

SEP 09 2019



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: September 9, 2019

SUBJECT: Temporary Suspension of Police Officer Bryan Menduni #4910
Internal Affairs Control Numbers 2019-0340 & 2019-0650

As a result of the two incidents identified below, and 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 Bryan Menduni #4910 from duty as a City of Austin, Texas police officer for a period of fifteen (15) days. The temporary suspension is effective beginning on September 10, 2019 and continuing through September 24, 2019.

I took this action because Officer Menduni 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 Menduni in violation of Rule 10:

The March 14, 2019 Incident:

On March 14, 2019, Officer Bryan Menduni responded as a back-up officer to assist a victim of a family violence incident, with a civil standby. While driving the victim to the East Substation, the victim told Officer Menduni she had been slapped in the face by her girlfriend earlier in the day. Officer Menduni then neglected to take any appropriate actions to ensure a proper investigation was conducted, including but not limited to thoroughly documenting this allegation and asking the victim the necessary follow-up questions. Instead, he made the unilateral decision to shirk his responsibility by dropping the victim off at the East Substation, to await for an unassuming officer to address her allegation. Officer Menduni then returned to the North Substation and went off-duty.

Officer Menduni acknowledged that he neglected to follow his training, experience, and he failed to meet the expectations of an APD officer by failing to take appropriate action after being advised of a crime. Officer Menduni further stated that his desire to end his workday caused him to *"cut corners"* rather than follow the Family Violence General Orders, even though the circumstances called for *"a report [to be] written, probably an AVS [Assault Victim Statement], phone call to the sergeant, pink form, all that good stuff."*

The June 15, 2019 Incident:

Separately, on June, 15, 2019, Officer Menduni, while working overtime and driving a police unit, hit a curb at the intersection of North Mopac Expressway and West Parmer Lane. The impact of hitting the curb, resulted in minor damage to the vehicle, including a flat tire. Officer Menduni drove back to the North Substation to have the tire changed. Once the tire was changed, Officer Menduni drove the unit around the parking lot, and found the vehicle was not driving well. He, subsequently checked out another unit and admittedly neglected to follow policy, including reporting the incident to his chain of command.

In connection with the March 14th incident, Officer Menduni 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 418.3: Family Violence: Additional Investigative Guidelines**

This section includes additional guidelines and required notifications when investigating any incident that involves family violence or may have involved family violence.

418.3.1 Assault Victim

- (a) An Assault Victim Statement (AVS) form shall be completed on every incident involving family violence, regardless of whether an

arrest is made. This includes, but is not limited to, any assault offense involving family violence with the exception of assault by contact and assault by threat offenses.

- (b) Officers shall advise victims of their right to obtain an emergency protective order (EPO) and ask them if they wish to file one. The required guidelines for filing an EPO are outlined later in this order.
- (c) Victims of family violence are to be given the opportunity to complete the AVS and sign it.
 - 1. Victims should be advised that the AVS may be used to file charges.
 - 2. In the event the victim refuses to complete and sign the AVS, the reporting officer shall complete the form and sign it under the signature refused section with a witness to the refusal, if possible.
 - 3. The AVS form must be reviewed for completeness by the officer prior to leaving the scene.

418.3.2 Victim Information

- (a) Officers shall provide each adult present with a copy of the information pamphlet entitled Victim Assistance Information that includes the Notice to Adult Victims of Family Violence and write the incident number on the front page.
- (b) Victims should always be referred to Victim Services for counseling.
- (c) Victims and offenders should be told that assault charges on family violence arrests may be filed even if the victim does not wish charges to be filed.
- (d) Victims with additional questions should be referred to the Family Violence Protection Team.
 - 2. On non-arrest incidents, the victim should be told that the case will be assigned to an investigator for follow-up investigation.

418.3.4 Evidence Collection and Photographs

- (b) Photographs
 - 1. Digital photographs should be taken of:
 - (a) All visible injuries on the victims and suspects, regardless of severity.
 - 1. Photographs should include, but are not limited to:

- (a) Full body;
- (b) Close up of face;
- (c) Visible injuries;
- (d) Area of body surrounding injury;
- (e) Body part used as a weapon.

➤ **Austin Police Department Policy 418.4: Family Violence: Emergency Protective Orders**

418.4 Emergency Protective Orders

Officers shall offer all victims of family violence the opportunity to file an EPO.

- (a) Officers shall file a motion for an EPO on the victim's behalf in all felony family violence arrests, including felony enhancements.
- (b) Officers shall file a motion for an EPO on the victim's behalf in all other family violence arrests when:
 - 1. The victim wishes to have an EPO filed; or
 - 2. The victim is unable or refuses to file and the officer has sufficient reason to believe it is imperative to the safety of the victim to file an EPO.

➤ **Austin Police Department Policy 418.6.2: Family Violence: Required Information**

418.6.2 Required Information

Officers shall document the following information in an incident report:

- (a) Specific facts that lead to the probable cause for an arrest, including a detailed description of injuries sustained and threats made by the victim and/or suspect.

➤ **Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

900.4.3 Neglect of Duty

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.

- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.

In connection with the June 15th incident, Officer Menduni 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 346.6(e)2: Crash Investigation and Reporting: Crashes And Damage To APD City Vehicles; Crashes Involving City Of Austin Vehicles Operating As An Emergency Vehicle (Ems, Fire, Other Operating Code Two Or Three)**

- (e) Supervisors will determine if the incident meets the criteria for a crash or "damage to city vehicle".

2. Reporting requirements for damage to city vehicle incidents:

- (a) Involved officer(s) will notify their supervisor.
- (c) The involved officer will complete the Damage to City Vehicle incident report.
- (d) Photographs of the scene, vehicle(s), and/or property will be taken and downloaded into the appropriate records management system.
- (e) Vehicle damage will be documented and repair requests will be submitted (if necessary) in PCO.

➤ **Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

900.4.3 Neglect of Duty

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.

- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.

By copy of this memo, Officer Menduni 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) calendar 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 Menduni is hereby advised that such provides for an appeal to an independent third-party hearing examiner. 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.

By copy of this memo, Officer Menduni is hereby advised that this temporary suspension may be taken into consideration in my determination as to whether a valid reason may exist to bypass Officer Menduni for promotion in accordance with Austin Police Department Policy 919.

 3016

BRIAN MANLEY, Chief of Police

9-9-2019

Date

AC Todd Smith for Chief Manley

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) calendar 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.

 4910

Police Officer Bryan Menduni #4910

Date

9/9/19