

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

DAVID ROLLINS,
Appellant

v.

G1-19-095

MASSACHUSETTS PAROLE BOARD,
Respondent

Appearance for Appellant:

David P. Cortese, Esq.
Law Office of David P. Cortese, P.C.
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Appearance for Respondent:

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Commissioner:

Cynthia A. Ittleman, Esq.

DECISION

On April 9, 2019, David Rollins (“Rollins” or “Appellant”), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Parole Board (“MPB” or “Parole Board”) to bypass him for original appointment to the position of Field Parole Officer A/B (“FPO A/B”). On June 18, 2019, a pre-hearing

conference was held at the offices of the Commission, which was followed by a full hearing at the same location on August 16, 2019.¹

The hearing was digitally recorded.² The parties submitted post-hearing briefs on September 20, 2019. For reasons explained below, I conclude that the City's bypass decision should be upheld.

FINDINGS OF FACT:

Sixteen (16) exhibits were entered into evidence by the Respondent and one (1) exhibit was marked for identification at the hearing. Pursuant to my request, the Respondent provided additional documents after the close of the hearing, including a Quincy District Court docket sheet, a Weymouth Police Department Statement of Facts in support of its Application for a Criminal Complaint against Ms. A, and a Nolle Prosequi filed by the Norfolk County District Attorney's Office dated June 20, 2017. (PH Ex. 1). Also pursuant to my request, the Appellant provided a copy of a Massachusetts Appeals Court case regarding random queries of police into RMV information. Based upon the documents entered into evidence and the testimony of:

For the Appointing Authority:

- Kevin Keefe, Chief of Field Services

For the Appellant:

- David Rollins, Appellant

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

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. The Appellant has a bachelor's degree in criminal justice. He served in the United States Marine Corps for four years and seven years in the United States Marine Corps Reserves. His military service includes one year in Iraq. He was honorably discharged in 2010.
(Appellant Testimony)
2. The Appellant has been employed with the Massachusetts Department of Correction (DOC) as a Correction Officer I (CO I). He served as a police officer for the Town of Weymouth's Police Department (WPD) from June 2011 to July 2017. After resigning from the WPD, he worked with the Department of Homeland Security and as a mail carrier for the United States Post Office. (Ex. 5; Appellant Testimony).

Employment with WPD

3. The Appellant received letters of commendation while working for the WPD, one for a response during an arrest of an armed felon and the other for his response to an armed robbery investigation. (Ex. 7).
4. Two incidents relevant to this appeal occurred while the Appellant was a police officer at the WPD, both involving his aunt's friend, Ms. A. While on duty near a business that had been recently broken into, the Appellant reviewed license plates on his mobile data laptop. He reviewed as many as fifty plates during this overnight shift. One of the license plates he "ran" belonged to Ms. A. He did not know Ms. A lived in the area and did not know what her car looked like. (Appellant Testimony).

5. The Appellant and Ms. A, while not “Facebook Friends,” had communicated through Facebook messaging in 2010. (Ex. 9A; Appellant Testimony).

6. On November 21-22, 2014, the Appellant used Facebook to message Ms. A as follows:

Appellant: “I think I passed you on Water Street the other night. I work for Weymouth Police.

Ms. A: Oh, how did you know it was me?

Appellant: I happened to run your plate for some odd reason lol. I usually run everyone’s plates. I was scoping out [a business] that’s across the street from your apartment complex. I’ve been catching suspicious people walking in the back of that business at night. Nothing to worry about though.

Ms. A: Oh geez what night was it?...

Appellant: A couple of nights ago. I’m like a ninja lol! I creep in and out of buildings with my lights off. You won’t see me [emoticon]. I thought I would say hi. I’m []’s nephew btw.

Ms. A.: Oh you’re a sneaky cop! Lol. Yes I remember that you are her nephew.

The Appellant: I’m also currently single- [emoticon] just sayin. Lol.

November 22, 2014

Appellant: Would you like to get dinner sometime?

Ms. A. Oh thank you for the offer. I’m kinda seeing someone right now.

Appellant: OK, no problem. Have a nice weekend!” (Exs. 9 and 9-A).

7. The second incident relevant to this appeal occurred approximately two years later in March 2016. The Appellant noted someone driving erratically while driving to work and notified the WPD. (Appellant Testimony; Ex. 15). The operator of that vehicle was Ms. A, which the Appellant learned after two other officers arrested her and brought her into the station where the Appellant saw her. (Appellant Testimony; PH Ex. 1).

8. After this incident, in February and March 2016, the Appellant contacted his aunt through Facebook to tell her about Ms. A's incident. In this communication, he told her he was looking out for public safety when he had reported the erratic driving and asked how Ms. A was doing. (Appellant Testimony; Exs. 9 and 9A). The Appellant explained to his aunt that he could not discuss the specifics of Ms. A's case. (Appellant Testimony; Exs. 9 and 9A).
9. On May 31, 2016, Ms. A asked the Appellant's aunt if the Appellant would "convince judges" to reduce the charges against her. The Appellant's aunt conveyed Ms. A's request to the Appellant, who told her he could not discuss the case with her. (Ex. 10; Appellant Testimony).
10. In February 2017, approximately one year after Ms. A was charged, the Appellant learned he was subpoenaed to be a witness in Ms. A's criminal case. He spoke with the ADA who was handling Ms. A.'s case to tell him there might be a conflict of interest, based on his friendship with Ms. A, if he were to testify in Ms. A's criminal case. The Appellant understood that the Assistant District Attorney had the responsibility to subpoena witnesses but believed his testimony might not be necessary, based on his knowledge of the law of operating under the influence. (Appellant Testimony).
11. In the morning of March 29, 2017, the Appellant messaged Ms. A.:

Appellant: "Good morning. I honestly didn't know you were driving on the road I was in my personal vehicle and was looking out for public safety. I asked the ADA if it would be possible for me not to testify against you since we know each other (possibly friends) and because your [sic] good friends with my aunt... I'm sorry things turned out the way they did. Please don't mention this to anyone." (Exs. 9 and 9A).

Later that evening, after Ms. A had returned his message to thank him, the Appellant responded:

Appellant: “Well, I’m here for you as a friend. Like I said, I will push the ADA to stop me from testifying hun (sic). Here’s my cell if you need anything. I love my aunt [] and I would do anything to help her or her friends out. You’re a good person and I’m not talking to you as a cop.” (Exs. 9 and 9A).

12. The Appellant was in court for Ms. A’s case on the day he was subpoenaed. (Appellant Testimony).
13. Approximately two months later, after having no conversation with Ms. A, the Appellant messaged Ms. A on May 15, 2017, telling her, “I just saw you pop up on my match.com matches. This online dating is frustrating lol. Anyway I hope you are doing OK.” (Ex. 9, 9A). Ms. A responded that she had not expected the Appellant to be in court, and the Appellant explained that he needed to be in court because he was subpoenaed although “he would prefer not to”. He told Ms. A that he empathized with her situation and felt bad, telling her, “The situation does not define who you are. You’re still a beautiful person inside and out.” (Exs. 8, 9 and 9A; Appellant Testimony).
14. The Appellant sent a “Friend” request to Ms. A around this time. Ms. A responded that she would accept his request after the trial was over and the Appellant responded that he agreed, then stated, “Maybe I can take you out for coffee when this is all over.” (Ex. 9A).
15. The Appellant knew at the time of writing these messages that communicating with a defendant in a criminal trial was not a good idea. Although his communication with Ms. A was intended to be “cordial,” he later realized later that Ms. A could have understood the request to go out for coffee to be a request for a date. (Appellant Testimony).
16. A short time before Ms. A’s trial in June 2017, Ms. A’s attorney contacted the District Attorney’s office about the Facebook messages between the Appellant and Ms. A. The D.A.’s office reviewed the messages between the Appellant and Ms. A, discussed them with

members of the WPD and determined that the messages left the impression that the Appellant was “attempting to ingratiate himself with Ms. A and manipulate the trial outcome.” (Ex. 11).

17. The Norfolk County District Attorney’s Office sent WPD a notification on July 10, 2017 stating that that it “would not be utilizing Officer David Rollins as a witness in any further proceedings requiring his testimony.”³ (Ex. 11)(emphasis added). This decision was made based on the Appellant’s actions in Ms. A’s case. The July 10, 2017 notification further state that, “ ... as a direct result of Rollins’ conduct, the case [against Ms. A] was dismissed.” (Id.)(emphasis added).
18. On the night of July 13, 2017, the Appellant arrived for his overnight shift, where he was met by multiple superior officers and investigators who told the Appellant that he had been placed on paid administrative leave. (Appellant Testimony). On July 14, 2017, the WPD wrote a memo to the Appellant stating that the Department had initiated an investigation into allegations against him and that he was being placed on paid administrative leave. (Ex. 14).⁴
19. Later on July 14, 2017, officers from the Weymouth Patrolman’s Union visited the Appellant at his home to urge him to resign. The Appellant learned that the District Attorney’s Office had written a letter regarding his communications with Ms. A during the pendency of her criminal trial. Union officers also told the Appellant that it would be best to resign because he could be criminally charged based on his use of criminal records and his alleged attempts to influence a criminal case. (Appellant Testimony). The Appellant signed

³ The Appellant had not seen this letter at the time of his resignation. (Appellant Testimony).

⁴ It is uncertain when the Appellant received the paid administrative leave memo.

a letter of resignation, which the union officers had prepared for him, that same day. (Id.; Ex. 13).

20. The Appellant did not speak to an attorney or contest the WPD's investigation or the actions of the Weymouth Patrolman's Union at the time he resigned because he wanted a "fresh start." (Appellant Testimony).

21. The WPD had conducted an internal investigation of the Appellant's actions. The investigation included interviews with multiple staff, Ms. A and a review of the documentation. The Internal Investigation Report stated that the Appellant's actions regarding Ms. A violated the following:

- WPD Policies and Procedures Section 26-3 Code of Conduct, sections of which include G.L. 268A, §§2-3 and G.L. 268 §13B (witness intimidation, public corruption);
- WPD Court Policy and Procedures Section 41-9 (officers shall cooperate with prosecutors to ensure impartial prosecution of all offenders; officers shall testify truthfully);
- WPD Rules and Regulations Section G (running license information and contacting defendant); and
- Telecommunications/Computer Systems 11.42 (running license information and contacting defendant). (Ex. 14).

22. The WPD report stated that even if the Appellant's "query of [Ms. A's] registration through the RMV was initially random and lawful, as soon as he looked her up on Facebook, sent her messages, identified himself as a police officer, and asked her out on a date, the initial query became improper and unlawful... This investigator finds that there is clear and convincing evidence to prove that Officer Rollins, an experienced 3 year police veteran at the time, knew or should have known that his actions ... violated his professional responsibilities." (Ex. 14).

23. Prior to resigning, the Appellant did not see the WPD investigation report explaining the reason he was asked to resign. (Appellant Testimony). There is no indication that the WPD interviewed the Appellant in connection with its investigation of the Appellant's conduct in connection with the criminal charges against Ms. A. (Keefe Testimony).

Application to the Parole Board

24. On June 30, 2018, the Appellant took the Civil Service Examination for FPO A/B. (Stipulated Facts).

25. In the fall of 2018, the Parole Board requisitioned 21 FPO positions. (Keefe Testimony). The Appellant was ranked Number 12 on Certification 05894 dated November 1, 2018. (Ex. 3).

26. The duties of a FPO include conducting home and work pre-parole investigations; having face-to-face contact with parolees; monitoring parolees' behavior and conduct in the community; providing for public safety through services to parolees; obtaining evidence and preparing parole violators; facilitating the reintegration of parolees into a non-institutional environment through counseling, guidance, cooperation with Re-Entry Officers, and referrals to community services; conducting drug and alcohol testing of parolees, enforcing curfews, and conducting assessments of parolees. It is vital for the parole officers to maintain professionalism with parolees. (Ex. 1; Keefe Testimony).

27. The Parole Board's hiring process includes an initial three-person panel interview and background investigation, which includes a home visit, reference checks, verification of employment, and questions to the applicant if issues arise. The Chief and Deputy Chief of Field Services review the investigations and determine which applicants will receive second interviews. (Keefe Testimony).

28. The Assistant Parole Supervisor, and two field parole officers (the panel) interviewed the Appellant on December 6, 2018. The panel rated the Appellant's answers to questions on a 1-4 scale, with 1 being below average and 4 being excellent. They scored the Appellant 3's and 4's on education, awards, achievements, volunteerism, problem solving, and in all areas of skills and attributes such as communication skills and demeanor and attitude. The notes from the interviews reflect the Appellant's awards and achievements in the military, his ability to deescalate a potential conflict or violent situation, and significant career accomplishments such as stopping an armed robbery while a police officer in Weymouth. The panel gave the Appellant low marks (1's) on current/most recent employment work experience and current/most recent work accomplishments. (Ex. 4).

29. On January 15, 2019, the MPD conducted a home visit with the Appellant. During the home visit, the Appellant provided two letters of reference and his personnel file from WPD, which included the Notice of Administrative Leave and resignation letter. The Appellant explained at that visit that he had been a witness to a crime and that his aunt had asked him to drop or reduce the charges for the defendant. (Ex. 5)

30. After the Appellant signed a waiver for the WPD, the Parole Board's background investigator spoke to the WPD about the Appellant's resignation. (Ex. 5; Appellant Testimony). The Parole Board's background investigation report states,

An investigation was initiated after a female defendant who had been arrested by Weymouth Police for driving under the Influence. The Defendant stated that [the Appellant] had contacted her online and suggested he would not testify against her if she entered a dating relationship with her. When the Norfolk County District Attorney's Office found out these allegations an investigation was opened. The Norfolk County District Attorney's Office had to dismiss the charges against the female defendant. Norfolk County District Attorney's Office also considered filing criminal charges against subject. At this time Norfolk County District Attorney's Office notified Weymouth Police

that [the Appellant] would no longer be a suitable witness in any criminal cases. (Ex. 5) (emphasis added).⁵

31. The background investigation included the fact that the Appellant has no criminal history, earned a bachelor's degree in criminal justice, and that the Appellant's references characterized the Appellant "a stand-up guy" and "one of the best guys he ever had." (Ex. 5).
32. The Appellant's second interview occurred on February 6, 2019 and was conducted by Mr. Keefe and the then-parole supervisor. The Appellant told the interviewers that he was put on administrative leave at the WPD and that the union told him to resign that day. The Appellant offered to provide the Facebook messages for Mr. Keefe to review. (Ex. 6; Keefe Testimony).
33. The Appellant provided Mr. Keefe with some of his Facebook messages between Ms. A and himself via email. (Ex. 8, 9 and 10; Appellant Testimony; Keefe Testimony). He also sent his Facebook messages to his aunt about Ms. A. The Appellant explained in his email that he had reached out to Ms. A in 2016 only after Ms. A had contacted his aunt, and that he would have fought this incident had he spoken to a lawyer or known about an appeal process. A letter of support written by his aunt was attached to the email. (Ex. 8).
34. When Mr. Keefe reviewed the Facebook messages between the Appellant and Ms. A, he found them to be concerning because the Appellant was clearly a witness in a criminal case; the Appellant's communication with the criminal defendant was improper; the Appellant had initiated that communication; that, as a police officer, the Appellant had the obligation to testify but tried not to; and that the Appellant called Ms. A. "beautiful" and "hun,"

⁵ The underlined text of the Parole Board's background investigation report quoted here is similar to the wording in the D.A.'s July 10, 2017 letter to the WPD (Ex. 11), noted in Fact 17 *supra*.

assuming an appearance of familiarity that Mr. Keefe believed to be inappropriate. Mr. Keefe questioned the Appellant's ability to maintain his obligations as a parole officer since parole officers frequently do come across people they know and must maintain their professional obligations. Parole officers must occasionally testify in court and Mr. Keefe was also concerned that the Appellant would not be able to fulfill that part of the job duties. Mr. Keefe believed that the messages showed the Appellant lacked good judgment and that the communications were a "significant red flag" compared to the other candidates. He made this conclusion after reading the messages prior to receiving the investigative report from the WPD in late February 2019. (Keefe Testimony).

35. The Parole Board bypassed the Appellant for a position as FPO based on his negative work history. (Keefe Testimony). The notification of bypass informed the Appellant that fifteen applicants bypassed the Appellant and stated that the Appellant, although he had several positive attributes such as military awards and police commendations, was not selected because of the circumstances related to his resignation from the WPD stating:

"Prior to being placed on Administrative Leave, the Norfolk County District Attorney's Office notified the Weymouth Police Department that the candidate would no longer be suitable to testify in criminal matters, due to his involvement with a defendant who had been charged with Operating Under the Influence of Liquor. The candidate, while en route to his shift at the Police Department in February 2016, had witnessed the defendant driving erratically and called it in to the station, resulting in an arrest. After the arrest, the candidate discovered that the defendant was a friend of his Aunt. He provided the Chief of Field Services with copies of text messages with his aunt, as well as Facebook messages with the defendant, in support of his assertion of no wrongdoing on his part. However, the Facebook messages include inappropriate communications in which he discusses efforts to convince the Assistant District Attorney that he is not required to testify, as they are "friends." He also refers to the defendant as "a beautiful person, inside and out" and mentions seeing her profile on Match.com. The District Attorney's Officer ultimately dismissed charges against the defendant. The Weymouth Police Department provided a copy of its investigation into the matter, which included findings that the candidate had originally run the defendant's motor vehicle license plate in 2014 and reached out to her to see if she would be interested in dating.

The Weymouth Police Department found that the candidate's use of CJIS data was a violation of departmental rules and DCJIS regulations. Parole Officers must display a high level of trustworthiness, discretion and responsibility in the performance of their duties. As a police officer, this candidate failed to meet the requisite qualities required for the position.” (Ex. 15).

36. The candidates who ranked lower than the Appellant on Certification 05894 (Applicants A-O) had no prior negative work history. No candidate had an outstanding issue on his or her background investigation report.⁶ (Ex. 16, A-O).

Legal Standard

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing authority has shown, by a preponderance of the evidence, “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate's present fitness to perform the duties of the position. Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461, 474-78 (2019); Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003). “Reasonable

⁶ For purposes of this summary, candidates who bypassed the Appellant are named according to their civil service rank. Candidate 13, a veteran, held a Bachelor's degree, had continuous law enforcement experience, and no negative work history. Candidate 16, a veteran, held a Bachelor's degree, worked as a correctional officer, and had no negative work history. Candidate 20, a social worker, was a veteran, held a Master's degree and had no negative work history. Candidate 21, a veteran, had eighteen years of continuous service in the criminal justice system with no negative work history. Candidate 23, a veteran, had a combination of law enforcement experience, education, and special skills and had no negative work history. Candidate 26 held a Master's degree and had a record of “outstanding” work performance, with no negative employment history. Of the four candidates who ranked 30, one had recent and relevant experience, with no negative work history; one had advanced education and licensing, with recent relevant experience, with no negative work history; one had a Bachelor's degree, had worked closely with Field Patrol Officers regarding victim-related issues, with no negative work history; and one had a combination of education, criminal justice experience, with no negative work history. Of the two candidates ranked 38, both held a Bachelor's degree, one had a combination of education and social work history, one had experience dealing with inmates, and both had no negative work history. The first of two candidates ranked 42 held a Bachelor's degree had a broad base of experience dealing with youthful offenders, inmates, probationers, with no negative work history. The second candidate ranked 42 held a Master's degree, had continuous experience in law enforcement and security, and experience with parole-related matters, with no negative work history. Candidate 47 held a Master's degree, multiple certifications, and broad, continuous experience in counseling, criminal justice, and law enforcement, with no negative work history.

justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’ ” Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. *See also* Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991)(bypass reasons “more probably than not sound and sufficient” and upon “failure of proof by the [appointing authority], the commission has the power to reverse the [bypass] decision.”). The governing statute, G.L. c. 31, § 2(b) gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997). The commission “. . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority”; however, when there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” *Id.* *See also* Town of Brookline v. Alston, 487 Mass. 278 (2021)(analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law). That said, “[i]t is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington v. McCarthy, 60 Mass.App.Ct. 914, 915 (2004).

Within this framework, disputed facts regarding alleged prior misconduct of an applicant must be considered under the “preponderance of the evidence” standard of review as set forth in Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461 (2019), as noted above, in which

case the SJC upheld the Commission's decision to overturn the bypass of a police candidate, expressly rejecting the lower standard espoused by the police department. *Id.* at 478-79.

Analysis

The Parole Board has shown by a preponderance of the evidence that there was reasonable justification to bypass the Appellant. The MPB conducted two interviews with the Appellant.

The Parole Board determined that the Appellant did not possess the high level of trustworthiness, discretion and responsibility in the performance of duties required of FPO A/B's. The Appellant's non-consideration letter cites to the Norfolk District Attorney's decision that the candidate would no longer be suitable to testify in criminal matters; WPD's investigation of the Appellant's Facebook messages with Ms. A including inappropriate communications about the ADA as well as inappropriate referrals to Ms. A. as a potential social partner through Match.com; and WPD's finding that the Appellant's use of CJIS data for this purpose was a violation of departmental rules and DCJIS regulations. The Appellant disputes the facts underlying these three reasons for bypass.

The Appellant argues that he did not intend to influence Ms. A's trial in 2016 and that he did not use his position as a police officer to gain favor with Ms. A. When he had asked her out on a date in 2014, he accepted her denial and spoke to her through Facebook messaging in 2016 to be "cordial."

Regardless of the Appellant's intentions, the appearance of impropriety regarding Ms. A's alleged criminal conduct is incontrovertible. The Appellant contacted Ms. A to explain he did not know he had reported her erratic driving, telling her that he would "do anything" for his aunt and his aunt's friends. The Appellant knew Ms. A was a criminal defendant in a trial yet the Appellant discussed the trial with her, explaining that he would "push" the ADA to allow him to

not testify. He told Ms. His preference to not testify multiple times. He told Ms. A to “not tell anyone” about their conversation. These conversations show the Appellant was trying to ingratiate himself with Ms. A through his position as a police officer. These improper statements by a police officer to a criminal defendant *during the criminal proceedings* caused the D.A.’s office to cease prosecution. Put another way, the D.A. was unable to charge Ms. A with operating under the influence solely because of the Appellant’s communications with Ms. A. That the Norfolk District Attorney’s Office decided to categorically exclude the Appellant from testifying in any further cases because of these messages, and that the Parole Board independently viewed the messages to see whether that office’s determination was grounded in fact are justifiable reasons for the Parole Board to exclude the Appellant from consideration.

Other messages to Ms. A also provide reasonable justification for bypassing the Appellant because, as Mr. Keefe testified, the messages demonstrate the Appellant’s lack of maintaining professional boundaries with a person within the criminal justice system. For instance, Mr. Keefe noted that the Appellant told Ms. A, “I’m here for you as a friend.” He called her “hun” and provided his cell phone number if Ms. A “need[ed] anything.” He also stated, “You’re a good person and I’m not talking to you as a cop” and that she is “a beautiful person inside and out.” The Appellant had initiated conversations with Ms. A, even reaching out to her after a period of no contact to let her know that she had “popped up” on a dating website. Mr. Keefe found these communications, in addition to a “Facebook friend” request, to be troubling for their assumed familiarity with Ms. A, and are even more troubling because they were written while Ms. A was a criminal defendant and the Appellant was a material witness in her case.

The Appellant did not limit his online conversations about Ms. A’s arrest to Ms. A. He also wrote to his aunt, who worked with Ms. A, to tell her that Ms. A had been arrested and to ask

how Ms. A was doing. He was privy to this knowledge solely because of his position as a police officer and shared that information with the defendant's work colleague. He did this in such a way as to appear to gain information about Ms. A's well-being. Even if the Appellant later told his aunt that he could not discuss the case, his initial contact with his aunt to discuss Ms. A gives the appearance that the Appellant attempted to remain in contact with Ms. A through his aunt, who worked with her and would know "how she was doing."

The Parole Board found that the Appellant's use of the CJIS system that occurred in 2014, while the Appellant worked for WPD, was also a reason to bypass the Appellant. The parties stipulated that officers may randomly check license plates for criminal justice purposes.⁷ The act of finding Ms. A's registration information during a random search, however, is not the problem here. The information from CJIS may only be used for express reasons, none of which include contacting the driver and informing her he ran her plate in a location near her apartment.⁸ In 2014, the Appellant messaged Ms. A to tell her he "ran her plates," that he was a police officer, and in the same discussion asked her to go on a date with him. In those messages, he appeared to have flaunted his position and used information he gained from being a police officer to have an excuse to contact Ms. A and ask her on a date. It may be that seeing her registration while engaging in legal, criminal justice employment duties was unrelated to the Appellant's contact with Ms. A, as the Appellant argues, but when Ms. A asked how the Appellant knew he had seen her drive by, he told her he was a police officer and had accessed her information while at work. Mr. Keefe's determination that the Appellant showed a lack of judgment in using CJIS this

⁷ Random inquiries to the DMV are permissible. Comm. v. Starr, 55 Mass. App. Ct. 590, 594 (2002) ("police-instigated search of registration data does not implicate a privacy right.").

⁸ The CJIS shall only be accessed for authorized criminal justice purposes, including: (a) criminal investigations, including motor vehicle and driver's checks; (b) criminal justice employment; (c) arrests or custodial purposes; (d) civilian employment or licensing purposes as authorized by law and approved by the FBI; and (e) research conducted by the [criminal justice agency]. 803 CMR 7.09 (2).

way is reasonable justification to have bypassed the Appellant, particularly when all of the Appellant's messaging history with Ms. A is viewed in its entirety.

When Mr. Keefe questioned the circumstances of the Appellant's resignation from the WPD, he provided the Appellant the opportunity to explain the situation. After the Appellant provided Facebook messages underlying WPD's allegations against him, Mr. Keefe carefully reviewed those. The partial messages that Mr. Keefe saw, in addition to the ones included in Ex. 9A, were enough to cause significant concern about the Appellant's ability to separate his personal and professional lives. This "red flag" was enough to outweigh the Appellant's positive attributes.

The Parole Board has articulated specific, rational reasons supporting their conclusion, after a thorough and impartial hiring process, that the Appellant's work history had negative aspects that overwhelmed his positive attributes. The Parole Board has shown by a preponderance of evidence that there was reasonable justification for bypassing the Appellant.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. G1-19-095 is hereby ordered *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman
Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Tivnan, and Stein, Commissioners) on June 3, 2021.

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:

David Cortese, Esq. (for Appellant)

Courtney Doherty, Esq. (for Respondent)