

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 8/27/07
Civil Service Commission

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

ROBERT GRINHAM,
Appellant

v.

TOWN OF EASTON,
Respondent

Case No.: D-05-293

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on August 23, 2007 to acknowledge receipt of the report of the Administrative Law Magistrate dated July 16, 2007 and the comments of the Appellant received by the Commission on August 8, 2007. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on August 23, 2007)

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Kenneth H. Anderson, Esq. (for Appellant)
Leo J. Peloquin, Esq. (for Appointing Authority)
Maria A. Imparato, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Robert Grinham,
Appellant

v.

Docket No. D-05-293
DALA No. CS-07-99

Town of Easton,
Appointing Authority

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CIVIL SERVICE COMMISSION

Appearance for Appellant:

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Administrative Magistrate:

Maria A. Imparato, Esq.

RECOMMENDED DECISION

Under G. L. c. 31, s. 43, the Appellant, Robert Grinham is appealing the August 5, 2005 decision of the Appointing Authority, Town of Easton, to discharge him from the position of Sergeant in the Easton Police Department.

I held a hearing on February 8, 2007, and continued to March 29, April 2, April 5 and April 10, 2007 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston. The hearing was declared public based on the written request of the Appellant. There are five volumes of stenographic transcript. The record closed on July 10, 2007 with the filing of briefs.¹

¹ Briefs were due to be postmarked July 2, 2007. The Appellant's brief was sent to an incorrect address and was not received until July 10, 2007.

I admitted documents into evidence. (Exs. 1 – 39) I took administrative notice of G. L. c. 263, s. 1. I marked “A” for identification a Court Summary of Damian Matta.

The Appointing Authority offered the testimony of: Patrol Officer Michael Golden; Detective Sergeant William Fulcher; Deputy Chief Allen Krajcik; and Patrol Officer Robert Tuohy, all of the Easton Police Department.

The Appellant, Robert Grinham, testified on his own behalf, as did William Zane, MD, a medical examiner and forensic pathologist in the Office of the Chief Medical Examiner.

The Appointing Authority discharged Sergeant Grinham because the Town Administrator, after hearing, found the following charges to have been substantiated:

1. On April 23, 2005, while you were booking Damian Matta with the assistance of two patrol officers, you grabbed him by the neck and head and repeatedly banged his head against a cell wall, punched him and kicked him;
2. You falsely charged Matta with resisting arrest;
3. You filed a false report about your actions and conduct with Damian Matta on April 23rd, including failing to report that you had grabbed him by the neck and repeatedly smashed his head against the wall, punched and kicked him; and
4. You used your position as Sergeant to attempt to influence Tuohy and Golden not to report your misconduct with Damian Matta. (Exs. 1, 2)

FINDINGS OF FACT

1. Robert Grinham worked as a police officer in the Town of Randolph from 1987 to 1991. He worked for the MBTA Police from 1991 to 1996. He started

- working as a Patrol Officer for the Town of Easton in 1996. He became a Sergeant in Easton in or about 2000 after taking a Civil Service exam. (Tr. 4, 12-19)
2. Michael Golden has been a Patrol Officer in Easton since March 2005. He was in his seventh week of work on the night of April 22-23, 2005. (Tr. 1, 32)
 3. Robert Tuohy began police work in 1987 at the Holbrook Police Department, part-time, as a special patrolman. He also worked for West Bridgewater Police Department as a permanent intermittent officer, and part-time for the Provincetown Police Department. He worked full-time for the Amtrak police. Officer Tuohy began working for Easton in 1997. After five years he left and went to the Laconia, New Hampshire police for a year. He then returned to Easton as a Patrol Officer in or about 2003. (Tr. 3, 107-108)
 4. On the night of April 22-23, 2005, Sgt. Grinham was the shift commander on the midnight to 8 a.m. shift. Officers Tuohy and Golden were on duty on that shift. Officer Tuohy was working as Officer Golden's Field Training Officer. (Tr. 4, 25; Tr. 3, 115; Tr. 1, 52-53)
 5. At or about 2:30 a.m., Sgt. Grinham called for back-up at the scene of a motor vehicle parked by the side of the road. Officers Tuohy and Golden responded. (Tr. 3, 132; Tr. 1, 56-57)
 6. At the scene there was a car parked with a female driver and a male passenger. Sgt. Grinham asked Officer Golden to perform a field sobriety test on the female driver. Officer Tuohy went to stand near the passenger door to watch

- the male passenger, later identified as Damian Matta. (Tr. 3, 133-135; Tr. 1, 58-60)
7. Mr. Matta got out of the car, despite Officer Tuohy telling him several times to remain in the car. Mr. Matta was yelling about the officers "busting the balls" of the female driver. Officer Tuohy, with the help of Sgt. Grinham, placed handcuffs on Mr. Matta and walked him to Officer Tuohy and Officer Golden's cruiser. It took about ten seconds to get the cuffs onto Mr. Matta because he was standing rigidly with his arms at his side. (Tr. 3, 134-143; Tr. 1, 61-68)
 8. Officer Tuohy told Sgt. Grinham that he wanted to charge Mr. Matta with being disorderly. Sgt. Grinham said to just PC (protective custody) him.
(Tr. 3, 145)
 9. Officers Tuohy and Golden brought Mr. Matta to the police station in their cruiser. Mr. Matta asked what the charges were, and Officer Tuohy said he wanted to charge Mr. Matta with disorderly conduct. Mr. Matta started yelling. Officer Tuohy said that they were going to PC him instead. Mr. Matta calmed down and apologized for his behavior at the scene. (Tr. 3, 146-149; Tr. 1, 72, 76)
 10. During the ride to the police station, Sgt. Grinham radioed Officer Tuohy and instructed him to leave Mr. Matta in handcuffs. On arrival at the station, Officers Golden and Tuohy secured their weapons, and then took Mr. Matta out of the cruiser. Mr. Matta walked into the booking room. (Tr. 3, 152-158; Tr. 1, 78-84; Ex. 4)

11. In the booking room, Sgt. Grinham informed Mr. Matta that he was being charged with disorderly conduct. Mr. Matta became agitated and said that he had been told he was going to be PC'd. Sgt. Grinham said he had changed his mind; he did not say why. (Tr. 3, 64-166; Tr. 1, 88-90)
12. Officer Tuohy left the booking area to run Mr. Matta's ID and to run a Board of Probation (BOP) check. At the same time Officer Golden walked Mr. Matta to the fingerprint room where he uncuffed him in order to take his fingerprints. Sgt. Grinham stood in the doorway of the fingerprint room. (Tr. 1, 103-107; Tr. 3, 168-174; Ex. 37)
13. Sgt. Grinham said something to Mr. Matta that Officer Golden could not hear. Mr. Matta became upset and refused to sign the fingerprint card. He said "I ain't signing shit." Mr. Matta asked to be put into a cell. Officer Tuohy arrived outside of the fingerprint room at about this time. (Tr. 3, 175-179; Tr. 1, 103-111)
14. Sgt. Grinham was standing in the door of the fingerprint room and Mr. Matta had to get past Sgt. Grinham to leave the room. Mr. Matta raised his hand as if to push Sgt. Grinham aside. Sgt. Grinham moved to block Mr. Matta. Mr. Matta put his hand down and stepped back. Sgt. Grinham moved aside. Then Mr. Matta, Sgt. Grinham, Officer Tuohy and Officer Golden walked down the hall to the cell area. (Tr. 3, 182-186; Tr. 1, 112-115)
15. Mr. Matta stood in front of cell 2. Sgt. Grinham stood in front of cell 3 facing Mr. Matta. Officer Tuohy stood behind Mr. Matta. Officer Golden stood in the

doorway of the cell area. Sgt. Grinham told Mr. Matta to take off his boots.

(Exs. 4, 6, 7, 8)

16. Mr. Matta took off one boot and threw it off to the side where it landed near the wall, about one foot away from Sgt. Grinham. Mr. Matta said words to the effect of, "If you treat me like an asshole, I'll act like an asshole." (Tr. 3, 210, Tr. 1, 127-133)
17. Sgt. Grinham lunged at Mr. Matta, pushed him back a few feet, took hold of Mr. Matta's neck and slammed the side of Mr. Matta's head off the side of the cell wall between cells 1 and 2. Sgt. Grinham then threw Mr. Matta to the ground and gave him three quick punches to the upper body, and three quick kicks in the chest and ribs. Mr. Matta was curled up in the fetal position. He raised his hands and said, "Take it easy." (Tr. 3, 212-218; Tr. 1, 135-139)
18. Officer Tuohy took Mr. Matta's feet and Sgt. Grinham took Mr. Matta under the armpits and they put Mr. Matta into cell 3. Sgt. Grinham punched Mr. Matta on his right cheek with a closed fist and kicked him in the stomach before leaving Mr. Matta in cell 3. (Tr. 3, 199-204; Tr. 1, 139-143)
19. After Sgt. Grinham left cell 3, he told Mr. Matta that he was being charged with resisting arrest. Sgt. Grinham told Officer Golden to fill out the criminal application form charging disorderly conduct and resisting arrest. (Tr. 3, 221; Tr. 1, 149-150; Ex. 9)
20. Sgt. Grinham and Officers Tuohy and Golden returned to the booking room. Sgt. Grinham said, "That's how we treat shit heads on the midnight shift." (Tr. 1, 148; Tr. 3, 219)

21. Officer Tuohy began writing a report. Sgt. Grinham told Officer Tuohy not to write his report until he had seen Sgt. Grinham's report. (Tr. 3, 223-224)
22. Sgt. Grinham told Officer Golden that if the Lieutenant approached him, to tell the Lieutenant that Mr. Matta was resisting and that Mr. Matta threw his boot at Sgt. Grinham. Sgt. Grinham told Officer Golden that the midnight shift was a tight shift, and that Mr. Matta was a scum bag and deserved it. Sgt. Grinham told Officer Golden that the cameras in the cell area do not record. (Tr. 1, 152-154)
23. Officers Tuohy and Golden left the station to go back out on patrol. Officer Golden was upset by what he had seen. Officer Tuohy told Officer Golden to speak with Officer Brophy (another of Officer Golden's field training officers, and Officer Golden's former coach), and said that he would speak with the Chief. Officer Golden was worried and scared and had difficulty sleeping. (Tr. 1, 155-158; Tr. 3, 225)
24. On the morning of Saturday, April 23, 2005, Lt. Krajcik released Mr. Matta. Mr. Matta did not allege that he had been beaten in the cell. Lt. Krajcik did not check Mr. Matta for injuries. (Tr. 2, pp. 18-22)
25. Officer Tuohy was on duty the next night, Saturday April 23-24, 2002. He read Sgt. Grinham's report, and then wrote his own report. Officer Tuohy deliberately made his report vague because he needed time to see how to go about things. (Tr. 3, 226-228; Exs. 10, 34, 35)
26. At the end of Officer Golden's shift on Saturday, April 23, 2005, he called Officer Brophy. Officer Brophy called the Chief. Officer Golden was

- interviewed by the Chief and Lt. Krajcik who asked Officer Golden to write a report. (Tr. 1, 211-213; Ex. 31)
27. After the end of his shift at 8 a.m. on Sunday morning, April 24, 2005, Officer Tuohy called Chief Kominsky. The Chief was already aware of the incident. He said he would speak with Officer Tuohy on Monday, April 25, 2005. (Tr. 3, 230-231)
28. On Sunday April 24, 2005 Deputy Chief Allen Krajcik was working the day shift as a Lieutenant when Chief Kominsky came into the station and informed him there had been an incident that required investigation. Deputy Chief Krajcik investigates internal affairs complaints, and then submits a report of his findings to the Chief. (Tr. 2, 47)
29. Then-Lieutenant Krajcik was scheduled to be in Taunton District Court on Monday, April 25, 2005. The Chief told him to seek out Mr. Matta in court and try to get a statement from him. (Tr. 2, 48)
30. Lt. Krajcik spoke with Mr. Matta on the steps of the courthouse. Mr. Matta was loud and agitated. He raised his shirt and showed an abrasion under his left nipple. He raised his left pant leg and showed an abrasion on his left shin. (Tr. 2, 52-53)
31. Sgt. Fulcher and the Chief went to Officer Tuohy's house on the morning of April 25, 2005. After they left, Officer Tuohy called Sgt. Grinham to let him know that criminal charges were being taken out against him. Officer Touhy and Sgt. Grinham were friends. (Tr. 3, 232)

32. On the evening of April 25, 2005 Mr. Matta went to the Easton police station where pictures were taken of his injuries. (Tr. 2, 55-56; Exs. 11-17)
33. By letter of April 26, 2005 Chief Kominsky placed Sgt. Grinham on administrative leave with pay, pending the completion of an internal affairs investigation based on a charge of use of excessive force brought by Mr. Matta. (Ex. 18)
34. On May 5, 2005 Officer Tuohy wrote a report at the request of Lt. Krajcik after an oral interview. After Officer Tuohy submitted his report, Lt. Krajcik asked Officer Tuohy to clarify in his report certain things that he had said in the oral interview that were omitted in the report, and to write more explicitly things that Lt. Krajcik thought were ambiguous. Officer Tuohy's original report says that "Matta tried to push by Sgt. Grinham" in the doorway of the fingerprint room. His final report reads, "Sgt. Grinham moved to block the doorway and Matta tried to get around him." (Tr. 2, 58-62; Tr. 3, 235-236; Exs. 32-33)
35. By letter of May 12, 2005 Sgt. Grinham was served with Notification of Charges, and was informed that the State Attorney General was investigating to determine whether he should be charged criminally. The letter acknowledged that Sgt. Grinham could not be compelled to submit to Internal Affairs questioning, but offered him the chance to voluntarily provide information. He was asked to contact Lt. Krajcik by May 16, 2005 if he planned to provide information. (Ex. 27)

36. By letter of May 17, 2005 to Sgt. Grinham's counsel, Lt. Krajcik said that he concluded that Sgt. Grinham was not going to voluntarily provide information because he had not contacted the Lieutenant. (Ex. 28)
37. On an unspecified date, Lt. Krajcik prepared an initial report of the complaint of excessive force against Sgt. Grinham that he had received from Officers Golden and Tuohy. (Ex. 30)
38. On May 20, 2005 Lt. Krajcik forwarded his IAD Investigative report of Mr. Matta's complaint to Chief Kominsky, finding that the complaint against Sgt. Grinham had been sustained. By letter of May 20, 2005 Chief Kominsky notified Sgt. Grinham that the charges had been sustained and the matter was being referred to the Town Administrator to schedule a disciplinary hearing. (Ex. 29)
39. At the disciplinary hearing held on June 20, 2005, Sgt. Grinham did not testify. Town Counsel notified Sgt. Grinham that the Town would object to his testimony in any subsequent proceeding based on his failure to testify at the Appointing Authority hearing. (Exs. 1, 36)
40. Sgt. Grinham was discharged after the Authority Appointing hearing. The Appointing Authority concluded that Sgt. Grinham's actions were in violation of the Code of Conduct and constituted Conduct Unbecoming a Police Officer – professional conduct; Conduct Unbecoming a Police Officer – truthfulness; Attention to Duty- criminal conduct; and violated the Use of Force Policy; the Oath of Office and Code of Ethics; G. L. c. 268, s. 6A, making it a crime to file a false report; G. L. c. 263, s. 1, making it a crime to arrest on false pretenses;

and violating Attention to Duty by failing to comply with the Policies and Procedures. (Ex. 2)

41. The Easton Police Department Code of Conduct and Appearance was issued on May 10, 2001, and signed for by Sgt. Grinham on September 15, 2001. (Exs. 20, 21)

42. The Easton Police Department Use of Force Policy was issued on June 20, 2000, and signed for by Sgt. Grinham on July 27, 2000, and again on February 5, 2004. (Exs 3, 22, 23)

43. The Easton Police Department policy with respect to Arrests was issued on August 24, 1999, and signed for by Sgt. Grinham on September 3, 1999. (Exs. 38, 39)

44. The Easton Police Department policy with respect to Detainee Processing was issued on November 7, 200, and signed for by Sgt. Grinham on November 14, 2000. (Exs. 24, 26)

45. On November 8, 2006 Judge Moses found Sgt. Grinham not guilty on all charges after a three-day trial. (Tr. 4, 93)

CONCLUSION AND RECOMMENDATION

The Town of Easton has demonstrated just cause for the discharge of Robert Grinham from his position of Sergeant in the Easton Police Department.

The Appellant's conduct on the night of April 22-23, 2005 violated the Easton Police Department Code of Conduct, and its Use of Force Policy.

The Appellant grabbed Mr. Matta by the neck and banged his head against a cell wall, punched him and kicked him. The Appellant falsely charged Mr. Matta with resisting arrest. The Appellant filed a false report of his actions. The Appellant used his position as a Sergeant in an attempt to influence Officers Tuohy and Golden not to report his misconduct.

The Appellant violated the Code of Conduct, section I (1), entitled "Conduct Unbecoming a Police Officer – Professional Conduct" by committing "acts of immoral, improper, unlawful, disorderly or intemperate conduct" while on duty, and by failing to conduct himself "in such a manner as to reflect most favorably on the Department and its members." The Appellant's conduct tends to "indicate that the officer is unable or unfit to continue as a member of the Department."

The Appellant violated the Code of Conduct, section I (29), entitled "Conduct Unbecoming a Police Officer – Truthfulness" by failing to "speak the truth at all times and state the truth in all reports."

The Appellant violated the Code of Conduct, section V (14), entitled "Attention to Duty – Police and Procedures Compliance" by failing to "comply with requirements of the Department's" policies and rules.

The Appellant violated the Department's Use of Force Policy by failing to "use only the force that is reasonably necessary 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."

The Appellant violated G. L. c. 268, s. 6A by filing a "false written report ... knowing the same to be false in a material matter ..."

The Appellant violated G. L. c. 263, s. 1 by assigning to “the person arrested an untrue reason for the arrest ...”

I accorded weight to the credible testimony of Officer Golden, and to the credible and reluctant testimony of Officer Tuohy, to make my findings of fact. I did not accord weight to the testimony of the Appellant who I deemed to be not credible.

I believe that both Officers Golden and Tuohy were distressed by the actions of the Appellant on the evening of April 22-23, 2005. They have no reason not to speak the truth, in view of the fact that Officer Tuohy was a friend of the Appellant, and Officer Golden had no reason to want to harm the Appellant.

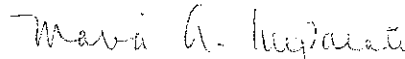
Furthermore, it is well known that a police officer hates to testify against another officer. This was evident in Officer Tuohy’s reluctant testimony. He admitted that he hated to be at the hearing, and he testified that there had been an indirect backlash against him and Officer Golden on the internet site, Mass.Cops, suggesting that they two “do not have anyone’s back.” I believe that both officers testified truthfully.

The Appellant was not credible. For instance, in his report of the incident the Appellant wrote that Mr. Matta threw his boot “nearly striking my leg.” At hearing, the Appellant testified that the thrown boot hit the Appellant on his foot. (Tr. 4, 71) At the criminal trial, the Appellant testified that if he had not done a “quick step” out of the way, the boot would have struck him in the femur. (Tr. 4, 147) The Appellant said that when Mr. Matta threw the boot, the Appellant “was in fear of his life.” (Tr. 4, 162)

I relied on the credible testimony of Officers Golden and Tuohy to conclude that the boot did not hit the Appellant. I am certain that if the boot had hit the Appellant, the Appellant would have charged Mr. Matta with assault and battery.

I conclude that the Appointing Authority did have just cause for the discharge of the Appellant. I recommend that the Civil Service Commission affirm the action of the Town of Easton and dismiss the appeal of Robert Grinham.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Maria A. Imparato
Administrative Magistrate

DATED: 7/16/07