

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Decision mailed: 1/28/11
Civil Service Commission *CS*

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

STEVEN LANDRUM,

Appellant

v.

**BOSTON POLICE
DEPARTMENT,**

Respondent

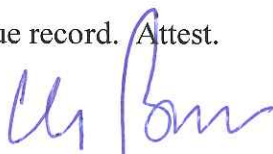
Case No.: D-10-80

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on January 27, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated November 19, 2010. The Respondent submitted comments to the Commission on December 23, 2010. 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 *allowed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on January 27, 2011.

A true record. Attest.



Christopher C. Bowman
Chairman

**Commissioner Marquis was
absent on January 27, 2011**

Either party may file a motion for reconsideration within ten days of the receipt of a Commission decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), 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 (for Appellant)
Amanda Wall, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
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November 19, 2010

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Steven Landrum v. Boston Police Department
DALA Docket No. CS-10-681

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CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Richard C. Heidlage, Esq.
Chief Administrative Magistrate

Enclosure

cc: Kenneth H. Anderson, Esquire
Amanda Wall, Esquire

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Stephen Landrum,
Appellant

v.

Docket No. D-10-80
DALA Docket No. CS-10-681

Boston Police Department,
Appointing Authority

Appearance for Appellant:

Kenneth H. Anderson, Esquire
Byrne & Dreschler, LLP
50 Redfield Street #201
Boston, MA 02122

Appearance for Respondent:

Amanda Wall, Esquire
Legal Division
Boston Police Department
1 Schroeder Plaza
Boston, MA 02120

Administrative Magistrate:

Judithann Burke

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CIVIL SERVICE COMMISSION

CASE SUMMARY

Boston Police Department did not have just cause to impose a one-day suspension upon Appellant for a violation of Rule 102 § 34 (Mutual Protection) of the Rules and Procedures of the Boston Police Department. The Appellant did not fail to promptly come to the aid of another officer, who, when carrying out his official duties, was in need of assistance.

RECOMMENDED DECISION

Pursuant to G.L. c. 31 §§ 41-45, the Appellant, Stephen Landrum, is appealing from the February 9, 2009 decision of the Appointing Authority, Boston Police Department, suspending him for a period of one (1) day without pay from his position as police officer in the City of Boston. A Section 43 hearing was held on September 13, 2010 at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, Boston, MA.

At the hearing, eight (8) exhibits were marked, including an audiocassette of a November 6, 2008 radio transmission. (Exhibit 7). The Appointing Authority presented the testimony of: William Dwan, Sergeant Detective in the Boston Police Department. The Appellant testified in his own behalf. One (1) tape was made of the proceedings.

FINDINGS OF FACT

Based upon the testimonial and documentary evidence submitted at the hearing, I hereby render the following findings of fact:

1. The Appellant, Stephen Landrum, is a patrol officer for the Boston Police Department, and has been employed as such since November, 1982. (Landrum Testimony)
2. Sergeant Detective William Dwan is assigned to the Boston Police Department's Drug Control Unit, in District A1. He has served with the Boston Police Department for 23 years. (Dwan Testimony)

3. On November 6, 2008, Sgt. Dwan was assigned to the 4:00 PM to 11:45 PM shift, and was conducting a drug investigation in the Boston Theater District with members of the A-1 Drug Control Unit. (Exhibit 3 and Dwan Testimony)

4. The A-1 Drug Control Unit, acting under the direction of Sgt. Dwan that evening, also included Detective Lynch and Police Officers Ryle, Chu, Mahoney, and Linehan. (*Id.*)

5. The Drug Control Unit members work out of their own separate area of the District A-1 Police Station and do not interact routinely with patrol officers. (Dwan Testimony)

6. Patrol officers in several different Districts receive their radio dispatches and calls on Channel Two of the Boston Police Department radio. These areas include Districts A-1 (Downtown area), A-7 (East Boston) and A-15 (Charlestown). (*Id.*)

7. The Drug Control Unit members ordinarily do not communicate on Channel Two, and do so mostly on cell phones and other channels. (*Id.*)

8. The Drug Control Unit members often socialize with one another off duty, and are very familiar with each other's appearances and voices. (*Id.*)

9. Sgt. Dwan's role in the drug investigation at approximately 6:00 PM on November 6, 2008 was to monitor and follow Officer Linehan, who was on undercover duty and attempting to buy a rock of crack cocaine from a suspected drug dealer. (*Id.*)

10. Both Sgt. Dwan and Officer Linehan were dressed in plainclothes. Sgt. Dwan was in an unmarked car on Boylston St., while Officer Linehan was on foot near the corner of Stuart St. and Tremont St. (Exhibit 3 and Dwan Test.)

11. Officer Linehan approached a male, later identified as Ahmad Jamal Maiden, near the corner of Stuart St. and Tremont St., and expressed his interest in buying a rock of crack cocaine.¹ (*Id.*)

12. Maiden led Officer Linehan to Beach St., near the Washington St. intersection, where Officer Linehan purchased one rock of crack cocaine from a third man, later identified as Jason Latimore. (*Id.*)

13. Sgt. Dwan was able to listen to Officer Linehan's interactions as they occurred in real time, through a recording device Officer Linehan was wearing on his person. (Dwan Testimony)

14. Following the transaction, Officer Linehan began walking east on Beach St., while Latimore and Maiden walked away on Beach St. in the opposite direction. (Exhibit 3)

15. Immediately following the transaction, Officer Linehan alerted Sgt. Dwan via cell phone that the buy had taken place, and provided Sgt. Dwan with a description of the suspects and their last known location. (*Id.* and Dwan Testimony)

16. Officer Linehan also gave similar alerts to other members of the squad who were performing surveillance on the buy. (Exhibit 3)

17. After receiving this alert, Officers Mahoney and Chu approached Latimore and Maiden at the intersection of Washington and Beach, and attempted to arrest them. (*Id.*)

¹ For a more specific account of the A-1 Drug Control Unit's activities on that evening, please refer to the Incident Report attached as Exhibit 3.

18. Maiden was placed under arrest, but Latimore resisted and began struggling with Officer Mahoney. (*Id.*)

19. Detective Lynch and Officer Ryle arrived at the scene and assisted Officer Mahoney in subduing Latimore, who continued to strike out at all four of the officers with his knees and arms. (*Id.*)

20. While the struggle continued, Officer Ryle contacted the police radio dispatcher on Channel 2, and notified the dispatcher that an officer was in trouble ("OT"). (*Id.*)

21. Additional officers began to arrive on the scene. (*Id.*)

22. After receiving Officer Linehan's cell phone call, Sgt. Dwan drove his car down Boylston Street towards Washington Street. Due to heavy traffic and rain, he parked near that intersection and proceeded to the Washington and Beach Street intersection on foot. (Dwan Testimony)

23. While running to the intersection of Beach and Washington Streets, Sgt. Dwan saw Officer Landrum in his police car parked on the left (west) side of Washington St. at the corner of Washington and Boylston Streets. (*Id.* and Exhibit 5).

24. Sgt. Dwan banged on Officer Landrum's cruiser window with force, and confronted the patrol officer. (Dwan Testimony and Landrum Testimony)

25. Prior to his encounter with Sgt. Dwan, Officer Landrum was sitting in his squad car parked on Washington. During slower nights, Officer Landrum often sits in his squad car at that location which he knows to be an "area with problems," including

frequent drug activity. Officer Landrum was monitoring the area for signs of trouble or drug activity. (Landrum Testimony)

26. At 5:58 PM, Officer Landrum received a call on his radio requesting his assistance at District 1-A Police Headquarters (the "Station") in subduing a psychiatric patient. (*Id.* and Exhibit 6)

27. After receiving this call, Officer Landrum waited in his squad car for a moment for the car's computer to provide additional information about the call. Officer Landrum usually waits for the car's computer to provide additional information before responding to a call, since that information can often lead to a better understanding of the call. (Landrum Testimony)

28. Approximately two minutes later, while waiting, Officer Landrum heard the OT call to aid the officers struggling to subdue Latimore. (*Id.*)

29. The first OT call on the radio was short and indecipherable. (*Id.* and Exhibit 7)

30. Members of the Boston Police Department sometimes mistakenly jostle or sit on their microphones, resulting in a short and indecipherable sound being dispatched on their radios. (Landrum Testimony)

31. After the first OT call, Officer Landrum was unsure as to whether there was a legitimate call or if someone had merely sat on their microphone. (*Id.*)

32. Only a moment later, the call was repeated, but due to the poor sound quality of the call, Officer Landrum was still unsure as to the location of the OT. (*Id.*)

33. After the second OT call, both the dispatcher and Officer Landrum's partner, Officer Craig Jones, in a separate car, requested a clarification of the OT location. (*Id.*, Exhibit 7 and Dwan Testimony)

34. A moment after the second OT call, Sgt. Dwan began to bang on Officer Landrum's window with force. (Landrum Testimony)

35. Officer Landrum cracked his window, and Sgt. Dwan asked him in a heated tone, "I want to know why you're still fucking sitting here?" Sgt. Dwan then showed Officer Landrum his badge. (*Id.*)

36. Officer Landrum did not recognize Sgt. Dwan, and did not know he was a fellow police officer until Sgt. Dwan displayed his badge. (*Id.* and Dwan Testimony)

37. The confrontation between the two officers continued for several seconds. Sgt. Dwan asked Officer Landrum if he was aware of the OT call. Officer Landrum stated "I got you," and drove his squad car around the block to the Washington and Beach intersection, while Sgt. Dwan continued to run towards that location on foot. (*Id.*)

38. Officer Landrum became aware of the proper location of the OT call during his confrontation with Sgt. Dwan, as the radio had broadcast the proper location more clearly. (Landrum Testimony)

39. Officer Landrum drove off from Washington St., took a right onto Essex St., a right onto Harrison Ave., and a right onto Beach St., all of which took less than a minute. (*Id.*)

40. Both Sgt. Dwan and Officer Landrum arrived at the scene of the OT just a minute or so after their confrontation. Sgt. Dwan arrived a few seconds earlier than the Appellant. (*Id.* and Dwan Testimony)

41. Sgt. Dwan found Detective Lynch, and Officers Chu, Linehan, Mahoney and Ryle on Beach St. subduing Latimore. Detective Lynch indicated he was concerned for his firearm, and so Sgt. Dwan removed it from Detective Lynch's holster as the group collectively subdued Latimore. (Dwan Testimony)

45. When the Appellant arrived at the scene in his squad car, both Latimore and Maiden were secure in custody. (*Id.* and Landrum Testimony)

46. Around the same time, a number of officers in the area had arrived on the scene to assist the OT. (Dwan Testimony and Exhibit 3.)

47. In addition to the responding Drug Control detectives and officers, a total of ten officers not in the Drug Control Unit ultimately responded to the OT call. (Dwan Testimony)

48. Later that evening at the District 1-A Station, Duty Supervisor Sergeant John McBrien expressed to Sgt. Dwan that he believed the OT call to have been clearly broadcast on the radio, having heard the call at the station. (*Id.* and Exhibit 6)

49. At the station, Sgt. Dwan instructed the Appellant to complete a Form 26 Report detailing the confrontation incident, and submit it to Captain Bernard O'Rourke. (*Id.*, Landrum Testimony and Exhibit 6)

50. The Appellant inquired as to what he was being accused of, so that he could better address the issues in his report, and Sgt. Dwan replied that he was not being accused of anything. (Landrum Testimony)

51. On the morning of November 7, Sgt. Dwan reported to Captain O'Rourke and asked him how the incident should be handled. Captain O'Rourke instructed Sgt. Dwan to complete and submit a Form 26 Report, and Sgt. Dwan complied. (Dwan Testimony)

52. Officer Landrum also filled out and submitted his Form 26 Report. (Landrum Testimony)

53. In or about early February 2009, Sgt. McBrien advised the Appellant that there might be activity within the Police Department regarding the incident, but that he did not believe there would be any repercussions for the latter. (*Id.*)

54. Officer Landrum had been disciplined once before prior to the incident, for violating the Boston Police Department's 90-hour per week limit on permissible police officer work schedules. For exceeding the 90-hour limit on one occasion, Officer Landrum was suspended for one day. (*Id.*)

55. Also in or about early February 2009, Captain O'Rourke instructed Sgt. Dwan to take Officer Landrum's report, and to fill out a Form 1920 (Internal Affairs Complaint) regarding the incident. (Dwan Testimony)

56. On February 9, 2009, Captain O'Rourke issued a Notice of Suspension to Officer Landrum, for violating Rule 102 § 34 of the Rules and Procedures of the Boston Police Department. (Exhibit 1)

CONCLUSION AND RECOMMENDED DECISION

After a careful review of all of the testimony and documents in this case, I have concluded that the Appointing Authority did not have just cause to impose the one-day suspension on the Appellant. The Appointing Authority has not proven by a preponderance of the evidence that the Appellant violated Rule 102 § 34 of the Boston Police Department Rules and Procedures on November 6, 2008.

Rule 102 § 34 is labeled "Mutual Protection," and states that "[i]n an emergency, an officer shall promptly come to the aid of any other officer who, when carrying out his official duties, is in need of assistance." In this instance, Detective Lynch and Officers Mahoney, Chu and Ryle were in need of assistance while carrying out their official duties, when they were attempting to subdue Latimore. However the Appellant did not fail to promptly come to their aid.

Discrepancies in the Testimony of the Two Key Witnesses Do Not Overcome Officer Landrum's Reasonable Conduct and Prompt Arrival at the OT Location.

When Officer Landrum first heard the OT call on the radio, it was not immediately clear to where the officers were being directed. While the Appointing Authority asserts that other officers that were also not in the Drug Control Unit were able to decipher the initial OT dispatches, at least one other officer (Officer Jones) and the radio dispatcher himself had to inquire over the airwaves for clarification on the location. The Appellant testified that he didn't ask for further clarification because others already had done so. He did not believe it was productive or necessary for him to tie up the airwaves while an emergency OT call was being broadcast. The Appellant intended to

wait in his squad car only long enough to ascertain the location of the OT call. His conduct under the circumstances was reasonable.

While he was waiting, Sgt. Dwan ran up to his car and initiated a heated confrontation. There are certain details in the two men's accounts of what followed that contradict one another. Sgt. Dwan testified that the Appellant never got out of his car, while Officer Landrum testified that he did, in response to Sgt. Dwan's question of why he was still sitting there. Sgt. Dwan testified that he ran off before the Appellant drove away in his squad car, while the Appellant asserted that he cut off their encounter in order to drive to the OT location once the radio had clarified it. The Appellant testified that both men arrived at the scene at around the same time, while Sgt. Dwan testified that he was there more quickly than the Appellant. The Appellant testified that Sgt. Dwan was wearing a grey hooded sweatshirt, which Sgt. Dwan denied in his testimony. But both men acknowledged that they did not fully recall the incident in its entirety, as the testimony took place almost two full years after the incident in question. This gap in time could reasonably contribute to the conflicting accounts.

The Appointing Authority also asserts that Sgt. Dwan arrived at the scene and aided Detective Lynch by removing Lynch's firearm from his holster so that he would not lose it in the struggle. While this statement is consistent with Sgt. Dwan's testimony that he arrived at the location before the Appellant, it does not show by a preponderance of the evidence that the Appellant failed to promptly come to the aid of another officer. The Appellant stated that he drove his car around the block to get to the location because Sgt. Dwan was standing by his squad car during the confrontation "wanting to debate"

the reasons the Appellant had not yet responded to the OT call. Because of the heated nature of the confrontation, this account is no less plausible than the Sgt. Dwan's statement that he ran off to the OT leaving the Appellant in his squad car. The possibility remains that in a charged and confused moment, the two men both left at the same time, each having made a quick determination of the best way to arrive at the scene.

Regardless of the discrepancies in their respective accounts, immediately after becoming aware of the location of the OT, the Appellant drove his squad car around the block, and arrived at the scene. He estimated the entire drive took only seconds. There is merit to the Appellant's contention that, had he wished to avoid aiding another officer, he easily could have responded to the first radio call he received, requesting his presence back at the station. Thus, the Appellant did not fail to promptly come to the aid of an officer needing assistance, and accordingly did not violate Rule 102 § 34.

Officer Landrum's Credibility Withstands Criticism.

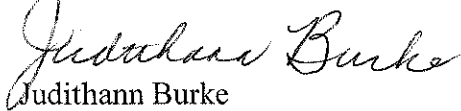
The Appointing Authority asserts that the Appellant's credibility is damaged because of his prior disciplinary record. However, the discipline taken against was merely a one-day suspension for violation of the Department's 90-hour per week work limit, and was the only discipline taken against him since he joined the Department in 1982. The Appointing Authority also contends that an additional complaint against the Appellant further reflects a lack of credibility. This complaint resulted in no disciplinary action. This evidence is not enough to warrant a questioning of the Appellant's credibility as a witness.

Conclusion.

Because the Appellant arrived at the scene only moments after the radio dispatcher clarified the location of the OT, I conclude that he did not fail to promptly come to the aid of another officer. I thus recommend that the decision of the Appointing Authority imposing the one-day suspension be vacated and that the Appellant be restored to his position without loss of compensation or other rights.

Division of Administrative Law Appeals,

BY:

A handwritten signature in cursive script that reads "Judithann Burke".

Judithann Burke
Administrative Magistrate

DATED: November 19, 2010