

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

DANA LYMON,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

Case No.: D-13-240

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 to the Commission. The parties had thirty (30) 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 in whole, thus making this the Final Decision of the Commission.

The decision of the Department of Correction to suspend Mr. Lymon for thirty (30) days is affirmed and Mr. Lymon's appeal under Docket No. D-13-240 is hereby *denied*.

While the Commission is not authorized to modify a disciplinary action *upward*, (See Moloney v. Civ. Serv. Comm'n & Lowell, Suffolk Sup. Ct. No. 04-2682 (2005)), that does not prohibit us from commenting on DOC's decision here to only issue a 30-day suspension, as opposed to a termination.

As laid out by the Magistrate, Mr. Lymon, after arriving home with his DOC-issued firearm, decided to take a nap without securing his firearm. After waking up and discovering that his female companion had absconded with his car and his personally-owned firearms, he and a known drug dealer went searching for the female and, upon finding her, Mr. Lymon took his DOC-issued gun out and pointed it in her direction. Remarkably, this represents only one portion of Mr. Lymon's misconduct.

DOC's decision to retain Mr. Lymon as a Correction Officer is both dangerous and mind-boggling.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, and Stein, Commissioners [McDowell – Absent]) on July 10, 2014.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

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.

Notice to:

James Gilden, Esq. (for Appellant)

Julie Daniele, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala**

Dana Lymon,
Appellant

v.

Department of Correction,
Respondent

CSC Docket No. D-13-240
DALA Docket No. CS-14-83

Appearance for Appellant:

Julie Daniele, Esq.
Department of Correction
P.O. Box 946, Industries Drive
Norfolk, MA 02056

Appearance for Respondent:

James Gildea, Esq.
173 N. Main Street
Sharon, MA 02067

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

Department of Correction (DOC) was reasonably justified in disciplining appellant because he violated DOC rules, including by pointing his DOC-issued gun toward a woman in an attempt to recover his car.

RECOMMENDED DECISION

The appellant, Dana Lymon, appeals the action of the Department of Correction (DOC) in suspending him for 30 days and issuing him “a last chance warning that any future violations” of DOC rules “may result in...termination from employment...” (Ex. 2, p. 2.)

I held a hearing on February 28 and March 7, 2014, which I recorded digitally. DOC called four witnesses: Detective Tyrone Jones of the New Bedford Police Department; James Ferreira, Director of DOC’s Central Transportation Unit; James O’Gara, who handles human

resources matters for DOC; and Krysten Collins, a DOC investigator. Mr. Lymon testified and called three witnesses: Noemi Cruz, a DOC Superintendent and his former wife; Kerri Santos, a friend; and a friend whose initials are J.R.¹

I have accepted into evidence 19 exhibits. Exhibit 6 is an audio recording of Mr. Lymon being questioned by Sergeant Jamie Nee of DOC's Internal Affairs Unit. Exhibit 7 is a video recording of Mr. Lymon being questioned by Detective Jones. Exhibit 19 is Mr. Lymon's appeal of the DOC disciplinary action, which I admitted as an exhibit on my own initiative after the hearing.

Findings of Fact

1. Mr. Lymon became a correction officer with DOC in 1989. At the beginning of June 2012, he was assigned to the Central Transportation Unit. (Lymon testimony.)

2. Mr. Lymon was also a bouncer in three bars in New Bedford. (Lymon testimony.)

3. As a bouncer, Mr. Lymon became acquainted with a woman who was stripper, who sometimes worked at one of the bars in a non-stripper capacity, such as patting down female patrons at the entrance. The stripper was the sister of another employee of the bar. (Lymon testimony.) This recommended decision will refer to her as "the woman."

4. The woman lived in New Bedford.

5. Mr. Lymon had known the woman for at least two years and had been sexually involved with her. (Lymon testimony.)

6. On June 1, 2012, Mr. Lymon was separated and estranged from his wife, Ms. Cruz, and living with his brother in West Roxbury. (This recommended decision will refer to Mr. Lymon's brother's apartment as Mr. Lymon's home.) At the time of the hearing, Mr. Lymon was divorced. (Lymon testimony.)

¹ J.R. provided his real name. I do not use it because I rely on the New Bedford Police Department's assessment that he was a drug dealer. (Jones testimony.) It would be unfair to report that a police department considered a named person to be a drug dealer, especially because it is a minor issue in an administrative case.

7. On June 1, 2012 , which was a Friday, the woman drove Mr. Lymon to work at DOC in his car, but did not pick him up from work as they had arranged. He could not reach her on her cell phone. He was driven home by a supervisor. (Although the car was registered to and possibly owned by Mr. Lymon's estranged wife, this recommended decision will refer to the car as his.) (Lymon testimony.)²

8. After Mr. Lymon had returned home that day, the woman drove Mr. Lymon's car to his home. She gave him an excuse for her whereabouts, which Mr. Lymon did not believe. He took his car key back. (Lymon testimony.)

9. Even though the woman had been missing with his car that day and even though he did not believe her excuse, Mr. Lymon put his keys on a table in the living room while he took a nap. (Lymon testimony.)

10. Mr. Lymon's keys included keys to his car and at least one gun safe in his home. (Lymon testimony.)

11. At the time, Mr. Lymon had access to five hand guns:

A. An automatic gun manufactured by Sig Sauer. DOC had issued it to him. He ordinarily stored it at home in a gun safe that DOC provided. (Lymon testimony.)

B. A 40-caliber automatic gun whose model number was 4013. He owned it personally. He stored it in the DOC gun safe. (Lymon testimony.)

C and D. Two guns that he held for his friend Dave Rose, because Rose did not have a gun license. He does not know the guns' make and model. He stored them in the DOC gun safe. (Lymon testimony.)

E. A .357 snub-nosed revolver. He owned it personally. It is traditionally called a service revolver, and Mr. Lymon referred to it that way. The term "service revolver" does not indicate that DOC issued it to him to use in its service. (*See* Ex. 16, p. 2 (New

² Mr. Lymon testified extensively about supposed events beginning on May 29, 2012, including how the woman came to borrow his car. Because his testimony was uncorroborated

Bedford police officers referred to their department-issued guns as “service weapon[s].”) Mr. Lymon kept this gun in a safe in a home in Bourne where he used to live before separating from his wife. When he moved out, he left this gun behind. (Lymon testimony.)

12. In addition to the DOC-issued gun safe in West Roxbury and a second gun safe in Bourne, Mr. Lymon had a third gun safe, also in West Roxbury. He referred to it as the blue safe. He did not generally use it for guns. (Lymon testimony.)

13. Mr. Lymon did not remove his duty belt before his nap. He fell asleep while wearing his DOC-issued gun, mace, handcuffs, and handcuff keys. (Lymon testimony.)

14. When Mr. Lymon woke from his nap after work on Friday, June 1, 2012, he found that his keys that he had left on a living room table were not there and his car was not outside . (Lymon testimony.)

15. While Mr. Lymon napped, the woman used the key to the DOC-issued gun safe in his home to get access to and take three guns: the 40-caliber automatic that he owned personally, and Rose’s two guns that he was storing for him. (Lymon testimony.)³

16. At that point, Mr. Lymon had access to two guns: his DOC-issued gun that he had been wearing when he napped, and the .357 snub-nosed revolver that was in a gun safe in Bourne.

17. Mr. Lymon borrowed a car and drove from West Roxbury to New Bedford looking for the woman that night, Friday, June 1, 2012. (Lymon testimony.)

18. On June 1, 2012, around 7:00 or 8:00 p.m., Mr. Lymon joined with a friend J.R. (Lymon and J.R. testimony.)

19. J.R. was a New Bedford resident and fellow bouncer. (Lymon and J.R. testimony.)

and because I found Mr. Lymon not credible, as I discuss below, I cannot find that this supposed background, even if it innocuous on its face, is factual.

³ I do not find that the woman stole Mr. Lymon’s car or the guns in his home. She came to control Mr. Lymon’s car and three guns from his home. I make no finding on how she came to control them.

20. The New Bedford police had arrested J.R. for drug-related crimes, and considered him a participant in the drug trade. (Jones testimony.)

21. J.R. had served time in prison for drug-related crimes. (J.R. testimony.)

22. Mr. Lymon knew about J.R.'s background.

23. On the night of June 1, 2012, Mr. Lymon and J.R. drove around New Bedford and may have ventured to Providence, Rhode Island looking for the woman and Mr. Lymon's car. Mr. Lymon saw her drive by him in his car in New Bedford. (Lymon testimony.)

24. On the morning of Saturday, June 2, 2012, Mr. Lymon and J.R. continued their search for the woman and Mr. Lymon's car. (Lymon and J.R. testimony.)

25. Mr. Lymon did not go to see his estranged wife or retrieve his .357 snub-nosed revolver in Bourne on the morning of June 2, 2012. He did not go to Bourne or retrieve his revolver there until later in the day, in the early evening, after he had confronted the woman. (Cruz testimony; Ex. 5, p. 29.)

26. On June 2, 2012, around 6:00 p.m., Mr. Lymon and J.R. saw Mr. Lymon's car in New Bedford. With the borrowed car he was driving, Mr. Lymon partially blocked his car. (Lymon and J.R. testimony; Ex. 7.)

27. Mr. Lymon was armed with his DOC-issued gun. (cite) Ex. 7.)

28. Mr. Lymon drew his gun out of his holster and pointed it toward the woman who was in his car. (Lymon testimony; Exs. 7, 16, p. 5.)

29. Because Mr. Lymon's car was only partially blocked, the woman was able to drive it away. (Lymon and J.R. testimony.)

30. After this incident, Mr. Lymon went to Bourne. (Cruz testimony.)

31. The woman or her brother later used one of the three guns to shoot approximately six times at a man in New Bedford. He was apparently not hit by any bullets. Shortly after the shooting, the woman crashed Mr. Lymon's car. (Ex. 16, p. 6.) (The woman originally

admitted to the New Bedford police that she had fired the gun, but later recanted and attributed the shooting to her brother. (Ex. 5, pp. 18-20, Ex. 16, p. 6, Ex. 17, p. 1-2.))

32. On January 29, 2013, Sergeant Jamie Nee of DOC's Internal Affairs Unit interviewed Mr. Lymon. (Exs. 5, 6.)

33. Mr. Lymon was untruthful during that interview on many points. The major points were that Mr. Lymon untruthfully denied using his DOC-issued gun and denied taking it completely out of the holster. (Ex. 6.)

34. On May 16, 2013, the Department of Correction notified Mr. Lymon of six charges against him:

1. On or about June 1, 2012, you invited a female guest into your home, who then stole your car, personal firearm(s) and other items. You left your key ring containing a key to your firearm safe accessible to her, thereby providing her access to the firearm(s). One of these weapons was then used by this individual in the commission of a crime.

2. You improperly orchestrated your own police-type investigation to search for and recover items stolen from you identified in paragraph 1.

3. You used your DOC issued firearm in an effort to recover the items stolen from you.

4. In the course of the conduct cited in paragraph 3, you assaulted the individual cited in paragraph 1 with your firearm. As a result, you were charged with Assault by Means of a Dangerous Weapon.⁴

5. On or about June 1, 2012, you approached New Bedford police officers while holding your wallet badge out in front of you and identified yourself as a Correction Officer in order to gain favor.⁵

6. You were less than truthful when interviewed by a Department investigator regarding the above-mentioned events.

(Ex. 4.)

35. On May 30, 2013, DOC held a hearing. (Ex. 3.)

⁴ After a DOC hearing, the second sentence in this charge was not sustained. (Ex. 2.) Mr. Lymon was not charged with assault with a dangerous weapon.

⁵ After a DOC hearing, this charge was not sustained. Therefore, it was not appealed and this decision does not discuss it. (Ex. 2.)

36. On October 10, 2013, DOC informed Mr. Lymon that it was suspending him for 30 days and issuing him “a last chance warning that any future violations” of DOC rules “may result in...termination from employment....” (Ex. 2, p. 2.)

37. Mr. Lymon appealed on October 16, 2013.

Discussion

The resolution of this appeal relies heavily on credibility and I discuss credibility issues first.

J.R.'s credibility

J.R. testified emphatically and more than once that Mr. Lymon was not armed on June 2, 2012 – whereas Mr. Lymon testified that he pulled a gun out of his holster on that date. (J.R. and Lymon testimony.) Prudence requires me to doubt anything significant that J.R. testified to.

Whether Mr. Lymon drove to Bourne on the morning of June 2, 2012

The timing of when Mr. Lymon went to see his then-estranged wife, Ms. Cruz, in his former home in Bourne is significant, because it bears on whether Mr. Lymon used his DOC-issued gun or a personally-owned gun to confront the woman in New Bedford around 6:00 p.m. on June 2, 2012. Mr. Lymon did not go to Bourne in the morning of June 2, 2012, as he testified. Instead, I find that he went in the early evening after 6:00 p.m.

On January 30, 2013, DOC's Internal Affairs Unit interviewed Ms. Cruz, who reported that on June 2, 2012, between 7:00 and 7:30 p.m., Mr. Lymon came to her home in Bourne and retrieved a personal firearm that he had left locked in a safe there. (Ex. 5, pp. 28-29, Ex. 6.).

On February 28, 2014, Ms. Cruz testified that Mr. Lymon arrived in Bourne on June 2, 2012 after dinner. (Cruz testimony.)

On June 8, 2012, Mr. Lymon wrote an incident report for DOC. It describes his activities on June 1 and 2, 2012, and does not mention going to Bourne at all. His account of the morning of June 2, 2012 does not include going to Bourne. He reported that he woke on June 2, 2012 in New Bedford; picked up J.R.; and drove around New Bedford with him, unsuccessfully looking for his car. Then Mr. Lymon and J.R. drove to West Roxbury. Mr.

Lymon went to the Boston Police Department to report that the woman had stolen his car, some guns, and his iPad. Mr. Lymon and J.R. then drove to New Bedford, spoke with the woman's mother, and drove around New Bedford until they located the woman in his car. (Ex. 5, pp. 39-40.)

Mr. Lymon's word distinctions

Mr. Lymon's word distinctions during the investigations by DOC and the New Bedford Police Department (Exs. 6 and 7) and during the hearing undermined his credibility. It is ironic that at the hearing, Mr. Lymon accused the DOC investigators of "playing with words" and engaging in "antics with words." (Lymon testimony.)

How many guns Mr. Lymon had

I asked Mr. Lymon how many guns he had had access to in June 2012, whether he owned them or not. He initially answered three. He later established that it was five.

Whether Mr. Lymon was a bouncer

Although Mr. Lymon testified that "security" was the proper term, in an interview with a DOC investigator (Ex. 6), he freely used "bouncer" and variations on the word.

Whether the woman was a stripper or a pole dancer

When Mr. Lymon reported to DOC that his car and guns had been stolen, he described the woman as a stripper. (Ex. 5, p. 37.) He testified that when she was at his home, he received a call from a coworker seeking strippers for a party. That indicates that it was known that Mr. Lymon knew at least one stripper. The woman overheard the conversation and volunteered for the job. (Lymon testimony.)

Mr. Lymon testified that the woman's job was not as a stripper and that he had never even seen her dance, except dancing at the pole in the bar where they both worked. (Lymon testimony.) Mr. Lymon may have intended to make the point that the woman's full-time or regular job was not as a stripper. He may have intended to make the point that because he had not seen her strip, she was not a stripper as far as he knew. However, for me to have to parse

Mr. Lymon's words indicates that he was engaging in word distinctions. And the word distinctions continued.

When I asked Mr. Lymon if the woman was a pole dancer, he said that the woman had said that she did pole dancing, but that he had never seen her do it. (Lymon testimony.) When I asked him to reconcile that testimony with his earlier testimony that the only dancing he had seen her do was pole dancing, he testified that after hours in the bar, when no customers were around, the woman had demonstrated some moves on the pole in the middle of the bar's dance floor. (Lymon testimony.) Thus, Mr. Lymon distinguished between pole dancing and demonstrating some dance moves on a pole. And in his mind, pole dancing after hours without customers present was not pole dancing.

Mr. Lymon went on to distinguish between pole dancing and stripping. (Lymon testimony.) I agree that there is a distinction, but it is not significant. To Mr. Lymon at various times, the woman was a stripper, not a stripper but a pole dancer, and not a pole dancer.

Discrepancies

Mr. Lymon's word distinctions and the discrepancies in his accounts made it difficult to discern the facts and even his version of the facts. For just one example, Mr. Lymon testified that his daily routine was to take a nap after work. (Lymon testimony; Ex. 6.) He also testified that a medicine he took made him drowsy. (Lymon testimony.) I make no finding on whether Mr. Lymon took a daily nap or whether medicine made him drowsy, because Mr. Lymon so undermined his credibility. Although I find that Mr. Lymon took a nap on June 1, 2012, I find it only more probable than not that he took a nap. *Tucker v. Pearlstein*, 334 Mass. 33, 35-36 (1956); G.L. c. 31, § 43 (establishing "preponderance of the evidence" as the standard in this appeal). I cannot be sure that even that is true.

Mr. Lymon testified that on June 1, 2012, "Next thing I knew, I dozed off" and "I fell asleep. It wasn't a planned nap." (Lymon testimony.)

If Mr. Lymon's daily routine was to take a nap, then there was no "doz[ing] off" on his part. There was no surprise, as suggested by "Next thing I knew." To say, "It wasn't a planned nap" is a non sequitur. If he took a daily nap, there was no planning or lack of planning to surround it.

However, that is not the end. Mr. Lymon also told Captain John Fredericks of DOC that on June 1, 2012 "he decided to take a quick nap." (Ex. 5, p. 37.) On June 1, 2012, Mr. Lymon took his daily nap or he dozed off or he decided to take a nap, assuming that he did take a nap. It cannot be all three things. Mr. Lymon's unwillingness or inability to recount apparently simple and innocuous background, such as the nature of his probable nap on June 1, 2012, undermined his credibility.

Whether he was armed with his DOC-issued gun

Mr. Lymon admitted to having a gun when he confronted the woman on June 2, 2012. (Lymon testimony; Ex. 7.) Of the five guns he had access to on June 1, 2012, the woman had three of them. One was locked in a gun safe in Bourne. When he confronted the woman at approximately 6:00 p.m. on June 2, 2012, he had not yet been to Bourne that day and could not have retrieved that gun. That left the fifth gun, his DOC-issued gun. He was armed with his DOC-issued gun.

In addition, Detective Jones asked Mr. Lymon about his confronting the woman,

"You still had your gun on from work?" Mr. Lymon answered, "Yes." (Ex. 7.)

Mr. Lymon's account that he went to Bourne on the morning of June 2, 2012 is not credible, for reasons discussed above. In addition, Mr. Lymon is not credible, also for reasons discussed above. Since Mr. Lymon so thoroughly undermined his own credibility that I can barely find that he took a nap on June 1, 2012, he certainly does not have enough credibility for me to believe that he used a personally-owned gun and not his DOC-issued gun on June 2, 2012. There is no reason to believe that he went to Bourne on the morning of June 2, 2012

and was armed with his personal gun, not his DOC-issued gun, later that day. He was armed with his DOC-issued gun.

Whether he pointed the gun at the woman

In his interview with Sergeant Nee, Lymon said about his gun, “It *never* came out of the holster. It *never* came out of the holster.” (Ex. 6)(emphasis added.) He repeated it: “The gun *never* came out.” (Ex. 6)(emphasis added.) He stated to Sergeant Nee, “But I didn’t pull it, Jamie. She [the woman] pulled off [in his car] before I could do anything.” (Ex. 6.)

Interspersed with those statements were these: “It *never even completely* came out...It *never completely* came out.” (Ex. 6)(emphasis added.)

Mr. Lymon testified at the hearing that he pulled his gun, but the barrel did not clear his holster.

In his interview with the New Bedford police, Mr. Lymon said that he would not have approached his car without his gun being “ready.” (Ex. 7.) He twice said that his gun had to be “ready.” (Ex. 7.) I take that to mean that he had drawn it completely. Furthermore, when Detective Jones heatedly accused of Mr. Lymon of pulling a gun, Mr. Lymon did not deny it. (Ex. 7.) Nor did Mr. Lymon say that he only partly drew his gun.

Thus, Mr. Lymon variously recounted that he did not take his gun from his holster, he did not take his gun completely from his holster, and that he took his gun out.

I do not know how close Mr. Lymon was to the woman when he pointed his gun toward her, such as pointing it at her head through the driver’s side window. But he was pointing his DOC-issued gun in her direction as he approached his car. That is what he meant by “ready.”

DOC’s charges

1. On or about June 1, 2012, you invited a female guest into your home, who then stole your car, personal firearm(s) and other items. You left your key ring containing a key to your firearm safe accessible to her, thereby providing her access to the firearm(s). One of these weapons was then used by this individual in the commission of a crime.

This charge is basically true. On or around June 1, 2012, Mr. Lymon invited the woman into his home. On June 1, 2012, the woman took Mr. Lymon's car, three guns, and an iPad, although I make no finding whether the woman stole them. Mr. Lymon left his key ring containing a key to his firearm safe accessible to her. The woman or her brother used one of the guns to shoot at another person.

2. You improperly orchestrated your own police-type investigation to search for and recover items stolen from you....

This charge is true, although I make no finding whether the woman stole the items. Mr. Lymon spent two days driving around New Bedford with another bouncer, looking for the woman and his car. When he located her, he tried to prevent her from driving away by blocking his car, which she was driving. He pointed his DOC-issued gun in her direction and possibly at her.

3. You used your DOC issued firearm in an effort to recover the items stolen from you.

This charge is true.

4. In the course of the conduct cited in paragraph 3, you assaulted the individual cited in paragraph 1 [the woman] with your firearm. As a result, you were charged with Assault by Means of a Dangerous Weapon. (emphasis added)

As mentioned above, Mr. Lymon was found not culpable of the second sentence in this charge and it is not before me. I include the second sentence and have added emphasis to the phrase "As a result," because the construction of the two sentences demonstrates that the word "assaulted" in the first sentence alleges a criminal violation. I doubt that I, an Administrative Magistrate, can find that Mr. Lymon criminally assaulted the woman when the criminal charge against Mr. Lymon was dismissed. Even if I could theoretically find that Mr. Lymon criminally assaulted the woman in the absence of a conviction, I doubt that I could do so practically without her testimony.

Nonetheless, I find that Mr. Lymon pointed his DOC-issued gun toward the woman as part of his “police-type investigation” in the DOC second charge. Although DOC did not strictly prove the fourth charge, it proved the gravamen of it.

6. You were less than truthful when interviewed by a Department investigator regarding the above-mentioned events.

Among the many untruths that Mr. Lymon told DOC’s Sergeant Nee was that he was not armed with his DOC-issued gun when he confronted the woman. (Ex. 6.) He tried to deceive Sergeant Nee after the interview as well, by sending her a document. He wrote: “Jamie: This is a photo of my personal service revolver I had on June 2, 2012, when I ran into [the woman] in my vehicle on Summer Str.” (Ex. 5, p. 63)(various capitalizations reduced to lower case). This was disingenuous. Not only did he use his DOC-issued gun, he did not run into the woman; he was looking for her. He more than ran into her; he pulled his gun on her.

Mr. Lymon also told Sergeant Nee both that he never took his gun out of the holster and that he never completely took it out of his holster. (Ex. 6.) Both assertions could not be true, and neither was true. He took his gun out of his holster completely.

It is ironic that Mr. Lymon tried to defend against this charge of being less than truthful by, during the hearing in front of me, being untruthful.

DOC’s rules

I have discussed whether DOC proved its charges against Mr. Lymon. It generally has proved them. I now discuss whether the charges constitute violations of DOC’s rules. DOC invoked various rules (Ex. 2), as follows.

General Policy 1

...Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her primary charge concerning the safe-keeping and custodial care of inmates or[] from his/her constant obligation to render good judgment[,] full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations, and policy issued by the Commissioner,⁶ the respective Superintendents,⁷ or by their

⁶ The Commissioner of Correction. *See* Rules and Regulations, Definitions. (Ex. 2.)

authority....Improper conduct affecting or reflecting upon any correctional institution or the Department of Correction in any way will not be exculpated[,] whether or not it is specifically mentioned and described in these rules and regulations....

(Ex. 1.) Although the first sentence refers to on-duty conduct, the second sentence is broad enough (“whether or not it is specifically mentioned and described in these rules and regulations”) to cover off-duty conduct.

Rule 1

You must remember that you are employed in a disciplined service which requires an oath of office. Each employee contributes to the success of the policies and procedures established for the administration of the Department of Correction and each respective institution. Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and places they frequent.

(Ex. 1.) I assess these two rules together.

Although Mr. Lymon may or may not have known that the woman was capable of being involved in a shooting, he knew that she was a stripper. Mr. Lymon knew J.R. because they worked together as bouncers. He knew J.R. well enough to enlist him in his police-type investigation. He denied knowing that J.R. had criminal convictions or was involved in the drug trade. (Lymon testimony.) Since Mr. Lymon so thoroughly undermined his own credibility that I can barely find that he took a nap on June 1, 2012, I do not believe that Mr. Lymon did not know about J.R.’s background and reputation. It is more likely than not that he knew. *Tucker*, 334 Mass. at 35-36.

Mr. Lymon’s improper conduct reflected poorly on DOC; he did not give dignity to his position; and he was not circumspect in his personal relationships as follows: He conducted a police-type investigation (Charge 2); pointed his DOC-issued gun toward the woman (Charge 3); was not circumspect in keeping company with and being sexually

⁷ “The Chief Administrative Officer of a state correctional facility...” See Rules and Regulations, Definitions. (Ex. 2.)

involved with a stripper; and was not circumspect in keeping the company of J.R. He violated these two rules.

The closeness of Mr. Lymon's relationship with the woman allowed her access to his car and three guns. He then drove around searching for her while armed and in the company of J.R., whom Mr. Lymon thought would be useful in his investigation. And it ended with Mr. Lymon pointing his DOC-issued gun toward a stripper in the presence of someone who had served prison time for drug crimes, a result that did not "give dignity" to his position. It resulted from his lack of circumspection in his personal relationships.

Rule 14(d)

...It is also your duty to protect yourself and others from loss of life or severe bodily harm. Consequently, weapons may be issued to you for the official performance of your duty....Any inappropriate use of a weapon may result in immediate discipline up to and including discharge.

(Ex. 1)(quoting only parts of rule that DOC cited in Exhibit 2). Mr. Lymon violated this rule by pointing his DOC-issued gun toward the woman.

Rule 15(a)

Employees shall use or possess the equipment, material, and personal services of the institution or Department of Correction for official purposes only and not for personal gain.....

(Ex. 1.) Mr. Lymon used his DOC-issued gun for his personal gain; he tried to recover his car and three guns. He violated this rule.

Rule 19(c)

Since the sphere of activity within an institution of the Department of Correction may on occasion encompass incidents that require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or yourself....

(Ex. 1)(quoting only part of rule that DOC cited in Exhibit 2).

Mr. Lymon did not respond fully to Sergeant Nee's questions. Rather, he made word distinctions and answered untruthfully. He violated this rule.

In sum, “there was reasonable justification for the action taken by” DOC. *Town of Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). *See also* G.L. c. 31, § 43 (relying on “just cause”); *McIsaac v. Civil Service Commission*, 38 Mass. App. Ct. 473, 476 (1995)(“The [civil service] commission could properly determine that the sanction [of a police officer] chosen by the selectmen was within appropriate limits”)(citations omitted). DOC had more than reasonable justification.

I do not recommend that DOC’s discipline of Mr. Lymon be decreased because it could not strictly prove the fourth charge. *See* G.L. c. 31, § 43. As I said above, DOC proved the gravamen of the fourth charge: Mr. Lymon pointed a gun toward the woman.

Conclusion and Order

I recommend that the appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth Bresler
Administrative Magistrate

