

**COMMONWEALTH OF MASSACHUSETTS
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of
Timothy Brennan

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)

Case No. PI-2023-11-16-001

ORDER OF THE SINGLE COMMISSIONER

Introduction

On August 15, 2024, the Peace Officer Standards and Training Commission (“Commission”) issued a suspension order, suspending the law enforcement officer certification of Timothy Brennan (“Brennan”) pursuant to M.G.L. c. 6E, § 9(a)(4), stating that [t]he commission may, pending preliminary inquiry..., suspend the certification of any officer if the [C]ommission determines by a preponderance of the evidence that the suspension is in the best interest of the health, safety or welfare of the public.

On August 30, 2024, Brennan came before me, a single commissioner of the Commission, pursuant to M.G.L. c. 6E, § 9(d) and 555 CMR 1.09, requesting a stay of the suspension.¹ Both parties opposed opening the hearing to the public. I determined that closure of the hearing was necessary to protect privacy interests and would not be contrary to the public interest in keeping with 555 CMR 1.09(6)(2). Therefore, I ordered that the hearing be closed.

The Commission recorded the hearing, and a copy of the recording can be made available upon request.² Daniel Fogarty, Esq. represented Brennan. Sean Martinez, Esq. served as Enforcement Counsel on behalf of the Commission Division of Police Standards (“Division”). The parties offered into evidence a total of 13 joint exhibits—11 from the Division and two from the Petitioner—and two witnesses testified, including Chief Robert L. Tusino, Chief of the Milford Police Department, as well as Brennan himself.

The findings of fact and conclusions of law in this Decision are based on consideration of all pleadings filed in the case, the parties’ Joint Pre-Hearing Memorandum, the Exhibits, and any testimony at the hearing; taking administrative notice of pertinent rules, statutes,

¹ In accordance with 555 CMR 1.09(4), the Chair of the Commission assigned me as the single commissioner to preside over the hearing.

² If there is a judicial appeal of this decision, the appellant in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he wishes to challenge the decision as unsupported by the substantial evidence, arbitrary or capricious, or an abuse of discretion. *See* Mass. Super. Ct. Standing Order 1-96. If such an appeal is filed, the Commission can provide the recording to the appellant to transcribe the hearing.

regulations, and policies, and drawing reasonable inferences from the credible evidence. The suspension of the officer must be affirmed “unless the single commissioner determines by a preponderance of the evidence presented to the [C]ommission and additional evidence provided by the officer, [that] the suspension is not warranted.” See 555 CMR 1.09(6)(a).

I find by a preponderance of the evidence that Brennan has met his burden of proof in demonstrating that his suspension is not warranted.

Discussion

The following facts were stipulated to by the parties.

1. Brennan first became a police officer at the Bentley College Police Department in 1987. He became a Sergeant in 1992 and a Lieutenant in 1997. In 2002, Brennan left Bentley College initially to become a state police officer. However, he left the state police academy to work as a patrol officer at the Hopkinton Police Department. He was the School Resource Officer from approximately 2005 until 2008. Brennan became a Detective in 2008 and a Sergeant in 2014. The Town of Hopkinton terminated Brennan, effective February 12, 2024. He is currently appealing the termination decision, with an arbitration hearing scheduled for January 2025.
2. Brennan first met the individual, who will be referred to as “the Victim” here, in approximately 2005 in his capacity as a School Resource Officer. Brennan worked with an officer, who will be referred to here as the “Defendant,” at the Hopkinton Police Department from approximately 2002 until April 2023, when the Defendant resigned. The Defendant was the School Resource Officer at the Hopkinton Police Department immediately prior to Brennan. The Defendant also met the Victim in his capacity as a School Resource Officer.
3. In 2023, the Defendant was indicted on three felony charges relating to the Victim for his actions against her in approximately 2004. His criminal case is currently pending.
4. Brennan was hired in July 2024 by the Milford Police Department.

In addition to the above stipulated facts, I find the following.

The Commission, pursuant to 555 CMR 1.08(2)(c), “may suspend the certification of the officer if the commission concludes by a preponderance of the evidence that the [D]ivision of [S]tandards report on the preliminary inquiry, and any supplemental information provided by the [D]ivision of [S]tandards, reflect that suspension of the officer *is in the best interests of the health, safety, or welfare of the public.*” (Emphasis added.)

The Commission's suspension order is set forth below.

[T]he Respondent had knowledge, in 2017, of a school resource officer [(i.e., the Defendant)] allegedly having committed an indecent assault and battery against a student [the Victim] in 2004, when she was 14 years old. Also, the Respondent became aware in August 2022 that the same school resource officer had allegedly raped the [Victim], also when she was 14. The Respondent did not report the alleged indecent assault and battery or the alleged rape until after the District Attorney's office initiated an investigation later in August 2022. After a disciplinary hearing held by the Town of Hopkinton, the Respondent was terminated from service with the Hopkinton Police Department. Following his termination, he was hired in July 2024 by the Milford Police Department, which is his current place of employment.

The facts as set forth in the Commission's findings were not disputed by the parties. The Suspension Order relies upon decisions made by Brennan in 2017 and 2022 that I find do not *currently* endanger the health, safety, or welfare of the public so as to merit suspension of his certification. Brennan's decisions articulated in the Commission's Suspension Order all relate to one set of circumstances, are far removed in time from the present, and do not demonstrate or suggest a pattern of behavior that is likely to escalate so as to threaten the public. Specifically, the Commission makes no discernible connection between the facts articulated in its Suspension Order that relate back to 2017 and 2022, and how those facts *currently* threaten the health, safety, or welfare of the public unless a suspension is issued. That is the standard.

The evidence showed that the Victim first confided to Brennan in 2015 that she had sexual relations with the Defendant when she was 18 years old. At the time of the disclosure, she was 25 years old. See Division Ex. A, Bates Number POSTC Brennan_000011. In 2017, the Victim made a further disclosure to Brennan, in similar circumstances that he understood to be confidential, that in fact she had been under-age at the time of her first sexual encounter with the Defendant. See Division Ex. A, Bates Number POSTC Brennan_000007; Brennan Testimony, 37:44.

Brennan understood her to be confiding in him not as a police officer, (although he does acknowledge that he was a police officer at the time), but rather in his capacity as her long-time mentor and confidant; a relationship he and the Victim developed both during and after she left high school. During this mentor-confidant relationship, Brennan testified that he encouraged her to go on to college, (after which she earned her nursing degree), and kept in touch with her as to

her progress at school and work, etc.

It is therefore not completely out of the realm of reasonable comprehension that Brennan may have reacted to the Victim's disclosures of the assault as her mentor and confidant, and not as a law enforcement officer. I do not make any finding as to whether or not that was an appropriate response, given his position as a law enforcement officer. However, I raise it as being a reasonable albeit perhaps ill-advised decision, but one that does not currently create a risk to the health, safety, or welfare of the public.

The evidence showed that there were ongoing discussions between Brennan and the Victim after she first reported the assault to him, during which he repeatedly urged her to report it. However, the Victim repeatedly refused, stating that she forbade him from reporting it, and warned him that if he did, she would deny it and state that he was lying.

The Victim also expressed her fear for her own safety should the information be reported – a fear also credibly shared by Brennan because of his personal knowledge of the Defendant's temperament.

The Victim's final disclosure to Brennan occurred during the summer of 2022 when, for the first time, she shared that she was ready to report the Defendant. Brennan urged her to do it directly to the Middlesex County District Attorney's Office sexual assault unit with which he was familiar and in which he had great confidence. By doing so, he felt she would avoid the risk of the Defendant obstructing her report and/or peremptorily harming her. On the eve of her Sexual Assault Nurse Examiner ("SANE") interview at the District Attorney's Office when Brennan was meeting with the Victim in preparation for the interview, she informed him for the first time that the Defendant had sexual relations with her when she was 15 that comprised the offense of rape of a child. See Division Ex. H, Bates Number POSTC Brennan_000655. The next day she made the disclosure in her SANE interview, and shortly thereafter the Defendant was relieved of duty and criminally charged.

It is also important to note that in 36 years of service, Brennan has no record of discipline, and has enjoyed, by all accounts, an exemplary career in law enforcement both before the incidents asserted in this matter occurred, and in their aftermath. He has demonstrated no pattern of behavior or propensity to harm or threaten the health, safety, or welfare of the public, and to be sure, his testimony as to his reasoning for remaining silent – to protect a victim from retaliation and harm – indicates that the safety of the public is not unimportant to him. Further

testimony was provided as to Brennan's benefit to the public and the importance of his ability to continue to work as a police officer in Milford. Chief Tusino of the Milford Police Department clearly affirmed that Brennan is not a present threat to the health, safety, or welfare of the public, and in fact testified to just the opposite. Chief Tusino's personal observation and assessment of and his confidence in Brennan's ethical and moral execution of his duties as a police officer was unambiguous. He reiterated that he made the right decision in hiring Brennan despite his full knowledge of the allegations against him and his termination in Hopkinton as a result thereof. Tusino Testimony, 1:15:21-1:15:25; 1:17:35-1:20:22.

Both he and Brennan testified to the strong support Brennan has from the Hopkinton citizenry. This was further evidenced by an article that was placed on the warrant for the May 7, 2024, Hopkinton Town Meeting directing the Select Board to reappoint Brennan to the rank of Sergeant and that he "resume the same or substantially similar duties he performed during the prior employment with the [Hopkinton] Department." Brennan Ex. 1. The article passed at the Town Meeting 219 to 99. Brennan Ex. 2.

It is, after all, the public whose health, safety, and welfare are impacted by a decision to suspend or not suspend. Therefore, although the information of citizen support is not dispositive, it is relevant and merits consideration in the determination of whether Brennan's suspension was warranted.

Further, the Hopkinton Police Department policies at that time provided little guidance as to how to handle a report of this nature and, required Brennan or the Victim to report the assault to the Hopkinton Police Department, which further amplified Brennan's concerns that by reporting the assault, (a report that would certainly be disclosed to the Defendant), he would be putting the Victim in danger of retaliation by the Defendant. As such and given his training as a Rape Aggression Defense ("RAD") counselor committed to taking a victim-centered, trauma-informed approach, he opted to remain silent and continue to urge her to self-report. Again, I make no finding as to the appropriateness of his decisions and rationale, but I find that those decisions, made years ago, do not currently threaten the health, safety or welfare of the public so as to merit suspension pending other proceedings.

Brennan also testified that he believed, whether misplaced or not, that as an adult, the Victim had the right to decide when or if she should report the assaults. Brennan Testimony, 1:00:12. Again, this belief, misplaced or not, does not presently place the public's health, safety,

or welfare in jeopardy, thereby meriting suspension.

In further support, I turn to Exhibit B (Bates Stamp POSTC Brennan_000048) of the parties' joint exhibits. That page is a letter from the Chief of Police from the Hopkinton Police Department outlining the announcement of the Defendant's alleged actions, Brennan's 2017 decision not to report the disclosures made to him by the then-adult Victim, and the result of an investigation concluding that Brennan had violated a series of rules, regulations and policies by remaining silent for years. The letter is notable for the following.

Starting at the end of page 50, and continuing to page 52, the letter states as follows:

Many victims are hesitant to participate in prosecution. Victims of sexual assault and domestic violence are those who are most commonly among hesitant victims. When a victim is reluctant police officers work to serve these victims and stand ready should they decide to come forward with prosecution.

This is telling. Clearly Hopkinton was well aware of the dilemma that victims of sexual assault and domestic violence face, and that the officers are trained to basically "stand ready" until the victim decides to move forward. Arguably, this is exactly what Brennan did.³

More to the point, the letter goes on to state that "reports are generated, statements are taken and evidence is collected and secured. This is all done to support the victim in the event that they choose to move forward with a prosecution."

However, what this does not address is Brennan understood that the Defendant would have been aware of any reporting of a sexual assault; a clearly problematic situation. As such, Brennan grappled with the best way to proceed while protecting the Victim given the restrictive parameters under which he was operating, and the complex nature of this situation in which the very high-ranking police official was, in fact, the alleged perpetrator. The rules, policies and regulations referred to by the Chief in his letter do not address a situation where the perpetrator of the abuse is a high-ranking official in the police force, as was the case when the Victim disclosed to Brennan.

Brennan may have not made the right choice to remain silent, even at the behest of the

³ The Commonwealth's Adult Sexual Assault Law Enforcement Guidelines are consistent with this "victim-centered and trauma informed" approach. The Guidelines note, among other things, that "investigators should be mindful of the numerous complex and unique factors that surround sexual assaults...[T]he existence of ongoing emotional and environmental factors may impact a victim's ability to participate fully in an investigation, if at all." Division Ex. C, Bates Number POSTC Brennan_000546.

Victim, and even in light of her protestations that she would claim he was lying and that both he and she feared for her safety. I make no determination or findings in that regard. However, those decisions, made years ago, do not implicate the health, safety, or welfare of the public at the present time such that a suspension of his certification during the pendency of other proceedings is justified or merited.

ORDER

Therefore, for the reasons stated above, it is hereby ORDERED, that the Petitioner's request for a stay of the suspension of his certification is hereby **GRANTED**.

This is the final decision of the Single Commissioner. M.G.L. c. 30A, § 11(8); 555 CMR 1.09(6)(d). A party aggrieved by this Order may commence an appeal to the Superior Court within thirty days in accordance with M.G.L. c. 30A, § 14. After initiating proceedings for judicial review in Superior Court, the appellant, or his attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).


Marsha V. Kazarosian, Esq.
Single Commissioner

Date Issued: September 6, 2024

Notice to: Daniel Fogarty, Esq., Petitioner Counsel
Shaun Martinez, Esq., Commission Enforcement Counsel
Milford Police Department
Hopkinton Police Department