



Massachusetts POST Commission

84 State Street, Suite 200 Boston, MA 02114

In the Matter of
Matthew Allan O'Sullivan
(MPTC User ID: 9998-1533)

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Case No. ED23-006-C
Certification No. OSU-2023-9998-1533

Determination of the Executive Director

(Review of Division of Police Certification Decision Pursuant to 555 CMR 7.10(1))

The above-captioned matter comes before the Executive Director of the Massachusetts Peace Officer Standards and Training Commission (the "POST Commission"), through a request for review regarding the recertification of Matthew A. O'Sullivan ("applicant" or "Officer O'Sullivan"). On September 28, 2023, and October 10, 2023, the POST Commission's Division of Certification notified the applicant that it declined to recertify him at that time, based on information regarding the use of force during an arrest [regarding an incident that took place on 8/25/2020] and the District Attorney's decision not to utilize his testimony in criminal cases.

On November 6, 2023, the applicant requested review by the Executive Director of that decision.

Factual Findings

After reviewing the applicant's application for recertification as a law enforcement officer and relevant submissions, I find the following:

1. The applicant has been employed by the Egremont Police Department ("Egremont PD") and by the Sheffield Police Department ("Sheffield PD").
2. On August 25, 2020, the applicant responded to an incident at 23 White Hill Road in Egremont and executed an arrest. Related to this incident, the applicant authored an arrest report and a use of force report.
3. On November 4, 2021, then-First Assistant District Attorney Karen J. Bell sent a letter to Chief Jason LaForest ("Chief LaForest") of the Egremont PD, notifying him that during an investigation by the Massachusetts State Police, "it was determined that portions of Officer O'Sullivan's report regarding the [August 25, 2020] arrest [were] inconsistent with the dash camera video obtained from the incident." The District Attorney's office determined such

conduct to be potentially exculpatory information requiring disclosure as part of that office's Brady policy.

4. On January 24, 2023, then-Second Assistant District Attorney Kelly Mulcahy Kemp sent an e-mail to Chief LaForest notifying him that the office had determined that it would not call Officer O'Sullivan to testify on behalf of the Commonwealth in any matter going forward.

5. On February 13, 2023, the Town of Egremont terminated the applicant's employment. This termination went to arbitration and was reversed by arbitrator Theodore O'Brien on August 14, 2023. In his decision, O'Brien cites the failure by the Town to investigate the alleged misconduct that led to the applicant being placed on the District Attorney's No-Call list. In addition, O'Brien cites the failure by the Town to produce substantive evidence of the alleged misconduct.

6. The deadline for submitting recertification information to the POST Commission for all officers with last names I-P was July 1, 2023. At that time, the Egremont PD did not include the applicant in the roster of individuals that should be recertified by the POST Commission. The applicant had been terminated prior to the deadline, was in the process of grieving his termination, and was subsequently reinstated.

7. On September 8, 2023, Chief LaForest notified the POST Commission that the applicant had returned to service, given the arbitrator's ruling.

8. On September 15, 2023, Chief LaForest submitted a non-attestation form to the POST Commission because he could not find that the applicant possessed good moral character and fitness for employment in law enforcement. In the form, Chief LaForest cited the applicant's disciplinary history as the reasons for this determination.

9. Also on September 15, 2023, the office of Berkshire District Attorney ("DA") Timothy Shugrue sent a letter to the Division of Certification requesting that, "the POST Commission revoke the certification of [Officer] O'Sullivan, who appears on this Office's Brady List and Do Not Call List" To the letter were attached several documents offered in support of this recommendation, including, most notably, documents and video concerning Officer O'Sullivan's actions in the August 25, 2020 incident mentioned above. DA Shugrue's letter identifies what he claims to be "discrepancies" between the video and Officer O'Sullivan's report, claims which appear to have formed the basis for the DA's office's prior decision to place Officer O'Sullivan on the *Brady* list.

10. In a letter dated November 13, 2023, Chief Eric Munson of the Sheffield Police Department submitted a letter stating his opinion that the applicant "has been a competent and productive member" of the Sheffield Police Department while working as a part-time officer since 2021. Chief Munson stated that, during his period of employment in Sheffield, the applicant "has never faced any disciplinary action." This letter was provided to the POST Commission by Officer O'Sullivan's attorney.

11. The applicant's complete disciplinary record, submitted to the POST Commission by the Egremont PD pursuant to Section 99 of *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*, St. 2020, c. 253, included seven entries listed below:

- a. Various motor vehicle stops resulting in "excessive, unwarranted pat frisks" between **08/02/2019 – 08/12/2019**. The discipline imposed was retraining.
- b. An incident dated **6/27/2020** for truthfulness or professional violations (questionable motor vehicle stop) with the discipline listed as retraining.
- c. The incident dated **8/25/2020** described herein, with the discipline imposed as termination that was later reversed by an arbitrator.
- d. An incident dated **5/23/2021** categorized as conduct unbecoming for insubordination of a senior officer and chief over the cleaning of a vehicle and a memorandum/report on a particular matter (a To/From request). The discipline imposed was retraining.
- e. An incident dated **2/3/2022** for a violation of the pursuit policy and an allegation of untruthfulness. The discipline imposed was a 3-day suspension that was later reduced to a 1-day suspension by an arbitrator.
- f. An incident on **6/12/2022** for truthfulness, questionable justification for a motor vehicle stop, unwarranted exit order, and unlawful detention. The discipline imposed was retraining. A letter of counsel was issued to the applicant on 8/19/2022.
- g. An incident dated **8/12/2022** as a form of untruthfulness and deliberately withholding use of force details from the report with the discipline imposed as a letter of counsel.

12. On November 14, 2023, the applicant, through his attorney, filed a brief with exhibits with the POST Commission as part of the applicant's request for reconsideration and review by the Executive Director.

13. On February 16, 2024, I and other staff members of the POST Commission met virtually with DA Shugrue and members of his office. We reviewed, in detail, the applicant's actions and statements in conjunction with the August 25, 2020 arrest.

14. On February 29, 2024, I and other staff members of the POST Commission conducted an oral interview of the applicant at the POST Commission offices in downtown Boston. As part of this interview, we reviewed the required forms, the applicant's entire disciplinary history, and the applicant's answers to the questionnaire.

15. On March 5, 2024, DA Shugrue's office forwarded a second letter to the POST Commission, containing information about a June 14, 2022, motor vehicle stop and subsequent arrest by Officer O'Sullivan of a driver who, according to Officer O'Sullivan's police report, was operating a motor vehicle under the influence of liquor. The DA's office contended that this incident demonstrated "professional misconduct" on the part of Officer O'Sullivan and provided the following: (1) dashboard camera video from Officer O'Sullivan's cruiser, (2) Officer O'Sullivan's contemporaneous police report; (3) court documents relative to the subsequent Operating Under the Influence ("OUI") prosecution of the driver; and (4) a written "Summary" of the incident authored by DA Shugrue personally. In that summary, DA Shugrue stated that, in the OUI prosecution, "a motion to suppress was filed and the case was ultimately dismissed due to the improper stop." It should be noted that, prior to being elected District Attorney, DA

Shugrue personally represented this defendant as his defense counsel in the OUI prosecution that resulted from this stop.

Determination

The POST Commission's enabling statute sets forth minimum certification standards, which include "being of good moral character and fit for employment in law enforcement, as determined by the [C]ommission." M.G.L. c. 6E, § 4(f)(1)(viii), (ix). The POST Commission's regulation 555 CMR 7.05 describes the standards for "Determination of Good Character and Fitness for Employment."

Regarding the three separate entries for the following incidents:

- a. "Excessive unwarranted pat frisks" between **8/2/2019 and 8/12/2019**
- b. "Questionable justification for motor vehicle stop" on **6/27/2020**
- c. "Insubordination of a senior officer for cleaning a vehicle and To/From request on **5/23/2021**

The above incidents all resulted in retraining. I find that these instances amount to documented verbal reprimands that do not impugn the applicant's good moral character and fitness for duty as a law enforcement officer.

I find that the **6/12/2022** incident detailed as "Questionable justification of motor vehicle stop, unwarranted exit order and unlawful detention"—which discipline was labeled as "retraining" and was the subject of a letter of counsel dated 8/19/2022—is an instance of written reprimand that does not impugn the good moral character and fitness for duty as a law enforcement officer.

I find that the **8/12/2022** incident labeled as "deliberately withholding use of force details from the report" does not rise to the level of untruthfulness. In my view, this incident can be summarized as a supervisor asking for additional details on a report, and the officer complying with this request. Law enforcement officers should always describe facts in as much detail as possible when writing reports, and supervisors should exercise their authority of asking for additional explanations or details when the situation might warrant so, as it appeared to be the case here. The record here shows that the initial four-page report authored by the applicant on **8/09/2022** did not fully detail the "compliance techniques" that he utilized when making the arrest in question, but an additional report he authored on **8/14/2022** did describe those techniques. The document authored by Chief LaForest regarding this incident describes that, when Chief LaForest asked the applicant why the details surrounding the use of force were so vague, the applicant responded (according to Chief LaForest), "*the last time he did a use of force report he ended up in the Brady list.*" Although such a response by the applicant could be considered impertinent or sarcastic, the original report does not appear to intentionally minimize or obfuscate the use of force used as part of the arrest and does not, in my view, rise to the level of deliberately withholding details in a report. Chief LaForest made clear to the applicant that lack of details in a report are not acceptable, and the applicant appears to have satisfactorily addressed that issue.

I do not consider the remaining two instances of discipline reported on the applicant's disciplinary record, pursuant to 555 CMR 7.05(4). That regulation states, in part, that:

[U]nless there have been allegations that an officer has engaged in multiple instances of similar or related misconduct or protocols adopted by the [C]ommission provide otherwise, neither the employing agency nor the [D]ivision of [C]ertification shall consider an allegation of a particular instance of misconduct [in rendering a determination regarding an officer's good character and fitness for employment] where... (a) [a]n authority has made a decision in the officer's favor on the merits of a complaint alleging such misconduct; . . . (c) [t]he officer has complied or is in the process of complying, with any disciplinary action...in relation to the alleged misconduct, and the officer has not engaged in any similar conduct since the discipline or decision; . . . [or] (e) [t]he allegation is not specifically and credibly supported

With respect to the applicant's violation of the pursuit policy on **2/3/2022**, I first find that this incident does not form part of a pattern of similar or related misconduct. The record does not show any other instances of similar misconduct. Furthermore, an authority has already imparted discipline to the officer for this incident, and the applicant has complied with the resulting disciplinary action. While the initial allegations for this suspension included untruthfulness, the arbitrator in this instance did not find untruthfulness. Weighing the evidence, which was investigated and acted upon, I find that they do not give rise to a finding that the applicant lacks good moral character and fitness for employment in law enforcement.

Likewise, I do not find that the incident that took place on **8/25/2020** forms part of a pattern of similar or related misconduct. Therefore, I do not consider it pursuant to 555 CMR 7.05(4). Two separate investigations concluded that there was insufficient evidence that the applicant intended to use, or actually used, excessive force during this incident.

I spoke with Chief LaForest about this incident and the applicant's entire disciplinary history. In addition, I spoke with DA Shugrue to understand his perspective on the incident, and the record. Finally, I met with the applicant himself.

I have carefully considered the District Attorney's Office's opinion as to the applicant's actions during the August 2020 incident, and the content of his written reports following the incident (which the DA believed to be deliberately untruthful). While it is the DA's prerogative to determine, as DA Shugrue did upon assuming office, that the applicant was untruthful and therefore should not be called to testify in any future criminal case, my role requires me to independently examine the underlying evidence in reaching a determination as to the applicant's good moral character. Having done so, I do not share the DA's view that the applicant was deliberately untruthful. The video evidence does not conclusively show that the female arrestee was aggressively thrown into the cruiser by the applicant. Instead, I am persuaded by the conclusions of both investigations—conducted by former Chief Michael J. Wynn of the Pittsfield

PD, and by MSP Trooper Ryan Mauer.¹ Both of these experienced investigators ultimately found that there was inconclusive evidence to determine that the applicant used excessive force. Most importantly, the applicant, in his interview with me and the POST Commission staff, provided an explanation of certain statements in his written report which, I find, are consistent with the evidence of the incident, a second report reviewed as part of the record (Officer Jacob Gonska of the Sheffield PD), and the previous investigative findings.

Thus, because I do not find that the applicant's written report is obviously inconsistent with the video evidence of the incident, and because I do not find that any discrepancy in the report was intentional, or made with the intent to deceive, minimize or obfuscate the incident, I find that the allegations of excessive force and untruthfulness relative to the August 2020 incident "[are] not specifically and credibly supported" by the evidence. 555 CMR 7.05(4)(e). I therefore do not consider them further.

I have also carefully reviewed the additional material submitted by DA Shugrue relative to the applicant's stop of a motor vehicle in June 2022 and subsequent arrest of the driver. I find nothing in those materials to support the DA's view that Officer O'Sullivan conducted an improper motor vehicle stop, or that he was untruthful in his written report. To the contrary, the dashcam video appears to support Officer O'Sullivan's stated reasons for his stop of the motor vehicle. The video plainly shows that the vehicle was operating erratically prior to being pulled over, and the applicant's decision to stop the vehicle apparently turned out to be the right call, as the driver's breathalyzer test indicated he had been operating at nearly twice the legal limit of alcohol.² Furthermore, Officer O'Sullivan's demeanor throughout the encounter appeared professional and calm. In my view, this unremarkable encounter does not show "professional misconduct" on the part of Officer O'Sullivan. To be clear, I do not lightly dismiss the DA's opinions as to Officer O'Sullivan's fitness to be a law enforcement officer and his determination that the applicant should not be called to testify in criminal cases. Nevertheless, for purposes of this decision, the materials submitted by the DA's office as to the June 2022 stop do not show anything that would, in my view, impugn Officer O'Sullivan's moral character.

Based on my review of the applicant's petition and all the information before me, I have determined that the applicant possesses the requisite good moral character and fitness for employment in law enforcement. Therefore, I hereby **remand** this matter to the Division of Certification with an instruction to issue the applicant a full recertification.

The applicant must remain in compliance with the requirements of Chapter 6E of the Massachusetts General Laws and all rules and regulations promulgated by the POST Commission for the duration of the applicant's employment as a law enforcement officer.

¹ Former Chief Michael J. Wynn also served as a Commissioner on the POST Commission between April of 2021 and June of 2023.

² Officer O'Sullivan's police report indicates the driver took a breathalyzer test, which produced a reading of 0.157.

The POST Commission reserves the ability to revisit the matter of the applicant's certification if it receives new information that paints a materially different picture of the facts, in accordance with 555 CMR 7.09.



Enrique Zuniga
Executive Director

March 15, 2024

Date