



OFFICE OF POLICE OVERSIGHT

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TO: Robin Henderson, Interim Chief, Austin Police Department

FROM: Gail McCant, Director, Office of Police Oversight

DATE: January 31, 2024

SUBJECT: OPO Recommendation, Case # 2023-0697

Dear Chief Henderson,

The Office of Police Oversight has concluded its review of Case #2023-0697 involving Officer Mark Lakes #4514. The events described below resulted in the filing of an internal complaint to Internal Affairs on August 14, 2023, via a memorandum from Commander Jamie Jobes #3763 and later, on August 30, 2023, the filing of an external complaint with the Office of Police Oversight by Mariah Martinez.

Based on its review, the following disciplinary recommendation is being made. Officer Lakes is scheduled for a disciplinary meeting with his chain of command on February 1, 2024, at 9:00 AM. The 180 date is February 2, 2024.

Summary of Facts:

On August 6, 2023, at approximately 4:30 pm, Officer Mark Lakes was off duty and operating his personal vehicle in San Marcos, TX. Officer Lakes was waiting in a drive-through line at Sonic restaurant located at 2830 South I-35 when his vehicle was allegedly struck by another vehicle. It is determined that the other driver in the incident was Mariah Martinez. However, Ms. Martinez did not stop after striking Officer Lakes' vehicle and proceeded to flip him off as she drove away. This resulted in Officer Lakes pursuing Ms. Martinez in his personal vehicle and using his personal vehicle to block her vehicle several times. Officer Lakes' statements would indicate he cut Ms. Martinez off twice, while Ms. Martinez alleges she was cut off three times during this incident. It is known that at one of the stops before the final stop, Officer Lakes exits his vehicle and attempts to speak with Ms. Martinez; however, Ms. Martinez drives away and calls 911. As Ms. Martinez drove away, there was evidence that would suggest that Officer Lakes struck the rear driver's window with his right hand. During the final obstruction of Ms. Martinez's driving path by Officer Lakes, Ms. Martinez is on the phone with 911. The 911 call is noted below in part. However, it is highly recommended that a full review of the 911 call occur to provide more context.

“Hello. I have somebody that's telling me they are a police officer. However, they're in an unmarked vehicle and they've been following my car. They hit my vehicle, like they slammed the door on it, I don't know. I'm shaking. They have shown me an identification, they're just in a white vehicle, is that not suspect?”



He's trying to cut me off on the roads." "He's trying to take a picture of me, I don't know. He's just showing me a picture of like, I don't know, he doesn't have any identification and he's trying to ram me over on the roads right now. He will not let me go."

While Ms. Martinez was on the phone with 911, Officer Lakes proceeded to open her driver's side door. Ms. Martinez repeatedly requested that Officer Lakes allow her to close her door. Still, Officer Lakes physically prevented her from doing so, forcing Ms. Martinez to exit her vehicle on the passenger side. Ms. Martinez can be heard on the 911 call making the following statement:

"I'm having to get out of my vehicle because he's not letting me close the fucking door...I don't know what kind of police officer he is, but he is really fucking scary. I had to leave my fucking vehicle."

San Marcos Police Department (SMPD) arrived on the scene and conducted an investigation. Both parties were allowed to leave the scene.

The IA investigation would reveal that SMPD did determine that Ms. Martinez was liable for the vehicle collision. SMPD also referred the incident to the Hays County District Attorney's Office (Hays Co. DA), with Officer Lakes as the subject. Offenses included Official Oppression, Unlawful Restraint, and Endangering a Child. The Hays Co. DA declined to prosecute.

Allegations:

IA investigated the following APD General Orders:

- *364.2 Off-Duty Law Enforcement Actions*

Officer Lakes contends that he did not violate policy 364.2. He stated he was not acting as a police officer but as a citizen. However, Officer Lakes never summoned law enforcement at any time to assist with the incident, nor did he report the vehicle collision. During Officer Lakes' IA investigation, he was asked why he didn't call the police. Officer Lakes stated he was disoriented and was focused on finding his work ID to show Ms. Martinez that he was a police officer. Additionally, when initially questioned on scene by SMPD Corporal Cormier, she asked "so you were acting as a police officer?". Officer Lakes responded by stating "at that time when she was driving off, **yes**, by putting my ID on there". **The Chain of Command did not sustain this policy. OPO recommends sustaining based on this policy.**



- *364.4 Decision to Intervene*

Officer Lakes contends he did not violate this policy because he notified his sergeant of the incident and provided the SMPD's sergeant with his sergeant's information. However, based on Officer Lakes' actions, there is no indication that he ever considered the seven factors identified in GO 364.4 (a). **The Chain of Command sustained this policy, and OPO concurs.**

- *900.1.1 Responsibility to Know and Comply*

Officer Lakes contends he did not violate this policy and committed no crime. **The Chain of Command did not sustain this policy, and OPO concurs.**

- *900.3.2 Acts Bringing Discredit Upon the Department*

By his own admission, Officer Lakes violated APD GO 900.3.2, and for all the above-noted reasons, OPO believes Officer Lakes violated this policy. Officer Lakes took full accountability for his behavior and stated that he embarrassed not only the Austin Police Department but himself as well. In the future, he will control his emotions and anger. Additionally, he would engage more professionally and respectfully with other law enforcement agencies. **The Chain of Command did not sustain this policy. OPO recommends sustaining based on this policy.**

OPO Disciplinary recommendation

The OPO recommends that Officer Lakes not be permitted to utilize education-based discipline for the APD policy violations.

The OPO recommends that Officer Lakes receive a temporary suspension that aligns with APD's policies and discipline matrix.

Thank you for your attention to this matter.

Regards,
Gail McCant
Director
Office of Police Oversight