

NOT DESIGNATED FOR PUBLICATION

JAY JACQUET * **NO. 2007-CA-0502**
VERSUS * **COURT OF APPEAL**
DEPARTMENT OF POLICE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 6906

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Judge Terri F. Love

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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge Terri F. Love)

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AFFIRMED

In this appeal, the Plaintiff/Appellant, Officer Jay Jacquet (Officer Jacquet), seeks review of the decision of the Civil Service Commission of the City of New Orleans (Commission) dismissing his appeal and thereby affirming the discipline imposed by the Superintendent of the New Orleans Police Department (Department). For the reasons assigned below, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The facts in this case are not disputed. The Department hired Officer Jacquet on June 1, 1997, as a police recruit. Officer Jacquet received promotions and, at the time of the Commission action, was a Police Officer IV with permanent status.

On or about June 5, 2004, Officer Jacquet stayed in Lafayette overnight at the home of his girlfriend while traveling to Alexandria for a police conference. The neighbors knew Officer Jacquet as he spent every other weekend at his girlfriend's home. As his girlfriend was babysitting young children, Officer Jacquet placed his service revolver in the compartment of his pick-up truck, out of sight, and locked his pick-up truck. The Department purchased the service revolver and provided it to Officer Jacquet.

Officer Jacquet parked the pick-up truck under a carport, adjacent to and visible from the kitchen door, which contained a window. Upon awakening the next morning, Officer Jacquet discovered that his vehicle had been entered and the weapon stolen by an unknown individual. Officer Jacquet contacted the Lafayette Police Department and filed a report.

Sergeant Perrilloux, Officer Jacquet's immediate supervisor, conducted an investigation into the theft of the service revolver. Thereafter, on September 27, 2004, the Department issued a fine of \$460.00, the cost of a replacement service revolver and a letter of reprimand.¹ The Department determined that Officer Jacquet violated the rule or regulation found in Chapter 17.2 relative to departmental property.

Officer Jacquet timely appealed the disciplinary action to the Commission. On February 15, 2007, the Commission upheld the discipline and dismissed the appeal of Officer Jacquet. Officer Jacquet timely filed a Motion and Order for Appeal of the Commission's decision.

ASSIGNMENT OF ERROR

Officer Jacquet argues that it was manifest error for the Civil Service Commission to dismiss his appeal as his action, storing a service revolver in a locked passenger compartment of a vehicle with no trunk, was reasonable under the circumstances.

STANDARD OF REVIEW

In a civil service matter, the standard of review is whether the decision by the Commission is arbitrary, capricious or characterized by an abuse of discretion. La. R.S. 49:694 (G), (S); *McElrath v. Dep't of Police*, 06-1288, p. 3 (La. App. 4

¹ The Department lacked the ability to issue the fine without a written letter of reprimand.

Cir. 5/23/07), 959 So. 2d 566, 568, *citing Alongi v. Dep't of Police*, 452 So. 2d 798 (La. App. 4 Cir. 1984). “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the ‘efficient operation’ of the public service.” *Taylor v. New Orleans Police Dep't*, 00-1992, p. 3 (La. App. 4 Cir. 12/12/01), 804 So. 2d 769, 772, *quoting Brooks v. Dep't of Police*, 00-1483, p. 9 (La. App. 4 Cir. 5/9/01), 787 So. 2d 1061, 1066. “Arbitrary and capricious can be defined as the lack of rational basis for the action taken.” *Taylor*, p. 3, 804 So. 2d at 772.

REGULATION VIOLATION

The Department determined that Officer Jacquet violated the regulation relative to departmental property, Chapter 17.2, which states:

Employees shall take reasonable precautions to prevent the loss, theft, or damage of Departmental property and of police identification, police uniforms or uniform parts, and firearms. Leaving these articles in the locked passenger compartment of a vehicle shall not qualify as reasonable precaution. Under normal circumstances placing items in a locked trunk would be reasonable.

Officer Jacquet argues his actions, locking his service revolver in the passenger compartment of his vehicle and placing the vehicle under the carport, were reasonable in light of the fact that there were young children in the house and his vehicle, a pick-up truck, does not contain a trunk.

The Commission noted that according to the Department’s rules, a console of a vehicle is not a secure location. The rules direct personnel to secure their weapons in the trunk of their vehicles. Granted, a pick-up truck has no trunk. Nevertheless, the . . . [Department] concluded the Appellant’s decision to store the weapon overnight in his console was not a reasonable alternative to a trunk. We do not disagree.

Sergeant Perrilloux testified that he questioned Officer Jacquet regarding Officer Jacquet's knowledge of the regulation relative to departmental property. Officer Jacquet replied that he knew of the regulation. Sergeant Perrilloux stated that he also inquired whether Officer Jacquet thought he fulfilled the regulation and Officer Jacquet said "No." Sergeant Perrilloux testified that he next inquired whether Officer Jacquet investigated other options such as "locking the weapon into the trunk of his girlfriend's car, disarming the weapon, unloading the weapon, securing the gun and magazine to separate locations, or even possibly disassembling the weapon." Further, Sergeant Perrilloux noted that the Department issued a gun lock to Officer Jacquet, which could have been utilized to safely allow the weapon in the girlfriend's home. Finally, Sergeant Perrilloux testified a weapon was not required at the educational conference.

In *McElrath* the appellants were disciplined for violating a rule laid down by the Superintendent of the Department relative to furloughs during the aftermath of Hurricane Katrina. 06-1288, p. 4, 959 So. 2d at 568. The Department found that the appellants had violated this rule by leaving the area for a few days to verify their family's safety. The Commission upheld the discipline imposed and dismissed the appeal of the appellants. This Court affirmed, finding that the decision of the Commission was not arbitrary, capricious or characterized by an abuse of discretion, even though the actions of the appellants were understandable.

Similarly, Officer Jacquet violated a rule or regulation laid down by the Department. Officer Jacquet's desire to protect the children whom his girlfriend was babysitting is both admirable and understandable. However, Officer Jacquet possessed a duty to obey the rules and regulations of the Department. Officer Jacquet admittedly failed in that duty by securing his service revolver in a manner

which violated the Department's rules and regulations, even though other options were available to him. Common sense dictates that a revolver can cause serious harm, up to and including death, and the Department's goal of preventing firearms from falling into the wrong hands is vital to the efficient operation of the public service provided by the Department. Hence, a rational basis existed for the decision of the Commission and we find the decision of the Commission was not arbitrary, capricious or characterized by an abuse of discretion.

DECREE

Accordingly, we affirm the judgment of the Commission dismissing the appeal of Officer Jacquet, thereby upholding the discipline imposed.

AFFIRMED