



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Wednesday, March 24, 2021

Mr. Eric Hessler
PANO 2802 Tulane Avenue #102
New Orleans, LA 70119

Re: **Jonathan Fowlkes VS.
Department of Police
Docket Number: 9057**

Dear Mr. Hessler:

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 - 3/24/2021 - 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 shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

Stacie Joseph

Stacie Joseph
Management Services Division

cc: Shaun Ferguson
Elizabeth S. Robins
Jay Ginsberg
Jonathan Fowlkes

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

JONATHAN FOWLKES,
Appellant

vs.

DOCKET NO. 9057

NEW ORLEANS POLICE DEPARTMENT,
Appointing Authority

I. INTRODUCTION

Appellant, Jonathan Fowlkes (hereinafter “Appellant”), brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1, asking this Commission to find that the New Orleans Police Department (hereinafter "Appointing Authority" or NOPD) did not have sufficient cause to issue a two-day suspension on July 24, 2019. At all times relevant to the instant appeal, Appellant served as a police officer and has permanent status as a classified employee.

A Hearing Examiner, appointed by the Commission, presided over a hearing during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner prepared a report and recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing, as well as the Hearing Examiner’s report. Based upon our review, we GRANT the appeal and render the following judgment.

II. FACTUAL BACKGROUND

Officers Jonathan Fowlkes and Anthony Schultz were on bike patrol on October 7, 2018, at approximately 6:30 PM in the French Quarter. (Tr. at 6-8). From about one city block from a parked vehicle on at the 800 block of Canal Street, Officer Fowlkes observed a woman in a Weed World vehicle give an item to another person. (Tr. at 9). Weed World gives out samples of candy and food products and accepts donations. (Tr. at 16, 18). The information provided previously to Fowlkes was that the people in the Weed World vehicles were conducting narcotics transactions. (Tr. at 20).

Officer Fowlkes learned that Malorie James, who was in the passenger seat of the Weed World vehicle, had an outstanding arrest warrant in Jefferson Parish, so Officer Fowlkes arrested her and also charged her with failure to pay sales tax and failure to have an occupational license. (Tr. at 26, 37). Although normally Officer Fowlkes would have issued a summons to Ms. James, because of the outstanding warrant, Officer Fowlkes arrested her and completed a probable cause affidavit. (Tr. at 26).

Ms. James complained to NOPD, and the Public Integrity Bureau conducted an investigation into whether Officer Fowlkes had probable cause to arrest Ms. James. (Tr. at 6). Sergeant Nigel Daggs conducted the investigation, including interviewing Ms. James, Officer Fowlkes, and reviewing the body worn camera of four officers. (Tr. at 9). Sgt. Daggs saw no evidence of a transaction or an exchange of money from the body worn camera footage. (Tr. at 12, 14). Officer Fowlkes informed Sgt. Daggs that Officer Fowlkes saw no money and that he did not know what goods were transacted. (Tr. at 31-32). Based on these facts, Sgt. Daggs concluded that no probable cause existed for the arrest of Ms. James. (Tr. at 21-22).

Ms. James testified that she was sitting in a passenger seat with a coworker in a parked vehicle, and she did not make a sale. (Tr. at 39). Despite this testimony, Ms. James paid a fine to the City. (Tr. at 42).

Commander Octavio Baldassaro testified that he agreed with Sgt. Daggs's conclusion about the lack of probable cause because of the lack of a transaction. (Tr. at 44). Commander Baldassaro testified that arrests lacking probable cause harm the efficient operation of the police department because such arrests expose the city to liability. (Tr. at 47). However, based on Ms. James' payment of the fine, Commander Baldassaro testified at the hearing he now believes Officer Fowlkes had probable cause to arrest Ms. James. (Tr. at 54).

III. LEGAL STANDARD

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. Const. Art. X, § 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 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, from 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 that the complained of activity occurred 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.*

IV. ANALYSIS

The Appointing Authority has failed to meet its burden of proof that the complained-of conduct occurred. Officer Fowlkes informed Sgt. Daggs that the transaction occurred before Officer Fowlkes turned on his body-worn camera. (Tr. at 10). So, the transaction does not appear on the body-worn camera. Ultimately, Ms. James paid a fine for a failure to pay sales tax and/or possess an occupational license, thereby admitting that a sales transaction occurred. (Tr. at 37). Her complaint about the arrest based on the outstanding warrant in Jefferson Parish is of no moment, as the arrest on the outstanding warrant was appropriate. (Tr. at 25-26). Officer Fowlkes also acted appropriately when he arrested Ms. James for the municipal violations after Officer Fowlkes became aware of the outstanding warrant in Jefferson Parish. (Tr. at 26). The Commission also finds it significant that Commander Baldassaro, who approved the discipline, now believes probable cause existed because of Ms. James' payment of the fine(s). (Tr. at 54). Although the Commission recognizes that probable cause must be established at the time of the arrest, the burden of proof in this proceeding is on the Appointing Authority to show that no probable cause existed. The Commission finds that NOPD has failed to show by a preponderance of the evidence that no probable cause existed.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the Appellant's appeal. The two-day suspension is rescinded and removed from Officer Fowlkes' record. NOPD shall reimburse Officer Fowlkes for all lost wages and emoluments of employment for the two-day suspension.

Judgment rendered this 24 day of March, 2021.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

J H Korn

J H Korn (Mar 24, 2021 14:53 CDT)

JOHN KORN, COMMISSIONER

CONCUR:

Brittney Richardson

Brittney Richardson (Mar 12, 2021 15:44 CST)


BRITTNEY RICHARDSON, CHAIRPERSON

DISSENT BY COMMISSIONER MOORE

I dissent from the majority opinion because probable cause is determined at the time of the arrest based on the facts and circumstances known to the officer: "Probable cause to arrest exists when the facts and circumstances within the officer's knowledge are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime." *State v. James*, 1999-0423 (La. App. 4 Cir. 2/16/00), 755 So. 2d 995, 1002, writ denied, 2000-0872 (La. 3/9/01), 786 So. 2d 112 (citing *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964) and *State*

v. Wilson, 467 So.2d 503 (La.1985)). According to Sgt. Dagg, the reviewing officer, the appellant was at least one city block away from the location of the Appellant's first contact with Ms. James. (Tr. at 10). The reviewing officer also stated that there was significant pedestrian traffic in the area (Canal at Bourbon) at the time. (Tr. at 10). Additionally, sunset on October 8, 2018 was at about 6:37 PM. These combined factors would make it challenging at best for an officer, while riding a bicycle, to observe a hand-to-hand transaction. Further, Officer Fowlkes admitted to Sgt. Dagg that he did not know what goods were transacted, and Officer Fowlkes admitted he saw no money. (Tr. at 31-32). These facts and circumstances are insufficient to justify a reasonable person's belief that Ms. James committed a crime. Therefore, no probable cause existed to arrest Ms. James for failure to pay sales taxes or failure to possess an occupational license. (Tr. at 37). The Appointing Authority carried its burden of proof to show the conduct occurred and that the conduct impaired the efficient operation of the police department by exposing it to liability. Based on Officer Fowlkes' earlier reprimand and the disciplinary matrix, I would find that the penalty was commensurate with the offense.

I would deny the appeal.


CJ Moore (Mar 15, 2021 13:51 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON