



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 - 1340 POYDRAS ST.  
NEW ORLEANS, LA 70112  
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE  
MARK SURPRENANT  
RUTH WHITE DAVIS

Monday, January 24, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Donovan A. Livaccari  
101 W. Robert E. Lee, Suite 402  
New Orleans, LA 70124

Re: **Marlon Padilla VS.**  
**Department of Police**  
**Docket Number: 9261**

Dear Mr. Livaccari:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 1/24/2022 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Shaun Ferguson  
Darren Tyus  
Jay Ginsberg  
Marlon Padilla

file



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Monday, January 24, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Donovan A. Livaccari  
101 W. Robert E. Lee, Suite 402  
New Orleans, LA 70124

Re: **David D'Amico VS.  
Department of Police  
Docket Number: 9263**

Dear Mr. Livaccari:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 1/24/2022 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Shaun Ferguson  
Kristen A. Lee  
Jay Ginsberg  
David D'Amico

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**MARLON PADILLA,  
Appellant**

**Docket No. 9261**

**v.**

**DEPARTMENT OF POLICE,  
Appointing Authority**

*consolidated with*

**BRIAN D'AMICO  
Appellant**

**Docket No. 9263**

**v.**

**DEPARTMENT OF POLICE,  
Appointing Authority**

**DECISION**

Appellant, Marlon Padilla, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1, seeking relief from an August 22, 2021, two-day suspension. (Ex. HE-1). Appellant, Brian D'Amico, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1, seeking relief from an August 22, 2021, one-day suspension. (Ex. HE-2). The parties agreed to consolidate these appeals, as the appeals concern the same underlying incident. (6/10/21 Tr. at 3). At all relevant times, both Appellants had permanent status as Police Officers. A Hearing Examiner, appointed by the Commission, presided over a hearing on June 3, 2021 (Padilla), and June 10, 2021 (Padilla and

D'Amico). At this hearing, both identified Appellant(s) and the Department of Police had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated August 22, 2021, and controlling Louisiana law.

For the reasons that follow, Padilla and D'Amico's appeals are DENIED.

### **I. FACTUAL BACKGROUND**

Marlon Padilla and Brian D'Amico, both Police Officers, were working as partners on the afternoon of October 3, 2020. (6/10/21 Tr. at 10). On this date, Padilla and D'Amico were working as patrolmen. (6/3/21 Tr. at 7). Padilla was driving, and D'Amico was the passenger in the police vehicle. (6/10/21 Tr. at 11). Padilla and D'Amico were traveling lakebound on Canal Street. (6/10/21 Tr. at 25). The dispatcher announced that a suspicious vehicle, a white Nissan Altima, had engaged in a hit and run. (6/3/21 Tr. at 8). Appellants spotted the vehicle turning right on Canal Street from Broad Street toward the Central Business District. (6/3/21 Tr. at 8). Padilla and D'Amico made a U-turn, crossed the median, and accelerated to catch up with the white Nissan. (6/3/21 Tr. at 8). They were traveling at about 55 mph on Canal Street, where the speed limit is 35 mph. (6/3/21 Tr. at 14). When the Nissan started swerving, the officers turned on their lights and siren, in an attempt to make a traffic stop. (6/10/21 Tr. at 17, 27). D'Amico, who was the passenger, asked his superior over the radio for permission to pursue the white Nissan. (6/3/21 Tr. at 8). Sgt. Young instructed Padilla and D'Amico to stand down, and the officers complied. (6/3/21 Tr. at 8).

Padilla and D'Amico both testified they believed exigent circumstances existed because a child was in the car. (6/3/21 Tr. at 15; 6/10/21 Tr. at 18).

NOPD's Policy on Vehicle Pursuits provides as follows:

This Department's response to those who unlawfully flee from law enforcement action shall stress a balance between the importance of apprehending offenders and the high-risk nature of vehicle pursuits. Therefore, officers may engage in a pursuit only when they have a reasonable suspicion that a fleeing suspect has committed or has attempted to commit a **crime of violence** as defined by this Chapter and the escape of the subject would pose an imminent danger of death or serious bodily injury to the officer or to another person. Pursuits for property offenses, misdemeanor offenses, traffic, or civil infractions are prohibited. Officers must receive supervisory approval prior to initiating the pursuit. Officers are not authorized to engage in a vehicle pursuit in order to subdue an escaping suspect who presents no imminent threat of death or serious injury. Vehicle pursuits may never be used for the protection of property.

(Ex. NOPD-1). The policy defines a "Crime of Violence" as "a felony involving the infliction or threatened infliction of serious bodily injury or death." (Ex. NOPD-1).

Padilla testified that the driver had not committed a crime of violence, and D'Amico testified that the driver was accused of a misdemeanor. (6/3/21 Tr. at 11, 16; 6/10/21 Tr. at 14-15). Lt. Michelle Woodfork testified she reviewed the body-worn footage, and that Padilla and D'Amico engaged in a pursuit, traveling 55 mph on Canal Street, based on a suspect's traffic violations. (6/10/21 Tr. at 37-38). Captain Lejon Roberts testified that vehicle pursuits put "innocent people at risk" because of the "high speed." (6/10/21 Tr. at 89). Captain Roberts recommended the presumptive penalty under the disciplinary matrix, two days for Padilla for a second offense and one day for D'Amico. (6/10/21 Tr. at 80).

## II. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the appointing authority has the burden of proving by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast*

*v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

NOPD has carried its burden of showing that the complained-of conduct occurred. Padilla and D'Amico engaged in a vehicle pursuit in violation of NOPD Policy. This vehicle pursuit impaired the efficient operation of the Department, as Captain Roberts testified the high speeds involved in vehicle pursuits pose a danger to innocent people. The penalty is commensurate with the violation, as NOPD applied the presumptive penalty under the disciplinary matrix.

For the foregoing reasons, Padilla and D'Amico's appeals are DENIED.

This the 24<sup>th</sup> day of January, 2022

WRITER:

Mark C. Surprenant  
Mark C. Surprenant (Jan 19, 2022 16:02 CST)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Brittney Richardson  
Brittney Richardson (Jan 22, 2022 21:02 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

J H Korn  
J H Korn (Jan 20, 2022 15:58 CST)

JOHN KORN, COMMISSIONER