

In the matter between )  
Town of Ashland )  
And )  
Sgt. Gregory Fawkes )

Hearing Officer Report

Introduction

The undersigned was appointed by Ashland Town Manager John Petrin to act as a hearing officer under Chapter 31, section 41 of the Massachusetts General Laws in the matter of whether just cause exists to terminate the employment of Sergeant Gregory Fawkes. The hearing was held on three different days, April 2, April 12 and April 18, 2012, at the Ashland Town Hall. The employee was present and represented by John Becker, Esq. Representing the Town was attorney Marc Terry and Lieutenant David Beaudoin. The employee requested that the hearing remain private and that request was granted. In addition, the parties entered into a confidentiality agreement, concerning certain documents, which was entered as Joint Exhibit 1. The witnesses were sequestered and gave testimony under oath. The hearing was stenographically recorded and transcriptions were provided. Numerous documents were accepted from the parties. The transcript and documents are attached hereto and incorporated herein.

Based on the evidence provided, I make the following findings of fact:

Findings of Fact

1. Sergeant Gregory Fawkes (hereinafter "Fawkes") has been employed in the Police Department of the Town of Ashland (hereinafter "Town") since 2002. (tr. 575)

2. William Cavanagh (hereinafter "Cavanagh") has been an Ashland resident for twenty years currently residing at [REDACTED]. (tr. 38)
3. Fawkes and Cavanagh have had a bad relationship for several years going back to a complaint Cavanagh made to the Police department concerning Fawkes investigation of a matter concerning Cavanagh's [REDACTED]. (tr. 136-137)
4. [REDACTED], the [REDACTED] of Fawkes, walked [REDACTED] dog by Cavanaugh's home on a regular basis for the past two years, initially every day, but by the time of the June 4<sup>th</sup> incident only 2 or 3 times per week. (tr., 40, 310, 314).
5. Cavanagh and [REDACTED] engaged in friendly banter during her walks but at some point, which [REDACTED] characterized as after Cavanagh found out she was married to Sgt. Fawkes, Cavanagh's comments became "inappropriate" and "harassing." (tr. 311-314)
6. [REDACTED] became increasingly frightened by Cavanagh and shared her fears with her husband, who told her to be cordial with him and not walk by his house. (tr. 314, 581)
7. During one of [REDACTED] regular walks on June 4, 2011, Cavanagh drove past [REDACTED] and asked her to take his cell phone number and let him know when she would be coming by, but not when she had her "bozo" husband with her. (tr. 40, 315)
8. [REDACTED] told her husband, who was off-duty that day, what Cavanagh had said to her and that she was afraid. (tr.315-316)
9. Prior to the June 4<sup>th</sup> incident, [REDACTED] was not physically frightened by Cavanagh, although he had made suggestive remarks to her between 25 – 50 times prior to that date. (tr. 327)
10. Fawkes went to Cavanagh's home to confront him about the comment he had made to [REDACTED] however Cavanagh was not home when he arrived. Fawkes drove up and down Cavanagh's street waiting for him to return and then parked across the street from Cavanagh's home. (tr. 42, 105-106)
11. On the way to Cavanagh's house, Fawkes called the police dispatch and inquired as to what officers were working. He told the dispatcher to have Officer John Driscoll call him. (Dispatch CD, Town Exhibit #8)
12. Officer Driscoll was instructed by dispatch to call Fawkes at home. The officer cleared his call and informed the dispatcher that he was going to assist Fawkes "on an issue." (Dispatch CD, Town Exhibit #8)

13. Fawkes called dispatch and informed the dispatcher that he had been "flagged down" by Bill Cavanagh but Cavanagh only made eye contact and nodded his chin in Fawkes direction. (tr. 584-585)
14. Neither Fawkes nor the dispatcher contacted Sergeant Steven Zanella who was the officer in charge on June 4, 2012. (tr. 132-133, 208)
15. Cavanagh returned home and observed Fawkes in his truck. Cavanagh backed his truck into his driveway, exited his truck and walked towards Fawkes. (tr. 42-45)
16. Fawkes and Cavanagh were yelling at each other in the middle of the street; Fawkes initiated the confrontation by asking Cavanagh what he had said to [REDACTED]. Fawkes told Cavanagh to "stay the fuck away" from [REDACTED]. (tr. 188, 649)
17. [REDACTED] who lives across the street from Cavanagh, heard Fawkes tell Cavanagh that this was his town and not to come down to the police station or Fawkes would throw him out. He also heard Cavanagh say something about an event being ten years ago, and assumed it was about Cavanagh. (tr. 109-111)
18. Cavanagh walked back to his driveway. Fawkes went back to his truck and made a call on his cell phone. (tr. 45)
19. When Fawkes was walking back to his truck he looked at [REDACTED] as if to say, "what are you looking at, mind your own business." (tr. 113)
20. Fawkes exited his truck and came onto Cavanagh's driveway and began yelling at Cavanagh about his prior criminal record, his reputation in the Town and that Cavanagh had previously committed a sexual assault against [REDACTED]... (tr. 48-49, 593)
21. During this confrontation Officer Driscoll arrived. He was on duty and in a department cruiser. He observed them talking loudly to each other and put himself between them in the driveway. (tr. 49, 185-186).
22. Officer Driscoll heard Fawkes tell Cavanagh to "stay the fuck away from [REDACTED]," and Cavanagh tell him that he gets what he deserved after how he treated [REDACTED] and that he should get a restraining order against him. (tr. 188)
23. [REDACTED] was in their house at the time of the argument and came outside when she heard Fawkes say that her husband had forced [REDACTED] with him because they were taking care of the [REDACTED]. (tr. 146-148)
24. The Cavanagh's [REDACTED] were also in the home and the windows were open. Mrs. Cavanagh did not want her [REDACTED] to hear the argument. (tr. 149)

25. Fawkes believes there was [REDACTED] committed in the incident between Cavanagh and [REDACTED], because there was no report and no investigation. (tr. 594-595)
26. The confrontation ended when [REDACTED] came out of the house and asked what was going on. Cavanagh grabbed her and told her to get back in the house and told Officer Driscoll and Fawkes to get off his property. Cavanagh then went into his house. (tr. 50 - 51, 189).
27. Cavanagh felt intimidated by Officer Driscoll's presence and was upset that he did not do anything to resolve the problem. He also felt that the confrontation was about more than Fawkes' [REDACTED] when Fawkes said to him that he (Cavanagh) didn't come from Ashland and Ashland was his town. (tr. 56)
28. Fawkes agreed on the witness stand that having a police officer show up while a private person was at Cavanagh's home could give the perception to a reasonable person that the private person (in this case Fawkes) could be getting preferential treatment, but he did not believe that Cavanagh is a reasonable person. (tr. 654)
29. Officer Driscoll suggested to Fawkes that [REDACTED] obtain a harassment order against Cavanagh. Driscoll interviewed [REDACTED]s and went to the department to complete a report and run a Board of Probation report (known as a BOP). (tr. 190-191)
30. Officer Driscoll obtained a harassment order against Cavanagh and he and Officer Foster served it on Cavanagh. (tr. 195, 389)
31. When Officer Foster served the harassment order on Cavanagh, Cavanagh told him he wanted the order taken off or he would file a complaint with the department. (tr. 390).
32. Officer Foster wrote a report, Employee Exhibit 10, concerning the serving of the harassment order on Cavanagh because Fawkes asked him to write the report. He normally would not write a report over the serving of an order unless he was the investigating officer. (tr. 389-394).
33. The town appointed Edward J. McGinn, Jr., a deputy chief in the Worcester Police Department, as a Major in the Ashland Police Department, to conduct an internal investigation into the complaint filed by Cavanagh. (tr. 201-203)
34. Major McGinn was hired because of relationships that Cavanagh had with members of the command staff in the department (tr. 203-204)
35. Major McGinn interviewed Fawkes as a part of his investigation. (tr. 207).
36. Fawkes told Major McGinn that he called Officer Driscoll because he wanted "a good guy," there with him as a witness because he was concerned that Cavanagh might make a false allegation against him. (tr. 208-210)

37. It is generally improper for police officers to act as witness for others, although they may respond to keep the peace or to mediate a situation. (tr. 126, 209, 557)
38. Fawkes admitted to Major McGinn that he went to Cavanagh's home on June 4, 2012, on a personal matter, not on police business. (tr. 215)
39. When Cavanagh returned home on June 4, Fawkes told Major McGinn that Cavanagh had given him a "chin nod" when he saw him. Cavanagh did not flag down Fawkes. (tr. 73, 214).
40. During the course of investigating a crime unrelated to Cavanagh, it was reported to Fawkes that Cavanagh had sexually assaulted [REDACTED]. Fawkes related this information to Major McGinn during his interview and also told Major McGinn that he had tried to investigate this allegation years ago when it was made but that neither the [REDACTED] nor Cavanagh would cooperate in the investigation. (tr. 215-219, 593-594).
41. Fawkes told Major McGinn that no one was present during his confrontation with Cavanagh. (tr. 219-220).
42. On June 7, 2012, Cavanagh filed a complaint against Fawkes, Town Exhibit #2, for acting unprofessionally. (Town Exhibit #2, tr. 64)
43. Cavanagh has not denied the remark he made to [REDACTED] throughout the investigation or these proceedings, nor has he denied that the comment was out of line. (tr. 79)
44. On July 23, 2011, Fawkes ran a BOP on Cavanagh. He told Major McGinn this was a part standard investigatory procedures of the Ashland Police Department, however Fawkes did not tell Major McGinn what he was investigating. (tr. 221)
45. Fawkes testified that he ran the BOP and put it in either Driscoll's or Foster's file. (tr. 599)
46. Fawkes testified that there is no rule in the department prohibiting investigating or participating in an investigation in a case in which [REDACTED] is the victim and that he was running the BOP to help an officer out, not for personal gain. (tr. 686-687)
47. Fawkes personally did not file any official reports with the Department relative to the June 4<sup>th</sup> incident; however he did file several complaints with the Department indicating that he was being harassed by Cavanagh. (tr. 222, 272)
48. Fawkes told Foster to put in his report concerning the serving of the harassment order that Cavanagh told Foster, if the order was not dropped, he would file a complaint because this comment was a threat. (tr. 602)
49. There is an inherent conflict in being an investigator, a witness and a victim. (tr. 272)

50. In September of 2009, [REDACTED] went to court and had the order against Cavanagh extended for one year because [REDACTED] was afraid that Cavanagh was saying things to [REDACTED] as a means to get to [REDACTED] and that she was afraid for [REDACTED] who attend the same school as [REDACTED] (tr. 323-324)
51. On October 26, 2011, Cavanagh went to the Mindess School to pick up [REDACTED] because it was raining. Usually [REDACTED] (tr. 58)
52. Cavanagh did not know where to park, so he stopped in the driveway and asked another parent in an SUV where he should park. She told him he could not park where he was, so he drove through the driveway, which is shaped like a big "U" and parked out on the street. (tr. 58-60, Exhibit Town #5)
53. Also parked in the Mindess School driveway on October 26, 2011 were the Fawkes, who also were [REDACTED] after school. (tr. 324)
54. At the school, Mr. Cavanagh park directly behind the Fawkes car, which has dark tinted windows. Fawkes called police dispatch and asked what officers were on duty. (tr. 325, 665)
55. Finding out that Officer Dionne, a personal friend of his was on duty, he called Officer Dionne on his cell phone and told him that Cavanagh was at the Mindess School, parked close to his vehicle and that he wanted Dionne to advise Cavanagh that the 258 (E) order was still in effect and what the ramifications were for violating that order. (tr. 159-162)
56. Fawkes specifically told Dionne not to arrest Cavanagh and just to tell him to stay away from [REDACTED] as it would be easier on [REDACTED] (tr. 223, 601)
57. Whether a supervisor is on or off-duty, police officers are required to follow the orders of a superior officer. (tr. 691)
58. Fawkes told Dionne that he was not certain that Cavanagh knew that it was his car but that he was "pretty sure" that Cavanagh intentionally parked close to them. (tr. 162)
59. When Dionne arrived at the school, Cavanagh was parked on Concord Street in front of the school. (tr. 164, Town Exhibit 5)
60. Dionne went to Cavanagh's vehicle and told him he was in violation of the order. He did not arrest or summons Cavanagh for violation of the order. Cavanagh told Dionne he did not know the Fawkes were present. (tr. 61-62, 167)
61. An arrest is mandatory for violation of a harassment order under c. 258(E). (tr. 192)
62. The Ashland police department has a history of allowing officers not to arrest in situations where the statute calls for mandatory arrest. (tr. 346-347)

63. Cavanagh went to Police Chief Rohmer after the incident at the school to complain about being harassed by the department. (tr. 62)
64. Cavanagh had previously filed a complaint with the Department over the June 4<sup>th</sup> incident with Fawkes. (tr. 65)
65. Between June 7, 2011 and November 26, 2011 there were numerous starts and stops to the complaints made by Cavanagh and the subsequent investigation. (tr. 79-90)
66. After filing the first complaint on June 7<sup>th</sup>, Cavanagh asked if they could sit down and work things out, but this did not happen. (tr. 66)
67. On June 10<sup>th</sup>, Cavanagh sent Chief Rohmer an email indicating that he wanted to withdraw his complaint and for Fawkes to contact him so he could apologize. (tr. 80-81, 528, Employee Exhibit #1)
68. Cavanagh then told the Chief that he wanted an apology from Fawkes which Fawkes did not agree to. (tr. 528)
69. Cavanagh asked that a meeting be set up with himself, the Chief and Fawkes. The meeting never took place. The Chief takes responsibility for "dropping the ball" on coordinating this meeting. (tr. 494)
70. On August 3<sup>rd</sup> Cavanagh filed another complaint over the June 4<sup>th</sup> incident. (tr. 66, 83, Town Exhibit #3)
71. In August of 2011, the Chief assigned Lt. Richard Briggs to investigate his complaint, however, Briggs did not want to do the investigation and was slow in getting started (tr. 397, 456, 534-536)
72. Cavanagh was upset that Lt. Briggs had been assigned to investigate his complaint because he did not trust him. Cavanagh believes that Briggs filed a false police report against [REDACTED] several years ago. (tr. 67)
73. Cavanagh was upset that Briggs wanted to handle the investigation over the phone. He felt this was unprofessional and he refused to cooperate with the investigation. (tr. 66-67)
74. Lt. Briggs filed a written report finding Cavanagh's complaint unfounded due to Cavanagh's failure to cooperate and Briggs' opinion that Cavanagh was not credible in this matter and other matters Briggs was involved with. (tr. 415-416)
75. Chief Rohmer sent Cavanagh a letter telling him that the investigation was closed and his complaint was deemed unfounded. (tr. 416 and Employee Exhibit #12)
76. On September 30, 2011, Cavanagh again wrote to Chief Rohmer asking for an investigation of the events of June 4, 2011. (tr. 69-71, Town Exhibit #4)

77. Chief Rohmer asked Briggs to reopen the investigation based upon names of witnesses which Cavanagh provided, however Briggs declined due to his prior lack of credibility finding in his report. (tr. 426, 539 and Town Exhibit #4)
78. Chief Rohmer attempted to mediate the issues between Fawkes and Cavanagh, which contributed to back and forth nature of the complaints and the investigation. (tr. 424-425)
79. On November 26, 2011, Fawkes and Chief Rohmer met at Stone's Public House and Fawkes told the Chief to "just do an investigation and be done with it ... or give me a reprimand, do whatever you have to do." (tr. 609)
80. The following day Chief Rohmer gave Fawkes a letter telling him that the department was re-opening the investigation. (tr. 611-612).
81. After meeting with the town manager and labor counsel, Chief Rohmer selected an outside investigator to do the investigation. (tr. 539)
82. At Fawkes urging, the department sent a package of information concerning the Cavanagh/Fawkes situation to the District Attorney's office for review. The DA reviewed the package and told the department that there was nothing to pursue. (tr. 523)
83. The Chief testified that he had a positive working relationship with Fawkes both before and after the June 4<sup>th</sup> incident with Cavanagh. This did not change until the January 2012 vote of no confidence. (tr. 526)
84. On January 23, 2012, the police union took a vote of no confidence against Chief Rohmer, which Fawkes, as union president, reported to the newspaper. (tr. 612-613)
85. The next day several people including Jon Featherston, Selectman Mike Campbell, and Cavanagh held signs showing support for the police chief. (tr. 612)
86. After the vote of no confidence, the Chief had no further involvement in this matter. He did not participate in the investigation or in the bringing of charges. (tr. 550)
87. On March 2, 2012, Sergeant Robert MacQuarrie, was the shift commander on the 3-11 shift which Fawkes was working. (tr. 341)
88. Fawkes asked Sgt. MacQuarrie if he could take an hour off during the shift. Sgt. MacQuarrie testified this request had been made by cell phone, but later stated in an email that his phone records did not reflect that a call had been made. (tr. 342, Joint Exhibit #5 )
89. Sgt. MacQuarrie recorded Fawkes hour off as personal time, but later had to change it to vacation time as Fawkes had no personal time available. (tr. 343, Town Exhibit #7)



90. Town Exhibit 7 is the only official document which reflects that Fawkes was using leave time during the time he called Featherston. There was no written leave request and no payroll documents reflecting use of vacation time by Fawkes on that date. (tr. 691-696, Town Exhibit #14)
91. During the hour Fawkes had requested off, Sgt. MacQuarrie heard him in the police station parking lot speaking to Mr. Featherston asking Mr. Featherston to be unbiased. (tr. 343)
92. On March 3, 2012, Lt. Briggs gave Fawkes an order telling him that while he was on duty he was to focus on his specific duties as an Ashland police officer. Fawkes did not tell him that he was using leave time at the time he called Featherston. (tr. 674)
93. On March 3<sup>rd</sup>, Fawkes also spoke to the town manager about his conversation with Featherston and he did not tell him that he was using leave time when he made the phone call. (tr. 676)
94. In November of 2011, Sgt. MacQuarrie filed a complaint against Edward Pomponio, another member of the department in which he accused Pomponio of being untruthful during an investigation about remarks Pomponio had made to a dispatcher. (tr. 358-361)
95. Sgt. MacQuarrie is of the opinion that the Chief was upset that he had filed the complaint against Pomponio because Pomponio is a friend of the Chief and this caused the Chief to retaliate against Fawkes. (tr. 359-363)
96. Fawkes filed two reports against Cavanagh while Cavanagh's complaint against him was being investigated. Each of these reports are official department forms called "incident reports" and in each case Fawkes checked off the box that no crime had been committed. (tr. 705-706, Employee Exhibits 18 and 19)

### Discussion

The Town's letter of charges states that Fawkes' misconduct amounts to conduct unbecoming a police officer and violates numerous departmental standards. Fawkes tried to turn this into a case about William Cavanagh and whether Cavanagh is a nice guy. Cavanagh doesn't deny his comments to [REDACTED] were out of line, but even the most despicable among us (not saying that Cavanagh is that) can still be a victim, and are still entitled to being treated with respect and certainly, when the police are involved, with the same rights accorded to all other citizens.

Looking at the charges individually the first charge is that Fawkes violated Ashland Police Department Rules and Regulations, Rule 4.03 Conflict of Interest, which provides that

members of the department shall not violate any provision of M.G.L. c. 268A. This charge also alleges that Fawkes violated Rule 4.06, Undue Influence, which provides:

"Officers shall not seek or obtain the influence or intervention of any person, outside or from within the department, but not including a lawfully retained attorney, for the purposes of advancement, preferential assignment, transfer, pecuniary advantage or any other type of preferred treatment or advantage, including the disposition of pending charges or findings in a criminal or disciplinary hearing."

And Rule 4.15, Abuse of Position, which provides:

"Officers shall not use the prestige or influence of their official position, or use the time, facilities, equipment or supplies of the department for the private gain or advantage of themselves or another."

And Rule 4.20, Use of Official Position, which provides in pertinent part:

"Officers shall not use their official position, department identification cards or badges: (a) for personal or financial gain ;(b) for obtaining privileges not otherwise available to them except in the performance of duty, or (c) for avoiding consequences of illegal acts."

This portion of Charge #1 relates to alleged violations by Fawkes on June 4, 2012 and actions he took after date which were related to his behavior on that date. What these violations speak to is that Fawkes used the privileges of his office for his personal advantage in a personal matter. Fawkes went to Cavanagh's home to confront him about the comment he had made to [REDACTED] however Cavanagh was not home when he arrived. Fawkes drove up and down Cavanagh's street waiting for him to return and then parked across the street from Cavanagh's home.

On the way to Cavanagh's house, Fawkes called the police dispatch and inquired as to what officers were working because he wanted a witness to the argument he was about to provoke. He did not want any police officer either, but one of his choosing. Why? Because he needed protection or there was a need to keep the peace? No, he told Major McGinn it was because he was afraid Cavanagh would make a complaint against him. Can you or I do this? Of course not. It also constituted a use of his position to intimidate Cavanagh by creating the impression that Fawkes had "the law" on his side. This is improper use of his official position as defined in Rule 4.20 by obtaining a privilege not otherwise available. It is preferred treatment under Rule 4.06 and an abuse of his position under Rule 4.15.

This is just the first of a long list of actions by Fawkes using his position to secure benefits to him and his family which are not available to private citizens. He told Officer Foster first to write a report and then what to say in his official departmental report documenting the service of the harassment order upon Cavanagh. What other victim, or family member of a victim, can dictate the contents of a police report? In the incident at Mindess School, Fawkes again sought out his own personally selected officer (Dionne) to remind Cavanagh he was in violation of the harassment order. And while off-duty, Fawkes told that officer how to dispose of the case, (with a warning and not the required mandatory arrest), so that it [REDACTED] would not have to testify at an enforcement proceeding. Fawkes used official department forms, Incident Reports, to document his run-ins with Cavanagh as if they were official department business. He even checked on the forms that there was no criminal activity. Would a police officer create a document for me if I went to the department and complained someone "flipped me the bird." Fawkes ran a Board of Probation report detailing the criminal history of Cavanagh for no legitimate credible reason. He said it was just to help out another officer.

Fawkes' statements concerning the running of the BOP was some of the most troubling testimony bought forth in this matter. It is clear he doesn't see the line between what's appropriate and what's not when it comes to ethical behavior by a police officer. He didn't blink an eye in testifying there is no rule against investigating or working on a criminal investigation when the victim is [REDACTED]. He testified, "A criminal matter is a criminal matter. The officer is going to need the criminal record for court, regardless of who the victim is." (tr. 68) He said it as if the potential for conflict of interest was inconceivable. After these statements, it became clear Fawkes doesn't know he's stepped over the line because he doesn't know a line exists.

Charge #1 also alleges Fawkes violated Rule 7.5, Dissemination of Official Information, which provides in pertinent part,

"Officers shall treat as confidential that information which is confided to them personally in the course of their official duties.

Officers shall neither disclose nor use for personal interest any confidential information acquired by them in the course of their official duties.

Officers shall treat the official business of the police department as confidential and shall conform to the following guidelines:

- a. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established department procedures..."

These allegations go to the misuse of information obtained by Fawkes during the performance of his official duties when he was dealing with Cavanagh. The first such instance of this was during the argument Fawkes and Cavanagh had on June 4<sup>th</sup>. During that argument Fawkes yelled at Cavanagh that Cavanagh had prior criminal record and that he had previously sexually assaulted [REDACTED]. Knowledge of his criminal record most likely came from his work as a police officer. Fawkes admitted that knowledge of the alleged prior sexual assault came from his investigation of another case and that he had attempted to investigate the alleged sexual assault with no success. Disclosing this information during an argument with Cavanagh served no legitimate police purpose and was but an attempt by Fawkes to embarrass and intimidate Cavanagh for his own personal purposes.

The first charge also alleges violation of Rule 13.2, Falsifying Records, which provides:

"Officers shall not knowingly enter or cause to be entered upon a police report or police record any inaccurate, false or improper information."

Fawkes called dispatch and informed the dispatcher that he had been "flagged down" by Bill Cavanagh. Fawkes had been driving up and down Cavanagh's street essentially lying in wait for him. Cavanagh made eye contact with Fawkes and nodded his chin. An acknowledgement of presence, which a chin nod is, is a far cry from being flagged down, and appears to be an attempt by Fawkes to make Cavanagh the initiator of the confrontation. "Flagging down" requires a response. A nod in someone's direction does not. This is a clear misrepresentation by Fawkes into the dispatch records of the department in an attempt to make his behavior appear less egregious. It is clearly a violation of Rule 13.2.

I find that the Town has sustained its burden of proof as to Charge #1.

The second charge concerns Fawkes conduct on October 26, 2011 when Cavanagh was accused of violating the harassment order. The Town charges that his behavior violated the previous cited Rules 4.03, Violating Conflict of Interest Rule; 4.15 Abuse of Position; 4.20 Use of Official Position; and Rule 4.12, Interfering with Course of Justice,

"Officers shall not interfere with cases being handled by other officers of the department

or other law enforcement agencies. When an officer believes that such involvement is absolutely necessary, he or she shall secure permission from a superior officer. Officers shall not take part in, or be concerned with, either directly or indirectly, any compromise or arrangement with any person whomsoever for the purpose of permitting an accused person to escape the penalty of his or her wrongdoing, or seek to obtain a continuance of any trial or otherwise interfere with the course of justice, except in the normal course or proceedings."

Similar to the June 4<sup>th</sup> incident, on October 26<sup>th</sup>, when Fawkes thought Cavanagh was in violation of the harassment order at the Mindess School, he again called dispatch to see who was working and then called a personal friend, Officer Dionne, on his cell phone to handle the matter. As in the first incident, this violates the conflict of interest rules of the department by Fawkes using his position in the department to further his personal interests. This time he went further by instructing Officer Dionne how he wanted the matter handled. Fawkes, who was off-duty, told Dionne to tell Cavanagh that the harassment order was still in effect and what the ramifications were for violating the order. He told Dionne to do this even though he was not certain that Cavanagh knew that [REDACTED] was at the school. He thought Cavanagh knew [REDACTED] vehicle, but was not certain. But even if he knew the vehicle, the windows are tinted. How would he know [REDACTED] was in the car? He specifically told Dionne not to arrest Cavanagh, even though the statute requires mandatory arrest. His reason for not wanting the arrest was personal. He did not want [REDACTED] to have to go through the stress of a court proceeding. There can be no doubt that Fawkes, by his direction to Dionne, interfered in the course of justice.

I find that the Town has sustained its burden of proof as to the second charge.

The Town's third charge is that on several instances Fawkes violated Department Rule 7.7, Truthfulness, which provides in pertinent part

"Officers shall speak the truth at all times when on duty or when discussing a matter arising out of or related to the officers duties or the operation, organization or business of the department. In cases in which an officer is not allowed by the regulations of the department to divulge facts within his or her knowledge, the officer will decline to speak on the subject."

The Town alleges that Fawkes violated this rule on several occasions during its investigation of these matters. Taking each violation separately:

During the investigation conducted by Major McGinn, Fawkes told the Major that he "didn't direct anybody to do anything." However, during the course of these events Fawkes told, directed, suggested, requested (pick any of these verbs you like, the outcome is the same), officers who were on duty to take certain official acts, regardless of whether Fawkes was on or off duty and generally to benefit him or ████████ their dealings with Cavanagh. As described above, it is not denied by anyone that Fawkes told Dionne not to arrest Cavanagh for the violation of the harassment order at Mindess School. Fawkes directed Officer Driscoll to investigate ████████ complaint against Cavanagh in furtherance of their attempt to get a harassment order against Cavanagh. Fawkes also directed Officer Foster to make a report of the service of the harassment order on Cavanagh and to include in it that Cavanagh had threatened to file a complaint against Fawkes if the order was not dropped.

An order can be phrased many different ways. Fawkes was clearly telling officers how to proceed in matters concerning Cavanagh and officers were obliging his requests. As was testified to at the hearing, officers follow the directives of their supervisors, whether the supervisors are on duty at the time or not. Officers are told what they are to do by their supervisors regardless of the language used. Not every direction starts with, "I direct you," or "I order you," and using a different phrase does not make it any less of a direction in a supervisor/patrolman relationship. Clearly Fawkes was "calling the shots" in the department's dealings with Cavanagh despite his claim to the contrary.

Fawkes denied that anyone was present or within earshot of his confrontation with Cavanagh. However, ████████ lives ████████ from Cavanagh. Fawkes had parked his truck in front of ████████ house. ████████ heard Fawkes tell Cavanagh that this was his town and not to come down to the police station or Fawkes would throw him out. ████████ heard some reference to something being ten years old. When Fawkes walked back to his truck he looked at ████████ as if to say, "what are you looking at, mind your own business." Later in the confrontation both ████████ and ████████ heard Fawkes make reference to the sexual assault allegation concerning Cavanagh ████████. Because of the issue of publication as it relates to the violation of the rape shield law, it was in Fawkes interest to misrepresent the presence of these individuals.

I find the Town has met its burden of proof concerning this charge.

The Town's fourth charge is that Fawkes by his actions on June 4<sup>th</sup> violated the rape shield law when he told Cavanagh that he knew that Cavanagh had sexually assaulted [REDACTED]. G.L. c. 26, section 24C provides that it is a crime to "disclose the name of the any individual identified as an alleged victim...in an arrest, investigation, or complaint for rape or assault with intent to rape..." No one denies that during the June 4<sup>th</sup> confrontation between Fawkes and Cavanagh, Fawkes told Cavanagh that he knew that Cavanagh had sexually assaulted [REDACTED]. The only question is whether that comment meets the requirements of the statute. I find that it does not meet the requirement because Fawkes' comment is more in the nature of repetition of gossip than of knowledge he received making an arrest, investigation or complaint for rape. There was no arrest, no formal investigation or any complaint. Fawkes' knowledge came from a comment made to him during the course of another investigation not from any police activity or other documentation of the alleged event. His comment, though reprehensible, does not violate the statute.

I find there is not sufficient evidence to sustain the fourth charge.

The Town's fifth charge is that Fawkes violated Massachusetts General Laws chapter 6 section 172, as well as the previously cited, Rules 4.03, Conflict of Interest, 4.15 Abuse of Position and 4.20 Abuse of Official Position when he ran a Board of Probation Report (a BOP) on Cavanagh. Fawkes admits to running a BOP on Cavanagh on July 23, 2011. He testified he ran it to put in a file, as a convenience to the officer, but he doesn't recall which one, he just did it in the course of reviewing some reports. I do not find this to be a credible statement. As previously discussed, running the BOP on a person with whom you have a personal dispute is a clear violation of departmental rules concerning conflict of interest. This charge is different because it further alleges that Fawkes violated the state's CORI law in running the BOP. The version of section 172 of chapter 6 which was in effect at the time Fawkes ran Cavanagh's BOP limits "dissemination" of criminal records information to certain authorized agencies for certain authorized purposes. There is no evidence on the record that Fawkes disseminated the information to anyone unauthorized to have the information. The only evidence that he ran the BOP for other than police business is circumstantial---he offered no credible reason why he ran

the BOP. Under these limited facts, I am not inclined to find that Fawkes violated state CORI laws in running the BOP. As to the remainder of the fifth charge I find that the Town has sustained its burden of proof.

The Town's sixth charge is that on March 2, 2012, while on duty, Fawkes violated the previously cited rules concerning Abuse of Position and Abuse of Official Position as well as engaging in Conduct Unbecoming a Police Officer when he made a personal call to Richard Featherston, Chairman of the Board of Selectmen of the Town of Ashland regarding a personal matter. I am unable to conclude that Fawkes was on duty at the time he called Mr. Featherston. The pay records submitted by the town in Town Exhibit 7 show that Fawkes took one hour of vacation leave that day. That there was no leave request makes sense given that this was an unplanned use of leave time and that the department has a practice of granting officers time off within their shifts for family emergencies and the like. Testimony by the Town's own witness that there are problems with the accuracy of leave reporting in the payroll log (which also did not show the one hour of leave time), cause me to conclude that it is more likely than not that Fawkes was on vacation time when he called Mr. Featherston.

Therefore, I find that the Town did not meet its burden of proof with respect to charge #6.

The Town's last charge is that by the totality his behavior in these matters, Fawkes is guilty of conduct unbecoming a police officer, Rule 4.02 of the Ashland Police Department, which provides:

Officers shall not commit any specific act or acts of improper, unlawful, disorderly, or intemperate conduct, whether on or off duty, which reflect(s) discredit or reflect(s) unfavorably upon the officer, upon other officers, or upon the Department. Officers shall conduct themselves at all time, both on and off duty, in such manner as to reflect most favorably on the department and its members.

Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continue as a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members.

Conduct unbecoming an officer shall also include off-duty conduct where there is a *nexus* or connection between the act or acts committed by the officer and that individual's continued fitness or ability to effectively perform his or her required duties and responsibilities and/or the impact or adverse effect said conduct may have on the operation, morale, integrity, reputation or effectiveness of the department



and ability of the officers not involved in said act to effectively perform their required duties and responsibilities."

Police officers are held to a higher standard of conduct both on and off-duty because of the great power society has granted to the police. Because of this great power, great trust is also expected. Charges of dishonesty and lack of integrity, which are the basis of the charges brought here, bring the most serious of consequences. Here, Fawkes repeated use of departmental resources for his personal benefit gives the impression that the powers of police department are at his disposal for his personal use. This behavior casts the department and Fawkes in the most unfavorable light. It cannot be said his ethical decisions are bad because it seems that ethics were never a part of his decision making process. Fawkes' actions seem to have been without consideration of anything but how they benefitted him. He was clear in his testimony that he never gave a second thought to intervening in matters concerning his family's issues with Cavanagh. He testified a crime is a crime, or words to that effect.

Fawkes also was intemperate in confronting Cavanagh publicly, being both loud and profane. In so doing he discredited himself and the department. The confrontation with Cavanagh was not something he was thrown into. He sought Cavanagh out and chose to have a public confrontation rather than handle it privately.

On the issue of integrity as it encompasses the concept of truthfulness, Fawkes' own misrepresentations seal his fate. There is no longer any place in any police department for police officers who lie. In the progeny of *Brady* and *Giglio*, it is clear that police officers who lie in official matters are unable to testify in court with credibility. In addition, prosecutors are required to disclose the officer's prior untruthfulness to the defense, jeopardizing the outcome of criminal cases. Untruthful police officers damage the reputation of the entire department. Continued employment under these circumstances is contrary to public policy in the Commonwealth as expressed by the SJC in *City of Boston v. Boston Police Patrolmen's Association*, 443 Mass. 813, 824 N.E.2d 855, (2005) at 823,863,

People will not trust the police—on the street or in court—unless they are confident that police officers are genuine in their determination to uphold the law. As the city reminds us, police legitimacy would be damaged severely by reports that the city continued to employ a police officer who had illegally abused his power and repeatedly lied about it under oath. Indeed, DiScullo's involvement in an investigation could prejudice the public against an otherwise flawless criminal prosecution.

I find that the Town has met the burden of proving that by the totality of his actions Fawkes has engaged in conduct unbecoming a police officer as that term is defined in Rule 4.02 of the Ashland Police Department. This charge is sustained.

The employee's main defense to the charges against him is that the investigation was the result of the Chief and other members of the command staff being friends of Cavanagh and retaliation against Fawkes for his union activities. The union activities are the complaint filed by Sgt. MacQuarrie against Officer Pomponio, who the union alleges is a friend of Chief Rohmer and the vote of no confidence taken by the Union against the Chief on January 23, 2012.

There is insufficient evidence to support that the Chief or anyone on the command staff was friends with Cavanagh. There was no evidence that any of them socialized with Cavanagh. The Chief knows Cavanagh from other departmental business and they may belong to the same gym. Lt. Beaudoin golfed in the same league as Cavanagh. There is no evidence that these "acquaintances" influenced the investigation, or caused it to be reopened. Fawkes himself may have caused the investigation to be reopened. He testified that he received a letter telling him the investigation was being reopened the day after he met with the Chief at the Stone Pub. At that meeting Fawkes told the Chief to do the investigation or give him a reprimand, anything to get the matter over with. Admittedly, the investigation went through various starts and stops as Cavanagh was unable to make up his mind as to whether he wanted to proceed. But there was no evidence supporting any other reason for the way the investigation proceeded.

There is nothing to support that Fawkes was investigated for his union activities. He was not the one who filed the complaint against Pomponio, if one were inclined to believe the Chief re-opened the investigation against Fawkes because of the complaint against Pomponio. The Chief completely removed himself from the investigation and subsequent appointing authority decisions after the vote of no confidence so he certainly has had no influence in this proceeding.

Accordingly, I do not find sufficient evidence to support these defenses raised by the employee.

Recommendation

Having found that the Town met the burden of proving by a preponderance of evidence that Fawkes did commit the acts in charges ##1, 2, 3, 5 and 7, just cause exists for serious discipline.

Accordingly, it is my opinion and recommendation that the Town terminate Sergeant Gregory Fawkes' employment.

Respectfully submitted,

*Janice Silverman 5/17/12*

Janice Silverman, Esq.

Hearing Officer

