CITY OF SHREVEPORT : NUMBER: 541,097-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

RONALD DEBELLO : CADDO PARISH, LOUISIANA

 **REASONS FOR JUDGMENT**

The Court has for consideration a petition for appeal filed by City of Shreveport in which it requests that the March 10, 2010 ruling of the Municipal Fire and Police Civil Service Board of the City of Shreveport (the Board) be reversed and that the June 25, 2009 decision by former Chief of Shreveport Police Department, Henry L. Whitehorn, Sr.[[1]](#footnote-1) terminating Ronald DeBello be reinstated. Having thoroughly examined the March 10, 2010 transcript of proceedings before the Board as well as the applicable law, oral arguments of counsel on November 8, 2010, and for reasons which follow, this Court concludes that Judgment should be rendered in favor of City of Shreveport, reversing the Board with respect to disciplinary action and reinstating the decision by former Chief of Police Whitehorn.

 **FACTS AND PROCEDURAL BACKGROUND**

The facts surrounding the misdemeanor crime, R.S. 14:56, and violations of Shreveport Police Department Rules and Regulations 100.17, Conformance to Laws, and 100.22, Unbecoming Conduct, are established[[2]](#footnote-2) as follows: Prior to May 2, 2009, the Shreveport Police Department was conducting an investigation concerning unknown persons posing as police officers and conducting traffic stops. Shreveport Police Officer Ronald DeBello was assigned to patrol in the area where the illegal stops were occurring. DeBello believed that a certain vehicle located at an apartment complex on Youree Drive was being used in these stops, that vehicle being owned by one Shane Lewis. While on duty and in uniform, DeBello drove his City patrol vehicle to the apartment complex; he proceeded to Lewis’ vehicle; he bent over, shined his flashlight on the side of the Lewis vehicle and slashed one of its tires. DeBello quickly returned to his patrol unit and left the complex. A witness observed all of DeBello’s actions and reported this crime to the Shreveport Police Department. Based on an incriminating statement that DeBello made to Cpl. Monica Reed earlier on May 2 and two excited exculpatory statements made to Sgt. Amy Mueller after the criminal offense, an investigation centered on DeBello’s actions which resulted in DeBello being arrested and charged with the misdemeanor crime of Criminal Damage to Property. An Internal Affairs investigation followed during which DeBello admitted to Sgt. Keith Greer that he cut the tire on Lewis’ vehicle; and based primarily on Debello’s admission, Greer recommended a finding of “sustained” in the alleged violations of SPD Rules and Regulations. On June 25, 2009, after conducting a Pre-Disciplinary Conference, Chief Whitehorn terminated Officer DeBello.

 **TESTIMONY AND EVIDENCE BEFORE THE BOARD**

DeBello appealed his termination to the Board, and on March 10, 2010, a hearing was held. DeBello’s counsel somewhat stipulated to the facts, saying “…we’re going to stipulate to the property damage, the damage of the tire” (6:14-16) and by conceding “[t]here’s not a dispute as to the act that occurred as far as the damage to a tire on a vehicle” (6:24-25; 7:1). There also appeared to be a stipulation that DeBello violated SPD policy. The hearing proceeded with various witnesses with the focus being the discipline/termination imposed by Chief Whitehorn.

**CHIEF HENRY WHITEHORN**

Of particular note, Chief Whitehorn testified of his multiple reasons for the termination all of which had as a core the integrity and reputation of the Shreveport Police Department:

Q. Chief, you felt like termination was the correct discipline for this particular offense?

A. Absolutely.

Q. Will you tell the board what factors led to that decision?

A. The two violations that I mentioned, and when you – the fact that you cannot explain why an officer on duty would go and just go to such extreme to, I don’t know if he was trying to effect an arrest or not, but that’s paramount or tantamount to planting evidence. What would happen if you planted cocaine on somebody or marijuana, or planted a weapon? Would he be able to say, well, I didn’t know what I was doing? I placed it in that same type of category; dishonesty, integrity, those are the things that we are (inaudible) my officers.

Q. The act itself, do you feel like that waves towards his integrity?

A. Absolutely.

Q. And how so?

A. He cannot in some cases or any cases go...

54:5-25

 \* \* \*

I looked at everything, Mr. Madison, as it was presented to me. I looked at the facts. And the fact remains that he, while on duty, in the performance of protecting the citizens of our city, decided that he needed to no longer protect an individual, but, in fact, go and damage an individual’s tire. The actions were so egregious that it damaged the reputation of this organization. It damaged his reputation. And I felt that it was such that would prevent him or should prevent him from ever to wear the uniform of a Shreveport police officer. I don’t want to work beside him.

72:2-13

 \* \* \*

It had nothing to do with the investigation. His actions had to do with the reputation and respect of this department.

73:5-7

\* \* \*

...these types of cases, I don’t just arbitrarily decide to terminate or do any other type of discipline without some agony in itself, because I want to try to help these officers as much as I can. But in this case I felt termination was the best result based on the actions of this officer. And, you know, it’s not something I take lightly. We’re talking about a person’s career. We’re talking about a person’s livelihood. But we’re also talking about the disrespect that he brought upon himself, this organization, and the brave men and women that serve day to day. I can assure you that there are other officers out there that have encountered as much stress as any other individual on this department that would not stoop to this level of action.

82:1-15

**OFFICER RONALD DEBELLO**

Of equal importance, Ronald DeBello provided testimony perhaps the most noteworthy, being as follows:

Q. But your testimony to the board today is that you can’t remember, you have no recollection or limited recollection of the tire slashing incident on May 2nd?

A. Yes, sir.

Q. And you still don’t recall those?

A. I still don’t have a full memory.

Q. When did you begin having trouble recalling those events?

A. What?

Q. The May 2, 2009 event?

A. That night when it happened.

Q. You don’t remember anything after you did it?

 \* \* \*

A. I don’t recall everything around the event.

BY MR. JONES:

Q. Do you recall slashing the tire?

A. I didn’t recall slashing the tire that night.

Q. That night?

A. Or –

Q. Did you recall being over at the apartment complex?

A. I did, yes.

Q. And you didn’t recall slashing the tire?

A. No.

Q. When the call went out over the radio dispatch to Sergeant Muller, you recall if they mentioned a slashed tire?

A. I do recall.

Q. You didn’t have a recollection of doing anything criminal in nature at the apartment complex when the call went out, is that correct?

A. That’s correct.

Q. But, yet, you called Sergeant Mueller to tell her, I didn’t do anything?

A. That was immediately after I received a call from Corporal Reed who was standing right next to Sergeant Mueller and advised me, I’m standing right here with Sergeant Mueller and I just told her what you told me earlier, you need to call her.

Q. So you called her and told her, I didn’t do anything?

A. My recollection was that I told her that I was there but did not do it. So obviously my recollection was wrong.

Q. Let’s talk about Corporal Reed for a minute. What did she tell you when she called you?

A. When she called me she heard the call go out the same time all the rest of us did.

Q. Okay.

A. And she advised me that she had just talked to Amy and had advised her of the conversation earlier in the day.

Q. Where you had told her that what you ought to do is slash the tire?

A. Correct.

Q. You recall that conversation when you talked to Monica?

A. I do recall that conversation.

Q. But you don’t recall slashing the tire?

A. That’s correct, at that time.

Q. But you called Sergeant Mueller to tell her you didn’t slash the tire?

A. That’s correct.

Q. Then you e-mailed her later on, is that correct?

A. Yes.

Q. And you asked for information about the tire?

A. The last thing she told me when she spoke to me on the phone was that she would call me to let me know what would proceed next. When I didn’t hear from her I sent her a text message to find out what would happen next.

Q. Were you concerned at that point?

A. At that time I was extremely concerned.

Q. Why?

A. Because I didn’t recall doing that. And a description that they put out on the radio, they gave a physical description of me, they gave the vehicle description and I knew that I had been over there multiple times that day.

Q. Had you been drinking that day?

A. I had not been drinking that day.

Q. You said that later on that you had blacked out?

A. I don’t recall saying that I had blacked out. I recall the officers when I said that I didn’t remember what happened, they stated, what, did you blackout.

Q. Were you consuming large quantities of alcohol during that time period?

A. At night, yes.

Q. But you don’t recall anything about it?

A. Not that I don’t recall anything about it.

Q. And it’s your testimony today that you still don’t recall slashing the tire?

A. I still don’t recall slashing the tire.

190:24-25;

191-194

\* \* \*

Q. And it’s your desire to come back and be a Shreveport police officer?

A. Absolutely, yes.

Q. Why did you slash the tire?

A. At the time I remembered we had been looking for this gentleman. The neighbors were coming to us and she requested police presence over there.

Q. And you drove through there, slashed the tire and left?

A. Apparently so.

Q. Still don’t recall?

A. I remember going over there. I remember looking at the vehicle.

MR. JONES: That’s all the questions I have.

200:20-25;

201:1-9

\* \* \*

**MULTIPLE STATEMENTS OF DEBELLO**

The Board testimony by DeBello should be contrasted by his other statements referenced in the transcript:

(1) Prior to slashing the tire, DeBello told Cpl. Monica Reed that he should cut (Lewis’) tire in order to catch him. (Testimony of Sgt. Keith Greer 42:14-25; 15:1-8.)

(2) Immediately after slashing the tire, a “panicked” DeBello initiated two calls and a text message to Sgt. Amy Mueller in which he denied (a) being in the area of the apartment complex and (b) slashing the care tire. (Sgt. Amy Mueller 21:6-25). Regarding DeBello’s peculiar and incriminating behavior, Sgt. Mueller testified as follows:

Q. How soon after the radio dispatch did he call you?

A. Almost immediately.

Q. What was the nature of his comments during that phone call?

A. He was – he sounded really panicked on the phone and he just was non-stop, I wasn’t there; I promise I wasn’t there; I didn’t go over there. I didn’t get to say much. He was saying everything.

Q. So he denied being there and any involvement?

A. Yes.

Q. Did you find that kind of strange?

A. I did find it strange because I had just been dispatched to the call. I didn’t have any time to really process it.

Q. Did he call you after you had arrived on the scene at the apartments?

A. He had sent me a text message and he called me I believe is how it went later on.

Q. So 2 calls and a text message?

(3) During the Internal Affairs investigation, DeBello admitted the tire slashing to Sgt. Keith Greer. (Testimony of Sgt. Greer 41:2-13.)

(4) In Caddo District Court, DeBello entered a nolo contendere plea to Criminal Damage to Property.

**DEBELLO’S COGNITIVE FOG**

Despite DeBello’s psychologist’s opinion that DeBello was in a “cognitive fog” (99:4-5), that he “lost focus situationally” (118:16-17), and that he suffered from “dissociative amnesia” (108:9-11), DeBello appeared to have vivid, specific and, quite frankly, impressive recall about the number of calls, “6460” (167:21) and number of arrests [“that I actually made was 344" (167:24)] over a 3½ year period. Yet, at the Board hearing, DeBello could not recall the extremely significant tire slashing event of May 2, 2009. See transcript pages 190-201 and pages 3-6 of this ruling.

**DEBELLO’S BACKGROUND**

It was established that Ronald DeBello has a very good background. After high school, he entered the United States Air Force and served active duty for six years and served in the Reserves for an additional four years. According to DeBello’s running tally of calls over a 3½ year period prior to the Board hearing, he responded to 6,460 duty calls and made 344 arrests. It is also uncontroverted that he had some very stressful days as a police officer, including being shot at and tending a colleague who had been shot. It is also clear from fellow officers Mike Heard and Diana Thomas (although the Court was a bit distracted by Officer Thomas’ testimony, “we stretch the truth” [159:13]) as well as Rabbi Foster Kawalor, that DeBello was an enthusiastic member of SPD.

 **ACTION AND COMMENTS BY BOARD MEMBERS**

Following closing arguments by the attorneys, the Board voted unanimously that “the City acted in good faith and for just cause to discipline Officer DeBello. (212:12-25; 213:1-4) However, by a vote of 6-1, the Board modified the punishment from termination to a 90-day suspension. (214:8-25; 215:1-4) Of particular note are the following member comments:

**Dr. Jones:**

While my vote today was cast thinking that maybe punitive consequences were a bit severe given your record prior to that incident, I do have some grave concern about your wholeness as a person, your mental stability. And I’m not making any judgments. But you’ve testified yourself as to your efforts to self-medicate. And while this board just advised me that we weren’t in a position to mandate any kind of counseling or help, I would feel far more comfortable knowing that you would leave this process today and get the kind of help you need.

216:3-13

**Mr. Thompson:**

Mr. DeBello, I just wanted to let you know that my vote was cast because I believe in folks having a second chance. I just believe that at some point in our life everybody at some point experience a second chance. This is your second chance to do what’s right.

216:24-25

217:1-4

**Mr. Madison:**

Mr. DeBello, I have some real reservations allowing you to come back on the force. But, likewise, I do believe in second chances.

217:10-12

**APPLICABLE LAW**

La. R.S. 33:2500 provides the circumstances under which classified civil servants, such as the plaintiff, may be subject to disciplinary action by their appointing authority. That statute provides in pertinent part:

A. The tenure of persons who have been regularly and permanently inducted into positions of the classified service shall be during good behavior. However, the appointing authority may remove any employee from the service, or take such disciplinary action as the circumstances warrant in the manner provided below for any one of the following reasons:

(1) Unwillingness or failure to perform the duties of his position in a satisfactory manner.

(2) The deliberate omission of any act that it was his duty to perform.

(3) The commission or omission of any act to the prejudice of the departmental service or contrary to the public interest or policy.

(4) Insubordination.

After the appointing authority dismisses or disciplines a civil service employee, that individual has a right to appeal the decision to the Board under La. Const. Art. 10, § 8(A), which states:

No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part. The burden of proof on appeal, as to the facts, shall be on the appointing authority.

La. R.S. 33:2501 specifies the procedure for perfecting such an appeal. That statute specifies in pertinent part:

1. Any regular employee in the classified service who feels that he has been discharged or subjected to any corrective or disciplinary action without just cause, may, within fifteen days after the action, demand, in writing, a hearing and investigation by the board to determine the reasonableness of the action. The board shall grant the employee a hearing and investigation within thirty days after receipt of the written request.

On appeal to the civil service board, the burden of proof as to the facts is on the appointing authority. La. Const. Art. 10, § 8(A). The Board may only affirm the appointing authority’s disciplinary action if the evidence is conclusive. La. R.S. 33:2501(C)(1); *Woods v. City of Shreveport*, 914 So.2d 635 (La.App. 2d Cir.2005); *Linton v. Bossier City Municipal Fire and Police Civil Service Board,* 428 So.2d 515 (La.App. 2d Cir.1983). Although the appointing authority has the burden of proof, it is not required to prove its case beyond a reasonable doubt, but merely by a preponderance. *Shields v. City of Shreveport,* 565 S.2d 473 (La.App. So.2d Cir.1990), *affirmed*, 579 So.2d 961 (La.1991).

The dismissal (or discipline) cannot be said to have been for “cause” if the evidence fails to show that it is necessary for the efficient and orderly operation of the department or that it was needed to avoid some detriment to the department or the city. *Pearson v. Municipal Fire and Police Civil Service Board for City of Shreveport*, 609 So.2d 1038 (La.App. 2d Cir.1992).

 If, in reviewing the disciplinary action taken by the appointing authority against civil servants, the Board determines that the action was taken in good faith and for one of the causes delineated in La. R.S. 33:2500, it should affirm the disciplinary action. Moreover, a civil service board’s determination, if made in good faith, and for legal cause, should not be disturbed by the judiciary on appeal. See *Woods, supra*; *White v. Municipal Fire & Police Civil Service Board of the City of Shreveport,* 38,942 (La.App.2d Cir.9/22/04), 882 So.2d 1217; *City of Shreveport v. Willis,* 33,680 (La.App.2d Cir.8/25/00), 765 So.2d 1245.

Any employee or appointing authority dissatisfied with the determination of the Board may appeal its decree directly to the district court of original and unlimited jurisdiction in civil suits in the parish where the board is domiciled. La. R.S. 33:2501; *Linton v. Bossier City Municipal Fire and Police Civil Service Board, supra.* The standard of review employed by the district court is the same as employed by the civil service board; the appointing authority’s disciplinary action will not be disturbed if taken in good faith and for cause set forth in La. R.S. 33:2500, discussed above. The Board’s factual findings will be upheld unless manifestly erroneous or arbitrarily capricious. *Linton v. Bossier City Municipal* *Fire and Police Civil Service Board, supra.*  “Arbitrary and capricious” means the lack of a rational basis for the action taken. *Pearson v. Municipal Fire and Police Civil Service Board, supra.*

In *McCoy v. City of Shreveport,* 972 So.2d 1178, 42,662 (La. App. 2 Cir. 12/5/07), Judge James Stewart, writing for the majority, stated the following about the scope of review by the district court:

This hearing shall be confined to the determination of whether the decision made by the board was made in good faith for cause under the provisions of this Part. No appeal to the court shall be taken except upon these grounds and except as provided in Subsection D of this Section.

Review by the district court does not include a trial *de novo*. *Walsworth, supra; Linton, supra.*  Rather, the district court sits as a reviewing court and determines from the record of the Board’s proceedings whether its decision was made in good faith for cause. *Wadsworth, supra.* The Board’s decision will not be overturned unless it is manifestly erroneous or arbitrary and capricious. *Linton, supra.*

 In *Landry v. Baton Rouge Police Department,* 17 So.3d 991 (2009), 2289, (La. App. 1 Cir. 5/8/090) the First Circuit Court of Appeal addressed the burden of proof and the standard of review in such classified employee matters, writing the following:

Matters involving classified employees of municipal fire and police departments are governed by the Municipal Fire and Police Civil Service Law, LSA-R.S. 33:2471, et seq., and by LSA-Const. 1921, Art. XIV, §15.1. See LSA-R.S. 33:2591 and LSA-Const. 1974, Art. C, §18. Any regular employee in the classified service who feels that he has been discharged or subjected to any corrective or disciplinary action without just cause may demand a hearing and an investigation by the Board to determine the reasonableness of the action, LSA-R.S. 33:2501(A).

The Board may, if the evidence is conclusive, affirm the action of the appointing authority. If it finds that the action was not taken in good faith for cause, the Board shall order the immediate reinstatement or reemployment of such person, LSA – R.S. 33:2501(C).

The employee may appeal any decision of the Board that is prejudicial to him. LSA-R.S. 33:2501 (E)(1). The district court shall hear the matter in a summary manner, and its review of the Board’s action is limited to a finding of whether the Board’s decision was made “in good faith for cause.” LSA-R.S. 33:2501(E)(2) & (3), *Moore v. Ware,* 2001-3341 (La. 2/25/03), 839 So.2d 940, 945.

If based on good faith and statutory cause, a decision of the Board cannot be disturbed on judicial review. Good faith does not occur if the appointing authority acted arbitrarily or capriciously or as a result of prejudice or political expediency. Arbitrary or capricious means the lack of rational basis for the action taken. The district and appellate courts should accord deference to a civil service board’s factual conclusions and must not overturn them unless they are manifestly erroneous. *Moore, 839 So.2d at 946.*

In *Lensey v. City of Shreveport Municipal Fire and Police Civil Service Board*, 839 So.2nd 1032, (La. App. 2nd Cir., 2003), off-duty Officer Lensey drove her cousins to Bossier City to board a bus they had missed in Shreveport. One of the cousins boarded the bus and battered the driver. Bossier City police were called. The driver did not wish to pursue charges and the cousin was not arrested. However, Lensey identified herself as a Shreveport police officer and continued to argue with the Bossier officers. She was ultimately arrested and booked into the Bossier City Jail for interfering with an officer. She was subsequently terminated from the Shreveport Police Department. The termination was upheld on appeal to the board and this judge in Caddo District Court. However, on appeal to the Second Circuit Court of Appeal, the termination was overturned. In framing the issue presented to the Second Circuit Court of Appeal, Judge James Stewart wrote:

The issue therefore is whether the City demonstrated by a preponderance of the evidence that Lensey’s discourteous or wantonly offensive conduct in violation of R.S. 33:2500 A(5), did in fact, impair the otherwise efficient operation of the Shreveport Police Department, which is a mandatory showing for cause when terminating civil service employees. La. Const. Art. X, § 8.

After examining a number of off-duty police cases, Judge Stewart concluded:

On close review, we find this evidence insufficient to prove that Lensey’s conduct impaired the efficient operation of the Shreveport Police Department. The jurisprudence delineates what kind of conduct must be proved to make an adequate showing of impairment.

 \* \* \*

As was found in *Laborde, supra,* we find no evidence in the record which would allow us to conclude that Lensey’s conduct impaired the efficient operations of the Shreveport Police Department. More specifically, as was the case in *Laborde,* Lensey, at the time of the bus terminal incident, was off-duty and in Bossier City.

**FINDINGS AND CONCLUSIONS BY THIS COURT**

 The evidence presented by the City of violations by Officer DeBello was absolutely conclusive. There is no question that Chief Whitehorn’s action was taken in good faith and for statutory cause. Further, the evidence was conclusive that DeBello’s pre-meditated criminal act, while on duty, in uniform and in a marked City vehicle, impaired the otherwise efficient operations of Shreveport Police Department as articulated by former Chief of Police Whitehorn [“so egregious that it damaged the reputation of (SPD) and the brave men and women that serve day to day”. 72:6-7; 82: 7-8].

 The egregious nature of the act is exacerbated, not mitigated, by DeBello’s “cognitive fog” when examined against the multiple inconsistent statements that he made to his colleagues - Cpl. Reed, Sgt. Mueller, and Sgt. Greer - and his unwavering reluctance to admit his wrongdoing to the Board. This failure of DeBello to admit wrongdoing is even more bewildering in light of the fact that his lawyer stipulated to the fact that DeBello committed the criminal act.

 Notwithstanding the stunning and overwhelming evidence that DeBello impaired the efficient operations and reputation of SPD, as implicitly conceded by Board members Jones (“grave concern about your wholeness as a person, your mental stability”) and Madison (“real reservations allowing you to come back to the force”), a majority voted to modify the punishment. This rationale was apparently based on a ubiquitous and abstract belief in “second chances”, specifically articulated by Board members Thompson and Madison, rather than an application of the law to the evidence.

 Under the serious facts and circumstances of this case, for the Board to return an officer to the department who they admittedly have “real reservations” about, an officer that they have “grave concern about”… (considering “his wholeness” and “his mental stability”), at the risk of the Shreveport Police Department and the citizens of the City of Shreveport amounts to arbitrary and capricious action. Specifically, under the facts and circumstances of this case, it is this Court’s opinion that the Board’s action was not made in good faith and for cause; its findings are manifestly erroneous and arbitrarily capricious. Accordingly, the decision of the Board modifying the punishment from termination to a 90 day suspension is reversed and the decision by Chief of Police Whitehorn to terminate Officer Ronald DeBello is reinstated.

A formal Judgment consistent with this Court’s conclusion shall be submitted in

accordance with La. Dist. Ct. R. 9.4 and, upon rendition, shall be binding as to the parties in this case subject to the filing of a suspensive appeal.

Signed this 2nd day of February, 2011 in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

Eron J. Brainard, Counsel for Ronald DeBello

Edward F. Jones, Counsel for City of Shreveport

Mary E. Winchell, Counsel for Shreveport Municipal Fire and Police Civil Service Board

1. Henry L. Whitehorn presently serves as United States Marshal for the Western District of Louisiana. [↑](#footnote-ref-1)
2. Stipulation of parties and, in part, taken from brief of City of Shreveport at pages 2-3. [↑](#footnote-ref-2)