it. Enough guys.’ We immediately said we’re pu-, bringing, putting him right in the cell.” (emphasis added)

Investigator: Well, let, let's clarify. And I, I'm not trying to, I, I'm not ... he, he never touches you, right?

Grasso: I don't know, I don't know.

Investigator: Okay.

Grasso: ... if he actually touched me. He just INAUDIBLE.

Investigator: It doesn't appear that he touches you.

Grasso: He just pointed at my badge." (emphasis added)

(Exhibit 33, Attachment 15)

33. Although Grasso initially made a misstatement during this interview when he stated "he started poking at my chest", he did correct his statement and clarified that Doe "just pointed at my badge." (Exhibit 33, Attachment 15) Taken together, I do not find these statements by Grasso to be untruthful regarding this particular interaction with Doe.

Removal of Doe from Booking Room and Escort to Cell

34. Grasso decided to remove Doe from the booking room. (Testimony of Grasso)

Grasso grabbed Doe from one side and Connor grabbed him from the other side and they escorted Doe out of the booking room, down the hallway, and to the cell block.

(Exhibit 30)

35. During the escort, Grasso switched from a regular escort to a wristlock. They went from a guided position or regular escort position, by just grabbing him by the straight arm, to a wrist lock because Doe was tightening up and Officer Connor was starting to lose hold of him. (Testimony of Grasso)

36. Based on a review of all relevant testimony, including Grasso, Moccio, O’Laughlin (the Town’s expert witness), Donovan (the investigator hired by the Town), Lt. J.B., as well as a review of all relevant APD policies, I find that the manner in which Doe was escorted to the cell did not violate any APD policies. While, in hindsight, it appears that it may have been advisable for Doe to be handcuffed during the hallway escort, the decision made here by Grasso does not constitute incompetence.

Entering Bullpen / Cell

37. As they entered the bullpen (between the hallway and the cell) from the hallway, Grasso felt Doe push back into him with his shoulder and Grasso told Doe: “Don’t do it.” (Testimony of Grasso)⁴

38. Doe crossed the threshold of the bullpen door at 6:12:20.254. (Exhibit 29) Doe crossed the threshold of the actual cell at 6:12:23.626. (Exhibit 29)

39. Grasso concluded at the time that he could not just push Doe into the cell and close the door because: a) Grasso did not have great control of him and was off balance; b) if he wanted to push Doe in, he would not have been able to get a good enough shove; and c) Grasso was worried that if he just let go of Doe, he was going to get punched in the face by Doe. (Testimony of Grasso)

40. Based on a review of the video, and having credited the testimony of Grasso that Doe was “pushing back” in the bullpen area, I find that the decision by Grasso to enter the cell with Doe, as opposed to letting him go or shoving him in, and then leaving, did

⁴ The Town argues that the recording played at the hearing before the Commission contradicts this. Specifically, the Town argues that this portion of the recording also captures audio and that Grasso cannot be heard saying “Don’t do it.” I reviewed this portion of the recording multiple times after the hearing. To me, it appears that the audio is only detectable at the point that Doe crosses the threshold of the cell. I have credited the testimony of Grasso that he said “don’t do it” while in the bullpen area directly outside of the cell.

not violate any APD Policies, including Policy and Procedure No. 1.01 regarding Use of Force. Although the Town's investigator, expert witness and Lt. J.B. offered persuasive testimony that Grasso should have at least attempted to remove himself and the other officers from the cell without escorting Doe to the bench, there is no policy that prohibits an officer from entering the cell with the inmate under the circumstances that unfolded here and I find that Grasso, in this circumstance, was permitted to make the judgment call to enter the cell with Doe.

Policies & Policies and Rules and Regulations Regarding Use of Force / Use of Baton

41. What occurred next, inside the cell, is central to whether the Town had just cause to terminate Moccio and demote Grasso. While inside the cell, Moccio and Grasso are alleged to have violated numerous APD Policies & Procedures and Rules and Regulations, including those policies regarding Use of Force referenced below.

42. Sections I and II of APD Policy and Procedure No 1.01 Use of Force State:

“I. GENERAL CONSIDERATIONS AND GUIDELINES

Police officers are continuously confronted with situations requiring or resulting in the use of force. The degree of force used is dependent upon the facts surrounding the situation the officer's (sic) face. Only a reasonable and necessary amount of force may be used. The objective of the use of force is to maintain and/or reestablish control over a situation.

II. POLICY

It is the policy of the department that:

1. Officers use only the force that is reasonably necessary to accomplish lawful objectives such as to make a lawful arrest, to place a person into protective custody, to effectively bring an incident under control, or to protect the lives or safety of the officer and others.
2. When exigent and unforeseen circumstances cause officers to deviate from the provisions of this rule, officers are still expected to act with intelligence, sound judgment and in full conformity with both state and

federal laws and constitutional provisions. Any such deviations from the provisions of this rule shall be examined on a case by case basis.

(Exhibit 20)

43. Section IV (Procedures) of the APD Use of Force Policies and Procedures states:

B. Use of Force by Sworn Officers

1. SWORN OFFICERS: Officers use only the force that is reasonably necessary to accomplish lawful objectives such as to make a lawful arrest, to place a person into protective custody, to effectively bring an incident under control, or to protect the lives or safety of the officer and others. [1.3.1]
2. PERCEIVED CIRCUMSTANCES: The level of force used by an officer shall be a response based upon:
 - a. Threat Perception - the reasonable officer's perspective of the situation in reference to the severity of any crime, the existence of an immediate safety threat to the officer or others, and the degree of compliance from the subject;
 - b. Perceived Subject Action(s) - the subject action(s) as perceived by the reasonable officer.
 - 1) Compliant: The officer maintains or gains compliance to desired directives via options of tradition, time, communication skills, etc.
 - 2) Passive Resistive: The subject's degree of noncompliance is free of physical or mechanical enhancement, other than sheer unresponsiveness.

- 3) Active Resistive: The subject's noncompliance has become more active in scope and intensity to a level of energy enhanced physical or mechanical defiance.
 - 4) Assaultive (Bodily Harm): An actual attack upon the officer or others. The scope and severity of the attack would not support the reasonable officer's assessment of death or serious bodily harm to occur to the officer or others.
 - 5) Assaultive (Serious Bodily Harm/Death): The reasonable officer could conclude that death or great bodily harm may be inflicted as a result of the subject's actions.
3. REASONABLE OFFICER RESPONSES
- a. Cooperative Controls: (Compliant) - Includes the subject's acceptance of authority by the use control techniques including; communication skills, common tactics, body language, etc.
 - b. Contact Controls: (Passive Resistant) - "Hands on" techniques used to guide or direct the subject. The primary force component at this level could be non-pain compliance techniques, etc.
 - c. Compliance Techniques: (Active Resistant) - The force forms could include elements of pain compliance, chemical irritants, joint restraints, electrical weapons in drive stun mode, etc.
 - d. Defensive Tactics: (Assaultive) – The officer is justified in taking appropriate steps to immediately cease the assaultive action and to gain compliance and maintain control of the subject. Force could include weapon (baton) strikes, electrical weapon deployment, and canine apprehension.
 - e. Deadly Force: (Lethal) - Absolute and immediate tactics must be deployed to stop the lethal risk and secure conclusive compliance and control. Force options could include those leading to permanent debilitation or even death, including firearms and weapons of available means.

(Exhibit 20)

44. APD Policy and Procedure No. 4.06 (Authorized Weapons) states in relevant part:

4. Police Baton

- a. The Police Baton may be used:
 - i. As a restraining or come-along tool in instances where verbalization and physical strength have failed or would obviously be futile;
 - ii. As a defensive weapon to ward off blows;

- iii. As a defensive weapon to deliver disabling blows to non-vital areas of the body as a means to halt or deter a subject when all lesser means of applying non-deadly force have failed or would obviously be futile. An officer is justified in using this type of force under the following circumstances:
 - [a] To overcome the violent resistance of an arrestee;
 - [b] To overcome an assault on an officer or a third party; or
 - [c] To deter persons engaged in riotous or violent conduct.
- b. Any time the police baton is used to strike a person or a subject is injured when applying a takedown or come-along hold the appropriate reports must be completed.

Inside the Cell

Entering the Cell

45. As referenced above, Doe crosses the threshold of the actual cell at or around 6:12:23.626, being forced in by Grasso and Connor. (Exhibit 29)
46. For the next approximately three (3) seconds, until 6:12:26.423, the only persons in the cell are Doe, Grasso and Connor. During this three (3) second span, Moccio was just outside the cell door, looking into the cell. (Exhibit 29)
47. During this three-second time period, Doe pulled away his right arm from the two officers. (Exhibit 29)
48. In his arrest report, Grasso described the above-referenced interaction as follows:
“As we went into the cell he quickly turned against me and threw a punch at me.”
(Exhibit 33, Attachment 1)
49. On July 29th, Grasso, when speaking to the Town’s investigator, stated that the alleged punch by Doe occurred *after* Doe was placed on the bench in the cell. The exact exchange between Grasso and investigator was as follows:

“Investigator: Okay, Okay, You bring him in the cell.

Grasso: Yep.

Investigator: He stops struggling.

Grasso: Yup, as we’re getting him into ...

Investigator: You and Officer ...

Grasso: ... the cell.

Investigator: Connor takes control or tried to take control. You, you get him on the bench and he’s struggling the whole time, right?

Grasso: That’s ... no, I don’t think that .. as we ..’cause as, as I was trying to pu-, put him onto the bench.

Investigator: To the bench.

Grasso: Okay?

Investigator: You move away.

Grasso: I said, I said, ‘Don’t do it.’ And I put him on the bench. As I went to let go, that’s when he, he tried to throw a roundhouse at me. He, he came, he come over with a punch.” (emphasis added)

50. During his testimony before the Commission, Grasso testified that Doe threw or attempted to throw a punch at him during the three-second time period referenced above *and* after Doe was placed on the bench. (Testimony of Grasso)

51. Based on a review of the video, the testimony of the Town’s expert witness, and the contradictory accounts by Grasso, I do not credit Grasso’s testimony that he perceived, at the time, that Doe was attempting to throw a roundhouse punch at him when they first entered the cell.

52. Moccio, during cross examination before the Commission, acknowledged that he never referenced this alleged punch in his written report and acknowledged that the

first time he actually became *aware* of the alleged punch was when he met with his counsel and reviewed the video again in preparation for the local appointing authority hearing.

For this reason, I do not credit Moccio's testimony (on direct) that, at the time, he was "positive" that he saw the alleged punch and that, at the time, he considered that punch as part of his perception of the level of threat posed by Doe.

53. At the 6:12:27.821 mark in the cell video, Grasso and Connor have forced Doe onto the cell bench. Doe's back is on the bench and the back of Doe's head is against the cell wall. At this point, Moccio has entered the cell and is standing almost directly behind Grasso and Connor. (Exhibit 29)

Physical Altercation on the Cell Bench: Part A

54. For the next approximately sixty (60) seconds, until the 6:13:27.245 mark in the cell video, Grasso and Connor are in a physical altercation with Doe on the cell bench. (Cell Altercation Part A) During this same sixty (60)-second time period, it is undisputed that Moccio strikes Doe multiple times with his baton. (Exhibit 29)

55. The Town initially concluded that Grasso and Connor, in addition to Moccio, engaged in misconduct by using excessive force during this time period, a significant reason for their termination. On the second day of hearing before the Commission, the Town's expert on use of force testified that, although *Moccio* engaged in excessive force, *Grasso and Connor* did not. The Town, prior to the third day of hearing, rescinded Connor's termination outright and modified Grasso's discipline to a demotion, for reasons other than the use of excessive force.

56. Throughout Cell Altercation Part A:

- A. There were four (4) uniformed police officers in the cell, in addition to Doe.
- B. Doe was 5'7" and weighed 155-165 pounds.
- C. Grasso perceived Doe to be "real strong."
- D. Doe was unarmed and wearing only his underwear.
- E. There were no bystanders.

(Exhibit 29 and Exhibit 33, Attachment 1)

57. Moccio observed and/or perceived the following during Cell Altercation Part A:

- A. Doe having Grasso in a headlock. (6:12:31.217)
- B. Doe actively moving and fighting with Grasso and Connor. (6:12:39:506)
- C. Doe engaged in an active fight with Grasso.
- D. Grasso and Connor struggling with Doe. (6:12:41.803)
- E. Connor not in a good position; Grasso and Connor struggling with Doe's hands to gain control of Doe. (6:12:57.983)
- F. Grasso and Connor still struggling with Doe.

(Testimony of Moccio and Exhibit 29)

58. Also during this altercation, Doe can be seen wrapping his legs around the legs of Grasso. (Exhibit 29)

59. During Cell Altercation Part A, Moccio struck Doe thirteen (13) times with his baton.

60. APD Officers are guided on the issue of what area of a subject's body to strike with the baton by a baton strike chart known as the "Monadnock Baton Chart". This chart depicts the human anatomy in three colors: 1) "Green Target Areas" which are areas of the body that if struck would result in a minimal amount of trauma to the subject; 2) "Yellow Target Areas" which are areas of the body that if struck may result in a

moderate to serious level of resulting trauma; and 3) “Red Target Areas” which are areas of the body that if struck would result in the highest level of resultant trauma.

(Exhibit 33, Attachment 6)

61. APD Officers are trained to strike the green target area if possible. You can strike the yellow target area if a green target area is not available. (Testimony of Grasso and Moccio). The only time you strike the red target area is if you’ve got serious bodily harm – lethal. (Testimony of Grasso)

62. The first four (4) baton strikes by Moccio hit the backside of Doe’s body. The cell video shows that these first four (4) strikes occurred at the following times:

1. STRIKE 1: (6:12:35.212)
2. STRIKE 2: (6:12:36.210)
3. STRIKE 3: (6:12:37.409)
4. STRIKE 4: (6:12:38.308)

(Exhibit 29)

63. The Town’s investigator and the Town’s expert witness both concluded that all four (4) of these above strikes were to Doe’s kidney area, which is a red area on the Monadnock Baton Chart. (Testimony of Donovan and O’Laughlin and Exhibit 33, Tabs 6 & 10)

64. The arrest report submitted by Moccio, which was completed before he viewed the video, states only that he struck Doe in the “thigh and shin area”. (Exhibit 33, Tab 1)

65. The use of force report submitted by Moccio asks: “If Baton used, area struck” followed by three boxes next to the words: Green, Yellow and Red. Moccio only checked the box next to “Green”. (Exhibit 33, Tab 11)

66. Asked whether he had seen the video prior to completing the use of force report,

Moccio testified that:

“ ... that one was completed when I got back from Six Flags. I hadn’t even looked at the video at that point yet. I walked in – into the report room, grabbed the use of force report, basically went over – checked off what needed to be checked off, filled out all his information and turned it in. And at that point, Sgt. Grasso said, ‘Hey, check – look at the video. There’s a video here

...
So I looked at it quick. My son is sitting in the truck. I’m covered with pepper spray. I want to go home and take a shower. I’m disgusting. So I – I kind of – I want to say I watched maybe 15 seconds of the video. I didn’t watch a lot of the video.

....
I looked at the video and I saw what a combative individual he was and what was going on. I mean that’s all I looked at. I just looked at his actions to make sure that I was justified in doing what I did – and I was.”

67. When Moccio was interviewed by the Town’s investigator, he made the following statements prior to reviewing the video:

Moccio: I believe I delivered strikes to his upper th-, le-, the outside of his leg and his shins trying to pa-, create pain compliance for him to stop resisting. You know, I mean, he was told to stop several times and he just refused to comply.

Donovan: Okay. Do you strike him with the butt end of the baton?

Moccio: Yup.

Donovan: Okay

Moccio: I do.

Donovan: Where?

Moccio: I aim for his inner thigh. The inner thigh’s got a bunch of nerves in that, in that area. And that’s ...

Donovan: Right.

Moccio: ... where I go to strike him at.

Donovan: Do you strike him in the back with that?

Moccio: Never.

Donovan: You never struck him in the back?

Moccio: Never struck him in the back with the butt end of my baton.

Donovan: It appears that you did. Uh, you can you ...

Moccio: I never did.

Donovan: Have you seen the vi-, okay. You never did?

Moccio: Never did.

Donovan: Okay.

Moccio: I don't recall doing it, no.

(Exhibit 33, Tab 13)

68. Later in the same interview, there is the following exchange between Donovan and

Moccio:

Donovan: Okay, He's done? All right. All right. Um, I'm gonna ask you to watch the video. I'm gonna let you and ... you're all not gonna fit in to see the video. So, uh, him and his INAUDIBLE attorney. Uh, I just want you to watch it and we'll go over a couple questions, Okay?

Moccio: Mm hmm.

.....

Donovan: So you ... that refreshed your memory as we spoke for ...

Moccio: Yeah.

Donovan: ... a second? Okay, And you can see that you do in fact use the butt end of, of your ...

Moccio: Yes

Donovan: ... expandable baton to strike him. And you said it was in ..
wasn't in the spine area. It was in...

Moccio: It wasn't in ..

Donovan: ... the kidney area...

Moccio: ...spine.

Donovan: ...or whatever?

Moccio: It was more of a yeah, lower back kidney area, yes. (emphasis added)

(Exhibit 33, Tab 13)

69. During his testimony before the Commission, Moccio testified that he never struck Doe in the kidney area and described these initial strikes as strikes “just above the hip” or strikes to Doe’s “lower back.” (Testimony of Moccio)

70. Asked to explain this discrepancy, Moccio offered the following testimony before the Commission:

Q Okay, and specifically on page 26 at some point, did you – did you agree with Mr. Donovan with respect to a strike to the kidney?

A I believe I – I did. I don't – I don't recall.

Q Okay. It says – I'm sorry – page 26, about half way down, it says ‘Moccio: it was more of a yeah, low – low back, kidney area, yes.’

A Yeah, low back.

Q Okay. At the time that you gave that statement, had you seen the video? Were you viewing the video with him?

A I don't believe I viewed the video at that point, no.

Q Okay. And sitting here today, do you agree with your statement as you made it here?

A No

Q Why not?

A Because it's not in the kidney area. The kidney area is more center – center – more centrally located. I hit him on the side in the lower back.

Q Okay, Were you intending – was it your intention to deceive anybody by giving this statement?

A No

Q Was it your intent to deceive anyone by giving any subsequent statement in this case?

A No

(Testimony of Moccio)

71. During cross examination, Moccio acknowledged that, during the interview with Donovan, he was first asked questions by Donovan, then given an opportunity to watch the video and then asked follow-up questions, at which time he acknowledged striking Doe in the kidney area. (Testimony of Moccio)

72. After reviewing all of the relevant evidence, including the testimony of all relevant witnesses, the Monadnock Chart and the video, I find that, of the first four (4) initial baton strikes, at least two (2) of them (Baton Strikes 1 & 4) hit the kidney area on Doe's body, a red target area on the Monadnock Chart. Those two strikes are clearly visible on the cell video.

73. The next six (6) strikes (Strikes 5 through 10) are to green areas as follows:

5. Moccio strikes Doe in the shin with his baton. (6:12:42.003)
6. Moccio strikes Doe in the thigh with his baton. (6:12:43.201)
7. Moccio strikes Doe in the left shin with his baton. (6:12:44.300)
8. Moccio strikes Doe in the left shin with his baton. (6:12:47.796)
9. Moccio strikes Doe in the left shin with his baton. (6:12:50.392)

10. Moccio strikes Doe in the left shin with his baton. (6:12:54.687)

(Exhibit 29)

74. The next three (3) strikes by Moccio (Strikes 11 through 13) hit the front side of Doe's body. (Exhibit 29)

75. The Town's expert concluded that two of these strikes hit the "groin". The Town's investigator concluded that there were three (3) strikes and that all three (3) of them hit the "groin area". (Exhibit 33, Main Report & Tab 10)

76. The "groin" is considered a yellow area on the Monadnock Chart. (Exhibit 33, Tab 6)

77. Moccio acknowledges hitting Doe's "groin area" but defines that as areas other than Doe's genitalia, including, but not limited to, Doe's upper leg near his genitalia. (Testimony of Moccio)

78. After reviewing all of the relevant evidence, including the testimony of all relevant witnesses, the Monadnock Chart and the video, I find that the video is not sufficiently clear as to whether Moccio struck Doe in that area labeled as the "groin" on the Monadnock chart (yellow area) or whether he struck Doe in the area directly surrounding the groin (green area).

79. As referenced above, the APD's Use of Force Policies state that an "officer is justified in taking appropriate steps to immediately cease the assaultive action and to gain compliance and maintain control of the subject. Force could include weapon (baton) strikes ..." (Exhibit 20)

80. After reviewing the cell video multiple times and considering and weighing the testimony of Moccio, Grasso, Donovan and both parties' expert witnesses on use of force, as well as reviewing all relevant APD Policies, I find that, Moccio, at the time,

as a reasonable officer, could have reasonably perceived that Doe was assaultive during this initial, sixty (60)-second time period on the bench. (Cell Altercation Part A)

81. As also referenced above, the APD's policies on authorized weapons states that a police baton may used: "as a defensive weapon to deliver disabling blows to non-vital areas of the body as a means to halt or deter a subject when all lesser means of applying non-deadly force have failed or would obviously be futile." (emphasis added) (Exhibit 25)
82. Again, after reviewing the cell video multiple times and considering and weighing the testimony of Moccio, Grasso, Donovan and the two (2) expert witnesses on the use of force, as well as reviewing the relevant APD Policies, I find that, although Moccio could have reasonably concluded that other non-lethal means of deadly force had failed, or were proving to be futile during Cell Altercation Part A, he engaged in misconduct by striking vital (red) areas of Doe's body (kidney area).

Physical Altercation on the cell bench: Part B

83. At 6:13:29.542 in the cell video, a bloodied-Doe is laying on his back on the cell bench and there is no physical contact between Doe and Grasso, Connor or Moccio. Grasso can be seen exiting the cell and Connor is heading toward the cell exit. Moccio is standing behind Connor looking down at Doe, with his (Moccio's) baton still in his hand. After reviewing the video and considering and weighing the testimony of Moccio and the two (2) expert witnesses, and based on commonsense, I find that Doe, as of this point, was not assaultive.

84. At 6:13:30.042, Doe, while still on the cell bench, begins to turn his body and lean on his right shoulder. At this point, Moccio can be heard telling Doe to “stay down on the bunk” while he (Moccio) places his baton closer to Doe. (Exhibit 29)

85. At 6:13:32.039, Doe is now sitting upright on the cell bench, with both feet on the cell floor, looking up at Moccio. At this time, it appears that Grasso tells Doe so stay down on the bunk and Moccio says the words “You stay”. (Exhibit 29)

86. At 6:13.32.938, Doe proceeds to stand up. (Exhibit 29)

87. Immediately thereafter, the following events transpire:

A. Moccio holds his baton behind his (Moccio’s) head.

B. Moccio steps toward Doe, moving the baton toward Doe.

C. Moccio, with his baton in hand, shoves Doe backward onto the cell bench.

D. Doe’s head appears to miss the cell wall by less than an inch.

E. As Doe is falling backward, Moccio says: “get down on the bunk”.

F. Doe stands back up with what appears to be a clenched right fist.

G. Moccio strikes Doe on his right thigh with the baton and says: “get down.”

H. Moccio strikes Doe on his right thigh with the baton and says “get down now.”

I. Moccio shoves Doe back down on the bench.

J. Moccio strikes Does on his upper leg and says “cuff him up.”

(Exhibit 29)

88. After reviewing the cell video multiple times and considering and weighing the testimony of Moccio, Grasso, Donovan and the two (2) expert witnesses on use of force, as well as reviewing all relevant APD Policies, I find that Moccio, at the time, could not have reasonably concluded that Doe was being assaultive when he

(Moccio) shoved Doe against the cell wall, and then subsequently struck him with a baton three (3) times. I find that Moccio, by shoving Doe against the cell wall, and administering these three (3) additional baton strikes, engaged in excessive force and violated the APD's Use of Force Policies.

89. After Moccio struck Doe these three (3) additional times, Grasso and Connor grabbed Doe, placed handcuffs on his wrists; shackled his ankles and left him face down on the cell bench. (Exhibit 29)

90. At or around 6:56.09, Grasso and Connor re-enter the cell after Doe had been banging his head on the window of the cell door. Grasso observed blood trickling down Doe's head at this point. (Exhibit 29 and Testimony of Grasso)

91. Approximately two (2) hours later, Doe is removed from the cell to be transported to the hospital. (Exhibit 29)

92. APD Policy 1.01, Section G (Medical Attention) provides the following:

“After any level of force is used (including weaponless tactics) the officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when:

- A. The suspect is in obvious need of medical attention.
- B. The suspect has serious visible injury; or
- C. The suspect complains of injury or discomfort and requires medical attention.

(Exhibit 20)

93. APD Policy 3.04 (Detaining Prisoners), Section B (Medical Care) requires the following: “An ambulance shall be called when any detainee requests and/or is deemed in need of medical attention.” (Exhibit 22)

94. After reviewing all relevant testimony, including the testimony of Grasso and reviewing all relevant APD Policies as well as the cell video, I find that Grasso violated the above-referenced APD Policies regarding medical attention when: a) he failed to seek immediate medical attention for Doe after Doe was struck several times with a metal baton and shoved onto the bench, inches from the cement wall, by Moccio; and b) he failed to seek immediate medical attention for Doe after observing that blood was trickling down Doe's head as a result of Doe banging his own head against the glass in the cell door.
95. Later that night, Grasso left a voice mail message to Chief Gillis stating:
- “Chief, it’s Anthony. Just to let you know, the rest of the night that [Special Police Officer] got injured hurt his back.. Had to send him to the hospital. Just wanted to give you a heads up. Ok so I am going to have some paperwork for you to fill out. A guy fought us in the cell. A pretty bad drunk ... arrested at Six Flags. Got a little crazy first half of the night. Just wanted to give you a heads up on that. No reason to call me back because it’s almost midnight. Just wanted to let you know what is going on.”
(Exhibit 47)
96. In addition to the usual arrest report, Moccio completed a use of force report. (Exhibit 33, Attachment 11)
97. The use of force report asks: “If Baton used, area struck” followed by three boxes next to the words: Green Yellow and Red. Moccio only checked the box next to “Green”. (Exhibit 33, Attachment 11)
98. The next question on the use of force report asks the officer to state the “Total # of Strikes”. Moccio hand-wrote: “7-10”. (Exhibit 33, Attachment 11)
99. In his arrest report, Moccio wrote the following regarding what occurred inside the cell while he was present:

“While placing [Doe] in the cell he became combative and grabbed Sgt. A. Grasso had (sic) place (sic) him in a head lock attempting to punch him in the face. It was at this time [Doe] was advised to stop resisting or he was going to be struck with my baton. [Doe] refused to release Sgt. A. Grasso and several baton strikes were delivered to [Doe]’s thigh and shin area. After several minutes wrestling with [Doe] we gained control over him and handcuffs and leg irons were placed on him.”

(Exhibit 33, Attachment 1)

100. Moccio went on to write the following in his arrest report regarding the events that occurred approximately one (1) hour later on the night in question:

“Please note after all Officer’s (sic) were out of the cell [Doe] continued to be aggressive and combative within the cell. [Doe] had slipped his handcuffs to the front and was punching, banging his head and kicking the cell door. Due to his actions he had received blood abrasions and contusions to his face, head, shin, and legs.”

(Exhibit 33, Attachment 1)

101. Grasso also filed an arrest report. He wrote the following regarding what transpired immediately after Doe was escorted into the cell:

“As we went into the cell he quickly turned against me and threw a punch at me. I quickly jumped back at him as Officer Connor and I tackled him onto the bench to control him however, [Doe] was now actively fighting against us and at one point had me in a head lock. As we were attempting to gain control of him he was now making noises as if he was going to spit at us and I could actually see him with full mouth of spit. We immediately grabbed his head and had to push and control his head away from us toward the cell room wall. During the incident [Doe] was also struck several times by Officer Moccio with his baton to the lower leg and upper thigh area in order to control him and allow us to leave the cell. After several blows it appeared [Doe] had stopped fighting we (sic) had instructed him to stay on the bench as we began walking towards the door. Officer Moccio was trying to keep [Doe] at a distance with his baton on the bench. However, he had eventually stood back up and started making his way towards officer Moccio. Officer Moccio pushed him back onto the bench to create distance and he immediately got back up and appeared as if he was getting ready to go after Officer Moccio. Officer Moccio immediately struck him with baton to keep him at a distance. We then forced him back onto the bench once again eventually handcuffing and shackling his legs.”

(Exhibit 33, Attachment 1)

102. Grasso went on to write the following in his arrest report regarding the events that occurred later on the night in question:

“I was also advised that [Doe] was banging his head on the wall and door. [Doe] was now bleeding from his head and left lower leg. He also had red marks from the baton strikes to his legs and contusions to his head and right cheek. During the course of the evening I along with prisoner watch officer informed him he was not going to be taken out of the cell until he calmed down, sober (sic) up and was going to cooperate with the booking process. At approximately 2140 hours [Sergeant] and [Officer] were able to complete the booking process and all of his injuries were photographed. At 2205 hours I requested AFD paramedics and [Doe] was transported to BSMC to be evaluated for his injuries at the emergency room. [Doe] was accompanied by [Officer] and was released at 0114 hours. He was then secured in cell 2.”

(Exhibit 33, Attachment 1)

103. On July 14, 2016, Grasso and Moccio were notified by separate letters from Agawam Police Chief Eric P. Gillis that the Agawam Police Department had initiated an internal investigation into allegations concerning the performance of their duties and their fitness to perform their duties as police officers. The Appellants were each placed on paid administrative leave as of that date. (Exhibits 1-3)

104. On or about July 25, 2016, the officers were notified that the investigation concerned their conduct and behavior in regards to the arrest, care, custody, handling and treatment of Doe which took place on June 19, 2016. That notice further indicated that “a preliminary review of the department’s video recording of the incident indicates police department Policy may have been violated.” The notices also advised the Appellants that the investigation would be conducted by Alfred P. Donovan from A.P.D. Management Inc. at the direction of Chief Gillis. Each officer was directed to submit to an interview with Mr. Donovan on or about July 29, 2016 which they did. (Exhibits 4-6)

105. By letter dated September 21, 2016 to Mayor Richard Cohen, Chief Gillis recommended that Sgt. Grasso's employment be terminated immediately. Chief Gillis's letter alleged eleven (11) violations of Agawam Department Policy and Procedures by Grasso as the basis for his recommendation. (Exhibit 11).
106. By letter dated September 21, 2016 to Mayor Richard Cohen, Chief Gillis also recommended that Officer Moccio's employment be terminated immediately. Chief Gillis's letter alleged eleven (11) violations of Agawam Department Policy and Procedures by Moccio as the basis for his recommendation. (Exhibit 12)
107. On October 5, 2016 and October 17, 2016, a hearing was held by the Mayor concerning the allegations raised against the Appellants. (Stipulated Facts)
108. On October 19, 2016 the Appellants received notices of termination from the appointing authority, Mayor Cohen, citing Chief Gillis's recommendation of September 21, 2016, the internal affairs report of Mr. Donovan, the video and the information presented at hearing as the basis for his decision to terminate the Appellants. (Exhibits 17-18)

Applicable Civil Service 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 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.”

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); 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); 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, *op.cit.* 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; Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006), quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

The Town’s Decision

The Town’s initial action here was to terminate three (3) police officers (Moccio, Grasso and Connor), in part, because all three officers allegedly engaged in excessive force during the altercation with Doe in the cell. During the hearing before the Commission, the Mayor, who serves as the Appointing Authority, explained that his decision to terminate these three officers was based in part upon his view of the video evidence. He testified that, in his opinion, the video depicted Officer Connor and Sgt. Grasso holding Doe down for the express purpose of allowing Officer Moccio to repeatedly strike Doe with his baton. After two days of hearing before the Commission, the Mayor reinstated both Connor and Grasso although Grasso was demoted from Sgt. to patrolman. By reinstating two of the officers, it appears that the Mayor accepted the testimony of the Town’s own expert witness that Connor and Grasso did not engage in excessive force.

The Town’s current position is that there is just cause for Moccio’s termination because his use of the baton was in violation of the Department’s use of force policies and that Moccio’s report of the incident was untruthful. As for Sgt. Grasso, the Town contends that he too was untruthful in his report of the incident and that his conduct throughout the incident was incompetent.

EXCESSIVE FORCE

Town's Argument Regarding Excessive Force

The Town argues that while Doe's behavior at Six Flags should be part of the analysis, Doe's behavior immediately prior to the altercations should be given much greater weight, citing Policy 1.01, Section B(2), which states: "Perceived Circumstances: The level of force used by an officer shall be a response based upon: a. Threat perception – the reasonable officer's perspective of the situation in reference to the severity of any crime, the existence of **an immediate safety threat** to the officer or others, and the degree of compliance from the subject." [emphasis added]

The Town argues that Doe's behavior at the police station at all times prior to the cell block altercations was not assaultive; that Doe was approximately 5'7" and 155-165 pounds, unarmed, and wearing only underwear in a confined space with no access to a weapon, and that there four (4) officers assisting who were of above average build and height. Therefore, the Town argues that the relevant factors weighed heavily in favor of the officers using the least amount of force necessary to control the situation, which is required by the Town's policy.

The Town, in its post-hearing brief, continues to argue that all three (3) officers (including Moccio and Grasso) violated the APD's Use of Force policies immediately after entering the cell by failing to remove themselves from the cell prior to engaging in the altercation with Doe. Specifically, the Town argues the Appellants should have allowed Doe to "fall forward" and then removed themselves from the cell. To support this argument, the Town argues that "later in the video (6:58:01:969), Grasso does exactly that when Doe is standing right in front of him next to the cell door."

The Town concedes that, after Doe was brought to the bench, (Cell Altercation Part A) “Doe did at one point have his arm around Grasso’s head in a backward position” and the Town’s expert (O’Laughlin) testified that, conceivably, this action by Doe could be considered assaultive, although he did not view Doe’s actions as deliberate.

The Town argues however, that, at a minimum, all of the blows delivered by Moccio after the removal of Doe’s arm, were not reasonably necessary to bring the situation under control and therefore violated the APD’s policy. According to the Town, Moccio delivered blow after blow to Doe, including blows to so-called yellow and red areas, without any reassessment to determine if the blows were reasonably necessary without even waiting a second to determine if Doe complied. The Town argues that the continued use of force was not justifiable simply because at some point in the past a prisoner was assaultive.

In regard to Cell Altercation Part B, the Town argues that Doe did not stand up from the cell bench until after Moccio thrust his baton in Doe’s face, and Moccio did not wait even a few seconds to determine if Doe would obey his order. Further, the Town argues that Doe exhibited no assaultive behavior toward Moccio at any point during Cell Altercation Part B, citing Grasso’s statement to Donovan where Grasso described Doe’s conduct as follows: “I think, I think he’s, he’s ready, he’s ready to defend himself against [Moccio]” and Donovan’s testimony that “It appears to me that he’s trying to block, Officer Moccio’s in a striking stance, weight bent way back and he’s trying to block the baton . . .” The Town argues that *Moccio’s* conduct was assaultive and unnecessary and that the mere belief that a prisoner may become assaultive is not sufficient to justify the level of force used by Moccio.

Appellants' Argument Regarding Excessive Force

The Appellants argue that all of the baton strikes were authorized under the APD Use of Force policy because officer Moccio reasonably perceived Doe's actions as assaultive behavior. The Appellants argue that the actions of Moccio must take into account the circumstances surrounding Doe's arrests at Six Flags, which they argue are part of the totality of the circumstances that must be considered in determining a reasonable officer's threat perception of an un-cuffed Doe in a subsequent struggle in the cell. At Six Flags, it took Moccio and a Special Police Officer several minutes to subdue and cuff Doe and they were only able to cuff Doe with the help of two (2) civilians, who jumped into the melee to free the Special Police Officer from a headlock employed by Doe and assisted the officers in placing handcuffs on Doe. Also, at one point during the struggle at Six Flags, Doe was sprayed with OC Spray (pepper spray) and this had little to no effect on Doe's fighting ability.

In regard to why the officers did not simply place Doe in the cell and try to close the door, Grasso was adamant in his testimony that this was not a viable option because by the time they reached the threshold of the cell he and officer Connor had lost control of Doe, stating that Doe was actively resistant upon entering the cell and immediately turned by throwing a "roundhouse" punch at him. According to the Appellants, Doe's conduct left the officers no choice but to engage Doe in order to bring him under control in order to exit the cell safely. Grasso also points out that it's not that simple to close these cell doors. The process requires everyone to exit the cell and swing the door 180 degrees to close it. In Grasso's estimation, that process would have left Doe ample time to attack the officers and endanger their safety. Grasso also testified that it was his practice to sit

unruly arrestees on the bench and talk to them to get them to calm down. He stated that this usually had the effect of keeping them calm during their period of incarceration. He also stated that 99 out of 100 times that practice was successful but that this occasion was obviously not one of the 99 times.

The Appellants argue that while it is true that officers using force must constantly reassess their level of force depending on changing circumstances, Doe was actively fighting with the officers during the periods in which Moccio was administering baton strikes. Furthermore, they argue that the Town's position unreasonably expects an officer to only strike when the subject is actually punching, kicking, spitting or placing an officer in a headlock. To suggest that an assailant is not assaultive between punches or simply because the officers are struggling with his hands thereby preventing a punch, they argue, is not consistent with the Department's Policy or the Graham standard.

They ask the Commission to consider that each case depends on the totality of the circumstances so if there was a long duration where the subject is not engaging in assaultive behavior then obviously that would be perceived by a reasonable officer as either surrender or a reduction in the level of resistance.

For his part, Moccio testified that during this incident he did reassess the situation continuously; however, he testified that he continued to observe Doe struggling to free his arms presumably to strike officers Grasso and Connor. He stated that he paused between strikes to see if the assaultive behavior stopped but it did not and that Doe was threatening to spit at the officers and was moving his arms, legs and his body in a combative manner instead of a compliant manner. The Appellants argue that these perceptions are certainly reasonable under the circumstances and for this reason, the

Commission cannot conclude that Doe's behavior deescalated from assaultive to some lower resistance during the period he was being struck by Moccio's baton.

Further, the Appellants argue that the Department's Use of Force Policy and the Town's own expert suggest that if a subject becomes assaultive, use of force may be used until the subject is under control *and compliant* citing Policy 1.01 which states in pertinent part: "[T]he officer is justified in taking appropriate steps to immediately cease the assaultive action **and to gain compliance and maintain control of the subject.**" (Policy 1.10 IV(B)(3)(d)) (emphasis added). Moreover, they argue that Mr. O'Laughlin specifically agreed to this understanding of when the use of force becomes de-authorized when he offered the following testimony:

Q And so an officer who's trying to figure out whether or not—what they can do, in terms of use of force, could conclude that, if somebody is assaultive, I am authorized to use my baton, correct?

A Yes.

Q All right. And I'm authorized to use that baton until the person is under control and compliant, correct?

A It doesn't say that but, yes, I would say you could use that amount of force that is reasonable and necessary in order to effect control, yes.

The Appellants caution against the urge to apply hindsight 20/20 vision to these use of force assessments, citing the guidance from Graham, *infra*, that: "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."

In regard to where Moccio struck Doe, the Appellants argue that a plain view of the video reveals that the alleged strikes to the groin were in fact strikes to the upper thigh

area which are “green target areas” and clearly permissible. Furthermore, for each alleged groin strike, the Appellants argue that the video clearly depicts Sgt. Grasso’s leg completely covering the genitalia of Doe with whom he is struggling and that the position of Sgt. Grasso’s leg over Doe’s groin during the relevant portion of the video conclusively demonstrates that Moccio did not strike Doe in the groin as alleged.

Further, the Appellants argue that the alleged strikes to the “kidney” are also unsupported by the video evidence and that all but one of the strikes alleged by Donovan and O’Laughlin to have been to the “Kidney” are clearly to the hip area, a Green/Yellow area and therefore not excessive. They argue that there is a single strike to the low back which appears to be below the kidney area and also in a yellow strike zone. Finally, the Appellants argue that the location of this strike on Doe’s back was the result of Doe’s body rolling away from Moccio as he executed the baton strike. For this reason, the Appellants argue that, even if this was a strike to Doe’s “kidney” area as the Town contends, it was not intentional and therefore not excessive.

In regard to Cell Altercation Part B, the Appellants argue that Doe’s assaultive behavior resumed when Doe grabbed Moccio’s baton, which increased the threat perception of Moccio. Further, Moccio testified that that he considered Doe getting up to be assaultive because his fists were clenched, Moccio had just hit him several times with the baton and now Doe is getting off the bench. Moccio testified that someone who is not assaultive would stay on the bench as ordered and that Doe was coming to assault Moccio when he was getting off the bench. Moccio testified that he shoved Doe at this point to create distance and place Doe at a disadvantage so that he could get control of him. Moccio testified that he perceived at the time that Doe continued to be assaultive

when he got off the bench a second time and came back up with a clenched fist. Moccio also testified that when he tried to put Doe on the bench, Doe continued to be assaultive, starting to fight with Connor.

Again, the Appellants argue that the Town's own expert witness (O'Laughlin) buttresses Moccio's claim that it was reasonable for Moccio to perceive that Doe was assaultive regarding Cell Altercation Part B, citing the following testimony by O'Laughlin:

BY MR. CONNOR:

Q Would you agree—we're at 06:13:7.745 - that at that point he's under control?

A It appears to be.

Q Okay. Now, at this point in the video, he's been struck by the baton several times. Two officers have been wrestling with him for the better part of 60 -- at least 60 -- somewhere around 60 seconds, correct?

A Uh-huh.

Q And he refused, during that period of time, repeated commands, correct, to stop?

A (No audible reply.)

Q Right?

A Yeah.

Q All right. And that's something you've got to consider in determining threat perception, right?

A Perhaps.

Q Well, what—yes or no?

A I would consider it, yes.

Q Okay.

A I would so perhaps I would, yes.

Q Well, you're the expert so you're supposed to --

A I would consider everything that took place --

Q Right.

A—as part of the totality of circumstances.

Q And after all that --

A Yeah.

Q What does [Doe] do?

A Obviously, if we watch the rest of the video, you will see him get up from his prone position --

Q Right. Right. Well, is it reasonable for the officers to believe that he would be assaultive at that point because, after all that, he still got up and was coming towards Moccio? Is that reasonable?

A Anyone could perceive that. (TR. Vol 2 P. 134-135).

.....

BY MR. CONNOR:

Q Is it reasonable for Moccio to assume that the fact that he's gotten up again is assaultive behavior?

A If he perceives that, that's his right to perceive that. He's an officer. He's trained. If he perceives that, then it's reasonable. (TR. Vol 2 P. 137-138)

Analysis Regarding Excessive Force

When assessing whether excessive force was used here, I considered various factors, including, but not limited to, the following:

The Graham standard

To assess whether Moccio's conduct constituted excessive force, both parties' experts agree that the appropriate standard is that which was first announced by the U.S. Supreme Court in Graham v. Connor et al, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). While Graham involved a question of whether an officer's use of force violated the arrestee's 4th Amendment rights, there is no dispute that the Graham standard is encompassed in the Agawam Police Department's Use of Force Policy 1.01 and was used to train Officer Moccio and Sgt. Grasso in the proper use of Force. As such, I looked to Graham for guidance on whether Officer Moccio's conduct violated the Agawam Police Department's use of force policy.

“Whether the amount of force used is excessive turns on whether the officers' actions were ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard for their underlying intent or motivation. See Cruz v. Town of Laramie, 239 Fed 1183, 1188 (10th Cir. 2001). Determining the reasonableness of the officers' actions requires careful attention to the facts and circumstances of each particular case. Graham, 490 U.S. at 396. Relevant factors include, but are not limited to, the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. Id.; see also Fisher v. Town of Las Cruces, 584 F.3d 888, 894 (10th Cir. 2009). The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Graham, 490 U.S. at 396. Waters v. Town & County of Denver, 2014 U.S. Dist. LEXIS 138373 (D. Colo. Sept. 29, 2014)

In reaching my conclusion regarding the issue of excessive force, I was particularly mindful of the guidance in Graham stating that:

“With respect to the claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers.’ Johnson v. Glick, 481 F. 2d. at 1033, violates the Fourth Amendment. The calculus of the reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Town's Policies

I reviewed the APD Policies that were relevant to the alleged excessive use of force including Policy 1.01 entitled "Use of Force" and Policy 4.06 entitled "Authorized Weapons", both of which are referenced in the findings.

Expert Testimony

As part of the hearing, I listened carefully to the testimony of the two (2) expert witnesses on excessive force, one (1) called by the Town and the other called by the Appellants, who offered opposing opinions on whether Moccio engaged in excessive force. Subsequent to the hearing, I reviewed their testimony again.

I did not accept the conclusions of either expert witness in their entirety. Rather, I gave their testimony the weight it deserved, and, based on all of the factors referenced here, reached my own conclusions. In regard to the weight given to the testimony of each of these expert witnesses, however, I did find the testimony of the Town's expert witness, David O'Laughlin, to be more informative, relevant, and, in some important respects, more persuasive. O'Laughlin has been a use of force instructor in Massachusetts since 1986, holds many certifications regarding the use of force, and was appointed by the Governor to the Massachusetts Municipal Police Training Committee to assess and approve training – force training in particular – for municipal police officers in the State of Massachusetts. O'Laughlin testified that he has written the protocols and trainings for the Municipal Police Institute and has done so since 2008 when he became the Director of Training at the Municipal Police Institute. Since 2009, the Municipal Police Institute has provided training on the use of force to the Agawam police department and its officers. Further, O'Laughlin's conclusions here appear to be genuinely independent and

not influenced by any Town officials. Finally, I credit O’Laughlin’s testimony that: “I will do everything I can to defend the actions of a police officer when and where I can.” To me, this credible statement by O’Laughlin reinforced that his conclusions were his own, and not influenced by any Town officials.

In regard to Mr. O’Laughlin, I considered the Appellants’ argument that his expert testimony should be given less (or no) weight since he never personally spoke with and/or interviewed Moccio or Grasso. During his testimony, O’Laughlin tacitly acknowledged that it would have been preferable if he had been given the opportunity to do so. O’Laughlin did, however, have the opportunity to review the written reports filed by Moccio and Grasso before reaching his conclusions regarding the issue of use of force. Further, as part of the de novo proceeding before the Commission, he was the subject of pointed cross examination in which he was asked to provide conclusions based on hypothetical perceptions that the officers may have had at the time. Finally, the fact that O’Laughlin did not personally interview the Appellants before giving his expert opinion to the Town does not prohibit me from giving his testimony weight. See Com v. DelValle, 443 Mass. 782, 824 (2005) (doctor who did not perform autopsy, but who testified on basis of report, diagrams, and photographs, had sufficient information to testify regarding cause of death, severity of force necessary to cause injuries, and that they could have been inflicted by ‘stomping’’).

In certain respects, I found the testimony of the Appellants’ expert witness, Mr. Key, to be less persuasive. To me, parts of his testimony appeared to be solely geared toward justifying the actions of the Appellants, as opposed to providing the Commission with an independent expert opinion. While reasonable people can reach differing conclusions

about what occurred in the cell on the night in question, some of Key's observations go beyond even what was initially reported by the Appellants and seems to stretch the bounds of what any reasonable person could see after reviewing the cell video. For example, Key claims Doe hit Grasso in the face with an elbow, punched Connor in the face, and kneed Grasso's groin. None of these alleged events were included in the Appellants' initial reports and the video footage does not seem to support these conclusions.

Testimony of Alfred Donovan

The Town asked Mr. Donovan to assist with the internal investigation here. I do not question his competence or years of experience, nor do I conclude that his investigation, including his observations about use of force, must have been conducted independent of the Town in order to be given weight. His testimony, along with the testimony of the Police Chief and the email communication between them, however, make it clear that this was not an independent investigation. Donovan added significant charges (including alleged criminal conduct) to his initial report after sharing the report with the Police Chief. Based on all of the relevant testimony, including somewhat confusing testimony regarding what actions constituted criminal conduct, I infer that the only reasons these charges were added was the Chief's request to do so, as opposed to an independent conclusion by Donovan that criminal conduct actually occurred. Further, Donovan, either didn't understand, or did not explain properly in his report, that he had reached an opposite conclusion than his own use-of-force expert (O'Laughlin) regarding whether Grasso and Connor engaged in excessive force. Donovan concluded in his report that

Grasso and Connor had engaged in excessive force; O’Laughlin concluded that they had not.

Further, Donovan’s interrogation techniques made it difficult, at times, for me to assess whether the thoughts expressed were those of the interviewee – or Donovan’s own predisposition. For example, it was *Donovan*, not *Moccio*, that first referenced an alleged attempt by Doe to grab Moccio’s baton during Cell Altercation Part B. There are multiple examples of this interview technique throughout the transcripts submitted.

Moreover, while the Commission does not act without regard to the previous decision of the Town, the de novo nature of these proceedings, in situations such as this, effectively requires the Commission to do its own review, hearing from percipient witnesses and reviewing all relevant exhibits, to determine if the Commission reaches the same conclusions as the Town.

Testimony of Appellants

Given that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, the testimony of the Appellants, particularly Moccio, is highly relevant to this appeal, including the pivotal issue of whether Moccio engaged in excessive force. I listened to their testimony in this context, aware of the judicial guidance that “not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers” (or a Civil Service Commissioner’s office) constitutes excessive force. Throughout the analysis below, I reference my conclusions as it relates to their testimony.

Testimony of Mayor

The Town's Mayor serves as the Appointing Authority here. He offered some stark testimony before the Commission making it clear that his decision to initially terminate all three (3) officers was based, in part, on his conclusion that the officers brought Doe into the jail cell with the underlying intent to inflict pain on him. First, although this is an administrative proceeding to determine whether there was just cause to discipline these officers, it is noteworthy that the cases cited in Johnson make it clear that "the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them without regard to their underlying intent or motivation." See Scott v. United States, 436 U.S. 128, 137-139 (1978). Second, while certain aspects of this case may be a "close call", the Mayor's conclusions regarding the *motivations* of the three (3) officers is not supported by a preponderance of the evidence. These officers did not bring Doe into that cell to inflict some type of street justice and the Mayor's conclusions in that particular regard are unsupported. That notwithstanding, the issue that remains is, after applying the appropriate standard, and after weighing all of the relevant evidence, whether Moccio engaged in excessive force.

My analysis starts with Doe. I have considered *all* of the events that occurred that day, both at Six Flags and then back at the police station. Although it occurred after the cell altercation, Doe's later actions, while alone in the cell, hands cuffed and feet shackled, provide some insight into whether he was a dangerous person. For example, in what appears to be second nature to him, Doe, who was handcuffed from behind, easily slips the handcuffs under his feet so that his hands were then in front of him. He

eventually uses the handcuffs to begin banging against the window of the cell door and then bangs his head into the window, causing his head to start bleeding. While, at times, Doe was, as reported by Grasso, “nice and calm” and “going along with the program;” a review of all the evidence, including the percipient testimony from those present at Six Flags, as well as the entirety of the video evidence, shows that Doe was a violent, erratic and relatively strong man with the proven ability to cause harm to himself and others. I factored this into all of my analysis regarding these appeals.

Next, I considered the Town’s argument that the officers should have simply placed or shoved Doe into the cell and tried to close the door, which Grasso did later that night at the 6:58 mark in the video. When Grasso made that later decision (at the 6:58 mark), however, Doe’s hands and feet were in cuffs. Doe was not in cuffs when he was being brought into the cell, a factor that Grasso likely considered when making his “split-second decision” regarding whether Doe was an immediate threat and whether Doe could be allowed to simply “fall forward” into the cell. While, in hindsight, it may have been more advisable to: a) handcuff Doe before entering the cell; and b) attempt to let him fall forward, I do not find the actions of Grasso regarding this interaction (forcing Doe to the bench in the cell) to be a violation of the APD’s policies.

While I have not found their decision to place Doe on the bench to be a violation of the APD’s Use of Force policies, I was troubled that Grasso and Moccio, in an apparent attempt to justify the decision to force Doe to the bench, testified before the Commission that Doe threw a “roundhouse punch” at them upon entering the cell. Moccio never referenced this alleged “roundhouse punch” in his report or when he was interviewed by the Town’s investigator. Grasso, when talking to the Town’s investigator, stated that the

alleged “roundhouse punch” referenced in his report occurred after Doe was placed on the bench. These inconsistencies, along with a review of the video evidence, show, to me, that Doe did not throw a roundhouse punch upon entering the cell. Even assuming arguendo that it was a credible perception by Grasso, Moccio, who ultimately administered the baton strikes here, acknowledged during his testimony before the Commission that he did not reach his alleged conclusion that Doe threw this roundhouse punch until after viewing the video in preparation for the local disciplinary hearing before the Mayor. Therefore, it could not have factored into his perception at the time.

After Doe was placed on the bench, there was an altercation (Cell Altercation Part A) that lasted approximately sixty (60) seconds between Doe, Grasso and Connor at which time Moccio struck Doe thirteen (13) times with his baton. Whether or not Doe was assaultive and, more specifically, whether Moccio, could have reasonably perceived Doe as being assaultive, is a critical issue here because the APD’s policies allow for the use of baton strikes under certain circumstances if Doe was “assaultive”, which is defined in relevant part by the APD’s policies as: “an actual attack upon the officer or others.”

With the benefit of 20/20 hindsight, and viewing the video in the peace and quiet of administrative offices, I found the Town’s argument here very compelling. To me, whether viewing the video in real time or frame-by-frame, or viewing the video for the first, second or tenth time, Moccio’s decision to strike Doe at all was troubling. As referenced above, however, the question here is whether Moccio’s actions violated the Town’s Use of Force policies, which are guided in part by the principles in Graham. Specifically, the “reasonableness” of a particular use of force must be judged from the

perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

After reviewing all of the video evidence, and listening to the Appellants' testimony, I credit that portion of the Appellants' testimony that, *while Doe was on the bench*, he exhibited behavior which the officers (including Moccio) could have reasonably concluded was assaultive, including the perceived headlock by Doe, Doe's attempted spitting and Doe locking his legs around Grasso. Under the APD's Policies, Doe's assaultive behavior, during Cell Altercation Part A permitted Moccio to use "defensive tactics" (i.e. – baton strikes) to "immediately cease the assaultive action and to gain compliance and maintain control of the subject."

That leads to whether Moccio, during Cell Altercation Part A, violated the Town's related weapons policy and the Town's allegation that Moccio engaged in misconduct by a) striking Doe in vital "red target areas" with his baton and; b) by failing to see if all lesser means of applying non-deadly force had failed or would obviously be futile. The parties agree that the Town's policy on authorized weapons states, in relevant part, that a police baton may be used: "as a defensive weapon to deliver disabling blows to non-vital areas of the body as a means to halt or deter a subject when all lesser means of applying non-deadly force have failed or would obviously be futile ..."

A) *Striking of Red Target Area*

In regard to where officers are permitted to strike an assaultive person with a baton, Grasso's own testimony establishes that:

"Your primary target is always the green area. That's where you start. Okay? You're getting a start. That's going to be the minimal amount of trauma to someone. Okay? Temporary – temporary – it's the trauma is going to be less intrusive, say. Okay? You're still going to have trauma, but

it's going to be temporary. And then you go into the yellow. If you can't get to – If you don't have a green target, you can go to the yellow target. That's your secondary target. All right? Your secondary target might be coming across the elbows, a joint. All right? It's going to cause – it's going to be moderate to serious. It's going to be a little longer lasting trauma but you can go to that yellow area if you need to. If you can't get to the green, you strike at the secondary target ... The only time you go to red is if you've got serious bodily harm ... lethal."

Moccio has offered at least three different accounts regarding whether he struck Doe in a vital "red area".

First, when Moccio completed his arrest report shortly after the incident, he wrote:

"While placing [Doe] in the cell he became combative and grabbed Sgt. A. Grasso had (sic) place (sic) him in a head lock attempting to punch him in the face. It was at this time [Doe] was advised to stop resisting or he was going to be struck with my baton. [Doe] refused to release Sgt. A. Grasso and several baton strikes were delivered to [Doe]'s thigh and shin area. After several minutes wrestling with [Doe] we gained control over him and handcuffs and leg irons were placed on him." (emphasis added)

This report makes no mention of any strikes to any part of Doe's back side.

Second, that same night, Moccio completed a Use of Force Report stating that he only struck Doe in green target areas. When testifying before the Commission, Moccio offered various explanations regarding why he only checked green target areas on the Use of Force Report, including that his son was waiting for him, that he was called back to Six Flags for a call, that he needed to get home to clean off the OC spray and that he only viewed about "fifteen seconds" of the video before he went home that night. Moccio also suggested during his testimony that his reports that night may have been impacted by his dyslexia. Important parts of this testimony just didn't ring true to me and appeared to be geared solely toward providing a justification for reporting that he only struck Doe in green target areas, which he now acknowledges is not true. (Moccio now acknowledges hitting Doe in yellow target areas.) The entirety of the physical contact in

the cell *between Moccio and Doe* lasted just over a minute. The testimony that he would stop watching the video after fifteen (15) seconds seemed illogical to me. Further, in Moccio's report, he also states: "[Doe] had slipped his handcuffs to the front and was punching, banging his head and kicking the cell door. Due to his actions, he had received blood abrasions and contusions to his face, head, shin and legs." Those events did not occur until approximately thirty (30) minutes into the video, making it highly unlikely that Moccio only watched fifteen (15) seconds of the video that night. Also, as discussed later regarding the allegations of untruthfulness, the video clearly shows that the blood abrasions to Doe's shin and legs were caused by Moccio's baton strikes – not Doe's own actions approximately thirty (30) minutes later. Moccio also stated that he wasn't able to go back and watch the video again because he was put on paid administrative leave and not allowed back in the police station. Moccio wasn't put on paid administrative leave until over three weeks later and there was nothing preventing him from reviewing the video to ensure that his report was accurate.

Third, when Moccio first provided a statement to the Town's investigator, although he had not seen the video again, he emphatically stated (four times) that he "*never*" hit Doe in the back. After reviewing the video with the Town's investigator and his counsel present, Moccio stated that he *did* strike Doe on the back in the kidney area during Cell Altercation A.

Fourth, when testifying before the Commission, Moccio stated that he did *not* strike Doe in the kidney area. Rather, he states that, at most, he struck Doe "on the side ... in the lower back." Finally, during this same testimony, Moccio suggested that, even if the strike hit Doe's kidney area, it was the result of Doe moving on the bench.

The Town's investigator and expert witness both concluded that the first four (4) strikes by Moccio during Cell Altercation Part A hit Doe in the kidney area on Doe's back. The video evidence supports their conclusion, at a minimum, regarding Strikes 1 & 4. I do not credit Moccio's testimony that he only hit Doe "on the side ... in the lower back" both because the clear video evidence shows otherwise and because his statements did not seem like a candid account of what occurred. Rather, his testimony, including his assertion that the only reasons Doe may have been hit in the kidney area was due to Doe's movements, appeared to be an ex post facto attempt to square his prior contradictory statements and to clear himself of hitting Doe in a red target area. In summary, I have concluded that Moccio engaged in misconduct by striking Doe in a red vital area regarding two (2) of the first four (4) initial baton strikes. The video evidence, to me, however, does not sufficiently show, as both the Town's investigator and expert witness concluded, that Moccio struck Doe in that area labeled as the "groin" on the Monadnock chart. During those baton blows, it does appear that Grasso's leg was at least partially blocking Doe's groin and I was unable to conclude from the video evidence that it was more likely than not that Moccio struck Doe in the groin.

B) Using Lesser Means of Force

That leads to the second, related issue regarding whether Moccio could have reasonably perceived, during Cell Altercation Part A, that "all lesser means of applying non-deadly force ha[d] failed or would obviously [have been] futile ..." before striking Doe with his baton at all, regardless of whether they hit green, yellow or red areas. I have already concluded that Doe was assaultive while on the bench and the video evidence appears to confirm the Appellants' testimony of Grasso and Connor that the

lesser means of hand-to-hand combat was not initially successful, including the headlock at one point and another point in the video where it appears that Connor is somewhat pinned down on the bench as a result of the altercation. Seeing this behavior and having seen similar behavior at Six Flags (i.e. – a headlock) in which it required four (4) individuals to subdue Doe, I conclude that Moccio, acting as a reasonable officer, could have concluded that lesser means of non-deadly force had failed or would have been futile, thus justifying the use of baton strikes under the APD’s policies during Cell Altercation Part A

Cell Altercation Part B

What occurred after 6:13:29.542 in the cell video (Cell Altercation Part B), however, is starkly different. As referenced in the findings, a bloodied-Doe is laying on his back on the cell bench and there is no physical contact between Doe and Grasso, Connor or Moccio. Grasso can be seen exiting the cell and Connor is heading toward the cell exit. Moccio is standing behind Connor looking down at Doe, with his (Moccio’s) baton still in his hand. Doe, as of this point, was not assaultive.

Doe, while still on the cell bench, begins to turn his body and lean on his right shoulder. At this point, Moccio can be heard telling Doe to “stay down on the bunk” while he (Moccio) places his baton closer to Doe. At 6:13:32.039, Doe is now sitting upright on the cell bench, with both feet on the cell floor, looking up at Moccio. At this time, it appears that Grasso tells Doe to stay down on the bunk and Moccio says the words “You stay”.

At 6:13.32.938, Doe proceeds to stand up. Immediately thereafter, the following events transpire:

- A. Moccio holds his baton behind his (Moccio's) head.
- B. Moccio steps toward Doe, moving the baton toward Doe.
- C. Moccio, with his baton in hand, shoves Doe toward the cell wall, head first.
- D. Doe's head appears to miss the cell wall by inches.
- E. As Doe is falling backward, Moccio says: "get down on the bunk".
- F. Doe stands back up with what appears to be a clenched right fist.
- G. Moccio strikes Doe on his right thigh with the baton and says: "get down."
- H. Moccio strikes Doe on his right thigh with the baton and says "get down now."
- I. Moccio shoves Doe back down on the bench.
- J. Moccio strikes Does on his upper leg and says "cuff him up."

During his testimony before the Commission, Moccio stated that, during the ensuing altercation, he perceived that Doe was attempting to grab his baton which elevated his threat perception even further. Moccio never mentioned the grabbing of a baton in his written report and/or that the alleged grabbing of the baton elevated his threat perception. In fact, as referenced above, the report that Moccio filed shortly after the event occurred, omits any reference to Cell Altercation Part B. At a minimum, there is no reference to Doe attempting to grab his baton or, as Moccio now alleges, that Doe stood up with "clenched fists". Moccio's report stated:

"While placing Doe in the cell he became combative and grabbed Sgt. A. Grasso had (sic) place (sic) him in a head lock attempting to punch him in the face. It was at this time Doe was advised to stop resisting or he was going to be struck with my baton. Doe refused to release Sgt. A. Grasso and several baton strikes were delivered to Doe's thigh and shin area. After several minutes wrestling with Doe we gained control over him and handcuffs and leg irons were placed on him."

In Sgt. Grasso's written report, he does reference Cell Altercation Part B, but there is no reference to Doe attempting to grab Moccio's baton or clenched fists. In regard to Cell Altercation Part B, Grasso states in his report:

“ After several blows it appeared Doe had stopped fighting we (sic) had instructed him to stay on the bench as we began walking towards the door. Officer Moccio was trying to keep Doe at a distance with his baton on the bench. However, he had eventually stood back up and starting making his way towards Officer Moccio. Officer Moccio pushed him back onto the bench to create distance and he immediately got back up and appeared as if he was getting ready to go at Officer Moccio. Officer Moccio immediately struck him with baton to keep him at a distance. We then forced him back onto the bench once again eventually handcuffing and shackling his legs.”

Grasso's statement that Moccio “pushed him [Doe] onto the bench” does not accurately depict what occurred here. As the video clearly shows, Moccio, with his baton in his hand, pulls his arm back, and then, with the aid of his baton, pushes that same arm forward and violently shoves Doe back toward the cell bench and wall, resulting in only inches, at best, between Doe's skull and the cell's cement wall. By getting up off the bench, Doe was disobeying an order and showing “active resistance” as defined by APD rules. I do not credit the Appellants' testimony, however, that they reasonably perceived, at the time, that Doe was being “assaultive”, as defined by APD rules, at that time. Thus, that violent shove to Doe's chest, with the aid of the baton, was not justified. While Grasso's full statement to the Town's investigator does include references to Doe being assaultive at this point, I concur with the Town that the following part of Grasso's statement below and Donovan's testimony before the Commission most accurately describes what happened during Cell Altercation Part B:

Grasso's statement, in which “he” refers to Doe, states:

“I think, I think he's, he's ready, he's ready to defend himself against [Moccio]”

Donovan's testimony was that:

“It appears to me that he’s trying to block, Officer Moccio’s in a striking stance, weight bent way back and he’s trying to block the baton . . .”

The Appellants cite portions of O’Laughlin’s testimony to argue that he (O’Laughlin) believes that Moccio was justified in regard to the strikes that occurred in Cell Altercation Part B. A full reading of O’Laughlin’s testimony, however, puts those remarks in the proper context including: the following:

BY MR. DUPERE

Q We’re at 6:13:29, 942. Now, from this point forward, as you’re aware, the prisoner starts to sit up and there’s a second altercation. What is your opinion as far as the prisoner’s conduct from this point in the video forward?

A Well, I’d have to see it. If you’re talking about what’s my opinion as to what happens forward –

Q Yeah. Let’s play it just at straight speed and then we’ll let him respond. O.K. You can stop it.

Q So from the point in time that – that time marker I gave you to now – the end of the altercation – what is your perception of what the prisoner was doing throughout that time frame? Was it assaultive? Was it active resisting? What – what – how would you characterize that?

A From the time we stopped and to this point here, I think what had taken place then was that the prisoner was in compliance. He was in control. He was not actively resisting at that point. You had him in control.

Q Did you perceive the prisoner to be getting up and going after the officers or attacking the officers in any way?

A I saw the prisoner getting up from the bench. He was being told to stay there. He was getting up from the bench.

Q Okay. Is that considered active resistance or assaultive behavior?

A Well, he’s certainly not obeying but, as far as assaultive? No.

Q Okay. Did you – is there any reason that the officers, in your opinion, couldn't have left the cell?

A I --- I thought they were leaving the cell. That's the normal – that's what I thought was going to take place, watching that.

Q Okay.

BY COMMISSIONER BOWMAN

Q Well, you thought they were leaving the cell. Do you think they should have left the cell?

A Yes. Yes.

BY MR. DUPERE

Q Do you think they didn't have enough time to do so?

A Um, that's hard to say. It's a perception of the officers themselves. I think that they – as they began their behavior to leave, they were doing the right thing, in my opinion. They had your prisoner in control. He was, uh, at that time, still down on the bench and they were up and leaving.

Q Do you see --- in your opinion, based on your experience with use of force, is there any reason the baton should have been used at any point during this sequence of events?

A I would say no.

Q And why is that?

A Because – in my opinion, looking at this, you have a person who is disobedient, probably belligerent. I can't hear everything he's saying. He's everything in my mind but a threat to anybody present. The baton is a -- very high level of force and it's used often and it is used justifiably often and police officers have, by statute, the right to use force. There is no question about it; however, there are circumstances that govern the use of force.

Q If there is any way you could have found that what Officer Moccio did was appropriate in this video, would you have done so?

A Yes. (emphasis added)

Later, O’Laughlin offered the following testimony:

BY MR. DUPERE

Q So, at the very end, when [Doe] is appearing to sit up, in your opinion, should Moccio have waited – well, could Moccio have waited for some period of time to determine what the threat level was going to be? Whether [Doe] was moving forward towards him or not? Did that happen in this video?

A Again, that’s – I don’t know whether he waited, in his mind’s eye, or not but what appears to me is a couple – a fraction of a second –

Q Well, before Moccio acted, was there any indication --- could you see any indication in this video that the prisoner was actually going to be assaultive or was it too early to tell?

A I would say too early to tell. It did not appear that ---

BY MR. CONNOR

Q You’re saying that – uh, in response to the question by counsel that Moccio could have waited to determine whether or not getting up off the bench posed a threat to him ---

A He could have.

Q Would you train an officer –

A Whether he did or he didn’t is not – is not up to me.

Q Would you train an officer to wait and see if it was – if you were going to be assaulted or not?

A We do all the time.

Q That’s what you train them to do?

A All the time, which – you are to – if you use force, you are to reassess whenever possible. We are trained all the time to that level.

Ultimately, the question is whether *Moccio* could have reasonably perceived at the time that Doe was being assaultive during Cell Altercation B. Even when applying the

highly deferential standard established in Graham, the preponderance of the evidence does not show that a reasonable officer could have concluded that Doe's behavior during Cell Altercation Part B was assaultive. While Doe was not complying with an order to stay on the bench at this point in time, he had ceased being assaultive, to the point that the officers felt comfortable to begin exiting the cell. Moccio's use of the baton to shove Doe back against the cell's cement wall and the subsequent baton strikes, were not consistent with the APD's policies. The Appellants seek to parse the wording of the APD's policies in a way that would permit police officers to use baton strikes simply in response to non-compliance of an order (i.e. – applied here, to stay down on the bunk). When, as here, Doe had ceased being assaultive, I do not read the APD's Policies as authorizing Moccio to violently throw Doe against a cell wall for failing to comply with his order. Even assuming that the policies did permit this, the violent shove of Doe into the cement wall, with or without the aid of the baton, was not consistent with APD's policies that require an officer to first determine that lesser means of force were unsuccessful or would prove futile. Nor do I accept the testimony of the Appellants' expert witness that what occurred here (the violent shove into the cement wall) was nothing more than a "distraction" technique.

FAILURE TO PROVIDE MEDICAL ATTENTION

APD Policy 1.01, Section G (Medical Attention) provides the following:

After any level of force is used (including weaponless tactics) the officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when:

- A. The suspect is in obvious need of medical attention;
- B. The suspect has serious visible injury; or

C. The suspect complains of injury or discomfort and requires medical attention.

Further, Policy 3.04 (Detaining Prisoners), Section B (Medical Care) requires the following: “An ambulance shall be called when any detainee requests and/or is deemed in need of medical attention.”

Town’s Argument Regarding Failure to Provide Medical Attention

The Town argues that Grasso’s actions did not comply with the requirements of these policies because he did not immediately evaluate the need for medical attention or treatment after Doe was struck approximately 19 times at full force and was thrown against the cell, had blood on both legs from the strikes, and blood on his head. Instead of evaluating Doe, the Town argues that Grasso simply walked out of the cell and slammed the door shut. The Town argues that Grasso violated these policies by failing to call an ambulance until approximately four (4) hours after the physical altercation in the cell. Further, the Town argues that Grasso had no way of knowing whether Doe had suffered a concussion from being thrown against the cell wall, broken bones from being struck by the baton, or other internal injuries from being struck in the kidney. Even after he observed Doe hit his head against the cell block door window several times after the officers had left the cell and blood began to stream down Doe’s shoulders and back, Grasso still refrained from calling an ambulance for over an hour, which the Town claims is a violation of APD Policies.

Appellants’ Argument Regarding Failure to Secure Medical Attention

The Appellants argue that Doe did not request any medical attention nor did he complain of any injury at the time. Thus, they argue that the question for the Commission to decide is whether Doe had a “serious visible injury” or whether he was in obvious need for medical attention.

The Appellants point to the fact that immediately after the use of force in the cell, Doe is able to transfer his cuffed hands from behind his back to the front; he is able to stand and walk in the cell; and that he was very aggressive, threatening to strike officers as well as banging his head and handcuffs against the cell door in a violent manner. They argue that the only visible injury that can be seen is the cut on Doe’s shin.

Grasso testified that he did evaluate Doe immediately after the use of force, however, he did so by observing him over the video surveillance monitor and that his evaluation did not yield any concern that Doe was seriously injured. In regard to calling for an ambulance, Grasso testified that based upon prior experience, medical personnel which are paramedics from the Agawam Fire Department, will not attempt to treat or transport a dangerous individual such as Doe unless it’s a life threatening emergency. Further, Grasso testified that he did re-enter the cell after Doe started bleeding from his head in order to assess that injury and whether it was serious enough to require stitches or other medical attention. He testified he concluded that the wound was not serious, did not require medical attention and that Doe was still too dangerous to call for an ambulance.

Analysis Regarding Failure to Provide Medical Attention

Even prior to being brought into the police station, Doe had been struck by a baton multiple times at Six Flags. Once back at the police station, he was struck again multiple times, including strikes to his back and kidneys. Then, albeit through his own actions,

blood began streaming down his head after he banged his head against the glass of the cell door multiple times.

The record appears to show that it took two (2) hours for Grasso to call for an ambulance after blood starting streaming down Doe's head. Even accepting the Town's calculation (of one hour), the preponderance of evidence shows that Grasso violated the APD's Policies by failing to call for medical attention sooner. Grasso is not a medical professional and he acknowledges that he was not able to assess whether Doe had sustained internal injuries, broken bones or a concussion. Even the Appellants' expert testified that Doe should have been sent to the hospital, "As soon as it was – as was able – as you were – as it was possible to send him, uh, I would say that that would be, uh, protocol." Grasso's inaction placed Doe at serious risk, and subjected the Town to the potential of serious liability. Grasso, as the supervising officer, was required by policy to call for immediate medical attention for Doe. By failing to do so, he violated the APD's policies in this regard.

FAILURE TO SECURE WEAPON

The Town found that Moccio violated Agawam Police Department's Policy 3.03 which provides, in relevant part, the following:

The transporting officers shall remove and secure their firearms in the weapons lockers located in the sally port, or outside of the booking area prior to handling detainees.

All persons, including but not limited to assisting officers, booking officers, detectives, and supervisors shall secure their firearms prior to entering the booking area.

No firearms are allowed in the booking room or holding facility during the processing or detention of detainees.

The Appellants acknowledge that Moccio did not secure his weapon in a timely manner and that he entered the booking room with a loaded firearm which is a violation of APD Policies. Rather, they argue that there is no evidence that Moccio has violated this policy in the past and that, similar to Connor, who also violated this policy, a written warning is the appropriate disciplinary action for this offense.

INCOMPETENCE

The Town also charged Grasso with incompetence as provided in the Agawam Police Department Rules and Regulations under Section G (Prohibited Conduct), #10 (Incompetence). Said Rules and Regulations provide the following:

An officer shall maintain sufficient competency to perform his duty and to assume the responsibility of his position. Incompetency may be demonstrated, but is not limited to, the following:

- A lack of knowledge of the application of the laws to be enforced;
- An unwillingness or inability to perform assigned tasks;
- The failure to conform to work standards established for the officer's rank, grade, or positions;
- Repeated poor evaluations or repeated infractions of the rules and regulations.

The Town argues that Grasso's failure to adequately control the situation as the supervisor in charge of the shift is evidence that he is incompetent to be a supervisor in the Department. The Town provided numerous examples of what they considered to be poor decision-making that ultimately resulted in an altercation that could and should have been avoided.

Given that Grasso was aware of the altercation between Doe and Moccio at Six Flags prior to Doe being brought into the booking area, and had been told by Moccio that Doe was “fighting like crazy . . . he was just out of control, a real dangerous guy” the Town argues that that Grasso was incompetent by not requiring that Connor place the handcuffs back on Doe. The Town alleges that his failure to do so violated the below policies:

APD Policy 3.03, Paragraph IV, Section A which states the following:

“Detainees who are violent, intoxicated or uncontrollable may be placed directly into a holding cell until such time as they are calm enough to process. Officers shall not remove restraints if the behavior of the detainee poses an excessive risk of injury to the officers or the detainee.”

APD Policy 3.03, Paragraph IV, Section C, Subsection 3 (Handcuffs) which provides that:

The transportation handcuffs shall remain on the detainee until the booking officer instructs that they are to be removed. Detainees shall generally be handcuffed to the cuffing bar which is specifically designated for that purpose.

Handcuffs may be removed:

For the purpose of conducting a booking inventory;

For the purpose of fingerprinting; or

At the discretion of the booking officer.

In making the decision to remove handcuffs from a detainee, the booking officer should consider the conduct of the arrestee, the offense for which the arrest has been made and the recommendations of the arresting and/or transporting officers.”

Grasso argued at hearing that he wasn’t sure who was actually the booking officer. I do not credit his testimony in this regard. Grasso was at the computer where the information would be inputted, and admitted that he was going to ask the booking questions, but hadn’t started to do so, and that when he entered the room he became the

booking officer. It is clear that he was acting as the booking officer. As the officer in charge, it was his responsibility to know who the booking officer was or to assign someone to do it.

The Appellants argue that Connor had removed the handcuffs from Doe before Grasso entered the booking room. Further, Grasso testified that upon entering the booking room he observed Doe to be calm and cooperative and therefore made the reasonable decision to leave him uncuffed and to attempt to complete the booking process.

Since the Department's policy with respect to whether to cuff an arrestee during the booking process is squarely up to the discretion of the booking officer, I cannot conclude that Grasso's actions in this regard demonstrated incompetence.

Next, the Town alleges that Grasso was incompetent by letting Officers Connor and Moccio in the booking room with unsecured firearms while Mr. Doe was uncuffed. On this issue, Grasso testified that he was not aware that the officers had not secured their weapons as he was focused on Desjardin's conduct. He also testified that had he been aware of the loaded firearm, he would have immediately advised the officers to secure their weapons.

As the supervisor that night, it was Grasso's responsibility to see what was in plain sight: Grasso walking through the booking room with an unsecured firearm in close proximity to Doe, who was not in handcuffs. Based on the Appellants' own testimony, Grasso had already been briefed by Moccio regarding the altercation at Six Flags before Grasso entered the booking room. There is no ambiguity in the APD's Policies regarding this issue. Moccio failed to take the necessary steps to protect the safety of everyone in

that room when he failed to notice the unsecured firearm and failed to order Moccio to immediately leave the booking room to secure his firearm.

The Town next makes three (3) related claims which arose after Grasso's decision to terminate the booking process of Doe. According to Donovan, Grasso was incompetent in his decisions to: 1) not handcuff Doe prior to transporting him to a cell, 2) to be actively involved in the transport of Doe himself instead of instructing one of the officers present to conduct the escort, and 3) to allow officer Connor to assist in escorting Doe to the cell with a loaded firearm on his person.

Grasso testified that he exercised his discretion not to try to handcuff Doe in the booking room because that process would likely further escalate Doe into a fight which would be very dangerous in the booking room. Grasso explained that he had tussled with subjects in the booking room in the past and that it's a very tight space with many potential weapons of opportunity that a subject might use. As such, he exercised his discretion and elected to escort Doe without placing him in handcuffs. Further, Grasso testified that he was not aware of any policy which prohibits him from being actively involved in the transport of a subject. He also noted that he and Officer Connor were the two officers closest to Doe when the decision was made to transport him to the cell and so it was the logical way to proceed. Connor had not secured his firearm, although, by the time the transport occurred, Connor had disabled his weapon by removing the ammunition clip.

Under these circumstances, I conclude that Grasso exercised reasonable discretion in the manner in which he escorted Doe to the cell. Furthermore, the Town has not

identified any specific rule or policy that would inform Grasso that such decisions were inappropriate.

The Town also concluded that Grasso's failure to stop Moccio's excessive force was an act of incompetence. As the Officer in Charge of the shift, the Town argues that Grasso had a duty to supervise the other officers. As stated by Mayor Cohen, "We purposely have a sergeant on bookings to make sure these types of things don't happen and that was a concern as well – that it was allowed to happen. . . . and that was put into place to prevent things like this from happening." On this issue, Donovan found the following: "As the Officer in Charge at the Agawam Police Department on June 19, 2016, and as a witness to the use of force by Moccio, Sergeant Grasso had a duty to stop Moccio's use of force as it became inappropriate, unnecessary and excessive. Moccio intentionally delivered baton strikes to [Doe's] kidney and groin areas when the level of resistance offered by [Doe] did not warrant a level of force that could have inflicted permanent damage." O'Laughlin testified, "Well, the sergeant, by just the fact that he's the supervisor – it's his responsibility to stop anything that is, uh, unlawful or unreasonable or excessive."

The Appellants argue that, even if Moccio's actions were excessive, the video revealed that at all times in which Moccio is using force in the cell block, Grasso is himself engaged in a hands on struggle to gain control of Doe.

First, as previously referenced, I have concluded that Moccio did not violate APD policies when he struck Doe near the groin area. Second, the video appears to show that, when Moccio did engage in misconduct, by striking Doe in the kidney area, Grasso would not have seen this happen, as he (Moccio) was facing toward Doe involved an

altercation. Grasso did, however have ample opportunity to review the video and see that at least two (2) of the strikes hit Doe in the kidneys (a red target area) as well as the additional strikes during Cell Altercation B. Further, Grasso did indeed view Moccio violently shove Doe back against the bench and cell wall when he got up off the bench. Grasso, as the supervisor, had a responsibility to intervene as soon as he saw Moccio violently shove Doe back toward the cell wall. By failing to do so, Grasso showed a failure to conform to work standards established for the rank of Sergeant and Officer in Charge that night.

UNTRUTHFULNESS

Agawam Police Department's Rules and Regulations manual under Section F, Rule 34, provides the following:

“An Officer shall truthfully state the facts in all reports as well as when he appears before any judicial, departmental or other official investigation, hearing, trial or proceeding. He shall cooperate fully in all phases of such investigations, hearings, trials, and proceedings.”

Charges of Untruthfulness Against Moccio

The Town argues that Moccio violated this rule in multiple ways. First, the Town argues that Moccio was untruthful by submitting an arrest report that contained the following allegedly untruthful, misleading and/or inaccurate statements regarding the incident in question:

- A. “During booking [Doe] became extremely uncooperative and had to be placed in the cell.”
- B. “While placing [Doe] in the cell he became combative and grabbed Sgt. A. Grasso (sic) had placed him in a headlock attempting to punch him in the face.
- C. “[Doe] refused to release Sgt. A. Grasso and several baton strikes were delivered to [Doe]’s thigh and shin area. After several minutes wrestling

with [Doe] we gained control over him and handcuffs and leg irons were placed on him.”

- D. “[Doe] had slipped his handcuffs to the front and was punching, banging his head and kicking the cell door. Due to his actions he had received blood abrasions and contusions to his face, head, shin and legs..”

Further, the Town alleges that Moccio was untruthful when speaking with the Town’s investigator during the following exchange:

Donovan: Okay. All right. Um, he gets. What Happens?

Moccio: He takes a ... well, he’s told to sit on the bench. He refuses to sit on the bench. I believe I told him to sit on the bench, because there was no way we were getting, uh ... you could just tell after dealing with him at Six Flags and getting him in that cell where I was in that cell in relation to him, I locked onto him at that point, because I could see his eyes that I wasn’t getting out of that cell without a fight. So I told him to sit on the bench ‘cause I figured that could buy, buy some time to get out of the cell.

Donovan: Okay.

Moccio: He refused, totally refused.

Donovan: Okay. It ends up with that the sergeant and Officer Connor, uh, engaging him in a struggle?

Moccio: Correct.

Donovan: And you’re standing behind them?

Moccio: Yup.

Donovan: Okay, what do you see?

Moccio: I see him, he got, uh, Sergeant Grasso in a headlock and he’s trying to feed, uh, Sergeant Grasso punches to his face just like he did [Special Police Officer] in Six Flags.

Donovan: Okay, did you see him punch the sergeant?

Moccio: I saw him, but I, I don't know if he struck him or not. I did see him attempting to hit him in the face, yes.

Donovan: And did they have him under some kind of control over this?

Moccio: Absolutely not.

Finally, the Town argues that Moccio was untruthful by stating on the Use of Force Report that he only struck green target areas and that the total amount of baton strikes was 7-10.

Charges of Untruthfulness Against Grasso

The Town argues that the following voice mail message that Grasso left for the Police Chief that night was misleading:

“Chief, it's Anthony. Just to let you know, the rest of the night that [Special Police Officer] got injured hurt his back.. Had to send him to the hospital. Just wanted to give you a heads up. Ok so I am going to have some paperwork for you to fill out. A guy fought us in the cell. A pretty bad drunk ... arrested at Six Flags. Got a little crazy first half of the night. Just wanted to give you a heads up on that. No reason to call me back because it's almost midnight. Just wanted to let you know what is going on.”

According to the Town, this message would lead the Police Chief to believe that the sole issue was Doe's actions and that Grasso failed to mention that numerous baton strikes were issued or that Doe was sent to the hospital for evaluation.

The Town also alleges that that Grasso was untruthful in other areas as follows:

- A. Grasso's arrest report allegedly did not accurately capture the incident and/or level of force used. Grasso stated in his report that “as we went into the cell [Doe] quickly turned against me and threw a punch at me.” The Town alleges that it is clear from the record and video that this did not occur and that Doe was actually falling away from Grasso, and never turned toward him and that no punch was thrown at Grasso.

B. Grasso also includes a similar statement to Moccio's, "During the incident [Doe] was also struck several times by Officer Moccio with his baton to the lower leg and upper thigh area in order to control him and allow us to leave the cell." (emphasis added) In his interview with Donovan, Grasso admitted that he saw Moccio strike Doe above the waist several times. Therefore, according to the Town, Grasso also failed to mention all of the strikes above the upper thigh area and/or the yellow and red areas, which is untruthful.

C. Grasso's report that stated the following:

"After several blows it appeared [Doe] had stopped fighting we had instructed him to stay on the bench as we began walking towards the door. Officer Moccio was trying to keep [Doe] at a distance with his baton on the bench. However, he had eventually stood back up and started making his way towards officer Moccio. Officer Moccio pushed him back onto the bench to create distance and he immediately got back up and appeared as if he was getting ready to go at Officer Moccio. Officer Moccio immediately struck him with baton to keep him at a distance. We then forced him back onto the bench once again eventually handcuffing and shackling his legs.

According to the Town, many aspects of this portion of the report are untruthful as Grasso and Connor were not walking towards the door, but were actually out of cell; Doe never started "making his way towards" Moccio, but instead merely attempted to stand up; Moccio did not merely push Doe back on the bench, but instead threw Doe head first into the cell wall and, according to the Town, at no point during the exchange, did Doe appear to be getting ready "to go at" Moccio. Further, the Town argues that Moccio's actions were not an attempt to keep Doe at distance, but instead were an attempt to inflict pain.

D. The following reference in Grasso's report regarding Doe's injuries:

"I was also advised [Doe] was banging his head on the wall and door. [Doe] was now bleeding from his head and left lower leg. He also had red marks from the

baton strikes to his legs and contusions to head and right cheek.” (emphasis added)

The Town argues that it is clear from the video that there was bleeding on Doe’s legs and that the bleeding was due to Moccio’s baton strikes. Grasso also failed to accurately report Moccio’s use of force and the incident in general, according to the Town.

E. Grasso’s statement to Donovan regarding being poked in the chest, previously referenced in this decision.

F. Statements regarding his own cervical fusion surgery.

The Town argues that, during his interview with Donovan, during the Appointing Authority hearing, and the Civil Service hearing it was presented that he had just had surgery as follows:

Grasso Interview with Donovan

Grasso: “So I understand what John’s doing. The other thing, too, you’d have to remember, uh, so you understand, let me back up. John Moccio was my partner for many years.

Donovan: Yup.

Grasso: I had cervical fusion when the... a couple years on. So he knows that I’ve, I’ve got a neck, uh, fusion.”
(Exhibit 33, Tab 15, p.24.

Opening Statement before Commission by Appellants’ Counsel

Counsel: “Officer Grasso had just had cervical fusion in his neck. All the officers were aware of that.”
(Tr. Vol. I, p. 11)

Cross Examination of Town’s Expert Witness by Appellants’ Counsel

Counsel: “And did you know that Sgt. Grasso had had cervical fusion in his neck approximately a year prior to this incident?

O’Laughlin: I have no knowledge of that.

Counsel: Would you agree that, if the officers knew that, that they would perceive a headlock as seriously endangering Sgt. Grasso?

O'Laughlin: Inaudible

Counsel: If he was put in a headlock?

O'Laughlin: They could, certainly.
(Tr. Vol. 2, pp. 124-125)

Presentation at Appointing Authority Hearing

Moccio acknowledged during his testimony before the Commission that there was a presentation by counsel that he had just returned from cervical spinal fusion surgery before this incident happened.

Appellants' Response to Charges of Untruthfulness

In regard to the reports filed that night, the Appellants argue that they were given honestly, accurately and specifically according to their best recollection and that any inconsistency in the sequence of events does not demonstrate any intentional deceit or untruthfulness. They point out that even Donovan and O'Laughlin, both Town witnesses, disagree on the exact amount of baton strikes (17 v. 19) and that the alleged untruthful statements to Donovan occurred before Moccio was able to view the video again. More generally, the Appellants argue that both Appellants spoke to the Police Chief in the days afterward and urged him to view the video, which they argue indicates that neither of them was trying to hide anything that occurred in the cell that night.

Finally, they argue that, in determining whether an officer is being untruthful, the Commission should look at the negative side of the statement and ask what would be the purpose of saying "I struck him "7-10 times" instead of "17 times." Here, the Appellants argue, there would be no such purpose because Moccio freely acknowledged

the nature of the force used and indeed, Grasso incorporated the video by express reference in his report. In the final analysis, the Appellants claim that both officers' descriptions of the incident were to the best of their recollections and therefore honest, accurate and as specific as possible at the time.

Legal Standard Regarding Charges of Untruthfulness

An appointing authority is well within its rights to take disciplinary action when a police officer has “a demonstrated willingness to fudge the truth in exigent circumstances” because “[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or embarrass a fellow officer,” Falmouth v. Civil Service Comm’n *op.cit.* at pp. 796, 801 citing Cambridge v. Civil Service Comm’n, *op.cit.* at 303.

The Commission has recognized that a police officer must be truthful at all times and that failure to do so constitutes conduct unbecoming an officer, MacHenry v Wakefield, 7 MCSR 94 (1994). Lying in a disciplinary investigation alone is grounds for termination. LaChance v. Erickson, 118 S. Ct. 753 (1998), citing Bryson v. United States, 396 U.S. 64 (1969). The Commission has stated that “it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens,” Garrett v. Haverhill, 18 MCSR at 381, 385 (2005). Specifically, there “is a strong public policy against employing police officers who are untruthful,” Royston v Billerica, 19 MCSR 124, 128 (2006). Therefore, “a police officer that has lost his credibility can no longer effectively perform the duties of the position,” Pearson v. Whitman, 16 MCSR 46, 50 (2003). Consequently, the discharges of police officers based upon their dishonesty have often been upheld by the Commission.

The Commission has also consistently held, however, that an allegation of untruthfulness, particularly when made against a law enforcement officer or candidate, should be made with an appropriate level of seriousness and due diligence. (See Morley v. Boston Police Department, 29 MCSR 456 (2016).

Analysis Regarding the Untruthfulness Charges

In certain respects, the Town appears to be overreaching regarding alleged untruthfulness. For example, the Town's argument that Moccio was untruthful when he stated that Doe became uncooperative during the booking cycle, rests on their premise that the booking process had not yet begun because Doe had not been asked any question. That type of subjective hair-splitting cannot be the basis for the serious charge of untruthfulness, nor can the inability not to remember every specific detail of a tumultuous event deem someone as being untruthful. Similarly, the Town's argument that Grasso was untruthful when he stated that the officers were exiting the cell (just prior to Cell Altercation Part B), when, according to the Town, two of the officers had already exited the cell, appears to be overreaching --- and not entirely consistent with the video evidence. I tried to view all of the allegations of untruthfulness in the proper context, including the fact that many of the statements were made regarding a tumultuous incident and, in some cases, the statements were made weeks after the incident had occurred, both of which could cause any individual to forget some details or remember them in an improper sequence.

When viewing all of the evidence, however, I was troubled that Moccio, at various points, appeared to omit or misstate facts that were highly relevant to the core issue of whether he engaged in excessive force.

First, as previously referenced, Moccio's arrest report, completed on the night in question, specifically states that "several baton strikes were delivered to Doe's *thigh and shin area*" (green target areas) and then completed a Use of Force Report specifically stating that he had only struck green target areas. Given his years of training and experience, Moccio knew the significance of what he was writing. He knew that striking a yellow or red area can only be done based on a more restrictive criteria and that striking these areas would generate more scrutiny. His explanation that he only viewed the video that night after the incident, and then only for fifteen (15) seconds, didn't ring true to me, particularly considering that other parts of his report that night reference events that occurred more than thirty (30) minutes into the video when Moccio was not even present. Even his reference to what occurred thirty (30) minutes later contained misstatements that appeared geared toward deflecting responsibility for his actions that night. Specifically, he stated that Doe, thirty (30) minutes after the Cell Altercations, "had slipped his handcuffs to the front and was punching, banging his head and kicking the cell door. Due to his actions he had received bloody abrasions and contusions to his face, head, shin and legs." (emphasis added) The video evidence plainly shows that the blood abrasions to Doe's shin and legs were the result of Moccio's earlier baton blows. Standing alone, this misstatement could be excused as an oversight. However, when taken together with other omissions and misstatements discussed below, I have concluded that these statements constitute untruthfulness.

Second, Moccio's arrest report completely omits any reference to Cell Altercation Part B, which occurred after a point in time when Doe had ceased being assaultive.

Third, Moccio, during the initial part of the investigation, repeatedly stated that he “never” struck Moccio on the back.

Fourth, although he changed his statement to the investigator, and acknowledge hitting the kidney areas on Doe’s back, he then testified before the Commission that, based upon further review, he did not strike Doe in the kidney area, which is a red target area.

When taken together, it appeared to me that Moccio was continuously trying to create – or re-create -- a picture in which all of his actions were justified, as opposed to an honest recollection of events as they actually occurred. That is precisely the type of “fudging the truth” that the Courts have made clear cannot be tolerated by police officers.

The charges of untruthfulness regarding Grasso are a closer call. For example, his initial voice mail to the Police Chief does appear to understate what occurred, omitting some relevant facts. Further, certain parts of his arrest report do not match up exactly with a plain viewing of the video, including the issue of whether Doe attempted to throw a roundhouse punch and, if so, when it occurred; and whether there were “red marks” as opposed to “bleeding” (which was obvious from viewing the video). Taken together, however, I did not find his reports or statements to be deliberately misleading. Unlike Moccio, he does not omit what occurred during Cell Altercation Part B. Further, he is the one who took the initiative to contact the Police Chief that night and then urged the Police Chief to view the video himself.

In regard to the issue of Grasso’s surgery, it is unfortunate that the Commission – and the Town – were told that the surgery occurred recently, as opposed to sixteen (16) years ago. Absent a showing that Grasso himself made these statements, however, I don’t believe there is justification to deem Grasso as untruthful in the context of this appeal.

Conclusion Regarding whether there was Just Cause for Discipline

For all of the above reasons, I have found that there was just cause to discipline Moccio for violating various APD policies regarding use of force, authorized weapons, truthfulness and securing weapons. Further, I have found that there was just cause to discipline Grasso for violating APD policies regarding competence and duty to provide medical attention.

Legal Standard Regarding Commission's Authority to Modify Level of Discipline

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814 (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 town, 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.’” 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.

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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. citations omitted.

The SJC decision in Falmouth overturned a Commission decision that had modified a suspension of a police officer from 180 days to 60 days because, in part, the Commission’s decision had been made “on the basis of essentially similar fact finding without an adequate explanation.” Id., 447 Mass. at 824. In that case, Falmouth had suspended a police officer named Deutschmann for 180 days for on-duty misconduct in violating police department rules governing use of force in responding to a call from his wife that their son was being bothered by three other youths. Officer Deutschmann singled out one of the youths and took him aside, where, according to the charges against him, he allegedly “grabbed [the youth] by the neck and pushed him up against a tree”, as well as “threw him up against the cruiser and threatened his life several times.” Id., 447 Mass. at 815-16. The Commission, after a de novo hearing, concluded that Officer Deutschmann did not purposefully shove the youth into the tree but, as the youth “attempted to walk away . . . [Deutschmann] put his hand to [the youth’s] chest preventing him from leaving . . . in a way that caused [the youth]to fall back into a tree.” Id., 447 Mass. at. 816, 825. Officer Deutchmann did not deny responding to the youth’s baiting the officer to hit him: “I’m so mad right now, but I if I was to hit you, I’d probably kill you.” Id., 447 Mass. at 816. The Supreme Judicial Court found these differences in the Commission’s findings “too inconsequential to justify the reduction of the penalty”, because Officer Deutschmann had not been suspended for the “degree” of force used, but for the fact that there was no justification for any use of force at all, as well as Officer Deutschmann’s other “inappropriate conduct” while acting as a Falmouth police officer. Id., 447 Mass. at 826.⁵

⁵ The SJC also noted that Falmouth’s decision had taken into account that Officer Deutschmann had been previously disciplined at least 24 times. Id., 447 Mass. at 824, fnt. 11.

Analysis Regarding whether a modified penalty is warranted here

In regard to “the circumstances found by the commission to have existed when the appointing authority made its decision”, I have, after a de novo hearing, which included a review of all of the evidence, including credibility assessments, concluded that Mr. Moccio violated APD policies by:

- Engaging in excessive force by: striking Doe in a red (vital) target area (kidneys) with his baton on two (2) occasions; and striking Doe three (3) to four (4) times with his baton after Doe ceased being assaultive;
- Failing to secure his weapon in the booking room;
- Providing incomplete or misleading statements regarding his actions.

Some of my findings do differ from those reported by the Town. For example, the Town found that all of Moccio’s baton strikes constituted excessive force, while I have found that only those strikes to the kidney and/or made after Doe ceased being assaultive constituted excessive force. Applying the guidance in Falmouth, however, I don’t believe these differences, alone, are consequential enough to justify a reduction in the penalty imposed here. Somewhat analogous to Falmouth, Agawam didn’t believe that any of the baton strikes were justified while I found that some of the baton strikes were not justified. Yet, I have ultimately reached essentially the same ultimate conclusion as Agawam: that Mr. Moccio engaged in excessive force with his baton.

My finding regarding the failure to secure the weapon in the booking room matches that reached by the Town. I don’t agree with the Appellants that this is a minor violation. Throughout these proceedings, it is the Appellants who have stressed just how dangerous and unpredictable Doe was. There is ample evidence to support this conclusion. Yet,

Mr. Moccio failed to secure his firearm and walked in close proximity to the dangerous – and un-cuffed – Doe on multiple occasions in the booking room with his loaded firearm.

Further, my findings regarding Mr. Moccio’s untruthfulness are not significantly different than those reached by the Town. As stated above, Mr. Moccio’s various omissions and misstatements, when viewed individually, can be considered oversights or inadvertent in nature. When taken together, however, and after fully considering his testimony before the Commission, I ultimately concluded that his omissions and misstatements constituted the type of “fudging the truth” that cannot be tolerated by police officers.

In making his decision to terminate Moccio (and initially Grasso), the Town’s Mayor adopted the investigator’s report which concluded that the officers had engaged in criminal conduct. It was clear to me that this finding was added at the request of the Town’s Police Chief. The testimony offered by the Town’s witnesses on this particular charge lacked consistency and the Town understandably made no reference to it in its post-hearing brief. Based on the lack of clarity and the Town’s failure to articulate a coherent argument regarding this particular charge, this charge cannot be upheld. As these proceedings began, the Commission was informed by the parties that the District Attorney’s office had decided not to pursue any criminal charges against either of the Appellants. Toward the end of the proceedings, the Town was notified that the Department of Justice was conducting its own review of this matter. As of the issuance of this decision, it appears that the DOJ review is still ongoing. While directly related to the issues raised in this appeal, the outcome of the DOJ review stands separately from whether, under the civil service law, there was just cause to terminate Mr. Moccio.

In determining whether a modification in the penalty was warranted, I also considered that, until his termination, Mr. Moccio had served the Town of Agawam as a police officer for approximately nineteen (19) years. His prior disciplinary record consisted of a two (2)-day suspension, which was agreed to as part of a settlement agreement executed on March 24, 2015. Although the parties stipulated that this discipline occurred, the Commission was not initially provided with the settlement agreement, which is part of Mr. Moccio's personnel file. Per my order, this settlement agreement was subsequently produced for the Commission. I have reviewed it and given it the weight it is due.

In Rizzo v. Town of Lexington, 21 MCSR 634 (2008), the Commission, after seven (7) days of hearing, unanimously upheld the termination of a nine (9)-year police officer for using excessive force, failing to filing reports, being untruthful to investigators and failing to following procedures. The Commission did not modify the penalty in Rizzo, stating, "although the Appellant's prior disciplinary history is limited to written reprimands, that does not warrant the Commission's intervention in terms of a modified penalty. The serious nature of the charges, including unjustified and excessive force and repeated examples of untruthfulness, warrant the discipline imposed by the Town – termination."

In summary, with the exception of the charge of criminal conduct, my findings do not differ significantly from those found by the Town and, as in Rizzo, the seriousness of the remaining charges warrant termination. Finally, in regard to any impermissible "political considerations, favoritism or bias", the Appellants implicitly suggest that the Town's Mayor was predisposed to terminating the Appellants because he prematurely, and erroneously, concluded that the Appellants had inflicted some type of street justice on

Doe. As previously stated, that did not occur here. The Appellants were not seeking retribution against Doe for what occurred earlier that day. While the Mayor simply got that wrong, his erroneous assumption cannot be categorized as a type of political consideration, favoritism or bias that would call for the Commission's intervention.

Whether or not Mr. Grasso's penalty should be modified is a closer call. The Town initially terminated Mr. Grasso, but then converted the termination to a demotion, without providing explicit written findings for the change in penalty. The Town's post-hearing brief, however, makes it clear that the decision was made based on the conclusion that Mr. Grasso had not engaged in excessive force – or criminal conduct. The Town continues to argue that issues related to Mr. Grasso's competence and truthfulness still warrant a demotion. Unlike the Town, I did not find that Mr. Grasso was untruthful.

While some of his written and verbal statements were not accurate, I found that they were not meant to deceive Town officials. In particular, Mr. Grasso's initial report, unlike that of Mr. Moccio's, did attempt to capture his version of what happened during the entirety of the cell altercation, including Cell Altercation Part B. Further, that same night, he contacted the Police Chief and later urged the Chief to review the cell video. Taken together, I couldn't find that Mr. Grasso was attempting to deceive or even fudge the truth.

While some allegations of incompetence against Grasso were not supported by a preponderance of the evidence, other serious charges were. Mr. Grasso failed to ensure that Mr. Moccio and Mr. Connor immediately secured their firearm, creating a potentially dangerous situation. He failed to provide immediate medical attention for a prisoner who was bleeding from the head and legs, had banged his head against a cement wall and had

been struck by a baton over a dozen times. Finally, and most importantly, he failed to intervene and/or take any other steps regarding Mr. Moccio's use of excessive force, including the baton strikes that occurred during Cell Altercation Part B.

Finally, I considered that Mr. Grasso has no prior discipline. I weighed that against his steadfast testimony, however, that, given the chance, he would not do anything differently, even given the benefit of hindsight. Put another way, if Mr. Grasso were to remain a sergeant, and continue to serve as the officer in charge, he has shown that he could not be trusted by the APD to intervene when excessive force is being used and he could not be trusted to seek medical attention for a prisoner in need of it. The Town has a right to expect more of its superior officers and the decision to demote Mr. Grasso to the position of patrol officer was justified.

Conclusion

The Appellants' appeals under docket numbers D1-16-175 and D1-16-176 are hereby ***denied.***

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 14, 2017

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)(I), 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:

John D. Connor, Esq. (for Appellants)

Russell Dupere, Esq. (for Respondent)