

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

PAUL VENUTO,  
Appellant

v.

D1-12-133

TOWN OF BRAINTREE,  
Appointing Authority

Appearance for Appellant:

Stephen C. Pfaff, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street  
Boston, MA 02110

Appearance for Respondent:

Carolyn M. Murray  
Town Solicitor  
Town of Braintree  
One J.F.K Memorial Drive  
Braintree, MA 02184

Commissioner:

Cynthia Ittleman<sup>1</sup>

**DECISION**

Pursuant to G.L. c. 31, § 43, the Appellant, Mr. Paul Venuto (hereinafter “Appellant” or “Mr. Venuto”) filed a timely appeal with the Civil Service Commission (hereinafter “Commission”) on April 3, 2012 contesting the decision of the Town of Braintree (hereinafter “Town”) to terminate his employment as a police officer from the Braintree Police Department (hereinafter “BPD”).

A pre-hearing conference was held at the Commission on June 5, 2012 and a full hearing was held at the same location, over a two day period, on August 14 and August 15, 2012. Neither party requested a public hearing so the hearing was deemed private. The witnesses were

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Hannah Filkins in the drafting of this decision.

sequestered, with the exception of the Appellant. Deputy Chief Russell Jenkins was present on behalf of the BPD; since he did not testify he was not sequestered. The hearing was digitally recorded and the parties were provided with a CD of the hearing. The parties submitted proposed decisions.

## FINDINGS OF FACT

Thirty-eight (38) exhibits were entered into the record. The parties filed a joint motion to re-open the record for the purposes of admitting one commendation and three performance evaluations by the BPD. The motion was allowed and the documents were entered into the record as exhibits 39-42.

Based on all of the exhibits, the testimony of the following witnesses:

### *Called by the Town:*

- Brian Cohoon, Detective, Braintree Police Department
- Michael Want, Sgt., Braintree Police Department
- Mark Sherrick, Detective, Braintree Police Department
- Mr. H
- Richard Seibert, Officer, Braintree Police Department
- Paul Dowd, Lieutenant, Braintree Police Department
- Paul Frazier, Chief, Braintree Police Department

### *Called by Mr. Venuto:*

- Paul Venuto, Appellant
- Daniel Mahoney
- Brian McLaughlin, Officer, Braintree Police Department
- Peter Gillis, Officer, Braintree Police Department

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 credible evidence establishes the following findings of fact:

1. Mr. Venuto was a permanent, full-time police officer with the BPD for five to six years prior to his termination on April 2, 2012. (Exhibit 1)

2. On March 6, 2006, Mr. Venuto was provided a copy of the BPD Rules and Regulations. Mr. Venuto signed a receipt of acknowledgment of these rules on March 6, 2006.  
  
(Exhibit 4-5)
3. Prior to April 2, 2012, Mr. Venuto had no disciplinary history. Mr. Venuto received a commendation from the Chief of Police in January of 2008 for his detective work. He received positive performance evaluations in 2006, 2007 and 2008<sup>2</sup>. (Exhibits 39-42)
4. There are allegations that on July 9, 2011, there was a domestic violence incident between Mr. Venuto and his girlfriend who resided with him. Mr. Venuto's girlfriend reported it on or about July 9, 2011 but she subsequently recanted the allegations. On or about that time, Mr. Venuto placed a call to on-duty Officers Brian Eng and Bill Cushing, Jr. to request that they respond to his home and take possession of his Department issued handgun and a personal firearm, alleging that he did not want his girlfriend to allege that he used a gun to threaten her. This matter was investigated by the BPD and later included as part of Lieutenant Paul Dowd (hereinafter "Lt. Dowd")'s internal investigation of Mr. Venuto. (Exhibit 14 ,15, and 16)
5. Shortly after the alleged domestic violence incident in 2011, officers informed Detective Brian Cohoon (hereinafter "Detective Cohoon"), then Union President, that Mr. Venuto had also displayed questionable conduct during an incident in 2008 involving a Mr. H and an incident in 2009 involving a Mr. A. (Testimony of Brian Cohoon)
6. On or around August 6, 2011, Detective Cohoon spoke with Mr. Venuto regarding the allegations that were being made against him with respect to Mr. H and Mr. A.  
  
(Testimony of Brian Cohoon)

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<sup>2</sup> The Appellant did not submit performance evaluations for the other years he was employed at BPD.

7. After speaking with Mr. Venuto, Detective Cohoon went directly to Officers Seibert, Paris, and McLaughlin, and Detective Sherrick regarding Mr. Venuto's alleged misconduct with respect to the incidents involving Mr. H and Mr. A. (Testimony of Brian Cohoon)
8. Detective Cohoon spoke with Sergeant Michael Want (hereinafter "Sgt. Want") regarding the information he had gathered concerning the incidents involving Mr. H and Mr. A.<sup>3</sup> Detective Cohoon indicated that he did not want to become "formally" involved with the internal investigation due to his position as Union President.<sup>4</sup> (Testimony of Brian Cohoon)
9. Sgt. Want spoke with Lt. Dowd regarding the information he had learned from Detective Cohoon specifically relating to Mr. H. Lt. Dowd told Sgt. Want to report the information to the Chief Paul H. Frazier (hereinafter "Chief Frazier") or he would report it to Chief Frazier. (Testimony of Michael Want)
10. Chief Frazier became aware of the incidents involving Mr. H and Mr. A in August of 2011, after Sgt. Want brought the issues to his attention. (Testimony of Paul Frazier)
11. By memorandum dated August 12, 2011, Chief Frazier requested that Lt. Dowd conduct an internal investigation into the alleged suspicious conduct of Mr. Venuto. (Exhibit 14)
12. Lt. Dowd conducted an internal investigation in August of 2011 regarding Mr. Venuto's action concerning (1) the alleged domestic violence incident, (2) the arrest of Mr. H in 2008 and (3) the arrest of Mr. A in 2009. (Exhibit 14)<sup>5</sup>

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<sup>3</sup> Sgt. Want had become aware of these rumors prior to Detective Cohoon coming to him in August 2011. Sgt. Want testified that if he had been able to substantiate the rumors he would have reported them earlier.

<sup>4</sup> Detective Cohoon was later brought in to work on Mr. Venuto's internal investigation.

<sup>5</sup> Lt. Dowd became aware of the alleged domestic violence incident by accident while conversing with Sgt. Detective Querzoli, whom had authored a report on the incident after speaking with Mr. Venuto's girlfriend. After learning of the alleged domestic violence incident, Lt. Dowd asked to re-open the alleged domestic violence case in

13. By memorandum dated September 9, 2011, Lt. Dowd reported the findings of his internal investigation to Chief Frazier. In the memorandum, Lt. Dowd wrote that the investigation into the alleged domestic violence incident would remain open until it was possible to interview Officer Venuto. Despite not being able to move forward on the alleged domestic violence incident, Lt. Dowd felt there was ample reason to initiate disciplinary proceedings against Mr. Venuto based on the incidents involving Mr. A and Mr. H. (Exhibit 14)

14. By memorandum dated November 10, 2011 from Lt. Dowd to Chief Frazier, Lt. Dowd outlined the status of the Internal Affairs Investigation of Mr. Venuto. The memorandum states:

- a. that the Norfolk County District Attorney (“DA”) granted Mr. Venuto transactional immunity regarding the Mr. H and Mr. A matters only. The granting of full transactional immunity regarding the Mr. H and Mr. A matters will require the state Attorney General and/or the District Attorneys for each county in Massachusetts to agree not to prosecute Mr. Venuto for his alleged behavior; (Exhibit 16)
- b. that Chief Frazier decided for the time being to suspend the pursuit of full transactional immunity and move forward with a “pre-disciplinary hearing”; (Exhibit 16)
- c. that on November 3, 2011, Mr. Venuto was advised that a “pre-disciplinary hearing” would take place on November 7, 2011, and that Mr. Venuto was present at this hearing along with two Braintree Police Patrolmen’s Association

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connection with the internal investigation regarding Mr. Venuto’s alleged conduct in connection to incidents involving Mr. H and Mr. A. (Exhibit 14)

(hereinafter “BPPA”) representatives (Detective Brian Cohoon and Detective Robert Joseph); (Exhibit 16)

- d. that Chief Frazier told Mr. Venuto he had 24 hours to voluntarily resign or he would move forward with a disciplinary hearing seeking his termination; (Exhibit 16; Testimony of Paul Frazier; Testimony of Paul Venuto)
- e. that on November 8, 2011, Chief Frazier received notice that Mr. Venuto had decided not to resign; (Exhibit 16) and
- f. that Lt. Dowd indicated that he felt as though BPD should go forward with the alleged domestic violence incident and hit Mr. Venuto “with everything we’ve got right from the start – a ‘decapitation strike.’” (Exhibit 16)

15. A disciplinary hearing was held on March 14, 2012 regarding the Mr. H and Mr. A incidents. Mr. Venuto was represented by counsel, and testified on his own behalf. The hearing officer, Attorney David Jenkins, recommended Mr. Venuto be terminated. (Exhibit 1)

16. By letter dated April 2, 2012 from Joseph C. Sullivan, Braintree’s Mayor, to Mr. Venuto, Mr. Venuto was given a copy of G.L. c 31, §§ 41-45 and was notified that his employment was being terminated for having violated the following: (Exhibit 1):

With respect to the Mr. A incident:

- a. Rule 4.2B – Conduct Unbecoming an Officer, states in part:

“Officers shall not commit any specific act or acts or immoral, improper, unlawful disorderly or intemperate conduct whether on or off duty, which reflects discredit or reflect unfavorable upon the officer himself, upon his fellow officers,...Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continue as a member of the Department, or tends to impair the operation...” (sic)

- b. Rule 4.7 – Undue Influence, states in part:

“Officers shall not seek or obtain the influence or intervention of any person, outside or from within the Department, for the purposes of advancement, preferential assignment ...preferential treatment or advantage including the disposition of pending charges or finding in a disciplinary hearing.”

- c. Rule 4.11 – Interfering with the Course of Justice, states in part: “Officers shall not take part in, or be concerned with, either directly or indirectly...with any person whomsoever for the purpose of permitting an accused person to escape the penalty of his wrongdoing...”

With respect to the incident involving Mr. H:

- d. Rule 4.2B – Conduct Unbecoming an Officer (*supra*)
- e. Rule 4.7 – Undue Influence (*supra*)
- f. Rule 4.11 – Interfering with the Course of Justice (*supra*)
- g. Rule 6.7 – Dissemination of Official Information, states in pertinent part: “Officers shall not communicate or give police information which may aid a person to escape arrest, delay apprehension or avoid prosecution or which contributes to the destruction, removal or loss of evidence, goods or contraband.”

17. Notwithstanding these rules, Officer Seibert explained that officers sometimes ask one another to use their discretion in issuing traffic violations (i.e. asking that a fellow officer not issue citations for traffic violations) but not in matters involving narcotics.

(Testimony of Richard Seibert)

18. Officers involved in both the incidents involving Mr. H and Mr. A were not subject to discipline for failure to timely report Mr. Venuto’s conduct. These officers will get training on proper procedure for reporting of such incidents<sup>6</sup>. (Testimony of Paul Dowd)

*Incident Involving Mr. H*

19. On April 10, 2008, Mr. H was arrested for a drug offense by Officer Brandon McLaughlin and Detective Mark Sherrick outside of the 7-11 convenience store parking

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<sup>6</sup> At the time of this decision there is no indication that these officers have been given such training.

lot located on Commercial Street in Weymouth Landing. (Exhibit 9 - Officer McLaughlin's Incident Report)

20. Prior to the arrest, Officer McLaughlin and Detective Sherrick were conducting undercover crime surveillance outside the 7-11. (Testimony of Mark Sherrick)
21. Officer McLaughlin noticed a red Pontiac Grand AM ("Pontiac") parked near the Quincy Avenue side of the 7-11 parking lot. (Exhibit 9 - Officer McLaughlin's Incident Report)
22. At 18:30:59 hours, Detective Sherrick contacted the BPD dispatcher regarding a registration listing for the Pontiac. Detective Sherrick also contacted the dispatcher to inquire whether the car owner had a criminal history involving illegal drugs, referencing G. L. c. 94C. (Exhibit 25)
23. Mr. Venuto heard the inquiry to the dispatcher concerning the Pontiac registration. Mr. Venuto overheard dispatch relay back that the Pontiac was registered to Mr. H, at which point Mr. Venuto recognized this to be his friend, Mr. H. (Testimony of Paul Venuto)
24. While Detective Sherrick and Officer McLaughlin were watching the Pontiac, Detective Sherrick received a phone call from Mr. Venuto.<sup>7</sup> Mr. Venuto asked Detective Sherrick what he was doing, he responded, "I'm watching a five pound largemouth", a term known in the Department to indicate drug surveillance. (Testimony of Mark Sherrick)
25. Mr. Venuto told Detective Sherrick that he knew the owner of vehicle whose plates had just been checked. (Testimony of Paul Venuto)
26. Mr. Venuto told Detective Sherrick that Mr. H was a friend of his. Detective Sherrick responded that it looked like his friend, "was about to do something dumb". (Testimony of Mark Sherrick)

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<sup>7</sup> Detective Sherrick testified that it was not unusual for Mr. Venuto to call him while he was working. They had worked together previously and Mr. Venuto was interested in the type of work that Detective Sherrick did.

27. After approximately five (5) minutes of surveillance, a white Mitsubishi Diamante (“Mitsubishi”) pulled up and parked next to the Pontiac. (Exhibit 9 - Officer McLaughlin’s Incident Report)
28. The operator of the Pontiac, later confirmed to be Mr. H, exited the vehicle and approached the Mitsubishi’s passenger side window. (Exhibit 9 - Officer McLaughlin’s Incident Report)
29. At this point in time, Officer Sherrick told Mr. Venuto that he had to go and he ended their phone conversation. (Testimony of Mark Sherrick)
30. The occupant of the Mitsubishi, later identified as Mr. B, handed something to Mr. H. Mr. H walked back to his vehicle and Mr. B began to leave the parking lot. (Exhibit 9 - Officer McLaughlin’s Incident Report)
31. Both Officer McLaughlin and Detective Sherrick believed that a narcotics transaction had occurred between Mr. H and Mr. B. Detective Sherrick approached Mr. H on foot while Officer McLaughlin followed Mr. B in the cruiser. (Exhibit 9 - Officer McLaughlin’s Incident Report)
32. When Detective Sherrick approached Mr. H’s vehicle he overheard him ending a phone conversation. Detective Sherrick asked Mr. H with whom he had been speaking on the phone. Mr. H replied, “my friend Paul”. (Testimony of Mark Sherrick; Testimony of Mr. H)
33. Detective Sherrick asked Mr. H if he was referring to Paul Venuto. He replied, “Yes”. (Testimony of Mark Sherrick)

34. Detective Sherrick found a small baggie containing four (4) green pills, (later identified as Oxycontin), a pill grinder, and a small amount of marijuana in Mr. H's vehicle.  
(Exhibit 9; Exhibit 26; Testimony of Mark Sherrick)
35. After checking Mr. H's phone call log, Detective Sherrick discovered that the last incoming call was from Mr. Venuto. (Exhibit 26; Testimony of Mark Sherrick)
36. In Mr. H's statement made on August 23, 2011 to Lt. Dowd, Mr. H reported that prior to being arrested on April 10, 2008 he had been on the phone with Mr. Venuto. Mr. Venuto had called him and said, "What are you doing dumbass, they're running your plates?"<sup>8</sup>  
(Exhibit 28; Testimony of Mr. H)
37. Mr. H was placed under arrest for the following: possession of a Class B Substance (Oxycontin), possession of a Class D Substance (marijuana), and conspiracy to violate controlled substance laws. (Exhibit 9 - Incident Report)
38. Mr. B was placed under arrest for the following: distribution of Class B Substance, possession of Class B Substance, conspiracy to violate controlled substance laws, and violating drug free school and park zone laws. (Exhibit 17)
39. Following H's arrest, Detective Sherrick called Mr. Venuto and said something along the lines of "what the hell?" (Testimony of Mark Sherrick)
40. When Detective Sherrick arrived at the BPD station after the arrest of Mr. H, he continued to "chew out" Mr. Venuto for his actions relating to Mr. H that day.  
(Testimony of Mark Sherrick)
41. Mr. Venuto apologized to Detective Sherrick and told him that he was just "giving [Mr. H] a hard time". (Testimony of Paul Venuto) However, Mr. H testified that Mr. Venuto

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<sup>8</sup> Mr. H acknowledged that he understood this to mean the police were checking his plates.

called to warn him his license plates had been checked; therefore I find Mr. Venuto's statement to Detective Sherrick is not credible. (*See* Fact 34)

42. Neither Officer McLaughlin nor Detective Sherrick included Mr. Venuto's phone calls in their incident reports relating to the arrest of Mr. H. (Testimony of Mark Sherrick)

43. After the incident involving Mr. H, Detective Sherrick was upset and disappointed with Mr. Venuto but he did not include Mr. Venuto's call in the arrest report at the time because he did not believe that Mr. Venuto's call was related to the drug arrest. (Testimony of Mark Sherrick)

44. Detective Sherrick also didn't include Mr. Venuto's calls to him in his report because he reasoned that Mr. Venuto was still relatively new on the job, this was an isolated incident, and that everybody makes mistakes. He believed that by reprimanding Mr. Venuto personally the situation had been addressed. (Testimony of Mark Sherrick)

45. Mr. Venuto was one of the people on the bidding list for a detective position in 2009<sup>9</sup>. At about that time, Detective Sherrick told Sergeant ("Sgt.") Tim Cohoon that he felt Mr. Venuto was not ready for the position given what happened in the incident involving Mr. H. (Testimony of Mark Sherrick)

46. Sgt. Tim Cohoon did not tell Detective Sherrick to take any further action regarding the incident involving Mr. H. (Testimony of Mark Sherrick)

47. Lt. Dowd requested information regarding the incident involving Mr. H from Detective Sherrick while conducting his internal investigation of Mr. Venuto. (Testimony of Mark Sherrick)

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<sup>9</sup> It is unknown whether or not this bidding process took place before or after the "Mr. "A"" incident on October 25, 2009.

48. In response to Lt. Dowd's request, Detective Sherrick sent Lt. Dowd a memorandum, dated August 23, 2011, outlining the events that occurred on the night of the incident involving Mr. H. (Exhibit 12) This was the first time any written report was made with respect to the incident involving Mr. H. (Testimony of Mark Sherrick)

*Incident Involving Mr. A*

49. On October 25, 2009 Mr. A was arrested for the possession of a Class B illegal drug with the intent to distribute it. (Exhibit 10)

50. On that day, BPD Officer Paris was sitting in a marked vehicle inside of the Quirk Jeep dealership on Quincy Avenue in Braintree when he observed several motorcycles speeding by. Officer Paris performed a routine motor vehicle stop on the rear motorcycle, which belonged to Mr. A. (Exhibit 22)

51. Mr. A was extremely nervous and smelled of alcohol. (Exhibit 22)

52. Officer Paris returned to his vehicle to call in Mr. A's driver information as well as to request a second cruiser to his location. Shortly thereafter, Officer Seibert responded to Officer Paris's request and arrived on scene. (Exhibit 22)

53. Mr. A continued to appear to be very nervous when he was approached by the officers. The officers ordered Mr. A to step away from the motorcycle and place his hands above his head and Officer Seibert performed a pat frisk. (Exhibit 22)

54. During the pat frisk, Officer Seibert found seven (7) bags of cocaine in Mr. A's left front pocket. Mr. A was handcuffed and placed under arrest. (Exhibit 22)

55. Mr. Venuto was not on duty at the time of Mr. A's arrest. Mr. Daniel Mahoney called Mr. Venuto at or around the time Mr. A had been pulled over. Mr. Mahoney's brother,

Mark Mahoney, was riding a motorcycle with Mr. A when he was pulled over.

(Testimony of Daniel Mahoney)

56. Believing that Mr. A may have been arrested for an OUI, Mr. Daniel Mahoney asked Mr. Venuto if he could obtain some information about what was going on. (Testimony of Paul Venuto; Testimony of Daniel Mahoney)

57. After speaking with Mr. Mahoney, Mr. Venuto believes that he called dispatch and spoke with Officer Ryan McHugh in order to find out who to call regarding Mr. A. (Testimony of Paul Venuto)

58. After Officer Seibert placed Mr. A under arrest and placed him in the back of Officer Paris's car, he received a phone call from Mr. Venuto. (Exhibit 22)

59. Mr. Venuto told Officer Seibert that Mr. A was a "buddy" of his and asked if anything could be done. Officer Seibert responded that "nothing could be done" as Mr. A was already under arrest for the possession of cocaine. (Testimony of Richard Seibert; Testimony of Paul Venuto)

60. When Mr. Venuto heard about Mr. A's arrest for illegal drugs, he responded, "Oh shit, I thought it was just a motor vehicle infraction." (Testimony of Richard Seibert) However, Mr. Venuto was aware from Daniel Mahoney that Mr. A was potentially under arrest for an OUI; therefore Mr. Venuto's assertion that he thought it was only a "motor vehicle infraction" is not credible. (*See* Fact 56)

61. Officer Seibert does not recall Mr. Venuto asking where Mr. A's motorcycle was being towed and about bail. (Testimony of Richard Seibert) Given that Mr. Venuto testified to the contrary, I do not credit Mr. Venuto's recollection of his conversation with Officer Seibert.

62. Neither Officer Paris nor Officer Seibert mentioned Mr. Venuto's phone call in their incidence reports. (Exhibit 12; Testimony of Richard Seibert)
63. At the time, Officer Seibert felt it was unnecessary to include Mr. Venuto's call in his report because Mr. Venuto told him he thought it was a "motor vehicle infraction or something". (Testimony of Richard Seibert)
64. Both Officer Seibert and Chief Frazier<sup>10</sup> indicated that calls for discretion regarding traffic stops are not unusual. Officer Seibert testified that a phone call would never alter his decision to make an arrest. (Testimony of Richard Seibert)
65. During his investigation of Mr. Venuto, Lt. Dowd asked Officer Paris and Officer Seibert to prepare reports regarding Mr. Venuto's conduct during the incident involving Mr. A. Officers Paris and Seibert submitted reports to Lt. Dowd via memorandums dated August 17, 2011. (Exhibit 11 and 12)
66. Officer Seibert's memorandum included, in pertinent part, the following information, "I asked Paul [Venuto] how he knew him [Mr. A] and he stated through his [Mr. A's] girlfriend from the "V" (Varsity Club in Quincy)." (Exhibit 11) Mr. Venuto testified that he was not friends with Mr. A. However, that day, Mr. Venuto told Officer Seibert that Mr. A was his buddy. I find that Mr. Venuto was, at a minimum, Mr. A's acquaintance.

## DISCUSSION

### *Legal Standard*

A tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L.c.31, §41, may appeal to the Commission under G.L. c.31, §43, which provides:

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<sup>10</sup> Chief Frazier believes this to be a common practice for the entire police profession. It's unfortunate that the Chief does not hold members of the Department to higher standards.

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

Under Section 43, the role of the Commission is to determine, under a de novo "preponderance of the evidence" test, "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, *rev.den.*, 426 Mass. 1102 (1997). Compare Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev.den.*, 440 Mass. 1108 (2003) (affirming de novo decision to reject appointing authority's evidence of appellant's failed polygraph test and prior domestic abuse orders and crediting appellant's exculpatory testimony) with Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) (inconsequential differences in facts found did not make appointing authority's justification unreasonable). See also Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411 (2000); McIsaac v. Civil Service Comm'n, 38 Mass.App.Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass.App.Ct. 331, *rev.den.*, 390 Mass. 1102 (1983).

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." *E.g.*, Commissioners of Civil Service v. Municipal Ct. 359 Mass. 211, 214 (1971); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, *rev.den.*, 426 Mass. 1102 (1997). 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 Mass. App. Ct. 486, 488, *rev.den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983). The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of merit principles which govern civil service law that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L.c.31, §1.

The Appointing Authority’s burden of proof by a preponderance of the evidence is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1982). The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. *See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 264-65 (2001)

It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” *See e.g., Leominster v. Stratton*, 58 Mass.App.Ct. 726, 729 (2003) *See Embers of Salisbury, Inc. v.*

Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). *See also* Covell v. Dep't of Social Services, 439 Mass. 766, 787 (2003)

### *Analysis*

Applying the law to the facts of this appeal, the Town of Braintree had just cause to discipline the Appellant for his serious misconduct during the incidents involving Mr. H and Mr. A. It is true that Mr. Venuto had no prior disciplinary history and had some positive performance evaluations. However, in consideration of the severity of Mr. Venuto's conduct, the termination is *upheld*.

### *Credibility*

Given that Mr. Venuto's testimony contradicted other BPD Officers' testimony, I give limited weight to his testimony. With regard to the incident involving Mr. A, Mr. Venuto testified to the effect that he was not friends with Mr. A. However, Officer Seibert's report shows that Mr. Venuto knew Mr. A's girlfriend from the Varsity Club in Quincy. Further, Mr. Venuto testified to the effect that he was calling an officer regarding a traffic violation involving Mr. A. But Mr. Venuto knew that Mr. A may have already been under arrest for an OUI. Mr. Venuto also testified that he wanted to obtain bail and towing information from Officer Seibert when he called, when, in fact, Mr. Mahoney testified that he had told Mr. Venuto that Mr. A was facing arrest for an OUI. With respect to the incident involving Mr. H, Mr. Venuto's testimony that he made no connection between Detective Sherrick's on-going drug surveillance and Mr. H's license plates being check is implausible. Finally, Mr. Venuto's testimony that he was not calling Mr. H to alert him to the police surveillance in the area but to tease him is not credible in

view of Mr. H's testimony that Mr. Venuto had called him to alert him to the surveillance. Thus, Mr. Venuto's testimony lacks credibility regarding key issues in this case.

The testimony of Officers Brian McLaughlin and Richard Seibert, and Detectives Mark Sherrick and Brian Cohoon was credible with regard to the key issues in this case. First, I note that they could have been disciplined in connection with their actions relating to the incidents involving Mr. H and Mr. A and yet they were forthcoming.<sup>11</sup> With respect to the incident involving Mr. H, both Officer McLaughlin and Detective Sherrick provided consistent testimony as to the events that day. Detective Cohoon's testimony is credible as it corroborates Detective Sherrick's testimony regarding the incident involving Mr. H; both men testified consistently as to the sequence of events as well as the nature of Detective Sherrick's confrontation with Mr. Venuto. Detective Cohoon's testimony also supports Officer Seibert's testimony regarding the sequence of events in the incident involving Mr. A. In particular, Detective Cohoon's and Officer Seibert's testimony consistently reported that Mr. Venuto referred to Mr. A as his "buddy". The memoranda written by Officer McLaughlin, Detective Sherrick, Officer Seibert and Officer Paris in response to Lt. Dowd's internal investigation are consistent with their testimony heard before the Commission.

Sgt. Want was placed in a difficult decision because he was responsible for bringing these allegations to Chief Frazier's attention. Sgt. Want had heard rumors of these allegations years before Detective Cohoon came to him in this regard in August 2011. Sgt. Want did not want to act on rumor alone but when Detective Cohoon provided additional information about the allegations, he knew he had to report them up the chain of command. Sgt. Want spoke with Lt. Dowd and was told he must report the information or that Lt. Dowd would do so. Although it is

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<sup>11</sup> As noted above, I do not agree with Chief Frazier's representation that the training on this issue that is supposed to be forthcoming constitutes discipline.

certainly troubling that Sgt. Want did not take action earlier, the Commission cannot fault him for wanting additional information prior to reporting up the chain of command. His testimony regarding the report of incidents relating to Mr. H and Mr. A was consistent with the testimony of Detective Cohoon and Lt. Dowd.

Chief Frazier's testimony was reflected in Lt. Dowd's internal investigation and the testimony of the other officers who testified regarding key matters. Therefore, Chief Frazier's testimony is credible on the whole. Lt. Dowd's testimony reiterated the reason Chief Frazier decided not to discipline the other officers for failure to report Mr. Venuto's conduct in a timely manner. However, Chief Frazier also testified that training is a form of discipline and that the officers who failed to report Mr. Venuto's conduct in a timely manner would receive training in this regard and that he did not want to punish the officers so that, in the future, officers would not refrain from reporting such matters in a timely manner. Here, training does not constitute discipline. Further, Mr. Venuto was put on administrative leave on August 15, 2011, he indicated he would not resign in November 2011, and he was terminated in April 2012 and yet, as of the Commission hearing, there is no indication that the training that Chief Frazier mentioned has been held. Thus, Chief Frazier's statements concerning the training diminish the reliability of his testimony in this regard.

Mr. H's testimony was credible; not only did his testimony accurately reflect the series of events as described by both Officer McLaughlin and Detective Sherrick but it was also consistent with his statement of August 23, 2011 to Lt. Dowd. Daniel Mahoney's testimony was also credible in that he admitted that he called Mr. Venuto to find out whether Mr. A had been arrested for an OUI. In addition, Mr. Venuto's testimony regarding the conversation he had with Daniel Mahoney is consistent with Mr. Mahoney's testimony in this regard.

*Incident Involving Mr. H*

Regarding the incident involving Mr. H, a preponderance of the evidence establishes that Mr. Venuto was in direct violation of the cited BPD Rules and Regulations. There was evidence that BPD officers call one another on occasion to ask that they exercise their discretion not to issue traffic citations. Mr. Venuto admitted to overhearing the dispatch call related to Mr. H prior to calling Officer Sherrick, including the inquiry about the drug arrest history for Mr. H. In addition, Detective Sherrick told Mr. Venuto that he (Det. Sherrick) was “watching a five pound largemouth,” a term known to indicate drug surveillance, at the time he called in Mr. H’s license plate number to dispatch. Therefore, it seems nearly impossible that Mr. Venuto did not know that Mr. H was being surveilled as a participant in a potential illegal drug sale and that he conveyed that information to Mr. H when he called him. By calling Mr. H and conveying that information to him, Mr. Venuto violated BPD Rule 6.7 – Dissemination of Official Information. In addition, with the information Mr. Venuto had just gathered from dispatch and Detective Sherrick, it is clear that he was not calling to “give his friend a hard time”. Further, Mr. Venuto went well beyond the apparent BPD practice of asking a fellow officer to exercise his discretion in regard to a motor vehicle traffic stop. Mr. Venuto attempted to influence his colleague, Officer Sherrick, and when that failed, he subsequently interfered with police operations by calling Mr. H. The bottom line is that Mr. Venuto placed the interest of a friend who possibly engaged in criminal conduct above the law and above the safety of a fellow officer and the public at-large.

The fact that the Mr. H was arrested does not relieve Mr. Venuto of his duty to uphold BPD Rules and Regulations. BPD found this behavior unacceptable. What BPD has not explained is how such conduct, if it is in fact unacceptable, went unreported for nearly three (3)

years. Under no circumstances is this type of behavior acceptable, which raises the question as to why this went unreported for nearly three (3) years. At some point in 2009, Detective Sherrick brought the incident involving Mr. H to Sgt. Tim Cohoon's attention during the bidding process for detective positions. Mr. Venuto placed his name on the bidding sheet. When Detective Sherrick was asked about the candidates, he stated that Mr. Venuto was not ready for the position because of the incident involving Mr. H. Surely, when the incident involving Mr. H was brought to Sgt. Tim Cohoon's attention it should have been reported and yet it remained unreported for two (2) more years. This is troublesome for if Mr. Venuto's conduct warrants termination why did it go unreported? In any event, the BPD has established, by a preponderance of the evidence that Mr. Venuto's conduct in regard to the matter involving Mr. H warrants grave discipline.

*Mr. A Incident*

Mr. Venuto's conduct on the day of the Mr. A incident was not only unbecoming of an officer, but arguably a failed attempt to interfere with the course of justice. There is ample evidence that shows Mr. Venuto was associated with Mr. A. Not only did Mr. Venuto refer to him as a "buddy" in his phone call with Officer Seibert, but when asked how he knew "A", Mr. Venuto stated that he knew "A's" girlfriend from the Varsity Club. As this directly contradicts Mr. Venuto's testimony, I credit Officer's Seibert report as the most accurate reflection of the facts.

Regarding the incident involving Mr. A, a preponderance of the evidence establishes that Mr. Venuto was, again, in direct violation of the cited BPD regulations. Mr. Venuto admitted to calling to inquire about the stop of Mr. A but asserted that he was only calling regarding a traffic stop when in fact he was told that by Daniel Mahoney that Mr. A may have been arrested for an

OUI<sup>12</sup>. Although I credit that Mr. Venuto was not aware that Mr. A was in the possession of narcotics, his call to Officer Seibert is still disconcerting. There is evidence to suggest that BPD officers call one another for discretion for matters such as traffic violations. When Mr. Venuto placed the call to Officer Seibert, he asked “if anything could be done?” despite knowing that Mr. A may be arrested for an OUI. Mr. Venuto suggested that he did not know Mr. A but the facts should otherwise. Thus, in 2008 and 2009, Mr. Venuto called fellow officers to ask them to intercede on behalf of friends involved with illegal drugs.

As a member of the BPD, Mr. Venuto has a duty to protect both the public and his fellow officers. As an officer of the law, he should know better than to attempt to help an individual who is engaging in reckless conduct such as operating a vehicle under the influence of alcohol or possession of illegal substances. Given that Mr. Venuto was verbally reprimanded by Detective Sherrick following the incident involving Mr. H only one year earlier, he certainly should have known better than to place a call to an officer in these circumstances. It is obvious that Mr. Venuto has now twice demonstrated a willingness to place the well-being of a friend before the law, his fellow officers, and the public.

A suggestion that Mr. Venuto cannot be found to have obstructed or interfered with the course of justice solely because Mr. A was under arrest at the time of the call is unpersuasive. There is no showing of fact that Mr. Venuto knew, prior to placing the call, that Mr. A was already under arrest. That Mr. A was successfully arrested by the BPD does not negate the egregious misconduct of Mr. Venuto in attempting to interfere with the arrest.

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<sup>12</sup> Daniel Mahoney’s brother was a part of the group riding with Mr. A but was not stopped for operating under the influence of alcohol; he had just met up with the group but he knew that the group had been out drinking.

Lastly, I find wanting the Town's argument regarding the reason other Officers failed to report Mr. Venuto's misconduct for years were not disciplined. Moreover, there is no indication that the Officers have received training in this regard, as was suggested. Several Officers were aware of Mr. Venuto's conduct yet consciously chose not to report it to the proper authority. An officer's failure to report a violation of the Rules and Regulations warrants discipline. Rule 12.1 of the BPD Rules and Regulations, states, in pertinent part, "... officers shall promptly and accurately complete all reports and forms as required by the manual and by department policies and procedures." All BPD officers should have a clear understanding of the BPD Rules and Regulations and the need to promptly report violations; their failure to do so undermines their individual credibility, not to mention the effectiveness and the public perception of the BPD. However, this does not remove the reasons for Mr. Venuto's termination. Mr. Venuto's misconduct with regard to the incidents involving Mr. H and Mr. A constitute grave transgressions of the applicable Rules and Regulations, and the Town has satisfied its burden of showing there was just cause in terminating Mr. Venuto's employment at the Braintree Police Department.

### Conclusion

For all of the above reasons, Mr. Venuto's appeal under Docket Number D1-21-133 is hereby *denied*.

Civil Service Commission

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Cynthia Ittleman  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, and McDowell, Commissioners – AYE; and Stein, Commissioner - NO) on August 22, 2013.

A True Record. Attest:

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Commissioner

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

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Stephen C. Pfaff, Esq. (for the Appellant)

Carolyn M. Murray (for the Respondent)

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
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(617) 727-2293

PAUL VENUTO,  
Appellant

D1-12-133

TOWN OF BRAINTREE,  
Respondent

**DISSENTING OPINION OF COMMISSIONER STEIN**

I respectfully dissent. Officer Venuto’s conduct clearly falls short of the high standards of behavior that the Town of Braintree may reasonably expect of its sworn police officers, but I believe there are significant mitigating factors here that have been shown by a preponderance of evidence and do not justify termination of this officer: (1) the conduct occurred in 2008 and 2009 and there is no evidence of any pattern of comparable behavior in the three years since then; (2) the incidents were well known to Officer Venuto’s peers and superior officers who elected to remain silent, take no steps to report or remediate the behavior at a time when such remedial discipline could have been effective and allow him to continue to carry a badge and a gun and exercise the authority of a Braintree Police Officer for years thereafter; (3) the officers and superior officers who concealed their knowledge of the misconduct have not been disciplined at all; (4) there is insufficient evidence that the regular practice of officers and superior officers to seek consideration for motor vehicle offenses were limited to only to specific types of civil traffic infractions, i.e. speeding tickets, but not arrests for OUIs, and, even if it did, there is no evidence that, at the time, Officer Venuto knew or should have known of that distinction; and (5) the charges were asserted only as part of a “decapitation strike” prompted by a wholly unrelated

incident for which Officer Venuto, ultimately, was never disciplined. Accordingly, while Officer Venuto's actions warrant discipline, even as stale as they we, they do not justify his termination.

I would modify the penalty to a suspension of 90 days.

Paul M. Stein  
Commissioner