

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

PAUL ZORZI,
Appellant

v.

TOWN OF NORWOOD
Respondent

CIVIL SERVICE COMMISSION
One Ashburton Place--Room 503
Boston, MA 02108
(617) 727-2293
Case No. D-15-111

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Paul M. Stein¹

DECISION

The Appellant, Paul Zorzi, acting pursuant to G.L.c.31, §41-§43, appealed to the Civil Service Commission (Commission) from the decision of the Town of Norwood, Appointing Authority (Norwood), to impose a two-day suspension from his position as a Police Officer with the Norwood Police Department (NPD). The Commission held a pre-hearing conference on June 30, 2015 and a full hearing on August 10, 2015.² The hearing was declared private as no party requested a public hearing. The witnesses were not sequestered. Norwood called three witnesses. The Appellant testified on his own behalf and called one witness. Fifteen (15) exhibits were received into evidence. The hearing was stenographically recorded.³

¹ The Commission acknowledges the assistance of Law Clerk Jaime Caprietta in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ 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 he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, the written transcript has been designated as the official record of the hearing. (Tr.6-7).

FINDINGS OF FACT

Fifteen (15) exhibits were entered into evidence, two (2) of which were marked “Confidential” (Exhibits 6 and 14). Based on these exhibits and the testimony of the witnesses:

Called by the Appellant

- Paul Zorzi, 11 year veteran Police Officer for the Town of Norwood, Appellant
- “Motorist”

Called by the Respondent

- John J. Carroll, General Manager and Appointing Authority for the Town of Norwood
- William G. Brooks III, Chief of Police for the Town of Norwood
- Lt. Peter F. Kelly Jr, Internal Affairs Investigator

and inferences reasonably drawn from the credible evidence, I make the findings of fact set forth below.

1. Appellant, Paul Zorzi, has been a full-time permanent Police Officer for NPD for eleven (11) years. (*Testimony of Officer Zorzi*)
2. On Tuesday, May 5, 2015, Officer Zorzi was working the 4:00P.M. to midnight shift. (*Exhs. 2, 7 & 15; Testimony of Officer Zorzi*)
3. At 7:43:54 P.M., Officer Zorzi called NPD dispatch to report that he had effectuated a lawful stop of a Motorist, after he observed the Motorist’s vehicle run a red light at the intersection of Washington Street (Route 1A) and Nahatan Street in the center of Norwood. (*Exhs. 2, 6 through 8, Testimony of Officer Zorzi, Testimony of Motorist*)
4. At 7:44:21 P.M., NPD dispatched a backup officer to the scene. (*Exh. 7*)
5. Officer Zorzi had pulled the vehicle over, in front of Limely’s Pub, a pub/restaurant frequented by numerous patrons at this time of evening. (*Exhs. 6, 7 Testimony of Officer Zorzi, Testimony of Motorist*)

6. According to Officer Zorzi, the level of traffic at the time was “medium” with “a lot of cars going up and down”. All the parking spaces along Washington Street were occupied by parked vehicles so the Motorist had to stop his vehicle in the travel lane and Officer Zorzi had to pull up directly in the roadway behind him. (*Exhs. 2 & 14; Testimony of Officer Zorzi*)
7. Officer Zorzi approached the vehicle on the driver’s side. He recognized the Motorist as a former college classmate. As they conversed, another car passed. Officer Zorzi and the Motorist saw the female passenger leaning out the window and heard her shout at Officer Zorzi that he was blocking the road and calling him a “prick”. (*Exhs. 6 through 8; Testimony of Officer Zorzi, Testimony of Motorist*)
8. According to Officer Zorzi, the encounter between the female passenger and Officer Zorzi was noticed by “numerous” patrons who were standing outside Limey’s Pub. Officer Zorzi heard one patron say “whoa”. (*Exhs 6 & 7; Testimony of Officer Zorzi*)
9. Officer Zorzi terminated the stop with Motorist and pursued the second car. He pulled, it over in front of the Norwood Town Library and approached the vehicle on the passenger side because the passenger was the person who had called him a “prick” , which personally bothered him. He had already formed the intent to place the passenger under arrest. (*Exhs. 2, 6 through 8, 14 & 15; Testimony of Officer Zorzi; Testimony of Lt. Kelly*)
10. At 7:45:10 P.M., Officer Zorzi called NPD dispatch. He cleared the prior stop of the Motorist and reported that he was on a stop of another vehicle at the Library. His next transmission was at 7:46:34 P.M. when he called for additional backup. With the first back-up still en-route, NPD dispatched a second cruiser operated by Officer

Wennerstrand, who arrived on scene at 7:48:31 P.M. Immediately prior to Officer Wennerstrand's arrival, Officer Zorzi had radioed; "slow it down everything is under control." (*Exh. 7*)

11. By the time Officer Wennerstrand arrived, Officer Zorzi had ordered the female passenger to get out of the vehicle and, when she refused, he unlocked the passenger door, physically removed the passenger, handcuffed her and arrested her for disorderly conduct and disturbing the peace. At 7:52:02 P.M., Officer Zorzi transmitted to NBD dispatch: "coming in with 1 female under arrest." (*Exhs. 2, 6 through 8 & 14; Testimony of Officer Zorzi*)⁴

12. At 7:55:48 P.M., Officer Wennerstrand transmitted to NPD dispatch that he would follow up at Limey's Pub to identify witnesses to the incident that prompted the arrest. He spoke with witnesses within the hour. He reported that the witnesses heard the passenger yelling and that her tone "sounded as if it was something negative." Contrary to what Officer Zorzi stated in his official incident report, however, none of the witnesses could specify what exactly the female passenger said. Officer Wennerstrand was not able to identify any witness who said "whoa", as reported by Officer Zorzi. None of the witnesses claimed to be annoyed. (*Exhs. 6 & 7; Testimony of Lt. Kelley*)

13. According to Officer Zorzi's own incident report:

As the vehicle passed my location I heard a female shouting at me This female was leaning out of the front passenger side window as she was shouting at me. During this time there were numerous patrons entering Limey's Pub. Many of them stopped what they were doing and stared at the female passenger. I heard one of them exclaim "whoa". It was obvious that the female passenger was creating a disturbance based on the actions of the patrons.

⁴ Evidence was introduced of some rough handling of the female passenger by Officer Zorzi prior to and incident to her arrest, including an alleged threat to discharge his pepper spray. As Officer Zorzi's treatment of the female passenger did not form the basis for any of the charges against him resulting in this discipline, I make no findings about these allegations. (See Exhs. 2, 7 & 14)

. . . .
. . . During the booking process Office Wennerstrand obtained names of the witnesses who were in front of Limey's Pub. They were all able to verify that they observed [passenger] shouting at me in a derogatory manner from the vehicle, which caused them to turn around and stare at her.

[Passenger] Disturbed the peace by shouting at me from a vehicle which caused the patrons to stop what they were doing and stare at her. She was disorderly because her behavior served no legitimate purpose.

(Exh.6)

14. Officer Zorzi testified he knew that, "by itself", he cannot "arrest someone for words for insulting a police officer". He understood that there must also be "tumultuous or violent behavior, if they're jumping in my face . . . acting in a threatening manner or . . . it's obviously causing alarm in public." He was specifically asked and answered the following question on cross-examination:

"Q. Officer Zorzi, I'm just going to ask you again on the way out of here if I lean out my window and call you a "prick" while I'm driving through the streets of Boston, is that disorderly conduct or disturbing the peace?"

A. "By itself, no."

(Testimony of Officer Zorzi)

15. The female passenger was transported to the station where she was booked and placed in a cell for approximately two or three hours until she made bail and was released.

(Exhs. 6 & 7; Testimony of Chief Brooks; Testimony of Lt. Kelly)

16. The male driver drove to the station, and, while there, taunted and threatened the dispatcher by calling him a "four-eyed nerd". Later that evening, as the dispatcher was leaving for a meal break, the male passenger accosted the dispatcher and said: "you four-eyed faggot, you're lucky you're at the police station or I'd kick your ass". The dispatcher called in to the NPD recorded line and reported this encounter to Lt.

Wennerstrand *(Exhs. 6 & 7;)*

17. On May 5, 2015, the female passenger appeared in Dedham District Court on the charges for disturbing the peace and disorderly conduct. The Clerk Magistrate found no probable cause for the charge of disorderly conduct. The Clerk-Magistrate found probable cause did exist to charge the female passenger for disturbing the peace but that charge also would be dismissed upon payment of \$100 court costs. The female passenger paid the \$100 and the complaint for disturbing the peace was dismissed. (*Exhs. 6, 13 & 15; Testimony of Chief Brooks; Testimony of Lt. Kelly; Testimony of Town Adm'r Carroll; Testimony of Officer Zorzi*)
18. On May 5, 2015, the female passenger filed a complaint with the NPD, asserting that her arrest was unlawful. (*Exhs. 7 & 14i; Testimony of Chief Brooks*)
19. As a result of the complaint, Chief of Police William Brooks ordered Lieutenant Peter Kelly to conduct an internal affairs investigation of the arrest. (*Exh. 7; Testimony of Chief Brooks; Testimony of Lt. Kelley*).
20. Lt. Kelly interviewed the female passenger and male driver by phone, reviewed Officer Zorzi's arrest report, reviewed the radio transmission transcripts from the night of the arrest, and further reviewed the complaint submitted by the female passenger. (*Exh. 7; Testimony of Lt. Kelly*)
21. During the phone interview with Lt. Kelly, the male driver agreed to meet with Lt. Kelly, but subsequently declined to be interviewed further. (*Exh. 7; Testimony of Lt. Kelly*)
22. During the same phone interview of the male driver by Lt. Kelly, the male driver passed the phone to the female passenger who also stated that she did not wish to be interviewed. (*Exh. 7; Testimony of Lt. Kelly*)

23. Lt. Kelly also received a memo from Sgt. Doucette who reported that Officer Zorzi had said he was “upset that he let the woman calling him a prick bother him as much as it did “. (*Exhs. 7 & 8: Testimony of Lt. Kelly*)
24. Officer Zorzi, as does any police officer, is required to maintain a thorough knowledge of the laws of the Commonwealth, including, in particular, criminal law and procedure as well as constitutional law. (*Exhs. 9 through 12; Testimony of Chief Brooks*)
25. The required study materials for preparation to take the civil service examination for a municipal police officer includes the following specific information about the crimes of disturbing the peace and disorderly conduct:

M.G.L.272 §53 DISTURBER OF THE PEACE

The elements are:

1. Conduct which tends to annoy all good citizens in that most people would find it unreasonably disruptive,
2. Does in fact annoy or infringe upon the right of any one person present not favoring it.

NOTE: Two aspects must be met: first, a reasonable person or most people would consider the conduct in question unreasonably disruptive, offensive or threatening; second, there must be at least one person . . . actually offended or who feels threatened or disturbed by the defendant’s conduct. . . the defendant’s conduct must be more than a mere annoyance, it must be so offensive, threatening or disruptive as to invoke the need for arrest and criminal sanctions.

. . .

Words which would provoke a reasonable person to violence, referred to as “fighting words”, may be punishable. . . . words alone (except for “fighting words”) are protected by the First Amendment right of free speech and may not be penalized by criminal sanctions. That is, a person who bellows out vulgar language is generally not arrestable unless conduct of a peace disturbing or disorderly nature accompanies his language or unless he threatens to commit a crime. . . or his conduct becomes so disruptive as to constitute disturbing the peace or being a disorderly person (see below). . . . [T]he time of day and locale are relevant factors. Boisterous and vulgar behavior . . . may be accepted or at least overlooked by most passersby in busy sections of large cities

M.G.L. 272 § 53 DISORDERLY CONDUCT

The elements are:

1. Whoever with the purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof,
2. engages in either fighting or threatening or in violent or tumultuous behavior; or
3. creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

NOTE: The above definition of disorderly conduct comes from the case of *Com v. A Juvenile* [citation], which went on to note that the type of conduct which the disorderly person provision of §53 reaches is “that conduct which by its very nature involves the use of physical force or violence or any threat to use such for or violence . . . objectively possible of immediate execution. . . .’ Also covered is “tumultuous behavior, which, while perhaps not physically violent, may nevertheless be characterized as involving riotous commotion and excessively unreasonable noise so as to constitute a public nuisance. . . . We further construe the section to relate exclusively to activities which involve no lawful exercise of a First Amendment (free speech or assembly) right. . .”

WORDS ALONE DO NOT CONSTITUTE CONDUCT

Words alone, including vulgar, profane and offensive speech, do not constitute “conduct” amounting to disorderly conduct. . . . conduct incident to constitutionally protected expression is . . . disorderly conduct if the conduct itself involves physical force or violence so as to constitute a public nuisance.

(*Exh. 12 (emphasis added)*)

26. On May 19, 2015, Lt. Kelly submitted a report of his internal affairs investigation to Chief Brooks. Lt. Kelly concluded that “Officer Zorzi lacked probable cause for both the charge of Disorderly Person or Disturbing the Peace, and the arrest lacked merit. . . . I believe that Officer Zorzi was embarrassed in front of an old college friend, and felt shown up by whatever [the female passenger] said. I think he reacted poorly to escalate rather than de-escalate an already bad situation, and the result was a bad arrest that was poorly thought out.” (*Exh. 7; Testimony of Lt. Kelly*)

27. By letter dated May 21, 2015, Chief Brooks informed Officer Zorzi that Officer Brooks had decided to impose a four day suspension for Officer Zorzi’s actions on May 5, 2015. His Findings included, in relevant part:

1. While working in uniform on the 4-12 shift, you made a traffic stop for a motor vehicle infraction . . .the stop was lawful and in line with Department policy. You knew the motorist and as you spoke with him your cruiser and his vehicle were in the travel lane. This occurred at a time when traffic volume would not have been particularly heavy.
2. As you conversed with the motorist, a vehicle . . .drove by and his passenger . . .yelled out the window . . .It is your contention that she yelled “something to the effect”, “nice going, you’re blocking the road you prick.” . . . I make no finding regarding the use of the insulting word, and believe that it has no bearing on the matter.
3. 3. You terminated your traffic stop and immediately followed and then stopped the . . . [name redacted]vehicle [that had just passed]. This was not a stop for a traffic offense, but rather because, in your words, “the passenger committed a criminal offense.”
4. . . .[Y]our intent upon stopping the [name redacted] vehicle was to arrest [name redacted] for being disorderly.
5. . . . You admitted that it [the passenger’s comment] bothered you personally. You . . .were upset that [you] let her comment bother [you] as much as it did.
6. Your arrest of [name redacted] was unlawful as her actions were neither disorderly nor a disturbance of the peace under Massachusetts law.
7. [Y]our decision to pursue and arrest [name redacted] was motivated not by a desire to protect the public or preserve the peace, but by anger towards her for insulting you.

Chief Brooks determined that Officer Zorzi’s behavior violated the following NPD Rules and Regulations;

Section G (Prohibited Conduct), Subsection 10 (Incompetence): An officer shall maintain sufficient competency to perform his duty and to assume the responsibilities of his position. Incompetency may be demonstrated by, but is not limited to, the following; a. a lack of knowledge of the application of laws required to be enforced; b. an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the officer’s rank, grade, or position; d. repeated poor evaluations or repeated infractions of the rules and regulations.

Policy 4.15d, the Oath of Office/Code of Ethics: All sworn officers shall abide by the Law Enforcement Code of Ethics: “I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions.”

Chief Brooks concluded:

I find that this incident alone would be sufficient to warrant discipline; however, it is even more troubling given your previous disciplinary history. In an incident occurring in August 2013, you were found to have used excessive force and been verbally abusive toward a prisoner while fingerprinting and moving her to a holding cell; you ultimately agreed to accept a one-day suspension for that incident. While no excessive force or verbal abuse is alleged in this incident described above, I am concerned that you once

again failed to control your temper, resulting in an inappropriate and unprofessional encounter with a member of the public.

(Exhs. 1 through 4; Testimony of Chief Brooks)

28. Officer Zorzi appealed his suspension to Norwood Town Manager John Carroll, the Appointing Authority. On June 11, 2015, Town Manager Carroll upheld the suspension, but reduced it to two days in the “hope that you can quickly put this behind you and move forward serving the best interests of the citizens of Norwood.” *(Exh. 5; Testimony of Town Adm’r Carroll)*

29. After the investigation had concluded, Chief Carroll spoke to the female passenger to inform her of the outcome of the NPD internal investigation. On June 11, 2015, Chief Brooks sent her a written apology and remitted the \$140 she had paid for court costs to have her criminal case dismissed. *(Exh. 13; Testimony of Chief Carroll)*

CONCLUSION

A Person aggrieved by disciplinary action 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, in part:

“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 Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823

(2006). The role of the Commission is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). See also City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, rev.den., 440 Mass. 1108 (2003); Police Dep’t of Boston v. Collins, 48 Mass App.Ct. 411 rev.den., 726 N.E.2d 417 (2000); McIssac v. Civil Service Comm’n, 38 Mass.App.Ct. 437, 477 (1995); Town of 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.” Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304 rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” School Comm. v. Civil Service Comm’n, 43 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).

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, 35-35 (1956). 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).

The "power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority." Town of Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm'r v. Civil Service Comm'n, 39 Mass App.Ct. 594, 600 (1996). 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., Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006).

Applying those principles to this appeal, the Commission concludes that Norwood met its burden to establish "just cause" for the discipline imposed on Officer Zorzi and that the discipline was not based on any 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 Officer Zorzi not "reasonably related to the fitness of the employee to perform in his position." See M.G.L.c 31, §43.

Chief Brooks concluded that Officer Zorzi's conduct on June 5, 2014 fell below the acceptable standard of performance he could rightly demand of an NPD police officer and beneath what the public may properly expect. Chief Brooks' decision to impose a four-day suspension turned on three core findings: (1) In Chief Brook's opinion, the arrest of the citizen in question was unlawful as no reasonable officer could conclude that her actions amounted to the crime of being either disorderly or disturbing the peace; (2) Officer Zorzi's decision to effect the arrest was motivated not by a desire to protect the public or enforce the law, but by his anger toward the citizen for insulting him; and (3) Officer Zorzi's prior record of discipline included one other instance where he let his temper get the better of him. The evidence fully supported these findings and justified the imposition of corrective discipline.

"An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion." McIssac v. Civil Service Comm'n, 38 Mass.App.Ct. 473,475 1995) (negligent off-duty handling of firearm) When it comes to police officers, the law teaches that there is a special "trust reposed in [a police officer] by reason of his employment. . . .Police officers 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 are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities." Police Comm'r v. Civil Service Comm'n, 22 Mass.App.Ct. 364, 371, rev.den., 398 Mass. 1103 (1986)

Further, although it would seem implicit, the NPD specifically codified, in rules and regulations that officers are held to have "knowledge of the application of laws required to be enforced" and requires all officers to subscribe to an Oath of Office and Code of Ethics which

states, “I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions.”

Officer Zorzi was in the midst of a lawful stop of the Motorist who ran a red light in the center of Norwood. Officer Zorzi abruptly terminated this lawful stop to pursue and pull over another vehicle, with the intent to arrest the passenger whom he claimed was the perpetrator of a minor misdemeanor offense that he has just observed, namely being disorderly and disturbing the peace for leaning out the window and yelling an obscenity at him for blocking traffic that he said caused bystanders at a nearby pub to “stop what they were doing and stare at her.” . Officer Zorzi eventually ordered the passenger out of the vehicle and when she refused, Officer Zorzi physically removed the passenger from the vehicle, handcuffed her and brought her to the NPD police station where she was booked on on charges of disorderly conduct and disturbing the peace.

First, the evidence fully supports Chief Brooks conclusion that Officer Zorzi’s decision to arrest the passenger on charges of disturbing the peace and disorderly conduct was a violation of his duty to know the law and to enforce it properly. Officer Zorzi, by training and experience, knew that the First Amendment protects a citizen’s right of free speech and that merely uttering a vulgar complaint directed at a police officer cannot be penalized by criminal sanctions. The passenger’s complaint clearly meant to express displeasure with how Officer Zorzi had placed his cruiser behind the Motorist in the travel lane of a main thoroughfare and requiring the vehicle in which she was sitting to veer around them, was clearly protected speech. It was not accompanied by any conduct involving physical force or violence, or “fighting words” that threatened such violence against any specific person that must be present to justify an arrest, as

Officer Zorzi knew or should have known ⁵. The distinction must be drawn between the issue presented to the Commission as to “just cause” for discipline and the decision of the Clerk-Magistrate of Dedham District Court in deciding whether “probable cause” existed to issue a criminal complaint. Neither the Clerk Magistrate’s dismissal of the charge of disorderly conduct, nor the decision to issue a complaint on the charge of disturbing the peace subject to dismissal on payment of court costs, are necessarily dispositive to the question of civil service law before the Commission. The Commission is not a court of criminal jurisdiction. Whether or not the discipline imposed on Officer Zorzi was justified under civil service law turns on whether there was “just cause” for Chief Brooks to conclude that the arrest was improper, not whether or not the evidence supports the conclusion that a crime was committed. Norwood presented compelling evidence that Chief Brooks’s conclusion that the arrest should not have been made was supported by sound judgment and the Commission is not warranted to substitute its own judgment on that subject. Further, the fact that Chief Brooks refunded the court costs to the female passenger – something he had never done before - and issued an apology, confirms the certainty of his conclusion and reinforces his bona fides.

Second, Norwood proved by a preponderance of the evidence that Officer Zorzi’s decision to arrest the female passenger was motivated not by a desire to protect the public or preserve the peace, but by anger due to her insulting him. By his own repeated admissions, Officer Zorzi acknowledged that the passenger’s vulgarity bothered him personally and he regretted that he let

⁵ The benign conduct of the passenger, which, at most caused a few bystanders to “stare”, can be compared to the altercation between the male driver and the NPD dispatcher at police headquarters. Upon transporting the female passenger to the station to be booked and processed, the male driver drove to the station, and while there, taunted and threatened the dispatcher. The male driver called the dispatcher a “four-eyed nerd” and later in the parking lot, confronted the same dispatcher and threatened “you four-eyed faggot, you’re lucky you’re at the police station or I’d kick your ass”. This is a clear example of “fighting words” which may be punishable because those “fighting words” were directed at a particular individual [dispatcher]. This altercation was reported to Lt. Wennerstarand, but the male driver was never arrested or charged for this incident.

it get to him. This behavior, which clearly weighed in Chief Brooks assessment, was a direct violation of the NPD code of ethics. Chief Brooks was fully warranted to conclude that this violation clouded the judgment of Officer Zorzi and caused him to act on his personal feelings when no reasonable officer should know better.

Third, Officer Zorzi was previously disciplined in 2013 for his use of excessive force, and was verbally abusive toward a prisoner while fingerprinting and moving her to a holding cell. Although excessive force was not found in the present case, Norwood was fully justified to take this prior discipline into account, in weighing the appropriate suspension to be imposed, to the extent that both incidents involved instances in which Officer Zorzi had “failed to control [his] temper.”

Fourth, the four-day suspension imposed by Chief Brooks was reduced to a two-day suspension by Norwood Town Manager Carroll in the hope that level of discipline would be sufficient to ensure that Officer Zorzi conformed his behavior to what was required of him in the future. That level of progressive discipline is fully justified and I find no reason for the Commission to modify it. Accordingly, for the reasons stated, the appeal of the Appellant, Paul Zorzi, is hereby *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Stein, and Tivnan, Commissioners) on March 17, 2016.

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)(1), 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:

Nicholas Pollard, Esq. (For Appellant)

Kier Wachterhouser Esq. (For Respondent)