



# CITY OF NEW ORLEANS

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

Thursday, February 10, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

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

Re: **Esther Cauthron VS.  
Department of Police  
Docket Number: 9239**

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 - 2/10/2022 - 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  
Alexandra Mora  
Esther Cauthron

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**ESTHER CAUTHRON,  
Appellant**

**Docket No. 9239**

**v.**

**DEPARTMENT OF POLICE,  
Appointing Authority**

**DECISION**

Appellant, Esther Cauthron, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from her January 8, 2021, 12-day suspension. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Officer. (Tr. at 6; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on May 26, 2021. 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 November 1, 2021, and controlling Louisiana law.

For the reasons set forth below, Officer Cauthron's appeal is DENIED.

**I. FACTUAL BACKGROUND**

Officer Cauthron, along with her partner, was assigned to the 200 block of Bourbon Street, in the Eighth District, on Lundi Gras 2019, March 3, 2019. (Tr. at 7-8). Officer Cauthron observed two men yelling at each other, and one of the men had a fifth of Patron. (Tr. at 8). It is a violation of a municipal ordinance to have an open glass bottle on Bourbon Street. (Tr. at 8). According to the Appointing Authority, Officer Cauthron should have activated her body-worn camera when

she and her partner engaged the two men in conversation, as one of the men was in violation of law. (Ex. HE-1; Tr. at 24-25, 49). According to the letter of discipline, NOPD policy (Chapter 41.3.10) requires manual activation of the body-worn camera for “all field contacts involving actual or potential criminal conduct within video or audio range.” (Ex. HE-1).

Officer Cauthron’s partner advised the man with the bottle to give it to a nearby bouncer, and to put the contents into a cup. (Tr. at 8, 77). The second man interfered with the first man’s efforts to comply with this directive. (Tr. at 77-78). When Officer Cauthron touched the second man with her hand to distract him, he grabbed her hand and tried to hit her with his other hand. (Tr. at 79). This man was an active-duty Marine in his 30s, who was intoxicated. (Tr. at 79). A fight ensued between the officers and the Marine, after the Marine took both officers to the ground. (Tr. at 79). According to Officer Cauthron, the Marine’s training far exceeded the training of the officers, and during this altercation, the Marine attempted to take Officer Cauthron’s weapon twice. (Tr. at 79). Officer Cauthron did not activate her body-worn camera until she stood up from fighting with the Marine on the ground. (Tr. at 82). Officer Cauthron explained that she did not activate her body-worn camera earlier because she did not anticipate an interaction other than just talking to the two men. (Tr. at 81).

The Marine would not put his hands behind his back to be handcuffed. (Tr. at 42). When the Marine would not comply with being handcuffed, Officer Cauthron tased him. (Tr. at 9). Officer Cauthron used the drive stun mode of the taser. (Tr. at 11). Officer Cauthron conceded that she did not use the drive stun mode to supplement probe mode or to gain separation. (Tr. at 12).

Sgt. Jamie Roach investigated the complaint against Officer Cauthron for violations of NOPD policy about the use of a taser (Chapter 1.7.1, subsection 43; Chapter 1.7.1, subsection 44) and the activation of body-worn camera. (Tr. at 21; Ex. HE-1). NOPD policy prohibits the use of

a taser in drive stun mode in general, with limited exceptions, (subsection 43), and specifically prohibits use of drive stun mode for pain compliance, (subsection 44). (Ex. HE-1). Officer Cauthron drive stunned the Marine to get him to comply with being handcuffed and conceded that the exceptions did not apply. (Tr. at 12, 16, 24). Lt. Octavio Baldassaro, who was the captain of the Eighth District at the time of the incident, testified that Officer Cauthron violated NOPD policy about the use of tasers by using the taser for pain compliance. (Tr. at 49).

## 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).

NOPD has carried its burden of showing the underlying conduct occurred. Officer Cauthron failed to activate her body-worn camera, even though she and her partner had contact with two men engaged in a verbal altercation, one of whom was holding a glass bottle in violation

of law. Officer Cauthron also used her taser in drive stun mode to gain compliance, in violation of NOPD policy about the use of tasers. Officer Cauthron conceded that her use of drive stun mode was not to gain separation or as a supplement to use of the projectiles, which are the exceptions to the prohibition of use of the taser in this mode.

Violations of policies about activation of body-worn cameras and use of tasers impairs the efficient operation of the Department of Police. NOPD policy about tasers is in effect to protect citizens. The policy about activation of body-worn camera is in effect both to protect NOPD officers and to protect citizens.

The penalty is commensurate with the violation, as NOPD applied the presumptive penalty under its disciplinary matrix for these violations, including the presumptive penalty for the third violation of both policy violations related to tasers. (Tr. at 50). The penalty was two days for the violation of the body-worn-camera violation and five days for each of the taser violations. (Tr. at 50; Ex. NOPD-3).

Officer Cauthron's appeal is DENIED.

This the 10<sup>th</sup> day of February, 2022

WRITER:

J. H. Korn  
J. H. Korn (Feb 4, 2022 15:04 CST)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

Mark C. Surprenant  
Mark C. Surprenant (Feb 4, 2022 09:43 CST)

MARK SURPRENANT, COMMISSIONER

Clifton J. Moore, Jr.  
CJ MOORE (Feb 10, 2022 09:16 CST)

CLIFTON J. MOORE, JR., COMMISSIONER