

---

Patrick Carroll v. City of Elizabeth  
Cite as 2 *N.J.A.R.* 26

---

**PATRICK CARROLL,**  
Appellant,  
v.  
**CITY OF ELIZABETH,**  
Respondent.

Decided December 6, 1979

**Initial Decision**

**SYNOPSIS**

Removal of police officer by the City of Elizabeth was not arbitrary, unreasonable or offensively excessive. The findings supported the following charges under *N.J.A.C.* 4:1-16.9: neglect of duty, serious breach of discipline and conduct unbecoming an employee in the public service for shooting a neighbor's dog and failing to report the discharge of a firearm; serious breach of discipline, conduct unbecoming an employee in the public service and disorderly or immoral conduct for the use of marijuana in his home; and neglect of duty, incompetency, inefficiency and disorderly or immoral conduct for possession of stolen property and possession of improperly registered weapons for which he did not purchase permits.

---

**Joseph W. Spagnoli, Esq.**, for Appellant (Spagnoli & Thuring, Attorneys)

**Kenneth N. Siegel**, Assistant Prosecutor of Union County, for Respondent

**SAMUELS, ALJ:**

Patrick Carroll was employed as a police officer in the City of Elizabeth. He was removed from his position by the City of Elizabeth, effective March 15, 1979, on disciplinary charges, pursuant to *N.J.A.C.* 4:1-16.9.

Mr. Carroll appealed to the Civil Service Commission and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* Hearings were held in the Union County Courthouse, Elizabeth, New Jersey, on July 31, 1979 and September 6, 1979; and in the Office of Administrative Law, Newark, New Jersey, on October 19, 1979. Counsel for the parties were permitted to file post-hearing briefs and memoranda on or before November 5, 1979. No briefs or memoranda were received from either party and the record closed on November 5, 1979.

---

Patrick Carroll v. City of Elizabeth  
Cite as 2 *N.J.A.R.* 26

---

In removing the appellant after a departmental hearing, the City alleges that Mr. Carroll violated various departmental rules, orders and codes, city ordinances, criminal statutes and the Civil Service rules, particularly *N.J.A.C.* 4:1-16.9, which delineates causes for removal from the Civil Service. The underlying specifications supporting these charges are:

A. That on July 18, 1978 the appellant fired a weapon at and hit a neighbor's dog, and that he thereafter failed to report the firing of a weapon to the Police Department. The respondent alleged that the foregoing violated the general rules of the law enforcement code of ethics, the criminal law, city ordinances, general orders of the Police Department and the Civil Service rules.

B. That the appellant used and allowed others to use marijuana in his home, in violation of the general rules of the law enforcement code of ethics, the criminal law and Civil Service rules.

C. That while in the basement of his home, the appellant put a weapon to the head of another person and threatened to take his life, in violation of general rules of the law enforcement code of ethics, general orders of the Police Department and Civil Service rules.

D. That the appellant had a stolen weapon in his possession and that he also possessed six improperly registered weapons, in violation of the Police Department general rules, the criminal law and Civil Service rules.

Each of the above charges is dealt with separately below:

A. *Firing of weapon and shooting of dog.*

On July 19, 1978 at approximately 11:30 a.m., an Irish setter dog owned by Edward Debevec, Jr., was shot in its body near the tail area. The dog had been tied up in the rear yard of the Debevec home on Summer Street in Elizabeth, which is next door to the appellant's residence. The appellant occupies the second floor and attic of a two-family house. The other adjoining houses in the row on Summer Street are also two-family homes, all located very close to one another. Dr. Moosik Jeon, a veterinarian, surgically removed a .22 caliber bullet from the dog. The projectile had penetrated 1 1/2 inches into the dog, and its angle of entry and travel indicated that it was fired from a height above the first floor level.

The dog was initially attended to by Edward John Debevec, Sr., who went out into the yard when he heard a report, followed by a squeal from the dog. Mr. Debevec thought that the sound came from the direction of the appellant's house next door. The same sequence of events was also testified to by several others:

Mary Ann Shine, the Debevec's daughter, whose bedroom on the second floor of the Debevec home is directly across from the appellant's apartment, heard a loud bang from the direction of the appellant's house and then heard

the dog squeal. When she looked out, she saw her father attending to the animal.

George Cortes, age 13, lives beneath the appellant in the first-floor apartment of Mr. Carroll's house. He was in his kitchen at 11:30 a.m. on July 18, 1978, when he heard a sound which he thought came from upstairs. He also heard someone walking above at about the same time, but he does not know who it was.

Mario Cortes, age 15, George's older brother, was in the living room towards the front of his first-floor apartment when he heard a report which sounded as if it had come from the rear of the house. He went to the back, looked out and saw the dog bleeding on the ground, in the adjoining rear yard. Mario Cortes also heard footsteps upstairs and he knew that the appellant's red Mustang automobile, which Mr. Carroll uses when he goes to work, was parked outside at the time.

Edward Debevec, Jr., the appellant's neighbor and owner of the dog, did not see or hear any of the above, but he knows that the appellant's car was at home at approximately 11:30 a.m. on July 18, 1978 and that Mr. Carroll was then working on the night shift. Mr. Debevec, Jr., testified that, considering the location of all of the adjoining houses, trees, garages, and windows, the only clear line of sight to the dog in the rear yard, other than from his own house, was from windows on the upper floors of the rear of the Carroll residence.

The above was corroborated by Sgt. Jerome White an investigator in the Internal Affairs Unit of the Elizabeth Police Department. Sgt. White indicated that after reviewing the positions of the houses their windows, obstructions and existing vegetation, the only close-by and unobscured line of sight to where the dog was tied was from the Debevec and Carroll homes. Sgt. White also testified that Mr. Carroll admitted to him that he was the only person at home in his apartment on July 18, 1978, at 11:30 a.m.

In making the above determinations, the witnesses were aided by photographs marked into evidence.

Both Mary Ann Shine and George Cortes also testified that Mr. Carroll had previously demonstrated annoyance and complained about dogs barking in the daytime when he was trying to sleep. This was confirmed by the testimony of the appellant's wife.

Patrick Carroll flatly denied shooting the dog. He testified that he was sleeping in the attic above his apartment from 8:00 A.M. to 4:00 P.M. on July 18, 1978; an air conditioning unit was running and he wore ear phones while he slept, to shut out noises.

The appellant owned and possessed more than 30 guns at the time. However, no evidence was presented that the bullet removed from the dog

was fired from any particular weapon.

*B. Use of Marijuana.*

Several witnesses testified that they and the appellant used marijuana in the appellant's home on various occasions in and around 1977.

Kevin Legendre, a former friend of the appellant, stated that in the winter of 1977 he attended a party in Mr. Carroll's home where marijuana cigarettes were passed around and smoked by the appellant, Edward Debevec, Jr., and himself.

Edward Debevec, Jr., confirmed this and stated that he and the appellant also smoked marijuana together in Mr. Carroll's home on at least a dozen other occasions, and that Mr. Carroll's wife often participated. Mr. Debevec, Jr., stated that most of the marijuana was supplied by the appellant, who kept it in dresser drawers. The friendship between Edward Debevec, Jr. and the appellant cooled after Mr. Carroll allegedly threatened him with a gun, and their association completely ended following the dog-shooting incident.

The foregoing was also completely denied by Mr. Carroll. He claims that Kevin Legendre was never in his home and that he never saw or knew him until he testified at this hearing. Mr. Carroll acknowledged that he was friendly with Edward Debevec, Jr. until the dog-shooting incident, but he denied ever using marijuana with him.

Joyce Carroll, the appellant's wife, denied that she or her husband ever used marijuana. She also testified that she knows nothing about marijuana except for what she may have learned from watching television. This testimony seemed to be somewhat too innocent and glib.

Two friends of the appellant testified for him on this issue:

Peter DeSante testified that he has never seen the appellant smoke marijuana, but he acknowledged that it could have happened out of his presence. There was some confusion as to whether Mr. DeSante knows the difference between marijuana and tobacco. His testimony was of little, if any, value.

Paul Heidrich, another friend of the appellant, also stated that he had never seen the appellant or anyone else smoke marijuana in Mr. Carroll's home.

Mr. Heidrich's attitude was belligerent when he testified, which detracted from his credibility.

Judicial notice can be taken of the fact that use and/or possession of marijuana is contrary to the laws of the State of New Jersey.

*C. Threat to kill:*

Edward Debevec, Jr. testified that sometime in 1976 or 1977, while he and Mr. Carroll were both high on marijuana in the appellant's home, Mr.

Carroll put a gun to his head and said: "How would you like to die?" There were no other witnesses to this and it was categorically denied by Mr. Carroll.

*D. Possession of a stolen weapon and six other firearms that were improperly registered:*

In November 1971, a .22 caliber H & R revolver owned by and registered to Frank Carragher of Old Bridge, New Jersey, disappeared. Mr. Carragher reported it to the police, who listed it as a stolen weapon.

On July 20, 1978, in connection with the police investigation of Mr. Carroll's alleged shooting of the dog, 31 weapons were removed from the Carroll residence, including the stolen .22 cal. H & R revolver. The appellant did not have a permit to purchase or own this weapon. According to Det. Sgt. Harold O. Van Fleet of the Firearms Unit of the New Jersey State Police, the law requires a person to have a "permit to purchase" in order to legally acquire a handgun, unless that individual is a licensed firearms dealer, and none of the weapons acquired were antiques. Under certain circumstances, possession of stolen property is also a violation of New Jersey law.

Fred Morette, a friend of the appellant, testified that he gave the .22 cal. revolver to Mr. Carroll in early July 1978 to check for his father-in-law. This was confirmed by Mr. Carroll.

Among the 31 guns removed from the appellant's home were:

A .45 cal. Smith & Wesson revolver that, according to State Police records, was purchased by someone in Montclair;

A .38 cal. Smith & Wesson revolver purchased and owned by someone in Elizabeth; and

A .45 cal. Colt automatic purchased and owned by someone in North Arlington.

The appellant did not have a permit to purchase any of the above weapons, and none of the third-party registered owners could be located.

Raymond C. Carroll, the appellant's father and a police detective in Elizabeth, testified that both of the Smith & Wesson revolvers were his, and that he gave them to his son, together with other weapons, for safekeeping. Raymond Carroll indicated that he knew the .45 Colt automatic belonged to his son, the appellant.

Addressing the question of appropriateness of penalty, the respondent introduced evidence of Mr. Carroll's prior disciplinary record. John Peter Simon, personnel officer at the Elizabeth Police Department, testified to three disciplinary actions against the appellant:

On January 20, 1972, he was found guilty of neglect of duty and conduct unbecoming an officer and he was suspended for two days.

---

Patrick Carroll v. City of Elizabeth  
Cite as 2 N.J.A.R. 26

---

On January 6, 1974, he was found guilty of conduct unbecoming an officer, mental or physical incapacity, subversive conduct, use of firearms and ignorance of rules and regulations. He was suspended for six months and a psychiatric evaluation was ordered.

The above 1974 incidents also resulted in two municipal court proceedings wherein the appellant pleaded guilty to discharge of a firearm and was acquitted of larceny. He paid a \$25 fine for the firearm conviction.

On the other side of the ledger, Mr. Carroll received three commendations:

An unofficial letter from a citizen on August 23, 1972, a letter from the F.B.I. on November 14, 1973 and an official departmental commendation on July 22, 1974.

The foregoing instances are relevant to the issue of penalty. *Town of West New York v. Bock*, 38 N.J. 501 (1962).

The law recognizes that high standards of conduct and behavior are expected of police officers, who are charged with a special kind of public trust. Any lowering of these standards causes a serious erosion in the public respect and confidence required for effective law enforcement by these officers. Furthermore, a police department is para-military in nature and must be able to maintain internal good order and discipline and keep departmental morale and efficiency high at all times. *Rivell v. Civil Service Comm.*, 115 N.J. Super. 64 (App. Div. 1971).

In order to achieve the above goals, some reasonable latitude should be permitted departmental authorities in penalizing violations of their own rules and regulations; and unless a penalty so meted out is unreasonable, arbitrary or offensively excessive under all of the circumstances, it should be permitted to stand. *Dutcher v. Dept. of Civil Service*, 7 N.J. Super. 156 (App. Div. 1950).

Having heard the testimony and observed the witnesses, and having reviewed the exhibits and argument of counsel, the court **FINDS** the following facts, by a preponderance of the believable evidence:

1. The specific facts set forth in the foregoing discussion are incorporated herein by reference.

2. The appellant, Patrick Carroll, was employed as a police officer by the respondent, City of Elizabeth. He was removed effective March 15, 1979 on disciplinary charges.

3. On July 18, 1978, at approximately 11:30 a.m. the appellant shot and wounded a dog belonging to his neighbor, Edward Debevec, Jr. The shot was fired from an upper floor window at the rear of the appellant's apartment on Summer Street in Elizabeth. The bullet struck the dog while it was tied up in the rear yard of the home adjoining the appellant's.

4. The appellant was off duty at the time and his action in shooting the dog was not related to his police duties.

5. The appellant did not thereafter report the firing of a weapon to the Elizabeth Police Department.

6. On various occasions in and around 1977, the appellant used marijuana in his home and at the same time he allowed other persons in his company to also use marijuana. The use or possession of marijuana is contrary to the laws of the State of New Jersey.

7. On or about July 20, 1978, the appellant had a .22 cal. H & R revolver in his possession. This weapon was previously reported and listed with police authorities as a stolen gun.

8. On or about July 20, 1978, the appellant had possession of three firearms that were not registered to him and for which he did not have permits to purchase. A person must have a permit to purchase in order to legally acquire a handgun.

It is **CONCLUDED** as follows:

A. The appellant's action in shooting the dog on July 18, 1979 and his related failure to report the discharge of a firearm constitutes neglect of duty, serious breach of discipline and conduct unbecoming an employee in the public service, pursuant to *N.J.A.C.* 4:1-16.9. No conclusions are made relating to alleged violations of departmental rules, regulations and orders, municipal ordinances or laws other than Civil Service rules, because no proofs or evidence thereof were offered at the hearing.

B. The use of marijuana by the appellant in his home, in the presence of others who were also permitted by him to use marijuana at the same time, is a serious breach of discipline, conduct unbecoming an employee in the public service and disorderly or immoral conduct, pursuant to *N.J.A.C.* 4:1-16.9. Such conduct is also a violation of New Jersey law. No conclusions are made relating to alleged violations of departmental rules, regulations and orders, because no proofs or evidence thereof were offered at the hearing.

C. There was not sufficient evidence adduced to prove that the appellant uttered a threat to kill another, especially since the sole witness and alleged victim of the threat acknowledged that both he and the appellant were high on marijuana at the time.

D. Possession of stolen property by the appellant and his possession of weapons that were improperly registered, or for which he did not have permits to purchase, constitute neglect of duty, incompetency and inefficiency and disorderly or immoral conduct, pursuant to *N.J.A.C.* 4:1-16.9, and possible violations of New Jersey law. No conclusions are made relating to alleged violations of departmental rules, regulations and orders

---

Patrick Carroll v. City of Elizabeth  
Cite as 2 N.J.A.R. 26

---

other than Civil Service rules because no proofs or evidence thereof were offered at the hearing.

E. Considering all of the foregoing facts, circumstances and conclusions, removal of the appellant from his position by the respondent was not arbitrary, unreasonable or offensively excessive.

It is, therefore, **ORDERED** that the respondent's action in removing the appellant from his position be **AFFIRMED** and the appeal **DISMISSED**.

---

After reviewing this Initial Decision, the  
Civil Service Commission on March 20, 1980 issued  
the following Final Decision

The Civil Service Commission accepts the administrative law judge's findings of fact in this matter and his recommendation that the appeal be dismissed. The Civil Service Commission finds that the action of the appointing authority in removing appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Patrick Carroll.