

ANTHONY MITCHELL

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7763

The Department of Police ("Appointing Authority") employed Anthony Mitchell ("Appellant") as a Police Sergeant with permanent status. He was first hired by the Appointing Authority on May 6, 2001, promoted to Police Sergeant on October 1, 2007, and demoted to Police Officer II effective July 12, 2010. The demotion resulted from the Appointing Authority's determination that the Appellant violated internal rules regarding Unauthorized Force. The Appointing Authority also determined that the Appellant violated internal rules regarding Courtesy for which he received a one day suspension, and Neglect of Duty for which he received a five day suspension. The basis for the disciplinary action is provided in the second and third paragraphs of the first page of the disciplinary letter which provides:

The investigation determined that on Wednesday, September 2, 2009, at about 1:30 p.m., you conducted a traffic stop of a vehicle in the 3700 block of Louisa Street. This incident was video recorded via the dashboard camera system installed in the police unit assigned to you that day. The captured events show that you approached the vehicle and yelled to the driver of the vehicle, "get on the ground before I knock your ass down." The driver then exited the vehicle and laid down on the ground.

You approached the driver and prior to handcuffing him you removed his hat from his head and struck him one time on the head with the hat. Also, after the driver was handcuffed and while in custody, you removed property out of his vehicle and threw the property to the ground...

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 hearing was held on March 3, 2011. The testimony presented at the hearing was

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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.

Background

All relevant facts were captured on the referenced videotape that was viewed during the hearing and made part of the record. A suspect had fired a weapon from a car striking several homes and parked vehicles. The Appellant and his subordinates responded to an emergency call for service in response to the criminal activity. While interviewing witnesses, a citizen informed the Appellant that a moving vehicle looked like the car that fired the shots. The Appellant immediately gave chase and stopped the moving vehicle.

The Appointing Authority acknowledged that the Appellant acted appropriately when he stopped and searched the vehicle. The Appellant had reasonable suspicion that the driver of the vehicle had committed a crime and was armed and dangerous.

As it turns out, the driver of the vehicle was not the perpetrator. The driver made a complaint that the Appellant had pistol whipped him and damaged his cell phone. A review of the videotape exonerated the Appellant of those charges. However, the Appointing Authority found other acts of misconduct which are reflected in the disciplinary letter.

Courtesy

The Appellant received a one day suspension for instructing the driver of the vehicle to "get on the ground before I knock your ass down". Sgt. Jenerio Sanders investigated the complaint. He testified that he sustained the violation because the Appellant used the word "ass" when addressing the suspect. Asst. Supt. Kirk Bouyelas

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testified that he was more concerned with the Appellant's threat of violence than his use of the word ass. Asst. Supt. Bouyelas stated that the Appellant's use of a threat is not part of his training and was unjustified in this particular circumstance. The Appellant testified that he was operating under the assumption that he was dealing with an armed and dangerous suspect. He stated that the suspect was slow to respond to his direction and that he intentionally spoke in an aggressive manner to get the Appellant's attention and insure compliance.

We cannot say that the Appointing Authority abused its discretion when finding the Appellant's statement discourteous. Further, we find the penalty commensurate with the violation. Accordingly, the Appellant's appeal of the one day suspension for violation of the internal rule for courtesy is **DENIED**.

Unauthorized Force

The Appointing Authority demoted the Appellant for striking the suspect on the top of the head with a baseball bat during his detainment. The Appointing Authority's rule provides that, "employees shall not use or direct unjustified physical abuse, violence or intimidation against any person." The videotape reflects the Appellant standing over the kneeling suspect. He removes the baseball bat from the suspect's head and, shakes it out but does not strike the suspect with the bat. Sgt. Sander's described the Appellant as slapping the Appellant on the top of his head with the bat. Asst. Supt. Bouyelas characterized the Appellant's conduct as a battery. Lt.'s Michael Brenckle and Kim Williams also reviewed the tape during the initial review and did not notice any use of unauthorized force.

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Our review reflects no use of unauthorized force. The Appellant hurriedly removed and, inspected the hat and threw it to the ground. We observed no striking of the suspect. Accordingly, the Appellant's appeal of his demotion for violation of the internal rule for unauthorized force is **GRANTED**. The Appointing Authority is ordered to retroactively return the Appellant to his rank of sergeant with all back pay and emoluments of employment.

Neglect of Duty

The Appointing Authority suspended the Appellant for five days for neglect of duty for failing to insure the property of the suspect during the traffic stop. The videotape reflects the Appellant searching the suspect's car after he is was detained. The Appellant testified that he tossed a few tee shirts and baseball hats out of the car while he was searching for weapons, bullet casing or drugs. There is no evidence that the items were lost or damaged as a result of the Appellant's lawful search of the vehicle.

We conclude that the Appointing Authority has failed to establish that the Appellant neglected his duty while searching the suspect's vehicle. The removal of the items was a direct consequence of a lawful search, and the manner of removal was inconsequential. Accordingly, the Appellant's appeal of his suspension for violation of the internal rule for neglect of duty is **GRANTED**. The Appointing Authority is ordered to return to the Appellant five days of back pay and emoluments of employment.

LEGAL PRECEPTS

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. LSA Const. Art. X, sect. 8(A); Walters v. Department of Police of New Orleans,

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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).

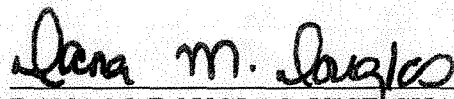
The civil service commission has a duty to decide independently, from the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. Walters, v. Department of Police of New 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 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 that the actions complained of bear a real and substantial relationship to

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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.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 13TH DAY OF APRIL,
2012.

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS


DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:


AMY L. GOVINSKY, COMMISSIONER


JOSEPH S. CLARK, COMMISSIONER