

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**JUAN SANCHEZ,**  
*Appellant*

v.

**CITY OF CHELSEA,**  
*Respondent*

**Case No.: D-13-142**

**DECISION**

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

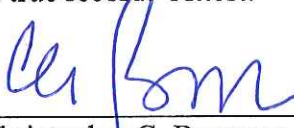
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the City of Chelsea to suspend Mr. Sanchez for five (5) days is affirmed solely on the charge of neglect of duty. The City failed to prove the charge of untruthfulness. The Appellant's appeal under Docket No. D-13-142 is *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on February 6, 2014.

A true record. Attest.

  
\_\_\_\_\_  
Christopher C. Bowman  
Chairman

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.

Notice to:

Thomas E. Horgan, Esq. (for Appellant)

Cheryl A. Watson, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

**Division of Administrative Law Appeals**

**Juan Sanchez,**  
Petitioner

v.

Docket No. D-13-142  
DALA No. CS-13-450

**City of Chelsea Police Department,**  
Respondent

**Appearance for Petitioner:**

Thomas E. Horgan  
Law Office of Michael F. Hanley  
300 1495 Hancock Street  
Quincy, Massachusetts 02169

**Appearance for the Respondent:**

Cheryl A. Watson  
City Solicitor-Law Department  
500 Broadway, City Hall  
Chelsea, Massachusetts 02150

**Administrative Magistrate:**

**James P. Rooney**

**Summary of Recommended Decision**

The City of Chelsea Police Department has shown just cause to impose a five day suspension on a police officer for neglect of duty, as Petitioner concedes. It has not shown just cause for one of its grounds for discipline (untruthfulness, for allegedly providing misleading statements during a disciplinary investigation).

**RECOMMENDED DECISION**

The Petitioner, Chelsea Police Officer Juan Sanchez, timely appealed, under M. G.L. c. 31 § 43, a June 12, 2013 decision of the Respondent, City of Chelsea Police Department, affirming the Police Chief's discipline of the officer. The Police Chief suspended Officer Sanchez for five days for neglect of duty and untruthfulness after an Internal Affairs

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Investigation. Officer Sanchez challenged only the untruthfulness charge, not the charge of neglect of duty or the suspension.

I held a hearing on September 9, 2013, at the Division of Administrative Law Appeals, One Congress Street, Boston, Massachusetts. I admitted eleven documents into evidence. (Exs. 1-11.) The parties submitted six stipulated facts. The hearing was digitally recorded. Officer Sanchez testified on his own behalf and presented the testimony of Officer Felix Rivera. The Police Department presented the testimony of Lieutenant Edward Noseworthy and Captain William Dana. The hearing was public. The record closed on October 25, 2013 with the filing of post-hearing briefs.

#### **FINDINGS OF FACT**

Based on the testimony and evidence presented and reasonable inferences drawn from them, I make the following findings of fact:

1. On May 12, 2008, Juan Sanchez was appointed a Chelsea Police Officer. (Stipulation ¶ 1.)
2. As a police officer, Officer Sanchez was subject to the Chelsea Police Department Rules and Regulations, which address an officer's obligation to be truthful and not neglect his duty. Rule 6.9-Truthfulness states:

Officers shall speak the truth at all times. In cases in which an officer is not allowed by the regulations of the Department to divulge facts within his knowledge, he will decline to speak on the subject.

- (Ex. 4.) Rule 5.1-Neglect of Duty states:

Officers shall not be absent from work without permission or abstain wholly or in part from the full performance of their duties in the normal manner without permission. Officers shall not be absent from their assigned duty without leave; leave their post, sector, community, or assignment without being properly detailed, relieved, or marking required notifications; fail to take suitable and appropriate police action when any crime, public disorder, or other incident

requiring police attention requires such police action; fail to promptly perform, as directed, all lawful duties required by constituted authority, notwithstanding the officer's normal assignment of duties and responsibilities.

(Ex. 2.)

3. On January 19, 2011, Officer Sanchez was disciplined for violating Chelsea Police Department Rule No. 9.5-Reporting for Duty and received a two day suspension. On October 18, 2010, Officer Sanchez was disciplined for violating the Chelsea Police Department Rule No. 9.5-Reporting for Duty and received a one day suspension.

(Stipulation ¶ 2, 3.)

4. On January 27, 2013, Officer Sanchez was working an overtime day shift from 7:30 a.m. to 3:30 p.m. at the Chelsea Police Station. He was assigned to be the Prison Control Officer that day. Duties of the Prison Control Officer include handling and caring for prisoners in custody, booking the prisoners brought to the station, checking criminal history to ensure it is accurate, fingerprinting prisoners, and checking eligibility for bail. The Prison Control Officer must remain at the police station. On that day, at the relevant time, no prisoners were in custody and none were brought in to the station for processing. (Sanchez and Rivera Testimony.)

5. The desk officer on January 27, 2013 was Officer Gravalese. He does not speak Spanish; Officer Sanchez does. (Dana, Sanchez, and Noseworthy Testimony.)

6. At approximately 11:48 a.m. on that date, a woman, later identified as Ms. [REDACTED] who speaks only Spanish, entered the police station. She spoke to Officer Sanchez for approximately one minute. During this brief encounter, Ms. [REDACTED] told Officer Sanchez that she was being threatened by her sixteen year old sister-in-law, who lives at the same residence, and that the minor wanted to physically harm her and

possibly have her killed. At this point Officer Sanchez told Ms. [REDACTED] he was going to call in another officer. (Ex. 1, 7; Sanchez Testimony.)

7. Officer Sanchez called Chelsea Dispatch to request that a Spanish-speaking officer come into the station. (Rivera, Sanchez, and Dana Testimony.)
8. On that day, Sargent Nofle was working as the street supervisor. Over the radio, Sgt. Nofle stated to Officer Sanchez:

If you are at the station just do that translation and if you need a report we can have somebody come in but I am not going to pull somebody off of a directed patrol in the square to translate if you are there.

(Ex. 1, 6.)

9. At 11:58 a.m., Officer Sanchez spoke with Ms. [REDACTED] for approximately ten minutes. She then left the station without pressing charges. Ms. [REDACTED] explained that she was being threatened by her sixteen year old sister-in-law, who lived in the same house as she did. Ms. [REDACTED] reported that the minor was trying to find someone to kill her and had threatened her in the past. (Ex: 1, 7, 8; Sanchez Testimony.)
10. Ms. [REDACTED] was standing to Officer Sanchez's right, while speaking with him. She was leaning her right arm on the counter and facing Officer Sanchez. In this position, Officer Sanchez could see her right wrist. At some point during the interview, he noticed she had a cut on her right wrist. Ms. [REDACTED] told him the cut happened during an altercation with her sister-in-law. (Ex. 7, 8; Sanchez Testimony.)
11. Officer Sanchez did not relay this information to Officer Gravalese, the desk officer, nor did he write a report. A report should have been prepared in this situation, because Chelsea Police Department requires a written report be made of a domestic violence

complaint regardless of whether the victim wishes to press charges. (Sanchez Testimony.)

12. At 12:41 p.m., Sgt. Noffle sent an email to his immediate supervisor, Lieutenant Nancy Haumann, and to Captain William Dana describing Officer Sanchez's effort to have a Spanish speaking officer re-routed to the police station for a translation, although Officer Sanchez speaks Spanish. Sgt. Noffle suggested that Officer Sanchez be charged with dereliction of duty. (Ex. 1.)
13. Later that afternoon, Captain Dana called Officer Sanchez and ordered him to write a complete report of what happened. (Ex. 1; Dana Testimony.)
14. Officer Sanchez emailed a response to the captain. (Ex. 1; Sanchez testimony.) An email is not the typical manner in which police reports are prepared in the Chelsea Police Department. (Rivera testimony.) Officer Sanchez had not previously written any reports for the captain. He thought he was to explain only why he called for another officer. In the email, he explained that Ms. [REDACTED] reported threats from her sister-in-law, but did not want to pursue the matter. She wanted only to scare her sister-in-law, since she was a minor. Officer Sanchez stated that, because the perpetrator was a minor and residing in the same residence, he thought there might be ongoing domestic violence and that is why he called for another officer. Although he did not say so, had an arrest been called for based on Ms. [REDACTED] report, another officer would have had to go to the home to make the arrest because Officer Sanchez's assigned duties confined him to the station. Officer Sanchez stated that Sgt. Noffle told him to "take the report," i.e. her statement. He stated that he did speak further with Ms. [REDACTED], and advised her that he would

write a report; she did not want him to do that, but just wanted to scare the minor. (Ex. 1; Sanchez Testimony.)

15. The next morning, Captain Dana reviewed the situation and discovered that Officer Sanchez did not write a police report regarding the threats reported by Ms. [REDACTED]. He then contacted Edward Noseworthy, a lieutenant in the internal affairs division at the Chelsea Police Department, and asked him to investigate Officer Sanchez's conduct. (Ex. 1; Noseworthy and Dana Testimony.)
16. As part of his investigation, Lt. Noseworthy reviewed relevant emails, listened to recorded phone calls and radio transmissions, and viewed the surveillance tape showing Ms. [REDACTED] at the police station. (Ex. 1; Noseworthy Testimony.)
17. On January 29, 2013, Lt. Noseworthy went to Ms. [REDACTED] house. Sargent Efrain Gonzalez accompanied him to serve as a Spanish interpreter. Ms. [REDACTED] minor sister-in-law and Ms. [REDACTED]'s newborn child were present in the home while Lt. Noseworthy interviewed Ms. [REDACTED]. During the interview, Ms. [REDACTED] stated that she went to the police station to report threats from her minor sister-in-law and the officer she spoke to, Officer Sanchez, did not do anything for her. Ms. [REDACTED] stated that she told the officer the minor threatened her, and that she and the minor lived in the same house. Ms. [REDACTED] said that she did not ask for a restraining order, and the officer did not offer her one. Additionally, Ms. [REDACTED] stated that she told the officer that she had been sliced with a razor knife on her arm and showed the officer her arm. Ms. [REDACTED] then showed Lt. Noseworthy the wound. Ms. [REDACTED] said the officer at the police station told her only that she could go to court, and she did not want to do that. (Ex. 1; Noseworthy Testimony.)

18. After conducting the interview with Ms. [REDACTED] Lt. Noseworthy and Sgt. Gonzalez placed her sister-in-law under arrest for domestic assault and battery and assault and battery with a dangerous weapon. (Ex. 1; Noseworthy Testimony.)
19. Ms. [REDACTED] refused a ride to the Chelsea Police Department to seek a restraining order, and signed a form advising her of her rights. (Ex. 1.)
20. Sgt. Gonzalez searched for the razor knife, but did not find it. Ms. [REDACTED] told him that the minor's mother had taken possession of the knife. (Ex. 1; Noseworthy Testimony.)
21. On January 30, 2013, Lt. Noseworthy issued a notification of investigation to Officer Sanchez for violation of Rule 5.1-Neglect of Duty. (Ex. 1.)
22. On February 1, 2013, Lt. Noseworthy interviewed Officer Sanchez to investigate whether he neglected his duty. Initially, Lt. Noseworthy asked about what shift Officer Sanchez worked on January 27, 2013, what his assignment was, and what was said during the first brief encounter with Ms. [REDACTED] Officer Sanchez stated that Ms. [REDACTED] came in to report threats, and that the perpetrator lived in the same house. Lt. Noseworthy and Officer Sanchez then discussed why Officer Sanchez decided to call in another officer. During this part of the interview, Lt. Noseworthy asked a series of questions to examine Officer Sanchez's call for another officer, why he did so, what he was told to do, and whether he believed his assignment included writing a report of his conversation with Ms. [REDACTED] Lt. Noseworthy then asked what Ms. [REDACTED] reported after Officer Sanchez was told to translate. Officer Sanchez responded:

...a sixteen year old girl that had been making threats against her in the past...And I asked if anything happened and she said no. And I said has she threatened you before and she said yes...

(Ex. 1, pg 8.) Lt. Noseworthy asked:

So she reported threats to you and you said this to Captain Dana in your email and said that you would file a report and get the complaints but you didn't do that because she said that she just wanted to scare the girl?

(Ex. 1, pg 8.) Officer Sanchez responded yes and Lt. Noseworthy asked:

Was there anything else that was reported? Did she look like she had been in a struggle? Did she have any visible injuries? Did she mention anything any assault or anything? It was just threats?

(Ex. 1, pg 8.) Officer Sanchez responded:

It was only threats. After a while we were speaking I asked her she was telling me what she could do, I asked her about, she talked to me about uh her mother in law doesn't say or do anything about it and she says that she has been hanging around with the wrong crowd and I explained to her that there was other ways that she could do it she is not going to school but she told me that she is sixteen years old and my understanding is that if you are sixteen then you do not have to go to school...I did not, she did not say anything about assaults until after when I spoke with her and actually while I was speaking to her and I got all of her information aaah she had a jacket on and I saw a scratch on her arm and I asked her what that was and she told me that she had gotten into an altercation with the girl sometime last week. I asked her what happened and she was like I confronted her about the threats and we got into an altercation and the mother got in the middle and just pushed them away and that was the end of it and I told her at that point I was like listen I have enough to have her arrested right now because this is domestic assault and she told me that she did not want that.

(Ex. 1, pg 8-9.)

23. Lt. Noseworthy asked about offering a restraining order. Officer Sanchez said he offered Ms. [REDACTED] one, but did not obtain a signed refusal. Signed refusals of restraining orders are required by the Police Department; Officer Sanchez has had other victims in the past sign these refusals. Officer Sanchez also stated that he did not know that Ms. [REDACTED] had an infant child and feared for the baby's life. Officer Sanchez conceded that it was poor judgment not to write a report and that he did not mention the assault in his email to Captain Dana. (Ex. 1; Noseworthy Testimony.)

24. On February 12, 2013, Lt. Noseworthy sent an email to Officer Sanchez notifying him that, based upon his statements during the interview, he was also being investigated for violation of Rule 6.9-Truthfulness and violation of Rule 5.2-Incompetance. (Ex. 1.)
25. On March 14, 2013, Lt. Noseworthy submitted a report based on his investigation of Officer Sanchez. He concluded that Officer Sanchez violated Rule 5.1-Neglect of Duty and Rule 6.9-Truthfulness. Lt. Noseworthy recommended that the charges against him be sustained. (Ex. 1.)
26. On January 27, 2013, the Chief of the Chelsea Police Department suspended Officer Sanchez for five days for violating the Chelsea Police Department Rule No. 5.1-Neglect of Duty and Rule No. 6.9-Truthfulness after an Internal Affairs Investigation. (Stipulation ¶ 4.)
27. The Appointing Authority, the City Manager for the City of Chelsea, held a hearing on May 8, 2013. Officer Sanchez testified at that hearing. (Stipulation ¶ 5.)
28. On June 12, 2013, the City Manager affirmed the Police Chief's decision to discipline Officer Sanchez. (Stipulation ¶ 6.)

### DISCUSSION

Officer Sanchez concedes that he was negligent in handling Ms. [REDACTED] domestic violence complaint. He did not contest the charge for neglect of duty or the suspension. He contested only the charge of untruthfulness. In this decision, I conclude that the City of Chelsea Police Department lacked reasonable justification for its conclusion that Officer Sanchez violated Chelsea Police Department Rule 6.9-Truthfulness.

The Appointing Authority has the burden of proving by a preponderance of evidence that reasonable justification exists for the action it took; The Civil Service Commission's role is to

determine whether that burden has been met. M.G.L. c. 31 § 43; *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303, 682 N.E.2d 923, 925 (1997). The issue before the Commission is whether, based on the facts found by the Appointing Authority, there was reasonable justification for the action taken, given the circumstances at the time of the decision, not whether the Commission would have acted in the same manner as the Appointing Authority. *Town of Watertown v. Arria*, 16 Mass. App. Ct. 331, 334, 451 N.E.2d 443, 445 (1983). An action is justified if it is “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.” *Id.*

The Civil Commission has long affirmed disciplinary actions against public employees who have not been truthful, including law officers. *Gonsalves v. Town of Falmouth*, 25 MCSR 231 (2012) (police officer discharged for untruthfulness and lapses in judgment); *Waugaman v. Town of Falmouth*, 25 MCSR 211 (2012) (firefighter discharged for carrying on extramarital affair at a fire station and lying about it); and *MacHenry v. Wakefield*, 7 MCSR 94, 96 (1994) (police officer suspended for four days, in part, because he failed to act on two arrest warrants and untruthfully denied that he ever received a call relative to suspects). Lying in a disciplinary investigation has been held to be grounds for discipline. *Reilly v. Department of State Police*, 19 MCSR 107 (2006) (state trooper was suspended for eight months for giving untruthful answers during a departmental investigation and knowingly falsified her flight logbook); *Royston v. Town of Billerica*, 19 MCSR 124 (2006) (police officer terminated, in part, for lying during internal investigation of his conduct); *see also LaChance v. Erickson*, 522 U.S. 262, 267-268 (1998) (agency may take adverse action against an employee who made false statements during the agency’s investigation of the employee’s alleged misconduct).

Discipline is appropriate when a police officer has been untruthful, given the nature of police work. As the Civil Service Commission explained in *Layne v. Tewksbury*, 20 MCSR 372, 375 (2007):

[b]ecause of the nature of a police officer's position, and the risk of abuse of power, police officers are held to a high standard of conduct. Police officers are routinely called upon to prepare reports, provide sworn testimony, make public statements and mediate disputes. Integrity must necessarily be a trademark feature of anyone aspiring to work in law enforcement. Creditability is a paramount characteristic. Such is the level of public trust placed in a police officer that nearly any public indiscretion could be regarded as conduct unbecoming a police officer.

*Id.*

The Chelsea Police Department maintains that Officer Sanchez was untruthful when he failed to mention in his email to Captain Dana that Ms. [REDACTED] reported physical injuries, and when he did not initially mention the physical injuries during his interview with the internal affairs investigator. The evidence offered by the Police Department to show that Officer Sanchez was untruthful was Officer Sanchez's email to Captain Dana, which did not mention the assault, and the fact that he was not initially forthcoming about the assault during his interview with Lt. Noseworthy. Although the evidence shows that Captain Dana and Lt. Noseworthy had to pull the information out of Officer Sanchez, I conclude that he was not untruthful.

Officer Sanchez was not untruthful in his email to Captain Dana. No doubt the captain expected a full report of relevant events, but the captain had not previously asked for a report from Officer Sanchez, and he interpreted the request to relate to the circumstances that had brought about the captain's involvement. Officer Sanchez testified that he thought the email to Captain Dana was supposed to explain why he called for a Spanish-speaking officer to come to the station to take Ms. [REDACTED] statement when he could have taken it himself and thus he did not intend the email to be a full report of what Ms. [REDACTED] told him. The very fact that he

that he responded to the Captain in an email shows that he did not think that the Captain had asked him to prepare a formal, complete police report. He included some background information about the situation to help illuminate why he decided to call in another officer. There was no reason, in Officer Sanchez's mind, for him to include everything that Ms. [REDACTED] stated during their second conversation, because that would not help explain why he called for another police officer after the initial brief conversation he had with her. This was not the full report that Captain Dana expected, but Officer Sanchez's questionable judgment in the manner in which he drafted the email is not enough to establish untruthfulness.

The evidence also does not establish that Officer Sanchez was untruthful during his interview with Lt. Noseworthy. The Police Department maintains that Officer Sanchez was deliberately misleading and did not mention Ms. [REDACTED] physical injuries until late into the interview after being asked several times. Officer Sanchez mentioned the assaults late in the interview, but the interview was conducted in a chronological fashion and he mentioned them when the questions reached the point at which he became aware of Ms. [REDACTED] physical injuries. Lt. Noseworthy started with questions pertaining to Officer Sanchez's shift and duties on that day. He also asked numerous questions relating to why Officer Sanchez called in another officer. The evidence establishes that Officer Sanchez did not become aware of Ms. [REDACTED] physical injuries until his second conversation with her. Because Lt. Noseworthy asked about events in the order in which they occurred, Officer Sanchez would have had no reason to mention the assaults until the point during the interview in which he was describing his second conversation with Ms. [REDACTED]

A common theme in the allegations that Officer Rivera was untruthful is the considerable difference between his version of his conversations with Ms. [REDACTED] and hers. Without Ms.

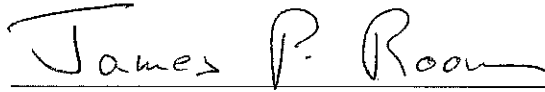
[REDACTED] testimony, it is difficult at this juncture to sort out what actually occurred when Officer Rivera interviewed her. What the Police Department contends is most significant is that Ms. [REDACTED] told Officer Sanchez she had been physically injured by her sister-in-law and, in Officer Sanchez's subsequent communications with Captain Dana and Lt. Noseworthy, his failure to highlight this, which the Department argues show he was covering up for his most serious mistake in handling Ms. [REDACTED]'s domestic violence complaint. I find the different versions of the conversations between Ms. [REDACTED] and Officer Sanchez to be very troubling, and, even if Officer Sanchez's depiction is more accurate, it shows he mishandled her complaint. I am not convinced, however, that Officer Sanchez's subsequent focus in his communications with Captain Dana and Lt. Noseworthy on the threats Ms. [REDACTED] reported, rather than her injury, demonstrates that he was deliberately avoided a topic that would show his poor handling of her complaint. Most of the conversation Officer Sanchez had with Ms. [REDACTED] concerned the threats her sister-in-law had made against her. Officer Sanchez learned that she had been injured in an altercation with her sister-in-law, but he did not find out how (as he should have), and thus he did not know what Lt. Noseworthy later found out, that Ms. [REDACTED] had been cut with a razor knife. Apparently thinking that she had been injured incidentally during the course of a minor scuffle, he thought that the threats were the most significant thing Ms. [REDACTED] had reported and consequently focused on them in his subsequent communications with Captain Dana and Lt. Noseworthy.

The evidence establishes that Officer Sanchez exercised poor judgment, which is not at issue, but the Appointing Authority has not established by a preponderance of the evidence that he was untruthful. I therefore recommend that the Civil Service Commission affirm the five day

suspension for neglect of duty, but vacate the City of Chelsea Police Department's finding that

Officer Sanchez violated Chelsea Police Department Rule 6.9-Truthfulness.

DIVISION OF ADMINISTRATIVE LAW APPEALS

A handwritten signature in black ink that reads "James P. Rooney". The signature is written in a cursive style with a long horizontal line extending to the right.

James P. Rooney  
First Administrative Magistrate

Dated: **DEC 19 2013**