

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

RICHARD ST. GERMAIN,
Appellant

CASE NO. G1-19-128

v.

**MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY TRANSIT POLICE DEP'T,**
Respondent

Appearance for Appellant:

James W. Gilden, Esq.
173 North Main Street
Sharon, MA 02067

Appearance for Respondent:

Daniel A. Kazakis, Esq.
MBTA Labor Relations Dep't
10 Park Plaza, Room 7550
Boston, MA 02110

Commissioner:

Paul M. Stein

DECISION

The Appellant, Richard St. Germain, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), to contest his bypass by the Massachusetts Bay Transportation Authority (MBTA) for appointment as police officer with the MBTA Transit Police Department).¹ The Commission held a pre-hearing conference on July 2, 2019 and a full hearing on August 30, September 18 and October 2, 2019, which was digitally recorded.² Witnesses were sequestered. Twenty-eight (28) exhibits were received in evidence and administrative notice was taken of documentation regarding the sealing of the Appellant's criminal and juvenile court records. Proposed Decisions were filed on July 8, 2019. For the reasons stated below, Mr. St. Germain's appeal is allowed.

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 CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. .

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- MBTA Transit Police Detective. Matthew Haney
- MBTA Transit Police Detective Paul Mabee
- MBTA Transit Police Sergeant John Cutting

Called by the Appellant:

- Richard St. Germain, Appellant
- Ms. C, former domestic partner

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

1. The Appellant, Richard St. Germain, is an African-American male in his early thirties. He currently shares joint legal and physical custody of three children resulting from a long-term prior relationship with Ms. C and also supports a fourth child that Ms. C had through another relationship, remaining active in their lives, attending school events, coaching sports and volunteering at school. (*Exh. 26; Testimony of Appellant & Ms. C*)

2. Mr. St. Germain was born in Boston, removed from his parents at an early age, and grew up in foster care, group homes and residential programs. He obtained a high school diploma through the Boston Community Leadership Academy (2003), received a scholarship to attend a transitional college program at Brandeis University (2003-2004), and completed a one-year technical training program at Cambridge College (2007) sponsored by Year Up, Inc. He attended Bunker Hill Community College off and on from 2004 through 2014, but did not obtain a degree. (*Exhs. 3, 24 & 28; Testimony of Appellant*)

3. Mr. St. Germain became employed in January 2016 with the Suffolk County Sheriff's Office and currently holds the position of Deputy Sheriff, which grants him full police powers. He serves on the rapid response unit, operates cruisers (sometimes at high speed over Boston streets to convey prisoners to hospitals), performs police details, and performs other duties

incident to the care and custody of prisoners. He participates in the Suffolk Sheriff's community outreach program, coaching inner-city youth. (*Exhs. 3, 24 & 28; Testimony of Appellant*)

4. Mr. St. Germain's employment from 2006 to 2016 includes:

- 2006-2008: Fidelity Investments, Intern; Jr. Systems Engineer; Regional Support Technician. Laid off in reduction in force due to recession.
- 2008-2010: Unemployed
- 2010-2011: Toys R Us, Bicycle Dep't Manager. Assembled and repaired bicycles and provided customer service. Resigned to take job with Middlesex Sheriff's Office.
- 2011-2013: Middlesex Sheriff's Office, Correction Officer. Terminated (conditional offer withdrawn) during probationary period when 2013 criminal charges were filed against him, as described further below.
- 2013-2014: Unemployed
- 2014-2016: Beth Israel Deaconess Hospital, Public Safety Officer. Per diem position. After becoming a full-time Deputy Sheriff, he stopped working the minimum number of hours and was terminated for "job abandonment".
- 2014-2016: Apollo International, Security Officer; Supervisor; Account Manager. Resigned after taking position with Suffolk County Sheriff's Office.

(*Exhs. 3, 24, 25 & 28; Testimony of Appellant*)

5. Mr. St. Germain's driver's history includes the following citations:

09/03/2005	Surchargeable Accident
11/18/2005	Speeding (NA); Number Plate Violation (NR)
05/22/2007	Speeding (NR); Registration Not In Possession (NA)
08/01/2007	Speeding (R)
09/13/2007	Failure to Obey Sign (R)
01/05/2008	Speeding (R); Failure to Wear Seat Belt (R)
09/17/2008	Passing Violation (NP); Failure to Wear Seat Belt (R)
12/16/2008	Miscellaneous Equipment Violation (R)
01/30/2009	Speeding (R); Registration Not In Possession (NR)
08/07/2009	No Inspection Sticker (R)
10/08/2009	No Inspection Sticker (NR); Number Plate Violation (NR)
06/11/2011	Surchargeable Accident
02/02/2012	Failure to Stop (NR)
04/25/2014	Speeding (NR)
02/23/2018	Speeding (INC) [later NR] ³

(*Exhs. 3 & 15; Testimony of Appellant*)

³ This citation was adjudicated Not Responsible after the BPD pulled the RMV Driver's History. (*Exhs. 3 & 15; Testimony of Appellant*)

6. Mr. St. Germain currently holds two Licenses to Carry Firearms (LTC): (1) an Unrestricted Class A Large Capacity License to Carry issued by the Medford Police Department and most recently renewed by the Woburn Police Department in August 2017 (to expire August 2023) and (2) a Utah Concealed Carry License, most recently renewed in 2016 (to expire in 2021). Mr. St. Germain has been in good standing with both LTCs, save for a one year period in 2013, when those licenses were suspended following the criminal charges filed against him discussed further below. He owns several firearms. (*Exhs. 2 & 3; Testimony of Appellant*)

7. Mr. St. Germain's Criminal History includes:

- Two (2) adult records (sealed in 2014) concerning disputes in May 2007 and May 2013 with Ms. C, then Mr. St. Germain's domestic partner, the details of which are described further below. (*Exhs.3, 12 & 13; Testimony of Appellant & Ms. C; Administrative Notice [https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid_%3Aascds%3AUS%3Af8e8f509-2db3-4de0-bc20-7bfc98a84cc7]*)
- Four (4) juvenile cases (sealed in 2019) alleging assault & battery concerning residents and staff at the juvenile facilities and group homes where he then lived, filed or dismissed without a delinquency adjudication: (1) age 14 – telephone allegedly thrown at resident; (2) age 15 – allegedly chased and threatened staff and residents with hockey stick; (3) age 15 –telephone allegedly used in unknown manner; (4) age 15 – resident allegedly hit with broken antenna and shampoo bottle. (*Exhs.2 & 12;Testimony of Appellant; Administrative Notice [https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Af8e8f509-2db3-4de0-bc20-7bfc 98a84cc7]*)⁴

⁴ Mr. St. Germain described the period of his youth from approximately 1997 to 2001 as the most difficult time of his life. He had been separated from his siblings, who were sent to different foster homes and, all but one, eventually adopted, and he wound up in residential programs and group homes where he was “fending off bullies” much older and bigger than he was. (*Testimony of Appellant*).

Mr. St. Germain's Law Enforcement Applications

8. On March 25, 2017, Mr. St. Germain took and passed the civil service examination for Municipal Police Officer (and Massachusetts State Police [MSP] Trooper) administered by the Massachusetts Human Resources Division (HRD) and his name was placed on the Municipal Police eligible list established in November 2017. (*Stipulated Facts*)

9. In April 2017, from a prior eligible list, Mr. St. Germain applied for appointment as a MSP Trooper. He completed the application process, including a background investigation and psychological examination, but was not selected for appointment. He reapplied in 2018 and, again, was not selected. (*Exhs. 2, 3 & 22*)

10. In 2018, Mr. St. Germain applied for a position as a Brockton Police Officer and, after an initial background investigation, in November 2018, was recommended for bypass. (*Exh. 21*)⁵

11. On September 4, 2018, HRD issued Certification #05777 to the MBTA for the appointment of twenty (20) entry-level MBTA Transit Police Officers from the 2017 Municipal Police eligible list. Mr. St. Germain's name appeared in a tie group in the 62nd position on the certification. He signed the certification as willing to accept employment and was provided, via e-mail, a copy of the MBTA's "Recruit Officer Candidate Application Packet" which he was required to complete electronically and return to the MBTA within seven (7) days. (*Stipulated Facts; Exhs. 1 through 11; Testimony of Haney, Mabee & Cutting*)

12. The application packet included twenty-eight (28) pages containing 99 separate questions, many of which required use of an "Additional Response Form" to provide all the information needed to respond to the question. (*Exh. 3*)

⁵ Mr. St. Germain's bypass by the City of Brockton is the subject of a related appeal which the Commission also decides today. St. Germain v. City of Brockton, CSC No. G1-19-053.

13. In the week following receipt of the application form, Mr. St. Germain was assigned extra overtime hours at the Suffolk Sheriff's Department. He did not begin working on his application until the night before it was due. To save time, he tried to copy information from prior applications, but had trouble entering all of the information correctly and "clearly made mistakes." (*Testimony of Appellant*)

14. On September 7, 2018, as required, Mr. St. Germain reported to the MBTA with his application packet. When it came time to meet with Sgt. Det. Cutting, he explained his difficulty completing and printing the on-line application form. (*Testimony of Appellant & Cutting*)

15. Candidates commonly encounter technical issues with the application and are allowed to fix errors and, if necessary, submit hand-written responses. (*Testimony of Mabee and Cutting*)

16. Sgt. Det. Cutting provided Mr. St. Germain a computer terminal and allowed him time to finish and submit his application, which included responses to all 99 questions, plus nineteen (19) Additional Response Form pages. Due to problems downloading some of the pages, he wound up having to fix typos and insert some of the information by hand. (*Exh. 3; Testimony of Appellant & Cutting*)

17. Mr. St. Germain included most of the required documentation with the application, but did not provide his college transcripts and three years of tax returns. (*Exhs. 4 through 11 & 28*)

18. It is not unusual for applicants to need more time to submit documentation. Mr. St. Germain was allowed additional time to provide his college transcripts and tax returns. He had not yet obtained all of those additional documents when he received notice that he would be bypassed and, therefore, never submitted them. (*Testimony of Appellant, Mabee & Cutting*)

19. Mr. St. Germain's application was assigned to MBTA Transit Police Detective Mabee to begin the background investigation. Det. Mabee reviewed the Criminal Offender Record Information (CORI) obtained by the MBTA through the Massachusetts Criminal Justice

Information Services (CJIS), which contains a record of Mr. St. Germain's driving history, as well as the history of all adult criminal arraignments, including the two sealed records, and all juvenile appearances. (*Exhs. 12 through 15; Testimony of Mabee*)

20. The rest of Det. Mabee's investigation consisted of collecting and reviewing (a) police reports on file with the Medford, New Bedford and Boston Police; (b) personnel records from the Middlesex Sheriff and the Suffolk Sheriff; (c) Mr. St. Germain's charge of discrimination filed with the Massachusetts Commission Against Discrimination (MCAD) alleging racially disparate treatment by the Middlesex Sheriff along with the MCAD's finding of lack of probable cause; and (d) Mr. St. Germain's MSP and Brockton application packets. (*Exh. 18*)

21. Det. Mabee never met Mr. St. Germain. His employment and personal references were not checked.⁶ He was not granted an "oral board" interview. No written investigation report was generated. (*Testimony of Appellant & Mabee*)

22. In early 2019, Sgt. Det. Cutting and Det. Mabee contacted Mr. St. Germain by telephone and informed him that, after verbal discussion with "command staff", the MBTA was not moving forward with his application. (*Testimony of Appellant, Cutting & Mabee*)

23. By letter dated April 10, 2019, MBTA Superintendent Richard Sullivan informed Mr. St. Germain that he had been bypassed. The letter, authored by Det. Mabee, summarized the reasons for his bypass as follows:

"[Y]ou failed to truthfully and accurately answer numerous questions listed in your MBTA Transit Police Recruit Application Package. Your horrendous driving record, accompanied by your inability to pay attention to detail makes you a burden for any law

⁶ The personnel file obtained by the MBTA from the Middlesex Sheriff's Office included a performance review made two months before Mr. St. Germain was dismissed, which noted that, except for improvement in gaining knowledge of policies and procedures, his performance was acceptable or superior in all categories, with his supervisor specifically calling out his "professional" manner and respect for all. (*Exh. 25*) The MSP application packet contains extensive details of the MSP's background investigation, including, among other things, two positive references from his direct supervisors at the Middlesex Sheriff's Office and the Suffolk Sheriff's Office, who vouched for him as a man of "superb moral character", a "fair yet firm officer" who "follows the chain of command" and performs with "professionalism and strict attention to detail." (*Exh. 22*)

enforcement agency. Your aggressive, hostile, and confrontational actions exhibited through the information cited by numerous Police Officers and their interactions with you makes you a liability (sic) therefor, appointing you as a Police Officer would be an injustice to the Commonwealth of Massachusetts. Your blatant disregard to follow Massachusetts General Law makes it impossible to empower you to enforce the same . . . laws . . . you violate. You failed to follow the directions completing the MBTA Transit Police Recruit Application and . . . every question was not answered truthfully and to the best of your knowledge. Therefore, hiring you, as a Police Officer, would not only be detrimental to the MBTA Transit Police Department but all citizens of the Commonwealth of Massachusetts and your name should be by-passed for employment.”

(Exh. 2; Testimony of Mabee)

24. The MBTA bypass letter enumerated twelve (12) “discrepancies and/or omissions” found in Mr. St. Germain’s application and background documentation:

1. Question #17 on the application asked: “Have you ever received a written or verbal warning from a police officer in any state?” Mr. St. Germain responded: ‘Yes, there have been a few times that I was pulled over by a Police Officer and let go with a warning date and reasons I do not remember.’ The MBTA found this answer “minimal” without providing the required “Who, What, When, Where and Why”.
2. Question #18 asked; “Have you ever received a citation from a police officer in any state?” Although Mr. St. Germain disclosed twelve (12) motor vehicle citations, he did not mention a February 23, 2018 speeding ticket [that he was appealing and resulted in a finding of Not Responsible].
3. Question #19 asked; “Have you ever been involved in an automobile accident in any state?” Mr. St. Germain provided an “Additional Response Form which disclosed both of his surchargeable accidents [a 2005 one-operator motorcycle accident and a 2011 accident “while driving in a rainstorm, a car with no tail lights stopped short” and he failed to brake in time to avoid the collision]. He also disclosed a 2016 accident that did not appear on his driver history [being rear-ended in Boston for which he was not responsible] Again, the MBTA found these responses “vague” and lacking in “details”.
4. Question #25 asked: “Has your license to operate a motor vehicle in any state been suspended, revoked, or slated for suspension or revocation?” Mr. St. Germain’s handwritten Additional Response Form listed a suspension from 9/14/2009 to 12/14/2009 for seven surchargeable events but did not disclose that his license was “slated for suspension” in 2008 due to non-payment of fines and costs; and did not disclose that he currently owed an unpaid parking ticket that would prevent renewal of his license when it came up. The MBTA described this driving record as a “direct reflection of your inability to safely operate a motor vehicle” and failing to accept “responsibilities for your own actions by promptly paying the citations issued in order to maintain your privilege to operate a motor vehicle.”
5. Question #27 asked: “List chronologically ALL employment, including summer, part-time employment and volunteer employment. If unemployed for a period of time indicate, setting forth the dates of unemployment.” The MBTA found the following

discrepancies in Mr. St. Germain's list of employment history: (a) he listed his employment at Fidelity Investments on the application form as one employment, but his resume and his MSP application showed three different jobs within Fidelity during that timeframe; (b) he failed to provide a telephone number or contact information for Fidelity Investments; (c) the employment dates for Fidelity on the application form were different from his resume and his MSP application; (d) his Suffolk Sheriff's Office personnel file showed notice of outside employment as a "barback" [bartender's assistant] omitted from his application or resume; and (e) he did not account for two years of unemployment from 11/2008 and 10/2010 [after he was laid off from Fidelity] and his next job for [Toys R Us] which left "unclear what your source of income was" for those two years.

6. Question #28(f) asked (sic): "Have you ever (or ever been accused of) . . . (f) Had an accident while working?" Mr. St. Germain answered "NO", but the MBTA noted that, his Brockton application stated: "I slammed my finger in a cell door while closing the door" at the Suffolk Sheriff's Department. The MBTA found this discrepancy to be evidence of untruthfulness and a "direct reflection of your personal character and integrity,"
7. Question #30 asked: "Have you ever received any reprimands, suspensions or counseling's (sic) from any employment or volunteer position you've held." Mr. St. Germain answered "NO". The MBTA letter noted that, in his MSP application, however, he said he once received a "written reprimand" for misplacing handcuff keys and had called the withdrawal of his probationary employment a "suspension".
8. Question #34 asks: "Have you ever been terminated or resigned in lieu of termination?" Mr. St. Germain answered "YES" and disclosed his layoff by Fidelity and the rescission of his conditional offer by the Middlesex Sheriff's Department "due to the previously disclosed matter which I was arrested"
9. Question #45 asked: "Have you ever been arrested for a violation of a criminal offense?"; Question #37 asked "Have you ever been tried for a criminal offense but were not convicted?"; Question #52 asked "Have you ever been detained by any law enforcement officer for investigation purposes or have you ever been the subject or a suspect in any criminal investigation?" Mr. St. Germain answered "YES" to these questions, disclosed his 2000 juvenile arrests and the two adult sealed criminal cases. The MBTA found that these disclosures "differed" from his CORI and the police incident reports they collected, and found that his disclosures were "vague" and that his "inability to provide a full recollection of each incident leading to your arrest and arraignment" was misleading and "reiterates your lack of integrity and displays a repeated pattern of untruthful actions."
10. Question #59 asked: "Have you ever used or possessed the following prescription drugs without a prescription?" Mr. St. Germain answered "YES" to this question and provided an Additional Response Form that stated he was given Valium in the emergency room after a slip and fall in 2018 and was prescribed a cough syrup containing Codeine in 2017. The MBTA found this answer left it "unclear" whether Mr. St. Germain had an "inability to follow directions" or whether he "used these prescribed drugs another time in your life and failed to disclose this information."
11. Question #66 asked: "Have you ever signed the civil service list for, or submitted an application to any other Fire Department, Police Department, Sheriff's Department or Law Enforcement agency?" Question #67 asks: "Have you ever been rejected for any Police, Fire, Corrections, Sheriff's or Law Enforcement position." Mr. St. Germain

answered “YES” to both questions and listed applications to the Middlesex Sheriff’s Department in 2010, 2013 & 2015; Suffolk County Sheriff’s Department in 2013 & 2015; TSA in 2013; MSP in 2016 & 2017; and Transit Police in 2018. The MBTA letter notes that Mr. St. Germain did not update his application to disclose that he also applied to the Brockton Police Department (after submitting his MBTA application) and quotes at length from Brockton’s November 2018 bypass recommendation which listed “lying”, a criminal record with a “propensity toward violence”, a domestic violence arrest in 2013, lack of character and maturity, unequivocal poor past employment history, excessive motor vehicle violations, and not being in compliance with residency. The MBTA also notes that he did not mention that he had also been rejected by the MSP again in 2018, citing his admission that he had “mixed up the dates” and missed a scheduled psychological exam.⁷

12. Question #94 asked: “Have you ever been issued any type of firearms license?” Mr. St. Germain answered “YES” and provided the details about his Massachusetts LTC, but did not disclose that he also held an LTC issued by the State of Utah.

(*Exh. 2*)⁸

25. The MBTA eventually hired thirteen (13) candidates from Certification #05777, of which three (3) were ranked below Mr. St. Germain. (*Stipulated Facts; Exhs. 1 & 2*)

Driver History (Bypass Reasons 1 through 4)

26. In concluding that Mr. St. Germain’s driving record was “horrendous”, the MBTA considered all entries on Mr. St. Germain’s Driver History going back to 2005, including those for which he was found “Not Responsible.” (*Exhs. 3 & 15; Testimony of Appellant & Mabee*)

27. The MBTA also cited Mr. St. Germain’s failure to disclose that his driver’s license was “slated for suspension” for failure to pay fines and costs, failed to disclose his attendance at a

⁷ Mr. St. Germain did complete the MSP’s psychological screening in 2017. The MSP examining psychiatrist’s final report contains a detailed account of Mr. St. Germain’s struggles as a youth, taken from his parents at four years of age to live with relatives and later group homes, where he became “embroiled in fighting to defend himself from bullies”. The psychiatrist noted that this “challenging life history and his response to it are key concerns” but Mr. St. Germain “did not present as exhibiting a mood disturbance or cognitive impairment” and denied “consciously experiencing anger, and was more focused on continuing self-improvement and overcoming obstacles.” (*Exh. 22*)

⁸ At the Commission hearing, the MBTA raised additional concerns, including: (a) answering “NO” to Question #64 which asked if he had ever sued or been sued, although a claim was pending from his 2016 motor vehicle accident and he filed a charge of discrimination with the MCAD after discharge by the Middlesex Sheriff’s Department; and (2) failing to sign the next certification for appointment to the Transit Police, that taken together with other information that came to the MBTA’s attention, raised doubt that Mr. St. Germain truly wanted a job with the MBTA or was more interested in a position with the Brockton Police. (*Exhs. 3,22 & 23; Testimony of Appellant*) As these concerns were based on information that came to the MBTA’s attention after the decision had been made to bypass him and were first presented at the Commission hearing, they are not properly before the Commission as reasons for bypass, I give them no weight, and I do not address them further. See G.L.c.31,§27; PAR.08(4).

remedial driver's training, and noted that he had an unpaid parking ticket that had flagged his driver's license for future non-renewal. Mr. St. Germain stated on his application that his driver's license was suspended for 60 days in 2009 "due to 7 surchargeable events". Save for the unpaid parking ticket, the MBTA witnesses were not able to identify which entries on the RMV Driver's History actually showed the alleged remedial training or what resulted from any of the "slated" suspensions. Mr. St. Germain paid the outstanding parking ticket as soon as it was brought to his attention by the MBTA bypass letter. (*Exhs. 3 & 15; Testimony of Appellant & Mabee*)

Criminal Record (Bypass Reason 9)

28. In addition to his driving record, the MBTA relies on Medford Police reports and Ms. C's testimony concerning the 2007 and 2013 sealed records cases and one other non-criminal incident report, as well as a Boston Police report regarding a 2005 incident, to support its conclusion that Mr. St. Germain's "aggressive, hostile, and confrontational actions" reported to, and observed by, numerous police officers showed a "blatant disregard" for Massachusetts law that made him a "liability" whom it was "impossible" to appoint as a police officer. (*Exhs. 16 through 19; Testimony of Ms. C*)

29. In the early morning hours of February 20, 2005, Boston Police officers responded to a report of a fight at a residential apartment in the Mission Hill area. Upon arriving on scene, the officers observed a black "non-Hispanic" male standing in the street in front of the residence with a cut on his chin and asked him if he had been in a fight, to which he responded "No" but would not say how he got cut. The officers spoke to the residents of the apartment who reported that the male, whom they had not previously met but identified as Richard St. Germain, had come to visit with other friends of theirs. An argument ensued over a food bill, the male began "freaking out", punched two women and they threw him out about 20 minutes before the police arrived. As he left, he smashed his hand into the door, causing a "spider-web" crack in the glass.

The police noted this crack in the incident report as well as noting that the male also appeared to have a small cut on his hand. The officers concluded that there was no probable cause to arrest the male suspect and allowed him to leave after telling him that the BPD detective division would be issuing him a summons on a complaint of malicious destruction of property. The incident report identifies the male as Richard St. Germain, a “Wentworth Student”, of Apt. 108 [# redacted] Huntington Avenue, Boston. The report listed a Boston telephone number and reported his SSN as “000-00-0000”. (*Exh. 20*)

30. Mr. St. Germain claims the incident is a case of mistaken identity. He was never a student at Wentworth and submitted a letter from the school attesting to that fact. He never resided at the Huntington Avenue address. He never received a summons or criminal complaint regarding the incident. (*Exhs.3,21 & 22;Testimony of Appellant*)⁹

31. On May 15, 2007, at approximately 10PM, the Medford Police responded to a report of a domestic disturbance. Ms. C (then pregnant with their first of her three children with Mr. St. Germain) met the officers outside the residence and stated that her boyfriend (Mr. St. Germain) was inside. The officers went to speak with him. The report does not indicate what interaction occurred with Mr. St. Germain. The report states that Ms. C had his belongings packed up and, when he came home, she told him to move out but he began to unpack his stuff and started putting it back into a dresser drawer. Ms. C reached to take his belongings out of the drawer. Mr. St. Germain grabbed her arm as he closed the drawer, causing her to catch her fingers in the drawer. She said that he also hit her with a stuffed animal. She was advised of her rights to seek a restraining order but declined. Based on her report, Mr. St. Germain was arrested and booked

⁹ When asked about the exculpatory evidence at the Commission hearing, Det. Mabee discounted the absence of any record that Mr. St. Germain’s ever lived on Huntington Avenue or attended Wentworth as more examples of “discrepancies” in his application. (*Testimony of Mabee*).

on a charge of domestic assault & battery. The charges were dismissed in December 2007 and the criminal record sealed. (*Exhs.3, 13 & 19*)

32. Mr. St. Germain does not deny that the incident occurred and resulted in his arrest. He agrees that the account in the police report is largely accurate but not complete. He vigorously denied that he threatened or assaulted Ms. C or engaged in any other form of criminal misconduct. (*Exh.3; Testimony of Appellant*)

33. At the Commission hearing, Mr. St. Germain confirmed that he arrived home after work on the night in question to find his laptop and other belongings piled up outside. Ms. C wanted him out of the house and he agreed. He arranged for his sister to pick him up and come back for his belongings. He tried to talk with Ms. C but she would not listen to him, so he began to bring his belongings inside and started to stow them away in a drawer and, as he did so, Ms. C began taking them out of the drawer. He does not specifically remember Ms. C catching her finger in the drawer but does not deny that it happened. He does remember that he threw a teddy bear at her as stated in the police report. (*Testimony of Appellant*)

34. At the Commission hearing, Ms. C largely stood by what she had told the police, but she did agree that, although Mr. St. Germain was “upset” with her, he was not out of control, and added that she did not believe Mr. St. Germain intentionally tried to slam the drawer on her finger and that she was never in fear that he would harm her in any way. (*Testimony of Ms. C*)

35. The MBTA also obtained a Medford Police “CAD Incident Report” concerning a 6/30/2010 response to a “Domestic” incident and an associated “Investigative Report” form. The CAD Incident Report contains no substantive information about the call, except the time the two Medford Police Officers were dispatched (10:28 AM) and the time the call was cleared (10:35 AM). The handwritten “Investigative Report” states that Ms. C was the “victim” of an “argument” with Mr. St. Germain “over money and no job” and got “verbally abusive with [Ms.

C] about his feeling the financial stress of being laid off and UE [unemployment] benefits have stopped.” The parties were “advised” and the report filed without any further action. (*Exh. 18*)

36. Until it was brought to his attention in the bypass letter, Mr. St. Germain had forgotten about this incident, but did recall it. At the Commission hearing, he described it as a “disagreement”, not an “altercation”. He does not remember the police coming to the house and neither he nor Ms. C were sure how it was that they were called. This incident occurred about a year and half after Mr. St. Germain was laid off by Fidelity Investments and had not found another job. Both he and Ms. C were short of money. He was still covering her rent and other bills as well as paying for a place of his own. Ms. C’s mother had recently passed away. He and Ms. C both recalled the incident as verbal argument over money issues. At the Commission hearing, both he and Ms. C stressed that the encounter never became physical. (*Testimony of Appellant & Ms. C*)

37. On May 6, 2013, at approximately 10:30 PM, the Medford Police responded to a 911 call received from a friend of Ms. C. According to the police report, at approximately 10:15 PM, Mr. St. Germain had dropped off their three children and left, but returned about fifteen minutes later and started banging on the front door. Mr. St. Germain told Ms. C. that he had learned something that he said warranted giving his daughters a “time out”. Ms. C said the children were already asleep and he should come back in the morning. According to the police report, Ms. C said Mr. St. Germain tried to pry open a front window and, then, before she could call 911, Mr. St. Germain was inside. She thought he came through a rear window. She said that an argument then ensued, during which Mr. St. Germain grabbed her, she spun around and he took Ms. C’s cell phone and left. She then contacted the Medford Police. (*Exh. 18; Testimony of Ms. C*)

38. Mr. St. Germain was tracked down by Randolph Police at the residence where he was staying and taken into custody by Medford Police officers. According to the police report, en

route to the police station, Mr. St. Germain stated that he had been with his daughters the entire day. After he dropped them off, his current girlfriend told him she had seen something “troubling” about his daughters. He turned back to Ms. C’s home. He tried to contact Ms. C but she did not return his messages or texts or answer her cell phone. He knocked on the front door and Ms. C came to the door and told him to go away. He could see his daughters in the background and could see Ms. C yelling at them. He returned to his vehicle and retrieved the house key to the back door which he used to enter the home. He met Ms. C in the dining/kitchen area. They argued, but it never got physical, and Ms. C ran out the front door. He initially denied knowing about Ms. C’s cell phone, but when asked again, he admitted to the officer that he “was right” and had “got rid of the cell phone by throwing it out the car window.” (*Exh. 16*)

39. Based on the foregoing information received from both Ms. C and Mr. St. Germain, Medford Police placed him under arrest with the intent to charge him with domestic assault and battery, breaking and entering with intent to commit a felony, and intimidation of a witness. The Medford Police also notified the Department of Families and Children (DCF), filed a “51A” Report of Child Abuse), and confiscated his Massachusetts LTC and his Middlesex Sheriff’s Department issued firearm. Medford Police later learned that Mr. St. Germain also held Utah LTC and notified that state’s authorities of Mr. St. Germain’s arrest. (*Exhs. 16 & 17*)

40. Mr. St. Germain was charged with Assault & Battery, Witness Intimidation and Breaking and Entering with Intent to Commit a Felony. On August 8, 2013, after filing of a Nolle Prosequi, all charges were dismissed. The record was later sealed. (*Exh. 13*)¹⁰

41. Mr. St. Germain agrees that the May 2013 incident occurred and that the charges resulted in his arrest, a one-year (negotiated) suspension of his LTCs and loss of his job at the

¹⁰ There was no evidence to indicate what action, if any, resulted from the “51A”. (*Exh. 17*)

Middlesex Sheriff's Office. He disputes parts of the police report and the DCF 51A and denies any criminal misconduct. (*Exhs. 3 & 16; Testimony of Appellant*)

42. At the Commission hearing, Mr. St. Germain's account of the May 2013 incident was largely consistent with what he told the police that night, but he provided additional details that corroborated his claim that he "had nothing to hide" about what happened. (*Exh. 13; Testimony of Appellant*)

43. As the police report indicated, Mr. St. Germain left Ms. C's residence after dropping off their three children without incident and then returned about 15 to 20 minutes later. The three girls had spent the day with him and Ms. V, who is still Mr. St. Germain's current girlfriend. They all went to the movie theater and, before leaving, Ms. V observed something she thought was wrong, but did not immediately tell Mr. St. Germain. On the way home, after they were alone, Ms. V described to Mr. St. Germain in detail what she said happened. This alarmed Mr. St. Germain for good reason, which he credibly explained during his testimony. Upon hearing what Ms. V told him, he turned the car around and returned to Ms. C's residence with the intention to discuss the subject with Ms. C and the children and get to the bottom of what had happened. As he told the police, en route he tried to reach Ms. C by phone, but she didn't answer. (*Testimony of Appellant*)

44. As the police report indicated, Mr. St. Germain told Ms. C they needed to talk about some "troubling" behavior by their children. Ms. C was visibly angry with Mr. St. Germain for reasons he couldn't pin down, but suspected it had something to do with the fact that Ms. C saw he had been out with Ms. V and that the children had met "Daddy's new friend" before she did. At the Commission hearing, Ms. C confirmed that is precisely why she was angry and did not then want to talk with Mr. St. Germain. (*Testimony of Appellant & Ms. C*)

45. As he had told the police, Ms. C would not open the door. He used his house key to the back door (he did not have key to the front door) to gain entry into the residence. He never attempted to enter the residence through a window. He met Ms. C in the kitchen area and tried to talk to her about his concerns, but she laughed at him and told him she would call the police or something to that effect. She took out her phone, which he grabbed from her hand as he continued to “plead with her” to “please listen to me.” Ms. C then ran out the door. Mr. St. Germain went to talk to his children and then sent them back to bed. He went outside where he saw Ms. C at the door of a neighbor’s house, tried one more time to engage her in conversation, to no avail, and then drove off. After he left, Ms. C made contact with the police. (*Testimony of Appellant & Ms. C*)

46. While driving home the second time, Mr. St. Germain realized that he had put Ms. C’s cell phone in his back pocket. By this time, he was stewing over the fact that Ms. C would not take seriously what he thought was an important issue involving their children, as well as the fact that his children would not give him straight answers about what happened at the movie theater. He admits that, at this point, his anger did boil over and he threw Ms. C’s phone out the car window. He provided Ms. C with a new phone following week. (*Testimony of Appellant*)

47. During her Commission testimony, Ms. C admitted that she depended on Mr. St. Germain to support their children and that her interest in Mr. St. Germain’s financial support was in her mind when the criminal cases against him were under consideration. She also admitted that both she and Mr. St. Germain could get “emotional” at times but he was not a “violent person”, he was never abusive to her and she was “never physically afraid” of him. (*Testimony of Ms. C*)

48. Ms. C did not make the comments about Mr. St. Germain by “numerous Police Officers” that the MBTA attributed to her, allegedly disparaging him about his suitability to

become a police officer. In particular, she called her prior relationship with Mr. St. Germain, although it included “lots of arguments” but no more than “typical of any couple”. Both she and Mr. St. Germain called their current “working relationship” good overall. She especially praised him for how well she saw him get along with their children and volunteered how “really, really good” he is handling difficult and stressful situations involving them and others. (*Testimony of Appellant & Ms. C*)

False Statements (Bypass Reasons 6, 7 & 12)

49. At the Commission hearing, the MBTA provided no specific evidence to support its contention (Bypass Reason 6) that Mr. St. Germain “intentionally” concealed his accident at the Suffolk Sheriff’s Department on his MBTA application, other than he did mention it in response to a similar question on Brockton’s application filed two month later. He was never out of work due to the accident. (*Exhs. 2,3 & 21; Testimony of Appellant, Mabee & Cutting*)

50. Mr. St. Germain admits that he provided inconsistent responses to very similar questions on the MBTA application and the MSP application regarding whether he was ever “suspended” from a job or “reprimanded” (Bypass Reason 7), but the substantive disclosures about his employment history, and specifically, his termination from the Middlesex Sheriff’s Department are substantially identical, save that he mentioned the “written reprimand” for his part (along with other Suffolk Sheriff correction officers) in misplacing handcuff keys only on his 2017 MSP application. Mr. St. Germain attributed the discrepancies to the logistical problems and tight deadlines he faced to complete his MBTA application. In particular, he copied his responses from prior applications and the questions on those application did not exactly match up to the questions as they appeared on the MBTA application. (*Exhs. 3 & 22; Testimony of Appellant*)

51. Mr. St. Germain also admitted his failure to disclose that he held an LTC issued by the State of Utah, in addition to his Massachusetts LTC, both of which were suspended due to the

2013 criminal matter (Bypass Reason 12). He did disclose the suspension of the Massachusetts license and had disclosed the Utah license on other applications. He also attributed the omission to the same logistical problems and tight deadlines he faced to complete the MBTA application noted above. (*Exhs. 3, 21 & 22; Testimony of Appellant*)

Oher Errors and Omissions (Bypass Reasons 5, 8, 10 & 11)

52. The other errors and omissions found by the MBTA in the employment section of Mr. St. Germain's application (Bypass Reasons 5 & 8) were not cited as intentionally untruthful, but relied upon to show what the MBTA concluded was Mr. St. Germain's lack of attention to detail and failure to follow the instructions provided for completing his application properly and updating it as necessary. Mr. St. Germain admitted most of these mistakes, including his failure to mention his part-time job as a barback and forgetting to list the period of unemployment between his jobs for Fidelity and Toys R Us. He attributed these omissions to honest oversight and the same logistical issues and time constrained he faced in completing the application noted above. (*Exhs. 2 & 3; Testimony of Appellant, Mabee & Cutting*)

53. In the case of the discrepancies regarding his Fidelity employment, Mr. St. Germain explained that he broke out that employment on his resume to show the three different assignments he had in different departments, but they were covered in a single block on the application because they were all part of the same employer, Fidelity Investments. The discrepancy in the overall employment dates on the application was a typo which Mr. St. Germain had corrected by hand (somewhat illegibly) when he was completing the form at the MBTA. The dates on the resume are correct. (*Exhs. 3 & 28; Testimony of Appellant*)

54. As to the discrepancy in his response about prescription drugs, at the Commission hearing, Mr. St. Germain agreed that he may have misinterpreted the question, taking it literally,

and thought that he had not been “prescribed” a drug that was given to him in the hospital. The Additional Response Form he provided was completely accurate. (*Testimony of Appellant*)

55. The final discrepancy in Mr. St. Germain’s application mentioned in the bypass letter concerned failure to update the information. The application material provided by the MBTA to candidates requires that they update their applications to reflect any “interactions” and “encounters” with law enforcement “officials” or “agencies.” The MBTA also tells candidates verbally that they must update and supplement the application if any information has changed, such as incurring a speeding ticket or submitting an application to another law enforcement agency. The MBTA considered Mr. St. Germain’s failure to disclose his 2018 applications to the MSP and Brockton a violation of these instructions. (*Exhs. 3 & 5; Testimony of Haney*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31, §1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass App.Ct. 632, 635 (1995), rev.den., 423 Mass.1106 (1996)

Basic merit principles in hiring and promotion calls for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. In order to

deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L.c.31,§27; PAR.08(4)

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 had shown, by a preponderance of the evidence, that it has “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. 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 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”)

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, 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.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (*emphasis added*) However, 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 for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

ANALYSIS

Driving Record

Mr. St. Germain acknowledges that his driver’s history is not unblemished. He disclosed that his license was suspended in 2009 after accumulating seven surchargeable events, including one at-fault accident (2005), a sign violation, not otherwise identified (2007), three speeding citations (2007 & 2008) and two seat-belt violations (2008). In the past ten years since then, he was cited for failing to have his registration in his possession (Not Responsible, 2009); failing to have a current inspection sticker (Responsible, 2009), a number plate violation (Not Responsible, 2009); one at-fault accident (2011), a failure to yield (Not Responsible, 2012), and three speeding citations (Responsible, 2009; Not Responsible, 2014 & 2018)

As recently summarized in Dorn v. Boston Police Department, 31 MCSR 375 (2018), the Commission, in regard to bypass appeals based on driving histories, generally limits the review to the Appellant’s driving history within the past ten (10) years, but gives greater weight to the most recent five (5) years. Further, the Commission gives more weight to those infractions related to at-fault accidents and other moving violations where the Appellant has been found responsible. Less weight is given to those entries which may be attributable to socioeconomic factors such as expired registrations, no inspection sticker, etc. which may have no bearing on whether the Appellant can effectively serve in a public safety position. The Commission also attempts to put an Appellant’s driving history in the proper context, considering such issues as whether he/she is required to drive more for personal or business reasons. Finally, when relevant,

the Commission reviews the driving histories of other candidates to ensure fair and impartial treatment. See also, Bruins v. City of New Bedford, CSC No. G1-19-206, 33 MCSR --- (2020)

In sum, for seven years immediately preceding his application to become an MBTA Transit Police Officer, Mr. St. Germain maintained a clean driving record. Following his suspension more than ten years earlier, he has had one at-fault accident, one speeding ticket and an inspection sticker infraction. Thus, the preponderance of the evidence, indeed, the undisputed evidence of Mr. St. Germain's most relevant recent driving record, is not fairly characterized as comprising "excessive motor vehicle violations" that justify a bypass for appointment.

Criminal History

Mr. St. Germain argues that the MBTA is precluded from obtaining and considering any information about either of his adult criminal cases, as those records have been sealed pursuant to G.L.c.276,§100A. The Commission recently considered this issue in Golden v. Department of Correction, CSC No. G1-19-198, 33 MCSR --- (2020) and Kodhimaj v. Department of Correction, 32 MCSR 377 (2019). The Commission concluded that a "criminal justice agency" as defined in G.L.c.276,§100D (which includes the MBTA Transit Policed Dep't), is expressly authorized to access independently, or through third parties, all forms of criminal history information about a candidate for employment as a law enforcement officer as part of the required "thorough review of a candidate's background", and that expressly includes sealed judicial records or other information (including police incident reports) concerning such sealed cases. Id.¹¹

¹¹ An order to seal a criminal record is distinguished from an order to "expunge" the record, now applicable to most juvenile records and certain other matters (e.g., cases of mistaken identity and offenses that are no longer criminal) which mandates "the permanent erasure or destruction" of judicial and all other related records as well, including police logs, "so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency. If the record contains information on a person other than the petitioner, it may be maintained with all identifying information of the petitioner permanently obliterated or erased." See G.L.c.276, §100E et. seq., added by St.2018 c 69, §195, eff. Oct. 13, 2018.

The Commission also concluded that criminal justice agencies were not exempt from the requirements of Massachusetts Discrimination Law, G.L.c.151B, §4(9) & §4(9½), which precludes any employer (including public law enforcement agencies) from asking a candidate to disclose certain prior criminal history, including cases that did not involve a conviction, misdemeanor convictions that occurred more than three years ago, and “a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276.”

Id.¹² Moreover, all employers must comply with G.L. c. 6, § 171A, which states, in part:

“In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant’s criminal offender record information shall provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source prior to questioning the applicant about his criminal history. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source. . . .”

“Failure to provide such criminal history information to an applicant pursuant to this section may subject the offending person to investigation, hearing and sanctions by the board. Nothing in this section shall be construed to prohibit . . . an adverse decision on the basis of an individual’s criminal history or to provide or permit a claim of an unlawful practice under Chapter 151B or an independent cause of action . . . for a claim arising out of an adverse decision based on criminal history except as otherwise provided under Chapter 151B.”

Thus, insofar as the MBTA’s application process inquired of Mr. St. Germain about information concerning his criminal history, including but not limited to sealed records and juvenile history, which Chapter 151B prohibits it from asking him about, he correctly asserts that those disclosures cannot be used against him and, in particular, any errors or omissions in his disclosures cannot form the basis to disqualify him on the grounds of untruthfulness. Id. See also G.L.c.151B,§9,¶2 (“No person shall be held under any provision of any law to be guilty of

¹² Massachusetts Civil Service Law also limits the information that may be required from a candidate when applying to take a civil service examination. See G.L.c.31,§20.

perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.”)

Moreover, by answering improper questions solicited by the MBTA about his criminal history that are prohibited by G.L.c.151B, Mr. St. Germain does not waive his rights to object to consideration of the truthfulness of his responses. See Kodhimaj v. Department of Correction, 32 MCSR 377 (2019) citing Kraft V. Police Comm’r of Boston, 410 Mass. 155 (1991) See also, G.L.c.151B,§4(5) (prohibiting “interference” with the exercise of c.151B rights); Lysek v. Seiler Corp., 415 Mass. 625 (1993) (“Any result other than the one reached in *Kraft* at best would have ignored the employer's unlawful inquiries, and at worst would have rewarded the employer for them. In either event, employers in the future would have been encouraged to violate the law”)

In sum, in the present case, none of Mr. St. Germain’s criminal history fell within the categories that the MBTA could lawfully ask him about in his application, and charging him with untruthfulness in his responses cannot be used as a reason to bypass him. Similarly, although the MBTA was lawfully entitled to access his criminal history, including the juvenile and sealed cases (which include no record of conviction or delinquency adjudication), the MBTA also was required to provide Mr. St. Germain with copies of all the information it had obtained (and allow him to directly and fully respond to it), before it used that information as a basis for bypass, which the MBTA did not do. For these two reasons, alone, the MBTA’s bypass of Mr. St. Germain on the basis of his criminal record did not comply with Massachusetts law and was not reasonably justified.

Finally, these two fatal flaws aside, I also conclude that the information about Mr. St. Germain’s criminal history would not provide a reasonable justification to bypass him on that basis. The fact that Mr. St. Germain’s adult records were sealed does not preclude their consideration by the MBTA, but the weight they deserve ought to take into account that, in order

to be sealed, a judicial determination had to be made that the sealing was in the public interest, after weighing all relevant factors, including, among other things “evidence of rehabilitation . . . [and] the passage of time since the offense and since the dismissal or nolle prosequi. . .” Commonwealth v. Pon, 469 Mass. 296, 316-19 (2014). See also Executive Order No. 495 “Regarding the Use and Dissemination of Criminal Offender Record Information by the Executive Department (Jan. 11, 2008):

“[T]he existence of a criminal record should not be an automatic and permanent disqualification for employment, and as the largest single employer in the Commonwealth, state government should lead by example in being thoughtful about its use of CORI in employment decisions . . .

It shall be the policy of the Executive Department with respect to employment decisions that . . . [t]he employer should consider the nature and circumstances of any past criminal conviction; the date of the offense; . . . the individual’s conduct and experience or professional certifications obtained since the time of the offense or other evidence of rehabilitation; and the relevance of the conviction to the duties and qualifications of the position in question. Charges that did not result in a conviction will be considered only in circumstances in which the nature of the charge relates to sexual or domestic violence against adults or children . . . or otherwise indicates that the matter has relevance to the duties and responsibilities of the position in question.”

(Emphasis added)

Giving consideration to applicable law and public policies set forth above, I conclude that the preponderance of the evidence fails to establish that Mr. St. Germain’s prior criminal history provides a reasonable justification to disqualify him for appointment to the position of an MBTA police officer. He has never been convicted of any crime or adjudicated a delinquent. All charges against him were dismissed. I also take note that, while not excusing his juvenile behavior, that period was a particularly difficult time in Mr. St. Germain’s juvenile life (having been separated from his siblings and bullied by other older and bigger kids at the juvenile facilities and group homes where he lived). The preponderance of the evidence at the Commission hearing, most of which the MBTA failed to discover or was led to misconstrue during its less than reasonably thorough review, established that the adult 2007 and 2013

incidents involved legitimate verbal arguments that, without a more thorough review than appears in this record, cannot reasonably be characterized as a pattern of domestic abuse or violence.. The credible testimony of Mr. St. Germain and Ms. C established that both incidents were isolated instances in a long-term relationship with Ms. C and their three children, that is, and has been, on good terms, without need even for a court order of support since 2014. I take note that Ms. C did not deny her potential bias due to her financial interest in Mr. St. Germain's employment future, but I credit her testimony for its candor and honesty.¹³

Mr. St. German's adult history shows many indicia of his maturity, none of which the MBTA considered, as the background investigator never met him and never took a serious look at his adult professional and pearsonal life beyond the paper record of his criminal history. No less than four law enforcement agencies (Suffolk Sheriff, Medford Police, Woburn Police and the State of Utah) have deemed him suitable to hold an LTC and carry a firearm. He has a satisfactory employment record as a Suffolk Deputy Sheriff, which, among other things, includes responsibility to operate cruisers and to handle the many stressors of a job dealing with the care and custody of prisoners. He proudly and credibly presented the evidence of these current, positive traits, in testimony that showed a demeanor that was calm and reserved, even under tough cross-examination.

In sum, because of the absence of a thorough review of Mr. St. Germain's background and after consideration of the preponderance of the evidence that failed to establish that Mr. St. Germain ever committed any domestic physical or verbal abuse of anyone in his entire life, I conclude that the MBTA has not met its burden to establish that he has a "troubling history" of "domestic violence" and never outgrew the "pattern of aggressive, assaultive behavior, lack of

¹³ The dispute reported in the Medford 2010 incident report was not considered worthy of pursuit by the police or Ms. C or Mr. St. Germain (the incident had slipped his mind until the MBTA bypass letter refreshed his recollection). The 2005 Boston incident was a case of mistaken identity. I give no weight to either incident.

impulse control and anger, dating from his time as a juvenile” that it claims to be the reason for this unwarranted bypass decision.

False Statements

The MBTA claims that Mr. St. Germain provided three knowingly false answers to questions on his application: (1) omitting disclosure of an on-the-job injury, (2) failing to disclose discipline received at the Middlesex Sheriff and Suffolk Sheriff’s departments, and (3) disclosing only one of his two LTCs, omitting his Utah Concealed Carry License. I accept Mr. St. Germain’s testimony that none of those omissions were intentional but, rather, attributed to the formatting issues he had encountered in completing the MBTA application.

An appointing authority is entitled to bypass a candidate who has “purposefully” fudged the truth as part of the application process. See, e.g., Minoie v. Town of Braintree, 27 MCSR 216 (2014). However, providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016) Moreover, as this case illustrates, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L.c.31, §27, ¶2.

The corollary to the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness requires 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. See, e.g., Boyd v. City of New Bedford, 29

MCSR 471 (2016) (honest mistakes in answering ambiguous questions on NBPD Personal History Questionnaire); Morley v. Boston Police Dep't, 29 MCSR 456 (2016) (candidate unlawfully bypassed on misunderstanding appellant's responses about his "combat" experience); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history)

In sum, the preponderance of the evidence failed to establish the MBTA's attempt to characterize these errors and omissions as examples of untruthfulness.

Other Errors and Omissions

The MBTA also identifies what it calls unintentional mistakes committed by Mr. St. Germain in completing his application. In addition to the three examples just mentioned above, the MBTA cites five other alleged errors and omissions: (1) omitting his part-time outside employment as a barback while working at the Suffolk Sheriff's office; (2) leaving off his period of unemployment from 2010 to 2013 between jobs at Fidelity Investments and Toys R Us; (3) failing to list his three different assignments at Fidelity Investments as separate employments; (4) erroneously listing two drugs he was properly prescribed as having been taken "without a prescription"; and (5) failing to report his 2018 applications to the MSP and Brockton as required further disclosures of "encounters" or "interactions" with a law enforcement agency.

Mr. St. Germain does not concede that his use of a single block to report his employment at Fidelity was an error at all. He does concede, however, that he "clearly made [other] mistakes", including "misreading" the question on prescription drugs because he didn't understand that drugs administered in the hospital were "prescribed" to him, forgetting to list his period of unemployment from 2010 to 2013 and failing to disclose his part-time job as a barback and his on-the-job accident while working as a Suffolk Deputy Sheriff.

Finally, forgetting to update his application to report his 2018 Brockton application and his 2018 MSP application and rejection by the MSP is troubling, but it does not alter my conclusion that, although attention to detail is an important trait for a police officer, on all of the evidence, Mr. St. Germain's carelessness on his application, alone, does not rise above the level of isolated, honest mistakes and, without more, does not presents a legitimate reason to question his candor or overall attention to detail. cf. Barboza v. City of New Bedford, 29 MSCR 495 (2016) (application riddled with dozens of discrepancies and credibility issues about prior employment and involvement with a known felon).¹⁴

Mr. St. Germain's errors are not excused by the rushed circumstances of his own making that he faced to complete his application. However, the MBTA also had information in the form of employment references that expressly praised Mr. St. Germain for his "professionalism" and "strict attention to detail as a correction officer". Having made no effort to follow-up with any of those on-the-job references or employers, or even meet with Mr. St. Germain, I cannot credit the background investigator's professed concern that these inadvertent errors on his application justify his bypass recommendation.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Richard St. Germain, is **allowed**.

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission **ORDERS** that the Massachusetts Human Resources Division and/or the City of Gloucester in its

¹⁴ I also note that, insofar as the MBTA relied on the Brockton and MBTA rejections: (1) the MSP rejection was due, at least in significant part, to reports of statements allegedly made by Ms. C about Mr. St. Germain which I found were misconstrued or not accurate, and (2), as set forth in the decision announced today in St. Germain v. Brockton, the Commission found that the reasons cited by the MBTA in the Brockton bypass letter were not reasonably justified.

delegated capacity take the following action:

- Place the name of Richard St. Germain at the top of any current or future Certification for the position of MBTA Transit Police Officer until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. St. Germain is appointed as an MBTA Transits Police Officer, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below Mr. St. Germain who was appointed from Certification No. 05777. This retroactive civil service seniority date is not intended to provide Mr. St. Germain with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By 3-2 vote of the Civil Service Commission (Bowman [NO], Chairman; Camuso [AYE], Ittleman [NO], Stein [AYE] and Tivnan [AYE], Commissioners) on June 4, 2020.

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:

James W. Gilden, Esq. (Appellant)

Daniel A. Kazakis, Esq. (for Respondent)

Patrick Butler, Esq. (HRD)

Regina Caggiano (HRD)

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

RICHARD ST. GERMAIN,
Appellant

CASE NO. G1-19-128

v.

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,**
Respondent

OPINION OF CHRISTOPHER BOWMAN AND CYNTHIA ITTLEMAN

The MBTA Transit Police Department has provided valid reasons to bypass the Appellant.

First, the Appellant, based on his own testimony, was involved in two (2) domestic violence-related incidents, including an incident in 2013 where he entered a home without permission, grabbed the mother of his children, spun her around and stole her cell phone. Aware that police had been called, the Appellant fled the scene and threw the cell phone out a car window, destroying the cell phone. This type of disturbing conduct, standing alone, is a valid reason for bypass.

Second, the Appellant failed to disclose on his application that he held a license to carry (LTC) a firearm in the State of Utah, which had previously been suspended for one (1) year.

Third, even as of the date of the hearing before the Commission, the Appellant had failed to provide the MBTA Police Department with documents that all candidates were required to produce, including, but not limited to, copies of his tax returns.

Fourth, the Appellant failed to provide complete and/or thorough responses to various questions on the application.

Years of prior Commission decisions have established that any one of these reasons, let alone all of them taken together, justify an appointing authority's decision to bypass a candidate for appointment to a public safety position.

The appeal should be denied.

Civil Service Commission

Christopher Bowman

Christopher C. Bowman

Chairman

June 4, 2020

I concur with the above dissent. Further, I note that well-established law and policy in Massachusetts are designed to prevent and address domestic violence. This decision should not be interpreted to mean that domestic violence is acceptable. Domestic violence must be condemned in the strongest possible terms.

Cynthia Ittleman

Cynthia A. Ittleman

Commissioner

June 4, 2020