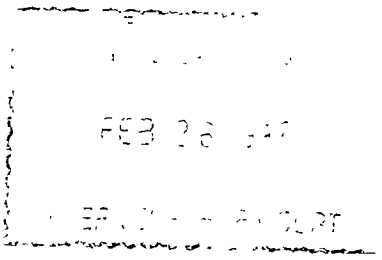
IN THE COURT OF APPEALS OF IOWA

No. 6-778 / 95-2207



000350

TY TADLOCK,

Plaintiff-Appellant,

vs.

CIVIL SERVICE COMMISSION OF THE CITY OF SIOUX CITY, IOWA and THE CITY OF SIOUX CITY, IOWA,

Defendants-Appellees.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

The plaintiff, a Sioux City police officer, appeals from the district court's ruling affirming the city's civil service commission's disciplinary decision against him. **AFFIRMED.**

Michael L. Smith and MacDonald Smith of Smith, McElwain & Wengert, Sioux City, for appellant.

James L. Abshier, City Attorney, and C. Maurice Rawe, Chief Deputy City Attorney, for appellees.

Heard by Habhab, C.J., and Streit and Vogel, JJ.

STREIT, J.

A Sioux City police officer appeals from the district court's ruling affirming the city's civil service commission's disciplinary decision against him. The police officer was acquitted of assault but the commission found he exhibited un-officer like conduct and suspended him for thirty days without pay.

In the early morning hours of March 31, 1993, Ty Tadlock, a Sioux City police officer, was involved in an incident with Molly Adam and Lisa Sullivan outside of a bar. Adam and Officer Tadlock became involved in a heated conversation. Adam prevented Tadlock from leaving in his car. Sullivan attempted to get Adam to leave Tadlock alone but Adam refused. Tadlock demanded both women to leave and there was evidence Tadlock then grabbed Sullivan by the throat and shoved her against another vehicle. Tadlock denies grabbing Sullivan by the throat but admits that he did touch her.

Tadlock was charged with the crime of simple assault. After trial, the court acquitted Tadlock concluding Tadlock was justified in his actions.

As a result of the incident, Sioux City determined that Officer Tadlock engaged in misconduct and suspended him for thirty days. Tadlock appealed the decision to the defendant, the city's Civil Service Commission. The commission affirmed the decision determining that Officer Tadlock's conduct constituted

misconduct within the meaning of Iowa Code section 400.18. Tadlock then appealed the commission's decision to the district court.[1]

The district court entered a decree affirming the commission's decision suspending Tadlock for misconduct. The district court acknowledged the acquittal of Tadlock in the criminal proceedings, but determined that it was not bound by such an adjudication due to the different burdens of proof involved in the proceedings. The court concluded Tadlock's thirty-day misconduct suspension was appropriate for his grabbing Sullivan without justification.

On appeal Tadlock claims that the district court's ruling failed to give him proper de novo review of the discipline under Iowa Code section 400.27 (1993) after he was acquitted of the assault. The police officer contends that since he was acquitted of the criminal assault charges, the district court on review of the commission's order imposing discipline for the assault should have revoked his suspension.[2] Our review of the district court's ruling is de novo and though we give

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[1] While the appeal to the district court was pending, Tadlock was found not guilty of the assault charge.

[2] Officer Tadlock argues the court's ruling, imposing discipline on an officer for committing a crime, which a court concluded he did not commit, is arbitrary and irrational. By upholding the sanction, the court's decision runs counter to the essential purpose of the civil service statutes, which appellant believes the legislature intended him to have greater protection as a civil service employee, then for example, an "at will" employee who has no protection from discharge for off-duty criminal activity despite acquittal on the criminal charges. *See Borschell v. City of Perry*, 512 N.W.2d 565 (Iowa 1994). These principles were settled long ago when the Supreme Court found that an aquittal in a criminal case does not bar the government from contesting the same issues in a civil case. *Helvering v.*

weight to the trial court's findings of fact, we are not bound by them. *City of Bettendorf v. Kelling*, 465 N.W.2d 299, 301 (Iowa App. 1990). We determine anew whether the evidence as a whole justified the disciplinary action imposed on the officer. *Eilers v. Civil Serv. Comm'n*, 544 N.W.2d 463, 465 (Iowa App. 1995).

The trial court concluded although

> the criminal court found that it had not been proven beyond a reasonable doubt that Tadlock grabbed Sullivan around the neck, . . .the preponderance of the evidence shows he did so and that he had no justification for doing so. . . .The behavior of Tadlock constituted misconduct and the suspension inflicted upon him was reasonable and proper under the circumstances.

The trial court makes a distinction based on the different standards of proof that even though Tadlock was acquitted of criminal charges, under the lesser burden of proof in the civil service hearing, his conduct was deserving of discipline. We affirm.

"Misconduct" includes "relatively minor or innocuous behavior as well as flagrant and injurious breaches of decorum." *Eilers*, 544 N.W.2d at 466 (citing *Sieg v. Civil Serv. Comm'n*, 342 N.W.2d 824, 829 (Iowa 1983)). Such behavior must reach the point of conduct which is detrimental to the public interest. *City of Des Moines v. Civil Serv. Comm'n*, 513 N.W.2d 746, 748 (Iowa 1994). When a police officer acts contrary to the image projected by society that they are upstanding law

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Mitchell, 303 U.S. 391, 397 (1938).

abiding citizens protecting the community from harm, it is detrimental to the public trust. *See Millsap v. Cedar Rapids Civil Serv. Comm'n*, 249 N.W.2d 679, 686 (Iowa 1977) (recognizing the need for a police force capable of promoting the public safety and welfare justifies regulating the personal appearance of police officers in a manner different from members of the general public).

> The image projected by police officers to the public is vital to the police mission. In turn, it also permeates other aspects of the criminal justice system, and impacts its overall success. Consequently, police officers must earn and maintain the public trust at all times by conducting themselves with good judgment and sound discretion. Grounds to justify discipline of an officer include off-duty conduct.

Eilers, 544 N.W.2d at 466 (citations omitted).

We find, even though Tadlock was acquitted of the assault charges, he still committed misconduct during the course of the investigation of the assault. The assault was not the only charge brought against Tadlock by the City of Sioux City. Officer Tadlock was also charged with lying to an investigating officer concerning the circumstances surrounding the incident with Sullivan.

Tadlock had been out drinking at several bars on the evening of March 30, 1993, when the alleged assault took place. Tadlock told police investigators he was too drunk to remember the circumstances of his altercation with Sullivan. The officer conducting the investigation felt Officer Tadlock was lying about the fact that he was too drunk to remember the alleged assault, as well as other aspects of the internal

investigation.[3] The investigating officer gave Tadlock the opportunity to change his answer that he was too drunk to remember the altercation between him and Sullivan, but Tadlock did not give any other explanation for not recalling whether he had grabbed Sullivan by the throat.

We acknowledge that Tadlock may have been aggravated by Adam and Sullivan, placing reasonable doubt in the mind of the criminal court whether an assault took place. However, we find the circumstances did not justify his conduct or the use of force to remove Sullivan from his car area. He did not exercise good judgment or restraint in controlling his anger in a way we believe police officers should as community representatives. *See Eilers*, 544 N.W.2d at 466. Under a preponderance of the evidence we find Officer Tadlock committed misconduct. His 30-day suspension without pay is a proper sanction for un-officer like conduct and lying during an investigation.

AFFIRMED.

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[3] It is ironic that Officer Tadlock, in his denial of misconduct, told police investigators he was too drunk that night to remember an incident that concluded with his driving his vehicle.