

DAVID DESALVO

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NO. 2013-CA-1598

VERSUS

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COURT OF APPEAL

DEPARTMENT OF POLICE

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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BONIN, J., CONCURS WITH REASONS.

I concur.

Mr. DeSalvo was apparently drug-tested under the authority of La. R.S. 49:1015 A. The cut-off level for marijuana, which is specified by statute, “shall be *no less than fifty nanograms/ML* and no more than one hundred nanograms/ML as specified by the employer or testing entity.” La. R.S. 49:1005 B (emphasis added). Here, the employer and the testing entity are relying upon a *lesser* cut-off limit, which contravenes the clear dictates of law because the NOPD is using the below cut-off limit for a “negative employment consequence,” namely termination of employment. *See* La. R.S. 49:1001(5), 1005 A. As a matter of law, these test results cannot support the termination of Mr. DeSalvo, who is not an at-will employee.