

KEVIN POZZO

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NO. 2018-CA-0832

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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DYSART, J., DISSENTS, WITH REASONS

I find that the Police Officers’ Bill of Rights was not violated in this instance. For the reasons that follow, I respectfully dissent.

Mr. Pozzo argues that the administrative investigation exceeded the 60 day limit as provided for in La. R.S. 40:2531 B(7), and, therefore, his dismissal should be deemed an absolute nullity per La. R.S. 40:2531 C. The record indicates that the administrative investigation began on June 24, 2016, the same day that Mr. Pozzo was found not guilty of the criminal charge of domestic battery in municipal court. The investigation was concluded on August 12, at which time Mr. Pozzo was notified by phone that charges against him had been sustained. On August 17, he signed a form acknowledging receipt of the Notice to Accused Law Enforcement Officer Under Investigation of a Pre-Disciplinary Hearing or a Determination of an Unfounded or Unsustained Complaint. “The completion of the investigation is defined by statute as occurring ‘upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint.’” La. R.S. 40:2531 B(7); *Abbott v. New Orleans Police Dept.*, 14-0993, p. 18 (La.App. 4 Cir. 2/11/15), 165 So.3d 191, 203. As August 25, 2016, would have been the 60th day

since the commencement of the investigation, the investigation was completed within the 60 day time limit.

Mr. Pozzo argues that because the investigating officer supplemented her PIB report in November 2016 with a transcript of the victim's testimony in municipal court, the disposition should be nullified, as the act of supplementing the report indicated the investigation was not completed timely.

I do not find a basis for appellant's argument.

Sergeant Kimberly Hunt of the NOPD's Public Integrity Bureau (PIB) conducted the investigation and testified at the CSC hearing. She testified in part:

D.A.: When did you find out what her [victim] testimony was at trial?"

Hunt: Immediately after I met with the Assistant District Attorney....

D.A. "Okay. So it would be fair to say that you found out the contents of Melanie Wilson's testimony at the trial prior to June 24th of 2016.

Hunt: Yes.

Mr. Pozzo argues that Sgt. Hunt did not make her credibility assessment of the victim (finding that she was not credible) until after the date she notified him that the report was complete. However, Sgt. Hunt was specifically asked at the CSC hearing about when she made the credibility call. She testified that she used the information she gathered from the ADA on the date of the criminal trial to make her assessment, i.e., prior to August 12, 2016.

The Commission also disregarded the "supplement" Sgt. Hunt attached to her report. On p. 4 of the disposition the Commission states:

Ultimately, the Commission finds that NOPD did complete its investigation into Appellant's misconduct by August 12, 2016, but later added items to buttress its claims made in the investigative report. Therefore, the Commission finds that any material added after August 12, 2016 is inadmissible with respect to the instant appeal. Had NOPD believed that obtaining the transcript

was going to be a problem, it could have requested an extension of the 60-day deadline. It did not. The Commission is concerned that allowing NOPD to add exhibits and details to its investigation following notice to an accused officer would essentially render the 60-day deadline moot. NOPD's own policy requires any and all clarifications or questions regarding investigations be addressed prior to the 60-day deadline.

The Commission finds that NOPD adhered to the requirements of the Law with the exception of adding elements after August 12, 2016. Therefore, **the Commission will disregard any portion of Ms. M's trial transcript or Sgt. Hunt's report that references Ms. M's testimony during the criminal trial.**

The credibility assessment in Sgt. Hunt's report is found on pp. 33-35 of the PIB report. Although Sgt. Hunt indicates that she reviewed the transcript of the victim's sworn court testimony at the CSC hearing, Sgt. Hunt indicated that she had already formed her opinion that the victim had given contradictory testimony at the criminal trial based on what she learned from the ADA on the date of the criminal trial, June 24, 2016. The 60 day period began to run the next day, June 25, 2016.

Mr. Pozzo also argues that the investigation was not complete because the report had not been signed up the chain of command all the way to the commission until well outside the 60 day period.

In *Abbott, supra*, the appellant officers argued that the notice of the pre-disciplinary hearing did not signal the completion of the investigation. This Court rejected the argument citing that the notice itself states that the investigation is now complete and indicates exactly what charges are sustained. The statement on the form that the superintendent or his appointee is the final approving authority does not change the statutory mandate that: "The investigation shall be considered complete upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or

unsustained complaint. Nothing in this Paragraph shall limit any investigation of alleged criminal activity.” La. R.S. 40:2531 B(7); *Abbott, supra*.

Thus, I find that the CSC sufficiently protected Mr. Pozzo’s rights as a police officer when it disregarded the transcript added to the investigative report outside of the 60 day period. I therefore do not find that his rights were violated or that the discipline imposed should be nullified. I would affirm the ruling of the CSC.