



# CITY OF NEW ORLEANS

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

Tuesday, September 6, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. C. Theodore Alpaugh, III  
639 Loyola Avenue, Suite 2130  
New Orleans, LA 70113

Re: **Tyrone Dukes VS.  
Department of Police  
Docket Number: 9346**

Dear Mr. Alpaugh:

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 - 9/6/2022 - 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  
Michael J. Laughlin  
Jay Ginsberg

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**TYRONE DUKES,  
Appellant**

**Docket No. 9346**

v.

**DEPARTMENT OF POLICE,  
Appointing Authority**

**DECISION**

Appellant, Tyrone Dukes, 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 80-day suspension imposed on December 7, 2021. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Officer. (Tr. at 43; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on May 10, 2022. 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 (including the audio files), the Hearing Examiner's report dated June 15, 2022, and controlling Louisiana law.

For the reasons set forth below, Officer Dukes's appeal is DENIED,

**I. FACTUAL BACKGROUND**

NOPD imposed a two-day suspension for neglect of duty and a written reprimand for unprofessional conduct based on Officer Dukes's failure to take action when he observed criminal damage to property by his girlfriend on June 4, 2020. (Ex. HE-1). NOPD imposed an 80-day suspension for failure to cooperate and withholding evidence based on Officer Dukes's conduct

when giving a criminal statement on September 8, 2020. (Ex. HE-1). Officer Dukes appealed only the 80-day suspension. (Tr. at 5-6).

Although police officers are not required to give criminal statements, Officer Dukes agreed to give a criminal statement in relation to NOPD's investigation into possible criminal conduct on his part concerning damage to an apartment on June 4, 2020. (Ex. HE-1; Tr. at 16, 43). The transcript of the September 8, 2020, criminal statement was entered into evidence as NOPD-3, and the audio recording was entered into evidence as NOPD-7. Sgt. Candice Preston, the investigator, had obtained the identity of Officer Dukes' emergency contact information prior to the criminal interview, and one emergency contact was Michael. (Tr. at 36, 38). Officer Dukes identified Michael as his brother. (Ex. D-4).

During the interview, the investigator never asked Officer Dukes to identify his brother or Michael. (Tr. at 44). Instead, the investigator asked, "Who else was there?" (Ex. NOPD-3 at 7). Officer Dukes answered, "I'm not sure about who else was there." (Ex. NOPD-3 at 7). Officer Dukes explained at the May 10, 2022, hearing that he stated he did not know who else was there because he did not know all the people at the apartment. (Tr. at 45). Then, the investigator asked about Michael Dukes or Mike Dukes, and Officer Dukes answered, "I don't know who that is." (Ex. NOPD-3 at 7). When the investigator became angry and raised her voice, Officer Dukes terminated the statement. (Tr. at 33, 50). Officer Dukes testified that the investigator was "loud" and "yelling," and he felt uncomfortable. (Tr. at 50). NOPD later took an administrative statement from Officer Dukes, and Officer Dukes identified his brother as Michael Weaver. (Tr. at 40; Ex. D-2).

Deputy Superintendent John Thomas testified that Officer Dukes evaded answering the investigator's question because she used the wrong last name. (Tr. at 26). Deputy Superintendent

Thomas testified that Officer Dukes' brother was at the apartment, and his name is Michael. (Tr. at 25). Deputy Superintendent Thomas also testified the disciplinary panel believed Officer Dukes was not being "totally honest" when he stated he did not know who was at the apartment because he "knew his brother was there and he was withholding." (Tr. at 22-23). The disciplinary panel recommended sustaining the violation of the rule prohibiting withholding evidence because Officer Dukes failed to give the information sought because the investigator gave the wrong last name. (Tr. at 21, 23). The presumptive penalty for withholding information is an 80-day suspension. (Tr. at 28).

## II. ANALYSIS

### A. Legal Standard

#### 1. The Appointing Authority must show cause for discipline

"Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A)." *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). "Legal cause exists whenever an employee's conduct impairs the efficiency of the public service in which the employee is engaged." *Id.* "The Appointing Authority has the burden of proving the impairment." *Id.* (citing La. Const., art. X, § 8(A)). "The appointing authority must prove its case by a preponderance of the evidence." *Id.* "Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the "efficient operation" of the public service." *Id.* "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).

**2. The Appointing Authority must show the discipline was commensurate with the infraction**

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. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

**B. Application of legal standard to discipline of Officer Dukes**

**1. NOPD has shown cause for discipline**

The Appointing Authority has met its burden of showing the occurrence of the complained-of activity. Officer Dukes failed to provide information about his brother’s presence at the

apartment in question, even though he understood the information being sought by the investigator. Although the investigator could have done a much better job in the way the investigation was handled and the pertinent questions asked, Officer Dukes was deliberately evasive. This conduct is inexcusable and it impairs the efficient operation of NOPD, as NOPD expects its officers to be forthcoming with information about crimes. Officer Dukes's deliberative evasiveness could be very harmful to a case in criminal court if Officer Dukes were called as a witness. (Tr. at 30).

**2. NOPD has shown that the penalty is commensurate with the offense**

NOPD imposed the presumptive penalty for withholding information, an 80-day suspension. (Tr. at 28). The penalty is commensurate with the offense.

For these reasons, Officer Dukes's appeal is DENIED.

This the 6<sup>th</sup> day of September, 2022.

WRITER:

Mark C. Surprenant  
Mark C. Surprenant (Aug 31, 2022 17:36 EDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Brittney Richardson  
Brittney Richardson (Sep 2, 2022 08:26 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

**DISSENT BY COMMISSIONER KORN**

Based on the documents, at the time of the criminal interview, the investigator and Officer Dukes knew that Officer Dukes's half-brother Michael was present at the apartment on the date in question. (Tr. at 36; Ex. D-5). The investigator failed to ask the correct question to elicit the

information she sought, although her questions in the transcript of the Administrative Statement indicate she believed she had asked who Michael was. (Ex. D-2). Instead, she became agitated and repeated the question loudly several times. (Ex. NOPD-7). I find the investigator's treatment of Officer Dukes to be unprofessional. Technically, Officer Dukes answered the investigator's questions truthfully. NOPD failed to carry its burden of showing that Officer Dukes violated v3.Rule 2:Moral Conduct; Paragraph 9: Failure to Cooperate/Withholding information defined: "In accordance with established rights under law, employees shall not withhold any information, acts, or omissions known to the employee that purposefully interfere or disrupt an authorized investigation." Officer Dukes voluntarily participated in a criminal interview and answered the questions truthfully. It is not clear how this disrupted the investigation. I would grant the appeal.

*J H Korn*  
J H Korn (Sep 5, 2022 13:12 CDT)

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JOHN KORN, VICE-CHAIRPERSON