

RECEIVED  
CITY OF AUSTIN  
CIVIL SERVICE OFFICE  
October 6, 2020 8:33 a.m.



## **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 5, 2020

**SUBJECT:** Temporary Suspension of Police Jason Denney #7499  
Internal Affairs Control Numbers 2020-0552

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 Jason Denney #7499 from duty as a City of Austin, Texas police officer for a period of fifteen (15) days. The temporary suspension is effective beginning on October 6, 2020 and continuing through October 20, 2020.

I took this action because Officer Denney 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 Ofc. Denney in violation of Rule 10:

On April 8, 2020, at approximately 5:47 AM, there was a call for service at E. Oltorf Street and Burton Drive. Ofc. Denney, along with a probationary officer he was training, were dispatched to the location. Upon arrival, the officers made contact with two subjects who were involved in the disturbance. The officers interviewed the parties involved and documented the incident within offense report #20-0990220. Since no arrests were made, officers provided information to the individual they determined to be the complainant (hereafter "Mr. J") on how to file a Class C misdemeanor charge against the alleged suspect (hereafter "Mr. M") with the Austin Municipal Court.

Thereafter, Mr. M filed a complaint stating that Ofc. Denney has a bias against him, mistreated him, intimidated him, and used profanity during this encounter. Upon receiving this complaint, Internal Affairs (IA) reviewed several items related to this incident, including the offense report and Body-Worn Camera (BWC) video related to this report.

#### **BWC video**

The BWC video shows the following:

Upon arrival, Ofc. Denney exited the passenger side of the patrol vehicle. Ofc. Denney paused outside the patrol vehicle because he could not find his face covering mask and asked, *"What happened to the fucking mask I just had?"* Ofc. Denney then approached Mr. M, who initiated the 9-1-1 call for service. Mr. M immediately began explaining to Ofc. Denney the reason for his call by saying, *"...he's smoking dope all the goddamn time,"* referring to Mr. J. Ofc. Denney, who knew Mr. M from previous encounters, responded, *"Don't curse at me..."* prompting Mr. M to walk away from Ofc. Denney saying, *"Can I talk to somebody else, please?"*

Ofc. Denney then walked by Sgt. Holsonback and asked if he knew Mr. M. Ofc. Denney told Sgt. Holsonback, *"He's gonna want to talk to you in about two minutes. He always wants to talk to a supervisor, he's nuts."*

Ofc. Denney then contacted Mr. J. Since a gun was mentioned in the 9-1-1 call text, Ofc. Denney frisked Mr. J, but did not find a weapon. Mr. J explained his side of the disturbance, including that Mr. M had spit on him, and he told Ofc. Denney that he wanted to file charges for that act. Mr. J went on to demonstrate how he was spit on, and unintentionally spat on Ofc. Denney. Ofc. Denney told Mr. J *"Don't. Don't. Don't spit again, you just got spit all over me."* He then walked away from Mr. J as he stated, *"God dammit."*

Ofc. Denney then made contact with other officers on the scene before returning to speak to Mr. J. During this second conversation, Ofc. Denney told Mr. J *"Stop it. Stop it. Okay? I agree with you, he's a fucking liar."* Ofc. Denney later confirmed to IA that he told Mr. J that Mr. M was a *"fucking liar."* After making this statement, Ofc. Denney then explained and provided information to Mr. J as to how he could press charges against Mr. M.

Ofc. Denney then returned to speak with Mr. M. Ofc. Denney asked Mr. M several times if he spit in Mr. J's face. Mr. M denied the allegation. After stepping away from Mr. M, Ofc. Denney then spoke with the probationary officer about Mr. M and Mr. M's wife. During this dialogue Ofc. Denney told the probationary officer that Mrs. M *"used to whore out here all the time."*

At the conclusion of the call, Ofc. Denney and the probationary officer returned to their patrol vehicle, drove away, and discussed the call. During this conversation, Ofc. Denney addressed the probationary officer's approach to the call and the vehicle positioning. Ofc. Denney told her she should have turned into the parking at the first opportunity. The probationary officer explained why she didn't by saying, *"I'm sorry. 'cause I missed that first initial turn in, but they were all walking."* Ofc. Denney replied, *"So? It's a, it's a fucking car, they'll move for a car. Right? They'll move. Plus, we're the fucking police, make 'em God damn move."*

#### Ofc. Denney's IA interview

APD's IA conducted an interview with Ofc. Denney. During the interview, IA asked Ofc. Denney about his conduct during this incident. Ofc. Denney indicated that he did not violate any APD General Orders and took virtually no responsibility for his actions and/or statements. In fact, when he was asked about the appropriateness of calling Mr. M a *"fucking liar"* while speaking to Mr. J, Ofc. Denney stated that his language was appropriate because it enabled him to get Mr. J to *"laugh"* and get Mr. J *"...on my side, we built rapport, I've gotten him to comply with what I need..."* Ofc. Denney went on to rationalize that it was appropriate to call Mr. M a *"fucking liar,"* as he stated that it was not as if he called Mr. M *"a jerk."* Moreover, Ofc. Denney defended his behavior by stating that Mr. M was not in the vicinity when he made his statement to Mr. J.

IA also asked Ofc. Denney about the conversation he had with the probationary officer about Mr. M's wife, when he said, *"She used to – to whore out here all the time."* IA asked Ofc. Denney why he thought it was appropriate to refer to Mrs. M in that way and why he even brought her name up, when she was neither involved nor present as a witness to this particular disturbance. Ofc. Denney stated he was aware that Mrs. M had been arrested for previous prostitution charges and felt it was his responsibility to apprise the probationary officer of the *"frequent flyers"* she would be dealing with in the general area in the future.

IA also asked Ofc. Denney if he thought it was appropriate to instruct a probationary police officer that she should make someone move just because they are police officers, and he replied, *"I don't believe that's the context I used it in. I would say to that question, I would say no, it's not. That's not the context I used it in."*

IA then asked Ofc. Denney if he would have done anything differently about this incident, and he replied:

*- honestly? I've been doin' this too long and I'm too old for this. And honestly, I could just sit in the car and let them handle it. The sergeant's there, [another Senior Officer was] there. [The other Senior Officer] think[s] he knows what he's doin'.*

*Um, let the PPO handle it. Be much easier for me to just write up how she screwed it up and forget it. If I'd have known this was happen, would I have done that?*

### **Conclusion**

In spite of his denial, Ofc. Denney demonstrated his bias toward Mr. M throughout this call for service. Ofc. Denney, who used profanity from the onset of the call and throughout this call, at times in frustration, immediately admonished Mr. M's similar use of profanity in an expression of frustration about Mr. J's alleged drug usage. Thereafter, Ofc. Denney called Mr. M a "fucking liar" to Mr. J and later needlessly brought up Mr. M's wife in a disparaging manner to the probationary officer. Ofc. Denney's actions were inconsistent with APD's objectives to always (1) be professional, tactful, and courteous, and (2) treat individuals with sincerity, fairness, and/or impartially.

Regarding his statement about the pedestrians in the parking lot, Ofc. Denney failed to take any responsibility for saying: "*So? It's a, it's a fucking car, they'll move for a car. Right? They'll move. Plus, we're the fucking police, make 'em God damn move.*" Instead of acknowledging that the statement was inappropriate and constituted poor guidance to a probationary officer, Ofc. Denney attempted to assert that the statement was taken out of context. He gave this explanation in spite of the fact that the context was readily apparent from the BWC video which captured the entire incident and his entire conversation.

It is further reflective of Ofc. Denney's poor judgement and lack of self-awareness that when given an opportunity to explain how he might have done things differently, Ofc. Denney only expressed apathy and frustration. Specifically, he lamented that the IA complaint had been made and said, the only thing he should have done differently would have been to remain in the car and allow the probationary officer and the other officers on the scene to (in his mind) mishandle the call. Ofc. Denney not only belittled the abilities of the probationary employee for her alleged shortcomings, but he also off-handedly made an unnecessary remark about the other on scene officer by stating "*he thinks he knows what he is doing.*"

In sum, Ofc. Denney's position to IA regarding the appropriateness of his behavior—including disparaging members of the community and his fellow officers (whether he was in their presence or not)—is incorrect. His lack of acceptance of responsibility to IA is very troublesome to me, his chain of command, and the expectations set by APD's ICARE values, General Orders, and training. The profanity or the inappropriate and/or belittling comments he made to and about several individuals is unacceptable and shows a complete disregard for the professionalism and impartial attitude or courtesy that APD officers are required and expected to show at all times and to all persons.

By these actions, Ofc. Denney 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 301.1: Responsibility to the Community: Purpose and Scope**

**301.1 Purpose and Scope**

All persons deserve protection by fair and impartial law enforcement and should be able to expect similar police response to their behavior wherever it occurs. Employees will serve the public through direction, counseling, assistance, and protection of life and property. Employees will be held accountable for the manner in which they exercise the authority of their office or position. Employees will respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

➤ **Austin Police Department Policy 301.2: Responsibility to the Community: Impartial Attitude and Courtesy**

**301.2 Impartial Attitude and Courtesy**

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

- (a) Employees will not express or otherwise manifest any prejudice concerning race, religion, national origin, age, political affiliation, sex, or other personal characteristics in the performance of their duties.
  - 1. Employees will respect the rights of individuals and will not engage in discrimination, oppression, or favoritism whether by language, act, or omission.
  - 2. The use of racial or ethnic remarks, slurs, epithets, words or gestures, which are derogatory or inflammatory in nature to or about any person or group of persons is strictly prohibited.
- (b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.
- (c) Employees will make every effort to be courteous and respectful toward all persons.

➤ **Austin Police Department Policy 900.3.4: General Conduct and Responsibilities: Personal Conduct**

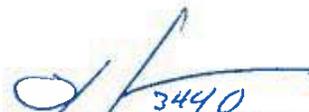
**900.3.4 Personal Conduct**

- (c) While on-duty or on the premises of City facilities, employees will not:
1. Use loud, indecent, profane, harsh, derogatory language, or use belittling term in any communications.
  2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.

Ofc. Denney is advised that this suspension may be considered by the Chief of Police in a future promotional decision pursuant to General Order 919.

By copy of this memo, Ofc. Denney 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.

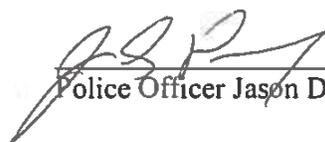
By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Ofc. Denney is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance 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.

  
\_\_\_\_\_  
BRIAN MANLEY, Chief of Police  
*FOR CHIEF MANLEY*

*10/5/2020*  
\_\_\_\_\_  
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) 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.

 7499  
\_\_\_\_\_  
Police Officer Jason Denney #7499

10-5-20  
\_\_\_\_\_  
Date