

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

MICHAEL VROOM,
Appellant

v.

HUDSON POLICE DEPARTMENT,
Respondent

D-22-100

DECISION

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

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

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

The decision of the Hudson Police Department to suspend the Appellant for fifteen days is affirmed and the appeal of Michael Vroom, Docket No. D-22-100, is hereby *denied*.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney and Tivnan, Commissioners [Stein – Absent]) on September 7, 2023.

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 to:

Ian Collins, Esq. (for Appellant)

Kimberly A. Rozak, Esq. (for Respondent)

James Rooney, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Michael Vroom,
Petitioner

v.

Docket No. CS-22-0354/D-22-100

Hudson Police Department,
Respondent

Appearance for Petitioner:

Ian Collins, Esq.
Sandulli Grace, P.C.
44 School Street, 11th Floor
Boston, MA 02108

Appearance for Respondent:

Kimberly A. Rozak, Esq.
Mirick O'Connell
100 Front Street, 1st Floor
Worcester, MA 01608

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

Police Department's decision to suspend Appellant, a Lieutenant, for 15 days without pay for neglect of duty is supported by the record. Appellant failed to investigate and adequately respond to a potential violation of a restraining order and, later the same night, failed to intervene between a police officer under his supervision and a prisoner when the officer was using excessive force. Appellant's extensive and serious discipline history, including a 10-day suspension without pay, supported the Department's decision.

TENTATIVE DECISION

Petitioner Lieutenant Michael Vroom timely appealed, under G.L. c. 31, § 43, the June 29, 2022 decision of Respondent Hudson Police Department that Lt. Vroom be suspended for fifteen days without pay. In his appeal letter to the Civil Service Commission, the Petitioner requested that the Department's decision be reversed, vacated and/or modified. The Commission assigned the appeal to the Division of Administrative Law Appeals (DALA), which held a prehearing conference on August 23, 2022. As no written notice was received from either party, the hearing was declared private. Both parties submitted pre-hearing memoranda. Lt. Vroom testified on his own behalf. Captain Chad Perry of the Hudson Police Department, Investigator Daniel Bennett of Comprehensive Investigations and Consulting, LLC, and Chief of Police Richard DiPersio of the Hudson Police Department, testified on behalf of Respondent. The hearing was digitally recorded and copies of the recording were sent to both parties. Both parties filed post-hearing memoranda to DALA and the administrative record closed.

I have marked the following documents as exhibits:

Ex. 1 Notice of Hearing from the Hudson Police Department to Lt. Vroom, dated December 13, 2021;

Ex. 2 Lt. Vroom's email to Cpt. Perry, dated July 21, 2021, with Cpt. Perry's reply, dated July 22, 2021;

Ex. 3 Lt. Vroom's use of force report regarding Officer Espie's conduct before Lt. Vroom viewed the video of the incident, dated July 24, 2021;

Ex. 4 Lt. Vroom's use of force report regarding Officer Espie's conduct after viewing the video, dated August 6, 2021;

Ex. 5 Investigation Binder for the Department's investigation into Lt. Vroom's actions on July 21, 2021;

Ex. 6 Department's Investigation Report on Lt. Vroom's actions on July 21, 2021 (subset of Ex. 5);

Ex. 7 Department's radio communication timeline for July 21, 2021;

Ex. 8 Relevant radio transmissions from July 21, 2021 (provided on Flash Drive);

Ex. 9 Transcriptions of relevant radio transmissions from July 21, 2021;

Ex. 10 Video of booking area of the Department from 10:25pm to 10:30pm on July 21, 2021 (provided on Flash Drive);

Ex. 11 Documents comprising Lt. Vroom's previous discipline history, dated September 2, 2003, August 25, 2003, and September 11, 2003;

Ex. 12 Documentation of training Lt. Vroom received on Use of Force and Department Rules and Regulations;

Ex. 13 Lt. Vroom's Acknowledgement of Receipt of department Rules and Regulations;

Ex. 14 Hearing Officer's Findings for officer presiding over whether Lt. Vroom should be suspended for 15 days, dated June 24, 2022;

Ex. 15 Chief DiPersio's, the Department's Appointing Authority, decision to issue Lt. Vroom's a 15-day unpaid suspension, dated June 29, 2022;

Ex. 16 Summary of information from Lt. Vroom's BOP inquiry, dated July 21, 2021 at 20:48,

Ex. 17 Personnel File Documents for Lt. Vroom and Related Police Report; and

Ex. 18 Lt. Vroom's appeal of the Department's decision, dated July 11, 2022 and received by the Civil Service Commission on July 14, 2022.

FINDINGS OF FACT

Based on the testimony of the witnesses and the exhibits in evidence, I make the following findings of fact:

1. Lt. Michael Vroom is a 21-year veteran of the Hudson Police Department. Lt. Vroom has served as a patrolman, a detective, and a sergeant. Five years ago, he was promoted to lieutenant. (Exs. 5, 11; Vroom test., Perry test.)
2. On July 21, 2021, Lt. Vroom was scheduled to work a double shift from 7:00 a.m. to 11:00 p.m. (Vroom test.)
3. While driving an unmarked vehicle at around 11:00 a.m. that day, Lt. Vroom saw a red Toyota sedan driving erratically. The Toyota's driver swerved out of his own lane and cut in front of Lt. Vroom. (Exs. 8, 9; Vroom test.)
4. Lt. Vroom ran the plate number and confirmed that the car was registered to JM.¹ Lt. Vroom followed the car into a Walmart parking lot where he observed a woman talking with the driver as she exited the passenger side. (Exs. 8, 9; Vroom test.)
5. Later that day, at 8:50 p.m., Lt. Vroom saw JM's red Toyota parked outside of Cottage Street in Hudson. Without stopping, Lt. Vroom drove by in his cruiser at approximately 15 to 20 miles per hour and did not see JM inside the car. He ran the plate number again because he remembered the vehicle and its driver's erratic driving from earlier in the day. Lt. Vroom continued up the street for a quarter mile and parked in a school parking lot while he asked dispatch for JM's Board of Probation (BOP) data. (Exs. 8, 9; Vroom test.)
6. Dispatch informed Lt. Vroom that the BOP for JM included a recent assault and battery case and a corresponding restraining order for the 55 Cottage Street address. Lt. Vroom

¹ I use this alias throughout.

asked if the order prohibited JM only from being in the presence of the occupant of Cottage Street or if the Order also restrained him from being near the residence. Dispatch confirmed that both the occupant and Cottage Street were covered by the restraining order. (Exs. 8, 9; Vroom test.)

7. After receiving this information, Lt. Vroom drove to another parking lot, flagged Officer Joseph Espie through the police radio at 8:58 p.m., and then continued to speak with Officer Espie via personal cell phone. Lt. Vroom directed Officer Espie to check the situation on Cottage Street and to bring another officer for support. At 9:00 p.m., Officer Espie radioed Officer Ahearn to meet at the station to help investigate Cottage Street. (Exs. 5, 8, 9; Vroom test.)

8. Hudson Police Department Policies and Procedures provide that whenever “any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse.” An officer is required to remain on the scene if he believes that a party might be in immediate physical danger without the officer’s presence. Failure to comply with this policy would also violate the Hudson Police Department’s Neglect of Duty policy. (Exs. I, G.)

9. Lt. Vroom drove back to the police station to complete some office work, as he was shift commander for the evening shift. He claims his duties were to “log and approve all requests” sent to him. (Vroom test.)

10. While Lt. Vroom was at the station, he saw Officer Espie at approximately 10:00 p.m. (Vroom test.)

11. Lt. Vroom did not ask Officer Espie why he had not immediately gone to Cottage Street as promised, nor did he outwardly disapprove of Officer Espie's failure to respond. (Vroom test.)

12. Lt. Vroom admitted that there was "no good reason" for not following up with Officer Espie until more than an hour after he asked him to go to Cottage Street. Lt. Vroom had expected Officer Espie to follow his order in a timely fashion. (Vroom test.)

13. At 10:20 p.m., Lt. Vroom learned that Officer Espie had arrested JM. (Exs. 8, 9; Vroom test.)

14. Officer Espie and another officer brought JM to the police station on the charge of violating a restraining order on the Cottage Street address. As JM was being walked to the booking room, Lt. Vroom was using a computer in the vicinity. (Vroom test.)

15. Officer Espie started to perform a routine pat-down while JM's hands were placed on the wall. Officer Espie then pulled JM's arm down, spun him around, and pinned him to the wall. He grabbed JM and wrapped his hand around JM's neck to hold him against the wall. (Ex. R10.)

16. From behind the computer monitor, Lt. Vroom could not see Officer Espie booking JM. At some point, Lt. Vroom became aware of Officer Espie's attempt to restrain JM. (Vroom test.)

17. When Officer Espie began choking JM, Lt. Vroom yelled "Joe!"—Officer Espie's first name. Neither Officer Espie nor JM heard this. Lt. Vroom did not otherwise intervene. (Ex. R10; Vroom test.)

18. Once Officer Espie released JM, Espie directed JM to a chair along the wall. Officer Espie proceeded to emphatically point downwards towards the floor. Officer Espie

loudly commanded JM to sit down. Despite JM's cooperation, Officer Espie grabbed him by the arm and jerked him around the corner to a cell. Officer Espie forced JM inside. Throughout the altercation, Officer Espie continued to yell and threaten to put JM in the cell. (Ex. R10; Vroom test.)

19. After JM was manhandled by Officer Espie, Lt. Vroom did not check on JM, and it never crossed his mind to ask JM if he was injured. (Vroom test.)

20. Shortly after the episode between Officer Espie and JM, Lt. Vroom emailed Captain Chad Perry about an "altercation" at 10:30 p.m. He did not describe the altercation further. Instead, Lt. Vroom asked if he could review the video evidence from the surveillance cameras in the booking room. In his response at 11:41 a.m. the next morning, Cpt. Perry told Lt. Vroom that he had until July 26—a four-day deadline—to file a use of force report. (Exs. A, B; Perry test.)

21. When an officer uses force, the officer and any witnesses are required to submit a use of force report. Lt. Vroom testified that all use of force reports process through him. However, as the primary witness to Officer Espie's use of force, Lt. Vroom claimed that the "chain of command and custody" for his report was unclear. Use of force reports are required to be submitted to a supervisor before the end of the submitter's shift. (Ex. H; Perry test., Vroom test.)

22. Lt. Vroom read, and agreed to comply with, the Department's use of force policy. (Ex. 12; DiPersio test.)

23. On July 22, after Cpt. Perry reviewed the surveillance video, Lt. Vroom called to ask if the email from the night before had been received. Although Lt. Vroom had not watched

the surveillance video yet, he mentioned that the incident “didn’t look good.” He also said that Officer Espie’s hands had been around JM’s neck. (Perry test.)

24. Chief DiPersio instructed Cpt. Perry to investigate Officer Espie’s conduct. While interviewing Officer Espie, Cpt. Perry learned that Lt. Vroom had confronted Officer Espie before he called Cpt. Perry on July 22. Lt. Vroom told Officer Espie that his actions “didn’t look good,” that it looked like he choked JM and that Officer Espie needed to file a “good” use of force report. (Perry test.)

25. Afterwards, Lt. Vroom avoided speaking with Officer Espie about the events of July 21 because of the pending investigation. Lt. Vroom waited until Officer Espie’s use of force report was submitted before filing his own. (Vroom test.)

26. Lt. Vroom’s initial email to Cpt. Perry was not a use of force report. It merely informed Cpt. Perry that there had been a use of force. A use of force report must be entered on the proper form and requires far more detailed information than the brief email contained. (Ex. H; Perry test.)

27. Lt. Vroom filed two reports on the incident—first, a written report before he watched the recording of the incident, and then an official use of force form after he watched the video. In the first report, Lt. Vroom reported that Officer Espie’s hand was “close to [JM’s] throat.” The second report noted that Officer Espie put his hand “up to [JM’s] throat and also that Lt. Vroom exclaimed “Joe!” to get Officer Espie to stop. (Exs. C, D.)

28. Lt. Vroom’s use of force reported stated that JM was not harmed. However, Cpt. Perry received an injury complaint from JM. (Ex. D; Perry test.)

29. Lt. Vroom never touched JM. (Ex. R10.)

30. Officer Espie received a 10-day unpaid suspension for his misconduct when booking JM, as well as for improperly viewing the video evidence of his actions. In assessing the suspension, Chief DiPersio took into account that Officer Espie accepted responsibility for his actions and concluded that his actions “were out of character.” Officer Espie was also assigned to further training on managing stressful interactions. (Ex. F; Perry test., Bennett test.)

31. Daniel Bennett—an investigator with decades of experience as a litigator, Worcester Assistant District Attorney, and Massachusetts Secretary of Public Safety—was hired by Chief DiPersio to investigate Lt. Vroom’s conduct while Cpt. Perry investigated Officer Espie. Mr. Bennett interviewed Lt. Vroom, Officer Espie, and JM. He also reviewed emails, documents, radio transmissions and the use of force reports regarding the event. He submitted a written report to Chief DiPersio. (DiPersio test., Bennett test.)

32. Mr. Bennett concluded that Lt. Vroom did not do enough to de-escalate the violence between Officer Espie and JM and was not in line with department procedure. Mr. Bennett concluded that Lt. Vroom should have physically intervened once he realized Officer Espie was using excessive force. However, Mr. Bennett clarified that Hudson Police Department policy does not explicitly require physical intervention and that verbal communication may be sufficient in certain situations of excessive force. Still, Mr. Bennett maintained Lt. Vroom failed to adequately intervene in that night’s circumstances. (Ex. 6; Bennett test.)

33. Mr. Bennett also concluded that Lt. Vroom violated the Hudson Police Department’s domestic violence policy and protocols. Upon learning of the restraining order, department policy required Lt. Vroom to check that JM was not in violation of the order. Mr. Bennett additionally found that Lt. Vroom should have approached Cottage Street and made sure that the resident was safe. Instead, Lt. Vroom called another officer to look in on the house and

eventually drove back to the police station without checking into it himself. Lastly, Lt. Vroom should have accompanied Officer Espie to the residence, or at least ensured that he had back-up. Overall, Mr. Bennett concluded that Lt. Vroom's neglect of the restraining order was the most concerning. (Ex. 6; Bennett test.)

34. Department policy required that, once Lt. Vroom realized that a restraining order had been issued against the driver of the car, he investigate further. A competent investigation would have included searching JM's car with a flashlight, which Lt. Vroom chose not to do. (Ex. H.)

35. Chief DiPersio opined at the hearing that Lt. Vroom should not have ignored the risk and should have investigated immediately himself rather than designating the job to another officer. Chief DiPersio was perplexed by Lt. Vroom's using his cell phone in these circumstances, instead of the police radio. Cell phones should not be used in an ongoing police investigation because their use deprives the department of an official record. (Exs. 11, 12; DiPersio test.)

36. Chief DiPersio also agreed with Mr. Bennett that Lt. Vroom failed to interject himself adequately between Officer Espie and JM to defuse their conflict. Chief DiPersio outlined an alternative method of conducting JM's booking: Lt. Vroom should have secured JM to a nearby arrest bar, there was no need to require JM to sit down, and Lt. Vroom should have sent Officer Espie to file a use of force report once the first instance of force occurred. (DiPersio test.)

37. Officer Espie received a 10-day suspension for his excessive use of force. He had no disciplinary history before this incident. Officer Espie was not disciplined for violating the

restraining order response protocol at Cottage Street, despite his tardiness that night. (DiPersio test.)

38. Lt. Vroom, on the other hand, has a lengthy disciplinary history that begins at the start of his career. I make these findings only to document progressive discipline.

39. On December 15, 2000, Lt. Vroom received a Letter to File after allowing his friends to handle his police hat and handcuffs. (Ex. 5, Bennett test.)

40. In May 2001, Lt. Vroom, without approval, abandoned an assignment given by the police matron at headquarters to respond to a call for a medical emergency that another officer had already been dispatched to. On his way there, Lt. Vroom was involved in a car accident with a civilian. Although he checked in on the other driver, Lt. Vroom violated department policy by failing to secure the scene of the accident. Consequently, he was issued a Documented Verbal Warning. (Exs. 5, 17.)

41. On September 6, 2001, Lt. Vroom received a Letter to File after placing an individual under arrest for an expired license. The arrestee informed Lt. Vroom that he was having difficulty breathing. Lt. Vroom did not transport him to a hospital, as required. (Ex. 5; Bennett test.)

42. On August 2, 2002, Lt. Vroom was involved in a single-car accident after “skidding across a driveway and into a concrete pumping enclosure.” The cruiser suffered \$2,800 in damages and the enclosure suffered additional damages. Lt. Vroom later claimed that he was “paying attention at all times.” However, an eyewitness who spoke with Lt. Vroom shortly after the accident quoted the lieutenant saying, “I wasn’t paying attention and I skidded.” Former Police Chief Braga concluded that Lt. Vroom was speeding when he entered the

driveway. Lt. Vroom subsequently received a letter of instruction to remain attentive and observe all the rules of the road. (Exs. 5, 17.)

43. Five years later, in an April 19, 2007 letter, Lt. Vroom continued to minimize his role in the car accident. Lt. Vroom said that the police cruiser tires had been “balding with minimal to virtually no tread” and that he had to replace all four with ones that “appeared to be in new condition.” Significantly, the front two tires had already been replaced following a complaint he had made about their tread two days after the incident. Further, mechanics stated that the old tires’ tread was sufficient. The back tires that Lt. Vroom claimed had “virtually no tread” were the same tires he had also recently described as being in “new condition.” (Ex. 17.)

44. On the evening of August 23, 2003, Lt. Vroom was disciplined for driving at excessive speeds during a high-speed chase involving two motorcyclists. Over the course of the pursuit, Lt. Vroom reached a speed of 117 m.p.h. Chief Braga requested that Sgt. Thomas Boudreau counsel Lt. Vroom “in regards to ‘reasonable’ speeds for pursuits.” On August 29, 2003, Sgt. Boudreau counseled Lt. Vroom about excessive speed and the department’s high-speed pursuit policy. (Exs. 11, 17.)

45. On March 1, 2006, Lt. Vroom received a letter of reprimand for conducting a search of a house without a warrant. (Ex. 5.)

46. Lt. Vroom was again reprimanded for excessive speed following a high-speed pursuit that occurred on March 5, 2007. On this day, Lt. Vroom attempted to pull over a driver who he claimed was driving 72 m.p.h. in a 40 m.p.h. zone. During the pursuit, Lt. Vroom’s Automatic Vehicle Locator (AVL) recorded the other driver at 90 m.p.h. on two separate occasions. Lt. Vroom witnessed the target vehicle “side swipe” a civilian’s car, but Vroom did not stop and check on the civilian. The Marlboro officer was injured, and the cruiser suffered

\$5,100 in damages. In his response to the subsequent disciplinary action, Lt. Vroom protested the accuracy of his cruiser's AVL system. Lt. Vroom lacked any supporting evidence. He received a 10-day suspension for his misconduct. (Ex. 17; DiPersio test.)

47. On October 17, 2009, Lt. Vroom engaged in another high-speed pursuit without permission. The pursuit took Lt. Vroom up to 80 m.p.h. through residential areas. During the chase, Lt. Vroom passed another police car, entered another jurisdiction without permission, and caused a car accident. Prior to the pursuit, Lt. Vroom had been on an assignment as backup in a domestic violence incident. On December 21, 2009, Lt. Vroom agreed to a 10-day suspension for these actions. (Ex. 5; Bennett test.)

48. On October 3, 2011, Lt. Vroom was required to attend a counseling session conducted by the Middlesex District Attorney's Office about the difference between probable cause and reasonable suspicion when searching a suspect. (Ex. 5.)

49. Lt. Vroom was last disciplined on August 26, 2013 for failure to properly supervise his subordinate in a call for service on a probate matter. (Ex. 5; Bennett test., DiPersio test., Vroom test.)

50. On December 13, 2021, Chief DiPersio emailed Lt. Vroom a notice of formal hearing to determine whether he should be suspended for 15 days for neglect of duty. On June 10, 2022, the hearing was held at the Hudson Police Station. On June 24, 2022, Hearing Officer Thomas Gregory concluded that Lt. Vroom committed several violations of Department Rule 5.1 – Neglect of Duty. (Exs. J, 15.)

51. By letter dated June 29, 2022, Chief DiPersio informed Lt. Vroom that he had adopted the hearing officer's findings and likewise concluded that he neglected his duty in violation of Rule 5.1 and would be suspended for 15 days without pay. Chief DiPersio ordered

Lt. Vroom to serve his 15-day suspension from August 1 through August 19, 2022. Lt. Vroom served the 15-day suspension. (Exs. K, 5, 11, 17; Vroom test., Bennett test., DiPersio test.)

52. On July 11, 2022, Lt. Vroom appealed Chief DiPersio's decision to the Civil Service Commission. (Ex. 18.)

CONCLUSION AND ORDER

The Department's decision to suspend the Petitioner without pay for 15 days for violating the Hudson Police Department Rules and Regulations is affirmed. The Appointing Authority had just cause to issue this suspension based on the Petitioner's conduct on July 21, 2021 and his history of discipline.

The Commission's role is to determine whether the Appointing Authority proved, by a preponderance of the evidence, that the discipline issued was for just cause. G.L. c. 31, § 43; *see also City of Cambridge v. Civil Service Comm'n*, 43 Mass. App. Ct. 300, 303 (1997); *Navas v. Dep't of State Police*, D-15-82 (CSC 2016). The Commission determines just cause by asking "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) (quoting *Murray v. Justs. of Second Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983)). A disciplinary 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." *Comm'rs of Civil Service v. Mun. Ct. of City of Boston*, 359 Mass. 211, 214 (1971) (citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928)).

In its determination, the Commission considers all credible evidence in the record, including "whatever in the record would fairly detract from the supporting evidence's weight."

Mass. Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 265 (2001).

Further, the Commission must consider the higher standard of conduct police officers undertake voluntarily such that they ““must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for, rather than public distrust of, law enforcement personnel. . . . they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”” *Att’y Gen. v. McHatton*, 428 Mass. 790, 793-74 (1999) (quoting *Police Comm’r of Boston v. Civil Service Comm’n*, 22 Mass. App. Ct. 364, 371 (1986)).

The Department alleges that Lt. Vroom violated several Rules and Regulations. The Department’s Rules and Regulations Rule 5.1 – Neglect of Duty states, in relevant part, that officers shall not

abstain wholly or in part from the full performance of their duties in the normal manner without permission. Officers shall not be absent from their assigned duty without leave, leave their post, sector, community, or assignment without being properly detailed, relieved or making required notifications; fail to take suitable and appropriate police action when any crime, public disorder, or other incident requiring police attention requires such police action; fail to promptly perform, as directed, all lawful duties required by constituted authority, notwithstanding the officer’s normal assignment of duties and responsibilities.

When an officer is required to remain on the scene or perform other duties, abandoning those duties amounts to a neglect of duty violation under Rule 5.1. *See Green v. City of Lawrence*, D1-17-104, at *18-19 (CSC 2019) (officer who left his detail before his replacement arrived committed neglect of duty); *see also Navas v. Dep’t of State Police*, D-15-82 (CSC 2016) (officer who was inattentive to his police duty, and instead apprehended private investigators tailing the officer’s wife, committed neglect of duty).

G.L. c. 209A, § 6 requires, in relevant part, that

[w]henever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to the following action: (1) remain on the scene of where said abuse occurred or was in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer.

In addition to officers' duties under the statute, the Department's Rules and Regulations require that, when domestic violence is suspected, "[w]henever possible, at least two officers should immediately be dispatched and proceed to the scene." If a Hudson police officer fails to comply with G.L. c. 209A, § 6, he has also by definition violated Rule 5.1 - Neglect of Duty.

The Department's Policies and Procedures Rule 3.04 - Use of Force by Sworn Personnel, Part VI - Duty to Intervene states, in relevant part,

[a]n officer present and observing another officer using physical force . . . beyond what is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.

A supervisor's failure to intervene when another officer uses excessive force against an arrested individual is a neglect of duty. *See Grasso v. Town of Agawam*, D1-16-175, at *68 (CSC 2017) (holding the supervisor had a responsibility to intervene when he saw his fellow officer violently shove an arrested individual towards a cell wall and he failed to conform to supervising officer standards by failing to intervene).

Similarly, an observing officer

shall report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with this Department's policy. The officer's written statement shall be included in the supervisor's report.

Hudson Police Department Policies and Procedures Rule 3.04 - Use of Force by Sworn Personnel, Part VI Duty to Intervene. Taking these three sentences together, the written statement is meant to be included in the report to the supervisor, which must be submitted by the end of the observing officer's shift.

Rule 3.04 also contains a Patrol Supervisor / Officer-in-Charge Responsibility section for responding when an officer under their supervision uses less-lethal force on an individual who is injured or claims to be injured. These responsibilities include that the supervising officer "immediately respond to the scene" and "ensure that the subject(s) receives the necessary medical treatment and that any injuries to the subject(s) are properly documented." A police officer's delay calling for medical attention for an arrested individual is a violation of Department policies. *See Grasso v. Town of Agawam*, D1-16-175, 62 (CSC 2017) (holding police officer supervisor's two-hour delay in calling for an ambulance after arrested individual's head started bleeding was a violation of his police department's policies). Again, if a Hudson police officer fails to comply with Rule 3.04, he has also committed a neglect of duty.

The Department has proven by a preponderance of the evidence that it was justified in disciplining Lt. Vroom for his conduct on July 21, 2021 and his follow-up to it. Lt. Vroom committed five separate Rule 5.1 - Neglect of Duty violations: 1) failing to investigate JM's car or 2) perform a wellness check on the subject of the restraining order after learning of the order against JM; 3) failing to intervene when he witnessed Officer Espie using excessive force on JM; 4) failing to check JM's physical condition after the use of force incident; and 5) failing to file a timely use of force report.

Lt. Vroom's inadequate response to discovering JM's car parked outside 55 Cottage Street, and JM's recent assault and battery case and corresponding restraining order for the same

address, violated G.L. c. 209A, § 6. While Lt. Vroom's decision not to immediately investigate alone is permissible under the Department's guidance that at least two officers should respond to a domestic violence scene, the situation still merited urgency as the victim who filed the restraining order was potentially in grave danger. Lt. Vroom instead assigned Officer Espie to find another officer and investigate, failed to effectively indicate the priority of this assignment to Officer Espie or follow up with him after a short period of time, and left the scene before any other officers arrived. To ensure an adequately swift response compliant with G.L. c. 209A, § 6, Lt. Vroom should have returned to the scene and investigated with Officer Espie when he arrived to determine if JM was present and ensure the family member's safety. His failure to do so resulted in Officer Espie and Officer Ahearn finding JM at 55 Cottage Street over an hour after Lt. Vroom first discovered JM's car and restraining order.

Lt. Vroom argued that since he did not see JM or the victim in the car or around the house, he did not have reason to believe the victim was in danger of being abused, and therefore G.L. c. 209A, § 6 did not apply. This argument fails because it was equally or more likely that JM was in the house or ducking down in the car when Lt. Vroom drove by as JM not being in the area at all. There was no way to tell where JM was because Lt. Vroom never stopped to check out the car or the address. Driving by at speed was not sufficient to discharge his duty. It was also likely that the victim was inside the home at such a late hour on a Wednesday. JM's car parked at the address, combined with his recent assault and battery charge resulting in a restraining order preventing him from visiting that exact location, was more than enough to require Lt. Vroom to leave the parking lot and return to 55 Cottage Street to investigate whether JM was present and perform a wellness check on the subject of the order to make sure she was safe. His failure to do so violates G.L. c. 209A, § 6 and constitutes a neglect of duty.

Lt. Vroom's response to Officer Espie's use of force violation later that same night was also inadequate and in violation of the Department's Policies and Procedures. Lt. Vroom failed to intervene as required when he stayed behind his computer and watched Officer Espie use excessive force on JM. Simply yelling "Joe!" was not an adequate intervention because neither Officer Espie nor JM heard the yell and it failed to prevent the use of unreasonable force, as required by the Duty to Intervene rule. Lt. Vroom also failed to make use of any de-escalation tactics he learned in his training, including "verbal persuasion, warnings" and "creating distance between the officer and a threat." Hudson Police Department Policies and Procedures, Rule 3.04 - Use of Force by Sworn Personnel.

Lt. Vroom emphasizes the speed at which the use of force incident unfolded, arguing that not only was yelling "Joe!" sufficient intervention but also that events elapsed too quickly for him to take additional action. However, given the appreciable space in time between the initial incident of unreasonable force where Officer Espie pinned JM against the wall by holding his neck and the second incident where Officer Espie grabbed JM and forced him into the cell, Lt. Vroom had sufficient opportunity to physically intervene and separate Officer Espie and JM to prevent further escalation and use of force. Even though the use of force seemed to have paused after the first incident, Officer Espie continued to yell at JM such that future unreasonable force was foreseeable. Lt. Vroom's failure to intervene violated the Department's Rules and Regulations and constituted a neglect of duty.

Lt. Vroom also failed to check JM's physical condition after the use of force incident. Lt. Vroom testified that he did not think JM was injured, but he failed to check JM to find out if his assumption was correct. Given the rough treatment he experienced from Officer Espie and the

ease with which Lt. Vroom could have walked to the cell and checked in on JM, especially since he was grabbed by his neck, Lt. Vroom's failure to do so was a neglect of duty.

Finally, Lt. Vroom also failed to file a timely use of force report with his superior officer as required under the Department's Policies and Procedures. As an officer who observed a fellow officer using an unreasonable use of force against an individual, Lt. Vroom was required to "report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer's shift" and include a "detailed written statement describing the incident . . . in the supervisor's report." Hudson Police Department Policies and Procedures Rule 3.04 - Use of Force by Sworn Personnel, Part VI - Duty to Intervene. It is clear Lt. Vroom knew he had witnessed an unreasonable use of force because he told Officer Espie it looked like he had choked the victim and that he should file a well-written use of force report to explain himself. Lt. Vroom himself did not provide such a report by the end of his shift, instead submitting the first detailed report three days later on July 24, 2021.

Lt. Vroom attributes this late submission to Cpt. Perry's request that the detailed report be submitted on July 26, 2021. However, Lt. Vroom received this request at 11:41AM on July 22, 2021, by which point the end-of-shift deadline had already passed. Cpt. Perry could not ask Lt. Vroom to go back in time and submit his report the night before in accordance with the Policies and Procedures, but rather he gave Lt. Vroom a new deadline. Lt. Vroom's failure to submit the detailed written report before the end of his shift in which the use of force incident occurred was a neglect of duty, regardless of the new deadline he received from Cpt. Perry afterward.

Finally, Lt. Vroom argues that even if I find some cause for discipline, the Commission should reduce the penalty for two reasons. First, he maintains that Officer Espie received only a

10-day suspension for his part in the excessive use of force against JM where Espie's conduct was worse than Vroom's. As Chief DiPersio stated in his discipline letter to Officer Espie, he took into account the fact that Espie accepted responsibility for what he did wrong and was open to further training on how to manage stressful interactions. Lt. Vroom, on the other hand, has not accepted responsibility for his part in the events of July 21, 2021. This is especially concerning because the Appellant is a Lieutenant in the Department. The Chief needs to be able to rely on superior officers to tell the truth and to accept responsibility generally, and also specifically when they make mistakes. Moreover, the Commission is not charged with a duty to fine-tune an employee's discipline to ensure perfect uniformity. *See Boston Police Dep't v. Collins*, 48 Mass. App. Ct. 408, 412 (2000).

Second, Lt. Vroom urges that a 15-day suspension is inconsistent with the purpose of progressive discipline and his prior disciplines are stale and unrelated. He does not cite any authority to support his argument. Unless the Commission's findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation." *E.g., Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823 (2006). Moreover, "although the civil service law does not explicitly require that an Appointing Authority's actions be consistent with the principles of progressive discipline, the Commission often looks to an Appellant's prior discipline as one factor in determining whether a modification of the penalty is warranted." *Godere v. City of Chicopee*, D-15-99, at *38 (CSC Feb. 4, 2016). Lt. Vroom has a long list of significant discipline for a variety of very dangerous behaviors on the job. The fact that the rest of his misconduct happened ten plus years ago does not mean that

the Department could not take it into account. The Department's choice of discipline is well supported.

The combination of five Rule 5.1 - Neglect of Duty violations, along with Lt. Vroom's extensive disciplinary history reflecting poor judgment, justifies the Department's decision to suspend Lt. Vroom for fifteen days.

For these reasons, the Department's decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: June 26, 2023