



CITY OF NEW ORLEANS

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Tuesday, April 23, 2019

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

Re: **Aristotle Stephens VS.
Department of Police
Docket Number: 8795**

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 - 4/23/2019 - 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
William R. H. Goforth
Brendan M. Greene
Aristotle Stephens

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

ARISTOTLE STEPHENS, Appellant, vs. DEPARTMENT OF POLICE, Appointing Authority.	DOCKET No.: 8795
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I. INTRODUCTION

Appellant, Aristotle Stephens, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1 and asks the Commission to find that the Police Department for the City of New Orleans (hereinafter “NOPD”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee. Appellant stipulated that NOPD’s investigation into his alleged misconduct conformed to the procedures established by Louisiana Revised Statute article 40:2531. (Tr. v. 1 at 10:17-13:10).

A referee, appointed by the Commission, presided over three days of hearing during which both Parties had an opportunity to call witnesses and present evidence. The referee 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 DENY the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The allegations against Appellant stem from his actions following a traffic stop on February 4, 2017. (H.E. Exh. 1). The vehicle that Appellant attempted to pull over (hereinafter referred to as “the white vehicle”) subsequently fled from Appellant and was involved in an accident. NOPD alleged that Appellant engaged in two separate policy violations on February 4th. First, NOPD alleged that Appellant engaged in an unauthorized pursuit of the white vehicle. The second policy violation occurred when Appellant witnessed the white vehicle strike another vehicle, but did not report the accident or render any assistance. In addition to these two alleged violations, NOPD asserted that, during NOPD’s investigation into that accident and underlying misconduct, Appellant purposely provided a dispatcher and investigators with false information. It was this last allegation that led to Appellant’s dismissal.¹

B. February 4, 2017

On February 4, 2017, Appellant was operating a patrol unit while working a general overtime assignment in NOPD’s Third District. (*See tr. v. 2 at 54:2-22*). While traveling eastbound on Chef Menteur Highway in the Gentilly neighborhood of New Orleans, Appellant observed the white vehicle traveling in the opposite direction. After observing the vehicle, Appellant noted a possible issue with the vehicle’s license plate or excessive window tint and decided to execute a traffic stop. (NOPD Exh. 7 at p. 13). Appellant made a U-turn and activated

¹ NOPD suspended Appellant for a total of six days in connection with his alleged violation of the vehicle pursuit policy and traffic response policy. (three days for each violation) Appellant, however, did not serve any of the suspension days. Therefore, the Commission will address only the discipline that NOPD actually imposed.

the emergency lights of his patrol vehicle and the white vehicle gradually come to a stop at the intersection of Press Drive and Chef Menteur Highway. (NOPD Exh. 4(a) at 17:19:51-17:20:26).²

Appellant stopped his patrol unit immediately behind the white vehicle, exited the patrol unit and approached the white vehicle's driver's-side door. As he approached, the white vehicle suddenly pulled off and turned down Press Drive towards the Lake. (NOPD Exh. 4(a) at 17:20:34; NOPD Exh. 5 at 23:20:22-23:20:33).³ Appellant immediately returned to his patrol unit and followed the white vehicle with the patrol unit's emergency lights still activated. (NOPD Exh. 4(a) at 17:20:42). When the white vehicle came back into Appellant's view, it almost immediately swerved up onto the adjacent the neutral ground but continued to flee. *Id.* at 17:20:58. While following the white vehicle, Appellant radioed his supervisor to inform him that he was behind the vehicle. He also gave his supervisor a description of the vehicle and its direction before deactivating his lights and pulling off onto a side street. *Id.* at 17:21:04-17:21:16. At the time, Appellant informed his supervisor that he was "not chasing" the white vehicle and was "veering off." (NOPD Exh. 4 at 23:21:04).

Although Appellant had told his supervisor that he was no longer "chasing" the white vehicle, once he pulled down a different street he reactivated his emergency lights and proceeded down the wrong lane of traffic in order to get back onto Chef Menteur Highway. (NOPD Exh. 3(b) at 17:23:17). Appellant then deactivated his emergency lights and proceeded eastbound on Chef towards the Danziger Bridge. *Id.* at 12:23:24. While he was proceeding down Chef, Appellant was speaking with an unidentified female on his cell phone and told her that "what they

² NOPD introduced video footage captured by the camera mounted on Appellant's patrol unit on February 4th. The video, which is in four separate segments, is in evidence as "NOPD Exhibits 4(a)-4(d)."

³ In addition to video footage captured by the vehicle-mounted camera, NOPD introduced video footage captured by Appellant's Body-Worn Camera (hereinafter "BWC"). The footage from Appellant's BWC is in evidence as "NOPD Exhibit 5."

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don't know is that I'm still behind that fool." (NOPD Exh. 3(b) at 17:23:36-39; NOPD Exh. 4 at 23:23:35-40). The female voice asked Appellant, "why are you still behind him?" To which Appellant replied, "because you don't run from Aristotle." (NOPD Exh. 4 at 23:23:40-46). Appellant then drove his patrol vehicle on the median strip separating the eastbound and westbound lanes of Chef and slowed his vehicle, almost coming to a complete stop. (NOPD Exh. 3(c) at 17:24:01).

A few moments after Appellant had paused on the median, the white vehicle turned onto Chef Highway from a side street and turned down the eastbound lanes of the Danziger Bridge. (NOPD Exh. 3(c) at 17:24:08). Appellant, apparently immediately recognizing the vehicle, blurted out "there he go, there he go" as he pulled off of the median and began to follow the white vehicle over the Danziger Bridge with his patrol unit's emergency lights activated (he also briefly activated his vehicle's siren). (NOPD Exh. 3(c) at 17:24:13-17:24:25; NOPD Exh. 4 at 23:23:57-59, 23:24:30).

There is a portion of the event that was not captured by the vehicle-mounted video, but Appellant's BWC footage shows Appellant proceeding eastbound on the Danziger Bridge and subsequently turning right towards I-10 West. (NOPD Exh. 4 at 23:24:40-25:48). It is not clear where the white vehicle is during this period of time, but the video from the vehicle-mounted camera resumed recording as Appellant and the white vehicle proceeded up the I-10 West onramp. (NOPD Exh. 3(d) at 17:25:51). When the white vehicle clears the barriers separating I-10 West traffic from the onramp, it suddenly veers left towards oncoming traffic. (NOPD Exh. 3(d) at 17:25:59). Following the white vehicle's sudden movement both the MVU and Appellant's BWC capture the sound of metal on metal. (NOPD Exh. 3(d) at 17:26:00-01; NOPD Exh. 4 at 23:25:56-26:02). The BWC also captures the sound of screeching tires.

In addition to the forward-facing camera mounted on Appellant's patrol unit – commonly known as the “dashboard cam” – there is also a camera focused upon the rear, driver's-side seat. When viewing video captured by the second camera, it is possible to see out of the rear, driver's side window. The driver's head is also visible. In the matter now before the Commission, video from the second camera shows the patrol unit passing two heavily damaged and smoking cars a moment after the sound of metal on metal. (NOPD Exh. 3(d)(camera 2) at 17:26:00-4). In the same video, Appellant's head can be seen turning towards the direction of the damaged vehicles. *Id.* And, very soon after the sounds of screeching tires and metal hitting metal, Appellant said “son of a bitch, shit.” (NOPD Exh. 4 at 23:25:56-26:02).

Appellant then proceeded to travel westbound on I-10 for a few moments before activating his radio to contact a dispatcher; he then asked the dispatcher if she had “got his last” to which the dispatcher replied that she had not and was waiting for Appellant to give her his location. Appellant then told her that he had “been turned off” and that his rank had come on and he had “10-22ed” the pursuit. (NOPD Exh. 4 at 23:26:09-36).⁴ As Appellant continued to drive around the Gentilly neighborhood, a call came over the radio indicating that there had been an accident on I-10 West involving a vehicle that matched the description of the white vehicle Appellant had attempted to pull over earlier. (Tr. v. 2 at 8:13-9:10). At the instant appeal hearing, Appellant claimed that he relocated to the scene of the accident in an attempt to locate the driver of one of the vehicle who had fled the scene, but was unsuccessful. *Id.* at 13:15-15:1.

Appellant testified that, soon after he had relocated to the scene of the accident, his supervisor informed him that members of NOPD's Public Integrity Bureau (hereinafter “PIB”)

⁴ When an officer uses the code “10-22” he/she represents that a vehicle chase has been canceled. (Tr. v. 1 at 80:6-8).

were coming to the Third District station to arrest him. Concerned, Appellant contacted his attorney and reviewed some of the video footage captured by his BWC. (Tr. v. 2 at 13:15-51:1). He was not able to review any of the video footage captured by his vehicle-mounted unit.

C. NOPD Investigation

Sergeant Trinell Franklin was at the scene of the accident between the white vehicle and other vehicles. According to witnesses at the scene, an NOPD vehicle was pursuing the white vehicle at the time of the accident. (Tr. v. 1 at 199:8-16). Sgt. Franklin also learned that Appellant may have been involved in the accident. *Id.* at 200:3-14. This prompted Sgt. Franklin to relocate to the Third District station in order to review video footage captured by Appellant's BWC and vehicle-mounted cameras. *Id.* at 203:25-204:3, 204:18-22. Based upon her initial investigation of the accident, Sgt. Franklin initiated an investigation into Appellant's actions on February 4th. *Id.* at 199:13-17.

As part of NOPD's investigation Appellant provided an "administrative statement" to two PIB personnel, Sergeant Kimberly Hunt and Lieutenant Darryl Watson. (NOPD Exh. 7). Appellant rendered his administrative statement on June 1, 2017 (almost four months after the incident that gave rise to the allegations against him). *Id.* Appellant stated that, after pulling over a vehicle in connection with a concern about either excessive tint or the vehicle's license plate, he exited his vehicle to complete the traffic stop. At that time, the vehicle sped off down Press Drive towards the Lake. (NOPD Exh. 7 at pp. 12-13). Appellant then claimed that he "jumped" back into his patrol unit to "get behind" the vehicle that had just sped off when his supervisor, Sergeant Richard Welch contacted him via the radio. *Id.* at p. 12. According to Appellant, he was "getting ready to chase" the vehicle but knew that he had to "be authorized to chase." *Id.* at 14. Eventually, Appellant told Sgt. Welch that he had pulled the vehicle over for a traffic violation and since "we

don't chase for traffic" he 10-22ed the call (indicating that he had canceled the pursuit). *Id.* at 15. Appellant insisted that he did not pursue the vehicle in question and instead pulled off of Press Drive. *Id.* at 15.

Appellant went on to claim that, after turning off of Press Drive, he "went to go about [his] business" and "wasn't going to follow [the white vehicle] anymore." *Id.* at 16. But, Appellant noted that he encountered the vehicle again at the foot of the Danziger Bridge when it "cut in front" of Appellant and there was no way Appellant could get to the side of the vehicle because there were vehicles hedging Appellant in due to rush hour traffic. *Id.* at 16-17, 26, 40-41. And, even though Appellant claimed that he was not following the vehicle, when the vehicle turned to get onto the interstate, Appellant did as well. *Id.* at 17. Appellant claimed that he "had no other choice but to get behind the vehicle because they were both headed to I-10. *Id.* at 49. Appellant did not recall whether or not he had his lights or siren activated while behind the vehicle he had pulled over earlier. *Id.* at 17. Later in his statement Appellant denied that he was looking for the vehicle that fled. *Id.* at 39.

Appellant flatly denied seeing the vehicle he had pulled over becoming involved in an accident while traveling on the interstate. *Id.* at 18. According to Appellant, the vehicle merged into the left lane while Appellant kept right and increased his speed in order to put some distance between himself and the vehicle. *Id.* at 18-19, 51. Appellant's stated purpose for increasing his speed was to demonstrate to the driver of the vehicle that he was not "worried" about the vehicle and was not following it. *Id.* at 19, 51. Then, because he was concerned what the driver of the vehicle would do, he exited the interstate at Louisa. *Id.* at 19, 51. It was not until a report came on the radio, that Appellant claimed to have learned that the vehicle he was behind had been involved in an accident. *Id.* at 20.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Misconduct

In order to establish that Appellant violated NOPD’s rule requiring officers be truthful, it must show that, in a spoken, written, or electronic communication, Appellant made a “materially false statement with the intent to deceive.” (H.E. Exh. 1). Based upon NOPD policy, a statement is “material” if “it could have affected the course or outcome of an investigation or an official

proceeding” regardless of whether the officer made the statement under oath. *Id.* The four mandates contained in NOPD’s policy regarding truthfulness are included below:

- (a) Employees shall truthfully state the facts in any oral, written, or electronic communication;
- (b) Employees shall not willfully or negligently make any false, misleading, or incorrect oral, written, or electronic communication;
- (c) Employees shall not willfully or negligently withhold relevant information of which they have knowledge, from any oral, written, or electronic communication;
- (d) Employees shall truthfully answer all questions directed to them on the order of the Superintendent of Police, the Superintendent’s designee, a superior officer, or any judicial, departmental, or other official investigative body.

(H.E. Exh. 1).

In the termination notice issued to Appellant, NOPD identified seven “untruthful, materially false, willful and negligent statements” that violated NOPD Policy. *Id.* The Commission will address each statement in turn.

- **Statement by Appellant to an NOPD dispatcher: “No, I been turned off Ma’am – I told you, my rank came on and I 10-22ed it.”**

Appellant made this statement, which was captured by the microphone on Appellant’s BWC, after asking the dispatcher if she had “got his last” almost immediately after the white vehicle had collided with another vehicle. The dispatcher replied that she had not and was waiting for Appellant to give her his location. In telling the dispatcher that he had been turned off and had “10-22ed” the pursuit, Appellant represented that he had not been engaged in a pursuit of the white vehicle. This was likely a knowingly false statement.

Prior to telling the dispatcher that he had canceled the pursuit, Appellant had followed the white vehicle for a short distance on Press Drive. But, when he pulled off of Press, he returned to Chef Menteur Highway. While he did so, he effectively admitted that he was still looking for the

white vehicle when he said – with not a small amount of swagger – that he was “still behind that fool” and that “you don’t run from Aristotle.” Appellant made no attempt to mitigate or explain these comments during his testimony.

When he again spotted the white vehicle, Appellant immediately got behind it and activated his emergency lights and siren. The white vehicle did not stop and instead proceeded onto the I-10 West onramp with Appellant close behind. When the white vehicle suddenly veered into traffic on I-10, Appellant must have realized that his pursuit likely contributed to the accident. It is also likely that Appellant knew that he could face discipline if NOPD discovered that he had been pursuing a vehicle for a mere traffic violation. Given Appellant’s actions and statements, it is likely that he knew that what he told the dispatcher was false.

The Commission finds that Appellant’s statement to the dispatcher, indicating that he had canceled the pursuit, was material to NOPD’s investigation into the traffic accident between the white vehicle and other cars on I-10. In any motor vehicle accident, law enforcement personnel must attempt to determine the proximate cause of the accident. By telling the dispatcher that he had not chased the white vehicle, Appellant was withholding a key piece of information related to the accident.

As a result of the above findings, the Commission finds that Appellant violated NOPD’s policy requiring truthfulness when he told an NOPD Dispatcher that he had cancelled his pursuit of the white vehicle.

- **Statement by Appellant to Sgt. Welch in which Appellant stated that a different officer was chasing the white vehicle at the time of the accident.**

There is no evidence in the record, other than hearsay statements contained in the investigator’s report, that addresses this allegation. Sgt. Welch did not testify and neither Appellant nor any NOPD witness provided any details as to this allegation. Bearing this in mind, the

Commission finds that NOPD has not established that Appellant made this statement to Sgt. Welch.

- **Statement by Appellant to Sgt. Hunt in which he denied chasing the white vehicle.**

The Commission's analysis of NOPD's allegation that Appellant knowingly lied to Sgt. Hunt about pursuing the white vehicle is very similar to its analysis of Appellant's false statement to the dispatcher. Video footage and audio recording captured on the day of the incident establish that Appellant was actively pursuing the white vehicle. When the white vehicle initially pulled away from Appellant during the failed traffic stop, Appellant was in pursuit on Press Drive, but then decided to pull off. Had he gone about his standard patrol duties, the Commission would have been inclined to accept his claim that he did in fact end his pursuit.

Instead, Appellant quickly relocated to Chef Menteur Highway, at one point activating his emergency lights so he could bypass some traffic. When he arrived at Chef, he pulled his patrol unit into the median area of the highway. Based upon Appellant's claim that he was "still behind that fool" it is more likely than not that Appellant was waiting in the median area for the white vehicle to proceed eastbound on Chef over the Danziger Bridge. Appellant's hunch paid off and as soon as the white vehicle appeared, Appellant resumed his pursuit with his emergency lights activated. At one point, Appellant even activated his siren.

The audio and video evidence establishes that Appellant was pursuing the white vehicle from the moment it pulled off of the traffic stop. Appellant's statement to Sgt. Hunt that he was not chasing the vehicle is demonstrably false. The false statement is also undoubtedly material since it was given to Sgt. Hunt in the course of Sgt. Hunt's investigation into whether or not Appellant violated NOPD's policy regarding vehicle pursuits.

Based upon the above findings, the Commission finds that Appellant's claim that he had not chased the white vehicle to be a false, material statement in violation of NOPD's policy requiring its officers be truthful.

- **Appellant's statement to Sgt. Hunt that he did not witness the accident involving the white vehicle that occurred on I-10 West.**

The Commission agrees with the hearing examiner that video footage and audio recordings captured by Officer Stephens's MVU and BWC contradict his claim that he did not witness the accident.

As soon as the white vehicle pulled off on Appellant to avoid the traffic stop, Appellant actively pursued it. First, Appellant followed the white vehicle on Press Drive, then he turned off and quickly relocated to Chef Menteur Highway in order to wait for the white vehicle. He evidently had a hunch that the white vehicle would attempt to get over the Danziger Bridge eastbound. His comments that he was "still behind that fool" because "you don't run from Aristotle" remove any serious doubt as to Appellant's motive for waiting at the foot of the bridge. When the white vehicle comes into view, Appellant immediately followed it. Clearly then, Appellant was focused on the white vehicle and was following closely behind.

As both vehicles proceeded up the I-10 West onramp, Appellant claimed that he observed the white vehicle "merge" left with traffic. To describe the white vehicle's movement as a "merge" is a work of utter fiction. Video footage clearly shows the white vehicle veer suddenly into oncoming traffic on I-10. The second vehicle-mounted camera captured the carnage caused by the white vehicle. Appellant's head turned toward the accident and said "son of a bitch, shit."

According to Appellant's administrative statement, he was very concerned that the white vehicle would perceive Appellant's presence as a pursuit and therefore attempted to get past the white vehicle to dispel this concern. Appellant asserted that he was so focused on getting in front

of the white vehicle that he increased his speed and the accident must have occurred when the white vehicle was behind him. If Appellant was concerned about being perceived as pursuing the white vehicle, he should have refrained from pursuing it. His denials and deliberate attempts at obfuscation regarding his positioning at the time of the collision were Vaudevillian.

Given that; 1) Appellant's focus was clearly on the white vehicle as he followed it up the onramp, 2) Appellant appeared to physically react to the accident by turning his head towards it, and 3) Appellant uttered curses in very close temporal proximity to the accident, it is much more likely than not that Appellant witnessed the accident.

Appellant's reaction to the accident combined with the fact that he did not immediately stop or report the accident, strongly suggests that Appellant believed that he could be in trouble for pursuing the white vehicle. Thus, Appellant had a motivation to mislead NOPD investigators who were charged with determining whether or not Appellant violated NOPD policy. Therefore, the Commission finds that Appellant knew that his statement to Sgt. Hunt was false and was trying to deceive her.

Finally, Appellant's false statement regarding witnessing the accident was material to NOPD's investigation into whether or not Appellant violated NOPD policy by failing to respond to or report the accident. Bearing the above in mind, the Commission finds that Appellant violated NOPD's rule requiring truthfulness when he knowingly made a false representation regarding witnessing the accident to Sgt. Hunt.

- **Appellant's statement to Sgt. Hunt that the white vehicle had cut in front of Appellant's patrol unit and that Appellant was unable to avoid getting behind the white vehicle due to rush hour traffic.**

In the above statement, Appellant portrayed his second encounter with the white vehicle as an unavoidable coincidence exacerbated by traffic on the Danziger Bridge. As with the other

statements we have reviewed above, video and audio evidence severely undercuts Appellant's claims. Video evidence clearly establishes that Appellant had slowed his patrol unit to a crawl in the median between the eastbound and westbound lanes of Chef Menteur Highway prior to the white vehicle reappearing and proceeding across the eastbound lanes of Chef Highway to the bridge. Even without the accompanying audio, the video footage strongly suggests that Appellant was waiting for the white vehicle. The audio captured by the vehicle-mounted camera and Appellant's BWC removes any serious doubt. Appellant clearly stated that he was "still behind that fool" and excitedly utters "there he go, there he go" when the white vehicle reappears.

The Commission observes that the white vehicle did make what appears to be an illegal turn on to the eastbound span of the Danziger Bridge, but he did not "cut off" Appellant, who was well behind the white vehicle and nearly stationary at the time the white vehicle turned, quickly accelerated to get close behind the white vehicle. Contrary to Appellant's claim of heavy traffic, the eastbound lanes of the Danziger Bridge appear almost free of other vehicles while Appellant pursued the white vehicle.

Finally, the Commission takes judicial notice of the fact that, the quickest route for a vehicle to proceed from the eastbound lanes on the Danziger Bridge (I-90 eastbound) to the onramp for I-10 West, is to take a right on Downman Road southbound. Based upon Appellant's BWC, this is apparently what both he and the white vehicle did on February 4th. Thus, not only did Appellant purposefully follow the white vehicle across the Danziger Bridge, he took a right on Downman Road in active pursuit of the white vehicle. For Appellant to suggest he had no choice but to follow the white vehicle is patently false and purposefully misleading.

As with Appellant's other false statements to Sgt. Hunt during the administrative hearing, his claim regarding being forced to follow the white vehicle was material to NOPD investigation into Appellant's underlying misconduct.

Based upon the above findings, the Commission finds that NOPD established that Appellant purposefully mislead Sgt. Hunt when he claimed that the white vehicle cut him off and that he had no choice but to follow the white vehicle.

i. Appellant's Defense

Appellant spent a great deal of time focusing on the recollection of NOPD's witnesses and pointing out that the witnesses often had to refer to documents and/or videos in order to refresh their recollections. The inference Appellant asks the Commission to make is that Appellant had similar problems remembering details of the February 4th pursuit and crash. In short, Appellant argues that his memory of the incident had faded between the day of the incident and when he provided Sgt. Hunt with an administrative statement on June 1, 2017.

On a basic level, the Commission finds it far more likely than not that Appellant had a very clear recollection of the events that led to the collision on February 4, 2017 due to the series of intentional actions he undertook to pursue the white vehicle. The Commission also notes that the event itself, a violent collision between at least two vehicle traveling at a high rate of speed (one which Appellant was pursuing), is a singular event in one's life and not likely to fade in any dramatic way over the course of a few months.

Further compromising Appellant's claim that he did not have a good recollection of the events of February 4th due to the passage of time is his false statement to the NOPD Dispatcher. Appellant had not turned off and/or 10-22ed the pursuit. Yet he insisted on perpetuating this lie up until his pre-disciplinary hearing.

The Commission also emphasizes that Appellant had an opportunity to tell Sgt. Hunt that he could not recall certain details of the event. And in fact there were elements of the day Appellant claimed he could not remember, such as the color of the vehicle he was pursuing and the reason he had initially pulled the vehicle over. As to other details, Appellant was far clearer in his recollection and provided a detailed narrative regarding how he came to be behind the white vehicle a second time and his thought process when he passed the white vehicle on I-10 West.

Finally, the Commission is not persuaded that the concussion suffered by Appellant in October 2016 had an impact on the version of events he provided to Sgt. Hunt. First, Appellant did not mention or otherwise seek treatment for his October 2016 concussion until March 2017. This is true despite the fact that instructions Appellant received from medical professionals directed him to seek further assistance if he experience any post-concussion symptoms, including memory loss. The Commission also notes that Appellant did not bring up his concussion during either his administrative statement or pre-disciplinary hearing with Deputy Superintendent Noel.

B. Negative Impact on the Appointing Authority's Efficient Operations

The Commission has repeatedly observed that NOPD officers occupy a unique position in the City's classified service. Given that officers have the authority to wield immense power in the execution of police duties, residents of New Orleans depend upon officers to conduct themselves according to the highest standards of professionalism and honesty. The Commission need not look into the too distant past to see the detrimental impact of police officers executing their duties in an unethical and untruthful manner.

Thankfully, NOPD has taken ownership of prior failings and made great strides towards being a more transparent entity with a focus on community engagement. Appellant's actions

compromise the strides NOPD has made over the past several years and cast fellow officers in a negative light.

For the above-stated reasons, the Commission finds that Appellant's misconduct had an adverse impact on NOPD's efficient operations.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

In order to violate NOPD's policy requiring honesty and truthfulness, an officer must make a false statement regarding a material fact with the intent to deceive. Further, the false statement must occur in the context of an investigation. As the Commission has noted in past decisions, NOPD views violations of this policy as a cardinal sin. In analyzing similar cases, the Commission has relied on U.S. Supreme Court precedent regarding evidence in criminal trials. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) and *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In *Brady*, the U.S. Supreme Court found that a prosecutor suppressed evidence favorable to a criminal defendant's defense. Further, such evidence was "material either to guilt or to punishment." 373 U.S. at 87. As a result, the Court found that the State had violated the criminal defendant's due process rights in violation of the Fourteenth Amendment. *Id.* Following *Brady*, the Court held in *Giglio* that, "[w]hen the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence

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affecting [the witness's] credibility falls within [the rule established by Brady]." 405 U.S. at 154 (internal citations omitted).

The Commission has held that most discipline should follow a progressively severe path in order to give an employee the opportunity to modify his/her conduct. But in cases involving untruthfulness, NOPD's well-founded concern is that courts would view any substantiated allegations of misconduct against an Officer as directly affecting an officer's credibility. As the Commission recently observed:

Supreme Court precedent would compel prosecutors to disclose such misconduct to criminal defendants in any matter in which the officer in question was involved. Upon such a disclosure, any competent defense counsel would likely use such information to undermine the credibility of the officer and call into question the integrity of the criminal investigation itself. The critical upshot of such misconduct then is that NOPD could not reasonably rely upon [the perpetrator] to prepare police reports, swear to affidavits or testify in criminal matters.

Moran v. NOPD, No. 8524 at 15-16 (Feb. 28, 2018).

If NOPD had substantiated one of the alleged untruthful statements listed in the preceding paragraphs, it would likely have had sufficient cause to terminate Appellant's employment. The fact that Appellant made numerous false statements to NOPD investigators is an aggravating factor that clearly establishes very serious misconduct.

Based upon the record before us, the undersigned Commissioners find that termination was an appropriate level of discipline.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the appeal.

Judgment rendered this 23rd day of April, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

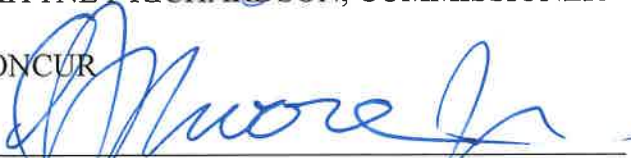


BRITTNEY RICHARDSON, COMMISSIONER

4-18-19

DATE

CONCUR



CLIFTON J. MOORE, Jr., COMMISSIONER

4/15/19

DATE



MICHELLE D. CRAIG, CHAIRPERSON

4/15/2019

DATE