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October 27, 2022
11:17 AM



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Joseph Chacon, Chief of Police

DATE: October 27, 2022

SUBJECT: Temporary Suspension of Police Detective Atilano Guerra #4634
Internal Affairs Control Number 2022-0708

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 Detective Atilano Guerra #4634 from duty as a City of Austin, Texas police officer for a period of four (4) days. The temporary suspension is effective beginning on October 28, 2022 and continuing through October 31, 2022.

I took this action because Det. Guerra 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 Det. Guerra in violation of Rule 10:

On April 17, 2022, a victim was in her residence and assaulted by an unidentified woman. Austin Police Department (APD) officers responded along with Travis County Emergency Medical Services (EMS) to the victim's apartment. The victim was transported by EMS to an area hospital where she received eleven [REDACTED] for a [REDACTED] on her head. The victim later described to officers that the suspect used the victim's cane to hit her repeatedly in the head. The victim could identify the suspect only as "LC" or "Letty."

APD Region IV Investigations Persons Unit was notified and received this case to investigate on April 18, 2022. The victim went to the APD South Substation on May 30, 2022, to provide a statement to Det. Atilano Guerra where she described the suspect and furnished a possible workplace—the Arby's restaurant located on Airport Boulevard. According to the victim, Det. Guerra responded by stating, "That's way on the east side and I work south side, so it's gonna be way difficult for me to get over there any time soon."

By the end of June 2022, the victim inquired with APD as to why no investigative steps had been taken in her case. Det. Guerra's supervising sergeant responded to the victim's inquiry. The Sergeant wrote a Versadex supplement report on June 28, 2022, documenting his conversation with the victim. On June 29, 2022, while Det. Guerra was on approved leave, the Sergeant updated his supplement to document the fact that he contacted the Arby's restaurant in an attempt to identify the suspect. The general manager of the Arby's told the Sergeant that she was not comfortable furnishing information over the phone, and the Sergeant told her he would have someone come to her location.

Once Det. Guerra returned from approved leave on or about July 19, 2022, the Sergeant updated Det. Guerra of the efforts he undertook, and that the Arby's manager was unwilling to furnish the potential information they needed to identify the suspect over the phone. The Sergeant directed Det. Guerra to follow-up on the case and to complete the investigation.

On August 23, 2022, the APD Internal Affairs (IA) received a Notice of Complaint from the Office of Police Oversight (OPO). The complaint, which was submitted by the victim, alleged:

She [the victim/complaint] has made multiple reports of assault with injury to APD. One incident required her to [REDACTED] and she is [REDACTED]. She called yesterday to speak with a sergeant or supervisor for the detective handling her case, and he told her she is not a high priority. She called back to speak with someone above the sergeant and was told, "Whatever the sergeant and detective said, it is what it is and you don't need to speak with anyone else."

The IA investigation

This complaint prompted an IA investigation into the efforts undertaken by the APD Region IV Investigations Persons Unit, with respect to this particular assault investigation. During the course of the investigation, Det. Guerra acknowledged that he took a statement

from the victim, but he failed to follow standard operating procedures by documenting that statement in a Versadex supplement. Det. Guerra had no explanation for this failure.

Moreover, the IA investigation showed that after obtaining the statement from the victim of the offense, Det. Guerra failed to conduct any additional follow-up on the case. Additionally, several weeks after obtaining the statement, the investigation confirmed that the victim contacted Det. Guerra's Sergeant, only for the Sergeant to discern that Det. Guerra had had done little to nothing in this particular investigation.

Thereafter, the Sergeant made some efforts on behalf of Det. Guerra, while Det. Guerra was out on approved leave. Upon his return, Det. Guerra was then instructed by his Sergeant to make contact with the Arby's manager who may have been able to potentially positively identify the suspect in this incident. Det. Guerra recalled this conversation with his Sergeant, and told IA that he responded to his sergeant by stating the following: "*The only thing that I remember telling him after this is, I didn't feel the information was sufficient enough to go all the way to Springdale, to [Arby's], to try to run down somebody named L.C.*" Det. Guerra also surprisingly advised IA that he has never left his assigned sector in any of his investigations in the two years he has been assigned to the APD Region IV Investigations Persons Unit.

In the end, Det. Guerra not only failed to physically go to the Arby's, but he never even contacted the Arby's manager via phone in furtherance of the investigation into the suspect's identity. Moreover, he made no additional follow-up investigative efforts after his conversation with his Sergeant and the investigation was subsequently re-assigned to another detective after the victim filed her complaint with the OPO.

During his Disciplinary meeting, Det. Guerra accepted responsibility for violating policy, standard operating procedure, and/or General Orders, including that his performance was unsatisfactory when it came to his handling of this particular investigation. He further acknowledged that he should have done several things differently in this case by stating:

"Well, first of all, I'd make sure that- I would've updated [the case]. - I would've put more effort - in following up with [the victim] and - and seein' if there was anything new or something that she could give me that I was actually concrete to follow up on. Like I said, if she had said, 'Hey, she's behind the counter right now. She served me [at Arby's] right now.' I would've gone over there. But when she told me, 'Yeah, I'm not sure. I think - I believe she may work at [Arby's].' It didn't click then that that's enough to go. But I should've followed up with her more and been like, 'Hey, is there anything new? Have you seen?' And - I told her when she left, I said, 'if you see her, give us a call, see if we can identify her.' She mentioned that her neighbor may know her, and I said, 'Hey,' I said, 'if your neighbor knows anything, get with him, - you have my card. Give me a call.' But I also, I could've went over there to the neighbors. I could've knocked on the door and been like, 'Hey, she said, you may know who LC is. Do - you have any idea?' But again, once I clicked on that, closed that thing out - it just fell off of there. And I - dropped the ball on that one. It fell out of the queue."

By these actions, Det. Guerra 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 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:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (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.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.

By copy of this memo, Det. Guerra 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, Det. Guerra 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, if this disciplinary suspension is for three (3) days or less, Det. Guerra 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.

For CHIEF CHACON

 JOSEPH CHACON, Chief of Police

10/27/2022
 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) 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.


 Police Detective Atilano Guerra #4634

10/27/2022
 Date