

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

**WILLIAM TAYLOR,**

*Appellant*

v.

**CITY OF LEOMISTER,**

*Respondent*

Docket Number:

D-24-168

Appearance for Appellant:

Casey E. Berkowitz, Esq.  
Sandulli Grace, P.C.  
44 School Street, Suite 1100  
Boston, MA 02108

Appearance for Respondent:

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Commissioner:

Shawn C. Dooley

**SUMMARY OF DECISION**

The Commission allowed the appeal of a Leominster Police Officer and overturned his five-day suspension as the City of Leominster failed to prove that he violated the Leominster Police Department's use of force policy.

**DECISION**

On November 1, 2024, the Appellant, William Taylor (Appellant), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Leominster (City) to suspend him for five days for violating the Leominster Police Department (LPD)'s use of force policy. On December 4, 2024, a remote pre-hearing conference

was held. On January 28, 2025, I conducted an in-person full hearing at the offices of the Commission in Boston. The hearing was recorded via Webex.<sup>1</sup> Both parties filed proposed decisions. For the reasons set forth below, the Appellant's appeal is *allowed*.

## **FINDINGS OF FACT**

The Appellant entered into evidence eight exhibits (App. Ex. 1-8)<sup>2</sup> and the City entered seven exhibits (Resp. Ex. 1-7) into evidence. Based upon the documents entered into evidence and the testimony of the following witnesses:

*Called by the LPD:*

- Daniel Bennett, Comprehensive Investigations and Consulting, LLC;
- Charles M. DiChiara, Waltham Police Department;

*Called by the Appellant:*

- William Taylor, Appellant;

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

1. The Appellant has been employed by the Leominster Police Department (LPD) since August of 2016. *(Testimony of Appellant)*
2. He has worked as a field training officer (FTO) for LPD since 2019. *(Testimony of Appellant)*

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<sup>1</sup> A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

<sup>2</sup> Exhibit 8 was entered by the Appellant after the hearing with no objection from the City.

3. Prior to this matter, the Appellant had no disciplinary history with the LPD. (*Testimony of Appellant*)
4. The discipline issued here involves a call for service involving use of force on a citizen (pseudonym: TM) by the Appellant on May 5, 2024.

***Summary of the events occurring on May 5th***

5. At approximately 12:01 AM on May 5, 2024, the Appellant and Officer Daniel Parrish were dispatched to a motel located on Commercial Road in Leominster, Massachusetts for a well-being check. (*Testimony of Appellant; Resp. Exhs. 2 and 3*)
6. Officer Parrish had been employed by the LPD for just under one year at the time of the call and had completed field training. (*Testimony of Appellant*)
7. Upon arrival, the Appellant spoke with the motel's office attendant, RA<sup>3</sup>, who informed him that there had been drug activity by TM and the unknown individual inside of the room which the 911 caller had identified. (*Resp. Ex. 3*)
8. Dispatch then notified the officers that a second 911 call had been received, and that the caller (TM) thought the resident in the motel room was suffering from an overdose and the Appellant requested that an ambulance be dispatched. (*Resp. Ex. 3*)
9. TM was the person who called 911 for the well-being check as well as to report possible overdose. She would not identify herself to officers despite multiple requests<sup>4</sup>. (*Resp. Ex. 3*)
10. TM presented to the officers as belligerent and agitated when they first encountered her. TM's behavior did not improve when she came down an exterior stairwell of the motel

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<sup>3</sup> For confidentiality purposes, civilians will be referred to by their initials in this decision.

<sup>4</sup> There is no requirement that a person who calls 911 must identify themselves.

and spoke to the Appellant and the motel manager, RA, on the ground floor of the motel directly outside of the motel's main office. TM was acting in such a manner that she was disturbing other guests of the motel and she was asked to quiet down multiple times by both the Appellant and RA. *(Testimony of Appellant, Resp. Exhs. 2 and 3)*

11. TM was asked to leave the property by RA. *(Resp. Ex. 3)*

12. RA gave the Appellant a keycard to the room of the individual who was the subject of the well-being check -- at which time both officers ascended the stairs to the second floor of the motel and approached the door to the room in which the alleged overdosed party was staying. *(Testimony of Appellant, Res. Exs. 2 and 3)*

13. TM approached the officers and was yelling at them. She was warned that if she did not leave, she would be placed under arrest. She left.

14. The Appellant and Officer Parrish then attempted to gain entry to the room in question, knocking on the door and identifying themselves and stating that they were there for a well-being check. They did this two times. After the second time and while waiting for a response, TM returned and again approached the officers. She began to yell loudly and cause a scene. She was again warned that if she did not leave, she would be placed under arrest. *(Testimony of Appellant, Resp. Exhs. 2 and 3)*

15. When she refused to leave, she was informed that she was being placed under arrest. *(Testimony of Appellant, Resp. Exhs. 2 and 3)*

16. TM refused to comply with the Appellant's instructions to place her hands behind her back and was forcibly taken to the ground by the officers in order to handcuff her.

*(Testimony of Appellant, Resp. Exhs. 2 and 3)*

17. Approximately forty seconds after the Appellant and Officer Parrish took TM to the ground, members of the Leominster Fire Department arrived in the hallway and proceeded to the room in question by stepping over TM who was then in the prone position across the hallway. (*Testimony of Appellant, Resp. Exhs. 2 and 3*)
18. After roughly 90 seconds, TM was repositioned from a prone position to a modified recovery position -- partially on her stomach and partially on her side with her hands cuffed behind her back. During this time, the Appellant provided responding firefighters/paramedics with details of the situation and stated that he had the room key. TM was yelling that she could not breathe, was making crying sounds, and yelling at the officers to “get off” of her, even though their body worn camera footage showed that they were not “on her”. Neither the paramedic nor firefighters who arrived on scene intervened or attended to her as they stepped over her to go to the room for the well-being check. (*Testimony of Appellant, Resp. Exhs. 2 and 3*)
19. Both officers were able to monitor her breathing throughout the period she was on the ground with the Appellant putting his hand on her to aid in his monitoring of her breathing. At no point did it appear that she was unable to breathe or have any difficulty breathing, despite her statements to the contrary. She remained extremely vocal and combative, frequently yelling profanities at the officers. (*Resp. Ex. 2*)
20. For several minutes the officers kept her on the ground in what can be described as a modified recovery position<sup>5</sup> with hands on her utilizing minimal pressure to maintain

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<sup>5</sup> The recovery position, also known as the lateral recumbent position, is a position taught in first responder and CPR courses to prevent airway obstruction. Correct recovery position puts the person fully on their side while supporting head and neck with the patient’s arm, while bending the knees to provide for stability. Continuous monitoring of breathing is required.

control and stabilize her. TM alternated between compliance, resistance, and expressing pain/discomfort. (*Testimony of Appellant, Resp. Exhs. 2 and 3*)

21. TM continued to move by sweeping her legs such that Officer Parrish was forced to keep his knee in between her legs; she repeatedly attempted to pinch and dig her nails into him throughout. (*Resp. Ex. 2*)

22. The firefighters forcibly entered the room of the possible overdose victim who was the subject of the original 911 call requesting a well-being check. (*Resp. Exhs. 2 and 8*)

23. Four minutes and twenty seconds after TM was handcuffed, LPD Officer Rijeovski joined Officer Parrish and the Appellant on scene. (*Res. Ex. 8*)

24. Roughly four minutes and forty-five seconds after TM was brought to the ground and handcuffed, the Appellant left TM in the custody of Officers Parrish and Rijeovski and entered the hotel room as the firefighters assessed and interviewed the room's occupant. The Appellant also spoke with the occupant of the room for roughly three to four minutes. (*Testimony of Appellant, Resp. Exhs. 2, 3, and 8*)

25. Throughout this period, TM continued to resist; as Officer Parrish later testified to Mr. Bennett: "She's trying to swing her whole body around, she's trying to kick off the wall, if it weren't for my knee in between her legs she would have been able to sweep that left leg ...." (*Resp. Ex. 2*)

26. Roughly 5 minutes after TM was handcuffed, she repositioned herself onto her other side to speak to the paramedic on scene. Paramedic Reese of the Leominster Fire Department (LFD) spoke to TM about the occupant of the room, asking her why she called 911, and if she had any other information about said occupant. TM did not tell the paramedic that

she was in any discomfort, only that she was just trying to help and wanted to leave.

*(Resp. Ex. 8)*

27. Paramedic Reese did not intervene or say anything to the police officers as to TM's

positioning nor did she suggest moving her to a seated or standing position. *(Resp. Ex. 8)*

28. Paramedic Reese stated in her interview with Bennett that TM was "maintaining well,

didn't seem injured in any way." *(Resp. Ex. 2)*

29. Paramedic Reese has served with the LFD for roughly a year and a half and has been a

licensed EMT-Paramedic for 30 years. *(Resp. Ex. 2)*

30. The Appellant is trained as a first responder. In Massachusetts the hierarchy of medical

responder levels from lowest to highest are: First Responder, EMT-Basic, EMT-

Advanced, EMT-Paramedic. *(Testimony of Appellant)*

31. After the paramedic left, Officer Parrish determined that the scene was secure and the

situation, as well as TM, had calmed down enough that it was appropriate to bring her to a seated position. *(Resp. Ex. 2)*

32. Officer Parrish asked TM if she would behave and stop resisting if he brought her to a

seated position. She answered affirmatively and thus Officer Parrish assisted her to a seated position. *(Resp. Ex. 2)*

33. From the time TM was handcuffed until she was in a seated position approximately six

minutes and twenty seconds had elapsed. *(Resp. Ex. 8)*

34. A short time after TM was put into the seated position, the Appellant rejoined Officer

Parrish and they, along with other LPD officers, raised her to the standing position and proceeded to bring her down the stairs and put her into a cruiser. TM resisted throughout this process. *(Resp. Ex. 8)*

35. The total elapsed time from the Appellant arriving on scene to TM being put into the cruiser was approximately 25 minutes and 40 seconds. (*Resp. Ex. 8*) For a minute-by-minute narrative of the entire incident, see the *Appendix* to this Decision.

### **Use of Force Investigation**

36. Although no complaint was filed after this incident, the LPD elected to conduct an internal review of the event. (*App. Exhs. 3 and 4*)

37. In Lt. Donnelly's report on the matter, he stated that the use of force was proper but that handcuffing procedures needed to be worked on. It stated that any problems could have been avoided if the officers had focused on and carried out the well-being check in a timelier manner. (*App. Ex. 4*)

38. In Sgt. Vasquez's report, he agreed with Lt. Donnelly's assessment that at issue were both handcuffing and urgency in performing the well-being check. He further noted that both officers needed a refresher on not having a handcuffed person in a prone position for an extended period of time. (*App. Ex. 5*)

39. Following these reports the City hired Daniel Bennett (Bennett) and his company, Comprehensive Investigations and Consulting (CIC), to conduct an investigation into the two officers and the incidents surrounding this arrest. (*Resp. Ex. 2*)

40. Mr. Bennet reviewed the body camera footage of the Appellant and Officer Parrish and then proceeded to conduct interviews with the Appellant, Officer Parrish, and Firefighter/Paramedic Reese. (*Resp. Ex. 2*)

41. Paramedic Reese, when asked about her observations of TM, stated that "she was, you know, maintaining well, didn't seem injured in any way." (*Resp. Ex. 2*)



42. Mr. Bennett stated in the hearing I conducted that he believes that if *any* part of a person's stomach is on the ground it constitutes a violation of MPTC's guideline prohibiting forcing "an individual to lie on their stomach." However, if the person is heavysset and has a larger belly, it would be impossible for the person to be put in a side recovery position because the side of their stomach would be on the ground. (*Testimony of Bennett*)
43. CIC hired Officer Charles DiChiara (DiChiara), a Waltham police officer who oversees training at Waltham Police Department and is state coordinator for use of force for the MPTC. He was utilized by CIC on this matter as an expert in use of force and defensive tactics. He was brought into this case to "determine if the procedures followed by and actions and/or inactions taken by Leominster Police Officers Daniel Parrish and the Appellant were reasonable and consistent with accepted industry standards for use of force." (*Resp. Ex. 2*)
44. Officer DiChiara reviewed the body camera videos of the Appellant and Officer Parrish but did not interview anyone during his investigation. (*Testimony of DiChiara*)
45. Officer DiChiara determined use of force was proper, but that TM should have been brought to a recovery position – preferably seated – sooner than she was. (*Testimony of DiChiara*)
46. At the hearing, Officer DiChiara demonstrated a recovery position of a person in handcuffs on their side and stated that this would have to be modified due to Officer Parrish needing to keep his knee between the arrestee's legs to prevent further kicking and pushing off the wall. (*Testimony of DiChiara*)
47. Officer DiChiara stated that the recovery position he was demonstrating would have been painful and was more of an aggressive tactic than a passive medical recovery position.

*(Testimony of DiChiara)*

48. Officer DiChiara said that he could not determine in the body camera video if TM was on her side during a portion of the video but agreed that she was not fully prone. *(Testimony of DiChiara)*

49. Officer DiChiara identified several factors which must be considered when an officer is assessing and re-assessing a use of force situation, namely: “the severity of the crime, the person that we’re dealing with, the environment where we are located, potential for other innocent bystanders around . . . the level of resistance, and . . . the person’s age, size, and physical capabilities—we would call that totality of the circumstances. How many officers are present, what is the officers’ skill set, age, size, physical capabilities, and what is the threat posed to the officers at the time, or the threat posed to the community.” *(Testimony of DiChiara)*

50. Officer DiChiara cited 550 Code Mass. Regs. 6.06 – duty to intervene - as an important aspect of his determination that the Appellant was responsible for TM not being brought to a seated position. Despite this policy stating that all officers have the duty to intervene in cases where use of force is excessive, “regardless of the rank of the officer so observed,” he chose not to apply this standard to either Officers Parrish and Rijeovski or Paramedic Reese in his final written analysis. *(Resp. Ex. 2)*

51. Officer DiChiara noted in the conclusion of his report that the use of force “did not appear to be malicious, punitive or sadistic and did not appear to be used with the infliction of any pain or injury.” *(Resp. Ex. 2)*

52. Leominster Police Department Policy OPS-2, Response to Resistance & Aggression, provides as follows:

Because there are an unlimited number of possibilities, allowing for a wide variety of circumstances, no written directive can offer definitive answers to every situation in which the use of force might be appropriate. Rather, this directive will set certain specific guidelines and provide officers with a basis on which to utilize sound judgment in making reasonable and prudent decisions.

**1. Actively Resistant Individual:** An individual who uses physical strength and/or body movement to resist a Department member. Examples of active resistance include pulling, turning, or walking away from an officer.

**17. Objectively Reasonable:** This term means that, in determining the necessity for and appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the officer, subject, and/or community. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight. Determining reasonableness of force must allow for the fact that police officers are forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. The force used must be reasonable under the circumstances known to the officer at the time force is used.

*(Resp. Ex. 2)*

53. The Municipal Police Training Committee's Use of Force regulation (550 CMR 6.04)

provides, in relevant part:

(6) Except to temporarily gain, regain or maintain control of an individual and apply restraints, a law enforcement officer shall not intentionally sit, kneel, or stand on an individual's chest, neck, or spine, and shall not force an individual to lie on their stomach.

(7) A law enforcement officer shall not obstruct the airway or limit the breathing of any individual, nor shall a law enforcement officer restrict oxygen or blood flow to an individual's head or neck. An individual placed on their stomach during restraint should be moved into a recovery position or seated position as soon as practicable.

*(Exhibit R1, internal Exhibit 6)*

54. Following the incident in May 2024, the Appellant was ordered to and did attend additional training by his superior officers on use of force, including Massachusetts General Laws, Department policies, relevant case law, and applicable CMRs. After

completing this training, he underwent an evaluation, on which he received a perfect score. (*Testimony of Appellant*)

55. Mr. Bennett recommended that the Appellant be retrained in use of force and suspended.

He recommended that Officer Parrish be retrained in use of force with no other discipline.

He did not investigate Officer Rijeovski and did not recommend retraining or discipline.

(*Resp. Ex. 2*)

56. The Appellant was initially suspended for a period of five working days. This discipline

was rescinded due to procedural issues. A new appointing authority hearing was

convened, and a new five-day suspension was imposed in January 2025. (*App. Exhs. 1, 2, and 3; Resp. Ex. 1*)

57. On January 13, 2025, Mayor Dean Mazzarella issued a Notice of Suspension of five days

without pay to the Appellant for violating 550 CMR 6.04 and Leominster Police Policy

OPS-2. (*Resp. Ex. 1*)

58. Officer Parrish was not disciplined for his role in the May 5, 2024 arrest. He was ordered

to undergo additional training on use of force. (*Testimony of the Appellant*)

## **LEGAL STANDARD**

Sections 41 to 45 of Chapter 31 allow discipline of a tenured civil service employee for “just cause” after due notice of charges, a hearing (which must occur prior to imposition of discipline, with the exception of a suspension from the payroll for five days or less), and a written notice of the decision that states “fully and specifically the reasons therefor.” G.L. c. 31, § 41. An employee aggrieved by such disciplinary action may appeal to the Commission, pursuant to G.L. c. 31, §§ 42-43, for de novo review by the Commission “for the purpose of finding the facts anew.” *Town of Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006). Under c. 31, § 43,

the Appointing Authority bears the burden of proving by a preponderance of the evidence that there was “just cause” for the discipline imposed.

An action is justified if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” *Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971) (citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928)). 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.” *School Comm. v. Civil Service Comm’n*, 43 10 Mass. App. Ct. 486, 488 (1997) (emphasis added); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983).

“After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.’” *Town of Falmouth, supra*, at 823-24 (quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983)). In the civil service regime, discipline is meant to be remedial, not punitive. *Lucas v. New Bedford School Department*, 32 MCSR 21 (January 17, 2019); *see also* G.L. c. 31, § 1. To that end, progressive discipline designed to improve performance is preferred over harsh and punitive measures. Even if the Commission finds justification for some discipline, it is empowered to review and modify the penalty imposed, and this is particularly appropriate where the Commission finds facts that differ substantially from those found by the appointing authority trial board when it imposed the penalty. *See, e.g., Town of Falmouth, supra*, at 824 (citing *Police Comm’n of Boston v. Civil Serv. Comm’n*, 39 Mass. App. Ct. 594, 600 (1996)).

## ANALYSIS

The matter at hand arises from the lawful arrest of a civilian. There is no dispute that the arrest was proper and that the initial takedown of the civilian was warranted. The central issue is whether the Appellant, in effecting the arrest of a civilian (TM), kept her in the prone position longer than allowed by law. The period in question was roughly six minutes, and the City was unable to show at what time during that period that the positioning became excessive. The City conceded that the initial takedown and positioning was proper but was unable to prove that the Appellant was not justified in detaining her in this position due to her continued attempts to resist arrest. Further, the City did not adequately address the fact that TM was in a partial recovery period at times throughout the arrest. The City also failed to address the fact that Officer Parrish, who had partial control over TM throughout the period in question and sole control for a period when the Appellant was not present, did not receive similar discipline as the Appellant. Finally, the City failed to prove beyond a reasonable doubt that the LPD's policies and procedures or the MPTC's regulations were violated.

While there are several areas to be improved during this arrest, the lack of urgency in accessing the room of a possible overdose victim is most concerning. The fact that the Appellant and Officer Parrish chose to arrest TM prior to determining the well-being of the woman who was the subject of the original 911 call is far more troubling than any debate over whether their use of force was proper. Saving a human life should be a top priority in every interaction with the public and this should be emphasized and addressed by the Leominster Police Department going forward.

I do credit the City for hiring an outside firm to do an investigation into the use of force in this matter, although the rationale behind this decision remains unclear. The 'victim' never

reported that there was excessive use of force and the LPD officers who undertook the after-action investigation did not suggest that further investigation or discipline would be warranted. Lieutenant Donnelly found the use of force and the circumstances surrounding her being kept on the ground were proper although the handcuffing was poorly done. Sergeant Vasquez noted that both officers should be retrained on handcuffing as well as the importance that a handcuffed person should not be left in the prone position for an extended period. Both officers noted that the entire situation could have been avoided if they prioritized the well-being check that was the basis of the call. Given these facts, the impetus surrounding the decision to hire an outside firm was never addressed.

The provisions that were cited by the Mayor in his discipline letter to the Appellant leave a great deal of discretion to the officers as well as being open to interpretation. The Municipal Police Training Committee's Use of Force section (550 CMR 6.04) provides, in relevant part: "[An officer] shall not force an individual to lie on their stomach." What exactly constitutes lying on one's stomach remains open to interpretation. Mr. Bennett determined that if *any* part of an obese person's belly comes in contact with the ground, that constitutes their lying on their stomach. It seems unreasonable that the definition was intended to be this broad given that the side recovery position is listed as one of the positions that may be utilized as an acceptable alternative for a person on their stomach to be moved into. This recovery position would not be possible for a heavier set individual such as TM, if any part of this person's abdomen touching the ground would thereby constitute assuming a prone position. Another issue is the phrase "*force an individual to lie on their stomach*" given that after the initial handcuffing, TM was able to partially roll to her side (unclear if the officers assisted) and later was able to roll, on her own, to her other side to speak with the paramedic. The word "force" connotes a much more active

and aggressive involvement by the officers than occurred here. Also, within MPTC guidelines, it states that the person should be moved to a recovery or seated position as soon as practicable. Again, a very subjective term, especially given that there is no dispute that TM was continuing to resist arrest throughout this process. One can argue that once the scene was secure and TM stopped actively resisting a reasonable interpretation officer would adjust the arrestee's position "as soon as practicable." 555 CMR 6.04 (7). It is important to note that none of the experts could cite precisely when, during the six minutes in question, TM should have been moved to a better position. Despite having the opportunity to view the scene from multiple body worn cameras and not dealing themselves with a chaotic scene, or a resisting individual, or any of the other stressors of the situation, these experts could not definitively say when – only that it should have been sooner.

Further, the Mayor's citing the Appellant for violating the LPD's policy on use of force is problematic in that the policy states:

*Because there are an unlimited number of possibilities, allowing for a wide variety of circumstances, no written directive can offer definitive answers to every situation in which the use of force might be appropriate. Rather, this directive will set certain specific guidelines and provide officers with a basis on which to utilize sound judgment in making reasonable and prudent decisions.*

Given that this very directive instructs officers to use their best judgement, it is hard to understand where the violation occurred. The section also states:

*The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight.*

This very "20/20 hindsight" appears to be what is being used to judge the Appellant and determine that he violated an exceptionally, and I suspect intentionally, vague policy and procedure.



I found it curious that Mr. Bennett, when conducting this investigation, seemed to assume the role of a prosecutor as opposed to an independent examiner of the facts. This posture was also apparent before the Commission. Further, his interpretation of what is a recovery position versus what is prone is problematic as he states that, given the size of TM's stomach, it would be impossible to put her in a side recovery position because the side of her belly (as opposed to her belly button) would always be in contact with the ground. In other words, no heavy-set person would ever be able to be put into a side recovery position. I find this to be factually inaccurate and not in alignment with what is universally considered to be a recovery position. His own expert, Officer DiChiara, belied this interpretation during his testimony.

In the body worn camera footage, TM continues to alternate between resisting arrest and compliance. This behavior continues even after she is brought to her feet and is escorted down the stairs and to the police cruiser. While it is obvious from the videos that there is repeated resistance by TM, the severity and dangerousness of said resistance is called into question by CSC. Since there are obvious signs that TM was continuing to resist, I credit the Appellant's testimony and Officer Parish's statements that, given the overall elements comprising the scene, they found it necessary to keep her in this position until the situation allowed her to be moved. In a six-minute time frame, during a chaotic situation, with a confrontational detainee, some discretion must be afforded to the arresting officers – especially when the final report states that the response “did not appear to be malicious, punitive or sadistic and did not appear to be used with the infliction of any pain or injury.”

Officer DiChiara cited in his analysis that there is a duty to intervene but dismisses this aspect when it comes to Officer Parrish, determining that even though he had this duty if he perceived a need to intervene, given that he was a newer officer, it wasn't reasonable for him to

understand what would be considered excessive use of force. He does not address the fact that Paramedic Reese, who has 30 years of experience and also has a duty to intervene, did not determine that any intervention was warranted. In this section of his analysis, DiChiara states that the Appellant was in control and maintaining TM in the prone position throughout the period she was on the ground. This is not true as the Appellant only had physical contact with TM for two minutes and 30 seconds after handcuffing whereas Officer Parrish had hands on her throughout the entire period in question. Given this fact alone, it is difficult to ascertain why the Appellant became the primary focus of this investigation and was the only person disciplined.

Not in dispute is that the only aspect of the arrest that is in question of violating procedure is whether or not TM was left in a prone position too long after being handcuffed. Two essential elements are necessary to analyze this aspect of the case.

The first being policy: 555 CMR 6.04 (6) states, “except to temporarily gain, regain or maintain control of an individual and apply restraints, a law enforcement officer shall not intentionally sit, kneel, or stand on an individual’s chest or spine, and **shall not force an individual to lie on their stomach.**” (*emphasis added*) In this situation, the elements of this policy are open to interpretation based upon whether one determines that TM continued to resist arrest—and, if yes, whether the officers needed to continue to exert force in order to maintain control. The CSC summary concluded that since the officers were “younger with superior size and skills,” TM “did not pose any significant threat to officers once she was restrained and handcuffed.” Both the Appellant and Officer Parrish stated that TM was continually trying to resist, in potentially injury-inducing ways, and they were monitoring her breathing throughout. While it may be open to interpretation as to whether her resistance was significant enough to put either of the officers at risk, I do not believe that the age and strength of the arresting officer, or

the perceived dangerousness of the situation at hand is a defining element as to the standard of what constitutes resisting arrest. Her thrashing, pushing off the wall, trying to sweep Officer Parrish's leg, digging her nails into and pinching Officer Parrish, as well as "dead weighting" when bringing her to the cruiser, are all actions that constitute resistance. Per LPD's policy and procedure manual, an Actively Resistant Individual is defined as "an individual who uses physical strength and/or body movement to resist a Department member. Examples of active resistance include pulling, turning, or walking away from an officer." These elements were demonstrated on the body-worn camera videos. Consideration of the age and fitness of the officers vis-à-vis the detainee would be more frequently be relied upon to determine the degree of force and whether pain compliance techniques were justified. As the CSC report states, the use of force "did not appear to be malicious, punitive or sadistic and did not appear to be used with the infliction of any pain or injury." Given that TM resisted intermittently for the entire period she was on the ground in handcuffs, it is not clear and definitive that the officers were unjustified in continuing to keep her in a partial prone / partial recovery position.

The second essential factor to analyze in this case also stems from policy; namely, 555 CMR 6.04 (7), which states: "An individual placed on their stomach during restraint should be moved into a **recovery or seated position** as soon as practicable." (**emphasis added**) Again, "practicable" is open to interpretation and, given TM's resistance, the nature of the scene, and the fact that she was in a partial recovery position, it is reasonable to infer that the officers were not out of compliance with this statute. The fact that a paramedic with 30 years of experience spoke with TM while she was in this position, did not intervene (as would be her duty). and stated that she was "maintaining well, didn't seem injured in any way" adds to the weight of the officers' testimony that TM was in what they considered an appropriate and reasonable position. Again,

while the officers may need retraining in what constitutes a model recovery position, the policy does list what is viewed on video here as an acceptable option, as opposed to the City's contention that only moving her to a seated or standing position would have been considered acceptable.

I credit both the Appellant's testimony as well as Officer Parrish's statements to Mr. Bennett that they had positioned her in the best position as the circumstances allowed, were monitoring her breathing, and moved her to a seated position when the scene was secured and TM had ceased actively resisting arrest.

One puzzling aspect of this case is the fact that the only officer disciplined was the Appellant. While he was the most senior officer on the scene, two and a half minutes after handcuffing her, he no longer had any physical contact with TM and the physical restraint aspect was solely being performed by Officer Parrish. Further, roughly five minutes after TM was handcuffed, he left to further investigate the other scene involving a potentially unresponsive individual and had another officer, Rijeovski, take his place. This put Officer Parrish in charge of TM while Officer Rijeovski stood by as support. Eventually, Officer Parrish determined that the scene, as well as TM, had calmed down enough to safely allow him to move TM into a seated position where she remained until the Appellant returned. Officer Parrish displayed control of the situation as he moved her to a seated position without discussing with or getting permission from any other person on scene. Once the Appellant returned, the two of them brought TM to her feet and proceeded to take her to the cruiser. The fact that Officer Parrish was with her the entire time and had his hands on and controlling her physically for the entirety of the period that she was on the ground, and yet received no discipline, is surprising. The rationale of Mr. Bennett's firm appears to be that Parrish was a young and less experienced officer, but one might argue that

given the recency of his undergoing use of force training at the Academy, he would have been very aware of proper procedure. He remained adamant throughout his interview with Mr. Bennett that both he and the Appellant did everything properly on scene. Further, Officer Rijeovski, who relieved the Appellant and remained with Officer Parrish while TM was on the ground, was not only never disciplined, but he was also not even interviewed as a part of this investigation.

Leominster Police Department's own procedure manual states: "no written directive can offer definitive answers to every situation in which use of force might be appropriate. Rather, this directive will set certain specific guidelines and provide officers with a basis on which to utilize sound judgment in making reasonable and prudent decisions." Based on all the evidence, I do not find that the City was able to prove that the Appellant violated policy, failed to use sound judgment, acted unreasonably in his decision-making process as it relates to not moving TM to a seated or standing position more quickly.

Had the City charged the Appellant with other rule violations, including those related to performance, the outcome here may have been different. From the record before us, it appears that the Appellant showed a disquieting lack of urgency when first arriving on the scene after being dispatched for a wellness check; instead he engaged in (and possibly instigated) a confrontation with the citizen who made the 911 call, while erroneously suggesting to her that the wellness check could not be performed if the caller refused to give her name. What ensued was an arrest of the 911 caller that quite possibly would not have been required if the Appellant had exhibited routine de-escalation skills taught to all police officers. Even in the context of a de novo review, however, and based on the specific facts of this appeal, it is beyond the Commission's mandate, *ab initio*, to impose discipline for charges not pursued by the City.

## CONCLUSION

For all the above-stated reasons, the appeal of William Taylor, filed under docket number D-24-168, is hereby *allowed*. His five-day suspension is rescinded, any previous withholding of pay due to said suspension shall be reimbursed, and the previous notifications of discipline shall be removed from his permanent personnel file, effective immediately.

Civil Service Commission

/s/ Shawn C. Dooley  
Shawn C. Dooley  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, & Stein, Commissioners) on July 10, 2025.

Either party may file a motion for reconsideration within ten days of receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:

Casey E. Berkowitz, Esq. (for Appellant)  
Brian M. Maser, Esq.. (for Respondent)

## APPENDIX

### *A minute-by-minute timeline of the relevant events of May 5th*

A timeline of what occurred at the motel on May 5<sup>th</sup> beginning right after midnight is as follows:

- 00:01:00**      The Appellant and Officer Parrish are dispatched to the motel for a wellness check.
- 00:07:42**      The Appellant arrives on scene.
- 07:43-12:45**   The Appellant speaks with Officer Parrish, motel Manager (RA), and TM while in the parking lot.
- 12:45-16:45**   Both officers go inside to speak with the manager and get the room key. The manager informs them that TM wanted access to the room because her key was in there.
- 15:11**          While in with the manager, dispatch informs the Appellant that TM has called 911 again and is now claiming that the room occupant is a possible overdose victim.
- 17:37-18:22**   Both officers proceed upstairs to the second level of this motel.
- 18:43**          TM confronts the officers and the Appellant warns her to leave or she will be arrested for trespassing and disturbing the peace. She leaves.
- 18:46-19:36**   The Appellant knocks on the motel door of the room occupant and announces he is there for a well being check, two times, with no response.
- 19:37**          TM returns and again is told by the Appellant to leave or she will be put under arrest. Final warning.
- 19:50-20:39**   Both officers begin to arrest TM and Officer Parrish attempts to handcuff her but is unable to because of her resistance.
- 20:40**          Both officers take TM to the ground as she continues to resist.
- 21:00-21:15**   Firefighters arrive and step over TM lying in hallway while officers continue to attempt to restrain her.
- 21:30**          Both of TM's wrists are finally handcuffed.
- 21:31-23:04**   TM continues to resist, screams, curses, and says she cannot breathe.
- 23:05**          She is now partially positioned on her right side with head fully turned facing to the left, right cheek is on the ground. The right shoulder is on the

ground with the left shoulder in the air. The right hip and side of the stomach is on the ground with the left hip off the ground. Her legs are spread and actively moving to various positions. At this point she is in between a prone position and fully on her side (recovery position).

- 23:06-26:14** TM remains in varying degrees of this position and alternated between actively resisting, resting, and calling out.
- 24:00** The Appellant removes his hands from TM and relinquishes physical control to Officer Parrish. *2 minutes and 30 seconds* from the time she was handcuffed.
- 25:50** Officer Rijeovski joins the Appellant and Officer Parrish in the hallway.
- 26:15** The Appellant leaves to investigate woman in the room. *4 minutes and 45 seconds* from the time that she was fully handcuffed.
- 26:30-27:00** TM rolls on her own to her other side (also partially prone) to speak with paramedic on scene. Does not say she is having any issues other than wanting to go home.
- 27:50** Officer Parrish asks her if she will stop resisting if he brings her to a seated position to which she agrees. He then moves her to a seated position – *6 minutes 20 seconds* from the time she was fully handcuffed.
- 31:00** Appellant returns to TM and he and Officer Parrish raise her to her feet.
- 31:05-32:30** Both officers walk TM downstairs, across the parking lot, and to the cruiser. She continues to resist throughout.
- 32:30-33:00** TM is searched.
- 33:20** TM is placed in the cruiser.