

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

BRIANA XAVIER,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket Number:

G1-24-132

Appearance for Appellant:

Briana Xavier, *Pro Se*

Appearance for Respondent:

Jennifer Cipolletti, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Angela C. McConney¹

SUMMARY OF DECISION

The Boston Police Department had reasonable justification to bypass a candidate for appointment as a permanent full-time police officer due to her prior conduct, lack of sound judgment and untruthfulness.

¹ The Commission acknowledges the assistance of law clerk Erasmus Ablernarh in the drafting of this decision.

DECISION

On June 29, 2024, the Appellant, Briana Xavier, pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the May 30, 2024 decision of the Boston Police Department (BPD or the Department) to bypass her for original appointment to the position of a permanent full-time police officer.

On September 10, 2024, the Commission held a remote pre-hearing conference via Webex, and I held an evidentiary hearing on December 4, 2024 at the offices of the Commission in Boston, located at 100 Cambridge Street, Suite 200, Boston, MA 02114.² That hearing was recorded via Webex.³ The Appellant did not submit a post hearing brief. The Department submitted a post hearing brief in February 2025, whereupon the administrative record closed.

For the reasons set forth below, the appeal is denied.

FINDINGS OF FACT

I admitted thirteen exhibits (R. Exhibit 1-13) into evidence by the BPD, impounding R. Exhibit 13. I admitted the Appellant's appeal as Appellant's Exhibit 1 (A. Exhibit 1); and the Stipulated Facts into evidence as Appellant Exhibit 2 (A. Exhibit 2). Based upon the documents submitted and the testimony of the following witnesses:

Called by the Appellant:

- Briana Xavier, Appellant

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, et seq., apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

³ 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.

Called by the BPD:

- Sgt. Det. Al S. Young, Recruit Investigations Unit, Boston Police Department
- Natasha Levarity, Esq., Director of Human Resources, Boston Police Department

and taking administrative notice of all pleadings filed in the case, plus pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from all the credible evidence, I make the following findings of fact:

Appellant's Background

1. Briana Xavier (Ms. Xavier or Appellant) was born and raised in the City of Boston. (Testimony of Xavier)
2. Ms. Xavier earned a bachelor's degree with a major in criminal justice and criminology and a minor in sociology. (R. Exhibit 2; Testimony of Xavier)
3. Ms. Xavier served as a Boston Police Cadet from July 2018 until December 2021. Her job duties included paperwork assignments, including taking police reports. (R. Exhibit 2; Testimony of Xavier)
4. Ms. Xavier attended a one-month Cadet Training Program, where she underwent basic police training, fitness training, and CPR training. The training program included learning about the Department Rules and Regulations, which apply to police officers and civilian employees alike for the pendency of their employment:

Rules and Procedures 102 *The Conduct and General Responsibilities of Department Personnel*, §1 Definitions:

For the purpose of this rule, the following definitions will apply. Employee shall mean all members of the Boston Police Department, both officers and civilian personnel.

(R. Exhibit 12; Testimony of Det. Young)

5. Rule 102, §39 *Association with Criminals* states:

Department employees shall not associate with persons whom they know, or should know, are persons under criminal investigation, or who have a reputation in the community or in the Department for recent or present involvement in felonious or criminal activities. This rule shall not apply where said associations are necessary in the performance of official duties, or where said associations are unavoidable due to familial relationships of employees.

(R. Exhibit 12)

6. Rule 102, §35 *Conformance to Laws* provides:

Employees shall obey all laws of the United States, of the Commonwealth of Massachusetts, all City of Boston ordinances and by-laws and any rule or regulation having the force of law of any board, officer, or commission having the power to make rules and regulations. An employee of the Department who commits a criminal act shall be subject to disciplinary action up to and including discharge from the Department. ...

(R. Exhibit 12)

7. As a Police Cadet, Ms. Xavier worked at various Boston police stations including District C11, Dorchester (C-11). (R. Exhibit 3; Testimony of Xavier)

8. After Ms. Xavier passed the Department's dispatch exam in December 2021, the Department hired her as a civilian 911 Call Taker in the Operations Department. Ms. Xavier's job duties include training new call takers. (R. Exhibit 3; Testimony of Xavier)

9. The Department has investigated Ms. Xavier three times during her six-year tenure. (R. Exhibit 3; Testimony of Young)

Application and Background Investigation

10. Ms. Xavier took the civil service examination on March 20, 2023 for the position of permanent full-time Boston police officer. (A. Exhibit 2)

11. On July 1, 2023, the state's Human Resources Division (HRD) established an eligible list for Boston Police Officer. On August 11, 2023, HRD issued Certification No. 09448 to the Department, from which it could fill vacancies from the top candidates willing to accept conditional employment; 139 conditional offers were made. (Stipulated Facts)

12. Ms. Xavier ranked 74th on the certification. (Stipulated Facts)
13. The Department extended offers to approximately 90 candidates ranked below Ms. Xavier. (Stipulated Facts)
14. It is the Department's practice to send out employment packets to the candidates seeking information related to work history, residency, criminal offender registry information (CORI), interviews and references. (Testimony of Levarity)
15. The Department's Recruit Investigation Unit (RIU) assigns a detective to conduct a background investigation for each candidate. After the background investigation is complete, the RIU detective compiles the background investigation findings into a document commonly referred to as a "Privileged and Confidential Memorandum" (PCM). (Testimony of Young)
16. Sgt. Det. Al S. Young was Ms. Xavier's assigned RIU investigator. Sgt. Det. Young has been a member of the Department for approximately 29 years, and has served as a detective since 2015. He was detailed to the RIU in 2021, 2023, and 2024 for the purpose of conducting background investigations for candidates. (Testimony of Young)
17. Sgt. Det. Young conducted a background investigation including Ms. Xavier's criminal history, driving history, past school discipline, employment history/discipline, professional and personal references, financial records, and Ms. Xavier's completed application form. (R. Exhibit 2; Testimony of Young)
18. Ms. Xavier's driving history included six warnings, including number plate and crosswalk violations, seatbelt violations, obstructed windows, and operating with suspended insurance. (R. Exhibit 2)
19. Ms. Xavier had several disciplinary reports in high school for offensive language, disruptive behavior, assault, and disrespectful language and behavior towards school staff. She had no disciplinary problems in college. (R. Exhibit 2)

20. Sgt. Det. Young reviewed Ms. Xavier's employment history. Cpt. Hegarty, her supervisor and Director of Operations at BPD, described her as a dependable and competent employee for the past year and a half. He said that she "always had a smile on her face and goes the extra mile for her co-workers." Cpt. Hegarty also expressed confidence in Ms. Xavier's ability to exercise discretion in a fair and thoughtful way. (R. Exhibit 2)

21. Sgt. Det. Young visited Ms. Xavier's residence to determine whether she met the residency requirement. Sgt. Det. Young noted that the "apartment was clean and organized," and concluded that Ms. Xavier met the residency requirement. (R. Exhibit 2)

22. At that appointment, Sgt. Det. Young inquired about past and present romantic relationships. When the detective spoke to a previous boyfriend of Ms. Xavier, he stated that there were no issues while they were dating. However, Sgt. Det. Young was unable to reach Ms. Xavier's current boyfriend, KA. KA failed to return Sgt. Det. Young's phone calls. (R. Exhibit 2)

23. Three neighbors completed the neighbor assessment form, indicating that they had known Ms. Xavier for ten years. They gave Ms. Xavier positive assessments and expressed confidence that she would make a good police officer. (R. Exhibit 2)

24. Sgt. Det. Young also spoke with two personal references. One personal reference stated that Ms. Xavier had exercised the judgement to let go of "some friends who were not making the best choices in [l]ife" so that she could focus on her future. (R. Exhibit 2)

25. During her employment review, Sgt. Det. Young discovered that Ms. Xavier had been accused of stealing money while working as a grocery store cashier. Ms. Xavier confirmed that the grocery store accused her of stealing when her register came up short. Ms. Xavier said that she had placed a tip next to the register. When she later put the tip in her pocket, the store accused her of stealing. Ms. Xavier quit the job when she learned that suspension was imminent.

(R. Exhibit 2)

26. Sgt. Det. Young discovered Ms. Xavier's name in several Department incident police reports: a November 6, 2016 domestic disturbance incident with KA; a November 12, 2020 allegation of association with known gang members on social media; a June 17, 2022 report that Ms. Xavier was followed from Roxbury to C-11 in Dorchester; a September 16, 2023 arrest after a domestic disturbance with KA and the related ongoing Internal Affairs Division (IAD) investigation. He also noticed an open matter for two counts of assault and battery pending in the Central Division of the Boston Municipal Court relating to the domestic disturbance. (R. Exhibit 2; Testimony of Young)

27. Sgt. Det. Young compiled all his findings into a PCM for presentation to the roundtable. (R. Exhibit 2)

28. The Department convened a roundtable comprised of representatives from Human Resources, the Legal Department and IAD to review Ms. Xavier's candidacy for the position of permanent full-time police officer. (Testimony of Levarity)

29. The roundtable was troubled by Ms. Xavier's April 21, 2020 engagement with known gang members on Facebook, given that those gang members made anti-police comments and at least one member's screen name referenced a firearm. (Testimony of Levarity)

30. The roundtable was also concerned that on November 12, 2020, during the booking procedure following his arrest for a firearm offense, a known gang member alleged a romantic relationship with Ms. Xavier. And that, while on-duty, Ms. Xavier telephoned a friend to inform them that this detainee was in custody. (Testimony of Levarity)

31. Finally, the roundtable was particularly concerned about Ms. Xavier's unresolved criminal or disciplinary matters. (Testimony of Levarity)

32. First, there was the September 16, 2023 domestic violence incident where she had

allegedly cut KA with a knife and provided responding officers differing narratives. That night's events resulted in a criminal charge for assault and battery with a dangerous weapon that was still pending at the time of the roundtable. It is not the practice of the Department to extend conditional offers of employment to candidates with open criminal matters. (R. Exhibit 1; Testimony of Levarity)

33. Second, Ms. Xavier, a civilian Department employee, was the subject of two open IAD matters which the roundtable believed could present problems for employment promotion. (Testimony of Levarity)

34. After deliberation, the roundtable decided to bypass Ms. Xavier. (A. Exhibit 2, R. Exhibit 1; Testimony of Levarity)

35. Director Levarity informed Ms. Xavier of the Department's decision in a May 30, 2024 letter, enclosing her appeal rights. (R. Exhibit 1; Testimony Levarity)

36. Director Levarity cited three reasons for bypass in the May 30, 2024 letter. First, she identified four concerning instances of Ms. Xavier's *prior conduct*: 1) Ms. Xavier's domestic disturbance incident with boyfriend KA in 2016; 2) Ms. Xavier's April 2020 interactions with known gang members on social media, and the detainee's November 2020 allegation of a romantic relationship with her; 3) Ms. Xavier's November 2022 traffic stop with KA at the wheel of her car; and 4) the September 2023 domestic disturbance incident with KA, resulting in Ms. Xavier being charged with two assault and battery offenses. (R. Exhibit 1; Testimony of Levarity)

37. Second, Ms. Levarity found that Ms. Xavier's association with a known criminal and failure to conduct herself in a reasonable manner showed that she lacked *sound judgment* and rendered her unsuitable for employment as a Boston Police officer. (R. Exhibit 1; Testimony of Levarity)

38. Third, Ms. Levarity found that the *untruthfulness* identified in Ms. Xavier's application deemed her unsuitable for employment as a Boston Police officer. (R. Exhibit 1; Testimony of Levarity)

39. On July 29, 2024, Ms. Xavier filed an appeal with the Commission. (A. Exhibit 1)

40. Ms. Xavier testified that she had experienced a challenging childhood. She grew up in Boston public housing, moving out only two or three years ago. (Testimony of Appellant)

41. Ms. Xavier testified that she had cut ties with many of her high school friends. She asserted that the PCM did not adequately describe who she had become. She testified that she loved working for the Department, which gave her the opportunity to interact with different kinds of people. (Testimony of Appellant)

Ms. Xavier's Association with Known Gang Member KA

42. Sgt. Det. Young outlined Ms. Xavier's association with KA in detail within the PCM. Ms. Xavier and KA met at a party in 2014. They dated casually from 2015-2017, and began dating seriously in 2021. (R. Exhibit 6; Testimony of Xavier)

43. On November 6, 2016, officers responded to a domestic violence call, where KA was reported as the suspect and Ms. Xavier was reported as the victim. At the scene, responding officers had to separate the couple. There were no visible injuries, and the couple refused to cooperate with the officers. The officers released both parties. (R. Exhibit 11)

44. KA has a significant criminal history. His Board of Probation (BOP) record documents 49 adult arraignments on 15 separate dates from 2016 to 2021, and 15 juvenile

arraignments on 10 separate dates. (R. Exhibit 8)⁴

45. In late May 2017, KA was wanted on a straight warrant out of the Dorchester Division of the Boston Municipal Court for assault to murder and firearm offenses. He was also involved in four separate shooting incidents in 2017. In early February 2018, KA was arrested for operating a stolen vehicle, and a passenger in the vehicle was arrested for carrying a firearm in his waistband. Boston Police had also previously stopped KA with other known gang members. On July 5, 2020, KA's vehicle sustained ballistic damage. Three months later, KA was treated at a hospital for a gunshot wound. (R. Exhibit 7).

46. Notwithstanding Rule 102, §39 *Association with Criminals*, Ms. Xavier began seeing KA again in 2021. (Testimony of Appellant)

Association with Known Gang Members, including on Social Media

47. On April 21, 2020, the Department photographed Ms. Xavier in her cadet uniform. The Department uploaded the photo to its official Facebook page. Ms. Xavier reposted the entire Department post on her own Facebook account. (R. Exhibits 4 and 5)

48. Later that day, known gang members responded to Ms. Xavier's Facebook post with anti-police comments. One gang member's screen name referenced a firearm, and one gang member's screen name referenced a Boston gang. (Testimony of Young)

⁴ Excluding motor vehicular offenses, KA's adult record reflects charges of larceny of a motor vehicle (2020), assault and battery on a family/household member (2020), intimidation (2016, 2018, 2019, 2020), threats (2016, 2018), assault with a dangerous weapon (2018, 2019), assault and battery with a firearm (2018), larceny of a motor vehicle (2020), receiving a stolen motor vehicle (2018), larceny from a person (2019), larceny under \$250 (2019), shoplifting (2018), possessing a loaded firearm without a permit (2017), possession of ammunition without an FID card (2017), discharging a firearm within 500 feet of a dwelling/building in use (2017), assault and battery with a dangerous weapon (2018), disorderly conduct (2017), disturbing the peace (2017), resisting arrest (2017), assault and battery on a police officer (2017), armed assault to murder (2017), distribution of Class C (2016) and criminal harassment (2016). (R. Exhibit 8)

49. A known gang member commented on Ms. Xavier's Facebook post, "It's always gonna be BPDK [middle finger emoji] [police car emoji], but you my dawg so I accept [fingers crossed emoji] [100 emoji]." Notwithstanding Rule 102, §39 *Association with Criminals*, Ms. Xavier responded on April 21, 2020, "aggy thank you [heart emoji]." (R. Exhibit 4)

50. Another known gang member commented on Ms. Xavier's Facebook post, "Omg she's the cops [screaming emoji] [screaming emoji]." A third gang member responded, "Facts she is but hey I respect it bro ***** it". Notwithstanding Rule 102, §39 *Association with Criminals*, Ms. Xavier replied to the third poster, "Love you too [smiling emoji] [heart emoji] [heart emoji]." (R. Exhibit 4)

51. On November 12, 2020, officers brought an individual known as "DJ," who had been arrested earlier in the day for firearm possession, into the station for booking. Ms. Xavier was on duty at the booking desk and as the arresting officers walked DJ past the booking desk, DJ blew Ms. Xavier a kiss. During his booking, DJ informed officers that he was in a romantic relationship with Ms. Xavier and later identified her. While on-duty, Ms. Xavier called one of DJ's friends with the news of DJ's arrest. (R. Exhibit 6)

January 2021 Anti-Corruption Division (ACD) Investigation of the Facebook and C-11 incident

52. The Anti-Corruption Division (ACD) of the Bureau of Professional Standards opened an investigation to determine whether the above April 21, 2020 social media interactions or November 12, 2020 allegation of a romantic relationship with an arrestee constituted a violation of Department rules. (R. Exhibit 5)

53. On January 5, 2021, Sgt. Det. Thomas Lembo, assisted by Sgt. Det. Jose Teixeira, interviewed Ms. Xavier. Ms. Xavier was represented by counsel. (R. Exhibit 5)

54. The investigators gave Ms. Xavier the opportunity to review Commissioner's Memorandum 10-007, *Truthfulness*, and Rule 113 *Public Integrity Policy*. She acknowledged

that she understood both documents. (R. Exhibit 5)

55. The investigators then questioned Ms. Xavier about her April 21, 2020 social media interaction with known gang members and the detainee's November 12, 2020 allegations that he had a romantic relationship with Ms. Xavier. (R. Exhibit 5)

56. Ms. Xavier acknowledged that she knew the known gang members who had commented on her Facebook post on April 21, 2020. She also acknowledged that she knew the detainee who identified her to the police officers at C11 on November 12, 2020.

57. Investigators asked Ms. Xavier whether she had considered "unfriending" anyone on Facebook based on Rule 102 §39 *Association with Criminals*, and she said no. Ms. Xavier's attorney advised her of the impact of "perceived connections," and advised her to delete her Facebook account. Ms. Xavier agreed to delete her social media accounts. (R. Exhibit 5)

58. Throughout the January 5, 2021 interview, Ms. Xavier did not inform the investigators of her association with KA, or disclose that they had been in a dating relationship. (R. Exhibit 5)

59. On January 18, 2021, Sgt. Det. Lembo concluded that Ms. Xavier had not violated any laws. He referred the matter to the Internal Affairs Division for investigation of whether Ms. Xavier had violated Rule 102, §39, *Association with Criminals*. (R. Exhibit 5)

60. On July 21, 2021, Lt. Det. Sean Martin of the IAD filed an internal complaint against Ms. Xavier based on the April 25, 2020 social media interaction with criminals and detainee DJ's November 12, 2020 allegation of a romantic relationship.⁵ (R. Exhibit 6)

61. After Ms. Xavier had become a 911 call taker in December 2021, Sgt. Det.

⁵ The IAD investigations did not sustain the charge of Rule 102, §39, *Association with Criminals* in relation to Ms. Xavier's social media interactions with known gang members or DJ's allegations of an intimate relationship with her. (R. Exhibit 1)

Palomares interviewed her on April 5, 2022. Ms. Xavier was accompanied by a union representative. (R. Exhibit 6)

62. During the April 5, 2022 interview, Sgt. Det. Palomares presented the April 21, 2020 Facebook post, the complimentary comments to and from known gang members, and the ensuing January 2021 ACD investigation; and KA's Boston Regional Intelligence Center (BRIC) notices, field investigative observation encounter (FIOE) reports, and BPD incident reports. (R. Exhibit 6)

63. When the sergeant asked Ms. Xavier if her attorney had explained Rule 102, §39, *Association with Criminals* to her, she acknowledged that he had. When the sergeant asked her if she understood the rule, she said that she did. Ms. Xavier said that she deleted the gang members from her Facebook account and deactivated the account occasionally. (R. Exhibit 6)

64. Ms. Xavier denied being in a romantic relationship with the detainee, and said that she was unaware that the Department had issued a November 11, 2020 flyer for his arrest. (R. Exhibit 6)

65. Sgt. Det. Palomares asked Ms. Xavier whether she knew other gang members. Ms. Xavier responded that because she did not talk to a lot of people in her neighborhood, she did not know if other people in her circle were part of the gang database, but opined that some "probably" were. (R. Exhibit 6)

Traffic stop with KA, Complaint No 2021-0289

66. On November 12, 2022, Officer McCullough pulled over a motor vehicle due to its excessive window tint.⁶ KA was the operator and Ms. Xavier, the passenger, was the owner of the motor vehicle. Officer McCullough issued KA an oral warning and submitted an FIOE for

⁶ Ms. Xavier had received warnings for obstructed/nontransparent windows in May and September 2022. (R. Exhibit 2)

officer safety after he viewed KA's BOP. (R. Exhibits 6 and 9)

67. While conducting Ms. Xavier's background investigation for her candidacy for the Boston Police Academy, Sgt. Det. John Puglia discovered the November 12, 2022 FIOE. He referred the matter to IAD for further review, and it was consolidated with the open investigation under complaint number 2021-0259. (R. Exhibit 6)

68. On January 24, 2023, Sgt. Det. Palomares and Sgt. Det. Eamon Geoghegan conducted a second interview in order to question Ms. Xavier about the FIOE report. Ms. Xavier had both union and counsel representation. (R. Exhibit 6)

69. Ms. Xavier said that she was unaware of KA's reputation in the community, and had resumed the relationship because he had not been convicted of a crime and had not been in trouble recently. (R. Exhibit 6)

IAD Findings: Complaint No. 2021-0259

70. Sgt. Det. Palomares concluded the investigation and issued an October 5, 2023 investigative report. Based on that report, the Department sustained the findings that Ms. Xavier had engaged in a romantic relationship with KA in violation of Rule 102, §39 *Associating with Criminals*. The Department did not find that Ms. Xavier had 1) associated with criminals via a social media post; or had engaged in a relationship with DJ in violation of Rule 102, § 39 *Associating with Criminals*. (R. Exhibit 6)

September 16, 2023 Domestic Incident

71. On September 16, 2023, Boston police officers responded to a call and found Ms. Xavier and KA outside the reported address. KA was "extremely agitated and animated" throughout his interactions with officers, would not give any identifying information beyond his first name, and constantly expressed his desire to leave the scene. (R. Exhibit 10)

72. Ms. Xavier gave the officers her particulars and provided KA's details. She

identified herself as a BPD employee. (R. Exhibit 10)

73. When asked if there had been any physical contact, Ms. Xavier replied that it was only a “tussle,” repeatedly asked for her phone back, and acted in an “evasive” manner. (R. Exhibit 10)

74. Ms. Xavier told the officers that after asking KA to leave several times, he became “increasingly aggressive” towards her, snatched her phone and left the apartment. Ms. Xavier followed him outside, where officers encountered them. (R. Exhibit 10)

75. KA told the officers that Ms. Xavier had attacked him, cutting him with a knife, and showed the officers a cut on the back of his neck. (R. Exhibit 10)

76. Ms. Xavier denied this and told the officers, “No, it’s only a tussle.” She denied that any knives were used during the argument. (R. Exhibit 10)

77. After further discussion with the officers, she admitted that she and KA had pushed and shoved each other. Questioned further, Ms. Xavier produced three knives and stated that she had armed herself because she was afraid of KA. (R. Exhibit 10)

78. Outside the apartment, KA told the officer that Ms. Xavier had concealed the knife used in the attack on the bed. The officers found a large kitchen knife under the covers, but there was no blood on it. (R. Exhibit 10)

79. When officers addressed the inconsistencies in her statements, Ms. Xavier said that she had already been denied a spot in the Police Academy because of an ongoing IAD case, and wanted nothing to get in the way of becoming a police officer. (R. Exhibit 10)

80. The officers arrested Ms. Xavier and charged her with assault and battery with a dangerous weapon.⁷ (R. Exhibit 10)

⁷ At the time of the roundtable and the Commission hearing, the criminal matter was pending.

Applicable Legal Standard

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. *See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm’n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996). *See also Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Original appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09.

The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. *Boston Police Dep’t v. Civil Serv. Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. *See, e.g., Falmouth v. Civil Serv. Comm’n*, 61 Mass. App. Ct. 796, 801 (2004), citing *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-305, rev.

den., 10 428 Mass. 1102 (1997); *Police Comm'r v. Civil Serv. Comm'n*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

Analysis

I find that the Department had reasonable justification to bypass Ms. Xavier. The Department gave three reasons for bypassing Ms. Xavier: 1) past conduct of associating with known criminals; 2) lack of sound judgment, and 2) untruthfulness. Each of these reasons is sufficient reason on its own for a bypass.

I now examine them.

Bypass Reason 1: Prior Conduct

Ms. Levarity wrote that Ms. Xavier's prior conduct was of significant concern to the Department, including:

- 1) The November 6, 2016 domestic violence incident where officers arrived in the midst of a physical altercation and had to separate Ms. Xavier and KA.
- 2) The April 21, 2020 association with known gang members, where Ms. Xavier communicated with them via a forwarded Facebook post.
- 3) The November 12, 2022 FIOE/traffic stop for excessively tinted windows, where Ms. Xavier was traveling in her car with KA as the driver.
- 4) The September 16, 2023 domestic violence call, resulting in an open criminal charge for assault and battery with a dangerous weapon.

In April 2020, Ms. Xavier attended an event at District C-11, where the Department photographed her in her cadet uniform. The Department posted the photo—which included the BPD logo on its Facebook page. Ms. Xavier later reposted it on her own Facebook account and interacted with commenters that the Department identified as known criminals.

Ms. Xavier maintains she knew the individuals only from middle school or through local community ties, and did not have personal relationships with any of them. However, she admitted that she was aware of their criminal histories through social media. She said that she understood that one individual's use of the word "BPDK" reflects anti-police sentiment, and that

another individual's social media handle evinced a firearm. Despite these acknowledgments, she engaged with them online, at the risk of creating the appearance that a Department employee was associating with criminals.

I find that Ms. Xavier engaged in a familiar manner with gang-affiliated individuals, reputed in the community and the Department for recent or present involvement in criminal activities. Certainly, individuals may have longstanding connections with people from their communities, some of whom may have criminal histories. Nonetheless, individuals in positions of public trust—particularly within law enforcement—bear a heightened responsibility to distance themselves from such associations. Rule 102 §39 *Association with Criminals* understands that some affiliations are beyond an individual's control and makes an exception for familial relationships.

During Ms. Xavier's cadet training, she learned about the Department's rules, including Rule 102 § 39, *Association with Criminals*. Thus, Ms. Xavier was aware, or should have been aware, that the Department enforces standards for cadets as stringent as those accorded sworn officers. She should have known, through her exposure to the BPD Rules, that it is her role to preserve the integrity and public trust of an institution whose effectiveness depends on public perception and trust.

Ms. Xavier's conduct not only creates a reasonable suspicion of association with criminals but also undermines the public's trust in the Department. The Commission has consistently emphasized that individuals who serve in law enforcement—sworn or civilian—must exercise sound judgment and maintain professional integrity. Given the discretion and authority conferred upon police personnel, a reasonable suspicion of association with criminals will erode public trust in the Department. It is the duty of the Appointing Authority to ensure that only those who meet these standards move forward in the selection process. At a minimum, Ms.

Xavier exercised poor judgment. However, I do not find that her interactions on social media rise to the level of Association with Known Criminals.

On November 12, 2020, while Ms. Xavier walked past the booking desk, a detainee on firearm charges blew her a kiss. During the booking process, the detainee told the arresting officers that he was having a romantic relationship with Ms. Xavier.

Although Ms. Xavier claims that she was unaware of the detainee's criminal reputation before she saw him led into the station, she chose to call and alert one of his friends of the arrest. Ms. Xavier made the call while on duty, during an active investigation. Her conduct could have compromised the investigation.

Ms. Xavier's association and romance with KA, a known gang member, is documented in the Department's response to the November 6, 2016 and September 16, 2023 domestic violence calls.

The association was also documented in a November 12, 2022 FIOE, where a Boston police officer pulled over Ms. Xavier's motor vehicle for excessive tint, and found KA driving with Ms. Xavier as the front-seat passenger. When the officer queried the driver, he learned that KA had 49 adult arraignments for offenses including possessing a firearm without a license, distribution of Class B, and assault with a dangerous weapon.

I find it alarming that Ms. Xavier, a BPD employee under prior investigation for similar behavior and already facing a potential Rule 102, §39 violation, chose to continue associating with another known offender. I reject Ms. Xavier's claim that she did not know about KA's extensive criminal record. Their alliance dated back to 2014 and both it and KA's record were too lengthy for this assertion to make sense. Ms. Xavier admitted to an "on-and-off" relationship between 2015 and 2017, before ramping up in 2021. During 2015-2017 alone, KA faced at least

15 adult criminal or civil arraignments, including the serious charges of assault to murder, multiple firearm offenses, assault and battery of a police officer, and criminal harassment.

KA was arraigned on the assault and battery of a police officer charge on September 25, 2017, and served in the House of Correction for 90 days. The matter was not dismissed until October 18, 2018. These are not details that a romantic partner exercising ordinary prudence would overlook. Ms. Xavier had the opportunity and reason to learn about KA's criminal reputation, even before she joined the Department in July 2018.

Ms. Xavier claimed that she ended the relationship with KA but reconnected with him around 2021 because she believed he had changed. Even if this were the case, her new status as a BPD employee should have discouraged her from restarting a relationship with an individual with such an extensive criminal record. Her position required her to exercise greater discretion and judgment.

Ms. Xavier has repeatedly chosen to flout Rule 102 §39. Her continued involvement with KA, despite clear evidence of his criminal background, reflects a deliberate decision to knowingly maintain that association. Ms. Xavier's conduct undermines the standards and expectations of the Department and warrants serious concern.

Ms. Xavier's prior conduct of associating with criminals, standing on its own, constitutes a legitimate reason for bypass.

Bypass Reason 2: Lack of sound judgment

Director Levarity wrote in the May 30, 2024 bypass letter:

Police Officers are required to provide *sound judgment* and have the ability to render decisions quickly. As a result, your association with a known criminal and failure to conduct yourself in a reasonable manner consistent with these requirements render you unsuitable for employment as a Boston Police Officer.

(Emphasis added)

Not only did Ms. Xavier engage in a long-term relationship with KA, it was a surreptitious one, in violation of Rule 102, §39 *Association with Criminals*, owing to his criminal background. Ms. Xavier compounded the continuing violation of this rule by engaging in domestic violence (November 6, 2016 and September 16, 2023) and being charged with criminal conduct (offense of assault and battery with a dangerous weapon).

Ms. Xavier engaged in activity that she would be expected to censor as a sworn police officer. As part of their duties, police officers respond to domestic violence calls.

The roundtable members treated Ms. Xavier's history of consorting with known gang members as a red flag, and were properly concerned that she could repeat the same pattern of lack of judgment as a Department officer hire. Ms. Xavier's unsound behavior would not be a good fit for the hierarchical structure of the Department and the reliability that it must place on its sworn officers. Further, her continuing contact with known gang members presented a safety issue for herself, the Department and the public at large.

The Department cannot be expected to assume this risk. Ms. Xavier's lack of sound judgment, on its own, warrants bypass.

Bypass Reason 3: Untruthfulness

The Commission has consistently recognized that "a police officer must be truthful at all times," and "failure to do so constitutes conduct unbecoming an officer." *MacHenry v. Wakefield*, 7 MCSR 94 (1994). Indeed, there is a "strong public policy against employing police officers who are untruthful." *Royston v. Billerica*, 19 MCSR 124, 128 (2006).

An appointing authority is well within its rights to bypass an individual for lack of truthfulness as part of an application for a civil service position. It is reasonable for a police department to have concerns about an applicant's candor during their job performance if they were willing to distort the truth in their application. *See O'Brien v. Somerville*, 25 MCSR 292

(2012). *See also Minoie v. Braintree*, 27 MCSR 216 (2014); *Polin v. Randolph*, 23 MCSR 229 (2011). To that end, the Commission has stated that “it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.” *Garrett v. Haverhill*, 18 MCSR 281, 285 (2005). As such, allegations of untruthfulness ought to be made with an appropriate degree of seriousness and investigated with sufficient diligence. *See, e.g., Morley v. Boston Police Dep’t*, 29 MCSR 456 (2016).

Police officers must conduct themselves in a manner consistent with the laws they are sworn to enforce. They must gain and preserve public trust, maintain public confidence, and avoid an abuse of power.

At the time of the roundtable, Ms. Xavier had the distinction of two open IAD investigations as a Department civilian employee, and an open criminal charge for assault and battery with a dangerous weapon (knife).

Further, Ms. Xavier was not fully truthful throughout her interactions with police investigators. Ms. Xavier’s credibility was questionable during the September 16, 2023 domestic disturbance incident that led to her arrest, with the reporting officer describing her demeanor as “evasive.” She initially denied any physical altercation, referred to the incident as a “tussle,” but officers retrieved a knife from beneath her bedcovers after KA told them about its location.

Police officers’ duties include issuing reports on incidents, frequently testifying in court, and assisting in internal investigations. These are all activities in which the credibility and truthfulness of the officer play an important role. When an officer is found to be untruthful, it damages the officer’s ability to testify in future court proceedings.

The extent of Ms. Xavier’s contacts with known gang members is unknown. This would compromise her ability to be an able police officer and limit her court appearances.

Based on the foregoing, Ms. Xavier's untruthfulness renders her an unfit candidate for the position of permanent full-time police officer, and on its own, warrants bypass.

Finally, I see no evidence that the appointing authority's decision was based on political considerations, favoritism or bias.

CONCLUSION

Accordingly, the Boston Police Department has proven by a preponderance of the evidence that it had reasonable justification for bypassing Brianna Xavier. The appeal filed under Docket No. G1-24-132 is hereby *denied*.

Civil Service Commission

/s/ Angela C. McConney
Angela C. McConney
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Markey, McConney and Stein; Dooley - absent) on July 31, 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 C.M.R. § 1.01(7)(l), the motion must identify a clerical or mechanical error in the 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:
Brianna Xavier (Appellant)
Jennifer Cipolletti, Esq. (for Respondent)