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Thursday, December 20, 2012

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Thomas McMasters VS.**
Department of Police
Docket Number: 7836

Dear Mr. Hessler:

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 - 12/20/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, New Orleans, Louisiana.

If you choose to appeal this decision, 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 cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Eraka Williams
Jay Ginsberg

THOMAS MCMASTERS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7836

The Department of Police (“Appointing Authority”) employed Thomas McMasters (“Appellant”) as a police officer with permanent status. By letter dated March 25, 2011, the Appointing Authority terminated the Appellant’s employment for violation of internal rules regarding Adherence to Law. Specifically, the Appointing Authority determined that the Appellant intentionally and falsely arrested Quanetia Davis and Kyana Boykins for Prostitution Loitering – Solicitation of Sex for Money without legal authority causing them to spend the weekend in jail prior to the court’s dismissal of the charge. (MCS 17271: 54:99 False Imprisonment).

Additionally, the Appointing Authority suspended the Appellant for forty days for violation of internal rules regarding Neglect of Duty (20 days) and False and Inaccurate Reports (20 days). The Appointing Authority’s investigation determined that the Appellant neglected his duty by failing to check the arrested individuals’ names via the Appointing Authority computer system to determine whether either of them had a previous prostitution arrest and conviction. An element of the crime for which the individuals were arrested requires a prior prostitution conviction, which neither Ms. Davis nor Ms. Boykins had. The Appointing Authority also determined that the Appellant made false statements in Ms. Davis’ affidavit of arrest to justify the actions that he took. The affidavit of arrest provided:

Arrested subject was observed by undercover officer Marshall Scallon approaching and stopping several males in the 200 block of Bourbon. Arrested subject approached undercover officer but turned and walked away when she observed arresting officer approach.

The Appointing Authority's investigation determined that Officer Scallon was not working undercover and that he did not give the Appellant the justification for the arrest provided in the affidavit.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on October 19, 2011. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The Appellant testified as follows at the October 19, 2011 hearing: On November 8, 2009 he was assigned to the Eighth Police District - Bourbon Street Promenade. On that date, while partnered with Officer Billy Tregle, he came upon the scene and assisted Officer Beau Gast with the arrest of Kyana Boykins by preparing an arrest affidavit using information provided to him by Officer Gast. The Appellant testified that he had no reason to question the validity of the information provided by Officer Gast, that arrests for prostitution were a matter of routine for those working the Bourbon Street Promenade, and that police officers working the promenade regularly assisted each other with arrests. Finally, the Appellant testified that it was Officer Gast's scene and, therefore, that Officer Gast was responsible for determining that reasonable cause and all elements of the crime of Prostitution Loitering were present, including the existence of prior convictions.

Sgt. Jenerio Sanders conducted the internal investigation, which resulted in the Appellant's termination. He interviewed the two complainants who were arrested for Prostitution Loitering on November 8, 2009. He testified that the Appellant signed the

arrest affidavit for Kyana Boykins that caused her arrest and incarceration. He also interviewed Officer Marshall Scallon who stated that on the night of Ms. Boykins' arrest he was not working undercover and would not have been in a position to report criminal acts of Prostitution Loitering to other police officers. Officer Scallon's testimony confirmed that he was working in uniform with a partner, and not undercover, on November 8, 2009.

Sgt. Sanders confirmed that the Appellant was not partnered with Officer Gast on November 8, 2009, and that the Appellant arrived on the arrest scene after Officer Gast made the initial stop. Sgt. Sanders further acknowledged that the Appellant assisted Officer Gast with the subjects' arrests for a few minutes only and then departed the scene to conduct other police activities while Officer Gast was on the scene for over an hour.

Sgt. Sanders testified that the crime of False Imprisonment requires a specific intent to confine or detain another without his or her consent and without legal authority. Sgt. Sanders also acknowledged that police officers are often called upon to rely upon information provided by other police officers to establish reasonable cause to make arrests. Sgt. Sanders confirmed that the Appellant relied solely upon the information provided to him by Officer Gast in preparing Ms. Boykins' arrest affidavit. Sgt. Sanders testified that he sustained charges against the Appellant based solely on the Appellant's reliance on information provided to him by Officer Gast, finding the Appellant culpable for signing a document that resulted in an individual's false arrest.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on the facts, presented whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. The Appellant caused a false imprisonment by signing an arrest warrant without sufficient cause. Before signing his name to the document, he should have taken should have taken the reasonable steps to confirm the

T. McMasters

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arrested subjects prior prostitution convictions which was a required element of the crime for which they were arrested on the night of November 8, 2009. A simple check of the system would have confirmed that the arrestees could not have been arrested for the crimes asserted regardless of the facts relied on by the Appellant, which he testified were given to him by Officer Gast.

Accordingly, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF
DECEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY J. GLOVINSKY, COMMISSIONER

CONCUR:


DANA M. DOUGLAS, VICE-CHAIRMAN


REV. KEVIN W. WILDES, S.J., CHAIRMAN