



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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JOHN H. KORN, VICE-CHAIRPERSON
CLIFTON J. MOORE
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Monday, January 24, 2022

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Daniel Berrincha VS.
Department of Police
Docket Number: 9279**

Dear Mr. Livaccari:

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 - 1/24/2022 - 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,

A handwritten signature in purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Shaun Ferguson
Elizabeth S. Robins
Jay Ginsberg
Daniel Berrincha

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**DANIEL BERRINCHA,
Appellant**

Docket No. 9279

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Daniel Berrincha, 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 June 20, 2021, one-day suspension and June 14, 2021, letter of reprimand. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Officer. (Tr. at 8-9; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on July 27, 2021. 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 Hearing Examiner's report dated September 10, 2021, and controlling Louisiana law.

For the reasons set forth below, Officer Berrincha's appeal is GRANTED.

I. FACTUAL BACKGROUND

The hearing officer has accurately and succinctly described the facts surrounding Officer Berrincha's vehicle pursuit on April 27, 2020, including in an illegal U-turn at Earhart and S. Carrollton, and the facts underlying the training issue. (*See also* Tr. at 6, 9). Therefore, the underlying facts will not be repeated. A copy of the hearing officer's report is attached.

Officer Berrincha was pursuing three juvenile escapees who had committed armed robbery. (Tr. at 29-30). Sgt. Wade Bowser, who was on the scene, testified that the pursuit was at 9:30 or 10:00 on a Sunday night during the pandemic lockdown, so traffic was “nonexistent.” (Tr. at 67).

Sgt. Bowser also testified that an officer with the title District System Administrator was solely responsible for scheduling training, not the individual officer. (Tr. at 34, 69). Officer Berrincha testified that he was on military orders when he was scheduled for training in July of 2019. (Tr. at 26).

I. ANALYSIS

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). 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. *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).

NOPD has failed to carry its burden of proving that the underlying conduct occurred. Making an illegal U-turn is distinguishable from driving “against traffic flow,” which is prohibited by NOPD policy. The undersigned Commissioners reject such a technical application of the

vehicle pursuit policy. As the hearing officer noted, no action by Officer Berrincha impaired the efficient operation of the Department of Police.

As for the failure to attend training, the undersigned Commissioners find that Det. Berrincha was on military leave when training was scheduled and that the responsibility for scheduling training was on the District System Administrator, not Berrincha.

The appeal is GRANTED. The letter of reprimand shall be removed from Det. Berrincha's records. NOPD shall reimburse Det. Berrincha all wages and other emoluments of employment from the one-day suspension.

This the 24th day of January, 2022

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Jan 20, 2022 20:57 CST)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Brittney Richardson
Brittney Richardson (Jan 20, 2022 23:11 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

J. H. Korn
J. H. Korn (Jan 21, 2022 14:59 CST)

JOHN KORN, COMMISSIONER

DANIEL BERRINCHA

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 9279

REPORT OF THE HEARING EXAMINER

I. INTRODUCTION

The Department of Police (“Appointing Authority”) employs Daniel Berrincha (“Appellant”) as a Police Officer with permanent status. By letter dated June 14, 2021, the Appointing Authority suspended the Appellant for one (1) day after determining that he violated internal rules regarding vehicle pursuits. Specifically, the investigation determined that the Appellant drove against the flow of traffic when he “made an illegal U-turn at the intersection of Earhart Blvd. and S. Carrollton Ave.” The Appointing Authority also reprimanded the Appellant for violation of the same rule “when he did not attend [his] required New Orleans Police Department Driving recertification training in 2019.” (H.E. Exh. 1).

II. FACTS AND ANALYSIS

A. Pursuit of Vehicle Against Traffic Flow

The investigation was based primarily on the review of in-car camera video. (NOPD Exh. 4). As reflected in the in-car camera video, the Appellant was part of a pro-active task force looking for a stolen minivan driven by juveniles who had escaped from a correctional facility. The Appellant spotted

the minivan on Earhart Blvd. as it was moving towards S. Carrollton Ave. and, with supervisory authorization, initiated a pursuit with lights and sirens.

Both Earhart and S. Carrollton are four lane streets divided by a median. The suspects sought to evade the Appellant by shifting into the oncoming traffic lane for a block and turning into the parking lot of a fast-food restaurant on the corner of Earhart and S. Carrollton. The Appellant continued on Earhart Blvd., making a U-turn at S. Carrollton, and followed the suspects into the fast-food parking lot where they were apprehended. While a police officer in pursuit with lights and sirens is allowed to ignore traffic laws when executed safely, the Appellant made the U-turn in the oncoming traffic lane, which the Appointing Authority interpreted as a violation of its policy. (Tr. at 9 – 13, 32, 50 -5; NOPD Ex. 4).

The Appellant acknowledged that he made a left turn at the intersection of S. Carrollton Ave. to get to the other side of Earhart Blvd., using the on-going traffic lane for a brief second. He stated that the roadway was clear when he made the turn. As reflected in the video, his lights and sirens were activated and there was no on-coming traffic in the area.¹ (Tr. at 13).

Lt. Samuel Palumbo initiated the internal investigation after viewing the video. While acknowledging that the Appellant is allowed to make emergency

¹ The event occurred in the early evening when there was very little traffic as a result of Covid restrictions on public activity.

U-turns, “instead of going past the neutral ground and making the U-turn, he makes a quicker U-turn in on-coming traffic lane.” (Tr. 32 - 38).

Capt. Preston Bax conducted the pre-disciplinary hearing and recommended the presumptive penalties. He confirmed that the pursuit of escaped armed robbery suspects was authorized and executed properly, with the exception of the U- turn in the oncoming traffic lane. He testified that the Appellant is an excellent officer who assisted in the successful apprehension of wanted subjects. He also confirmed that traffic was light due to the pandemic and that no one was injured as a result of the Appellant's maneuver. (Tr. at 48 – 57).

Sgt. Wade Bower was a task force supervisor involved in the apprehension of the subjects. He stated that the incident occurred on a Sunday night between 9:30 pm and 10:00 pm. He characterized the traffic as “non-existent” as a consequence of the pandemic lockdown. He observed that the Appellant make a quick U-turn and assist in the apprehension of the subjects in a fast-food parking lot. (Tr. at 64 -68).

The Appointing Authority has failed to establish that it disciplined the Appellant for cause by engaging in an unauthorized pursuit. The Appellant did not follow the suspects when they shifted into the on-coming traffic lane. He safely made a U–turn to effectively and efficiently assist in the apprehension of violent criminal suspects. He used his lights and sirens and did not turn into on-

coming traffic. In fact, there was no traffic to consider during the brief seconds he was in the wrong lane.

The purpose of the department's pursuit policy is to assure that its members enforce the law in a safe and effective manner. The Appellant performed his duties safely and effectively. The pursuit policy was not created to punish its members for hyper-technical interpretations. As such the Appellant's Appeal should be GRANTED. No actions taken by the Appellant impacted the efficient operation of the department.

B. Drivers Training

The Appellant is required to successfully complete the Tactical Police Driving Course annually in the month of, or the month after, his/her birth date. The Appellant was unable to attend training in July of 2019 because he was on military leave in Alaska on the date scheduled. The Appellant never received a rescheduling date. (Tr. at 70).

The Appointing Authority has failed to establish that the Appellant was disciplined for cause when he was unable to attend training while on military leave. As such the Appellant's appeal should be GRANTED.

III. CONCLUSION

Based upon the foregoing, The Appellant's appeal should be GRANTED. The Appointing Authority should be ordered to pay one day of back pay and to remove the written letter of reprimand from his record.

September 10, 2021
DATE

S/ Jay Ginsberg
HEARING EXAMINER