



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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Tuesday, October 25, 2016

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

Re: **Marsha Thompson VS.  
Department of Police  
Docket Number: 8405**

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 - 10/25/2016 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, 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: Michael S. Harrison  
Elizabeth S. Robins  
Jim Mullaly  
Marsha Thompson

file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

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| MARSHA THOMPSON<br><br>vs.<br><br>DEPARTMENT OF POLICE | DOCKET No.: 8405 |
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**I. INTRODUCTION**

Appellant, Marsha Thompson, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was disciplined for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee.

**II. FACTUAL BACKGROUND**

**A. Alleged Misconduct**

The allegations of misconduct against Appellant arise out of an incident that occurred on or about November 25, 2010. (H.E. Exh. 1). NOPD alleged that, at 11:18 a.m. on the morning of November 25th, Appellant responded to a call (NOPD Signal 521: Simple Arson) from a citizen requesting assistance. *Id.* Appellant allegedly spoke to witnesses on the scene who identified a female subject (referred to hereinafter as “LS”) as the individual responsible for starting the fire. *Id.* One witness also alleged that LS’s daughters, (referred to hereinafter as “JR” and “TS”) were with LS when LS started the fire. *Id.*

After speaking with the witnesses, Appellant arrested LS and prepared two applications for arrest warrants, one for JR and one for TS. In both applications for arrest warrants, Appellant represented that:

At approximately 3:00 a.m. on November 25, 2010, the wanted subject [JR and TS respectively] arrived at the victim's residence, and was observed using a clear liquid and paper, ignited by a lighter, to set a fire in front of the front door.

(NOPD Exhs. 6, 7).

NOPD alleged that Appellant's sworn applications for arrest warrants were inconsistent with the police report Appellant had generated in connection with the incident. (H.E. Exh. 1). NOPD characterized the inconsistencies as "fabrications" and claimed that Appellant admitted that no witnesses claimed to have observed JR or RS start the fire. *Id.*

According to NOPD, Appellant's actions violated the following NOPD rules:

- Rule 2: Moral Conduct; Paragraph 1: Adherence to Law, to wit: Revised Statute 14:126 Inconsistent Statements; False Swearing
  - Employees shall act in accordance with the constitutions, statutes, ordinances, administrative regulations, and the official interpretations thereof, of the United States, the State of Louisiana, and the City of New Orleans; but when in another jurisdiction, shall obey the applicable laws. Neither ignorance of the law, its interpretation, nor failure to be physically arrested and charged, shall be regarded as a valid defense against the requirements to this rule.

NOPD Rule 2, ¶ 1

- It shall constitute false swearing whenever any person, having made a statement under sanction of an oath, or an equivalent affirmation, required by law, shall thereafter swear or affirm in a manner materially contradictory of or inconsistent with his former sworn or affirmed statement. It shall not be necessary for the prosecution, in such case, to show which of the contradictory or inconsistent statements was false; but it shall be an affirmative defense that at the time he made them, the accused honestly believed both statements to be true.

La. R.S. 14:126

- Rule 3: Professional Conduct; Paragraph 1: Professionalism
  - Employees shall conduct themselves in a professional manner with the utmost concerns for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.
- Rule 4: Performance of Duty; Paragraph 4(c): Neglect of Duty
  - The following acts or omissions to act, although not exclusive, are considered neglect of duty:
    1. Failing to take appropriate and necessary police action.

(H.E. Exh. 1). As a result of the above-listed rule violations, NOPD suspended Appellant for a total of forty-five days broken down in the following manner: thirty-day suspension for Rule 2, Paragraph 1; five-day suspension for Rule 3, Paragraph 1; and ten-day suspension for Rule 4, Paragraph 4. *Id.*

#### **B. November 25, 2010 & Appellant's Arrest Affidavits**

On Thursday, November 25, 2010 (Thanksgiving morning), at approximately 11:00 a.m., Appellant responded to a simple arson call for service. (Tr. at 10:1-4). When she arrived at the scene, she observed burn marks on the front door of a residence. *Id.* at 10:5-7. The residence was owned by a citizen hereinafter referred to as "L.F." At the time of the incident, L.F. lived at the residence with her boyfriend (hereinafter "A.W.") and her boyfriend's son (hereinafter "O.W."). *Id.* at 10:11-11:4. Appellant interviewed O.W. whom she believed to have observed the individuals who perpetrated the arson.

According to Appellant, O.W. stated that he saw his mother (hereinafter "L.S.") and two other individuals (hereinafter "T.S." and "J.R.") approach the residence; he then told Appellant that L.S. used a clear liquid, paper and a lighter to set the front door of the residence on fire. *Id.* at 12:6-14. Appellant acknowledged that O.W. did not claim to have witnessed T.S. or J.R.

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lighting fire to the residence. *Id.* at 12:19-13:1, 15:15-19. Based upon O.W.'s description of events, Appellant arrested L.S. for simple arson. Appellant also filled out arrest affidavits for T.S. and J.R. (NOPD Exhs. 6, 7). In each of these affidavits, Appellant stated, under oath, that T.S. and J.R. "arrived at the victim's residence and [were] observed using a clear liquid and paper, ignited by a lighter, to set a fire in front of the front door." Appellant also claimed that O.W., the eight-year-old step-brother of J.R. and T.S. positively identified both J.R. and T.S. *Id.*

When confronted about the apparent inconsistency between what O.W. told her and what she included in her affidavits, Appellant stated that:

J.R. was there as a part of a commission of that crime [simple arson] that her mother committed and, based on witness statement, did nothing to stop her or alarm anyone and knew of previous negative involvement her mom had with the resident [L.S.] at that place, at that apartment.... Even if [J.R.] didn't light the lighter or pour liquid she was still responsible for the commission of that crime and so that's how I wrote it. She did not find out about it later. She was there when her mom set that fire. As an adult, not five or seven, she knew that [the fire] would either cause damage or harm somebody. She had knowledge that her mom had issues with the woman who lived there and stood by while her mom committed this crime. That makes her as culpable as her mom is.

Tr. at 14:1-22. Appellant testified that she did not believe what she wrote was false and explained that she believed that both J.R. and T.S. were "principals" to the crimes of simple arson and criminal damage. However, in the narrative of the police report generated by Appellant in connection with this incident, she describes J.R. and T.S.'s roles in a very different manner:

[O.W.] further advised that [L.S.] had "some kinda (sic) pipe and something watery she was pouring through the pipe. Then she pushed paper in the pipe and lit it." [O.W.] indicated that [L.S.] was the subject who physically ignited the fire, but was accompanied by [T.S. and J.R.].

App. Exh. 1.

It is the difference between the police report and Appellant's arrest affidavits that provided the basis for NOPD's decision to discipline Appellant.

### III. LEGAL STANDARD

Employees in the classified service may only be disciplined for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

### IV. ANALYSIS

#### A. Occurrence of the Complained of Activities

The Commission focuses its attention on the fact that the following statement, “T.S. and J.R. arrived at the victim’s residence and were observed using a clear liquid and paper, ignited by a lighter, to set a fire in front of the front door,” is simply not true. And, Appellant knew it was not true when she prepared the arrest affidavits for T.S. and J.R. She could have easily changed the narrative and clarified that, while witnesses did not observe T.S. and J.R. engage in the arson

and property damage, they were present and likely provided the perpetrator with assistance. Instead, she chose to apply the same narrative to all three women, despite clearly knowing that the witness only observed one actually light the fire.

During her testimony, Appellant tried to emphasize that T.S. and J.R. were principals to the criminal activity and that the affidavits account this distinction. They do not. It is one thing to unequivocally state that a witness observed an individual commit a crime and another to indicate that an individual was a principal to a crime in that he/she aided and abetted the perpetrator. *See* La. R.S. § 14:24. As Appellant noted, to be a principal, “the statute [presumably § 14:24] doesn’t say you had to physically hold the lighter or physically ball the paper or physically pour liquid.” (Tr. at 59:18-20). Unfortunately, that is exactly what Appellant alleged J.R. and T.S. did in her affidavit. Appellant painted each suspect with the same broad brush, and in doing so, misled the magistrate and generated an inaccurate arrest warrant and affidavit.

As part of her defense, Appellant pointed out that, in order to be guilty of violating La. R.S. 14:126 (Inconsistent Statements: False Swearing), a perpetrator must have made two inconsistent statements under oath or “equivalent affirmation.” She then argued that her police report does not represent a statement made under oath or equivalent affirmation. The Commission is not persuaded by this argument.

As a preliminary matter, NOPD established Appellant’s Police Report was accurate but her affidavits were inaccurate. Police reports are business records, maintained in the normal course of business, upon which NOPD, the public and criminal courts rely. The accuracy of these reports, as well as an Officer’s candor and honesty with respect to the contents, is of the utmost importance. Furthermore, Appellant acknowledged that the affidavits were inaccurate during the course of the disciplinary investigation conducted by NOPD.

Finally, Appellant attempted to assert an affirmative defense to her alleged violation of La. R.S. 14:126 by suggesting that she believed what she had written in the affidavits was true at the time she submitted the affidavits to the magistrate. There is no support for this defense in the record. Appellant may have believed that J.R. and T.S. were principals to the crimes of simple arson and criminal damage, but Appellant's police report and subsequent statements show that she could not have reasonably believed what she wrote in the affidavits.

Nevertheless, Cmdr. Albert testified that he did not sustain the allegations against Appellant with respect to honesty and truthfulness because he believed Appellant's inaccuracy was due to her lack of attention to detail and carelessness rather than an intentional misrepresentation with an intent to wrongfully arrest two citizens. Ultimately, a criminal court may have found J.R. and T.S. to be principals to simple arson and criminal damage, but the facts regarding their actual involvement vary substantially from what was reflected in Appellant's affidavits. Therefore, the Commission finds that Appellant did engage in the misconduct identified in the disciplinary letter and that the misconduct constituted a violation of the NOPD Rules, also identified in the letter.

#### **B. Impairment of Efficient Operation of Appointing Authority**

Commander Darryl Albert was responsible for conducting the disciplinary hearing that resulted in a recommendation that the NOPD Superintendent suspend Appellant for forty-five days. (Tr. at 21:21-24). Cmdr. Albert testified that NOPD takes allegations that an employee knowingly included false information on an official document very seriously. He also expressed a concern that the Appellant had not been careful when copying and pasting elements from one affidavit into another. In addressing the inconsistencies between what the witness told Appellant



and what Appellant wrote in her affidavit, Cmdr. Albert stated that, when Appellant included incorrect information in her affidavit, it damaged the image of the Department.

The Commission finds that Appellant's actions amount to more than simple carelessness or a lack of attention to detail. Appellant provided a sworn statement that was inaccurate and she knew it to be inaccurate at the time she made it. Such conduct necessarily impacts the efficient operation of NOPD in that both NOPD and the residents of New Orleans depend upon Officers to faithfully execute their duties and truthfully represent the facts of a particular case, especially when a citizen's liberty is at stake. Therefore, the Commission finds that NOPD has met its burden of proof regarding this element of our analysis.

### **C. Discipline Commensurate with Offense**

In conducting its analysis, the Commission must determine if the Appellant's discipline was "commensurate with the dereliction;" otherwise, such discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Commission recognizes that Officers, like Appellant, are in the position to materially impact someone's liberty based upon affidavits and reports filed with criminal courts. If Officers alter, omit or misrepresent material in these affidavits, a citizen's rights and liberty could be compromised. While the Commission recognizes that Appellant believed that J.R. and T.S. were equally culpable in the crimes perpetrated by their mother, they each allegedly played different roles. Appellant was aware of these roles but instead of taking the time to differentiate the conduct, she chose to include identical allegations in her sworn statement. The Commission finds that NOPD must act to deter such conduct with the threat of significant discipline.

Finally, it appears that NOPD was lenient in dispensing discipline in this matter since its penalty matrix provides for termination if an Officer knowingly provides a false statement or commits a misdemeanor in the course of duty. And, while the Commission is not bound by NOPD's penalty matrix in determining if discipline was commensurate with a particular offense, such a matrix provides a useful guide as to, 1) how seriously NOPD views a particular offense, and 2) if employees are on notice that certain penalties accompany certain misconduct. Based upon the record before us, we find that Appellant's forty-five-day suspension was commensurate with her misconduct.

#### **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

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Judgment rendered this 24 th day of October, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Ronald P. McClain  
RONALD McCLAIN, VICE-CHAIRPERSON

10/24/16  
DATE

Tania Tetlow  
TANIA TETLOW, COMMISSIONER

10/24/16  
DATE

Joseph Clark  
JOSEPH CLARK, COMMISSIONER

Oct 24, 2016  
DATE