

OCT 08 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: October 7, 2019

SUBJECT: Agreed Suspension of Police Officer Stephen Johnson # 7804
Internal Affairs Control Number 2019-0405

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 agreed to temporarily suspend Police Officer Stephen Johnson # 7804 from duty as a police officer for the City of Austin, Texas, for a period of thirty (30) days. The temporary suspension is effective beginning on October 8, 2019 and ending on November 6, 2019.

I took this action because Officer Johnson 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 specific acts committed by Officer Johnson in violation of Rule 10:

On April 16, 2019, Officer Stephen Johnson, was [REDACTED]. At approximately 3:32 pm, the woman arrived at the apartment complex to find A&A Wrecker and Recovery (hereafter A&A) towing her brother's vehicle, which resulted in a police response. A&A towed the vehicle and the officers cleared the call without making a report.

At the time this incident was taking place, Officer Johnson was on-duty and was speaking with [REDACTED]. She informed him of what was happening and told him that the wrecker driver stated he would drop the vehicle but it would cost them \$50. Officer Johnson told her the wrecker driver could not charge them for dropping the vehicle and stated doing so was a violation of the City's towing ordinance.

Officer Johnson provided the brother a ride to the wrecker yard to retrieve his vehicle. Officer Johnson should have declined the request since doing so was a conflict of interest to become involved in what was a civil matter. During the encounter at the wrecker yard, Officer Johnson failed to activate his Body Worn Camera (BWC) and/or in-car Digital Mobile Audio Video (DMAV) in accordance with policy, as well as a directive from his Corporal to do so. Officer Johnson also acknowledged that his interactions with the employees at the wrecker were in conflict with APD General Orders and brought discredit upon the Police Department.

By these actions, Officer Johnson 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 900.3.2(a) & (c): General Conduct and Responsibilities: Acts Bringing Discredit Upon the Department**

900.3.2 Acts Bringing Discredit Upon the Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.
- (c) Employees will not engage in any activity in which there is a potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee.
 - 1. "Conflict of interest" includes any activity which would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency which would favor one side or the other in

conflict with the employee's official duties, or which conflicts with the accomplishment of the Department's mission or goals.

➤ **Austin Police Department Policy 110.4.4: Organizational Structure and Responsibility - Insubordination**

110.4.4 Insubordination

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

➤ **Austin Police Department Policy 303.3.1: Body Worn Camera Systems**

303.3.1 When Department Issued BWC System is Required

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements. The BWC should only be activated for law enforcement purposes.

(a) All units responding to a scene shall activate their department issued BWC equipment when they:

1. Arrive on-scene to any call for service;
 4. By the nature of the call for service, are likely to detain or arrest a person;
- or
5. Any consensual contact in which the officer or a citizen believes activation of the BWC would be in the best interest of the community.

(b) Examples of when the department issued BWC system must be activated include, but are not limited to:

1. Traffic stops;
2. Foot pursuits, until completion of enforcement action;
3. DWI investigations including field sobriety tests;
4. Warrant service;
5. Investigatory stops; or
6. Any contact that becomes adversarial in an incident that would not otherwise require recording.

(c) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

➤ **Austin Police Department Policy 304.3.2: Digital Mobile Audio Video Recording**

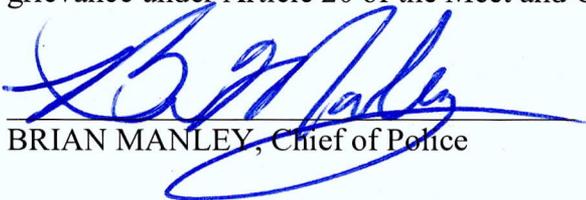
304.3.2 When DMAV is Required

This order is not intended to describe every possible situation where the system may be used. In some circumstances it is not possible to capture images of the incident due to conditions or location of the camera however the audio portion can be valuable evidence and is subject to the same activation requirements.

- (a) All units responding to a scene shall activate their DMAV equipment when they:
 - 1. Arrive on-scene to any call for service; or
 - 4. By nature of the incident, are likely to detain or arrest a person.
- (b) Examples of when the DMAV system must be activated include, but are not limited to:
 - 1. Traffic stops.
 - 2. Pursuits, until completion of enforcement action.
 - 3. DWI investigations including field sobriety tests.
 - 4. Warrant service.
 - 5. Investigatory stops when the subject is on foot or in a vehicle.
 - 6. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be impractical or unreasonable for officers to activate their DMAV system before taking police action. It is expected that once the immediacy of the situation is over, officers will activate their DMAV system to record the remainder of the incident.
- (d) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

Officer Johnson understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.11.

By signing this Agreed Discipline, Officer Johnson understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Officer Johnson waives all right to appeal to this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.


BRIAN MANLEY, Chief of Police

10-7-19

Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above and that by agreeing to the suspension, I have no right to appeal this disciplinary action to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and I may not file a grievance under Article 20 of the Meet and Confer Agreement.

 #7804

Police Officer Stephen Johnson # 7804

10/7/19

Date