



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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MAYOR

Wednesday, October 3, 2018

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Joseph Betcher VS.
Department of Police
Docket Number: 8718**

Dear Mr. Hessler:

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 - 10/3/2018 - 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: Michael S. Harrison
Elizabeth S. Robins
Jay Ginsberg
Joseph Betcher

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

JOSEPH BETCHER vs. DEPARTMENT OF POLICE	DOCKET No.: 8718
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I. INTRODUCTION

Appellant, Joseph Betcher, 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. The Parties stipulated that NOPD’s investigation in the Appellant’s alleged misconduct complied with all aspects of Louisiana Revised Statute 40:2531 (commonly referred to as the “Police Officer’s Bill of Rights”).

A referee, appointed by the Commission, presided over one day 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 referee’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 response to a “house alarm” on June 27, 2016. (H.E. Exh. 1). The Complainant, a civilian, alleged that Appellant reported to the wrong location in response to a burglar alarm in an adjacent property. *Id.* The Complainant (referred to herein as “Mr. M”), resided at a home (referred to herein as “Residence #1”) across the street from the property in which the alarm originated (referred to herein as “Residence #2”). Appellant encountered Mr. M while canvassing Residence #1. Mr. M was holding his infant daughter at the time. *Id.* Upon encountering Appellant, Mr. M alleged that Appellant drew his sidearm and leveled it at Mr. M and his infant daughter. *Id.* Based upon the Complainant’s description of the events, NOPD initially investigated the matter as an unauthorized use of force and a failure to report a use of force. *Id.*

But, upon review of video footage captured by Appellant’s body-worn-camera, NOPD investigators determined that, while Appellant did draw his weapon out of its holster, he did not point and/or aim it at Mr. M or his daughter. *Id.* Investigators did, however, believe that Appellant was not professional in some of his interactions with Mr. M. Following a pre-disciplinary hearing, NOPD Commander Hans Gauthier recommended that NOPD sustain an allegation that Appellant violated NOPD Rule 3: Professional Conduct; Paragraph 1: Professionalism. The relevant portion of NOPD Rule 3 regarding professionalism reads as follows:

Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.

Id.

NOPD alleged that Appellant violated this policy when he: 1) “yelled at the complainant on a couple of occasions,” 2) “did not take the time to inform the complainant [that he] went to the wrong address for the burglar alarm,” and 3) did not “apologize to the complainant.” *Id.* As a result of Appellant’s alleged misconduct, NOPD issued him a letter of reprimand.

B. May 20, 2016

In the early evening hours of May 20, 2016, Appellant was on patrol in Mid-City when he heard a call come over dispatch that a business’s burglar alarm had been activated. Appellant responded that he would relocate to the business and understood that another NOPD Officer (identified in the record as “Officer Rougouf”) was already on scene. (Tr. at 63:18-64:3). Appellant described Office Rougouf as “very new.” The Commission notes that Residence #1 and Residence #2 are across the street from each other and both yellow.

As he was on route, Appellant heard Officer Rougouf indicate over the radio that a door located in the rear of the business was open and he was going in. *Id.* at 64:14-18. Appellant tried to reach Officer Rougouf via radio and advise him to wait for back up, but he was not able to make radio contact. His inability to raise Officer Rougouf worried Appellant because a burglary scene could be extremely dangerous and the best practice in responding to burglary calls is to wait for additional support and coordinate a search of the property. *Id.* at 64:21-65:2. Given the nature of the call and his inability to raise Officer Rougouf on the radio, Appellant was in a heightened state of awareness and testified that it was a “very dynamic situation.” *Id.* at 65:7-12.

When he arrived at Residence #1 – the location he believed to be the source of the alarm call – Appellant noticed Officer Rougouf’s patrol unit parked near the rear of the property. *Id.* at 65:13-17. Assuming that he was at the correct location, Appellant drew his sidearm, held it facing downward in a ready position, and approached the front door which was unlocked. Worried that

Officer Rougouf was possibly inside with a perpetrator, Appellant continued to try and make radio contact as he proceeded along the back of Residence #1. *Id.* at 65:21-66:5. As he rounded the corner of the home, he encountered Mr. M who was holding an infant. Appellant confirmed that the male resided in the home and stated that an alarm was going off in Residence #1. Mr. M denied that there was an activated burglar alarm in his house and instructed Appellant not to enter his home because he had other children inside. At this time, Appellant still believed that Officer Rougouf had entered the home and was urgently trying to make radio contact in order to inform him that he was in the wrong house. *Id.* at 66:8-17. His attempts to reach Officer Rougouf were initially unsuccessful.

Appellant testified that Mr. M began to panic because he believed that NOPD Officers were preparing to enter his house. Meanwhile, Appellant was trying to make radio contact with Officer Rougouf and other responding Officers to alert them to the presence of children in the home. He also attempted to position himself in front of Mr. M in case the situation turned violent. *Id.* at 66:23-67:7. As he did so, Mr. M continued to address Appellant in a loud and agitated manner. Appellant responded in a very assertive manner and advised Mr. M to get back in his house and lock the door. Appellant yelled to Mr. M “stand down” and told Mr. M that he was “making [Appellant] nervous.” (NOPD Exh. 2).

At some point during his patrol of Residence #1, Appellant noticed that there was a second yellow building – Residence #2 – heard the burglar alarm, and realized that he was at the wrong location. (Tr. at 67:21-68:3). He quickly relocated to Residence #2 and encountered other NOPD Officers who were arriving to the scene. After canvassing Residence #2, Appellant and his fellow Officers determined that nothing appeared to be ransacked or damaged and the alarm was likely false. Officer Rougouf indicated that he would remain on location and wait for the “key holder”

to secure Residence #2 and Appellant returned to his car. *Id.* at 68:9-20. While walking back to his car, Appellant encountered Mr. M and briefly asked “are you alright?” to which Mr. M replied “I don’t know. You tell me.” *Id.* at 69:5-15. Appellant, while still walking, then advised Mr. M to lock his doors and left the scene. According to Appellant, he perceived Mr. M’s tone as aggressive and did not believe that any further conversation would be productive. *Id.* at 69:21-70:7.

C. Aftermath and Investigation

Following his interaction with Appellant, Mr. M made a formal complaint to NOPD regarding Appellant’s actions on May 20, 2016. At the time, Regina Williams was a Sergeant assigned to the Force Investigation Team and responsible for the initial investigation into Appellant’s alleged misconduct.¹ As part of her investigation, Sgt. Williams reviewed the video footage captured by Appellant’s body-worn camera in evidence as “NOPD Exhibit 2.” After viewing the footage, Sgt. Williams determined that Appellant had been unprofessional and should have better explained the situation to Mr. M. (Tr. at 25:17-25). Yet, she did not believe that Appellant was unprofessional in his initial interaction with Mr. M given the nature of the encounter and the fact that Appellant was responding to what he believed to be a potentially dangerous and violent call. *Id.* at 26:1-7. According to Sgt. Williams, Appellant would have complied with NOPD’s professionalism rule if he had apologized to Mr. M, explained his mistake and clarified that the burglar alarm was actually at a different location. *Id.* at 32:17-22.

Commander Hans Ganthier conducted the pre-disciplinary hearing regarding the allegations against Appellant. *Id.* at 38:4-10. He agreed with Sgt. Williams that Appellant should

¹ Sergeant Williams has since been promoted to Lieutenant and is currently the Commander of NOPD’s Special Victim Section.

have clearly explained to Mr. M that Appellant had the wrong address and that the burglar alarm was going off at a residence across the street. *Id.* at 42:1-8. According to Cmdr. Ganthier, an apology was less important than an explanation. Ultimately, Cmdr. Ganthier recommended that Appellant receive a letter of reprimand for failing to provide Mr. M with an explanation about how he had initially reported to the wrong house.

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

As a preliminary matter, Appellant mistakenly reported to the wrong address when he initially responded to a burglar alarm while Officer Rougouf and two other responding NOPD Officers got the address correct. When he reported to the incorrect address, he encountered the property owner (Mr. M) who was holding his infant daughter. Understandably, when faced with an armed Officer with a drawn weapon, Mr. M became very alarmed and, with rising panic in his voice, informed Appellant that there were children in the house, no alarm was going off, and directed Appellant to refrain from entering his home. It was a very tense and fraught situation. Yet, neither NOPD nor the majority faults Appellant for his initial interaction with Mr. M given the nature of the circumstances. The focus of the misconduct allegation is on the subsequent interaction, or lack thereof, between Appellant and Mr. M.

What was most concerning about the subsequent interaction between Appellant and Mr. M was Appellant's apparent lack of empathy. The Commission does not question Appellant's dedication to the job, but the majority finds that Appellant failed to fully appreciate the position in which he placed Mr. M, who clearly believed that NOPD Officers, with weapons drawn, were planning on entering his house in which there were at least two children. The amount of effort required for Appellant to approach Mr. M and explain his mistake was minimal. The benefit was perhaps putting Mr. M at ease and improving at least one relationship between the police and a resident.

Appellant had ample time to talk with Mr. M on the walk back to Appellant's patrol unit and explain the situation. In the BWC footage, Appellant calmly informs his fellow Officers that he is going to return to his car. He then proceeds to walk, at a normal pace, back to his patrol unit.

During his case-in-chief, Appellant suggested that his District was very busy that night responding to other calls. We do not doubt that this is true, but according to the record, there was no pressing emergency that would have precluded Appellant from providing Mr. M with a brief explanation and apology.

The Commission does not take the position that Appellant should have apologized for doing his job. NOPD Officers routinely face stressful, life-threatening situations and must be given the latitude to take all necessary and appropriate actions to ensure the safety of the public and fellow Officers. Here, however, the emergency had subsided and Appellant had a few spare moments to engage Mr. M and apologize for any concern and fear caused by their initial interaction. Appellant asserted that Mr. M's terse response to the question, "Are you alright?" revealed that Mr. M was irate and would not have been receptive to further discussion. Yet, Appellant posed this question as he was walking back to his vehicle and didn't even pause when he asked this question.

B. Impact on the Appointing Authority's Efficient Operations

The Commission recognizes NOPD's efforts to more effectively police New Orleans with community-based policing strategies. While Appellant did not engage in misconduct when he reported to the wrong home, his presence clearly resulted in stress and anxiety for Mr. M. Appellant had the responsibility to briefly engage with Mr. M and explain the initial confusion. His failure to do so constituted a lapse in professionalism. It also adversely impacted the efficient operations of NOPD, albeit in a minor way, by failing to address – or even attempting to address – the breach of Mr. M's personal space and security.

C. Was Appellant's Discipline Commensurate with his Misconduct

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 *Staehele v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The majority notes that a letter of reprimand is the mildest form of discipline available to appointing authorities under the Civil Service System. We agree that Appellant's misconduct was not severe, but appreciate NOPD's position that its Officers must serve as ambassadors to the community and, whenever possible, avoid compromising the safety and security of the public. In the course of his duties, Appellant compromised Mr. M's sense of safety and could have attempted to address it by taking a few brief moments to explain his mistake. Had he done so, we would likely not have needed to hear this case.

V. CONCLUSION

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

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

J. Betcher
No. 8718

Judgment rendered this 3rd day of October 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



RONALD P. McCLAIN, VICE-CHAIRMAN

9/13/18

DATE

CONCUR



STEPHEN CAPUTO, COMMISSIONER

10-1-18

DATE

DISSENT



CLIFTON MOORE, JR., COMMISSIONER

9/11/18

DATE

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

JOSEPH BETCHER vs. DEPARTMENT OF POLICE	DOCKET No.: 8718
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COMMISSIONER CLIFTON J. MOORE, Jr. DISSENTS AND ASSIGNS REASONS

I respectfully dissent from the majority's holding that that Appellant violated NOPD's rule regarding professionalism.

According to NOPD, Appellant was unprofessional when he 1) "yelled at the complainant on a couple of occasions," 2) "did not take the time to inform the complainant [that he] went to the wrong address for the burglar alarm," and 3) did not "apologize to the complainant." Both Sgt. Williams and Cmdr. Ganthier acknowledged that the initial interaction between Mr. M and Appellant occurred under extremely tense circumstances as Appellant was trying to determine the location of a fellow officer he believed to be walking into a very dangerous situation. As a result, neither Sgt. Williams nor Cmdr. Ganthier believed that the manner in which Appellant initially interacted with Mr. M constituted unprofessional conduct. After reviewing the record, the Commission agreed.

Therefore, in order to find that Appellant violated NOPD's rule regarding professionalism, NOPD must establish that Appellant's failure to explain to Mr. M that he initially went to the wrong address for the burglar alarm and failed to apologize to Mr. M constituted a failure to act

with the “utmost concern for the dignity” of Mr. M or that he unnecessarily inconvenienced or demeaned Mr. M.

The specific interaction between Appellant and Mr. M upon which I am focused occurred when Appellant returned to his vehicle after determining that the burglar alarm was false. Appellant did attempt to engage Mr. M in a conversations asking, “Are you alright?” Mr. M replied, “I don’t know. You tell me.” Appellant then briefly recommended that Mr. M make sure that his doors are locked and proceeded to his vehicle. According to NOPD investigators, Appellant should have apologized before returning to his patrol unit and explained that he had initially gone to the wrong address. I disagree. It would have been readily apparent to Mr. M – who was standing outside – that Appellant had initially reported to the wrong address. The hearing examiner found Appellant to be credible when he testified that, based upon his assessment of Mr. M’s demeanor, further discourse about the reason Appellant had initially reported to Residence #1 would not have been productive. In fact, Appellant believed that it was possible that engaging Mr. M again could possibly agitate the situation. Appellant’s belief was based upon a very quick assessment of Mr. M’s demeanor, body language and tone. Such factors are/were not observable on the BWC footage.²

Appellant leaned upon his ten years of experience and decided that it was best to withdraw from the situation entirely. Based upon the record before us, I believe that NOPD has failed to establish, by a preponderance of the evidence, that Appellant’s failure to apologize to Mr. M and explain why he reported to Residence #1 initially demeaned or unnecessarily inconvenienced Mr. M. I therefore dissent from the majority and do not believe that Appellant engaged in misconduct.

² Mr. M’s response, “I don’t know. You tell me.” is audible in the BWC footage, but too faint for the undersigned to make definitive findings with respect to Mr. M’s tone or state of mind.