

RYDELL DIGGS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7498 & 7823

The Department of Police ("Appointing Authority") employed Rydell Diggs ("Appellant") as a Police Officer III with permanent status. By letter dated February 3, 2011, the Appointing Authority terminated the Appellant's employment for violation of internal rules regarding Adherence to Law, Truthfulness, and Professionalism. Specifically, the Appointing Authority determined that the Appellant violated the following criminal statutes:

1. La. R.S. 14:34 relative to aggravated battery on Mr. Froilan Corrias by striking him with a metal baton;
2. La. R.S. 14:35 relative to simple battery on Mr. Froilan Corrias by striking him with a fist;
3. La. R.S. 14:35 relative to simple battery on Ms. Victoria Ruiz by pepper spray; and
4. La. R.S. 14:67 relative to theft of U.S. currency, the property of Mr. Froilan Corrias, in the amount of \$500.00, the property of Mr. Froilan Corrias.

The Appointing Authority determined that the Appellant was untruthful when he denied violating the above-listed criminal statutes during the Appointing Authority's internal investigation. Also, the Appointing Authority found the Appellant's criminal violations unprofessional.

Additionally, the Appointing Authority suspended the Appellant for thirty days for violation of internal rules regarding False and Inaccurate Reports. The Appointing Authority's investigation determined that the Appellant submitted a false and inaccurate report when he failed to accurately document his interactions with Mr. Corrias in his Daily Activity Report.

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

R. Diggs
#7498/7823

hearing was held on May 4, 2011 and October 13, 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.

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 of proof 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.*

R. Diggs
#7498/7823

APPOINTING AUTHORITY'S VERSION OF EVENTS

The Appointing Authority contends that in the early morning hours of August 2, 2007, the Appellant conducted a valid traffic stop involving Froilan Corrias. The Appellant ordered Mr. Corrias out of his pick-up truck, asked for his driver's license and took his wallet, handcuffed him, and placed him in the back seat of his police vehicle while he ran his name for outstanding arrests. The Appellant observed a significant amount of cash in Mr. Corrias' wallet, \$1,400.00, and queried him as to why he was carrying so much money. Mr. Corrias informed the Appellant that he had recently received payment for construction work he performed and intended to use the money to pay bills. After running his name and confirming that he had no outstanding arrests, the Appellant returned his wallet and released Mr. Corrias.

Shortly thereafter, Mr. Corrias counted the money in his wallet and realized that \$500.00 was missing. Mr. Corrias lived nearby. He awakened his common law wife/girlfriend Victoria Ruiz and together they returned to the scene to find the Appellant and confront him regarding the missing money.

Mr. Corrias and Ms. Ruiz found the Appellant a few blocks away from the scene of the traffic stop. He was sitting in his car in front of his girlfriend Denise Green's residence eating a sandwich she prepared for him. Mr. Corrias pulled up next to the Appellant and demanded his money, calling the Appellant a thief. The Appellant reacted by exiting his vehicle, taking out his metal baton, and poking Mr. Corrias. He then punched Mr. Corrias in the face. Attempting to flee, Mr. Corrias climbed over Ms. Ruiz and exited the vehicle through the passenger door. As Mr. Corrias was fleeing the vehicle, the Appellant used his pepper spray, hitting Ms. Ruiz and

R. Diggs
#7498/7823

irritating her eyes. The Appellant continued attacking Mr. Corrias after he exited his vehicle, striking him on the arms and knee cap with his metal baton.

The Appellant then called his supervisor, Sgt. Russell Philibert, who arrived at the scene within a few minutes. Mr. Corrias informed Sgt. Philibert that the Appellant had stolen \$500.00 from him. Neither Mr. Corrias nor Ms. Ruiz informed Sgt. Philibert of the attack or of any injuries resulting from the attack. Sgt. Philibert and Mr. Corrias inspected the backseat of the Appellant's police vehicle, where Sgt. Philibert found \$500.00 in crumbled bills. He asked Mr. Corrias if this was his money. Mr. Corrias said it was his money and Sgt. Philibert returned it to him. Mr. Corrias and Ms. Ruiz left and Sgt. Philibert assumed that the matter was resolved and all necessary action taken.

After leaving the scene, Mr. Corrias and Ms. Ruiz went to Ochsner Medical Center emergency room where Mr. Corrias received treatment for the injuries he sustained. Mr. Corrias was diagnosed with a patellar fracture and provided crutches, a knee immobilizer, and pain medication.

On August 6, 2007, Mr. Corrias and Ms. Ruiz reported the incident to the Public Integrity Bureau. Sgt. Omar Diaz interviewed the complainants and observed Mr. Corrias walking with crutches and wearing a knee brace. He also observed a bruise over Mr. Corrias eye where Mr. Corrias alleged the Appellant struck him with his fist through the open car window.

After receiving Mr. Corrias' and Ms. Ruiz's complaint, Sgt. Diaz initiated a criminal investigation. The Appellant was arrested and placed on emergency suspension.¹ After an extended period, the matter went to trial and the Appellant was acquitted of all criminal charges.

¹ The Appellant filed a timely appeal of the emergency suspension, which was assigned Docket No. 7498.

R. Diggs
#7498/7823

After the Appellant's acquittal, Sgt. Diaz investigated the complaint administratively. He obtained Mr. Corrias' medical records, which were introduced as evidence of Mr. Corrias injuries. He also interviewed Denise Green who told Sgt. Diaz that she observed the Appellant "sucker punch" Mr. Corrias through the car window. Finally, Sgt. Diaz interviewed the Appellant, who denied that he engaged in any of the criminal activities of which he was accused.

Sgt. Diaz testified that he credited Mr. Corrias' and Ms. Ruiz's version of events based on corroboration from Ms. Green (the Appellant's former girl friend), who observed the events and informed Sgt. Diaz that she saw the Appellant strike Mr. Corrias without provocation; Mr. Corrias' injuries, which were observed in close proximity in time to the event; and the medical records obtained from Ochsner Medical Center.

Neither Mr. Corrias nor Ms. Green testified at the hearing. Ms. Ruiz testified with the assistance of a translator, as she speaks Spanish only. Ms. Ruiz recalled that her husband woke her up and told her that a police officer stole his money. They looked for and found the Appellant sitting in his car. Mr. Corrias confronted the Appellant, who began hitting him through the truck window with his metal baton. Mr. Corrias climbed over her and they both ran away to find someone who spoke English who could help them. Before she exited the vehicle, the Appellant sprayed something that caused irritation to her eyes. Once they observed other police cars on the scene, they returned, and spoke to Sgt. Philibert. After Mr. Corrias' money was found and returned to him, they left. They then went to the hospital and thereafter to the Public Integrity Bureau to file a report.

R. Diggs
#7498/7823

APPELLANT'S VERSION OF EVENTS

On August 2, 2007, the Appellant was on patrol in a one man unit working the overnight shift. He was tasked with proactive investigation of suspected illegal drug activity in high crime areas. He observed an individual sitting in his truck having a conversation with another individual standing on the street. Once the driver noticed him, he quickly drove off without turning on his headlights. The Appellant elected to stop the driver for driving without his headlights and for suspected drug activity. The Appellant ordered the driver to exit the vehicle, handcuffed him, and placed him in the back seat of his police unit while he searched the vehicle and ran his name for outstanding warrants. He asked the driver for his name and address. He did not ask for his driver's license or take his wallet. The driver identified himself as Froilan Corrias and gave the Appellant his address. The Appellant used the information provided by Mr. Corrias to run his name through the system to determine whether he had any outstanding warrants. The Appellant found no drugs in the truck and no outstanding warrants. Consequently, the Appellant chose not to issue the Appellant a ticket and instead give him a warning for driving without his headlights.

The Appellant left the scene and parked in front of his ex-girlfriend Denise Green's home to eat a sandwich. Within a few minutes, Mr. Corrias drove alongside him with a female passenger. Mr. Corrias accused him of stealing his money. The Appellant denied the accusation and immediately called his supervisor Sgt. Philibert. Sgt. Philibert arrived within a few minutes. The Appellant distanced himself from Sgt. Philibert's investigation of the complaint by Mr. Corrias and Ms. Ruiz.

R. Diggs
#7498/7823

According to the Appellant, Sgt. Philibert informed him that he found \$500.00 in the backseat of the police vehicle and gave the money to Mr. Corrias after Mr. Corrias confirmed it was his. Sgt. Philibert made no mention to the Appellant of any other complaints and he assumed the matter was resolved. He was later arrested, placed on emergency suspension, and tried for the criminal violations for which he was acquitted. During the administrative investigation, the Appellant gave a statement denying all of the allegations made by Mr. Corrias and Ms. Ruiz.

SGT. PHILIBERT'S TESTIMONY

Sgt. Philibert testified at the hearing and stated that he responded immediately when he received the Appellant's request for assistance. He spoke to Mr. Corrias and Ms. Ruiz. Mr. Corrias' only complaint was that the Appellant stole \$500.00 from his wallet. Sgt. Philibert stated that neither Mr. Corrias nor Ms. Ruiz exhibited any apparent signs of physical injury. He further testified that neither of them told him that the Appellant had battered them with fists, struck them with metal batons, or used pepper spray on them. Sgt. Philibert also testified that he looked into Mr. Corrias' truck and did not detect the odor of pepper spray. Sgt. Philibert stated that if pepper spray was recently dispersed he would have smelled it. Sgt. Philibert and Mr. Corrias searched the back of the Appellant's police vehicle where they observed a crumpled ball of money. Mr. Corrias confirmed it was his money. Sgt. Philibert gave him the money and Mr. Corrias and Ms. Ruiz left. Sgt. Philibert considered the matter resolved and concluded.

ADMISSIBILITY OF HEARSAY TESTIMONY

The Appellant objected to Sgt. Diaz' testimony regarding what he was told by Mr. Corrias and Ms. Green, arguing that any information obtained from Mr. Corrias and Ms. Green

R. Diggs
#7498/7823

was unreliable and inadmissible as hearsay. In *Taylor v. New Orleans Police Dept.*, 804 So.2d 769 (La. App. 4th Cir. Dec. 12, 2001), the Court found that the Commission erred in disallowing the hearsay testimony of an investigating officer when a third party witness failed to testify, stating that the usual rules of evidence need not apply in administrative hearings. According to the Court, hearsay may be admitted, but the findings of the Commission must be based upon competent evidence. *Id.* at 773.

Therefore, the question becomes whether the hearsay evidence was “competent evidence”. In *Taylor*, the investigating police officer testified regarding a third party witness’s observations of the physical condition of the victim of a domestic violence complaint. The investigating officer testified that the third party witness, who called the police to report the domestic disturbance, observed the female arguing with her boyfriend and also observed bruises and scratches on the female’s face and neck at the time he called the police. According to the Court, the investigating officer had the opportunity to evaluate the witness’ credibility and his truthfulness during the interview, concluding that “Sergeant Thomas’ testimony was based on his investigative interview with an eyewitness to the domestic disturbance; as such, his testimony qualified as competent evidence because it had a degree of reliability and trustworthiness and was of the type that a reasonable person would rely upon.” *Id.* at 774.

Based upon the foregoing, we find that Sgt. Diaz’ hearsay testimony regarding his investigative interviews of Mr. Corrias and Ms. Green, while hearsay, qualified as competent evidence and was admissible.

CONCLUSIONS

The Appointing Authority has the burden of proving its case by a preponderance of the evidence. *Schexnayder v. Dept. of Police*, 474 So.2d 461 (La. App. 4th Cir. August 6, 1985). In the instant case, the Appointing Authority provided reliable hearsay evidence from the primary victim, Mr. Corrias that the Appellant stole his money and beat him when he demanded it back. The Appointing Authority also provided reliable hearsay evidence from Ms. Green, who corroborated Mr. Corrias' testimony that the Appellant punched him in the face. Additionally, Ms. Ruiz testified that the Appellant acted violently towards them when Mr. Corrias called the Appellant a thief and demanded the return of his money. Finally, Sgt. Diaz observed Mr. Corrias' injuries, and through his testimony, the Appointing Authority introduced medical records proximate in time to the incident and consistent with Mr. Corrias' version of events.

Conversely, the Appellant testified that he made a routine traffic stop and that Mr. Corrias' and Ms. Ruiz's versions of events were concocted. Sgt. Philibert testified that he did not hear any complaints other than the allegation of theft and that he observed no injuries to Mr. Corrias or Ms. Ruiz. He also testified that he did not smell pepper spray.

Sgt. Diaz conducted a thorough investigation using reliable evidence to support his conclusions. While Sgt. Philibert's testimony was credible, it does not diminish the reliability of the victims' testimony nor is it inconsistent with the other supporting evidence to such a degree that the Appointing Authority's burden of proof has not been met. It is undisputed that Mr. Corrias returned to the scene and demanded the return of his money. Three witnesses, including the victim, provided consistent evidence that the Appellant attacked Mr. Corrias'. Once Mr. Corrias recovered his money, he left the scene, sought medical assistance, and later made a timely complaint through the Public Integrity Bureau.

R. Diggs
#7498/7823

The evidence supports the conclusion that the Appellant took Mr. Corrias' money and then assaulted Mr. Corrias' when he returned and accused him of theft. It further supports the conclusion that the Appellant placed the money in the back seat of his police unit so that his supervisor would find it there. The preponderance of the evidence supports this conclusion over Appellant's contention that the money fell out of Mr. Corrias' pocket, who thereafter went to the hospital emergency room to obtain and file a false medical report in order to accuse the Appellant of misconduct and criminal behavior.

Considering the foregoing, we conclude that the Appointing Authority has provided sufficient reliable evidence to meet its burden of proof as to all sustained charges, and consequently, the Appellant's appeal is DENIED.

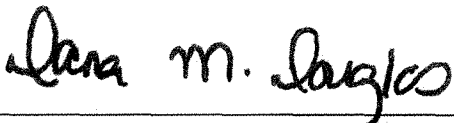
RENDERED AT NEW ORLEANS, LOUISIANA THIS 10TH DAY OF MAY, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



DANA M. DOUGLAS, VICE-CHAIRMAN



AMY Y. GLOVINSKY, COMMISSIONER