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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: February 14, 2012

SUBJECT: Indefinite Suspension of Police Officer Jose Robledo #6825
Internal Affairs Control Number 2011-1018

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's and Police Officer's Civil Service Commission, I have indefinitely suspended Police Officer Jose Robledo #6825 from duty as a police officer of the City of Austin, Texas effective on February 15, 2012.

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

On August, 31, 2011, Officer Michelle Gish responded to the termination point of a pursuit. Officer Gish began assisting EMS in securing an intoxicated and uncooperative female onto an EMS gurney. As Officer Gish was securing the female on the gurney, the female spit on Officer Gish and Officer Gish struck the female at least once in the head. Officer Gish was forcibly removed from the female by Officer Robledo and had to be restrained until she was calm enough for EMS to assist in rinsing off her face.

Internal Affairs began an investigation into the incident and noted the Response to Resistance inquiry may not have been thorough enough to form a conclusion regarding whether any policy violations had occurred.

Officer Robledo stated in his supplement and in his Internal Affairs interview that he pulled Officer Gish away from the suspect because he believed that Officer Gish was being assaulted or about to be assaulted. Officer Robledo stated that he heard a spitting sound but he never saw or heard Officer Gish strike the subject and denies that he grabbed Officer Gish because she was striking the subject. During his Internal Affairs interview, Officer Robledo could not explain what led him to believe that Officer Gish was being assaulted other than seeing Officer Gish leaned in toward the subject. Officer Robledo's account of the reasons for the actions of Officer Gish and himself are inconsistent with his own statements at the scene, physical evidence and the statements of other witnesses, including Officer Gish. Officer Gish admitted in her Internal Affairs statement that the female was restrained on the gurney when Officer Gish slapped her and that Officer Gish had to be pulled away from the female because she was out of control. Officer Robledo's inaccurate and untruthful statements constitute violations of APD's policies on honesty and report writing.

By these actions, Officer Robledo 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 402.2.2: Incident Reporting and Documentation: Report Writing**

402.2.2 Report Writing

- (a) All reports shall accurately reflect:
 - 1. The identity of the persons involved.
 - 2. All pertinent information seen, heard, or assimilated by any other sense.
 - 3. Any action(s) taken.

- (b) Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing.

➤ **Austin Police Department Policy 900.3.1: General Conduct: Honesty**

900.3.1 Honesty

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

- (a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":

1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.
2. Verbal or written statements made by an officer in connection with their official duties to:
 - (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
 - (b) A supervisor conducting an inquiry into the officer's use of force.
 - (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.

➤ **Austin Police Department Policy 900.3.2(a): General Conduct: 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

In determining discipline, I took into consideration the fact that honesty is the cornerstone of the police profession. At his Disciplinary Review Hearing, Officer Robledo persisted in providing an account of the incident that is inconsistent with his own statements, physical evidence and the statements of other witnesses. Officer Robledo's failure to truthfully and completely report on the incident beginning with his report and continuing through the investigative and disciplinary processes violates several APD policies, including APD's honesty policy. As stated in APD's policy, honesty is of the utmost importance in the police profession and dishonesty is a serious policy violation for which indefinite suspension is mandated by the Discipline Matrix.

Consequently, under all of the facts and circumstances of this case, indefinite suspension is warranted and appropriate, and is the chain of command's unanimous recommendation to me.

By copy of this memo, Officer Robledo is hereby advised of this indefinite 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, Officer Robledo 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.


ART ACEVEDO

Chief of Police

2/14/2012
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of indefinite suspension and I have been advised that if I desire to appeal that I have ten (10) 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 Officer Jose Robledo #6825

2-14-2012
Date