



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 - 1340 POYDRAS ST.  
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CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
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MARK SURPRENANT  
RUTH WHITE DAVIS

Thursday, October 27, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Kevin Boshea  
2955 Ridgelake Dr., Suite 207  
Metairie, LA 70002

Re: **Isaiah Shannon VS.  
Department of Police  
Docket Number: 9322**

Dear Mr. Boshea:

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 - 10/27/2022 - 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  
Michael J. Laughlin  
Jay Ginsberg  
Isaiah Shannon  
;  
file



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Doddie K. Smith  
Chief, Management Services Division

cc: Shaun Ferguson  
Michael J. Laughlin  
Jay Ginsberg  
Isaiah Shannon  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**ISAIAH SHANNON,  
Appellant**

**Docket Nos. 9322 & 9323**

**v.**

**DEPARTMENT OF POLICE,  
Appointing Authority**

**DECISION**

Appellant, Officer Isaiah Shannon, 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 November 9, 2021, termination and other discipline. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Senior Police Officer. (Tr., Vol. II, at 35; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 24, 2022, and April 7, 2022. 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 post-hearing briefs submitted by the parties, the Hearing Examiner's report dated August 27, 2022, and controlling Louisiana law.

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

**I. PERTINENT FACTUAL BACKGROUND**

On March 10, 2021, Officer Shannon and his partner, Officer Markus Caldwell, performed a traffic stop of a white Jaguar at Chef Menteur and Werner Drive. (Ex. HE-1; Ex. NOPD-1 at 4). Officer Shannon was suspicious that the occupants of the vehicle illegally parked across from the

Eastside Cash & Carry were engaged in drug dealing. (Ex. HE-1; Tr., Vol. II, at 18-20). This suspicion was based on Officer Shannon's previous experience in the area (including an arrest a few months prior in the 4300 block of Werner for narcotics involving a vehicle parked in the same spot as the white Jaguar) and reports of narcotics trafficking and narcotics use nearby from the owner of the convenience store and a cashier at the store. (Tr., Vol. II, at 18-20).

According to Officer Shannon, the vehicle was parked in a location where narcotics are sold. (Tr., Vol. II, at 23, 56-57). Because the windows were heavily tinted (in violation of state law) and because he suspected narcotics activity, Officer Shannon unholstered his gun and placed it behind his leg as he approached the vehicle. (Tr., Vol. I, at 60-61). When the officers engaged the occupants, the officers observed the scent of marijuana smoke, and Officer Shannon testified he saw the butt of a handgun between the front passenger seat and the center console. (Tr., Vol. II, at 29-30).

When Officer Shannon asked the passenger to exit the vehicle, the passenger tried to run away, resulting in a physical altercation with Officer Shannon. (Tr., Vol. II, at 85-86). During this altercation, Officer Shannon testified he hit the passenger, Anthony Cowart, with his gun because Officer Shannon did not have an opportunity to holster the gun and because Officer Shannon was concerned that Cowart was going to disarm him. (Tr., Vol. II at 32-33, 36). During this altercation, the gun discharged, resulting in injury to Cowart. (Tr., Vol. II, at 43). Officer Shannon testified he did not intentionally shoot Cowart. (Tr., Vol. II, at 43). During this altercation, the driver fled in the vehicle. (Tr., Vol. I, at 117-18; Ex. NOPD-11). Officer Shannon handcuffed Cowart with hinged handcuffs, a type of handcuffs no longer authorized by NOPD. (Tr. at 133-34). Officer Shannon also cut Cowart's sweatshirt to remove narcotics from Cowart. (Tr., Vol. I, at 142).

NOPD did not train Officer Shannon to unholster his gun and place it behind his leg. (Tr., Vol. I, at 39-40; Tr., Vol. II, at 54). According to the NOPD investigator, no lethal threat existed when Officer Shannon unholstered his gun. (Tr., Vol. I, at 150). NOPD Policy states that an officer should not draw his weapon unless “the circumstances surrounding the incident create an objectively reasonable belief that a situation may escalate to the point at which lethal force would be authorized.” (Ex. NOPD-13, ¶ 11). The only crime observed by Officer Shannon when he unholstered his gun was parking illegally. (Tr., Vol. I, at 151). The NOPD investigator also testified that Officer Shannon should have holstered his gun when he was removing the passenger from the vehicle. (Tr., Vol. I, at 151). According to NOPD Policy, “[o]nce an officer determines that the use of force is no longer likely, the officer shall re-holster the weapon.” (Ex. NOPD-13, ¶ 11). The NOPD investigator testified that Officer Shannon’s decision to unholster his gun in the absence of a lethal threat and his failure to re-holster his gun caused the strike of Cowart by the gun and the discharge of the weapon. (Tr., Vol. I, at 159).

Two days after the March 10, 2021, above-described incident, Officer Shannon completed a Use of Force Statement, as required by NOPD policy. (Tr., Vol. II, at 93-94). In this statement, Officer Shannon stated he unholstered his weapon after he arrived at the vehicle and observed what he believed to be a gun in the console. (Ex. NOPD-9). Officer Shannon also failed to disclose that he hit Coward with the gun. (Ex. NOPD-9). Officer Shannon’s Force Statement read as follows:

ON MARCH 10, 2021 AT 9:32AM, OFFICER MARKUS CALDWELL AND MYSELF WERE ON A PROACTIVE PATROL IN THE 4300 BLOCK OF WERNER. WE OVERSEED A WHITE, JAGUAR SEDAN ILLEGALLY PARKED ON THE WRONG SIDE OF THE STREET. WE DECIDED TO STOP AND INVESTIGATE. WE OBSERVED THE VEHICLE WAS OCCUPIED BY TWO INDIVIDUALS. AFTER MAKING CONTACT WITH THE SUBJECTS I NOTICED THE UNIQUE AROMA OF MARIJUANA EMANATING FROM

THE INTERIOR OF THE VEHICLE. WHILE SPEAKING WITH THE PASSENGER I OBSERVED AN OBJECT THAT MAY HAVE BEEN A FIREARM BETWEEN THE SEAT AND THE CENTER CONSOLE. FOR OFFICER SAFETY I DREW MY WEAPON AND ASKED THE PASSENGER TO EXIT THE VEHICLE. ONCE OUT OF THE VEHICLE THE PASSENGER PUSHED PAST ME, MAKING CONTACT AND ATTEMPTED TO FLEE.

AT THAT POINT I IMMEDIATELY GRABBED THE SUBJECT BY HIS ARM TO DETAIN HIM. THE SUBJECT IMMEDIATELY BEGAN STRIKING ME WITH HIS OTHER HAND, DURING THE PHYSICAL CONFRONTATION THE SUBJECT HIT AND GRABBED AT MY FIREARM. DURING THE STRUGGLE MY WEAPON DISCHARGED CAUSING A GUNSHOT WOUND TO THE SUBJECT'S LEG.

IT SHALL BE NOTED DUE TO THE STRUGGLE WITH THE SUBJECT I RECEIVED SCRAPES AND BRUISES TO BOTH HANDS AND MY LEFT KNEE.

IT SHALL BE NOTED THAT MY BWC WAS ACTIVATED DURING THE COURSE OF THE INCIDENT. THE MVU WAS NOT ACTIVATED. CEW ACTIVATION DID NOT OCCUR.

SGT. SUMMER TURNER UNIT 720A OF THE 7<sup>TH</sup> DISTRICT WAS NOTIFIED AND QUICKLY ARRIVED ON SCENE.

THERE WERE NO CIVILIAN WITNESSES TO MY KNOWLEDGE.

(Ex. NOPD-9).

Officer Shannon was assisted by counsel when providing this statement, and NOPD supplied Officer Shannon's body-worn footage to Officer Shannon to aid him in drafting the statement. (Tr., Vol. I, at 23). Officer Shannon and his counsel spent approximately two hours on the force statement. (Tr., Vol. I, at 27). NOPD also supplied a Force Statement Quick Reference Guide to Officer Shannon. (Tr., Vol. I, at 24; Ex. NOPD-8). Officer Caldwell's body-worn camera footage and the surveillance video from the convenience store reveal that Officer Shannon's statements were inaccurate. (Tr., Vol. I, at 31-32). NOPD did not provide these two videos to Officer Shannon for his review prior to his completion of the force statement. (Tr., Vol. I, at 190).

NOPD Policy Rule 6 provides that “An employee shall not knowingly make, or cause or allow to be made, a false or inaccurate oral or written record or report of an official nature, or intentionally withhold material matter from such report or statement.” (Ex. NOPD-7, ¶ 2).

NOPD disciplined Officer Shannon for a number of NOPD Policy violations, including dismissal for violation of Rule 6. (Ex. HE-1). The NOPD investigator determined Officer Shannon intentionally filed a false report. (Tr., Vol. 1, at 219). The remaining discipline at issue is as follows:

- (1) Drawing weapon on a traffic stop without an articulable reason (Ex. NOPD-5, Rule 4, ¶ 4(c)(6); Ex. NOPD-13, NOPD Operations Manual Chapter 1.3, Use of Force, ¶ 11) – 1-day suspension
- (2) Jeopardizing safety through poor tactical decisions (Ex. NOPD-5, Rule 4, ¶ 2; Ex. NOPD-13, NOPD Operations Manual, Chapter 1.3, Use of Force, ¶ 2) – 5-day suspension
- (3) Unauthorized strike to head with weapon (Ex. NOPD-6, Rule 2, ¶ 4, Unauthorized Force) – Dismissal
- (4) Unauthorized gunshot to the leg (Ex. NOPD-6, Rule 2, ¶ 4, Unauthorized Force) – Dismissal
- (5) Use of unauthorized Smith & Wesson 300 hinged handcuffs (Ex. NOPD-5, Rule 4, ¶ 4(c)(6); Ex. NOPD-10, NOPD Operations Manual, Chapter 1.3, Handcuff Policy, ¶ 14) – 1-day suspension
- (6) Cutting suspect’s shirt to access seizure (Rule 4, ¶ 6(c)(6); Ex. NOPD-12, NOPD Operations Manual, Chapter 1.2.4, Search and Seizure Policy, ¶ 12) – 1-day suspension

(7) False or Inaccurate Force Statement (Ex. NOPD-7, Rule 6, Official Information, ¶ 2) –  
Dismissal

(NOPD Post-Hearing Brief at 2-3; Ex. HE-1; Tr., Vol. I, at 6 (charges uncontested by Appellant); Tr., Vol. I at 176-77 (charges withdrawn by NOPD)). NOPD aggravated the two unauthorized force charges under the NOPD disciplinary matrix from an 80-day suspension each to dismissal for each charge. (Tr., Vol. I, at 178).

Anthony Cowart testified from the Caldwell Correctional Facility. (Tr., Vol. I, at 85). Cowart pled guilty to the charges of felon in possession of a firearm and possession of cocaine. (Tr., Vol. I, at 85). When Officer Shannon shot Cowart, Cowart was on parole. (Tr., Vol. I, at 89). Three months later, Cowart was arrested on charges unrelated to the events of March 10, 2021. (Tr., Vol. I, at 85).

## II. ANALYSIS

### A. Legal Standard for Commission’s Review of Discipline

#### 1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient



operation” of the public service.” *Id.* “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).

**2. The Appointing Authority must show the discipline was commensurate with the infraction**

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 the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep’t*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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 Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep’t of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

**a. Factors considered by Commission**

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep’t of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep’t of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749

**B. NOPD has met its burden of showing cause for the dismissal of Officer Shannon**

Among other discipline, NOPD imposed the penalty of dismissal for Officer Shannon’s inaccurate force statement. The undersigned Commissioners do not find Officer Shannon’s explanation for the inaccuracies in his force statement to be credible. Officer Shannon testified that he did not remember the “exact moment” he unholstered his weapon, (Tr., Vol. II, at 95), and that he reported a “physical altercation” in lieu of a strike to Cowart’s head with his gun. (Tr. Vol. II, at 109). Officer Shannon knowingly provided a false statement about when he unholstered his gun and intentionally withheld information about striking Cowart with his gun. Therefore, NOPD has met its burden of showing that Officer Shannon violated Rule 6.<sup>1</sup> False or inaccurate reporting impairs the efficient operations of NOPD because it affects the officers’ credibility in the community and in court, if the officer’s testimony is necessary in any case. (Tr., Vol. I, at 321).

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<sup>1</sup> The undersigned Commissioners note that if Officer Shannon would have been provided access to all available video, then it is possible that neither the NOPD nor the Commission would have been in the position of determining whether Officer Shannon’s inaccurate force statement was intentional or negligent. However, that is pure speculation at this point.

**C. The penalty is commensurate with the violation.**

NOPD must be able to rely on the truthfulness of its officers, especially in the context of unauthorized force and the officer's belief that the suspect has a weapon. The Commission finds that dismissal is commensurate with the offense of a violation of Rule 6.

**D. Remaining discipline**

- (1) Drawing weapon on a traffic stop without an articulable reason – 1 day suspension**
- (2) Jeopardizing safety through poor tactical decisions – 5 day suspension**

Officer Shannon violated NOPD policy when he unholstered his weapon and placed it behind his back, and this poor tactical decision jeopardized Cowart's and Officer Shannon's safety. Therefore, NOPD has carried its burden of showing the complained-of conduct occurred as to numbers 1 and 2, listed above. These violations impaired the efficient operation of the NOPD, as these violations paired with Cowart's conduct led to the strike to the head of Cowart and the gunshot wound to Cowart. NOPD applied the presumptive penalty for these policy violations, and these penalties are commensurate with the violations.

Officer Shannon's appeal of the discipline listed as numbers 1 and 2 above is denied.

- (3) Unauthorized strike to head with weapon – Dismissal**
- (4) Unauthorized gunshot to the leg – Dismissal**

Although Officer Shannon should not have unholstered his gun and placed it behind his back, his strike to Cowart's head and the gunshot were caused by Cowart's decision to attempt to flee. The video evidence supports Officer Shannon's testimony that he did not have sufficient time to holster his gun before Cowart attempted to flee. Sergeant Duplantier, who is assigned to the NOPD training division, agreed that if a suspect is attempting to disarm an officer, the "number

one commandment” is for the officer never to give up his weapon. (Tr., Vol. I, at 34). Therefore, Officer Shannon’s strike to Cowart’s head was a reasonable response to Cowart’s resistance and attempts to disarm Officer Shannon. Further, Officer Shannon testified the gunshot to Cowart’s leg was accidental and was caused by Cowart’s resistance. Therefore, NOPD has failed to carry its burden of showing that Officer Shannon engaged in unauthorized use of force. Officer Shannon’s appeal is granted as to numbers 3 and 4, listed above.

Even if Officer Shannon engaged in the unauthorized use of force, the NOPD improperly aggravated the penalty. As the hearing officer noted, the aggravating factors were not supported. In particular, the shooting was widely agreed to be accidental (Tr., Vol. I, at 72), and was caused by a bad tactical decision punished separately. Moreover, notoriety was listed as an aggravating factor and was based on the potential for the media to portray the shooting as intentional, and an egregious use of force violation similar to what was done in the “old days.” Hitting the suspect in the head with his pistol was likewise the result of the bad tactical decision of having drawn his gun or not holstering it prior to removing the suspect from the car.

The NOPD failed to follow its own disciplinary matrix/penalty schedule, which states “The following non-inclusive factors, if applicable, **should be considered** when considering discipline, as mitigating or aggravating circumstances:” (Ex. NOPD-17 at 4) (emphasis added). Both aggravating and mitigating factors should be considered. Among those factors not considered were:

- *The employee’s past disciplinary and work record, including whether he or she has any commendations.* Chief Thomas testified that he did not know anything about Officer Shannon and it would not have mattered for purposes of the appropriate penalty whether Shannon had any commendations (Tr., Vol. I, at 332-33).
- *The employee’s longevity with the Department and what he or she has contributed to the department throughout employment.* (Chief Thomas did testify that he considered Officer Shannon’s 13 years of service. (Tr., Vol. I, at 329)).

- *The clarity with which the employee was on notice of any regulations that were violated in the commission of the offense, including whether he or she was warned about the conduct in question.*
- *Whether the violation was intentional, inadvertent or committed maliciously or for personal gain*
- *Whether the violation was repeated, and how often*
- *Whether the violation is technical and an administrative or criminal violation.*
- *Whether the employee has accepted responsibility for his or her actions, from the outset of being informed of the allegation(s); and*
- *Whether the violation resulted in a criminal conviction or arrest.*

(See Ex. NOPD-17 at 4). Shannon was described as a “good man” by Sergeant Duplantier. (Tr., Vol. I, at 51). Officer Shannon is an Army veteran with several service medals, who was honorably discharged (Tr., Vol. II, at 11-12) and served in the NOPD for 13 years, where he received several commendations. (Tr., Vol. I, at 78). The NOPD failed to consider these mitigating factors.

**(5) Use of unauthorized Smith & Wesson 300 hinged handcuffs – 1-day suspension**

The NOPD has carried its burden of showing that Officer Shannon used hinged handcuffs in violation of NOPD policy. This conduct impairs the efficient operation of the NOPD, as the handcuffs have the potential to cause injury to suspects. The NOPD applied the presumptive penalty for this violation under its disciplinary matrix, and the Commission finds that the penalty is commensurate with the violation. Officer Shannon’s appeal of the discipline listed as number 5 above is denied.

**(6) Cutting suspect’s shirt to access seizure – 1-day suspension**

NOPD has not carried its burden of showing that the complained-of conduct occurred. The suspect placed narcotics in a hidden pocket in his sweatshirt. Therefore, the damage to the sweatshirt is the fault of Cowart, not Officer Shannon. Officer Shannon’s appeal of the discipline listed as number 6 above is granted.

Officer Shannon’s appeal is DENIED in part and GRANTED in part. Specifically, the appeal of the discipline listed as 1,2,5, and 7 is denied, and the appeal of the discipline listed as 3,4, and 6 is granted. Because the Commission denied the appeal of Officer Shannon’s termination of employment, no relief is appropriate.

This the 27<sup>th</sup> day of October, 2022.

WRITER:

Mark C. Surprenant  
Mark C. Surprenant (Oct 14, 2022 15:05 EDT)  
MARK SURPRENANT, COMMISSIONER

CONCUR:

BR  
Brittney Richardson (Oct 26, 2022 16:17 CDT)  
BRITTNEY RICHARDSON, CHAIRPERSON

JH Korn  
J H Korn (Oct 14, 2022 13:31 CDT)  
JOHN KORN, VICE-CHAIRPERSON