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NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

## COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

ROBERT GRINHAM vs. TOWN OF EASTON &amp; another. [FN1]

+09-P-1163+

## MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Robert Grinham appeals from a Superior Court judgment affirming a Civil Service Commission (commission) decision upholding the termination of his employment as a police sergeant for Easton (town). We affirm.

*Background.* As determined by the administrative magistrate at the Division of Administrative Law Appeals, Grinham, a sergeant in the town's police department, was the commander on the midnight to 8:00 A. M. shift on April 23, 2005. Grinham called for back-up at the scene of a motor vehicle parked by the side of the road. Officer Tuohy, a veteran police officer, and Officer Golden, who had been on the force for only seven weeks, responded. The male passenger in the car, Damian Matta, did not obey police commands to remain in the car, and when the officers attempted to put handcuffs on him, he resisted by holding his arms rigid at his sides. He was transported to the police station for booking.

At the police station, Matta became agitated when he learned that he was being charged with disorderly conduct and not merely being held in protective custody as he had earlier been told. There was a brief interaction when Matta had to pass Grinham in a doorway: Matta raised a hand as if to push Grinham out of the way; Grinham moved to block Matta; Matta lowered his hand; and Grinham moved aside. Outside the cell, Matta was told to remove his boots. He took one off and threw it to the side where it landed about a foot away from Grinham. Grinham, believing that Matta had thrown the boot at him, lunged at Matta. He pushed him and, grabbing his neck, slammed the side of his head against the wall. Grinham then threw Matta to the floor and punched and kicked him while Matta was in the fetal position. After dragging Matta into the cell, Grinham punched him in the face and kicked him in the stomach. Grinham then charged Matta with resisting arrest in addition to the disorderly conduct charge. Tuohy and Golden were present throughout the incident. Later, when Tuohy was preparing his report, Grinham told him to wait until he reviewed Golden's report. Grinham also told Golden to tell his superior that Matta was resisting and threw his boot at Grinham.

Tuohy and Golden reported Grinham's conduct to his superiors. An internal investigation was conducted, and a disciplinary hearing was held before the town administrator. Grinham was subsequently discharged on the ground that his conduct violated numerous provisions of the code of conduct. [FN2]

Grinham appealed the decision of the town administrator to the commission. After a five-day hearing, an administrative magistrate found the facts recited above. She specifically found

Grinham's testimony not credible, and credited Golden's testimony and Tuohy's 'reluctant' testimony. Grinham appealed to the commission, which adopted the administrative magistrate's decision. Grinham then appealed the commission's decision. A judge of the Superior Court affirmed, commenting that 'there is far more than enough substantial evidence to support the findings and decision of the Civil Service Commission . . . in its dismissal of the plaintiff's appeal.'

*Discussion.* The commission's role was to determine 'whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.' *Cambridge v. Civil Serv. Commn.*, 43 Mass. App. Ct. 300, 303 (1997). Our review is governed by the familiar standards of G. L. c. 30A, § 14. See *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003) (reviewing court bound to accept factual findings of commission's hearing officer, if supported by substantial evidence). 'Under the substantial evidence test, the reviewing court may not make new determinations of facts or make different credibility choices.' *Id.* at 733.

Grinham contends that the magistrate's decision was not supported by substantial evidence and that her failure to consider certain evidence that he claims was favorable to him rendered her decision arbitrary and capricious. We have reviewed the record carefully and conclude that the magistrate's decision was well-founded on the facts found by her and that Grinham's arguments to the contrary lack merit.

*Judgment affirmed.*


By the Court (Berry, Vuono & Hanlon, JJ.),

Entered: June 4, 2010.

FN1. Massachusetts Civil Service Commission.

FN2. Grinham was found not guilty of criminal charges arising out of this incident.

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