

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Decision mailed: 6/18/10
Civil Service Commission *CS*

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

GERARD LETT,
Appellant

v.

**BOSTON POLICE
DEPARTMENT,**
Respondent

Case No.: D-08-221

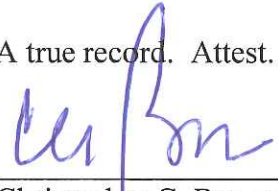
DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on June 17, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 17, 2009. On August 31, 2009, the Commission received written objections to the Magistrate's recommended decision from the Appellant.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By a 3:1 vote of the Civil Service Commission (Bowman, Chairman – yes; Henderson - no, McDowell - yes and Stein – yes [Marquis, absent], Commissioners) on June 17, 2010.

A true record. Attest.

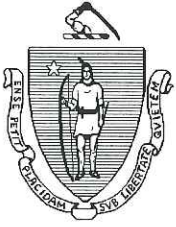


Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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, Esq. (for Appellant)
Nicole I. Taub, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
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Boston, MA 02114

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August 17, 2009

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

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Re: Gerrard Lett v. Boston Police Department
DALA Docket No. CS-08-794

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.

Sincerely,


Richard C. Heidlage
Acting Chief Administrative Magistrate

RCH/das

Enclosure

cc: Kenneth H. Anderson, Esq.
Nicole I. Taub, Esq.

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Gerard Lett,
Appellant

v.

Docket Nos. D-08-221
CS-08-794

Boston Police Department,
Appointing Authority

Appearance for Appellant:

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

Appearance for Appointing Authority:

Nicole I. Taub, Esquire
Legal Division
Boston Police Department
1 Schroeder Plaza
Boston, MA 02120

Administrative Magistrate:

Judithann Burke

CASE SUMMARY

Boston Police Department had just cause to impose a one-day suspension upon Appellant for a violation of Rule 301(4). The Appellant failed to radio in that he had attempted to apprehend the driver of an ATV and that the ATV had made contact with the police cruiser and sped off into heavy traffic.

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CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

Pursuant to G.L. c. 31 s. 41-45, the Appellant, Gerard Lett, is appealing from the September 3, 2008 decision of the 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. (Exhibits 17 & 18). A Section 43 hearing was held on February 4, 2009 at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, Boston, MA.

At the hearing, eighteen (18) exhibits were marked. The Appointing Authority presented the testimony of: Paul Joseph, Police Sergeant in the City of Boston; and, Robert Ciccolo, Jr., Police Captain in the City of Boston. The Appellant testified in his own behalf. Two (2) tapes were made of the proceedings.

FINDINGS OF FACT

Based upon the testimonial and documentary evidence and submissions of the parties, I hereby render the following findings of fact:

1. The Appellant, Gerard Lett, has been employed as a full-time police officer in the City of Boston 1989. At all pertinent times, he has been a tenured civil service employee. (Testimony).
2. The Appellant has no record of prior discipline as a police officer. (*Id.*).
3. On June 20, 2005, the Appellant was on duty in Area E13 on the 4:00 PM to midnight shift. During the course of the early part of his shift, the Appellant, fellow Boston Police Officers and the local State Police all heard radio broadcasts that the State Police were pursuing and/or attempting to stop a motorcycle and an ATV that were

speeding and weaving from the roadways onto the sidewalks and back in the area of Jamaica Plain, thus creating a public safety risk. (*Id.* and Exhibits 7 and 8).

4. The Appellant had heard myriad radio broadcasts concerning the motorcycle and the ATV on that afternoon. He was familiar with the operation and capabilities of ATVs, as he had raced dirt bikes while he was growing up in Virginia. (*Id.*).

5. At or about 6:00 the Appellant was outside of his cruiser talking to civilians at the intersection of Montebello and Washington Streets. He observed the motorcycle and the ATV speed down Washington Street toward Eggleston Square. They took a right turn onto Iffley Road. The Appellant returned to his cruiser and radioed that he had seen the vehicles bear right on Iffley. Then, he drove .5 mile down Iffley and took a left onto School Street. He observed the ATV stopped at the intersection of School Street and Walnut Avenue next to Franklin Park. The ATV operator was talking to someone in a car beside him.

The Appellant parked and started to exit his cruiser and approach the ATV operator. The ATV operator spun the vehicle around and pulled up onto the sidewalk very close to the cruiser. The ATV knicked the front left bumper of the cruiser during this process. The ATV then sped off up Walnut Avenue toward Columbus Avenue and ran a red light.

The Appellant returned to his cruiser and followed the ATV up Walnut Avenue. While he was stopped at the red light at the top of the hill on Walnut Avenue, he observed the ATV cross the center yellow line and veer into the wrong traffic lane

several times while careening down the hill along Walnut Avenue. Operators of other vehicles travelling in both directions were forced to pull to the sides of the street or stop completely in order to avoid colliding with the ATV. The Appellant activated his siren in order to alert motorists and pedestrians to the impending danger. He was not able to catch up to the ATV at this time because the ATV had accelerated too quickly fast and was proceeding at a too high a rate of speed.

The Appellant intended to monitor the location of the ATV. He kept both of his hands on the steering wheel and his eye on the ATV. He reached for his police radio in order to broadcast his status and that of the vehicle at a time when he came to an area with lighter traffic.

After approximately .25 of a mile and thirty seconds, the ATV entered Area B, lost control of the vehicle, hit the sidewalk and a large patch of hedges and collided with a wall. The Appellant was approximately 50-60 yards behind the ATV at that time. He pulled up to the accident scene and stopped to assist the operator who was severely injured. He radioed for medical assistance and accompanied operator to the hospital. (Testimony and Exhibits 4-6 and 13-14).

7. When he returned to the police station after assessing the status of the ATV driver, the Appellant reported the incident to his patrol supervisor, Sgt. Paul Joseph. He also showed the mark on the cruiser to Sgt. Joseph. Sgt. Joseph reported to the scene of the ATV accident and commenced an investigation. (*Id.*).

8. Rule 301(4) of the Boston Police Department rules and Regulations provides:

Sec. 4 Transmitting information: When an officer encounters a situation where pursuit is warranted, the officer shall notify the Operations Division immediately. Whenever the operator of the vehicle which is being pursued fails to stop after having been directed or signaled to do so, the pursuing officer shall immediately inform the dispatcher of the following information:

- The call sign of the unit involved in the pursuit.
- The reason for the pursuit (e.g. offense committed).
- The best possible description of the vehicle and its occupants.
- The direction of travel, the roadways being used, the estimated speed of the suspect vehicle and the speed of the police vehicle. This information must be constantly updated by the pursuing unit.

(Exhibit 1).

9. On September 3, 2008, the Appointing Authority sustained the charge against the Appellant and imposed a one day suspension without pay. (Exhibit 17).

10. The Appellant filed a timely appeal. (Exhibit 18).

RECOMMENDED DECISION

After a careful review of all of the testimony and documents in this case, I have concluded that the Appointing Authority had just cause to impose the one-day suspension on the Appellant. The Appointing Authority has proven by a preponderance of the evidence that the Appellant violated Rule 301(4) of the Boston Police Department Rules and Regulations on June 20, 2005.

The Appellant has contended that he was not in pursuit of the ATV after the vehicle bumped against the cruiser and sped off up Walnut Avenue. Rather, he submits, in that short time, he wanted to monitor the location of the vehicle and warn the public.

He contends further that he could not have been in pursuit of the ATV because the ATV was travelling at too high a rate of speed.

Rule 301(4) is still applicable in this situation. Whether or not the Appellant could overtake the ATV, the possibility existed that another officer nearby may have been able to stop the vehicle. The Boston Police and State Police throughout the entire area were on the lookout for the vehicle. Had the Appellant radioed in that he had attempted to apprehend the ATV driver at School Street and Walnut Avenue, he would have provided an updated location and direction of the vehicle for other law enforcement personnel and communicated that the ATV made contact with a police cruiser before it sped off.

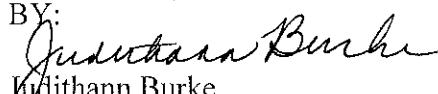
Rule 301(4) is not limited to police vehicles in active pursuit. The first line describes an applicable situation as one in which "a pursuit is warranted". In this case, a pursuit was most certainly warranted even if the Appellant himself did not intend to be the pursuer. He should have notified his supervisors that he had encountered the ATV, that the ATV had made contact with the cruiser and that the operator had sped off up Walnut Avenue in an area of heavy traffic.

It is acknowledged that the chain of events took place over a mere .25 mile and 30 seconds. The Appellant was indeed busy, focused and preoccupied. He was concerned for his own safety and that of the public. The facts of the case warrant no more than the one day suspension. Nonetheless, there was indeed a technical violation of the rule in question.

In conclusion, I recommend that the action of the Appointing Authority imposing the one-day suspension be affirmed.

Division of Administrative Law Appeals,

BY:


Judithann Burke
Administrative Magistrate

DATED: **AUG 17 2009**