

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

TYRONE SMITH,
Appellant

v.

Case No. D-02-192

**BOSTON POLICE
DEPARTMENT,**
Respondent

Appellant's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Tyrone Smith (hereafter "Smith" or "Appellant"), filed this appeal with the Civil Service Commission (hereafter "Commission") on March 7, 2002, claiming that the Boston Police Department (hereafter "Department" or "Appointing Authority") did not have just cause to suspend him as a police officer for ten (10) days for alleged violations of the Department's rules. The appeal was timely filed. A full hearing was held on May 15, 2007 at the offices of the Commission. As no written notice was received from either party, the hearing was

declared private. The witnesses were sequestered. Two audiotapes were made of the hearing. Proposed Decisions were submitted thereafter by the parties, as instructed.

FINDINGS OF FACT

Eighteen exhibits (Joint 1-10, Appointing Authority 1-6 and Appellant 1-1A) were entered into evidence. Based upon the documents entered into evidence and the testimony of: Superintendent-in-Chief Albert Goslin, Boston Police Department; Officer Tyrone Smith, Boston Police Department; and for the Suffolk County Sheriff's Department: Stephen F. Jacobs, Deputy Superintendent of Operations; Lieutenant Charles Bailey, Deputy Sheriff Gary Henry and Lieutenant Melvin Reed, I make the following findings of fact:

1. The Appellant has been an Officer in the Boston Police Department for approximately ten (10) years. Until the suspension that is the subject of this appeal, he has never been disciplined by the Department. (Testimony of Appellant)
2. The Appellant's background includes previous employment as a Boston Firefighter, an honorable discharge from the United States Army where he participated in Desert Storm and the past two years as a professional boxer, preceded by a heavyweight amateur boxing career in which he came close to making the United States Olympic Team. (Testimony of Appellant)
3. On June 14, 2000, at approximately 8:00 p.m., the Appellant visited the Suffolk County House of Correction to leave twenty (20) dollars for the canteen fund for his brother, an inmate at that facility. (Testimony of Appellant)

4. Upon arriving at the House of Correction, the Appellant parked his vehicle in a “No Parking” zone in front of the main entrance, which was a fire lane. Stephen Jacobs, Deputy Superintendent of Operations, testified that parking near the facility is limited “at best” and that much of the front of the building is a fire lane. He stated that illegally parked vehicles have been ticketed and towed from the facility in the past. (Authority Exhibits 3 and 4, Joint Exhibit 4 and testimony of Jacobs)
5. When Smith entered the facility, several dozen individuals were waiting in the lobby area to visit inmates. Persons seeking visitation are required to give their name and address to House of Correction personnel. (Appellant’s Exhibit 1 and testimony of Bailey)
6. Deputy Sheriff Gary Henry (“Henry”), then a Corrections Officer and the lobby officer on June 14, 2000, testified that he observed the Appellant park his vehicle in the fire lane. When the Appellant entered the facility, Henry approached Smith and informed him that he could not park in the fire lane. The Appellant replied that he was dropping off money and only going to be a couple of minutes. Henry testified that he again told Smith that he could not park in the fire lane and needed to move his car. Henry stated that as the Appellant proceeded to the visitor registration desk, he (Henry) went to retrieve his parking violation ticket book. Henry testified that he informed the officer at the visitor registration desk - where the Appellant had been waiting in line - not to accept the Appellant’s money. (Authority Exhibit 3 and testimony of Henry)

7. Henry testified that the Appellant stated, “Fine, be a big man, make me move my truck” and walked away from the registration area toward the exit. Smith exited the facility and moved his vehicle to a legal parking spot. I find that this was the initial display of disrespect towards the facility staff by the Appellant. (Appellant’s Exhibit 1, Authority Exhibit 3 and testimony of Henry and Appellant)
8. After the Appellant left the building, Henry informed his supervisor, Lieutenant Charles Bailey, about the incident. Henry stated that he might need a Sheriff’s Emergency Response Team (“SERT”), a mobile security force trained to respond to conflict, to escort the Appellant out of the building if he returned. I find through his credible testimony that Henry believed that the Appellant was in a somewhat agitated state at that time. (Authority Exhibit 3 and testimony of Henry)
9. When the Appellant reentered the facility a few minutes later, Lt. Bailey met him in the enclosed entryway. Bailey held out his hand in a gesture indicating that the Appellant should stop and informed him that he would not be allowed to reenter the building but could return the following day. Bailey testified that the Appellant pushed his hands away and stated, “Don’t put your hands on me.” I find that this was the second display of disrespect towards the facility staff by the Appellant. (Authority Exhibit 2 and testimony of Bailey)
10. Bailey testified that visitors can “lose a visit” if they are disrespectful. He stated that asking the Appellant to leave was consistent with the Sheriff Department’s

standard protocol in situations where visitors are disrespectful to other visitors or staff, or for other types of conflict occurring in the lobby. (Testimony of Bailey)

11. Bailey testified that if the Appellant had stated that he was just running in to drop off money, it would not have been an issue. He also stated that if the Appellant had identified himself as a Police Officer, he would have been extended a courtesy to reenter the facility with no foul having been committed. (Testimony of Bailey)
12. Bailey had a very credible demeanor and offered experienced and knowledgeable testimony. I find that his efforts and those of Henry were intended to deescalate the situation and to avoid a more serious confrontation with the Appellant. I also find that neither Bailey nor Henry exhibited any bias or ill-will toward the Appellant in asking him to leave the facility. (Demeanor of Bailey and Henry)
13. Lieutenant Melvin Reed, (then Deputy Reed), a Corrections Officer at the House of Correction and on June 14, 2000 assigned to SERT 1, testified that he received a request to respond to the lobby for a disturbance and, upon arriving, observed Bailey and Smith arguing. (Testimony of Reed)
14. Bailey testified that the Appellant stated “you got your boys here” when the SERT began arriving to the lobby area. Bailey stated that he was still unaware that the Appellant was a Police Officer. I find that this was yet another display of disrespect towards the facility staff by the Appellant. I further find that, in each instance of displaying disrespect, the Appellant could have simply complied with the directives of the facility staff and the situation would not have escalated to a serious level. (Authority Exhibit 2 and testimony of Bailey)

15. Bailey testified that he did not seek to employ the SERT teams but when they arrived, he stepped aside and allowed them to handle the situation. He stated that Reed ordered the Appellant to leave the facility and that the Appellant escalated the argument by moving aggressively toward and bumping Officer Reed in the chest with his hands and body. I find that this is the point in time when the Appellant instigated the confrontation. (Authority Exhibit 2 and testimony of Bailey)
16. Henry and Bailey each wrote a June 14, 2000 memorandum to Captain Richard Brown. Both stated that they observed the Appellant strike Reed in the chest with both hands. (Authority Exhibits 2 and 3)
17. In a June 17, 2000 letter to the District Commander of Area B-3, the Appellant wrote that on June 14, 2000, Reed told him, “You need to get off our fucking property” and the Appellant replied, “You need to get out of my face.” The Appellant wrote that at that point he was attacked from behind and several correctional officers punched, grabbed and physically and violently threw him to the floor. He further wrote that as he lay on the ground on his stomach, he was repeatedly kicked and punched and that several officers violently handcuffed him with his hands behind his back. The Appellant stated that at no time did he resist. In his letter, he denied slapping Bailey’s hand and pushing or threatening Reed. (Joint Exhibit 4, Authority Exhibit 2 and testimony of Appellant)
18. I find that there was lingering bad-blood between the Appellant and Reed even during the Commission hearing. Both men engaged in a staring match while Reed testified and, while this hearing officer was attending to his notes, the

- Appellant's Counsel alleged that the witness, Reed, made a disrespectful finger gesture at the Appellant. I cannot find that this was so, but all parties were admonished to maintain a civil decorum for the remainder of the proceedings. I make no finding that either man was at fault for this interruption to the hearing but I do take notice that the Appellant was clearly agitated in Reed's presence.
19. The Appellant testified that after being surrounded by the SERT, he felt threatened and identified himself as a Boston Police Officer. However, Reed testified that the Appellant did not inform the SERT that he was a Boston Police Officer until he was being handcuffed. (Appellant's Exhibit 1 and testimony of Reed)
 20. The Appellant was escorted to a training area by the SERT. He complained of shortness of breath, leg pain and that his recently fractured wrist hurt and requested to be taken to the hospital. The Appellant was transported to Brigham and Women's Hospital by ambulance. (Authority Exhibit 3 and Joint Exhibit 5)
 21. Medical staff at the hospital reported that the Appellant was very impatient, leaving the emergency room before they finished their assessment. The Appellant testified that he wanted to leave quickly because his union representative informed him that he might be arrested. (Joint Exhibit 3)
 22. Immediately following the incident, Reed lodged a complaint against the Appellant with the Boston Police Department. The Internal Affairs Department ("IAD") was notified. (Joint Exhibit 2)
 23. Following the altercation, Deputy Sheriff/Investigator Stephen Jacobs ("Jacobs") collected fifteen incident reports and four Use of Force reports from the officers

involved in the beating. Jacobs testified that officers are required to write an incident report when force is used. In Henry and Reed's Use of Force Reports, they indicated that prior to the application of force, the Appellant's behavior was aggressive and threatening and "assaultive" to the officer. Jacobs did not contact any of the other persons who had witnessed the altercation. (Authority Exhibits 4 and 6 and testimony of Jacobs)

24. On June 22, 2000, Jacobs submitted an investigation report to the Suffolk County Sheriff's Department. (Authority Exhibit 1)

25. On April 17, 2001, IAD issued a complaint against the Appellant for alleged violations of Rule 102, §§ 3(Conduct Unbecoming) and 9 (Respectful Treatment). Specification I stated that the Appellant violated Rule 102, § 3 by being verbally abusive and physically combative with several correctional officers at the Suffolk County House of Correction. Rule 102, § 3 states, "Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Conduct unbecoming an employee shall include that which tends to indicate that the employee is unable or unfit to continue as a member of the Department, or tends to impair the operation of the Department or its employees." Specification II stated that Appellant violated Rule 102, §9 by being verbally abusive and physically combative with several correctional officers at the Suffolk County House of Correction. Rule 102, §9 states, "Employees shall, on all occasions, be civil and respectful, courteous and considerate toward their supervisors, their subordinates and all other members of the Department and the general public. No employee shall use epithets or terms that tend to denigrate any

- person(s) due to their race, color, creed or sexual orientation except when necessary in police reports or in testimony. (Joint Exhibits 1, 8 and 9)
26. On November 16, 2001, IAD held a hearing relative to the complaint against the Appellant.
27. On February 28, 2002, the Respondent suspended the Appellant for ten working days, effective March 1, 2002, for violations of Rule 102, §§ 3(Conduct Unbecoming) and 9 (Respectful Treatment) based upon the Appellant's disrespectful conduct, offensive language and inappropriate behavior when he visited the Suffolk County House of Correction and "instigated a verbal and physical confrontation with members of the Suffolk County Sheriff's Department." (Joint Exhibit 10)
28. At the Commission hearing, the Appellant was professional, respectful and courteous in his vocal tone and his physical appearance. His recall of the events in question was detailed but the words he used to describe his version of these events were carefully chosen and strategically placed. Descriptions of calmly brushing away Lt. Bailey's hands from near his chest "in a downward motion" in a situation where others testified he was clearly hot-tempered detracted from the overall credibility of his testimony. I find that the Appellant's testimony was largely crafted to place him in the best light possible rather than to offer a completely honest assessment of his actions. Many of his answers under examination left the distinct impression that he was rationalizing his actions after the fact rather than providing a straightforward account.

29. Superintendent-in-Chief Albert Goslin testified that officers learn Rule 102, § 3 and Rule 102, § 9 of the Rules and Procedures of the Department in their academy training, in subsequent training and in refresher notes at roll call meetings throughout their employment. (Joint Exhibits 8 and 9 and testimony of Goslin)
30. Chief Goslin testified that officers must be respectful to the general public, police officers and other members of the law enforcement community, control their emotions and should be able to deescalate heated situations on and off duty. Goslin testified that police officers are held to an even higher standard of conduct when working with other law enforcement officers. (Testimony of Goslin)
31. Goslin testified that the Appellant should have been more compliant on June 14, 2000, given the atmosphere. He stated that the Appellant violated the Department's conduct rule when he did not move his vehicle and the respectful treatment rule by showing disrespect to a Corrections Officer. (Testimony of Goslin)
32. Goslin testified that he believed that the Appellant was disciplined for failing to respond to Henry's first demand that the Appellant move his vehicle from the fire lane and that the ten-day suspension was "excessive."
33. Goslin testified in a professional, direct and knowledgeable manner. He possessed an excellent grasp of the Department's Rules and Regulations. I find, however, that his assertion that the discipline in this matter was "excessive" was solely an expression of his opinion regarding the initial display of disrespect towards facility staff by the Appellant. (Testimony of Goslin)

CONCLUSION

The role of the Civil Service Commission is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when 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. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission determines justification 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.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is established “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). In reviewing an appeal under G.L. c. 31, § 43, if the Commission finds by a preponderance of the evidence that there was just

cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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.” Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

It is well established that police officers must “comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into the 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.” Meaney v. City of Woburn, 18 MCSR 129, 133 (2005) *supra*; citing Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986)

In light of the standards articulated for police officer conduct above and in consideration of Superintendent-in-Chief Goslin’s credible testimony noting the

importance of police officers behaving in a manner that reflects favorably on the Department and exhibiting sound judgment, professionalism and courtesy at all times, the Department has sustained its burden of proving that it has just cause for its suspension of the Appellant. Goslin did opine that the ten-day discipline was “excessive” and his opinion is to be respected, but the circumstances of the incident do not warrant a modification of the suspension by this Commission. Documentary evidence and credible testimony by the Suffolk County House of Correction witnesses indicated that the Appellant’s conduct toward the Sheriff’s Department personnel at the Suffolk County House of Correction on June 14, 2000 was verbally combative with Henry, Bailey and Reed as well as physically aggressive toward Bailey and Reed. Specifically, the Appellant’s unprofessional and disrespectful conduct included his parking in a “No Parking” zone, initially disregarding Henry’s authority when requested to move his vehicle, displaying further disrespect for authority by stating to Henry, “Fine, be a big man, make me move my truck”, as well as removing Bailey’s hands with the comment, “Don’t put your hands on me” and saying to him, “you got your boys here” when the SERT arrived on scene.

Based on the higher standards that police officers are held to and the above facts found by the Commission, the Department had reasonable justification for finding that Appellant’s conduct on June 14, 2000 violated Rule 102, § 3 (Conduct Unbecoming) and Rule 102, § 9 (Respectful Treatment) of the Rules and Procedures of the Boston Police Department.

In sum, the Department has proven by a preponderance of the evidence that there was just cause to suspend Appellant. For the above reasons, the Appeal under Docket No. D-02-192 is hereby *dismissed*.

Civil Service Commission.

John J. Guerin, Jr.,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Marquis, Taylor and Henderson, Commissioners) on October 11, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c 30A, section 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Bryan Decker, Esq.
David Jellinek, Esq.