

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

KENNY RODRIGUEZ,
Appellant

v.

DEPARTMENT OF STATE POLICE,
Respondent

Docket Number: D1-22-166

DECISION

Pursuant to 801 CMR 1.01 (11) (c), I assigned to the Commission's General Counsel the duty of serving as the presiding officer over an evidentiary hearing into whether the Respondent Department of State Police had just cause to terminate the employment of the Appellant, Kenny Rodriguez, from his position of state trooper.

The Presiding Officer released to the Commission the attached Tentative Decision and advised the parties that they had thirty days in which to provide any written objections to the Commission. A limited objection, described below, was received from the Appellant on June 4, 2024. Other objections were filed by the Respondent on June 3, 2024. The Appellant replied to the Respondent's objections in a filing dated June 17, 2024.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Presiding Officer, thus making the attached the Final Decision of the Commission. To address the Appellant's limited objection first: The Commission declines to alter the Presiding Officer's recommendation that the discipline to be imposed on the Appellant for his admitted violation of the Respondent's policy on use of body-worn cameras be reduced from thirty days to one day of unpaid suspension. The Appellant petitioned to have this discipline further reduced to a written warning, pointing out that the Respondent allowed the Appellant to conduct his patrol duties without a body-worn camera for some period of time (while his device was being repaired) prior to the patrol incident leading to discipline. The Appellant further argues that the motorist assist incident not fully captured by body-worn camera video seemed generally unremarkable at the time and the Appellant had not been trained *in person* regarding occasions when it would be permissible to eschew use of the body-worn camera. As the Presiding Officer observed in the Tentative Decision, however, there are

compelling reasons for firm enforcement of the body-worn camera policy and this case is one illustration of why there ought to be consequences for any violation. Very substantial public resources went into investigating and adjudicating whether the Appellant had colluded with the motorist to further an improper objective and the best evidence that the Appellant had *not* engaged in any misconduct would have been recordings from his body-worn camera had he engaged it throughout his interactions with the motorist. The Appellant had been trained on the policy, had used his device to upload over 180 recordings, and admits that he violated written policy on the occasion in question. An unpaid suspension for one day is not excessive or unfair under these circumstances.

The Respondent has lodged five specific objections to the Tentative Decision but none merits rejection or modification of the initial decision. The Respondent first objects to the Presiding Officer's citation of two bar journal articles (discussed in the space of one paragraph among the 48 pages of the recommended decision). The Respondent is incorrect in labeling the articles in question as "evidence" "relied upon" in finding a lack of just cause for the Appellant's termination. It is clear to the Commission that the articles are cited in the Analysis section of the decision, along with many relevant Commission precedents, to further explain the Presiding Officer's reasoning in declining to find intentional untruthfulness; importantly, no finding of fact depends on the contents of those articles. Regarding the charge of alleged untruthfulness, we view the main point of the Tentative Decision's relevant findings of fact as showing that any inaccuracies in the Appellant's statements, obtained nearly six months after the events in question, were essentially trivial, unintended, or inconsequential. A careful review of the Tentative Decision shows that the Presiding Officer did not rely upon the cited bar journal articles in making those crucial findings.

Although the articles discuss the normal limits of human memory (especially when an event sought to be recalled is not particularly memorable *and* a considerable period of time has elapsed), while also emphasizing that a person's memory function does not operate like a video camera, at bottom they simply describe a universal phenomenon with which everyone is familiar. This Commission has decades of experience in distinguishing between false statements uttered to cover up misconduct and mistaken recollections offered without ill intent. The Tentative Decision spends four pages discussing prior Commission decisions that explore those opposing situations. That the challenged articles are not likewise precedent, but rather illustrate for members of the legal profession, and cite empirical support for, considerations that this Commission has taken into account over many years of adjudicating disciplinary cases featuring untruthfulness allegations is no reason to question the sound conclusion reached by the Presiding Officer that, here, the Appellant was not guilty of consciously lying to Department investigators.

Furthermore, the Respondent errs in asserting that it was not afforded the opportunity to comment on or rebut the universal phenomena discussed in the contested articles, as summarized by the Presiding Officer. To the contrary, the Respondent was given thirty days in which to respond to the Tentative Decision. The Respondent opted not to respond substantively to the observations articulated in that one paragraph of the decision it finds objectionable.

The Respondent next raises a jurisdictional objection, claiming that this Commission's jurisdiction is limited to an appellate-style review of the Department Trial Board decision. In

fact, the pertinent law is not nearly so limited. Section 13(a) of G.L. c. 22C guarantees independent, impartial and *de novo* review of both the facts and process leading to the discharge of any tenured state trooper. This law states in pertinent part: “A person aggrieved by the finding of the trial board . . . may appeal the decision of the trial board under sections 41 to 45, inclusive, of chapter 31.” Many provisions of the cited sections of Chapter 31 (the civil service law) safeguard the due process rights of tenured public employees. In particular, the Respondent’s objection ignores Section 43’s unambiguous statement that “if the employee, by a preponderance of evidence, establishes that said action [e.g., a discharge] was based upon harmful error in the application of the appointing authority’s procedure” or “an error of law” (which could include a failure to provide the due process guaranteed in Section 1 and other sources of positive and common law), then “said action shall not be sustained [by this Commission] and the person shall be returned to his position without loss of compensation or other rights.” Any interconnected set of disciplinary actions undertaken by the Respondent, including (in an initial phase) encroachment on the Appellant’s right not to be placed on unpaid suspension without due process (in contravention of Sections 41 and 42), remains open to this Commission’s review upon the filing of a timely appeal. Nonetheless, as the Presiding Officer noted in his Tentative Decision, he was “not advising the Commission to lessen discipline due to the manner in which the Department conducted [Appellant’s] duty status hearing”; rather, he observed: “the lack of proper notice to Tpr. Rodriguez of the true concerns animating the disciplinary process created unnecessary impediments to uncovering the full truth of what occurred in the early morning hours of September 11, 2021.” Tent’v. Dec’n at 17 n.17. In other words, the Respondent’s actions in not securing a prompt statement from the Appellant and in keeping the Appellant and his counsel in the dark for months regarding management’s actual suspicions and the evidence that troubled them led almost inevitably to a delayed interrogation of the Appellant that deepened those concerns when the Appellant’s lack of precise recall—matching video evidence—made it seem he was being untruthful. Examination of the entire course of events leading to the Appellant’s discharge most definitely is not out of bounds. All this said, quite apart from this Commission’s concurrence that prejudicial application of disciplinary procedure harmed the Appellant, the Commission’s *principal* reason for ordering the Appellant’s reinstatement is that the Respondent failed to prove just cause for the Appellant’s termination.

The Respondent’s other objections to the attached Tentative Decision are likewise unpersuasive. The third objection takes issue with observations therein that Det. Lt. Blanchette had significantly enhanced the surveillance video evidence after the Appellant was first shown the relevant video footage on a small laptop screen at the October 2021 hearing immediately preceding his suspension without pay. Although the record evidence is ambiguous as to whether Det. Lt. Blanchette “deployed sophisticated video enhancement techniques” or instead more commonplace techniques accessible to lay persons, a review of the record shows that the video evidence presentations at the Appellant’s November 2022 Trial Board hearing, and then the Commission’s evidentiary hearing some six months later, were light years more sophisticated and effective than the first sharing of such evidence at the Appellant’s duty status hearing. More importantly, the record shows that the Respondent did not share with the Appellant or his attorney the centerpiece of its photographic evidence—numerous still shots of surveillance video

footage with precise time stamps and text boxes explaining key elements of the activity depicted—until some nine months after Department investigators secured the video footage in question. Again, had the Respondent been more forthcoming, it is questionable whether a discharge process ever would have become necessary.

The Respondent's fourth objection appears to be grounded in a misinterpretation of the Presiding Officer's observation in a footnote that the Respondent chose not to seek enforcement of its subpoena directed to the civilian motorist, Alex, who was the key source of allegations adverse to the Appellant's interests. In his Tentative Decision, the Presiding Officer did not draw an inference adverse to *the Respondent*. Rather, as the footnote in question clearly states, the Presiding Officer elected to give little weight to *Alex's* hearsay statements, recorded in a jailhouse interview, in part due to Alex's unavailability to be cross-examined. There is nothing remarkable or objectionable about this call.

The Respondent's fifth objection centers on pure *dicta* in the Tentative Decision to the effect that the Appellant had advanced not insignificant circumstantial evidence of inequitable discipline of troopers of color as compared to their Caucasian counterparts. The Presiding Officer, however, expressly stated: "I recommend that the Commission reserve judgment on the question of whether the Department's personnel-related actions toward Tpr. Rodriguez reflect discrimination on the basis of race or ethnicity in violation of G.L. c. 31, § 1." Tent'v. Dec'n at 47. By adopting the attached Tentative Decision, this Commission is making no finding relating to the possibility of discriminatory treatment of the Appellant (although caselaw permits it to plumb this topic, *see Alston v. Town of Brookline*, 487 Mass. 278, 293 (2021)), in view of the Commission's bottom-line conclusion that the Respondent failed to establish just cause to discharge the Appellant.

The Commission concludes that the Tentative Decision reflects thorough and careful consideration of voluminous record evidence, showing that the preponderance of credible evidence establishes both a lack of just cause for discipline exceeding a one-day unpaid suspension and harmful error in the application of disciplinary procedure. Accordingly, the decision of the Colonel of State Police to issue a dishonorable discharge to the Appellant from his position as a state trooper is hereby reversed and the Appellant's appeal under Docket No. D1-22-166 is ***allowed in part***. Except for the one-day suspension, the Appellant shall be returned to his position without loss of pay or other benefits.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on June 27, 2024.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Maurice M. Cahillane, Esq. (for Appellant)

Timothy J. Ryan, Esq. (for Appellant)

Keith A. Paquette, Esq. (for Respondent)

Joshua D. Reilly, Esq. (for Respondent)

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Appearance for Appellant:

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Presiding Officer:

Robert L. Quinan, Jr.

SUMMARY OF TENTATIVE DECISION

The Presiding Officer recommends that the full Commission order the immediate reinstatement of a state trooper unfairly accused of untruthfulness during an investigative interview that occurred approximately six months after his participation in a rather routine motorist assist incident. The Presiding Officer also recommends that (1) the Commission set aside two Trial Board findings of unprofessional performance due to an alleged failure by the trooper to “safeguard evidence” that the motorist was in lawful possession of – a small quantity (less than one ounce) of marijuana and a virtually empty bottle of beer at the time of a single-car crash being investigated by the trooper; but (2) the trooper should be suspended without pay for one day for failing to record all of the interactions he had with this motorist prior to the arrival of a tow truck summoned to remove the motorist’s disabled vehicle from the scene.

TENTATIVE DECISION

On December 1, 2022, the Appellant, Kenny Rodriguez (“Appellant” or “Tpr. Rodriguez”), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (“Commission”) contesting a decision of the Department of State Police (“Department”) three days earlier to discharge him from his position as a Trooper. On January 10, 2023, the Commission Chair held a pre-hearing conference. Subsequently, I conducted an in-person evidentiary hearing,¹ digitally recorded at the Springfield State Office Building, on April 21 and June 16, 2023.

The parties had the two evidentiary hearing audio-recordings transcribed by a Registered Professional Reporter and the transcripts were filed with the Commission as the official record of the proceeding.² With the exception of the Appellant, I asked the witnesses to sequester themselves prior to testifying. Following the close of the hearing, the parties submitted proposed decisions, in November of 2023.

FINDINGS OF FACT

The Respondent Department submitted 50 separately numbered exhibits. (“R.Ex.”). The Appellant submitted four Exhibits (“A.Ex.”). Based upon the documents admitted into evidence and the testimony of the following witnesses:

Called by the Department:

- Detective Lieutenant Michael Scott (“MS” when citing testimony);
- Detective Lieutenant Michael Blanchette (“MB” when citing testimony);

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² Volume I of the hearing transcripts, memorializing the hearing conducted on April 21, 2023, will be denoted “Tr. I”; “Tr. II” refers to the transcript of the June 16, 2023 evidentiary hearing. Should there be an appeal of this decision, the Commission will plan to include these transcript volumes as part of its certified administrative record.

Called by the Appellant:

- Kenny Rodriguez, Appellant (“KR” when citing testimony);

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies, and reasonable inferences from the evidence, a preponderance of credible evidence establishes the following facts:

1. The Department hired Tpr. Rodriguez in January of 2019. He graduated from the State Police Academy in June 2019 and assumed his first assignment as a Trooper in the Russell barracks. He then transferred to the Springfield barracks in October of 2020. Prior to September 2021, Tpr. Rodriguez never had been the subject of any disciplinary action. (Testimony of KR, Tr. II at 115-117).

Responding to a Vehicle Crash

2. On September 11, 2021, at approximately 3:17 a.m., Tpr. Rodriguez responded to a motor vehicle crash involving Alex [REDACTED]³ at the intersection of Chestnut and Liberty streets in Springfield. (R.Ex. 11 at R0054-R0055; R.Ex. 14; KR testimony, Tr. II:167). Alex had driven over a traffic island that he had not seen because he had been “riding low” in his front driver’s seat, did not have his glasses on, and had been attempting to avoid numerous construction cones, barrels, and raised structures in this intersection. As a result, his airbag had deployed and his vehicle’s axle was seriously damaged, rendering the car inoperable. (KR testimony, Tr. II: 119, 125).
3. Just prior to the crash, Tpr. Rodriguez had been on duty parked outside of the Top Shelf nightclub near the intersection of Liberty and Chestnut streets in Springfield. While parked

³ The motor vehicle operator’s last name is being redacted intentionally for privacy reasons.

at this location, Tpr. Rodriguez heard a crash about 200 meters away and quickly turned on his body worn camera. Within a minute or two, he had also activated his blue lights and parked right behind Alex's disabled vehicle on Liberty Street. (KR testimony, Tr. II:117-119; R.Ex. 31 at R0231 and R0233-235).

4. Tpr. Rodriguez's body-worn camera was first activated at 03:18:14 a.m. and deactivated at 03:20:41 a.m. (R.Ex. 14; R.Ex. 19 at R0098-99) and the video from this camera shows Tpr. Rodriguez assessing the situation. In the audio recording, Alex informed Tpr. Rodriguez that he had hit the median at the intersection of Chestnut and Liberty streets. Tpr. Rodriguez informed Alex that Springfield Police had been summoned to the scene. Alex mentioned that he did not have his glasses on while he was driving and stated that he had his seatback set low during the accident. Tpr. Rodriguez informed Alex that because there had been air bag deployment, he would have to wait for the Springfield Police to arrive. (R.Ex. 14).
5. When Tpr. Rodriguez examined Alex's vehicle, shining a flashlight into the car's interior, he noticed an empty bottle of Corona beer lying on the floor on the passenger side and a small plastic bag of loose marijuana (an "eighth", or less than an ounce in quantity—enough to roll five or six "blunts") on the console between the front seats. (R.Ex. 24 at R0185; R.Ex. 47 at R0622.) Tpr. Rodriguez determined that the amount of marijuana Alex possessed was within legal bounds in Massachusetts.⁴ (KR testimony, Tr. II: 122.)
6. Following normal procedures, Tpr. Rodriguez radioed the desk sergeant to secure a City of Springfield police officer to handle the matter further, and to arrange the towing of Alex's vehicle. (KR testimony, Tr. II: 127.)

⁴ "Massachusetts law permits [an adult] to carry up to one ounce of marijuana."
<https://masscannabiscontrol.com/know-the-laws/>

7. Tpr. Rodriguez informed Alex that he was going back to his cruiser to do paperwork and Alex could wait in his car. Tpr. Rodriguez entered his cruiser and manually deactivated his body worn camera after articulating on audio that he was doing so and “awaiting tow”. (R.Ex. 14.)
8. Before he could run Alex’s license and registration information through police and Registry databases, Alex flagged down Tpr. Rodriguez. After Alex signaled for Tpr. Rodriguez’s attention, Tpr. Rodriguez opened his car door, at first stepping only one foot outside, and then moving to the front of his cruiser, which was directly behind Alex’s disabled car—a black BMW sedan. (MB testimony Tr. II: 71-73, 82; R. Ex. 31 at R00250.) Besides Tpr. Rodriguez’s testimony, the only evidence of the next few minutes of his interactions with Alex came from surveillance video obtained from cameras mounted on nearby buildings. Either those cameras were trained principally on an adjacent parking lot and consequently only captured, in grainy footage, the lower bodies of individuals like Tpr. Rodriguez and Alex standing in the street or sidewalk, or were motion-activated, meaning that they did not film scenes continuously but only when individuals were moving about (and hence the resulting footage is jumpy and challenging for untrained eyes to interpret).⁵
9. In a verbal exchange not captured on camera, Alex asked Tpr. Rodriguez if he could have the BMW, which normally his wife drove, towed to his home. (KR testimony, Tr. II: 128.) Tpr. Rodriguez replied that he saw no problem with that, so long as he had sufficient cash on him, but that it would be up to the City of Springfield police, whose arrival he expected shortly. (*Id.*; R.Ex. 31 at R0240-R0241).

⁵ In addition, all of the video images (from either Tpr. Rodriguez’s body-worn camera or the surveillance cameras on adjacent buildings) introduced into evidence were captured between roughly 3:15 and 4 a.m. when of course outdoor light levels were particularly low.

10. Remembering the beer bottle he had spotted on the passenger floor, Tpr. Rodriguez asked Alex if he had been drinking and Alex replied in the negative. He stated that his wife had consumed and left the empty beer bottle there the day before. (R.Ex. 31 at R0242). Alex offered to take a sobriety test. (KR testimony, Tr. II: 128-129.) Tpr. Rodriguez did not deem it necessary to perform any test of Alex's sobriety. (R.Ex. 47 at R0624.)⁶
11. From the first body-worn camera video (and subsequent video evidence discussed below), I conclude that Alex did not appear to be intoxicated or under the influence of drugs. (R.Ex. 14.) Alex appeared able to speak clearly and walk straight. Tpr. Rodriguez reported that Alex did not exhibit any odor of alcohol (Tr. II: 121) and he did not slur his speech or stumble. (R.Ex. 14.)⁷
12. As the trooper and motorist were talking, Alex moved around the front of his vehicle and toward the passenger side of the disabled sedan. On surveillance video, he appears to reach inside the passenger door where Tpr. Rodriguez earlier had spotted the empty Corona bottle. After a skip in the video, Alex appears to walk back towards Tpr. Rodriguez, possibly holding a clear object in his hand. (R.Exs. 18 and 22 at R00122.) At one point in the disjointed video, he appears to be facing Tpr. Rodriguez and at another point he has turned to walk away. Seconds later, Tpr. Rodriguez walked away toward his cruiser and had his back turned to Alex when the latter appeared to place something under a traffic barrel located near the front of the disabled BMW. (R.Exs. 17 and 18)

⁶ The Appellant testified that he would have handled his encounter with Alex very differently if this motorist had told him, or given him any indication, that he had in fact recently consumed several alcoholic drinks. R.Ex. 47 at R0639. I credit this testimony.

⁷ In his June 2022 investigative report, Det. Lt. Blanchette did *not* sustain initial concerns that Alex might have been operating under the influence. He later testified there was no concrete evidence to support such a hypothesis. R.Ex. 47 at R0582.

13. Tpr. Rodriguez then walked over to the traffic island that Alex had crashed into (or driven over) to check for any property damage. Alex followed him to the island. (KR testimony, Tr. II: 131.) Video screenshots show that Alex was walking several paces behind Tpr. Rodriguez as they moved toward the traffic island. (R.Ex. 22, R00120.)
14. After a brief moment of likely interaction there (not captured by the trooper's body-worn camera), surveillance video shows Tpr. Rodriguez and Alex back in the vicinity of the disabled car. Tpr. Rodriguez then spotted a Springfield police cruiser about 100 yards away on Chestnut Street and he flagged it down, turning his body-worn camera back on as he did so. (KR testimony, Tr. II: 126.) A female Springfield patrol officer approached and advised Tpr. Rodriguez that no call had been aired seeking local police assistance to the Liberty Street accident scene. She could not assist as she was heading to a more pressing call elsewhere. (R.Ex. 15)
14. Tpr. Rodriguez decided that he needed to remain on scene until a tow truck driver arrived and, consonant with advice from superior officers in his barracks, he turned off his body-worn camera again until the tow truck's arrival, which occurred another 15 or so minutes later. (KR testimony, Tr.II: 166-167; R.Ex. 31 at R0271; R.Ex. 47 at R0650.) Several times during that interval, surveillance video shows that Alex approached Tpr. Rodriguez at his cruiser and I infer that they conversed. (R.Ex. 38 at R0343.)
15. When the tow truck finally arrived, Tpr. Rodriguez turned on his body-worn camera a third time and, using a flashlight, conducted an inventory of Alex's car, verbally noting certain items of value in the car trunk. (R.Ex. 38 at R0341)⁸ He did not look for, or mention, the Corona

⁸ Tpr. Rodriguez's third and final body-worn camera recording was activated at 03:45:41 and deactivated at 03:57:42 hours. (DE 16; DE 21, R0104-R0105).

bottle (or a water bottle that Alex is observed to be holding in some surveillance video scenes) or the small quantity of bagged marijuana since he had concluded that they were not valuable items and were not material to any investigation that theoretically could have been undertaken. (KR testimony, Tr. II: 132-133.)

16. That morning and for the next several days at least, Tpr. Rodriguez did not believe that anything unusual had transpired while he was in Alex's presence. The vehicle accident struck him as entirely mundane and not worthy of sustained attention. (KR testimony, Tr. II: 120-128.)

Wire calls and seizure of the Corona bottle

17. Later, however, during the afternoon of September 11, 2021, Detective Lieutenant Michael Scott ("Det. Lt. Scott"), was supervising a wiretap investigation at the Department's Commonwealth Interstate Narcotics Reduction Enforcement Team ("CINRET") – West location. The target was Alex, the vehicle operator whose crash Tpr. Rodriguez had responded to some 11 hours earlier that same day. (Testimony of MS, Tr. I: 43-44).
18. Tpr. Rodriguez did not know that Alex had been the subject of an ongoing State Police investigation for drug and arms trafficking or that his cell phone was then the subject of a State Police wiretap. (KR testimony, Tr. II: 142, 144, 152.)
19. Shortly after 2:00 p.m., one of the monitors asked Det. Lt. Scott to listen to a call that seemed to involve a member of the Department. (MS testimony, Tr. I:45-46).
20. Eventually CINRET agents tapped and recorded four relevant calls placed by Alex on September 11, 2021. The first began at 2:00 p.m. During that call, Alex advised a female friend that he had been in a motor vehicle accident at an intersection near the Top Shelf bar in Springfield. He stated that he did not have his glasses on and was drunk. Alex explained

that as he was taking a sharp left onto Liberty Street at a poorly-lit roadway construction site, and attempting to avoid a raised sewer head, he struck the sidewalk. A state Trooper, later identified as Tpr. Rodriguez, quickly arrived on the scene. In his telephone recounting, Alex mentioned that he had an open bottle of beer on his vehicle floor. He reported to his friend that the trooper asked him if he had been drinking, and he responded in the negative. The trooper then reportedly suggested he throw that open beer bottle away; he should put the bottle under an orange traffic cone before Springfield Police arrived.⁹ The trooper also informed Alex that he had observed “weed” (marijuana) and baggies in his car. (R.Ex. 6—Wire Call 1 recording at 0:00:00-0:02:30; R.Ex. 7 at R0035-R0036). Three additional relevant wire calls transpired between 3:14 p.m. and 8:13 p.m. During those calls, Alex described the trooper telling him to throw, take, or grab the Corona bottle from his vehicle and put it under a construction cone before Springfield Police could arrive. Alex indicated Tpr. Rodriguez also told him to “get rid of” the drugs in his vehicle. He bragged to a friend on one call that he had narcotics in his pockets but did not expressly state that Tpr. Rodriguez had been aware of this. (MS testimony, Tr. I at 57, 60-62, and 65; R.Ex. 6—Wire Call 2 recording at 00:00 to 3:20, Wire Call 3, and Wire Call 4, 1:30-2:20; R.Exs. 8-10, 12 at R0076).¹⁰

21. On September 11, 2021, at approximately 3:00 p.m., after listening to the first wire call, Det.

⁹ As explained in the *Analysis* section, I do not find the latter half of this supposed instruction and several other statements by Alex during the wiretapped calls to be reliable or worthy of credence.

¹⁰ Alex repeatedly used the N-word in all three wiretapped calls in which he was speaking in English, often in referring to Trooper Rodriguez, himself, or his friends. (R.Ex. 6) At one point, Alex refers to Tpr. Rodriguez as a “cabrón” or “Puerto Rican ass”. (R.Ex. 8 at R0039.) All four calls are replete with street slang, boasts, bluster, bravado, and in all likelihood significant exaggerations.

Lt. Scott traveled to the scene of the crash described by Alex at the intersection of Chestnut Street and Liberty streets in Springfield. Det. Lt Scott observed that the area was under construction, as the road's top layer of blacktop had been removed, in a process known as milling, and there were numerous construction barrels around that intersection. (MS testimony, Tr. I: 72-74). Det. Lt. Scott observed an orange construction barrel located in the vicinity Alex had described in a wire call. Det. Lt. Scott found a Corona beer bottle underneath an orange construction barrel, just as Alex described. The bottle still contained some alcohol residue inside. Outwardly, the bottle appeared clean and fresh, despite the area being quite dirty from the milling work. (MS testimony, Tr. I: 74-75 and 85-86).

Misconduct investigation and suspension of Tpr. Rodriguez

22. Detective Lieutenant Michael Blanchette ("Det. Lt. Blanchette") has been a member of the Department for twenty years. Before 2021, he had been detailed to the Hampden County District Attorney's Office State Police Detective Unit for sixteen years. He has been assigned to the Department's Office of Professional Integrity and Accountability since 2020. (Testimony of MB, Tr. I:138). Det. Lt. Blanchette is certified in mobile and computer forensics and is a certified forensic examiner. He underwent training in the acquisition of video surveillance systems, review of video surveillance, and video enhancement programs. (MB testimony, Tr. I: 139-140).
23. On September 15, 2021, Det. Lt. Blanchette was assigned to investigate potential misconduct by Tpr. Rodriguez regarding his body worn camera usage, or lack thereof, when responding to Alex's car crash. (MB testimony, Tr. I:140).
24. The next day, Det. Lt. Blanchette obtained permission from the Commander of the Department's Division of Standards and Training to *not* notify Tpr. Rodriguez that he had

been made the subject of an internal affairs investigation. (R.Ex. 38 at R0339.) Det. Lt. Blanchette later testified that, in effect, he suspected that Tpr. Rodriguez might be cooperating with, or turning a blind eye, to Alex's illegal possession (and perhaps distribution) of drugs and he did not want to "jeopardize the ongoing criminal investigation" that had led CINRET-West to tap Alex's phone calls by notifying Tpr. Rodriguez that he was being investigated. (R.Ex. 47 at R0563.)

25. The Department never asked Tpr. Rodriguez to submit a report regarding his interactions with Alex or whether there had been any basis for further investigation of Alex's actions or the crash (and in fact removed this trooper from duty before he could complete routine event paperwork). (KR testimony, Tr. II: 134-135; Administrative Notice)
26. On September 14, 2021, Troop B Commanding Officer Michael Habel asked the Commander of the Division of Field Services to initiate an investigation into Tpr. Rodriguez's actions in that he had "potentially violated" the Department's body-worn camera policy. (R.Ex. 5.) Two days later, a Personnel Order issued placing Tpr. Rodriguez on paid suspension status. (R.Ex. 45.)
27. Within a short while, Det. Lt. Blanchette had retrieved and analyzed the three body-worn camera recordings created by Tpr. Rodriguez within half an hour of Alex's crash. He also reviewed and analyzed surveillance video feed downloaded from cameras mounted on two adjacent buildings at Chestnut Crossing and the Springfield Community Justice Support Center ("Justice Center"), which had captured the crash and accident aftermath. (MB testimony, Tr. I: 83-84.)

Jailhouse interview of Alex

28. By the first of October 2021, Alex had been arrested for narcotics offenses and was being held for want of bail funds in the Hampden County House of Correction (a.k.a. the Ludlow Jail). (R.Ex. 24, 38.) On October 2, 2021, Det. Lt. Blanchette and Det. Lt. Eric Benson interviewed Alex in the Ludlow Jail. (MB testimony, Tr. I:218; R.Ex. 24¹¹).

29. In this interview, the Department detectives learned that, prior to September 11, Alex had never met Tpr. Rodriguez and didn't know who Tpr. Rodriguez was (R. Ex. 24 at R0144). Det. Lt. Blanchette later testified before the Trial Board regarding Alex's statement to him on October 2 that Alex "had never met [Tpr. Rodriguez] before, didn't know him in any other capacity prior to [their encounter on Sept. 11], and hadn't seen him ever since th[at] particular night." (R.Ex. 47 at R0548.)¹² Alex's initial statements to the detectives offer no basis for concluding that Tpr. Rodriguez had engaged in any unprofessional conduct. (R.Ex. 24 at R0141-144.) To the contrary, Alex stated that Tpr. Rodriguez was "a decent guy, a respectful guy." (*Id.* at R0141.) In response to repeated, suggestive, and leading questions,

¹¹ The Appellant objected to introduction of R.Ex. 24, a transcript of the detectives' jailhouse interview of Alex but I decided to admit it *de bene*. Although the Department had obtained the Commission's permission to subpoena Alex and included him on its witness list, it took no steps to enforce the subpoena its agent served when Alex did not appear on the first day of hearing. Given the hearsay nature of the interview transcript, multiple inconsistencies in what Alex told the detectives in the course of a one-hour interview (detailed below), indications in the transcript that Alex felt compelled to tell the detectives whatever they wanted to hear, and the fact that the Appellant had no opportunity to cross-examine Alex, ultimately I am giving Alex's recorded statements little weight in formulating my recommended decision.

¹² Nevertheless, Department detectives bore down on whether Alex and Tpr. Rodriguez might have had mutual acquaintances as they were both "Springfield kids". (R.Ex. 31 at R0274) Both Tpr. Rodriguez and Alex identify as Hispanics of Puerto Rican heritage. (R.Ex. 6; R.Ex. 24 at R0147; KR testimony, Tr. II: 161-62) I take administrative notice of U.S. Census data, however, showing that almost 73,000 Hispanics called Springfield home during the 2020 decennial census. https://data.census.gov/profile/Springfield_city,_Massachusetts?g=160XX00US2567000

however, Alex began to vacillate on whether Tpr. Rodriguez had acted inappropriately. (*See id.* at R0163, 190, 200, 203.)

30. As soon as the detectives asked Alex whether he left the empty beer bottle under a construction barrel, Alex claimed memory loss and expressed concern that what he disclosed to the detectives might result in additional criminal charges against him. (R.Ex. 24 and 38 at R0146 and R0349.) Eventually, Alex stated: “I’m promising you, I’m telling you everything you want to hear.” (R.Ex. 24 at R0187.)¹³ And later he essentially stated that he would readily bend the truth if it would help end his current incarceration. *Id.* at R0189-90 (and then he would go back to “living the f---ing life of the bulls--- in the streets”). In the end, however, Alex insisted that nothing other than the accident (due to his own visual impairment) had gone awry that night and he was just grateful that Tpr. Rodriguez performed quite professionally and did not display even the slightest disrespect or aggression toward him (unlike the officer who had just arrested him the day before this jailhouse interview). (*Id.* at R0160, 163-64, 202-04.)

31. Throughout the interview, the Department detectives appeared to seek confirmation of Alex’s disconcerting wiretapped boasts about Tpr. Rodriguez’s putative laxity (or worse) in his interactions with this motor vehicle operator. (*E.g.* R.Ex. 24 at R0146, 173-74, 178-79, 181) Precisely because, eventually, the Trial Board relied upon certain recorded statements by Alex in recommending Tpr. Rodriguez’s termination and dishonorable discharge (*see, e.g.*, R.Ex. 48 at R0715-716—“Evidence . . . that the operator claimed that Tpr. Rodriguez told him to dispose of the bottle . . . supports the charge of Guilty [on the unsatisfactory

¹³ Alex would not agree with the detectives’ leading suggestion, however, that Tpr. Rodriguez had turned off his body-worn camera in order to talk about disposing of the empty beer bottle. (R.Ex. 24 at R0179-180.)

performance charge]”; same re: Tpr. Rodriguez allegedly advising Alex to “get rid of” his marijuana), it is necessary for me to make further findings about the content of the detectives’ jailhouse interview of Alex.

32. The preponderance of credible evidence establishes that Alex uttered several untruthful statements during his October 2nd interview with the Department detectives:

- (a) Alex claimed that Tpr. Rodriguez told him to get rid of the Corona bottle before a Springfield officer could arrive on scene. He claimed Tpr. Rodriguez said: “You don’t want to go to jail. You got your wife, she’s pregnant.” (R.Ex. 24 at R0145.) But video evidence clearly shows that Tpr. Rodriguez’s *entire* interaction with Alex regarding the beer bottle occurred within four minutes of Tpr. Rodriguez’s arrival on scene; within sixty seconds of termination of the first recording; and, most importantly, before Tpr. Rodriguez obtained access to *any* information about Alex’s prior brushes with law enforcement. (R.Ex. 47 at R0589.) Tpr. Rodriguez would have had no reason or basis to utter any such remark about Alex going to jail. Nor could Tpr. Rodriguez possibly have known at that point in his interaction with Alex that the motorist’s wife was pregnant at the time. (*Id.* at R0645.)
- (b) Alex claimed to have consumed a considerable quantity of alcohol earlier that night, to the point of being all “f---ed up” but then later stated in the jailhouse interview that alcohol did *not* impair his driving. (R.Ex. 24 and 38 at R0149 and R0364.) Despite being explicitly advised that the detectives had no corroborating evidence of such, Alex insisted that Tpr. Rodriguez required him to undergo field sobriety tests (R0152-3, R0559). But the surveillance video (active throughout the entire 40 minutes or so the two were together) would have captured movements associated with typical sobriety tests and

no such video evidence exists, as Det. Lt. Blanchette later acknowledged. (R.Ex. 47 at R0597-98.) Indeed, Det. Lt. Blanchette later concluded that none of the video recordings “provide[d] any evidentiary value of showing physical signs of impairment” and in fact contradict Alex’s statements regarding his condition that night. (R.Ex. 38 at R0365.)

- (c) Alex claimed that he used a portable breath test (PBT) device to prove his sobriety (R0156), but the record evidence is clear that Tpr. Rodriguez did not have a PBT device with him and the devices in use by the State Police that morning do not show any use by Alex or anyone else between 3 and 4 AM. (R.Exs. 38 and 46 at R0351 and R0432.)
- (d) Alex claimed that the female Springfield police officer asked him some questions (R.Ex. 24 at R0142) but that officer’s entire interactions on the scene were recorded and she only ever spoke with Tpr. Rodriguez. (R.Exh. 15)

33. Certain other key statements Alex made to the Department detectives on October 2 either are contradicted by the September 11 wiretapped recordings or by Alex’s own statements later in the jailhouse interview. For example, Alex denied having any drugs on him at the time of the crash besides the small amount of marijuana in his car’s console¹⁴—or any alcohol besides the dry Corona bottle in his vehicle. (R.Exs. 38 and 47 at R0364 and R0556) As Det. Lt. Blanchette later testified before the Trial Board: “[Alex] was adamant that he did not have any narcotics on him or in the vehicle that particular night, which was inconsistent with what he had said during the recorded wire calls.” (*Id.* at R0596.) On several calls intercepted within hours of the crash, Alex bragged that he had a lot of narcotics on his person. (*E.g.*, R.Ex. 12 at R0074)

¹⁴ Initially, Alex denied to the detectives even possessing *any* marijuana at the accident scene. (R.Ex. 24 at R0162.) He later acknowledged having on him a marijuana blunt and enough loose marijuana to roll a few more blunts. (*Id.* at R0185.)

34. Alex told the detectives, consistent with Tpr. Rodriguez’s observations, that he only had less than an ounce of marijuana on him – enough for six blunts only. (R.Ex. 24 at R0185.) Alex was inconsistent and unclear, however, about whether anything had been stated between him and Tpr. Rodriguez regarding the small bag of marijuana in the console. (R.Ex. 47 at R0555.) In the jailhouse interview, Alex initially denied that Tpr. Rodriguez said anything to him about either the beer bottle or the marijuana (*id.* at R0557), but then contradicted himself minutes later.¹⁵ (*Id.* at R0558.)

Duty Status Hearing and Aftermath

35. Six days after the jailhouse interview, on the morning of October 8, 2021, the Department conducted a duty status hearing upon the Legal Unit’s recommendation that Tpr. Rodriguez be suspended without pay. (*See* R.Ex. 49 (audio-recording)) The Legal Unit, however, did not share any evidence the Department had gathered over the prior four weeks with either Tpr. Rodriguez or his attorney until selected pieces of evidence were divulged the afternoon before. (*Id.* at minute 2.) At the hearing itself, only short portions of two of the five available video files were shown on a computer laptop.¹⁶ (*Id.* at minutes 38, 41.) The surveillance video feed downloaded three weeks earlier was not shared with the Appellant or his counsel until the duty status hearing was about to get underway. (*Id.* at minute 49.) I find that the Appellant and his counsel had no realistic opportunity to familiarize themselves prior

¹⁵ Tpr. Rodriguez later testified under oath at the Trial Board hearing that he never said anything to Alex about the marijuana he had observed (R.Ex. 47 at R0637)—presumably because he had no basis to question possession of such a small amount.

¹⁶ The Department attorney displaying video snippets on a laptop screen conceded that the images were “difficult to see.” (R.Ex. 49 at minute 33.) A union representative present at the hearing, Trooper Matthew Kane, later testified: “I couldn’t really picture or make anything out . . . the videos are pretty grainy and the still images that were shown to us were pretty poor quality as well.” (*Id.* at minute 58.)

to this hearing with the evidence the Department relied upon to place the Appellant on an indefinite unpaid suspension.¹⁷

36. Toward the end of the hour-long duty status hearing, a second Department attorney uttered a vague two sentence statement to board members about an unidentified individual who had claimed on a wiretapped call, sometime within the past 60 days, that Tpr. Rodriguez had (possibly a year earlier) “assisted him in concealing evidence related to OUI, open container and narcotics violations.” [R.Ex. 49 (minute 49).] I find that the Appellant had no meaningful opportunity to respond—or even fully comprehend these vague allegations, especially given that the clear focus of the Department’s lawyers, throughout 95% of the duty status hearing, was on Tpr. Rodriguez’s alleged violation of the Department’s body-worn camera (BWC) policy on September 11. The duty status hearing recording clearly indicates that the Appellant’s attorney did not know, four weeks after Trooper Rodriguez’s one and only interaction with Alex, that the Department had commenced a secret internal investigation into concerns far more serious than violation of the BWC policy.

37. Six days later, Tpr. Rodriguez received formal notification from Det. Lt. Benson that he had been identified as the subject of an official personnel investigation being conducted by the Department’s Office of Professional Integrity and Accountability (OPIA). (R.Ex. 28 at R0214, 218.) This notification, however, did not go beyond advising the Appellant that he “may have violated the Massachusetts State Police Body Worn Camera policy” in the early morning hours of September 11, 2021 in Springfield. (*Id.* at R0214.) The OPIA case

¹⁷ As will become apparent in the *Analysis* section below, I am not advising the Commission to lessen discipline due to the manner in which the Department conducted this duty status hearing; rather, the lack of proper notice to Tpr. Rodriguez of the true concerns animating the disciplinary process created unnecessary impediments to uncovering the full truth of what occurred in the early morning hours of September 11, 2021.

notification letter concludes with Det. Lt. Benson's stating: "In the future, it will be necessary for me to speak with you concerning these allegations." (*Id.*)

38. The Department did not arrange for the Appellant to meet with anyone in a position of authority to discuss or defend his actions, or even to gain access to much of the key evidence that OPIA had accumulated in this matter, until February 11, 2022—a full *four months* after he had been placed on indefinite unpaid leave. (R.Exs. 29 and 47 at R0565.) The Department, for no appropriate reason discernible from the record, waited five months to share with the Appellant the wiretap recordings that were driving this whole internal affairs investigation. (R.Ex. 47 at R0566.) The Department's investigators did not engage Tpr. Rodriguez in any discussion in February about what it found troubling about the evidence it had accumulated to date. (R.Ex. 47 at R0641.) And it wasn't until the *next* month that the Appellant was invited to Department headquarters for an investigative interview.

39. On February 11, the Appellant declined an opportunity to view again the surveillance videos, thinking that he would only be shown the same poor-quality clips as had been displayed on a laptop screen four months earlier, but not realizing that OPIA's lead investigator, Det. Lt. Blanchette, had in the meantime deployed sophisticated video enhancement techniques and had watched those videos more than ten times to capture every minute detail that became visible upon zooming in. (R.Ex. 47 at R0608-609)¹⁸

Tpr. Rodriguez's March 2022 interview and statements regarding his actions immediately after he first deactivated his body worn camera on September 11, 2021.

40. On March 1, 2022, Det. Lt. Blanchette and Det. Lt. Kevin Dwyer interviewed Tpr. Rodriguez

¹⁸ Det. Lt. Blanchette is trained in forensic video analysis. (R.Ex. 47 at R0606.) He later acknowledged that an untrained individual would probably miss where relevant action was taking place in the surveillance video given the limitations of the original feed. (*Id.* at R0607.)

at Department headquarters. Tpr. Rodriguez's union attorney, Mark Russell, and union representatives Troopers Matthew Kane and David Podworksi were present. (MB testimony, Tr. I: 234; R.Ex. 30 at R0222-223; and R.Ex. 31 at R0226-R0228). Tpr. Rodriguez acknowledged his administrative rights and responsibilities, including the requirement to answer all questions truthfully during the interview. (KR testimony, Tr. II: 163-164; R.Ex. 30 at R0222-R0223).

41. Tpr. Rodriguez at first generally described the events that transpired after he deactivated his body worn camera the first time. (R.Ex. 31 at R0240-R0241). Det. Lt. Blanchette then peppered the Appellant with many highly specific questions about virtually his every movement in the five-minute timeframe between the first and second BWC recordings. In response, calling upon memories that by this point were nearly six months old, Tpr. Rodriguez recounted a set of recollections that in part were accurate (*i.e.*, true to the video evidence) and in part were inaccurate. The inaccuracies, as later identified in Det. Lt. Blanchette's June 2022 investigative report or in subsequent hearings, may fairly be summarized as follows.

42. During the March 1, 2022 interview, an OPIA investigator asked Tpr. Rodriguez if he walked to the traffic island to see the damage caused by the BMW crash. Tpr. Rodriguez responded: "Yes. Alone." After being asked to confirm, he responded: "Alone. [Alex] followed me after, after he saw me—he was in the car, I walked down there alone, yes." (R.Ex. 31 at R0246). Tpr. Rodriguez admitted, however, that he exited his cruiser without his body worn camera activated to check the damage to the island. (*Id.* at R0248). The investigator then asked Tpr. Rodriguez if he had interacted with Alex without his camera

on—*i.e.*, at Alex’s vehicle prior to checking out the damage to the island—and his response was “No, no”. (*Id.* at R0249).

43. Video surveillance demonstrates that these statements were partially inaccurate. While it is true that Alex followed Tpr. Rodriguez to the island a few steps behind, Tpr. Rodriguez clearly had been interacting with Alex at his vehicle prior to inspecting the traffic island.¹⁹ (R.Ex. 18)

44. The OPIA detectives asked Tpr. Rodriguez if, two minutes earlier, he had exited his cruiser when he had a verbal exchange with Alex about the empty beer bottle he had observed in the BMW’s passenger-side footwell. He responded: “I had the door open, I had one foot out, one foot in. I’m talking to [Alex] through ... where the A pillar is at. I’m talking to him through the crack ... I looked back and I seen Springfield PD, that’s when I turned on my body camera [the second time].²⁰ I ... closed the door and that’s when I fully get out, to flag down Springfield PD.” (R.Ex. 31 at R0245). As detailed below, video evidence belies this description of Tpr. Rodriguez’s location between the two BWC recordings.

45. Tpr. Rodriguez was asked if he saw Alex retrieve the Corona bottle at any time and responded: “No, I did see him on the passenger side” of the vehicle; and he also observed, from his vantage point in front of his cruiser, that Alex opened the car door. (R.Ex. 31 at R0250-R0251). I do not find these responses inaccurate.

¹⁹ The Chestnut Crossing surveillance video feed (exterior entrance view) between 03:23:14 and 03:23:25 hours shows Tpr. Rodriguez and Alex facing each other between the cruiser and black sedan; and Tpr. Rodriguez and Alex walking together, with Alex a few paces behind, in the direction of the traffic island. (R.Ex. 18; see also R.Ex. 22 at R0119-R0120).

²⁰ In fact, Tpr. Rodriguez’s second body worn camera was activated at 03:25:59 (a good four minutes after the beer bottle conversation) and deactivated at 03:29:13 hours. (R.Ex. 15; R.Ex. 20 at R0101-R0102).

46. The detectives then asked Tpr. Rodriguez, at least twice, if he approached Alex's vehicle while the motorist retrieved the Corona bottle and he responded: "No. The only two times I approached his vehicle, they are both on camera. It was ... the initial contact and when I inventory the car at the end...when the tow got there." (R.Ex. 31 at R0246; *see also id.* at R0251). By denying any literal "approach" to the BMW off camera, Tpr. Rodriguez clearly misspoke. But if Tpr. Rodriguez had in mind that he was being asked whether he got close enough to Alex's vehicle to peer inside, I would credit his response as accurate.
47. Tpr. Rodriguez was then asked what happened as he observed Alex around the open passenger-side car door. He responded that Alex "pretty much asked me, what do I do with the beer bottle? I told him he could recycle it, he could do whatever he wants with it. It's an empty beer bottle." (*Id.* at R0251-252). I credit the veracity of this response.
48. Next, Tpr. Rodriguez was asked if he saw Alex approach the traffic barrel and put the beer bottle underneath it and he responded: "I didn't see him put anything under it." (R.Ex. 31 at R0266). I also deem this to be a truthful response.
49. The surveillance video of the scene on the morning of Alex's crash contradicts some, but not all, of Tpr. Rodriguez's above-quoted statements to Department investigators. Those videos depict the following: Within 30 seconds of deactivation of the first BWC recording and Alex flagging down the Appellant in his cruiser, Tpr. Rodriguez is positioned near the rear passenger side of the BMW sedan, not by the driver's side of his cruiser as he originally told the OPIA investigators.
- Chestnut Crossing's surveillance video (exterior entrance view) on September 11, 2021, between 03:21:29 and 03:21:39 hours, depicts the following: Alex and Tpr. Rodriguez on the passenger's side of Alex's vehicle; Alex on the sidewalk near his

vehicle heading towards the orange construction barrel while Tpr. Rodriguez is on the passenger side of Alex's vehicle; and Alex at the orange construction barrel while Tpr. Rodriguez is by the rear passenger side of the BMW sedan. (R.Ex. 18; R.Ex. 22 at R0109-R0114; and MB testimony, Tr. I: 186-187).

- The Justice Center's video channel 13 view between 03:21:19 and 03:21:40 hours depicts the following: Alex opens and closes the passenger-side door of his vehicle while Tpr. Rodriguez stands between the rear of the BMW sedan and the front of his cruiser (just a few feet behind); Alex walks towards the Justice Center parking lot carrying a clear object that might consist of a bottle while Tpr. Rodriguez remains at the rear of the BMW; Alex walks on the sidewalk towards the construction barrel while Tpr. Rodriguez walks away from the rear of Alex's vehicle; and Alex walks up to the construction barrel tilts it, reaches down, and then places an object underneath the barrel. (R.Ex. 17; R.Ex. 23 at R0128-R0135; and MB testimony, Tr. I: 191-193).

The key finding I make here, upon repeated close observation of the video evidence, is that Tpr. Rodriguez had turned away from his view of the passenger side door and started to move toward his cruiser as Alex was approaching the construction barrel²¹ and so Tpr.

Rodriguez was not untruthful in stating that he did not see Alex deposit the empty beer bottle underneath the orange barrel.

²¹ Det. Lt. Blanchette testified before the Trial Board that it appeared to him, as well, that Tpr. Rodriguez had turned *away* from Alex's vehicle and back toward his cruiser at the same time that Alex was placing the beer bottle under a traffic barrel located toward the front of Alex's car. (R.Exh. 47 at R0529) Additionally, I note that this expert on video forensics conceded to the Trial Board that the surveillance video he had enhanced still appeared choppy. People move from one spot to another without any video images of them walking in between. (*Id.* at R0613.)

50. Nevertheless, in his case closing memorandum dated June 27, 2022, Lt. Det. Blanchette recommended sustaining the charges against Tpr. Rodriguez of unprofessional conduct, for having either “direct[ed] or allow[ed]” Alex “to remove a Corona beer bottle, which was potential evidence of a violation of [M.G.L.] Chapter 90, Section 24 (Operating under the Influence of Alcohol or Drugs)[.]” (R.Ex. 38 at R0367.) Likewise, he recommended sustaining the charge of acting unprofessionally “by either directing or allowing [Alex] to remove marijuana, which was potential evidence of [OUI], from the operator’s motor vehicle while Trooper Rodriguez was investigating a crash involving the operator[.]” (*Id.*)²² Additionally, he urged that the allegation that Tpr. Rodriguez “was untruthful relative to statements made to Departmental investigators during his subject interview” be sustained. (*Id.* at R0368.)²³

51. After issuance on June 27, 2022, of Det. Lt. Blanchette’s investigative report, the Appellant finally came into possession of most of the evidence the Department would rely upon at the Trial Board hearing.²⁴ OPIA declined the Appellant’s request, however, for a supplemental interview at which he could clear up any misstatements he had made in March.

²² Importantly, Det. Lt. Blanchette did not sustain a charge that Tpr. Rodriguez had acted unprofessionally by allowing Alex “to remove Percocets or other prescription pills” from the BMW. (R.Ex. 38 at R0368). The detective later testified that Tpr. Rodriguez lacked probable cause to frisk Alex’s person at the accident site (R.Ex. 47 at R0638) and there is no reliable evidence in this record, one way or the other, as to whether Alex actually had any pills in his pockets at the time.

²³ As will be discussed below, Det. Lt. Blanchette also recommended that the charge that Tpr. Rodriguez had violated the Department’s BWC policy be sustained. But this OPIA detective did *not* sustain any concern that Tpr. Rodriguez might not have conducted a proper traffic stop or crash investigation. (R.Ex. 38 at R0367-368; see also R.Ex. 47 at R0600.)

²⁴ During the Trial Board hearing, however, the Department’s prosecutor apologized for a failure to have shared with Appellant’s counsel color copies of photographic or video evidence (which, for example, would have revealed whether there was a golden discoloration near the bottom

Tpr. Rodriguez's subsequent testimony regarding his location after he deactivated his body-worn camera the first time.

52. On November 15, 2022, the Department held a Trial Board proceeding pursuant to Article 6 of the Department Rules and Regulations. (R.Ex. 47). Tpr. Rodriguez testified under oath at that proceeding. (*Id.* at R0447 and R0618). Tpr. Rodriguez's attorney asked if he could tell the Board what he did when Alex flagged him down after he had deactivated his body worn camera. Tpr. Rodriguez responded: "So he flagged me down. He asked me if he could get his car towed back to his residence. At that point, after seeing the [surveillance] video, **my location was wrong**, but the conversation stayed the same. So he asked me, I told him, you have to wait for Springfield PD and they can answer that question ... I did ask him if he had been drinking, and he told me no. When he told me no, I asked him about the beer bottle ... I seen on the passenger side floor ... he told me that his wife has been drinking and this is his wife's car. At some point, you know, according to the videos that I seen now—and I should have watched it thoroughly—I see where I was placed, and . . . me and him were feet apart." (R.Ex 47 at R0624-R0625) (emphases added).²⁵

53. During the Commission's evidentiary hearing, the Department's prosecutor asked Tpr. Rodriguez: "During that specific conversation [about the beer bottle], you said that you were in your cruiser, one foot in your cruiser and one foot outside of your cruiser when you had that conversation with Alex..., you said that on March 1st of 2022, correct?" Tpr. Rodriguez responded, "If that was my recollection at that time, correct, yes." Tpr. Rodriguez was then

surface of the Corona beer bottle, indicating a certain level of residual alcohol still in that bottle). (R.Ex. 47 at R0541-0544)

²⁵ Tpr. Rodriguez added: "If I would have seen the videos more thoroughly or detailed like Lieutenant Blanchette had it, my testimony [on March 1] would definitely [have been] different, but I went off of pure recollection of what I remembered that night." (*Id.* at R0626-627.)

asked, “But that is not true because you were at his car?” Tpr. Rodriguez responded, “I went into my recollection; again, that was seven months later.” (KR testimony, Tr. II: 179-181).

54. When I asked Tpr. Rodriguez: “Based on all the information now available to you today, would you say that your statement at the March 1st investigatory interview about your having your foot inside the cruiser as you were speaking to Mr. R[.] about the Corona beer bottle was accurate or not accurate?” Tpr. Rodriguez responded, “It was **not** accurate.” (KR testimony, Tr. II:182) (emphasis added).

55. I have carefully examined the transcripts of both the Trial Board proceeding and the evidentiary hearing I presided over in the spring of 2023. After scrutinizing this entire case file, I do not find any of Tpr. Rodriguez’s statements on those occasions to have been untruthful.

Tpr. Rodriguez’s failure to strictly adhere to the Department’s body-worn camera policy

56. Tpr. Rodriguez testified that he is familiar with the Department’s policy on body-worn and cruiser-mounted cameras (a document internally referred to as “ADM-35”). While testifying under cross-examination, Tpr. Rodriguez agreed that this policy requires a trooper to record contacts with civilians during any motor vehicle stop, motorist assist, or crash investigation. (KR testimony, Tr. II: 210-211).²⁶ Tpr. Rodriguez underwent an online body-worn camera training session on May 4, 2021. He started using his body-worn camera the next day, and

²⁶ “The [ADM-35] policy directs members that they shall activate the BWC in conjunction with official law enforcement duties while on regular tours of duty, overtime assignments, and paid details *where such use is appropriate for the proper performance of duties.*” (R.Ex. 38 at R0354) (emphasis added). The policy further directs troopers that once the BWC is activated, the recording should continue uninterrupted until or unless the event has *paused* or concluded. (*Id.* at R0355) (emphasis added). Where the incident or event is of such duration that continuously using the BWC will consume excessive recording time, it is acceptable to deactivate. (*Id.*; R.Ex. 31 at R0279.)

thereafter uploaded a total of 184 recordings (with his last recording having been uploaded on September 14, 2021). (R.Ex. 37 at R0330-333; MB testimony, Tr. I: 246-248). Tpr.

Rodriguez admitted he should have recorded further conversations with Alex after he initially deactivated his body-worn camera. Tpr. Rodriguez in fact candidly acknowledged (more than once while testifying) that he should have captured all of his interactions with Alex using his body-worn camera. (R.Ex. 31 at R0242, R0256; R.Ex. 47 at R0635, R0642).

57. However, other facts also must be taken into account. The Department did not arrange for Tpr. Rodriguez to attend an in-person ADM-35 training until three days *after* his interactions with Alex. (MB testimony, Tr. II: 56-57) In the several weeks before September 11, 2021, Tpr. Rodriguez had performed all of his police duties, including regular patrol, without a body-worn camera, as his BWC device was not functioning and in for repair. The Department returned his BWC device to him on September 10, 2021. (KR testimony, Tr. II: 136.)

58. Moreover, for Tpr. Rodriguez to have made an electronic note in the Daily Administrative Journal while still at the crash scene about not having recorded all of his interactions with Alex would have been virtually impossible as it is undisputed that the onboard computer (or RAMS system) in Tpr. Rodriguez's cruiser was inoperative. (R.Exs. 38 at R0346; 47 at R0639.) Finally, Tpr. Rodriguez was notified of his impending suspension on his first day back at his desk after the September 11 incident as he was preparing to complete paperwork thereon. (KR testimony, Tr. II: 134) Accordingly, he was not given a fair opportunity to come into full compliance with ADM-35.

59. I also credit evidence indicating that several Troopers who violated the BWC policy received only counseling (or, in one case, forfeited one day off). (A.Ex. 1, pages 163, 210, 329, 349.)

Charges, Trial Board, and Discipline

60. At some point during the second half of 2022, the Department formally charged the

Appellant with the following violations of Department Rules and Regulations:

- Article 5.1 - Violation of Rules for noncompliance with ADM-35 Body Worn and Cruiser Mounted Camera Policy in that Tpr. Rodriguez did not record all interactions he had with Alex during the crash investigation and aftermath, and for not documenting the circumstances and reasons for failing to record all interactions;
- Article 5.8.2 - Unsatisfactory Performance for directing or allowing Alex to remove a Corona beer bottle and marijuana from his vehicle during the crash investigation; and
- Article 5.27.2 - Truthfulness for Tpr. Rodriguez's allegedly untruthful statements made to Department investigators during the investigative interview on March 1, 2022.

(R.Ex. 4 at R0029-30; and R.Ex. 48).

61. At the conclusion of the November 15, 2022, Department Trial Board disciplinary proceeding pursuant to G.L. c. 22C, § 13, the Trial Board found Tpr. Rodriguez "Guilty" of all charges and recommended that he be terminated. (R.Ex. 48).

62. The Colonel of State Police, the head of the Department, terminated Tpr. Rodriguez upon issuing him a dishonorable discharge on November 28, 2022. (R.Ex. 48).

63. Although other troopers have been terminated for being untruthful, some found guilty of untruthfulness have been permitted to resign or retire in lieu of being terminated and others have been issued less than terminal discipline. (A. Ex. 1.)

APPLICABLE LAW

The civil service law provision most applicable here—G.L. c. 31, § 43—provides:

"If the commission by a preponderance of the evidence determines that there was just cause for an action taken against [a tenured trooper aggrieved by a finding of a

Trial Board per G.L. c. 22C, § 13(a)] ... it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of the evidence establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

The Commission determines just cause for discipline by inquiring whether the employee has been guilty of "*substantial* misconduct which adversely affects the public interest by impairing the efficiency of public service." *Doherty v. Civil Serv. Comm'n*, 486 Mass. 487, 493 (2020) (state trooper disciplinary appeal) (emphasis in original). *See also School Comm. v. Civil Service Comm'n*, 43 Mass. App. Ct. 486, 488 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983).

The appointing authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." *Tucker v. Pearlstein*, 334 Mass. 33, 35-36 (1956).

Under section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." *Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823 (2006) and cases cited. However, "[t]he commission's task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly... Here the commission does not act without regard to the previous decision of the [appointing authority—here, the Trial Board and Colonel of State Police], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the

commission to have existed when the appointing authority made its decision.” *Id.* at 823-824 (quoting internally from *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983)).

By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. “Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” *Police Commissioner of Boston v. Civil Service Commission*, 22 Mass. App. Ct. 364, 371 (1986). “[H]igh standards of ... truthfulness for police officers ... are critical to the proper functioning of the police force.” *Town of Falmouth v. Civ. Serv. Comm’n*, 61 Mass. App. Ct. 796, 801 (2004).

The Commission has also consistently held, however, that labeling a police officer as untruthful can be an inherently subjective determination that should be made only after a thorough, serious, and well-informed review that is mindful of the likely career-ending consequences that flow from such a conclusion. *E.g.*, *Kerr v. Boston Police Dep’t*, 31 MCSR 35 (2018), *citing Morley v. Boston Police Department*, 29 MCSR 456 (2016).

On December 31, 2020, the Massachusetts legislature passed An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth (“police reform bill”) to “provide justice, equity, and *accountability* in law enforcement ... necessary for the immediate preservation of the public safety.” 2020 Mass. Acts 253 (emphasis added). The Act sets forth provisions on officer untruthfulness, including the requirement that a new state Division of Police Standards maintain a database containing information related to an officer’s untruthfulness. *Id.* and G.L. c. 6E, § 8(e). Further, in a provision that greatly raises the stakes in any untruthfulness inquiry, the Act requires automatic officer decertification if terminated by the appointing authority

based on “intentional conduct performed under the color of office to ... create or use falsified evidence, including false testimony or destroying evidence to create a false impression.” *Id.* and G.L. c. 6E, § 10(a).

Separately, the Supreme Judicial Court has repeatedly “held that public policy supports terminating police officers for lying.” *City of Pittsfield v. Loc. 447 Int’l Bhd. Of Police Officers*, 480 Mass. 634, 640 (2018). *See also Diaz v. City of Somerville*, 2019 WL 2083385, at *9- *10 (Civ. Serv. Comm’n) (citing cases, including *LaChance v. Erickson*, 522 U.S. 262, 268 (1998), for the propositions that lying in a disciplinary investigation alone is ground for termination and the discharges of police officers based upon their dishonesty often will be upheld by the Commission).

There is a “public interest in maintaining public trust and confidence in the integrity of law enforcement, and that such public trust would be eroded if police officers are permitted to maintain their employment in the face of demonstrated dishonesty.” *Town of Belmont v. Doe*, 101 Mass. App. Ct. 1122 (2022 rule 23.0 decision) (citation omitted).

ANALYSIS

The Department conducted a commendably thorough (albeit ultimately fruitless) forensic investigation into the charges pending against Tpr. Rodriguez. Regrettably, the Respondent did not devote commensurate attention to the Appellant's due process rights. Not only is the evidence of potential misconduct insufficiently credible or strong but the Department's "application of . . . procedure" (i.e., how it prosecuted this matter) caused grievously "harmful error"—to Tpr. Rodriguez's serious detriment, clearly warranting the relief called for in section 43 of G.L. c. 31.

A. The Disappearance of a Mostly Dry Beer Bottle and Marijuana Blunts from Alex's Vehicle Does Not Suffice to Sustain Discipline Against Tpr. Rodriguez.

Two of the Class "A" violation charges that led the Trial Board to recommend termination of the Appellant's employment asserted that Tpr. Rodriguez "failed to take appropriate action on the occasion of a crime or other condition deserving State Police attention" in that he "directed or allowed the operator of a motor vehicle to remove a Corona beer bottle"—and "marijuana"—from an "operator's motor vehicle while [he] was investigating a crash involving the operator." (R.Ex. 4 at R0029-30.) As my findings above indicate, the preponderance of credible evidence does not support these charges—or, indeed, any violation of the cited MSP Rules and Regulations on professionalism (Article 5.8).²⁷

First, as will be discussed further below, no crime that Tpr. Rodriguez had reason to know of occurred while he was on patrol the morning of September 11, 2021. Second, safeguarding (or seizing as "evidence") an essentially empty beer bottle or a small quantity of

²⁷ As relevant here, Art. 5.8, entitled "Unsatisfactory Performance," authorizes discipline for "the failure to conform to work standards established for the member's rank, title, or position; [or] the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving State Police attention[.]" R.Ex. 1 at R0003.

marijuana could not be deemed a necessary, or even appropriate, action in the context of the “condition” meriting this trooper’s attention (an ordinary, readily explained, single-car crash). Third, I do not find that Tpr. Rodriguez “directed” Alex to remove the bottle or the marijuana from his car. Fourth, to the extent that Tpr. Rodriguez condoned their disposal, I find that he did not expect to see—and did not personally observe—either item’s immediate removal following his remark that Alex could get rid of, or recycle, the empty bottle. Even if Tpr. Rodriguez encouraged Alex to get rid of the bottle (or remove the marijuana from view²⁸) before the possible arrival of another police officer (a finding that I do not make on the basis of a wholly unreliable witness’s hearsay statement), such a misguided call, while perhaps meriting counseling or mild discipline, would not warrant the termination of a trooper’s employment.

Tpr. Rodriguez concluded, after appropriately assessing the situation, that the discarded bottle simply was not relevant to the scope of his traffic accident investigation. The video evidence and Tpr. Rodriguez’s sworn testimony (which I deem truthful) firmly establish that Alex was not impaired by either alcohol or drugs at the time he accidentally ran over a small traffic island in the middle of a poorly-lit, major road construction site. The video and audio recordings show that there was nothing amiss with Alex’s speech, his ability to walk, react, or comprehend instructions. He emitted no odor of alcohol and maintained sharp eye contact. The evidence further establishes that Tpr. Rodriguez had reasonable grounds to believe that Alex’s wife, not Alex, had consumed the contents of that beer bottle many hours earlier.

²⁸ To be clear, I credit Tpr. Rodriguez’s testimony that he said *nothing* to Alex regarding the marijuana he observed. In light of Alex’s frank admission to Department detectives that he lived the life of a “bullsh—er” and described himself as “a criminal” (R.Ex. 24 at R0205), in addition to the number of times he lied, misremembered, or contradicted himself during the jailhouse interview, the fact that he was recorded bragging to friends and associates (who themselves appear to be involved in the drug trade) that a trooper told him to “grab” his “weed” carries no weight with me at all.

The bottle certainly was not evidence of a crime and nor did its presence in the car warrant a citation.²⁹ The Department has presented no evidence that the quantity of marijuana in Alex's possession exceeded one ounce and so his pocketing of the marijuana should be considered no more remarkable than the removal of a pack of cigarettes.³⁰

Finally, OPIA itself did not sustain an earlier charge that Tpr. Rodriguez failed to take enforcement action against Alex for violating the law against operating under the influence of alcohol or drugs. (R.Ex. 31 at R0368) The "unsatisfactory performance" convictions must be overturned.

B. Tpr. Rodriguez Is Not Guilty of Untruthfulness.

Setting aside Tpr. Rodriguez's failure to comply with the newly introduced body-worn camera policy (discussed further below), the Department also acted following release of OPIA's

²⁹ Any argument that Alex stood in violation of the open container law would rest on shaky ground. The relevant statute states: "Whoever, upon any [public] way . . . possesses an open container of alcoholic beverage in the passenger area of any motor vehicle shall be punished by a fine of not less than \$100 nor more than \$500." G.L. c. 90, § 24I. The alcohol residue left in the Corona bottle was so scant as to preclude any legitimate citation. (R.Ex. 13 at R0086.) One of the detectives interviewing Alex in jail conceded that the empty beer bottle was "essentially a piece of trash . . . a recyclable . . . [and] not necessarily a piece of evidence[.]" (R.Ex. 24 at R0177-78.) In any event, as this detective acknowledged, police officers have discretion not to ticket when it comes to violations of this nature. (*Id.* at R0171)

³⁰ As noted above, the Trial Board relied exclusively on Alex's hearsay statements (bragging to friends on intercepted calls) in finding both unprofessional and worthy of discharge the passive manner in which Tpr. Rodriguez reacted to spotting marijuana in Alex's car. Alex's reason for boasting about (and exaggerating) what had happened immediately after the crash clearly was expressed during his jailhouse interview. R0560 (he got excited about his "f—ing good luck" in encountering a trooper who did not hassle him over the small amount of marijuana in his possession or the empty beer bottle in the car's interior). Alex clearly believed that at a minimum he could have been issued an open container violation citation. It is also entirely possible that, despite his adamant denials during the jailhouse interview, Alex in fact had (or immediately after the crash secreted) in his basketball shorts pockets a cache of illicit Percocet pills, unbeknownst to Tpr. Rodriguez. Because Tpr. Rodriguez almost certainly lacked probable cause to search Alex's person, if Alex did "get away with something," it would have been no reflection on Tpr. Rodriguez's performance. Probably due in part to Alex's boasts, however, within three weeks he had been arrested on narcotics offenses.

investigative report in late June 2022—without any basis to otherwise implicate Tpr. Rodriguez in any wrongdoing—to introduce a charge that he “was untruthful with statements made to Departmental investigators during an investigative interview” held on March 1, 2022. This charge must be assessed against the backdrop of the Department’s shortcomings in affording Tpr. Rodriguez due process in the preceding months.

As the findings of fact above outline, the Department’s lead investigator obtained approval in mid-September 2021 from the Commanding Officer of the Division of Standards and Training (which houses OPIA), Lt. Col. John Pinkham, immediately after the Department suspended Tpr. Rodriguez with pay for a possible body-worn camera violation, to not notify Tpr. Rodriguez that he had been made the subject of a much more serious internal affairs investigation intersecting with an ongoing undercover criminal investigation into drug trafficking activities.³¹

By the time the Department convened a duty status hearing on October 8, 2021, for the purpose of potentially suspending Tpr. Rodriguez indefinitely *without* pay, Department investigators had interviewed Alex at length and learned some key facts: (1) Alex and Tpr. Rodriguez were strangers to one another and apparently did not have any mutual acquaintances; (2) no proof existed that Alex had been unlawfully in possession of any illicit drugs the morning

³¹ During the evidentiary proceeding I presided over in June of 2023, Tpr. Rodriguez testified that at some point prior to either his Duty Status or Trial Board hearing his union attorney, Daniel Moynihan, reported to him that Lt. Col. Pinkham had expressly told attorney Moynihan that he suspected Tpr. Rodriguez “was in cahoots with [Alex]” and “part of a mob ring”. (KR testimony, Tr. II: 160-161.) Neither party summoned either principal to this conversation to serve as a witness at the Commission hearing and it is unclear to me exactly when this reported conversation had taken place. Nonetheless, I credit this testimony for the limited purpose of confirming what other evidence establishes: Department investigators and management initially suspected Tpr. Rodriguez, based on the wiretap recordings of Alex’s four phone calls on September 11, of possibly being a “dirty cop,” more interested in enabling unlawful activity than in strictly enforcing the law. (*See, e.g.*, R.Ex. 24 at R0188)

of September 11; (3) Alex had not consumed the beer once contained in the virtually empty Corona bottle observed on the passenger floor of his sedan; (4) a combination of Alex's serious visual impairment³² and poor road conditions readily explained why Alex's car had become disabled; and (5) Alex maintained (despite insistent questioning) that Tpr. Rodriguez had acted very professionally in their encounter. Nonetheless, Department lawyers chose not to acknowledge any of these facts at the duty status hearing or to share with the Appellant and his counsel key pieces of evidence (most prominently, the wiretapped phone recordings) that were leading Department prosecutors to recommend Tpr. Rodriguez's indefinite suspension without pay.

The only substantive exhibits introduced at the October 8 hearing were a copy of the body-worn camera policy, ADM-35; the three BWC recordings created by Tpr. Rodriguez on September 11, 2021; and video feed taken from adjacent Chestnut Towers and Springfield Justice Center building surveillance cameras. The major focus of the prosecutors' presentation involved video clips showing that there had likely been several interactions between Alex and Tpr. Rodriguez that were not captured on the trooper's body-worn camera recordings. One Department attorney drew board members' attention to "very difficult to see . . . [only through] shadows and feet walking" video of an "individual . . . approaching a barrel [and] something is placed under the barrel." (R.Ex. 49 at minute 44.) At the end of their presentation, a second Department attorney advises board members that "within the last 60 days an individual was intercepted on a court-authorized wiretap" stating that he had been involved in a motor vehicle

³² Alex advised the detectives that he had not been wearing his glasses at the time of the crash and was legally blind without them. (R.Ex. 24 at R0160) Tpr. Rodriguez's first body-worn camera recording also captured Alex's excited utterance to the trooper two or three minutes after the accident: "I couldn't f---g see". (R.Ex. 14)

crash in Springfield “in the early morning hours of September 11, **2020** [sic].” (*Id.* at minute 49.) This unidentified motorist alleged that a trooper had “assisted him in concealing evidence related to operating under the influence, open container, and narcotics violations” and had “allowed him to conceal an open container of alcohol under a barrel at the scene of the crash.” (*Id.*)

Although mainly prepared to respond to the extensive video evidence (which had been shared with him only the afternoon before) and—of course—the only stated charge (possible BWC policy violation), the Appellant’s attorney did pick up on the prosecutor’s reference to other non-video (*i.e.*, wiretap recording) evidence. He stated: “[T]here was another allegation made regarding an audio recording, apparently of the individual that was at that stop. All I really can speak to on that is that Trooper Rodriguez doesn’t know that individual, never met him before in his life. And I think the best I can do for Trooper Rodriguez is getting all of this evidence that they [the prosecutors] have, review it, and advise him accordingly. But . . . we don’t have anything in front of us . . . there’s not an investigation occurring.” (*Id.* at minute 55.) Indeed, it wasn’t until six days later (more than a month after his interactions with Alex) that the Appellant learned that, in fact, he *had* been identified as “the **Subject** of an official personnel investigation.” (R.Ex. 28 at R0214, emphasis in original.) Even that notification, however, referred only to an allegation that “you may have violated the Massachusetts State Police Body Worn Camera policy.” (*Id.*)

Quite disturbingly, the Department did not share with the Appellant or his counsel copies of the wiretap recordings (in Respondent’s possession since September 11) until February 11, 2022, *five whole months* after the incident giving rise to discipline (and four months after the

Appellant's counsel requested access).³³ Tpr. Rodriguez testified before the Trial Board that he was shocked to learn, after listening to the phone call recordings for the first time on February 11, that Alex had claimed to others that he had *directed* Alex to get rid of the Corona bottle and Alex's marijuana blunts before a city police officer could arrive on the scene. (R.Ex. 47 at R0633.) I fully credit the Appellant's testimony as it is buttressed by contemporaneous texts exchanged between Tpr. Rodriguez and a union representative, Tpr. Matt Kane (admitted as Appellant's Exhibit 4).³⁴ Whether by deliberate design or not, the Department kept the Appellant in the dark for months about matters greatly jeopardizing his career. Surprisingly, Tpr. Rodriguez was never even asked, at any point from September 11 forward, to submit a written report regarding the motor vehicle crash he had attended to, which would have been standard practice in any police department.

Thus, going blind into the March 1 interview with Det. Lt. Blanchette, the Appellant was not prepared to be grilled on the minutiae of his movements during what he had, for weeks if not months, quite reasonably viewed as an uneventful, routine "motor assist" incident. Based on

³³ On March 1, 2022, Det. Lt. Blanchette acknowledged that it was indeed the four wiretapped calls "that prompted this internal investigation." (R.Ex. 31 at R0229)

³⁴ The Appellant had been advised in mid-October by an OPIA detective that he would be interviewed about the subject matter of the internal investigation in the near future. (R.Ex. 28) Trooper Kane texted Tpr. Rodriguez on February 3, 2022: "Bad news. . . . [B]ecause MSP f---ed up dates[,] interview is getting pushed back again[,] working on rescheduling it to 2/11. There's tapes of wire tap we need to listen to[,] not just the videos they showed us before. From what I can gather the questions are gunna be geared towards why BWC was stopped and no enforcement action taken. I think those are both easily answered." (A.Ex. 4) Tpr. Rodriguez responded: "Enforcement actions as in?" His union advisor replied: "Open container ticket is the only thing I can think of." After another exchange about the rescheduling of the meeting to gain access to the wiretap recordings and subsequent interview, Tpr. Rodriguez queried: "And was I supposed to smell the container as in he just finish[ed] drinking it[?] How about if he was recycling it. Idk [I don't know]. But I understand and thanks . . . Anything I should prepare myself with?" Tpr. Kane responded: "Not right now, we'll know more after we listen to tapes. We saw all videos as far as I know." (*Id.*)

surveillance video (which Tpr. Rodriguez had not viewed again because what he had seen in October was of such poor quality), it is apparent that the Appellant did answer inaccurately questions about when he exited his cruiser and where precisely he was standing during certain moments of the interaction he had with Alex. He did respond accurately that he had been interacting with this motorist at various times without his body-worn camera engaged, at his cruiser's front fender, and in the space between his cruiser and the disabled vehicle, and that later (he "[d]idn't recall exactly when") he walked on his own to the traffic island that, when hit, had caused airbag deployment. (R.Ex. 31 at R0249, 251, 261.) Det. Lt. Blanchette then asked Tpr. Rodriguez, three separate times, what amounted to a trick question: Had he "approach[ed]" the BMW while Alex retrieved the Corona bottle from inside the car? (Id. at R0246, 250, 266.) The Appellant maintains, and I believe him, that he did *not* observe Alex removing the beer bottle from his car. He also stated that he was by his cruiser door when he saw Alex opening the BMW's passenger door. Surveillance video reveals that in fact Tpr. Rodriguez was standing near the right rear corner of the BMW as the passenger door opened – but also that he had turned *away* from that door by the time Alex approached the construction barrel where the bottle was found later that day.

The Appellant's few inaccurate responses while being interrogated do not amount to proof of untruthfulness, in the context of this case, for at least one major reason. "Memory decay is the natural propensity of recorded knowledge or information to dissipate as time passes." Justin S. Teff, "Human Memory is Far More Fallible and Malleable Than Most Recognize," 76 N.Y. St. Bar J. 38, 38 (2004) (*"Human Memory is Fallible"*). "The decay effect is . . . correlated to the significance or salience of the original perception or sense impression. . . . [E]ven when a complex event is deeply engraved, people still tend to recall only the most significant structural

themes and elements, whereas the particular inconsequential details lapse, perhaps later to be replaced by imagination and generalization.” *Id.* at 39. Moreover, upon recalling a particular scene, it is very natural for one’s thoughts to bend, quite unconsciously, in an advantageous direction. *Id.* at 39-40. Much psychological research shows that interview by interrogatory decreases the accuracy of recall and, moreover, the content or wording of a question can drastically diminish accuracy. *Id.* at 41. “Misinformation in testimony . . . often results from entirely natural unconscious cognitive mistakes.” Justin Teff, “Distinguishing Intended Deception from Unconscious Inaccuracy,” 76 N.Y. St. Bar J. 42, 42 (2004). It is entirely unreasonable to expect a witness to be able to recreate, with the level of accuracy that a video can furnish, the details of a past event. *Id.* at 43-44. Recall errors, “whether they arise from a lapse in perception, attention or decaying memory, are seldom realized quite as such. Instead, . . . the details one does not perceive or recall precisely are often unwittingly fabricated in accordance with one’s psychic constitution and purpose[.]” *Id.* at 45. “[I]f the truest inner motivations for a person’s perceptions and recollections are unknown even to that person, he or she can hardly be deemed deceitful for failure to disclose.” *Human Memory is Fallible*, 76 N.Y. St. Bar J. at 41.

What matters to me is that Tpr. Rodriguez honestly and forthrightly admitted during his investigative interview, at the Trial Board hearing, and before me that he “should have never turned off [his] camera.” (R.Ex. 31 at R0256; *see also* R.Ex. 47 at R0675.) He candidly conceded at the Trial Board hearing and again before me that he had misstated his location at points during the investigative interview. But Tpr. Rodriguez did not have the benefit of all the significant enhancements Det. Lt. Blanchette made to the video evidence before being asked in March about what it showed. The manner in which only portions of the choppy video footage

were displayed to him in a crude fashion (*i.e.*, very poor quality video shot from a great distance—“never zoomed in”—on a laptop screen) during the October duty status hearing did not equip the Appellant at all to improve his recollection of events many months later.³⁵ (R.Ex. 47 at R0627-629.)

Nothing in this decision should be read as detracting from the long line of cases holding that *lying*, or *proven* conscious dishonesty, warrants the dismissal of a police officer. I view this case as readily distinguishable from others in which the Commission has upheld the termination of a police officer fired due to false statements uttered during an investigation. *See, e.g., Diaz v. City of Somerville*, 32 MCSR 156 (2019) (officer’s false statement, dealing as it did with core issue of use of force upon civilian, and not minor details of interaction, “cannot be attributed to an innocent lapse of memory”); *Mozeleski v. Chicopee*, 21 MCSR 676 (2008) (lying to cover-up inappropriate conduct during a late-night traffic stop)³⁶; *Meaney v. City of Woburn*, 18 MCSR

³⁵ When questioned before the Trial Board in the fall of 2022, Lt. Det. Blanchette could not remember how often he had posed questions to Tpr. Rodriguez in March of that year about the number of times this trooper had exited his cruiser while investigating the crash involving Alex. (R.Ex. 47 at R0603) If Det. Lt. Blanchette could not recall how many times he asked Tpr. Rodriguez “how many times he exited the cruiser” in an interview several months earlier, how should he have expected that the Appellant would have recalled with precision six months after the fact how often he approached the disabled sedan? Det. Lt. Blanchette had access to, and was quite familiar with, the transcript of his investigative interview of the Appellant before being questioned during the Trial Board. Likewise, Tpr. Rodriguez had access to surveillance video showing his movements on September 11. The point, though, is that how many times or when Tpr. Rodriguez exited his cruiser and where he was standing at particular moments in time are not details that, if reported inaccurately months later, could properly sustain an untruthfulness charge.

³⁶ Although *Mozeleski* similarly started off with a police officer - civilian interaction in the wee hours of the morning, I distinguish the case before me from *Mozeleski* principally for three reasons: (1) Officer Mozeleski’s superior first asked him about his questionable actions within three weeks of their occurrence and he was then required to submit a formal written report, plus a follow-up report less than a month after the incidents for which he was disciplined; (2) What Ofcr. Mozeleski omitted from his report (that he had telephoned and left a voicemail for a

129 (2005) (litigious police officer with significant prior discipline terminated *inter alia* for giving false, evasive, or misleading testimony, answers, and statements in official report and during investigative interview).³⁷ In a leading case in which this Commission articulated the importance of a police officer's obligation to be truthful—*Gonsalves v. Falmouth*, 25 MCSR 231 (2012)³⁸—the Commission's hearing officer firmly declared that the Appellant officer simply

motorist he had stopped in an effort to arrange a sexual tryst) is something that very few people would ever forget in that time span; and (3) While Ofcr. Mozeleski eventually came clean about certain aspects of his misconduct that he had initially misreported, the Commission concluded that he continued to knowingly misrepresent a certain crucial matter.

³⁷ The facts in *Meaney* were quite different from this case. Early one morning, the recently departed Mayor of Woburn discovered in his driveway a dingy toilet with derogatory graffiti (featuring appellant Meaney's name) on it, adorned with flowers, and stuffed with a copy of a non-public, internal Woburn Police incident report (itself defaced with derisive remarks) regarding one of his relatives. After initial investigation cast further suspicion on Meaney, internal affairs interviewed him within about a month of this incident and he was ordered to submit a report, which he promptly did. Meaney denied all knowledge or memory of suspicious circumstances. Then his thumb fingerprint was discovered on the non-public, paper-copy report stuffed into the toilet left at the former Mayor's house. Despite being confronted with this forensic evidence, Meaney continued to deny any involvement. Testifying before this Commission after his discharge, Meaney for the first time made several damaging admissions contrary to what he had previously reported during the investigation. The Commission decision concluded that "the evidence adduced during the CSC hearing . . . credibly support the overall finding that Meaney engaged in obfuscation of the Internal Affairs investigation by willingly withholding information as well as creating an irrational and unbelievable scenario whereby his sister-in-law claimed full responsibility and he should have been fully exonerated." 18 MCSR at 134. The CSC hearing officer added: "Meaney's testimony was evasive at times and his demeanor was somewhat agitated when asked probing questions or when it was clear his answers were contradictory to others' testimony[.] Under cross examination, he would answer questions with questions in order to 'size up' or dissect the questions to accommodate his answer. This led this hearing officer to make an inference that Meaney's story was so prefabricated that his answers had to 'fit' regardless of what questions he faced." *Id.* at 133. More need not be stated about why the *Meaney* disposition diverges markedly from my recommendation in this case.

³⁸ The Superior Court affirmed the Commission's *Gonsalves* decision under the name *Gonsalves v. Civil Service Commission and Town of Falmouth*, Suffolk Superior Court, C.A. No. 12-2655G (2014).

was not a credible witness.³⁹ Obviously, I have reached a very different conclusion with respect to Tpr. Rodriguez's veracity.⁴⁰

This Commission has repeatedly cautioned that accusations of untruthfulness must be analyzed with care: “[S]ubjective hair-splitting cannot be the basis for the serious charge of untruthfulness, nor can the inability . . . to remember every specific detail of a tumultuous event.” *Grasso v. Town of Agawam*, 30 MCSR 347, 369 (2017). “The serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness require that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings.” *D’Esposito v. City of Malden*, 36 MCSR 368 (2023). See also *Luis v. Town of Dartmouth*, 34 MCSR 335 (2021); *Hall v. Town of Brookline*, 33 MCSR 164 (2020) (context in which statement made can be crucial in assessing truthfulness).

Tpr. Rodriguez's relatively minor inaccurate statements during his investigative interview were as much the product of the Department's failure to afford him proper due process⁴¹ as they

³⁹ “His testimony on nearly every core issue was equivocal, unresponsive and inconsistent.” *Gonsalves, supra*, at 238 (specifying numerous examples). “He left a trail of evasive, incredible and inconsistent statements that began on [the date of an incident giving rise to discipline] with his original denial to [a fellow] Officer [and it then] continued through the [internal affairs] investigation and was on display during his two days of testimony at the hearing before the Commission.” *Id.* at 239.

⁴⁰ It is the purview of the hearing officer to determine the credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [Commission] upon which a court conducting judicial review treads with great reluctance.” *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 729 (2003).

⁴¹ Recall that Tpr. Rodriguez was suspended indefinitely without pay on October 8, 2021, within hours of the Department *beginning* to share relevant evidence with him and minutes after airing the first vague accusation that he had concealed evidence pertinent to a possible criminal prosecution. Due process requires adequate notice and a meaningful opportunity to be heard *before* a suspension without pay results in more than minimal economic harm to a tenured police officer. *Hall-Brewster v. Boston Police Dep’t*, 96 Mass. App. Ct. 12, 20-21 (2019), citing

were a function of his fallible memory. *Cf. Grasso, et al. v. Town of Agawam*, 30 MCSR 347 (2017) (“statements . . . made weeks after the incident had occurred . . . could cause any individual to forget some details or remember them in an improper sequence”). Particularly in this era of possible decertification for untruthfulness, tenured police officers must not be branded dishonest based on misunderstandings, unfair process, or inadvertent errors. *Marchionda v. Boston Police Dep’t*, 32 MCSR 303, 308 (2019); *Owens v. Boston Police Dep’t*, 31 MCSR 14, 17 (2018).

In short, the Department committed a grave error by issuing Tpr. Rodriguez a dishonorable discharge based on unfair procedure and flimsy assertions of untruthfulness.

C. Trooper Rodriguez Did Violate the Department’s Body-Worn Camera Policy.

Throughout significant portions of his encounter with Alex, Tpr. Rodriguez violated the body-worn camera policy by failing to record all interactions with this motorist. Department policy states: “Every member is required to record contact with civilians, regardless of the number of BWC members present and recording, in the following occurrences: [v]ehicle stops, motorist

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985). To comport with the law, Tpr. Rodriguez should have been given “notice of *all* of the charges against him and the possible consequences of the charges.” *Hall-Brewster*, 96 Mass. App. at 23, citing *Cotnoir v. Univ. of Me. Sys.*, 35 F.3d 6, 11 (1st Cir. 1994) (emphasis supplied). “The employee must receive . . . ‘an explanation of the employer’s evidence, and an opportunity to provide his side of the story.’” *Hall-Brewster, ibid.*, quoting *Loudermill*, 470 U.S. at 546, and further citing to *Williams v. Seattle*, 607 F. Supp. 714, 721 (W.D. Wash. 1985). Key evidence the Department relied upon to defend its termination decision before the Commission (R.Exs. 22 and 23 – carefully annotated and enlarged screenshots showing details of Tpr. Rodriguez’s interactions with Alex) were not shared with the Appellant or his attorney until release of the final OPIA investigative report at the end of June 2022, several months after the March 1, 2022 investigative interview. (R.Exh. 47 at R0670) The only opportunity the Appellant had to tell his side of the story after receipt of all the evidence the Department used to prosecute him was at a Trial Board hearing conducted more than 14 months after the incident giving rise to investigation. (*Id.* at R0470 and R0508) Even then, certain evidence the Department used at the Trial Board had not previously been shared with the Appellant’s attorney. (*Id.* at R0541-0544)

assists, and crash investigations.” ADM-35 (R.Ex. 35). There are only limited circumstances in which a trooper may shut off their body-worn camera and the Liberty Street crash scenario involving Alex did not fall within any of those exemptions. To comply with Department policy, Tpr. Rodriguez should have kept his body-worn camera activated during all interactions with Alex. Instead, Tpr. Rodriguez shut off his body-worn camera for an extended period where contemporaneous surveillance footage demonstrates he was interacting with Alex. The Appellant’s testimony at both the Trial Board and Civil Service Commission also confirmed that he interacted significantly with Alex after he deactivated his body-worn camera, in direct violation of policy.

Any assertion that Tpr. Rodriguez’s investigation was complete after his body-worn camera was deactivated the first time is not supported by the evidence. While waiting for Springfield Police to arrive on scene, Tpr. Rodriguez continued to investigate the crash, including questioning Alex about the beer bottle observed in his car and walking to the traffic island to assess the damage with Alex in tow. By Tpr. Rodriguez’s own admission, these interactions with Alex were not recorded via his body-worn camera in violation of policy.

The Department implemented the use of body-worn cameras to “[e]nhance police transparency; [i]ncrease public trust; and [h]elp foster police-community relations through public facing recording.” (R.Exs. 32, 34-35). The recordings are indeed “an effective tool to preserve member and civilian interactions.” *Id.*

The two essential purposes of the body-worn camera program—namely, the fostering of public trust and the preservation of evidence of encounters between troopers and members of the public—mitigate in favor of at least a short suspension when a Trooper admits to violating ADM-35.

An important role of the Commission is to ensure “the principle of uniformity and the equitable treatment of similarly situated individuals ... as well as the underlying purpose of the civil service system to guard against political considerations, favoritism and bias in governmental employment decisions.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 824 (2006) (internal quotation marks and citation omitted). The Legislature has granted the Commission explicit statutory authority “to temper, balance and amend” discipline meted out by the head of a policing agency. *Police Comm’r v. Civil Serv. Comm’n*, 39 Mass. App. Ct. 594, 600 (1995). The Commission’s “power to modify penalties permits the furtherance of uniformity and the equitable treatment of similarly situated individuals.” *Id.* The burden is on the Appellant, however, to “identify other employees to whom he is similarly situated in terms of performance, qualifications and conduct ‘without such differentiating or mitigating circumstances that would distinguish their situations.’” *Matthews v. Ocean Spray Cranberries, Inc.*, 426 Mass. 122, 130 (1997) (internal citation omitted). While the “offenses of two employees need not be identical, the offenses must be of comparable seriousness.” *Matthews*, 426 Mass. at 130.

Tpr. Rodriguez has argued that the Department treated him inequitably in comparison to other Department members and he contends that the Trial Board and Colonel engaged in racial or ethnic discrimination in their imposition of discipline. Tpr. Rodriguez cites the disciplinary records of 153 Department members and hones in on the race (or identification as Hispanic/non-Hispanic) of each, demonstrating that troopers of color have been treated more harshly than their Caucasian peers. More specifically, the Appellant has identified four troopers charged with violation of ADM-35, the body worn camera policy, who received far more lenient discipline than the 30-day

suspension meted out to him by the Trial Board.⁴² In particular, the Appellant identifies Trooper # 36 (A.Ex. 1 at A0164), Trooper 54 (*Id.* at A0210), Trooper 96, (*Id.* at A0329), and Trooper 105 (*Id.* at A0349) as comparators. Trooper 36 (a Caucasian member) was charged with failure to activate a body camera while issuing a verbal warning to a motorist. Trooper 96 (also Caucasian) was charged with failing to activate his body camera while assisting another member on a motor vehicle stop. Trooper 105 (also Caucasian) was charged with failure to activate his body camera while issuing a verbal warning to a motorist. Additionally, one Hispanic member (Trooper 54) received a letter of counseling for a body camera policy violation. In its post-hearing submission, the Department did not dispute the lenient discipline, ranging from counseling only to forfeiture of one day of vacation leave, meted out to these other troopers. In a telling concession, the Department admitted: “Had Appellant’s only offense been a body camera violation it’s likely he would have received discipline consistent with that imposed on these troopers[.]”

The terribly unfortunate facts and course of this case suggest that the time has come to put all troopers on notice that any non-accidental, non-trivial violation of the Department’s body-worn camera policy should normally result in the imposition of at least a short suspension. Balancing all the factors discussed above, and recognizing the Appellant’s prior clean disciplinary history, I recommend that the Commission reduce Tpr. Rodriguez’s unpaid suspension for violation of ADM-35 from thirty days to one day.

⁴² The Appellant also relies on *Adams v. Department of State Police*, 36 MCSR 188 (2023), in urging the Commission to modify his discipline. In deciding *Adams*, the Commission compared Trooper John Adams to other Troop E members who were disciplined more leniently for the creation of false citations or time sheets for overtime hours they did not work and ordered a substantially reduced penalty for Trooper Adams.

CONCLUSION

The lack of just cause for terminating the Appellant's employment as a state trooper must lead inexorably to his prompt reinstatement with full back pay. See *Town of Brookline v. Alston*, 487 Mass. 278, 306 (2021) (Section 43 "is unequivocal"; upon lack of just cause determination, reinstatement order and back pay are "statutorily required"). In view of this, I recommend that the Commission reserve judgment on the question of whether the Department's personnel-related actions toward Tpr. Rodriguez reflect discrimination on the basis of race or ethnicity in violation of G.L. c. 31, § 1. The Appellant asserts that he "was inequitably treated in comparison to other troopers in a manner . . . that shows racial/ethnic discrimination in the enforcement of state police discipline." (Proposed Decision at 1.) Considerable circumstantial evidence has been marshaled in support of this claim. With some justification, the Appellant asks this Commission to infer that "State Police [management] harbored a racially biased suspicion that Tpr. Rodriguez was associated with criminals." (Proposed Dec'n at 27.) As is evident from the findings of fact laid out above, there is no evidence to support any such hunch. The Department should not now claim any impediment to Tpr. Rodriguez's reinstatement as a trooper.⁴³ Should the Appellant nonetheless not be reinstated forthwith in accordance with this decision, he should be permitted to reopen his appeal for further proceedings under G.L. c. 31, §§ 1 *et seq.*

For all of the above reasons, I recommend that the Appellant's appeal under Docket No. D1-22-166 be ***allowed*** and the Department's decision to terminate his employment be overturned. I also recommend that the Commission modify downward—from 30 days to one day—the length

⁴³ The Commission takes note of the Department's argument that reinstatement of Tpr. Rodriguez's license to carry firearms will be a precondition to his restoration to full active duty. Such prompt reinstatement is fully within the power and discretion of the Colonel of State Police.

of unpaid suspension that Tpr. Rodriguez should serve for his violation of the Department's body-worn camera policy.

CIVIL SERVICE COMMISSION

/s/ Robert L. Quinan, Jr.

Robert L. Quinan, Jr.

General Counsel and Presiding Officer

Date: May 6, 2024