

OCT 30 2020  
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## MEMORANDUM

### **Austin Police Department** *Office of the Chief of Police*

**TO:** Joya Hayes, Director of Civil Service

**FROM:** Brian Manley, Chief of Police

**DATE:** October 30, 2020

**SUBJECT:** Temporary Suspension of Police Officer Robert Furbush #7992  
Internal Affairs Control Number 2020-0589

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Robert Furbush #7992 from duty as a City of Austin, Texas police officer for a period of One (1) day. The temporary suspension is effective beginning on October 31, 2020.

I took this action because Officer Furbush violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Officer Furbush in violation of Rule 10:

On May 10, 2020, Officer Robert Furbush responded to a *Disturbance-other* incident at a hotel in northeast Austin. During the call, the front desk manager told Officer Furbush that a suspect had exhibited aggressive behavior, including damaging hotel property and threatening hotel staff and a third-party guest. The manager specifically told Officer Furbush that she witnessed the suspect threaten a female guest by "...cussing at her, telling her all kinds of things and saying he was going to cut her."

Officer Furbush then confirmed with the manager that she wanted a Criminal Trespass Notice (CTN) to be issued to the suspect. Officer Furbush was directed to the suspect's room and made contact with him. Officer Furbush told the suspect that he would have to vacate the hotel and would be issued a CTN.

Officer Furbush subsequently came in contact with a male witness and the female victim in the hotel lobby. The male witness advised Officer Furbush that "[the suspect] threatened this lady for no reason." The female victim then advised Officer Furbush, "I am the one that keeps getting threatened." After hearing these statements Officer Furbush tried to reassure her by stating, "I'm standing right here, okay. So you're fine. Ain't nothing going to happen to you." After making this statement, Officer Furbush did not ask any follow-up questions or identify the victim and witness.

Officer Furbush then exited the lobby, returning to his police vehicle to make a personal telephone call, during which time the suspect passed through the lobby several times while removing his personal belongings from the hotel room, within feet of the victim, without any police over watch and protection.

In sum, Officer Furbush ultimately made sure the suspect collected his belongings and vacated the hotel. Officer Furbush wrote a report for Criminal Trespass, documenting the CTN information under Case Number 2020-1310610. While Officer Furbush denied violating any APD General Orders, he admittedly failed to investigate and document the alleged "Assault by Threat" criminal offense. Not only did Officer Furbush fail to identify the victim and witness, he failed to ask any questions of the suspect about the specific alleged "Assault by Threat". Moreover, Officer Furbush failed to document any of the victim and witness statements in his report.

By these actions, Officer Furbush violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 401.2: Preliminary Field Investigations: Initial Response and Investigation**

**401.2 Initial Response and Investigation**

- (c) The primary officer shall make a preliminary determination if a crime has been committed.

1. If the information indicates that a crime has occurred, follow the guidelines outlined in this General Order.
2. If the information indicates that no crime occurred, determine what other action may be necessary and/or what resources may be available to the subject.

(d) Generally, officers assigned to calls or discovering incidents requiring a report shall be responsible for the preliminary investigation and required paperwork.

➤ **Austin Police Department Policy 402.1.1: Incident Reporting and Documentation: General Guidelines**

**402.1.1 General Guidelines**

An incident number will be assigned and all required fields completed during documentation anytime an employee observes or receives any information concerning the following, but not limited to:

- (a) Criminal or suspected criminal offenses, regardless of the victim's level of cooperation.
- (b) Citizen complaints of non-criminal incidents requiring action by the police.
- (f) Any other situation where documentation is required by law or another section of departmental general orders.

If in doubt as to whether an incident should be documented, employees shall confer with a supervisor. For the purpose of this order, Corporals may function as the designated supervisor.

By copy of this memo, Officer Furbush is hereby advised of this temporary suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Furbush is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or

exceeded its jurisdiction, or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.

In addition, because this disciplinary suspension is for three (3) days or less, Officer Furbush is advised of the following provisions of Article 18, Section 1, of the Meet and Confer Agreement:

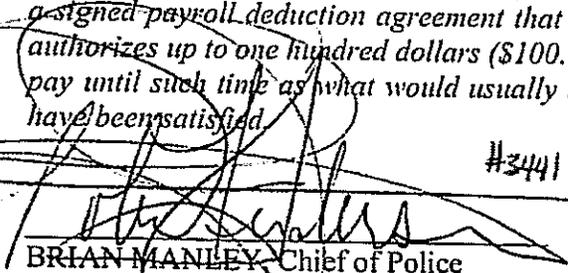
*The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.*

- a) **Suspensions that may not be appealed.** *The officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.*
- b) **Suspensions that may be appealed.** *The officer may appeal the suspension to arbitration or the Civil Service Commission. If the officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the officer shall be fully reinstated with no loss of pay or benefit.*

**Arbitration Costs on Appealable Suspensions**

*In the event that an officer appeals a 1, 2 or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.*

*To facilitate such payment on the part of the officer he shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the City he authorizes up to one hundred dollars (\$100.00) per month to be deducted from his regular pay until such time as what would usually be the City's portion of the arbitrator's costs have been satisfied.*

  
BRIAN MANLEY, Chief of Police

RUBIN J. HENDERSON

ON BEHALF OF  
CHIEF BRIAN MANLEY

#3441

OCT. 30, 2020  
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of temporary suspension and I have been advised that if I desire to appeal that I have ten (10) days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.

  
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Police Officer Robert Furbush #7992

10/30/2020  
Date