



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. C. Theodore Alpaugh, III
639 Loyola Avenue, Suite 2130
New Orleans, LA 70113

Re: **Willie Jenkins III VS.**
Department of Police
Docket Number: 9189

Dear Mr. Alpaugh:

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 black ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Shaun Ferguson
Elizabeth S. Robins
Alexandra Mora
Willie Jenkins

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**WILLIE JENKINS,
Appellant**

Docket No. 9189

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Sgt. Willie Jenkins, 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 five-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., Vol. I, at 6; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on October 7, 2020, and December 7, 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 20, 2021, and controlling Louisiana law.

For the reasons set forth below, Sgt. Jenkins' appeal is GRANTED.

I. FACTUAL BACKGROUND

On April 19, 2018, NOPD responded to an armed robbery. Police Officer Brianne Verrett interviewed the victim. (Tr., Vol. I, at 35). The suspect, Oliver Myles or "Polo," was known to the victim, and another individual later supplied NOPD with Polo's address. (Tr., Vol. I, at 36; Tr., Vol. II, at 7, 26;). Sgt. Jenkins responded to the crime scene. (Tr., Vol. II, at 35). Detective Decynda Chambers, who responded later, was familiar with Polo and with his girlfriend, Ms. Dwan Magee.

(Tr., Vol. II, at 13). Det. Chambers was aware of previous incidents with Polo. (Tr., Vol. II, at 68). When the officers arrived at the described residence, a double, the victim identified the suspect's bicycle in the back yard of the double at the fence. (Tr., Vol. I, at 17-18,; Tr., Vol. II, at 98). Additional officers responded to the scene. These officers included Lt. Baldassaro, Sgt. Jenkins, Detective/Police Officer Chambers, Detective/Police Officer Neveaux, Police Officer Chris Long, and Police Officer Kozlowski. (Tr., Vol. II, at 12). Lt. Baldassaro supervised all the officers on the scene. (Tr., Vol. II, at 104). The bicycle was in the rear of the property, so NOPD officers established a perimeter and proceeded to search for the assailant and the gun used in the robbery. (Tr., Vol. I, at 159, 167).

The NOPD officers decided to try to enter the residence. Sgt. Jenkins knocked on the back door. (Tr., Vol. I, at 16) The officers knocked on the door about 32 minutes after the victim's initial call to NOPD. (Tr. at, Vol. I, at 144). Ms. Magee eventually answered the door, and she told the officers, including Sgt. Jenkins, that she did not know if Polo was inside the residence. (Tr., Vol. I, at 18; Tr., Vol. II, at 44). Lt. Baldassaro and Sgt. Davis testified that the woman's answers were evasive, and the officers feared she was being held hostage. (Tr. Vol. I, at 161, 195, 202).

The body-worn camera footage reflects that Ms. Magee initially refused entry based on the lack of a warrant. (Tr., Vol. I, at 53). Detective Chambers asked for permission to search, and Ms. Magee eventually consented to a search of the premises. (Tr., Vol. I, at 18; Tr., Vol. II, at 16-17). Because of the officers' proximity to an air conditioning unit, the consent is inaudible on the body-worn camera footage. (Tr., Vol. I, at 24, 213; Ex. NOPD-4). Consent to search is an exception to the requirement of a warrant to search a residence. Sgt. Jenkins¹ was the first officer to enter the

¹ In the appeal filed by Sgt. Joseph Davis relating to the same incident (Docket No. 9178) the elicited testimony from Sgt. Davis on September 10, 2020, was that Sgt. Davis was the first officer to enter the residence.

residence. (Tr., Vol. I, at 29) Neither Detective Chambers nor Detective Neveaux entered the residence. (Tr., Vol. II, at 74, 90).

Lt. Baldassaro testified he agreed to the entry into the residence to apprehend the suspect. (Tr., Vol. I, at 195-96). Lt. Baldassaro believed that obtaining a search warrant would do more harm in this situation. (Tr. at 201). The assailant was apprehended by NOPD inside the residence. (Tr., Vol. I, at 162-63). Ultimately, NOPD officers discovered that another woman besides Ms. Magee was inside the house. (Tr., Vol. II, at 14).

Before entering a residence to search for a suspect when the resident consents to the search, NOPD policy requires a police officer to notify the officer's supervisor and have the consenting party sign a consent to search form. (Tr., Vol. I, at 10-13; Ex. NOPD-3). Sgt. Jenkins is a supervisor and is aware of the requirement of the consent to search form. (Tr., Vol. I, at 7, 10-13). If exigent circumstances exist, the form is not required. (Tr., Vol. I, at 82). Generally, the lead detective would have completed the form. (Tr., Vol. I, at 54). In this case, the lead detective was Detective Chambers. The highest ranking officer on the scene must sign off. (Tr., Vol. I, at 55). In this case, the highest ranking officer on the scene was Lt. Baldassaro, who was also Sgt. Jenkins' and Det. Chambers' supervisor. (Tr., Vol. I, at 55).

NOPD determined that no exigent circumstances excused completion of the form. Lt. Kevin Burns, who reviewed this incident as a member of the Force Investigation Team, testified that there was no urgency, and that the officers could have obtained a warrant. (Tr., Vol. I, at 56-58, 69, 96-98). Lt. Baldassaro, who was disciplined for this incident, testified that no consent to search form was obtained because, based on the presence of the bicycle, the officers suspected the armed robbery suspect was inside the residence and Ms. Magee was behaving in an evasive manner, raising a concern about a potential hostage situation. (Tr., Vol. I, at 202). Det. Chambers

testified that children lived at this residence. (Tr., Vol. II, at 33). Sgt. Davis characterized the scene as a “hot scene,” and, in his view, imminent escape of Polo was possible. (Tr., Vol. I, at 173, 179). All of the officers at the scene believed exigent circumstances existed. (Tr., Vol. I, at 144). Lt. Baldassaro testified it was not tactically sound to obtain a signature on the consent form. (Tr., Vol. I, at 207).

Captain Hans Ganthier, now the Commander of the Police Academy, testified that exigent circumstances existed, and it was no feasible to fill out a form with an armed robber in the house. (Tr., Vol. I, at 208, 215, 217). Capt. Ganthier testified that the safety of the officers was an issue, in addition to the safety of Ms. Magee. (Tr. Vol, I, at 218).

Det. Chambers and Det. Neveaux returned to the residence after the arrest of Polo, and interviewed Ms. Magee, confirming on body-worn-camera that Ms. Magee consented to the search. (Tr., Vol. I, at 76).

NOPD imposed discipline on all officers acting in a supervisory capacity on the scene, According to Sgt. Aiyana Francis, who investigated this incident on behalf of the NOPD Public Integrity Bureau, Det. Chambers or Sgt. Davis or Sgt. Jenkins should have asked the resident to complete the consent to search form. (Tr., Vol. I, at 134). NOPD disciplined Sgt. Jenkins and Sgt. Davis for failing to complete the consent to search form. (Tr., Vol. I, at 133). NOPD also disciplined Lt. Baldassaro for failing to instruct his subordinates to complete the form. (Tr., Vol. I, at 135). Sgt. Francis explained that Baldassaro received an additional sustained violation because the responsibility fell on Lt. Baldassaro to ensure everything was done properly, and the sergeants were actively involved in the search. (Tr., Vol. I, at 135).

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 undersigned Commissioners find that NOPD has failed to carry its burden of showing the occurrence of the complained-of activity. Three ranked officers on scene (Sgt. Davis, Sgt. Jenkins, and Lt. Baldassaro) all gave tacit approval to enter the home based on verbal consent. Although Sgt. Jenkins failed to complete a consent to search form, the highest-ranking officer on the scene, Lt. Baldassaro, testified such a form was not required based on the exigent circumstances. As an officer ranked below Lt. Baldassaro - who had no supervisory duties at this scene - Sgt. Jenkins should not suffer discipline for his supervisor's decision not to require the lead detective to obtain the execution of a consent to search form.

The undersigned Commissioners find no error in the hearing officer's admission of the statement of Det. Chambers, as NOPD used Det. Chambers' statement to refresh her recollection, allowing the Appellant to move for the introduction of the statement. *See Civil Service Rule II, §*

4.11(B) and La. C.C.P. art. 612(A). In the alternative, the admission of this statement was harmless error.

The appeal is GRANTED. NOPD shall reimburse Sgt. Jenkins the lost wages and other emoluments of employment from this ten-day suspension and shall remove this discipline from his record.

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This the 29th day of September, 2021

WRITER:

Ruth White Davis

Ruth Davis (Sep 25, 2021 11:35 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:

CJ Moore

CJ MOORE (Sep 28, 2021 17:35 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

J. H. Korn

J. H. Korn (Sep 17, 2021 12:33 CDT)

JOHN KORN, COMMISSIONER