



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

BRITTNEY RICHARDSON,
CHAIRPERSON
CLIFTON J. MOORE, JR, VICE-
CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

Wednesday, September 29, 2021

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

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

Re: **Matthew Morrison VS.
Department of Police
Docket Number: 9188**

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 - 9/29/2021 - 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
Elizabeth S. Robins
Alexandra Mora
Matthew Morrison

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**MATTHEW MORRISON,
Appellant**

Docket No. 9188

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Sgt. Matthew Morrison, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his six-day suspension beginning the week of August 9, 2020. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Sergeant. (Tr. at 79; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on October 6, 2020. At this hearing, both parties 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 May 3, 2021, and controlling Louisiana law.

For the reasons set forth below, Sgt. Morrison's appeal is GRANTED in part and DENIED in part.

I. FACTUAL BACKGROUND

NOPD disciplined Sgt. Morrison for his supervision of a search for contraband on the person of an arrested suspect on May 31, 2018. (Ex. HE-1). NOPD sustained six separate violations of policy. (Ex. HE-1). The first sustained violation was for failing to inform the suspect of the reason for the search and how the search would be performed in violation of NOPD Policy

Manual Chapter 1.2.4, ¶ 9. (Ex. HE-1; Ex. NOPD-7 at 3). The remaining five violations related to violations of procedure when conducting a strip search (violations 2-5) or a body cavity search (violation 6). (Ex. HE-1' Ex. NOPD-7).

On May 31, 2018, the suspect was riding a bicycle and pulling a second bicycle. (Tr. at 18). NOPD officers stopped the suspect because NOPD believed the suspect was in possession of a stolen bicycle. (Tr. at 18). When the officers stopped the suspect, who was in possession of narcotics and money, the suspect ran. (Tr. at 18). The officers chased the suspect on foot, using a taser to subdue him. (Tr. at 18; Ex. NOPD-6). Because of the use of force, superior officers, including Sgt. Morrison, reported to the scene. (Tr. at 80)

When Sgt. Morrison arrived on the scene, the suspect was handcuffed and in the back of the police car, but it appeared the suspect was attempting to destroy contraband. (Tr. at `17-18, 80). So, Sgt. Morrison ordered the officers on the scene to remove the suspect from the car and search him. (Ex. NOPD-6). The suspect had crushed half of a pill while in the back of the police vehicle. (Tr. at 18).

The search of the suspect after he was removed from the police vehicle was recorded by body-worn camera of both Sgt. Morrison and Officer Galman. (Ex. NOPD-6). Sgt. Morrison instructed Officer Galman not to remove the suspect's pants, but to pat the suspect down on the outside of the suspect's clothes to determine whether the suspect had hidden contraband on his person. (Tr. at 19, 81; Ex. NOPD-6). The suspect was wearing multiple pairs of pants, and the officers had removed the suspect's belt earlier. (Tr. at 46). While the officers held the suspect and held up his pants, Officer Galman patted the suspect down. (Tr. at 19; Ex. NOPD-6). Officer Galman informed Sgt. Morrison that he felt something in the suspect's crotch area. (Tr. at 19, 81; Ex. NOPD-6). Sgt. Morrison instructed Officer Galman to "grab it," and Officer Galman put his

hand inside the suspect's underwear. (Tr. at 20, 81; Ex. NOPD-6). Officer Derrick Williams, who was on the scene, and Sgt. Morrison testified that Officer Galman was trying to shake the contraband loose by shaking the suspect's underwear. (Tr. at 73, 81). Both Officer Williams and Sgt. Morrison testified they never saw the suspect's buttocks. (Tr. at 74).

The NOPD Policy Manual Chapter 1.2.4, governing searches and seizures, defines a "strip search" as "any search of an individual that includes the removal or rearrangement of some or all clothing to permit visual inspection of the suspect's groin/genital area, buttocks, female breasts, or undergarments covering these areas." (Ex. NOPD-7 at 2). The NOPD Policy Manual defines a "body cavity search" as "any visual or physical inspection of a person's genital or anal region with or without physical contact or intrusion into a body cavity." (NOPD-7 at 1). NOPD investigators viewed the suspect's buttocks as the "anal region." (Tr. at 66).

The NOPD Policy Manual requires officers to conduct search with "dignity and courtesy," and to inform the suspect of the reason for the search and how the search will be conducted. (NOPD-7 at 3).

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 and terminating 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).

The parties stipulated that if the Commission found that the complained-of violation occurred, the conduct impaired the efficient operation of NOPD and the penalty of a one-day suspension for each violation was commensurate with the dereliction. (Tr at 66-67).

As to alleged violation 1, the record shows that NOPD carried its legally imposed burden of proving that appellant never gave the suspect any explanation as to how the search was to be conducted as required by the NOPD Policy Manual procedures for a search. (Ex. HE-1; Ex. NOPD-7 at 3).

As to alleged violations 2, 3, 4, and 5, NOPD failed to carry its legally imposed burden of proving that the Appellant instructed Officer Galman to conduct a “strip search” of the suspect or that Officer Galman actually did a “strip search” of the suspect as that term is defined in the NOPD Policy Manual. (Ex. NOPD-7 at 2). The evidence presented was insufficient to prove that there was a “rearrangement of some or all of the clothing to permit **visual inspection** of the suspect’s groin/genital area, buttocks...or undergarments covering those areas.” (Ex. NOPD-7 at 2) (emphasis added). Officer Galman had already removed the suspect’s belt, causing his pants to fall, exposing the undergarments, before appellant even arrived on the scene. (Tr. at 46-47). Furthermore, after Appellant arrived, he at one point specifically told Galman not to pull down the suspect’s pants. (Tr at 74, 81; Ex. NOPD-6).

The evidence in the record indicates that the officers’ intent on the scene relative to the search was for Officer Galman to “shake or tug” on the suspect’s undergarments to get any object

to dislodge from any hidden area. (Tr. at 77,79, 82-84, 91). NOPD failed to carry its burden of proving that there was any intent to do a “visual inspection” as required by the definition of “strip search.” (Ex. NOPD 7).

Since NOPD failed to carry its burden of proving that a “strip search” was conducted, the appellant’s one day suspensions for alleged violations 2, 3, 4, and 5 were improper.

Regarding alleged violation 6, NOPD failed to carry its legally imposed burden of providing that there was a “body cavity search” of the suspect ordered by the appellant to be done at the scene by Officer Galman or that Officer Galman actually did a “body cavity search.” The NOPD Policy manual defines a body cavity search as: “any **visual or physical inspection** of a person’s genital or anal region with or without physical contact or intrusion into a body cavity.” (Ex. NOPD-7 at 1)(emphasis added).

The evidence in the record indicates that Officer Galman felt something in the suspect’s groin area. (Tr. at 19; Ex. NOPD-6). The appellant then told Galman to “go get it.” (Ex. NOPD-6). As indicated above, the testimony at the hearing shows that the intent was for Officer Galman to “shake or tug” on the suspect’s undergarments to dislodge any object concealed therein, not to perform a “visual or physical inspection...of {the suspect’s} genital or anal area” as required by the NOPD Policy Manual.

At the hearing, the parties stipulated that the only issue to be decided was whether the alleged wrongful conduct did or did not occur. Assuming NOPD carried its legally imposed burden of proving that appellant’s conduct was wrongful to any extent, then it was stipulated that the one day suspension for each alleged violation was commensurate with the offense and that the alleged wrongful conduct impaired the efficient operation of the police department. (Tr. at 66-67).

The undersigned Commissioners DENY Sgt. Morrison's appeal as to violation 1, but GRANT the appeal of Sgt. Morrison's appeal of violations 2-6. Therefore, NOPD shall reimburse Sgt. Morrison back pay and other emoluments of employment for five days of the six-day suspension and shall correct Sgt. Morrison's personnel record to reflect a one-day suspension instead of a six-day suspension.

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This the 29th day of September, 2021

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Aug 23, 2021 17:50 EDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

CJ Moore
CJ MOORE (Sep 28, 2021 17:37 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

Ruth White Davis
Ruth Davis (Aug 30, 2021 20:44 CDT)

RUTH WHITE DAVIS, COMMISSIONER