



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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RONALD P. MCCLAIN, VICE-  
CHAIRPERSON  
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TANIA TETLOW

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Thursday, February 2, 2017

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

Re: **Ramon Negrete VS.  
Department of Police  
Docket Number: 8133**

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 - 2/2/2017 - 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 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: Michael S. Harrison  
Elizabeth S. Robins  
Victor Papai  
Ramon Negrete

file

CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS

RAMON NEGRETE

vs.

DEPARTMENT OF POLICE

DOCKET NO.: 8133

**I. INTRODUCTION**

Appellant, Ramon Negrete, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was disciplined for sufficient cause. According to a letter issued to Appellant by NOPD, Appellant received a one-day suspension for violating NOPD Rule 4, ¶ 4.c.4. – Neglect of Duty (failing to make a written report when such is indicated). (H.E. Exh. 1). After a review of the transcript, evidence and hearing examiner’s report, the undersigned Commissioners render the following findings of fact and decision.

**II. FACTUAL BACKGROUND**

The Parties entered into the following stipulation with respect to Appellant’s actions on May 9, 2011: “[Appellant], on May 9, 2011, responded twice to 11000 Yardley and on neither occasion did he write a police report.” (Tr. at 8:2-12). When Appellant first arrived at the scene it was approximately 12:30 a.m. He encountered a group of “adults and teenagers” in front of the residence some of whom indicated that they lived at the location but had not called the police.

R. NEGRETE  
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Following this interaction, Appellant marked the incident as “unfounded” and left the scene. *Id.* at 58:12-19.

The second time Appellant reported to 11000 Yardley Rd., it was in response to another call. When Appellant arrived it was approximately 1:30 a.m., the adults and teenagers he first encountered were no longer present, and he went to the front door and knocked. A woman (hereinafter “victim” or “complainant”) answered the door, indicated that she had called the police, and invited Appellant into the residence. Appellant entered and observed damage to a dual-paned sliding glass door, but noted that the doors second pane of glass was intact as were the iron bars preventing access to the residence. *Tr.* at 60:2-18. Based upon his observation, Appellant determined that no one had gained unauthorized entrance to the residence through the sliding glass doors. *Id.* at 63:6-11. Appellant also noted that the living area look neat and orderly. *Id.* at 53:23-25.

The complainant then proceeded to show Appellant damage to her fence and expressed a concern about individuals cutting through her back yard. She then requested that Appellant arrange for a patrol officer to be assigned to her neighborhood. *Id.* at 62:3-5. When Appellant indicated that he did not have the authority to arrange for a regular patrol of the area, the victim became upset. *Id.* at 62:5-12. Then, the complainant’s husband spoke with Appellant and indicated what the complainant was really looking for was some assurance from NOPD that there would be regular patrols of the immediate area. Again, Appellant indicated that he did not have the authority to arrange such patrols at which time the complainant’s husband indicated that they were not interested in making a report and asked Appellant to leave. *Id.* at 62:15-25. During the course of his investigation, Appellant noted that the electricity to the residence was on and several lights were working. *Id.* at 59:13-14.

Approximately seven hours after Appellant left the scene, Officer Warren Gibson Sr. responded to a complaint related to a residence located at 11000 Yardley Road. *Id.* at 11:12-:19. When Officer Gibson arrived at the residence, he first spoke with the landlord of the property who requested an “item number” regarding the incident. (App. Exh. 1). Officer Gibson also spoke with the victim who indicated that she wanted to file a police report; the victim also indicated that she had contacted NOPD twice over the course of the previous night. (Tr. at 11:20-24). Officer Gibson accompanied the complainant into her residence and observed damage to the property, signs of forced entry and evidence that rooms on the first floor had been “rummaged” through. *Id.* at 12:19-24.

After speaking with the complainant and observing the property damage, Officer Gibson prepared a criminal damage report. *Id.* at 13:6-7. According to Officer Gibson, NOPD Policy mandates the preparation of such a report in instances such as the one he encountered at 11000 Yardley Rd. *Id.* at 13:14-25. On cross-examination, Officer Gibson clarified that NOPD policy mandates that an Officer to prepare a report when the victim requires a report or when the victim “states that there was damage done and they [have] no idea who may have done [the damage].” *Id.* at 20:21-21:1.

### **III. POSITION OF PARTIES**

#### ***A. Appointing Authority***

NOPD alleges that Appellant should have prepared a police report regardless of whether or not the victim had requested one because there was clear evidence that a crime had been committed or attempted. Appellant’s failure to prepare a report under such circumstances violates NOPD rules and impairs the efficient operation of NOPD by depriving the public of a vital service.

***B. Appellant***

Appellant asserts that the crime he observed was simple criminal damage to property, which does not require a report when the victim does not request one.

**IV. STANDARD**

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A), 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. *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, we 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 Commission’s analysis is three-pronged with the appointing authority bearing the burden of proof for each prong.

**V. ANALYSIS**

According to NOPD, Appellant was disciplined for failing to prepare a police report after his second visit to the scene when it should have been obvious to him that a crime had been attempted or had occurred. *Id.* at 52:12-19. Deputy Superintendent Darryl Albert testified that there are **three** instances wherein NOPD expects its Officers to prepare police reports: 1) when a citizen requests a report, 2) when a “UCR”<sup>1</sup> crime has been committed, and 3) if, after completion of an

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<sup>1</sup> The acronym “UCR” stands for “Uniform Crime Reporting.” (Tr. at 34:10-13). UCR is a program maintained by the FBI that tracks crime statistics in metropolitan areas. The Commission takes judicial notice of the fact that the FBI has established eight crimes that are “Part I” crimes and tracked through UCR. Those crimes are murder and non-

investigation, an Officer believes that a crime has been attempted or committed. *Id.* at 39:1-25. Deputy Superintendent Albert testified that Appellant should have prepared a report because there were obvious signs of that a “serious crime” had been committed or attempted. (i.e., broken windows, damaged fencing, rummaged through belongings). *Id.* at 38:12-25.

However, this testimony is contradicted by the investigative report generated by Captain Ceravolo. (App. Exh. 8 at 4 of 9). In that report, Capt. Ceravolo writes that he reviewed NOPD’s Operations Manual – specifically, Chapter 82.3 – and determined that:

[H]ad the incident been a burglary and not criminal damage, a report would have been required, but based on the signal dispatched to the [Appellant] and the report that was eventually written as criminal damage, a report would have NOT been required in this case.

*Id.* (emphasis in original).

Deputy Superintendent Albert testified that, according to his review of the facts, it appeared that a burglary had been committed at 11000 Yardley Rd. *Id.* at 41:9-13. However, Officer Gibson determined the crime was “simple criminal damage.” (App. Exh. 5). This determination was supported by Captain William Ceravolo who testified that he believed Officer Gibson’s was correct. (Tr. at 82:13-23). Deputy Superintendent Albert acknowledged that simple criminal damage is not a “UCR” crime. (Tr. at 39:15-17). Thus, we find that Appellant’s responsibility to prepare a report would ***not*** have been triggered by observation of such a crime absent a request from the victim to prepare one. *Id.* at 71:20-24. Appellant testified that neither the complainant, nor her husband requested a police report. Captain Ceravolo confirmed that the victim did not ask Appellant to prepare a report when he interviewed her as part of his PIB investigation. (App. Exh. 8 at p. 3 of 9).

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negligent homicide, forcible rape, robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft, and arson.  
<http://www.ucrdatatool.gov/offenses.cfm>.

Based upon the foregoing, the Commission finds that NOPD has failed to establish that Appellant violated NOPD rules by failing to complete a report following his investigation of alleged criminal activity at 11000 Yardley Rd. on May 9, 2011.

#### V. CONCLUSION

Because we find that NOPD failed to establish that Appellant engaged in the misconduct alleged in the disciplinary notice, the Commission need not determine if the alleged misconduct impaired the efficient operation of NOPD or if a one-day suspension was commensurate with the offense. Additionally, the Commission will not address Appellant's assertion that NOPD's investigation violated the timelines established by La. R.S. 40:2531.

For the above-stated reasons, the undersigned Commissioners find that NOPD did not have sufficient cause to discipline Appellant. Therefore, Appellant's appeal is hereby GRANTED. It is ORDERED that NOPD remit to Appellant all back pay and emoluments related to the one-day suspension and remove any documentation or reference to the one-day suspension in Appellant's personnel files.

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appear on the following page]**

R. NEGRETE  
No. 8133

Judgment rendered this 1st day of February, 2017

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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JOSEPH S. CLARK, COMMISSIONER

1-18-2017  
\_\_\_\_\_  
DATE

  
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TANIA TETLOW, COMMISSIONER

1-24-2017  
\_\_\_\_\_  
DATE

  
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MICHELLE D. CRAIG, CHAIRPERSON

2-1-2017  
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DATE