

**NOT DESIGNATED FOR PUBLICATION**

**JAKE SCHNAPP** \* **NO. 2000-CA-1390**  
**VERSUS** \* **COURT OF APPEAL**  
**DEPARTMENT OF POLICE** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CITY CIVIL SERVICE COMMISSION OF THE CITY OF NEW**  
**ORLEANS**  
**NO. 5316**

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**JUDGE MAX N. TOBIAS, JR.**  
\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge Max N. Tobias, Jr. and Judge David S. Gorbaty)

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**REVERSED**

This is an appeal by the New Orleans Police Department (NOPD) from a decision of the Civil Service Commission of the City of New Orleans (the Commission) reducing from thirty (30) days to ten (10) days the suspension imposed on Officer Jake Schnapp by New Orleans Police Superintendent Richard J. Pennington, the appointing authority.

On 9 July 1995, Officer Schnapp, classified as a Police Officer III, and his partner, Sergeant Steven Gaudet, were in a NOPD patrol car parked on Third Street, assisting in the investigation of a homicide that had taken place on Clara Street between Second and Third Streets. While parked, they heard the police radio dispatcher report that Sergeant Willie Lahorser from the Second District was in pursuit of a vehicle near the Magnolia Housing Development that allegedly was used in another homicide. Based on their proximity to the housing development, Officer Schnapp and Sergeant

Gaudet went to assist Sergeant Lahorser. Officer Schnapp, the driver of the patrol car, activated the vehicle's overhead lights and turned right onto Clara Street, which was a one-way street opposite to his direction of travel. After traveling one block in the wrong direction, Officer Schnapp approached the intersection at Fourth Street where he struck the left rear panel of a vehicle traveling southbound on Fourth Street. He then crossed the intersection and hit a fire hydrant.

Following an internal investigation, the Traffic Accident Review Board conducted an administrative inquiry into Officer Schnapp's alleged violations of NOPD defensive driving techniques and city and state traffic laws. After considering Officer Schnapp's explanation, the evidence and mitigating circumstances, the Board concluded Officer Schnapp's actions warranted disciplinary action and recommended a thirty day suspension as the penalty.

Based on the Board's recommendation, on 13 December 1995, Superintendent Pennington issued a disciplinary letter to Officer Schnapp, imposing the thirty day penalty. The letter stated in part:

[The Traffic Accident Review Board]  
determined that on July 9, 1995, you were

involved in a traffic accident at Fourth and Clara Street, while driving a department vehicle. The accident occurred when you were responding to an emergency call for service. You stated that you activated your emergency lights and siren and turned west onto Clara Street. You stated that you were not aware that you were traveling against traffic until you had already traveled one block. When you reached the intersection of Fourth Street you were struck by another vehicle that was traveling south on Fourth. Your vehicle was knocked into a fire hydrant on Clara Street.

This accident/incident, as outlined above, has been classified by the Board as Category B-Preventable, Chart III, that is, you the operator shared a portion or all the responsibility for the accident/incident, in which the operator of the department vehicle has disregarded laws and policies governing traffic laws and safe driving practices.

The Superintendent concluded that Officer Schnapp's conduct was contrary to the standards as prescribed by Rule IX, Section 1, paragraph 1.1 of the Rules of the Commission.

Civil Service Rule IX provides, in pertinent part, that when a classified employee is unable to perform his duties in a satisfactory manner or has committed any act to the prejudice of the service, the appointing authority shall take action warranted by the circumstances to maintain the standards of effective service. This action may include, *inter alia*, suspension without pay not exceeding one hundred twenty (120) calendar

days.

Officer Schnapp appealed his thirty day suspension to the Commission, arguing that the appointing authority failed to consider mitigating factors. At the 29 January 1997 hearing before the Civil Service Hearing Examiner, Officer Schnapp acknowledged that he turned the wrong way onto Clara Street, a one-way street, and traveled one block before he realized he was going in the wrong direction. He explained that when he and Sergeant Gaudet decided to assist Officer Lahorser, he hastily turned right onto Clara Street, thinking it was Willow Street, which was one street away. Officer Schnapp maintained that conflicting one-way signs at the intersection of Third and Clara Streets were confusing and contributed to his wrong turn. In support of his claim, Officer Schnapp introduced into evidence four photographs that he had taken two days after the accident that depicted the conflicting one-way signs and poorly marked street signs at the intersection. He also testified that he could turn only right onto Clara Street because several police units and a crowd of persons had gathered on Clara at the homicide site, blocking the street. According to Officer Schnapp, the police vehicle's lights and siren were activated and he was driving

approximately 30 to 35 m.p.h. when he entered the intersection at Fourth Street and collided with the other vehicle.

NOPD Officer George Campbell, Jr., testified that in July 1995 he was assigned to the Traffic Division and investigated Officer Schnapp's accident. His accident investigation report stated that Officer Schnapp had caused the accident by traveling in the wrong direction on a one-way street.

Deputy Superintendent of Police Duane Johnson (Chief Johnson), Chairman of the Traffic Accident Review Board, testified that the three members of the Board found Officer Schnapp at fault in the accident and unanimously voted to recommend to the appointing authority that he be suspended for thirty days. In making its recommendation, Chief Johnson maintained the Board considered several factors: the seriousness of the violation, the risks taken by the officer, the conditions prior to the accident, and the damages sustained. According to Chief Johnson, Officer Schnapp should have exercised increased caution when he responded to the emergency and opted to travel in the wrong direction on a one-way street. As a result of the accident, the police vehicle and the other vehicle sustained property damage totaling \$6,027.00 and \$2,000.00, respectively. The loss of

the patrol vehicle further burdened the NOPD's already heavily burdened fleet of patrol vehicles.

Based on the Civil Service Hearing Examiner's report, the Commission concluded that the appointing authority suspended Officer Schnapp for just cause. Officer Schnapp chose to travel against traffic on a one-way street, failed to exercise heightened caution under the circumstances, and caused an accident resulting in property damage. The Commission also agreed with the hearing examiner's finding that the appointing authority failed to consider the mitigating factors and Officer Schnapp's exemplary driving record. It found that the appointing authority's thirty day suspension was excessive and not supported by the evidence. Thus, on 30 July 1999, the Commission rendered a decision reducing from thirty to ten days the suspension imposed by the appointing authority.

The Commission granted the appointing authority's motion for rehearing of the 30 July 1999 decision and remanded the matter to the hearing examiner for additional testimony relative to the imposed penalty and its relationship to the NOPD's published penalty schedule. At the

rehearing on 13 January 2000, Chief Johnson reiterated his earlier testimony as to the factors considered by the Traffic Accident Review Board in recommending the thirty day suspension. Specifically, he testified that Officer Schnapp traveled the wrong way on a one-way street and failed to slow down and/or stop before entering the intersection where the accident occurred. The Board concluded that, regardless of whether or not Officer Schnapp inadvertently turned the wrong way on to Clara Street, in view of the emergency circumstances, he should have exercised greater caution and been more aware of his surroundings. Chief Johnson maintained that the Board considered Officer Schnapp's exemplary record yet still determined his violations warranted a thirty day suspension. If Officer Schnapp had not had a good record, the Board would have recommended a suspension greater than thirty days, he explained. According to Chief Johnson, the appointing authority previously imposed thirty day suspensions in other cases involving similar violations.

On rehearing, the Commission concluded that Chief Johnson provided no new, significant information or objective criteria to justify the harsh thirty day penalty. It also concluded that the appointing authority's claim that



Officer Schnapp made a “conscious decision” to turn the wrong way on Clara Street and violated traffic laws was not supported by the evidence in the record. Thus, on 31 May 2000, the Commission reinstated its earlier decision and reduced Officer Schnapp’s suspension from thirty to ten days.

On appeal, the NOPD argues that the Commission arbitrarily reduced the thirty day suspension imposed by the Superintendent and exceeded its constitutional authority by substituting its judgment for that of the appointing authority.

The standard of appellate review in civil service cases requires a determination of whether the Commission’s findings are arbitrary and capricious. In order to modify the disciplinary action of the appointing authority, the Commission must find that there was insufficient legal cause for the action taken. Legal cause for the disciplinary action exists if the facts found by the Commission disclose that the conduct of the employee impaired the efficiency of the public service. *Palmer v. Department of Police*, 97-1593 (La. App. 4 Cir. 1/28/98), 706 So. 2d 658.

The Commission has the authority to “hear and decide” disciplinary cases, which includes the authority to modify (reduce) as well as to reverse

or affirm a penalty. La. Const. art. X, § 12; *Branighan v. Department of Police*, 362 So. 2d 1221, 1223 (La. App. 4 Cir. 1978). However, the authority to reduce a penalty can only be exercised if there is insufficient cause for imposing the greater penalty. *Id.* at 1222.

The appointing authority is charged with the operation of his or her department and it is within his or her discretion to discipline an employee for sufficient cause. *Joseph v. Department of Health*, 389 So. 2d 739, 741 (La. App. 4 Cir. 1980); *Branighan, supra*. The Commission is not charged with such operation or such disciplining. *Id.* In *James v. Sewerage and Water Board of New Orleans*, 505 So. 2d 119 (La. App. 4 Cir. 1987), we considered a decision of the Commission which reversed a five day suspension of an employee and suggested a reprimand instead. In reversing the Commission and reinstating the suspension, we reaffirmed and reiterated the holdings in *Joseph* and *Branighan*, stating:

It is not the job of the Commission to decide who should be disciplined how. The appointing authority is charged with the operation of his department. He is the one who must run the department, an obviously necessary part of which is dismissing or disciplining employees. While he may not do so without

cause, he may, and indeed must, within the exercise of sound discretion, dismiss or discipline an employee for sufficient cause. The Commission is not charged with such operation or such disciplining.

*Id.* at 121.

In *Chapman v. Department of Police*, 97-1384 (La. App. 4 Cir. 1/28/98), 706 So. 2d 656, we rejected the Commission's reduction of a suspension from thirty days to ten days, holding that the Commission is not charged with the operation of the NOPD or disciplining its employees. We concluded that the Commission's action was simply a substitution of its judgment for the Superintendent's judgment. We found that the Superintendent had sufficient cause to impose the penalty and that the NOPD carried its burden of proof. The Commission's action was an arbitrary and capricious interference with the authority of the Superintendent to manage his department.

Similarly, in *Palmer, supra*, we reversed the Commission's reversal of the NOPD's imposition of a two day suspension. In that case, the Commission substituted its judgment as to the appropriate sanction without an articulated basis for its action. We held the Commission acted arbitrarily and found legal cause for disciplinary action existed where the officer's actions clearly impaired the efficient operation of the public service.

Recently, in *Smith v. New Orleans Police Department*, 00-1486 (La. App. 4 Cir. 4/11/01), \_\_\_ So. 2d \_\_\_, we reversed the Commission's reduction of a suspension from five days to two days for an officer's failure to complete an investigation of a shoplifting incident by writing a police report and confiscating surveillance tapes that showed the alleged perpetrator fleeing the scene. We found there was ample evidence to show that the Superintendent acted reasonably and with sufficient legal cause in imposing a five day suspension under the circumstances of the case.

In *Brooks v. Department of Police*, 00-1483 (La. App. 4 Cir. 5/9/01), \_\_\_ So. 2d \_\_\_, we reversed the Commission's dismissal of both ten day and five day suspensions imposed by the appointing authority on an officer for neglect of duty and violations of departmental rules regarding truthfulness and testifying on behalf of a defendant in a criminal proceeding. In reinstating the suspensions, we concluded the appointing authority had legal cause to impose the disciplinary action and the Commission arbitrarily and capriciously interfered with the Superintendent's authority to manage the department.

Likewise, in *Stevens v. Department of Police*, 00-1682 (La. App. 4 Cir. 5/9/01), \_\_\_ So. 2d \_\_\_, we reversed the Commission's reduction from fifteen to ten days a suspension imposed by the appointing authority on an

officer who violated a local traffic ordinance and caused an accident that resulted in substantial property damage. We concluded that the Commission wrongfully substituted its judgment for that of the appointing authority.

The public puts its trust in the police department as a guardian of its safety, and it is essential that the appointing authority be allowed to establish and enforce appropriate standards of conduct for its employees sworn to uphold that trust. *Newman v. Department of Fire*, 425 So. 2d 753, 756 (La. 1983). Indeed, the Commission should give heightened regard to the appointing authorities that serve as special guardians of the public's safety and operate as quasi-military institutions where strict discipline is imperative. *Brooks, supra*; *Stevens, supra*.

In this case, the Commission never found that the Superintendent lacked sufficient cause to impose disciplinary action. To the contrary, it concluded that Officer Schnapp violated a local traffic law by traveling against traffic on a one-way street and failed to exercise greater caution under the extenuating circumstances. Officer Schnapp's actions resulted in an accident that caused substantial damage to the NOPD patrol vehicle, another vehicle, and a fire hydrant. The loss of the patrol vehicle certainly impaired the efficient operation of the police department. Under these circumstances, we find the Commission's reduction from thirty to ten days

the suspension imposed by the appointing authority on Officer Schnapp was an arbitrary and capricious interference with the Superintendent's authority to manage the NOPD. As in the above-cited cases, the Commission's action was simply a substitution of its judgment for that of the Superintendent and, thus, cannot stand.

Accordingly, the 31 May 2000 decision of the Civil Service Commission is reversed and the thirty day suspension imposed upon Officer Jake Schnapp by the appointing authority is reinstated.

**REVERSED**