



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Thursday, September 30, 2021

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

Re: **Joseph Davis VS.
Department of Police
Docket Number: 9178**

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 - 9/30/2021 - 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 blue ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Shaun Ferguson
Megan A. Haynes
Jay Ginsberg
Joseph Davis

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**JOSEPH DAVIS,
Appellant**

Docket No. 9178

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Sgt. Joseph Davis, 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 ten-day suspension beginning the week of June 21, 2020. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Sergeant. (Tr. at 8; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on September 10, 2020. 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 January 16, 2021, and controlling Louisiana law.

For the reasons set forth below, Sgt. Davis' appeal is GRANTED.

I. FACTUAL BACKGROUND

On April 19, 2018, an armed robbery victim informed NOPD of the location of his assailant after the victim saw the assailant's bicycle in the back yard of the assailant's residence. (Tr. at 20, 97; Ex. NOPD-3). NOPD officers reported to the described location. (Ex. NOPD-3). These officers included Lt. Baldassaro, Sgt. Jenkins, Detective/Police Officer Chambers, Detective/Police Officer Neveux, and Police Officer Chris Long. (Tr. at 15-17). The bicycle was in the rear of the

property, so NOPD officers established a perimeter and proceeded to search for the assailant and the gun used in the robbery. (Tr. at 21, 44). Sgt. Davis, who was on his way from home to report to work, heard the call on the radio and reported to the active scene. (Tr. at 19)

The NOPD officers decided to try to enter the residence. (Tr. at 97). Detective Chambers knocked on the door, and there was no answer. (Tr. at 97). A woman, Ms. Magee, later answered the door, and she told the officers, including Sgt. Davis, that the assailant was not inside the residence. (Ex. NOPD-3). Lt. Baldassaro testified that the woman's answers were evasive, and the officers feared she was being held hostage. (Tr. at 98). The body-worn camera footage reflects that the woman refused entry based on the lack of a warrant. (Tr. at 40). Detective Chambers asked for permission to search, and the woman consented to a search of the premises. (Tr. at 18, 98). Consent to search is an exception to the requirement of a warrant to search a residence. (Tr. at 43). Sgt. Davis was the first officer to enter the residence. (Tr. at 17). Neither Detective Chambers nor Detective Neveaux entered the residence. (Tr. at 25). The assailant was apprehended by NOPD inside the residence. (Tr. at 98; Ex. NOPD-3).

Before entering a residence to search for a suspect when the resident consents to the search, NOPD policy requires a police officer to notify the officer's supervisor and have the consenting party sign a consent to search form. (Tr. at 11; Ex. NOPD-1). Sgt. Davis is a supervisor and is aware of the requirement of the consent to search form. (Tr. at 9). If exigent circumstances exist, the form is not required. (Tr. at 92). Generally, the lead detective would have completed the form. (Tr. at 15). In this case, the lead detective was Detective Chambers. (Tr. at 15-16, 97, 101). The highest ranking officer on the scene must sign off. (Tr. at 66). In this case, the highest ranking officer on the scene was Lt. Baldassaro, who was also Sgt. Davis' and Det. Chambers' supervisor.

(Tr. at 9, 17, 90, 101). According to Lt. Baldassaro, Det. Chambers should have gotten the consent form completed, with approval from Baldassaro or one of the two other sergeants. (Tr. at 101).

NOPD determined that no exigent circumstances excused completion of the form. Lt. Kevin Burns, who reviewed this incident as a member of the Force Investigation Team, testified that there was no urgency, and that the officers could have obtained a warrant. (Tr. at 45). Captain La'Jon Roberts, who now serves as an Assistant Commander in the Fifth District, and who recommended the discipline, testified that no exigency existed. (Tr. at 92). Lt. Baldassaro, who was disciplined for this incident, testified that no consent to search form was obtained because, based on the presence of the bicycle, the officers suspected the armed robbery suspect was inside the residence and Ms. Magee was behaving in an evasive manner, raising a concern about a potential hostage situation. (Tr. at 99). Lt. Baldassaro testified it was not "practical" or "tactical" to obtain a signature on the consent form. (Tr. at 99).

NOPD imposed discipline on all officers acting in a supervisory capacity on the scene. According to Sgt. Aiyana Francis, who investigated this incident on behalf of the NOPD Public Integrity Bureau, Det. Chambers or Sgt. Davis or Sgt. Jenkins should have asked the resident to complete the consent to search form. (Tr. at 73). NOPD disciplined Sgt. Jenkins and Sgt. Davis for failing to complete the consent to search form. (Tr. at 72). NOPD also disciplined Lt. Baldassaro for failing to instruct his subordinates to complete the form. (Tr. at 101-02).

II. 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 and terminating 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).

The undersigned Commissioners find that NOPD has failed to carry its burden of showing the occurrence of the complained-of activity. Three ranked officers on scene (Sgt. Davis, Sgt. Jenkins, and Lt. Baldassaro) all gave tacit approval to enter the home based on verbal consent. Although Sgt. Davis failed to complete a consent to search form, the highest-ranking officer on the scene, Lt. Baldassaro, testified such a form was not required based on the exigent circumstances. As an officer ranked below Lt. Baldassaro - who had no supervisory duties at this scene - Sgt. Davis should not suffer discipline for his supervisor's decision not to require the lead detective to obtain the execution of a consent to search form.

The appeal is GRANTED. NOPD shall reimburse Sgt. Davis the lost wages and other emoluments of employment from this ten-day suspension and shall remove this discipline from his record.

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This the 30th day of September, 2021

WRITER:


Brittney Richardson (Sep 30, 2021 12:33 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:


CJ MOORE (Sep 28, 2021 17:34 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

J. H. Korn
J. H. Korn (Sep 17, 2021 12:32 CDT)

JOHN KORN, COMMISSIONER