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## **MEMORANDUM**

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

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

**FROM:** Joseph Chacon, Chief of Police

**DATE:** November 28, 2022

**SUBJECT:** Temporary Suspension of Police Officer Garritt McGraw #9087  
Internal Affairs Control Number 2022-0440

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 Garritt McGraw #9087 from duty as a City of Austin, Texas police officer for a period of ten (10) days. The temporary suspension is effective beginning on November 29, 2022 and continuing through December 8, 2022.

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

On May 25, 2022, Austin Police Department (APD) Ofc. Garritt McGraw and Ofc. Paul Stratton responded to a physical disturbance call for service around 4:12 p.m. at a motel located on South Interstate Hwy 35. Ofc. McGraw was first to arrive on scene and was flagged down by a man (Mr. X) standing in the parking lot with no shirt. As Ofc. McGraw started to question Mr. X as to what transpired, Mr. X said, "*But look,*" pointing at an injury on the right side of his exposed torso. Mr. X told Ofc. McGraw the other party involved was his son's mother, identified as Ms. Z, who was upstairs in the motel room.

Mr. X proceeded to tell Ofc. McGraw that Ms. Z slapped him across the face. He also suggested that when officers go to speak with Ms. Z, she would say he hit and choked her. Ofc. Stratton arrived during Ofc. McGraw's conversation with Mr. X. Ofc. Stratton joined the dialogue, and approached Mr. X, and pointed at the injury on Mr. X's torso and asked him, "*Is this from her?*" Mr. X responded, "*She bit me.*" Ofc. Stratton asked Mr. X if it hurt. Mr. X answered, "*No, I don't want to incriminate.*" This interaction and dialogue were captured on both officers' Body Worn Cameras (BWC).

Thereafter, both officers walked upstairs to speak with Ms. Z, who was inside the motel room. The officers knocked on the door. Ms. Z opened the door and exited holding her and Mr. X's infant son in her arms. Ms. Z told Ofc. McGraw and Ofc. Stratton that she got into an argument with Mr. X regarding his dog. Ms. Z said it became physical and Mr. X threw her to the ground, they both started swinging, and Mr. X hit her, and she hit him back. Ms. Z also told the officers Mr. X choked her. Ofc. McGraw responded by asking Ms. Z if she was hurt. Ms. Z responded that she was not hurt. Ofc. Stratton then immediately followed up by asking Ms. Z if she needed EMS. She declined that offer.

Later in the dialogue between the officers and Ms. Z, Ofc. Stratton raised his voice, while pointing at Ms. Z, and stated, "*You're being disrespectful!*" He then abruptly ended the conversation with her by saying, "*We're done.*" Ofc. McGraw walked back downstairs and sat in his patrol car, while Ofc. Stratton returned to speak with Mr. X a second time.

After this brief, second conversation with Mr. X, Ofc. Stratton walked back to Ofc. McGraw and they debated the circumstances around this call. The debate centered around Ofc. McGraw wanting to title the call Assault by Contact, a Class C misdemeanor and Ofc. Stratton stating the call should be titled Assault with Injury Family Violence, a Class A misdemeanor. Both of the officers seemingly agreed that Ms. Z was the aggressor.

During the debate, Ofc. Stratton told Ofc. McGraw, "*I'm not trying to prolong this for the heck of it, but after seeing this...*" as Ofc. Stratton made a circular motion with his hand around his own torso—in the area where Mr. X had a bite injury. As the debate continued, Ofc. Stratton asked Ofc. McGraw if he would be titling the report Assault with Injury Family Violence. Ofc. Stratton then offered to complete the Assault Victim Statement (AVS) form. After this dialogue, Ofc. McGraw left the scene while Ofc. Stratton remained on scene to help Mr. X find another place to stay.

Shortly after leaving the scene, Ofc. McGraw called Child Protective Services (CPS) for the welfare of the child. Ofc. Stratton successfully helped Mr. X contact his sister, who wired Mr. X money. Ofc. Stratton transported Mr. X to pick up the funds, and then assisted him in getting a motel room for the night.

On May 28, 2022, the APD Internal Affairs (IA) received an Internal Complaint Memorandum from the officers' Chain-of-Command. The complaint submitted by their Lieutenant alleged:

*Officer Stratton and Officer McGraw responded to a Disturbance call. Officer Stratton and Officer McGraw may have violated policy by not taking the appropriate enforcement action. Furthermore, there may be some discrepancies in the reporting of this incident.*

### **IA Investigation**

#### **IA established the following timeline utilizing the officers BWCs:**

IA noted the following from Ofc. McGraw's BWC video:

- Time stamp of 1:18, Mr. X said, *"But look."* He looked down and pointed with his right hand at an injury on his exposed upper torso, and said, *"She slapped me in my face."*
- Time stamp of 4:29, Ofc. McGraw asked if Ms. Z was going to say anything different. Mr. X said, *"She will say I hit her and choked her."*
- Time stamp of 4:47, Ofc. Stratton pointed at the injury on Mr. X, and Mr. X said, *"She bit me,"* and Ofc. Stratton asked if it hurt.
- Time stamp of 4:51, Mr. X responded, *"I don't want to incriminate."*
- Time stamp of 8:59, Ms. Z said, *"He was choking me."*
- Time stamp of 15:35, Ofc. Stratton can be seen pointing at Ms. Z saying, *"You're being disrespectful!"*

IA noted the following from Ofc. Stratton's BWC video:

- Time stamp of 2:34, Ofc. Stratton pointed at the red mark on Mr. X's torso and asked, *"Is this from her?"*
- Time stamp of 2:36, Mr. X stated, *"She bit me,"* and Ofc. Stratton asked Mr. X, *"Did it hurt?"*
- Time stamp of 6:46, Ms. Z said, *"He was choking me."*
- Time stamp of 13:24, Ofc. Stratton pointed at Ms. Z saying, *"You're being disrespectful!"*
- Time stamp of 26:21, Ofc. Stratton said to Ofc. McGraw, *"Cause what I'm trying to do is at least document to make sure we don't get screwed because we missed something, or something happens later why didn't we do this, why didn't we do that."*
- Time stamp of 27:26, Ofc. Stratton was still discussing the call with Ofc. McGraw, and Ofc. Stratton said, *"I'm not trying to prolong this for the heck of it, but after*

*seeing this...*" As he was saying this, Ofc. Stratton was making a circular motion around his own torso in the same area where Mr. X had the apparent bite injury.

- Time stamp of 27:50, Ofc. Stratton asked Ofc. McGraw, "*Are you writing this up Assault with Injury?*"
- Time stamp of 27:56, Ofc. Stratton told Ofc. McGraw, "*Because we both saw that and it's fresh.*"
- Time stamp of 28:17, Ofc. Stratton said to Ofc. McGraw, "*I can do the AVS, cause what if he comes back later and says I do want to press charges.*"
- Time stamp of 28:58, Ofc. Stratton reiterated to Ofc. McGraw, "*It's obvious we see that and those are fresh looking injury and he's making those statements.*"
- Time stamp of 40:44, Ofc. Stratton said to Ofc. McGraw, "*I'm not saying she is going to jail now, for what it is, it's a Class A Misdemeanor.*"

### **Ofc. McGraw's phone call to Child Protective Services (CPS):**

IA was furnished the audio recording of the intake phone call Ofc. McGraw made to Child Protective Services (CPS) on May 25, 2022, at 5:18 p.m. The audio phone call was transcribed. Ofc. McGraw told the intake operator, "*Now when I'm looking at the male that flagged me down, he had a bite mark to his chest.*" Ofc. McGraw went on to tell the intake operator, "*Um, now the ba- obviously, I've been doing this a little while now. Obviously, we can kind of tell that the baby's not in a good place. Between those two and this little argument they were having, - I can't imagine this is the first one.*"

### **IA interviews of Ofc. Stratton and Ofc. McGraw**

Ofc. Stratton conceded that he and Ofc. McGraw should have followed policy and their training by 1) conducting a more thorough investigation, including asking more questions of Ms. Z about her choking allegation and asking her how the male sustained the bite mark. 2) they should have made an arrest since they had been made aware of a physical disturbance with a complaint of pain and/or injury; and/ or alternatively 3) they were required to consult with a supervisor and/or a Family Violence Detective to make the decision not to arrest, under the circumstances of this case. Moreover, Ofc. Stratton accepted full responsibility for his actions/inactions and General Order (GO) violations during this investigation.

In contrast to Ofc. Stratton, Ofc. McGraw only admitted that he and Ofc. Stratton could have done a better job with the investigation. Ofc. McGraw otherwise accepted no responsibility during the IA investigative process. In fact, Ofc. McGraw stated, "*everything I did on scene complied with policy.*"

### **Conclusion**

In arriving at my disciplinary decision, I took into consideration the seriousness of this matter, while also giving significant weight to Ofc. McGraw's eventual acceptance of responsibility at the conclusion of the investigation, during his Disciplinary Meeting (DM). In sum, I agree with the recommendation of Ofc. McGraw's Chain-of-Command

that Ofc. McGraw should be sustained for and disciplined for the following GO violations.

**418.2.1(a)1,2&3 Arrest Requirements for Assaultive Offenses  
418.2.5 Family Violence Involving Strangulation/Suffocation**

Specifically, I concur with the Chain-of-Command, which advised Ofc. McGraw how he violated GO 418.2.1(a) (1,2,3) Arrest Requirements for Assaultive Offenses, with the following acts or omissions:

*“On May 25<sup>th</sup>, 2022, you responded to [a motel] and while investigating a disturbance you failed to make an arrest or call a supervisor. Specifically, you failed to make an arrest or call a supervisor when the suspect was still on scene, the assault met the definition of “family violence”, and you observed bodily injury in the form of a fresh bite mark on the victim’s body which was alleged to have been caused by the suspect and a reasonable person could have also inferred that the bite mark would have caused pain. In addition, the female suspect also alleged to have been ‘slung to the ground’ and ‘choked’ and you failed to make an arrest or call a supervisor to address her injuries.”*

I also concur with the Chain-of-Command, which advised Ofc. McGraw how he violated GO 418.2.5 Family Violence Involving Strangulation/Suffocation, with the following acts or omissions:

*“On May 25<sup>th</sup>, 2022, you responded to [a motel] and while investigating a disturbance you were told by a female involved in the family violence situation that she was ‘slung to the ground’, struck, and ‘choked.’ You failed to ask all of the necessary follow up questions mandated by policy, and you failed to call EMS to the scene.”*

By these actions, Ofc. McGraw 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 418.2.1(a)(1)(2)(3): Family Violence: Arrest Requirement for Assaultive Offenses**

**418.2.1(a)(1)(2)(3) Arrest Requirement for Assaultive Offenses**

- (a) Officers are required to make an arrest for incidents involving family violence when:
  - 1. An assault has occurred that resulted in a minimum of bodily injury or complaint of pain; or where an officer can articulate

facts from which a reasonable person could infer that the victim would have felt pain due to:

- (a) The manner in which the suspect made contact with the victim, or
  - (b) the nature of observable physical marks on the suspect's body allegedly caused by the suspect's contact with the victim, and
2. The suspect is still on-scene; and
  3. The assault meets the definition of "family violence" or "dating violence."

➤ **Austin Police Department Policy 418.2.5: Family Violence: Family Violence Involving Strangulation/Suffocation**

**418.2.5 Family Violence Involving Strangulation/Suffocation**

When the suspect impedes the normal breathing or circulation of the blood of the victim by applying pressure to the victim's throat, neck or by blocking the victim's nose or mouth, the assault shall be enhanced to a felony of the third degree (Tex. Penal Code § 22.01(b)(2)(B)).

- (a) While in most cases there is evidence of both external and internal injury to the neck, many times there are no visible injuries. In those instances, an internal injury may still have occurred that can result in death. Victim may not understand the danger of their injuries and may be reluctant to seek medical attention.
  1. Call EMS to the scene to evaluate the victim even if the victim doesn't want them.
  2. Advise EMS you suspect strangulation with possible life threatening injury.
- (b) Proper documentation of an assault involving strangulation/suffocation is critical and should include at least the following:
  1. Physical Signs - This may include, but is not limited to:
    - (a) Red marks or bruising around the neck.
    - (b) Loss of memory in the recollection of the sequence of events.
    - (c) Petechial hemorrhaging (burst blood vessels) in the eye or face area.
    - (d) Difficulty and/or painful swallowing or hoarseness in the voice.
  2. Type/Method
    - (a) Ligature - Involves the use of a weapon (e.g., belt, telephone cord, shoe string, rolled up shirt) to impede breathing or cause air restriction.

- (b) Manual - Involves the use of the suspects' hands to impede breathing or to cause air restriction.
  - 1. Describe in detail the position of the suspect in relation to the victim (e.g., grabbed from the front or from behind) and what body part was used by the suspect (e.g., one hand, both hands, arm using choke hold).
- 3. Specific Questions
  - (a) What did you think was going to happen?
  - (b) What did the suspect say?
  - (c) How did it stop?
  - (d) What did you say during the assault?
  - (e) How did you feel?
- 4. Additional Observations
  - (a) If the victim has trouble swallowing, breathing or any pain or tenderness in neck area.
  - (b) Any changes in the victim's voice during interview (e.g., hoarseness, raspy, loss of voice).

Ofc. McGraw 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. McGraw 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. McGraw 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.

4647 for Chief Chacon  
JOSEPH CHACON, Chief of Police

11.28.22  
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.

Garritt McGraw 9087  
Police Officer Garritt McGraw #9087

11/28/22  
Date