

**JOHN DESHOTEL**

\*

**NO. 2007-CA-0363**

**VERSUS**

\*

**COURT OF APPEAL**

**DEPARTMENT OF POLICE**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

\*

\*

**\* \* \* \* \***

**TOBIAS, J., DISSENTS WITH REASONS.**

I respectfully dissent. I would reverse and reinstate the discipline imposed by the New Orleans Police Department (“NOPD”).

The majority has ignored certain facts in the record. For example, Sergeant Deshotel admitted under oath that he did not ask permission to leave his posting at the Louisiana Superdome from his immediate superior because he knew that his request would be denied. Sergeant Deshotel also stated under oath that he knew that his actions would result in some kind of discipline. It is undisputed that Sergeant Deshotel was responsible for the supervision of five other NOPD officers at the Superdome at the time he left his post.

The majority argues that the NOPD did not prove that Sergeant Deshotel’s actions bore a real and substantial relationship to the efficient operation of the public service, relying on the fact that the Superdome had been substantially evacuated and his unit was relieved of duty several hours after he left. However, the majority ignores Sergeant Deshotel’s admission that he was actively supervising five officers when he left his post. No evidence exists that Sergeant Deshotel advised his men of his departure, or that he spoke to another supervising officer to take command of his officers. More importantly, Sergeant Deshotel did not know that his unit was going to be relieved of duty when he left. Instead, Sergeant Deshotel testified that he left when he did because he was under the

impression that his unit was going to be immediately assigned to police the New Orleans Convention Center. While I might be persuaded to reduce the amount of discipline imposed on Sergeant Deshotel because the discipline imposed appears harsh, I cannot condone his behavior and neither should the majority or the New Orleans Civil Service Commission.

As we noted in *McElrath v. Department of Police*, 06-1288, p. 1 (La. App. 4 Cir. 5/23/07), 959 So. 2d 566, 567:

On August 27, 2005, due to the approach of Hurricane Katrina, Superintendent Eddie Compass placed the New Orleans Police Department in "Activation Status" in order to mobilize departmental personnel for emergency operations upon the hurricane's making landfall. Pursuant to this status, **all essential personnel were required to report to duty and remain on duty until relieved.** It was made clear that only the Superintendent himself could grant furlough to an officer who sought to be relieved of duty after the storm. [Emphasis added.]

We further stated:

The appellants were aware that only the Superintendent himself could grant furlough to an officer who sought to be relieved of duty after the storm, but left anyway. Although the appellants [sic] actions were understandable, that does not change the fact that they violated the rule laid down by the Superintendent. **The purpose of this rule was to centralize control of the police force under the Superintendent and avoid chaos in organizing and administering rescue efforts following the hurricane.**

*Id.* at pp. 3-4, 959 So. 2d at 568 [emphasis added].

These same facts apply to Sergeant Deshotel's case. He left his post without permission, thereby violating the rule laid down by the Superintendent. Based on the logic of the majority, every officer on duty, given sufficient "mitigating circumstances" in the officer's subjective opinion, was entitled to leave his/her post without permission if that officer believed that his/her job was finished. How many desertions does it take for there to be a real and substantial relationship to the

efficient operation of the public service? I find that the NOPD met its burden of proof and thus dissent from a decision to find that Sergeant Deshotel should not be punished for violating rules of the Superintendent of Police.