

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

Decision mailed: 7/23/07  
Civil Service Commission E.T.

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

**ROSEMARIE HICKS,**  
*Appellant*

v.

Case No.: D-02-795

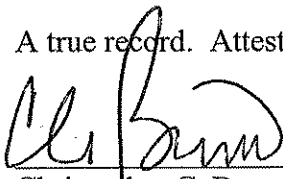
**DEPARTMENT OF  
STATE POLICE,**  
*Respondent*

**DECISION**

After careful review and consideration, the Civil Service Commission voted at an executive session on July 19, 2007 to acknowledge receipt of the report of the Administrative Law Magistrate dated June 11, 2007 and the comments of the Department of State Police received by the Commission on July 10, 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 Appointing Authority's Motion for Reconsideration of its Motion to Dismiss is *denied* and the Appellant's appeal is hereby *allowed*. She shall be restored to her position without any loss of pay or benefits, as allowed by law.

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis, Taylor, Commissioners) on July 19, 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:

Michael B. Halpin, Esq. (for Department of State Police)  
Scott Dunlap, Esq. (for Appellant)  
Sarah H. Luick, Esq. (DALA)



COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

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June 11, 2007

Christopher Bowman, Commissioner  
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Boston, MA 02108

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P.O. Box 190  
Norwood, MA 02062

Michael B. Halpin, Esq.  
Department of State Police  
Office of Chief Legal Counsel  
470 Worcester Road  
Framingham, MA 01702

Re: *Rosemarie Hicks v. Department of State Police*,  
D-02-795, CS-06-798 (DALA)

Dear Commissioner Bowman, Mr. Dunlap and Mr. Halpin:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c), they have 30 days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs.

Very truly yours,

*Sarah H. Luick*  
Sarah H. Luick, Esq.  
Administrative Magistrate

encl.

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CIVIL SERVICE COMMISSION

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

Division of Administrative Law Appeals

State Trooper Rosemarie Hicks,  
Appellant

v.

Docket Nos. D-02-795;  
CS-06-798 (DALA)

Department of State Police,  
Appointing Authority

Appearance for Appellant:

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Appearance for Appointing Authority:

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Department of State Police  
Office of Chief Legal Counsel  
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Framingham, MA 01702

Administrative Magistrate:

Sarah H. Luick, Esq.

**RECOMMENDED DECISION**

Pursuant to G.L.c.22C, §13, and G.L.c.31, §43, the Appellant, Rosemarie Hicks, is appealing the September 26, 2002 decision of the Appointing Authority, Colonel Thomas J. Foley, Superintendent of the Department of the State Police, imposing a "forfeit [of] twenty (20) days of accrued time off," in connection with her conduct on September 13, 2000. (Exs. 6, 7 & 9) The appeal to the Civil Service Commission was timely filed. (Ex. 8) A hearing was held January 24, 2007 for the Civil Service Commission at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, 4<sup>th</sup> Floor, Boston, MA 02114, pursuant to G.L.c.7, §4H.

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Various documents are in evidence. (Exs. 1 – 24) Two tapes were used. The Appellant testified.<sup>1</sup> Both parties filed briefs by March 20, 2007.

The Appointing Authority filed a Motion to Dismiss for Lack of Jurisdiction due to the discipline imposed not being specifically listed within G.L.c.31, §§41-45, which is referenced in G.L.c.22C, §13 as amended by Chapter 43 of the Acts of 2002. Both parties filed briefs on this issue. I produced a separate Recommended Decision for the Civil Service Commission on this Motion. My recommendation was to deny the Motion. See, "A".

#### FINDINGS OF FACT

Based on the documentary and testimonial evidence, I make the following findings of fact:

1. Rosemarie Hicks, d.o.b. 2/5/51, is a State Trooper, First Class. She has done this work from 1983. She used to be with the Metropolitan District Commission (MDC) Police, but has been with the Department of State Police since their merger with the MDC Police. She has been stationed in South Boston. (Exs. 3 & 15. Testimony)
2. Trooper Hicks has a son, Sir Dawayne Hicks, now about thirty-two years old, who has had a history of trouble with law enforcement, and with the Brockton Police in particular. Trooper Hicks is married to Paul Hicks, Sir Dawayne's father. (Testimony)
3. Trooper Hicks and her husband in September 2000, were residing at 56 Ithaca Road in Brockton. At that time, Sir Dawayne Hicks had an ex-girlfriend residing

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<sup>1</sup> Witnesses for the Appellant asserted as unavailable are: Sir Dawayne Hicks, Appellant's son who is in prison; Paul Hicks, Appellant's husband due to a stroke; Frank Araujo, Appellant's brother, and Appellant's mother, both of whom have died; and, Donna O'Brien, Appellant's neighbor who has moved out of state.

nearby at 46 Ithaca Road. (Exs. 9 & 20. Testimony)

4. Trooper Hicks was off duty and at home during the evening hours of September 13, 2000. Her state police cruiser was parked in the front yard driveway. She was not in uniform. Those in the home with her at this time included: her husband Paul; her brother Frank Araujo visiting from out of state and his teenaged son Joseph Araujo; her mother in ill health with a tendency to fall; and, her medium sized dog named Troubles. At some time that evening, her son Sir Dawayne was also in the house.

(Testimony)

5. Sir Dawayne Hicks went to his ex-girlfriend's home at 46 Ithaca Road that night. This visit resulted in a "911" call to the Brockton Police by the ex-girlfriend reporting that Sir Dawayne had intimidated her and her mother (or stepmother) by showing a hand gun. After that, Sir Dawayne Hicks left the ex-girlfriend's home to go to his family home. Upon arriving he did not report that anything had happened at the ex-girlfriend's home, or that he had shown a gun. (Exs. 9 & 20. Testimony)

6. Brockton Police Officer Daniel Matukas was on duty alone in his cruiser when he heard a call about a man brandishing a gun at 46 Ithaca Road. He proceeded to that location. Also hearing this call were Brockton Police Officer Robert Diliddo and State Trooper David LeMar who was on duty in his state police cruiser in this area of Brockton. All went to the scene. Officer Matukas was the first to arrive. He went to the ex-girlfriend's home and learned that Sir Dawayne Hicks was the person who brandished the gun and that he left for his family home at 56 Ithaca Road. Officer Matukas immediately went after Sir Dawayne as he understood he had a gun and might use it. He knocked on the door of 56 Ithaca Road. Trooper Hicks opened the door. Her medium

sized dog was barking constantly. Officer Matukas immediately warned her that he would shoot the dog unless she moved the dog out of the way. She immediately secured Troubles in a bathroom. Officer Matukas had seen the state police cruiser in the front yard driveway. Upon Trooper Hicks return, he learned she was a Trooper and asked to see her service gun. She took him right away to her bedroom where it was under lock and secure as required of her. Officer Matukas was satisfied. Trooper Hicks was cooperative. (Exs. 9, 19, 20 & 21. Testimony)

7. Officer Matukas at no time told Trooper Hicks why he was inside her home, but once they returned to the front of the house, he asked her where her son was. She thought he was not home and said that. Officer Matukas began to look around inside. He saw someone in the livingroom on a couch covered by a blanket. He immediately went to this person, and removed the blanket and briskly pulled up the person. Joseph Araujo had been resting on the couch and was startled. Upon seeing this was a teenaged person, Officer Matukas quickly left him. He had hurt Joseph's neck in the process. This was Trooper Hicks's nephew and this treatment of him was upsetting to her. (Testimony)

8. Officer Matukas then saw someone in the corner of a narrow part of the room near the garage. He yelled out: "Show me your hands." It was Sir Dawayne. He also went immediately over to him. Trooper Hicks was behind Officer Matukas, while her husband and brother were in the nearby kitchen. They became alarmed, and left to see what was happening. They had been drinking beers. There was yelling at Officer Matukas, asking what he was doing, and telling him to get out of the house. Paul Hicks

joined his wife behind Officer Matukas. Her brother, Frank Araujo, was also near Officer Matukas at this time. (Exs. 9, 19, 20 & 21. Testimony)

9. Officer Matukas was only focused on Sir Dawayne as he felt he might have a loaded gun he would use. As he was moving toward Sir Dawayne, Trooper Hicks and Paul Hicks, one or both of them, or perhaps her brother or nephew, momentarily held onto one of Officer Matukas's arms and/or slapped his back a few times as he reached Sir Dawayne and went after him to gain physical control of him. Officer Matukas felt this touching at the time but did not see who was doing it. Any touching of Officer Matukas was only momentary, and did not impede him in reaching and then in beginning to gain physical control of Sir Dawayne. (Exs. 9, 19, 20 & 21. Testimony)

10. Having heard the noise, both Officer Diliddo and Trooper LeMar who were now at the scene, immediately entered the house and ran toward the noise and commotion. Officer Diliddo quickly pushed Officer Hicks aside to reach Officer Matukas and Sir Dawayne. He did not know Trooper Hicks or that she was a State Trooper. He immediately began to help Officer Matukas get hold of Sir Dawayne who was trying to get away from him. Once Officer Diliddo pushed Officer Hicks aside, Trooper LeMar focused on both Trooper Hicks and her husband. He held Paul Hicks back with his arm at his chest since he was continuing to yell at the officers although not getting in the way of them. Trooper LeMar recognized Trooper Hicks and she recognized him. They had previously worked out of the same station. Trooper LeMar told Trooper Hicks to calm down. (Exs. 9, 19, 20 & 21. Testimony)

11. The time between Officer Matukas spotting Sir Dawayne and moving toward him, and before the other two Officers entered the same space, lasted only

seconds. The two Officers took no more than about three minutes to get control over a struggling Sir Dawayne, pull down his pants to see if he had a hand gun on him, and handcuff him to arrest him. They found no gun on him or in his immediate vicinity. (Exs. 9, 19, 20 & 21. Testimony)

12. In the meantime, Trooper Hicks asked Trooper LeMar what was going on. He responded that there was a reason, but be quiet and that everything would be figured out later. She remained calm, but as her son was being moved away, she asked and was allowed to pull up his pants before he was taken outside. (Testimony)

13. Shortly after Officer Diliddo and Trooper LeMar entered the house, a neighbor, Donna O'Brien, came inside to investigate all the commotion. She saw both Paul and Rosemarie Hicks with a State Trooper, and she saw the other Officers wrestling with Sir Dawayne. (Testimony)

14. At some point during this event, Trooper LeMar used his cell phone to inform the State Police that an incident was happening at the home of Trooper Hicks. He did not indicate whether or not she was in any way involved in an incident or whether she was the subject of an arrest. This message resulted in State Police coming to the location, including the State Gang Unit, and a State Police Supervisor. (Exs. 21 & 24)

15. At no time during the incident was Trooper Hicks or her husband threatened with being arrested. At no time during the incident was Trooper Hicks informed why her son was being arrested. At no time had she given permission for Officer Matukas to enter her home, although she did not stop him from coming inside or otherwise try to slow him down to question what he wanted, but complied with his orders to her. (Testimony)



16. Officer Matukas and Officer Diliddo secured Sir Dawayne Hicks into the police cruiser. Officer Matukas left for 46 Ithaca Road to talk to the ex-girlfriend to take her personal account of what happened for purposes of his police report. While he did this, other officers at the scene began searching for a hand gun in the surrounding yards. The description of the hand gun the ex-girlfriend provided to Officer Matukas did not match Trooper Hicks's service revolver. Donna O'Brien allowed her yard to be searched but did inquire whether or not the police had a paper to permit this searching. No gun was found on her property. Trooper Hicks allowed the State Gang Unit to search her property, both inside and outside. No gun was found. All Police Officers and State Troopers at the scene were in uniform other than Trooper Hicks. (Exs. 19, 20, 21 & 24. Testimony)

17. Officer Diliddo produced an application for criminal complaints against Trooper Hicks, stating:

I observed the Def (Rosemarie Hicks) pulling on OFC Matukas' right arm and slapping him on the back. All this was taking place while OFC Matukas was trying to place Def (Dawayne Hicks) under arrest. As I approached I removed Rosemarie Hicks and assisted OFC Matukas in placing Dawayne Hicks under arrest. (Ex. 10)

18. Trooper LeMar produced a report of the incident. He noted how he had followed Officer Diliddo into the house, heard Officer Matukas yelling at someone to show their hands, and then saw "a black female ... [he] knew to be one Rosemary Hicks." He noted that he saw Officer Matukas attempt to put "a black male later identified as one Dawayne Hicks in handcuffs," but that Trooper Hicks "started to scream towards Officer Matukas what do you want, get ... the fuck out of my house as she then began to pull on Officer Matukas's right arm." He noted how Sir Dawayne Hicks

resisted, and that Officer Diliddo went to help Officer Matukas and “pulled” Trooper Hicks “away from Officer Matukas’s back.” Trooper LeMar reported that he “then stepped in telling ... [Trooper Hicks] to let them do what they have to do.” He noted he also held back “a black male later identified as Ms. Hicks’s husband,” but that they both “continued screaming at the Brockton Officers during the arrest of Dawayne Hicks.”

(Ex. 24)

19. Officer Matukas never filed a criminal complaint against Trooper Hicks, but Officer Diliddo’s complaint resulted in criminal charges being lodged against both Trooper Hicks and Paul Hicks. No criminal complaints were sought against Trooper Hicks by the State Police. Officer Diliddo and Trooper LeMar had known each other prior to this incident. (Exs. 9, 10 & 11. Testimony)

20. Sir Dawayne Hicks was charged with resisting arrest, destruction of property, disorderly conduct, two counts of assault and battery, domestic assault with a dangerous weapon (though the gun was never found), and intimidating a witness. He was arraigned and held without bail. (Exs. 9 & 20)

21. Trooper Hicks was summonsed to Brockton District Court for an arraignment on September 27, 2000 on charges of common law interference with a police officer, and for assault and battery on a police officer. On that day, Trooper Hicks’s attorney filed a Motion to Dismiss these charges which was allowed pending the possibility of re-issuance of the charges following a show cause hearing before the Clerk on October 11, 2000. (Exs. 9, 11, 12, 13 & 14)

22. Paul Hicks was also summonsed to the Brockton District Court to face a charge of interference with a police officer. Like Trooper Hicks’s case, her husband was

not arraigned, but his case was heard along with her case at the Clerk's show cause hearing on October 11, 2000. Officer Matukas, Officer Diliddo, Trooper LeMar, Trooper Hicks, Paul Hicks, and Donna O'Brien testified. On October 26, 2000, the Clerk issued a complaint against Trooper Hicks only for interference with a police officer, and a complaint against her husband for the same charge. They were arraigned on November 16, 2000, and both pled not guilty. (Ex. 9)

23. Officer Diliddo petitioned the Brockton Police Prosecutor to resubmit his complaint against Trooper Hicks for assault and battery. A request was made for another show cause hearing to be before a judge. This occurred on December 22, 2000, and it resulted in the charge of assault and battery being again issued against Trooper Hicks. On October 17, 2001, attorneys for both defendants filed motions to dismiss the interference with police officer charges, which were denied. Then, a jury waived trial was held for both. Testifying were: Officer Matukas, Officer Diliddo, Trooper LeMar, Trooper Hicks, Paul Hicks, Donna O'Brien, Joseph Araujo, and Frank Araujo. Both defendants were found not guilty. (Ex. 9)

24. Trooper Hicks's brother, Frank Araujo, produced a report of his recollections about the events of September 13, 2000. He noted that once the Brockton Police came into the house, they "stormed the house like madmen." He maintained that no one "interfered" with the arrest of Sir Dawayne Hicks. (Ex. 23)

25. In reaction to Trooper Hicks's arraignment on criminal charges based on her conduct on September 13, 2000, the State Police commenced an Internal Affairs investigation. An Officer of the State Police attended all the Court proceedings including those before the Clerk, and provided summaries of the testimony given by all the

witnesses at all the proceedings. In his summaries, he noted whether testimony differed or was consistent at the different proceedings. (Ex. 9)

26. In the midst of the proceedings and before the matter reached a show cause hearing before a Judge, the State Police issued to Trooper Hicks on October 30, 2000, Personnel Order Number 00PER-464. As per Article 6.2.5 of the State Police Rules and Regulations, Trooper Hicks was placed on restricted duty. She was not allowed to operate a State Police motor vehicle or to carry her service weapon. (Ex. 16)

27. The next day, Trooper Hicks was notified of an Internal Affairs investigation being opened concerning her conduct on September 13, 2000. Officer Diliddo's report (Ex. 10) was enclosed. (Ex. 17)

28. The State Police ran Trooper Hicks's Internal Affairs history, and uncovered two matters with charges against Trooper Hicks; one in 1991 and one in 1995. Neither was sustained. (See, Ex. 15)

29. Officer Diliddo and Officer Matukas were separately questioned by Internal Affairs on November 17, 2000. A question and answer format was used. Trooper LeMar was also questioned by Internal Affairs on November 22, 2000. He was provided with a notice about having to do this on October 31, 2000, and informed it would be concerning Trooper Hicks's conduct on September 13, 2000. As a State Trooper, before providing his information, Trooper LeMar had the collective bargaining agreement contract Article 27 called to his attention, warning how he might be subject to discipline in connection with his participation, and that he was required to address all questions truthfully and to the best of his knowledge. He was warned that his refusal to answer questions may subject him to discipline up to and including termination. Each of

these three individuals had their interviews recorded and then transcribed. (Exs. 18, 19, 20 & 21)

30. Trooper Hicks also was called for questioning by Internal Affairs, for December 19, 2000. She also received the same warnings that Trooper LeMar received, including a notice of this pending interview, and that it was to involve the claim that she had interfered with Officer Matukas in attempting the arrest. Her attorney came to this interview. She refused to participate in the question and answer interview. Her attorney explained her reasons:

[There are] criminal charges currently pending against Trooper Hicks. Therefore prior to having her answer any of our questions, I would ask whether you're prepared to offer her transactional immunity from this matter? (Ex. 22)

She was not provided with this immunity. In response to that, her attorney explained:

That being the case, in accordance with Carney versus Springfield and Baglioni versus Salem, I am going to advise Trooper Hicks not to answer your questions at this time .... (Ex. 22)

The interview was then ended. (Ex. 22)

31. Using the summaries of testimony Internal Affairs had from the witnesses at the Court proceedings which included testimony provided at the trial of Trooper Hicks and Paul Hicks including Trooper Hicks's testimony, and using the interviews Internal Affairs conducted, formal discipline proceeded against Trooper Hicks. (Ex. 1) She faced a charge of having violated the General Conduct Rule and Regulation at Article 5.3, which reads:

Members shall maintain a level of conduct in their personal and business affairs which is in keeping with the highest standards of the law enforcement profession.

Members shall not participate in any act which impairs their ability to perform as members of the State Police or causes the State Police to be brought into disrepute. (Ex. 2)

She faced two specifications pursuant to this charge:

**Specification I**

In that Trooper Rosemarie Hicks, ... did, on September 13, 2000 fail to maintain a level of conduct in per personal affairs in keeping with the highest standards of the law enforcement profession by engaging in a physical altercation with Officer Daniel Matukas .... (Ex. 1)

**Specification II**

In that Trooper Rosemarie Hicks, ... did, on September 13, 2000 fail to maintain a level of conduct in her personal affairs in keeping with the highest standards of the law enforcement profession by using profanity towards Brockton Police Officers .... (Ex. 1)

32. The State Police Trial Board issued its findings and recommendation on September 18, 2002. The Trial Board found Trooper Hicks was guilty under both specifications for violating Article 5.3. The Trial Board found that Trooper Hicks had been deliberately trying to interfere with Officer Matukas's arrest of her son by pulling on his arm and slapping him on the back. The Trial Board found that Trooper Hicks had also shouted out at Officer Matukas "a number of times, 'get the fuck out of my house!'", and that ... Tpr. Hicks continued to direct her anger profanely toward the Brockton officers and never offered assistance." The Trial Board recommended that based on these guilty findings and her employment history, that she receive a loss of thirty days accrued time on Specification I and a loss of ten days accrued time concurrent as to Specification II. (Ex. 3)

33. State Police Colonel/Superintendent Thomas J. Foley received the Trial Board's determinations and recommendations. He issued his decision on September 26, 2002. He agreed that the evidence "established" that Trooper Hicks violated Article 5.3 as to both specifications. He ordered that she "forfeit twenty (20) days of accrued time off." He noted that she could appeal this decision to the Civil Service Commission.

(Exs. 6 & 7)

34. Article 6 of the Rules and Regulations Trooper Hicks is held to, addresses disciplinary procedures. These procedures were followed for Trooper Hicks. In regard to imposing discipline, the Rules and Regulations contain Appendix "A", which is called Discipline Guidelines. There are written interpretive notes to employ for Appendix "A". Note 2 reads as follows:

The Trial Board may recommend loss of accrued vacation/personal/holiday time as an alternative to suspension. Such recommendation shall not be considered a departure from the Guideline provided the number of days so recommended is consistent with the Guideline. (Ex. 5)

36. Trooper Hicks filed an appeal with the Civil Service Commission, received October 9, 2002. Her letter of appeal of October 2, 2002, noted that she was appealing pursuant to G.L.c.31, §43 and G.L.c.22C, §13 as revised. (Ex. 8)

### **Conclusion and Recommendation**

Trooper Hicks had not answered questions at the Internal Affairs interview which occurred before her criminal case occurred. At that time on December 19, 2000, her counsel provided her legal reasoning for this refusal to the State Police. At that time, the case of Falmouth v. Civil Service Commission and Deutschmann, 447 Mass. 814 (2006) had not been decided. In that case, the Civil Service Appellant had chosen not to testify

at his Appointing Authority hearing. He had refused to by asserting a fifth amendment privilege against self-incrimination as he was facing criminal charges on the same issues. The Appointing Authority drew an adverse inference in connection with determining his discipline. He subsequently testified at the Civil Service appeal hearing. The Civil Service Commission relied on his testimony to reduce the discipline, and this is what the Court found could not be done. Trooper Hicks's circumstances are not the same. In determining her discipline, the State Police relied on the testimony she had provided in Court proceedings which had been subject to cross examination, at least a summary of it produced by the State Police Investigator. She had testified at two show cause hearings and at her criminal trial. I find that his is enough to make her situation not subject to the Falmouth case, supra, ruling. I find her testimony at the Civil Service hearing can be used by the Civil Service Commission, including to be relied upon to alter the discipline imposed by her Appointing Authority.

In making my findings, I did rely on Trooper Hicks's testimony. I found that as to many facts, her testimony was in agreement with the hearsay accounts of the other Officers that are in evidence. But, her testimony differed as to just what happened in terms of her actions in regard to Officer Matukas that form the basis for her discipline. I note that her hearsay testimony also in evidence matched her in person testimony. I also note that to determine what actually happened when Officer Matukas was about to and then did engage with her son, involved credibility determinations. Without relying on Trooper Hicks's testimony, I lacked sufficient proof of what happened.

The Appointing Authority has the burden of proof to show a reasonable justification for the discipline imposed on Trooper Hicks under a preponderance of



evidence standard. City of Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300 (1997); Watertown v. Arria, 16 Mass.App.Ct. 331 (1983). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Wakefield v. First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Civil Service Commission v. Municipal Ct. of Boston, 359 Mass. 214 (1971)

The Appointing Authority had summaries of the testimony provided by various witnesses, including Trooper Hicks, at the Court proceedings, but not the actual transcripts of such testimony. This is evidence toward meeting the Appointing Authority's burden of proof, but I find that it was insufficient proof to demonstrate at this Civil Service hearing that Trooper Hicks swore at Officer Matukas or at any of the other Officers in the course of their conduct with her son, Sir Dawayne, or to show she interfered with the arrest of her son. Perhaps if some of these Officers from the scene, Matukas, Diliddo, and LeMar, had testified at the Civil Service Hearing, I would have concluded differently. They did not, and the record does not contain sufficient evidence to show Trooper Hicks engaged in the particular conduct asserted by the Appointing Authority. I made credibility determinations based on her testimony to support my conclusion that there is insufficient proof she engaged in the wrongful conduct she is alleged to have committed. Her account of her conduct was reasonable and believable. The hearsay evidence contradicting her account in light of the common evidence of the very swift course of events involved inside the home with Sir Dawayne Hicks's arrest, is insufficient to overcome her account.

Specification I is that she engaged "in a physical altercation with Officer Daniel Matukas." In that specification it is noted that he was responding to her home to locate a man with a gun. I found Trooper Hicks's testimony credible and reasonable that she did not know that is why Officer Matukas had entered her home. What he recalls is being slapped. This is referred in Specification I as being attacked. I would have liked to have heard his account of how he was impeded or not by these slaps or holding onto his arm (whoever did that) when he began to get hold of Sir Dawayne to accomplish an arrest of him. The findings made show that any touching or hitting was not of a substantial or other than momentary duration, and that such actions did not interfere with his gaining control of Sir Dawayne. The findings made show that the other two Officers came to assist him no more than seconds after he first came to touch Sir Dawayne, and that once they were there, no interference with Officer Matukas occurred. The Specification also notes how Trooper Hicks failed to assist the Officers in their arrest of her son. This seems to make no sense. They did not want her to be near the effort to control her son, so it is hard to figure out just what she was supposed to have done. I also do not find sufficient proof that she was hiding his whereabouts if that is what was meant by not offering assistance. (See, Ex. 3)

In terms of Specificaion II, I did not find sufficient proof that she yelled profanities at Officer Matukas. The record shows that neither Officer Matukas nor Officer Diliddo support this claim. Only Trooper LeMar gave his account that she had done this by yelling: "Get the fuck out of my house." Trooper LeMar's account is that she said this more than once. Perhaps if Trooper LeMar had testified at the Civil Service hearing, then I might have had a firm enough evidence basis to agree with this

Specification, but that did not happen. Trooper Hicks denied swearing at Officer Matukas or at Officer Diliddo, and under the circumstances of others in the immediate area yelling at Officer Matukas, more than this hearsay evidence was needed to overcome Trooper Hicks's credible account of her actions. She was upset and reasonable surprised by Officer Matukas's actions inside her home, and particularly when he went after first her nephew and then her son. Showing concern over such swift actions is not enough to demonstrate she swore at him or interfered physically with his arrest of her son. Only after the incident did she learn that the reason for this rush into her home to find and arrest her son had to do with a dangerous situation of the gun potentially in his possession. She would not have been surprised and upset by Officer Matukas's actions, she credibly testified, had she been told this information.

I simply found too much hearsay that was not presented to me in the form of even prior recorded or transcribed transcript testimony of key witnesses subject to cross examination, along with no opportunity to make determinations about the demeanors of such witnesses, to find enough to prove Specification I and II occurred in regard to Trooper Hicks. I lacked sufficient proof that she violated Article 5.3 of the Rules and Regulations.

For these reasons, I recommend that the Civil Service Commission rescind the discipline imposed on Trooper Hicks of twenty accrued days, and restore that time to her.

DIVISION OF ADMINISTRATIVE  
LAW APPEALS

*Sarah H. Luick*  
Sarah H. Luick, Esq.  
Administrative Magistrate

DATED: June 11, 2007

