

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 CW 0125

JOHNNIE SANDERS

VERSUS

CITY OF MANDEVILLE MUNICIPAL POLICE DEPARTMENT

*Handwritten initials:*  
eJW  
TMH  
JK

Judgment Rendered: NOV 02 2018

Appealed from the  
Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany, Louisiana  
Docket Number 2017-12060

Honorable William J. Knight, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON AND HIGGINBOTHAM, JJ.

**WHIPPLE, C.J.**

Johnnie Sanders, a former patrolman for the Mandeville Police Department (MPD), appeals a judgment of the district court, which affirmed the decision of the Municipal Police Employees' Civil Service Board (the Board) to uphold his termination from the MPD. After reviewing the facts and applicable law, we hereby convert the appeal to an application for a supervisory writ and deny the writ.

**FACTUAL AND PROCEDURAL BACKGROUND**

When Sanders, a police officer for the MPD on February 20, 2017, he was shopping at a Home Depot store in Covington, Louisiana. He put a Ridgid battery-powered miter saw, a laser level, and two lithium batteries into his shopping cart. After he finished shopping, Sanders proceeded to the cash register, where he paid for the saw and level. As he walked out of the building, Sanders was confronted by Home Depot Loss Prevention Specialist Corey Crowe, who asked Sanders about the batteries. Sanders stated that he believed the batteries belonged with the Ridgid miter saw and that he found them on the shelf near the saw. Crowe led Sanders into his office where he called the St. Tammany Parish Sheriff's Office. When the Sheriff's deputies arrived, Sanders was arrested for theft of goods as a result of his shoplifting the two lithium batteries valued at \$168.00.

By notice dated February 21, 2017, Sanders was informed that an Internal Affairs (IA) investigation had begun regarding his arrest, centering on his violation of Municipal Police Employees' Civil Service Rule 9.08<sup>1</sup> and Mandeville Police

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<sup>1</sup>Municipal Police Employees' Civil Service Rule 9.08 provides, in relevant part, as follows:

Cause for suspension (with or without pay), demotion and dismissal shall include, but not be limited to, the following:

- A. Unwillingness or failure of an employee to perform the duties of his/her position in a satisfactory manner.
- B. The deliberate omission of any act that it is the employee's duty to perform.
- C. The commission or omission of any act or acts to the prejudice of the City Service or any act contrary to public interest or policy.

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Code of Conduct Rule 2 (Unbecoming Conduct) and Rule 3 (Conformance to Laws).<sup>2</sup> Sanders also received a notice dated the same day, informing him that he was being placed on administrative leave until his disciplinary hearing.

The IA investigation was led by Lieutenant Vincent Liberto. At the conclusion of the investigation, Lt. Liberto prepared a report in which he concluded that Sanders had violated Municipal Police Employees' Civil Service Rule 9.08(N) and Mandeville Police Code of Conduct Rule 2 (Unbecoming Conduct), Rule 3 (Conformance to Laws), and Rule 40 (Truthfulness).<sup>3</sup> Lt. Liberto submitted his report to Assistant Chief Ron Ruple, the head of IA at the MPD. After reviewing the case file, the evidence, and the investigation conducted by Lt. Liberto, Assistant Chief Ruple agreed with Lt. Liberto's findings and recommended termination of Sanders's employment with the MPD. Assistant Chief Ruple gave this recommendation to Gerald Sticker, Chief of the MPD.

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E. Conduct of a discourteous or wantonly offensive nature toward the public, any City official or fellow employee; and any dishonest, immoral or prejudicial conduct.

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N. The willful violation of any personnel policy or of any rule, regulation or order lawfully adopted. ...

<sup>2</sup> Mandeville Police Code of Conduct Rule 2 (Unbecoming Conduct) states:

Members of the Police Department shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Unbecoming conduct shall include that which brings the Department into disrepute or reflects discredit upon the individual as a member of the Police Department, or that, which impairs the operation or efficiency of the Department or the individual.

Mandeville Police Code of Conduct Rule 3 (Conformance to Laws) states:

Members of the Police Department shall obey the laws of the United States and of any state or local jurisdictions in which the members are present. A conviction of the violation of any law shall be prima facie evidence of a violation of this section.

<sup>3</sup>Mandeville Police Code of Conduct Code of Conduct Rule 40 (Truthfulness) states:

Upon the order of the Chief of Police, the Chief's designee, or a superior officer, members of the Police Department shall fully and truthfully answer all questions specifically directed and narrowly relating to the performance of official duties or fitness for office which may be asked of them.

Prior to any discipline being imposed, Sanders was given the opportunity to present his version of events with regard to the charges brought against him, at which time he appeared with his attorney. Following Sanders's appearance with his attorney, a review of the surveillance footage from the Home Depot and the entire IA case file, Chief Sticker upheld the findings as to the rule violations and likewise determined that dismissal was the warranted course of action. Accordingly, by notice dated March 17, 2017, Sanders was given notice of termination of his employment with the MPD, effective as of the date of the notice.

Sanders appealed his dismissal to the Board pursuant to LSA-R.S. 33:2501(A). On April 24, 2017, the Board conducted a full evidentiary hearing at which numerous people, including Sanders, testified, and several exhibits, including surveillance footage from the Home Depot, were introduced into evidence. Following this hearing, the Board determined, by a two-to-one vote, to uphold the dismissal.

Sanders then appealed the Board's decision to the Twenty-Second Judicial District Court pursuant to LSA-R.S. 33:2501(E)(1). After considering the record, the district court found that the Board's decision was made in good faith for cause. Consequently, the district court affirmed the Board's decision to uphold Sanders's termination from the MPD.

Sanders filed a devolutive appeal to this court, contending that the action of the MPD in terminating his employment, as affirmed by the Board and by the district court, was erroneous due to the lack of just cause for the dismissal.

## **JURISDICTION**

At the outset, we note that the MPD has asserted that this court lacks appellate jurisdiction over this matter. Moreover, this court has a duty to examine subject

matter jurisdiction on its own motion, even when the issue is not raised by the litigants. Monterrey Center, LLC v. Education Partners, Inc., 2008-0734 (La. App. 1st Cir. 12/23/08), 5 So. 3d 225, 228-229.

Appellate review of decisions by the Municipal Fire and Police Civil Service Boards resulting in a discharge or any corrective or disciplinary action is granted pursuant to LSA-R.S. 33:2561(E), which provides as follows:

Any employee under classified service and any appointing authority may appeal from any decision of the board or from any action taken by the board under the provisions of this Part which is prejudicial to the employee or appointing authority. This appeal shall lie direct to the court of original and unlimited jurisdiction in civil suits of the parish wherein the board is domiciled. This appeal shall be taken by serving the board, within thirty days after entry of its decision, a written notice of appeal stating the grounds thereof and demanding that a certified transcript of the record or written findings of fact and all papers on file in the office of the board affecting or relating to such decisions be filed with the designated court. The board shall, within ten days after the filing of the notice of appeal, make, certify, and file the complete transcript with the designated court, and that court thereupon shall proceed to hear and determine the appeal in a summary manner. This hearing shall be confined to the determination of whether the decision made by the board was made in good faith for cause under the provisions of this Part or to whether a board member should have or failed to recuse himself in accordance with Subsection D of this Section. No appeal to the court shall be taken except upon these grounds.

As recognized by the Louisiana Supreme Court, the district court has subject matter jurisdiction to consider an appeal pursuant to LSA-R.S. 33:2561(E). Moreover, because appellate jurisdiction is vested in the district court pursuant to LSA-R.S. 33:2561(E), the intermediate appellate courts lack appellate jurisdiction over these matters. Miazza v. City of Mandeville, 2010-0304 (La. 5/21/10), 34 So. 3d 849. Nonetheless, in Miazza, the Supreme Court directed this court to convert the plaintiff's appeal of the district court's judgment to an application for supervisory writs. Miazza, 34 So. 3d at 849. Since the Supreme Court's pronouncements in Miazza, this court has on numerous occasions converted appeals of this nature to

applications for supervisory writs. See Beck v. City of Baker, 2011-0803 (La. App. 1st Cir. 9/10/12), 102 So. 3d 887, 889 n.1, writ denied, 2012-2455 (La. 1/11/13), 107 So. 3d 617; Dwyer v. West Feliciana Fire Protection District #1 Civil Service Board, 2011-1096 (La. App. 1st Cir. 12/21/11), 80 So. 3d 1229, 1230 n.1; McGee v. St. Tammany Parish Fire Protection Dist. No. 1, 2010-1894, p. 2 (La. App. 1st Cir. 5/6/11) (unpublished), 2011 WL 2616831; Baton Rouge Police Department v. O'Malley, 2010-1386 (La. App. 1st Cir. 3/25/11), 64 So. 3d 773, 774 n.1; and Meiners v. St. Tammany Fire Protection District #4 Board Of Commissioners, 2009-0435R (La. App. 1st Cir. 9/10/10), 47 So. 3d 1031, 1032, writ denied, 2010-2290 (La. 12/10/10), 51 So. 3d 728; also see generally Andel v. City of Mandeville, 2016-1473 (La. App. 1st Cir. 9/15/17) (unpublished). Therefore, we will convert Sanders's appeal to an application for a supervisory writ and review the merits.

## **DISCUSSION**

The grounds for which a municipal appointing authority may remove or discipline a tenured employee are set forth in LSA-R.S. 33:2500. The pertinent parts of the statute provide that the following constitute "cause" for termination or other disciplinary action and set forth the types of disciplinary action that may be taken, as follows:

A. The tenure of persons who have been regularly and permanently inducted into positions of the classified service shall be during good behavior. However, the appointing authority may remove any employee from the service, or take such disciplinary action as the circumstances warrant in the manner provided below for any one of the following reasons:

- 1) Unwillingness or failure to perform the duties of his position in a satisfactory manner.
- 2) The deliberate omission of any act that it was his duty to perform.
- 3) The commission or omission of any act to the prejudice of the departmental service or contrary to the public interest or policy.

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5) Conduct of a discourteous or wantonly offensive nature toward the public, any municipal officer or employee; and, any dishonest, disgraceful, or immoral conduct.

\* \* \*

14) The willful violation of any provision of this Part or of any rule, regulation, or order hereunder.

15) Any other act or failure to act which the board deems sufficient to show the offender to be an unsuitable or unfit person to be employed in the respective service.

B. Unless the cause or condition justifies an employee being permanently removed from the service, disciplinary action may extend to suspension without pay for a period not exceeding the aggregate of ninety days in any period of twelve consecutive months, reduction in pay to the rate prevailing for the next lower class, reduction or demotion to a position of any lower class and to the rate of pay prevailing therefor, or such other less drastic action that may be appropriate under the circumstances. Nothing contained herein shall prevent any employee who is physically unable to perform the duties of his position from exercising his rights of voluntary retirement under any applicable law.

Any regular employee in the classified service who feels that he has been discharged or disciplined without just cause may demand a hearing and investigation by the Board to determine the reasonableness of the action. LSA-R.S. 33:2501(A). At such a hearing, the appointing authority must prove by a preponderance of evidence that a legal cause existed for the disciplinary action imposed. Miller v. City of Gonzales, 2015-1008 (La. App. 1st Cir. 8/31/16), 202 So. 3d 1114, 1118.

The Board reviews the appointing authority's decision to take disciplinary action to determine whether the decision was made "in good faith for cause." LSA-R.S. 33:2501(C)(1). The Board may, if the evidence is conclusive, affirm the action of the appointing authority. If it finds that the action was not taken in good faith for cause, the Board shall order the immediate reinstatement or reemployment of such person, or it may modify the discipline imposed. LSA-R.S. 33:2501(C)(1); Landry v. Baton Rouge Police Department, 2008-2289 (La. App. 1st Cir. 5/8/09), 17 So. 3d 991, 994-95. LSA-R.S. 33:2501(C)(1). The imposition of disciplinary action

against a police officer does not occur in good faith if the appointing authority acted arbitrarily, capriciously, or as the result of prejudice or political expediency. Arbitrary or capricious means the lack of a rational basis for the action taken. Miller, 202 So. 3d at 1118.

As detailed above, an employee dissatisfied with the Board's decision may appeal to the district court. LSA-R.S. 33:2561(E) & 2501(E)(1). Upon the Board's filing of the complete transcript of its hearing with the district court, the court shall proceed to hear the appeal. LSA-R.S. 33:2501(E)(2). The district court's review of the Board's quasi-judicial administrative decision is an exercise of appellate jurisdiction and does not include a trial *de novo*. Beck, 102 So. 3d at 892. The district court's review is confined to the determination of whether the decision made by the Board was made in good faith for cause under the provisions of LSA-R.S. 33:2531–2568. LSA-R.S. 33:2561(E). The district court may not substitute its opinion for that of the Board. The district court should accord deference to the Board's factual conclusions and must not overturn them unless they are manifestly erroneous. Likewise, the intermediate appellate court's and Supreme Court's review of a civil service board's findings of fact is limited. Those findings are entitled to the same weight as findings of fact made by a trial court and are not to be overturned in the absence of manifest error. St. Tammany Parish Fire Protection Dist. No. 4 v. Picone, 2010-0481 (La. App. 1st Cir. 12/15/10), 53 So.3d 704, 706; Beck, 102 So. 3d at 893.

In his sole assignment of error, Sanders contends that his termination, as affirmed by the Board and the district court, was erroneous due to the absence of "just cause." In reviewing the Board's decision, the district court reviewed the full record of the evidentiary hearing and found that the Board's decision was made in good faith for cause. On review of the record, this court concludes that the Board's



findings were based upon substantial and competent evidence, and we likewise conclude that the Board's decision to uphold the termination of Sanders's employment was made in good faith for cause.

Crowe, who had worked as a Loss Prevention Specialist at Home Depot for approximately three years as of the date of the incident, testified at the hearing before the Board regarding the events of February 20, 2017. According to Crowe, he was in a concealed location approximately fifteen feet away from Sanders when he saw Sanders place the battery-operated Ridgid miter saw and a laser level into his shopping cart. Crowe testified that he watched Sanders open a boxed Ridgid drill set, which was a combo kit containing drills, a charger, and two batteries, located on the shelf near the miter saw. He then saw Sanders take two lithium batteries out of the combo kit and put them in his shopping cart. Crowe testified that he followed Sanders to a remote area in the back of the store where Sanders concealed the batteries underneath the boxed miter saw in his shopping cart. Crowe stated that he maintained visual surveillance on Sanders as Sanders checked out, doing so in a manner to conceal the batteries from the cashier, and walked out of the store. When Crowe then approached Sanders in the parking lot, he discovered the batteries under the box where he had witnessed Sanders conceal them.

Crowe's testimony of the events was supported by the surveillance footage of Sanders at the Home Depot. The video surveillance, while not the clearest quality, shows Sanders maneuvering something on the shelf near where Crowe testified Sanders took the batteries out of a box. It then shows Sanders checking out at the cash register by slightly lifting the box of the Ridgid saw for the clerk to scan it, corroborating Crowe's testimony of events.

Lt. Liberto also testified at the hearing. When conducting the IA investigation for the MPD, Lt. Liberto reviewed the case file, looked at the surveillance footage

from the Home Depot taken on the day of the incident, and interviewed both Crowe and Sanders. During his interview of Crowe at the Home Depot, Crowe gave Lt. Liberto a thorough “walk through” of Sanders’s actions. Crowe, who Lt. Liberto found to be credible, took Lt. Liberto to the exact location where he was standing when he observed Sanders take the batteries out of the separate packaging, put them on the shelf, and then put them in his buggy. Although Crowe’s concealed location could not be seen from the surveillance camera, this vantage point, as Crowe explained to Lt. Liberto, offered a good view of the events. Crowe also showed Lt. Liberto the location where he observed Sanders “manipulating the box.”

When interviewed by Lt. Liberto, Sanders stated that he had in fact knowingly taken the batteries from the Home Depot, but denied taking them out of another box. Rather, he said that the batteries were lying on the shelf and that he believed they belonged with the Ridgid saw in his buggy because they were of the same brand. Sanders claimed that he had removed batteries from the store “other times” before with permission from the Home Depot. However, when asked by Lt. Liberto if he had permission to do so on the day in question, Sanders admitted that he did not.

Lt. Liberto testified that after completing the IA investigation, he concluded that Sanders had committed shoplifting and had been untruthful, deceptive, and vague during the investigation. Therefore, he documented his findings that Sanders had violated Municipal Police Employees’ Civil Service Rule 9.08, and Mandeville Police Code of Conduct Rule 2 (Unbecoming Conduct), Rule 3 (Conformance to Laws), and Rule 40 (Truthfulness).

Assistant Chief Ruple and Chief Sticker also testified at the hearing, and both concurred with Lt. Liberto’s findings as to the various rule violations. Assistant Chief Ruple likewise concluded that Sanders had been untruthful during the IA

investigation and felt that the fact that the MPD had charged Sanders, under a policy violation, of being untruthful during an investigation was information that the MPD would have to disclose to defense attorneys in any case in which Sanders was involved as a police officer in the future. Thus, according to Chief Ruple this violation destroyed his credibility as well as his effectiveness as an officer. Similarly, Chief Sticker testified that Sanders's actions of committing a shoplifting offense and of lying during an IA investigation rendered him ineffective as a police officer.

With regard to Sanders's testimony at the hearing, Sanders stated that he "assumed [the batteries] probably went with" the saw that was on the shelf near the batteries. Although Sanders denied making any incriminating statements or admissions of guilt to Crowe, Crowe testified that when he spoke to Sanders at the time of the incident, Sanders said he had a problem with theft and hoped that the incident in question could be "a wake-up call". Additionally, there was testimony that this was not the first incident of suspicious behavior by Sanders at this exact Home Depot. According to Crowe, there was also a 2016 incident that took place at the same Home Depot where Sanders was suspected of attempted shoplifting. Although Sanders testified with regard to the 2016 incident that he parked his buggy "near the gate" and was going out to look for his wallet, Lt. Liberto reviewed the video of the earlier incident, and his testimony as to the video differed from Sanders's account of events. According to Lt. Liberto, Sanders walked right past the checkout registers with a buggy filled with merchandise before being stopped by the Home Depot manager, who reached out, grabbed the buggy, and pulled it back in.<sup>4</sup> Home Depot management alerted the asset protection personnel, who apparently

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<sup>4</sup>The merchandise was later determined to be valued at approximately \$900.00.

then put Sanders “on their radar.” In his statement to Lt. Liberto, Crowe indicated that the police would have been called, but for a Home Depot policy specifying that the police do not need to be called if all items are recovered from the individual.

This court has carefully reviewed the record of the proceedings before the Board, and we conclude that the Board’s decision in upholding the MPD’s actions of terminating Sanders’s employment is clearly supported in the record. As noted by the district court, the Board was required to make credibility determinations given the conflicting testimony of Crowe and Sanders. Crowe’s detailed testimony before the Board was supported by the surveillance footage, whereas Sanders’s account of the events was viewed as untruthful by all those involved in the IA investigation. Thus, we are unable to find manifest error in the factual findings of the Board, and, as did the district court, we accordingly find that the Board’s decision to uphold the MPD’s termination of Sanders’s employment was made in good faith for cause.

In so concluding, we reject Sanders’s argument that lawful cause did not exist for his termination because at the time of his termination, he had only been charged with misdemeanor theft, not convicted of a felony. Sanders points out that LSA-R.S. 33:2500(8) lists as a grounds for disciplinary action “[t]he conviction of a felony.” He also argues that under the provisions of Mandeville Municipal Civil Service Rule 9.08, “[t]he indictment for or the conviction of a felony” is listed as a cause for discipline. Mandeville Municipal Civil Service Rule 9.08(I). He notes that both of these rules require the alleged criminal activity to be a felony. Sanders argues that the “only lawful predicate for the firing was to have had the criminal charges presented to a criminal [c]ourt [j]udge who would have weighed the credibility of the witnesses and determined if, in fact, [he] had committed shoplifting.”

However, we note that Sanders's discharge was based on violations of Municipal Police Employees' Civil Service Rule 9.08(N) (involving the willful violation of a personnel policy, rule, regulation, or order), and Mandeville Police Code of Conduct Rule 2 (Unbecoming Conduct), Rule 3 (Conformance to Laws), and Rule 40 (Truthfulness), and not on Mandeville Municipal Civil Service Rule 9.08(I), which is the rule Sanders argues does not justify his termination. Chief Sticker and Assistant Chief Ruple's testimony as to how his violation of Rule 40 as to truthfulness ruined Sanders's ability to be a police officer is set forth above.

Additionally, as discussed above, the MPD's burden of proof was to establish that legal cause existed for the disciplinary action by a preponderance of the evidence, Miller, 202 So. 3d at 1118, which clearly differs from the burden of proof required for a criminal conviction. See Fulton v. Department of Police, 2017-0523 (La. App. 4th Cir. 12/6/17), 234 So. 3d 107, 111, writ denied, 2018-0016 (La. 2/23/18), 237 So. 3d 515 (where police officer appealed decision of the New Orleans Civil Service Commission that affirmed his discharge resulting from a second degree battery charge for which he was found not guilty, court agreed with the Commission that the burden of proof was a preponderance of evidence, not that required for a criminal conviction), and Knight v. New Orleans Police Department, 302 So. 2d 396, 397 (La. App. 4th Cir. 1974) (court affirmed the Civil Service Commission's upholding of a police officer's discharge based on alleged theft where the Commission had observed that the evidence may have fallen short in a criminal proceeding, but was sufficient to support the discipline imposed). Therefore, we disagree with Sanders's argument that the termination was not based on legal cause because he had not yet been tried on the charge of misdemeanor theft at the time of his discharge.

## **CONCLUSION**

For the foregoing reasons, we convert Sanders's appeal to an application for a supervisory writ and deny the writ, hereby maintaining the decision of the Board and the judgment of the district court in upholding the termination for cause of Johnnie Sanders's employment with the Mandeville Police Department. Costs of this appeal are assessed against the plaintiff/appellant, Johnnie Sanders.

**APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT; WRIT DENIED.**