

RECEIVED
NOVEMBER 7, 2022
12:48 P.M.



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 7, 2022

SUBJECT: Temporary Suspension of Police Officer Eric McDonald, III #4004
Internal Affairs Control Number 2022-0394

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 Eric McDonald, III # from duty as a City of Austin, Texas police officer for a period of six (6) days. The temporary suspension is effective beginning on November 8, 2022 and continuing through November 13, 2022.

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

On May 15, 2022, Austin Police Department (APD) Ofc. Eric McDonald and another officer responded to the 10000 block of Jollyville Road. The call text in the computer aided dispatch (CAD) record stated that the complainant felt threatened by her husband, who she identified as Mr. P. Ofc. McDonald was the first to arrive on scene and upon arrival, he notified the APD Dispatcher that he had detained the suspect. After an on-scene investigation, Mr. P was placed under arrest for Public Intoxication and Reckless Damage or Destruction of Property and transported to the Travis County Central Booking Facility.

While in transit to the jail, Mr. P informed Ofc. McDonald that he wanted to speak to a supervisor. Ofc. McDonald pulled over and called a Sergeant to the scene. Mr. P informed the Sergeant that he wanted to file a complaint on Ofc. McDonald for allegedly tripping him while placing him under arrest.¹

The following day, Ofc. McDonald responded to a call for service at Research Blvd and Braker Lane involving persons experiencing homelessness blocking an intersection. Coincidentally, Ofc. McDonald noticed Mr. P was one of the persons involved in this call for service. Mr. P came to Ofc. McDonald's patrol vehicle and they engaged in a conversation.

A significant portion of this interaction was not captured on Ofc. McDonald's in-car audio video (DMAV) or body-worn camera (BWC). Ofc. McDonald manually deactivated his car's DMAV system within seconds of the start of his encounter with Mr. P. Moreover, Ofc. McDonald failed to activate his BWC until 3 or 4 minutes after the encounter started.

Mr. P filed a subsequent external complaint stating he felt threatened by Ofc. McDonald during the May 16, 2022, encounter. Specifically, on May 17, 2022, the Office of Police Oversight (OPO) received an external complaint from Mr. P. The Notice of Complaint (NOC), ultimately investigated by Internal Affairs (IA), stated in part:

The complainant was previously arrested on 5/15/2022 on...Jollyville Road... While the complainant was being handcuffed, he was tripped by this officer. The complainant now has back pains as a result. The complainant requested to speak to a sergeant and make a complaint against the officer because he was tripped. He now believes he is being harassed by that officer because he made this complaint.

The next day, the same officer parked in the middle of traffic by a 7/11 parking lot where the complainant was living because he is currently homeless. The officer called out to the complainant "do you remember me?" and "oh you're out of jail?" The officer stated "you have someone looking at me right now because of what happened, because you said I did this". The officer told the complainant "you fell by yourself and now it's going to be on my record". To this the complainant replied, "No you tripped me". At some point during this 15-20 minute interaction, the officer touched his chest, possibly to turn the camera off, and then turned it on again. The complainant stated the officer

¹ Ultimately the investigation did not show that Ofc. McDonald tripped Mr. P.

to turn the camera off, and then turned it on again. The complainant stated the officer was harassing him throughout this interaction. Because the complainant complained about this officer, he believes the officer has other officers watching him. The officers are looking around at where he is living and he is not safe. The complainant also believes the officer was racist when he tripped him.

The IA investigation

IA found the beginning portion of the interaction between Ofc. McDonald and Mr. P captured on Ofc. McDonald's DMAV, before he deactivated it. In the portion IA located, Ofc. McDonald can be heard telling Mr. P the following:

"Thanks, Mr. [P]. You remember me, right? Well, you made a complaint now. When y'all complain on us and it's false, we have to go through the ringer and that could put my job in jeopardy. You tripped on your own."

IA played this clip of the DMAV for Ofc. McDonald and asked him to describe his actions:

Ofc. McDonald: *I don't think it was rude or loud or yelling at him, but I was, I think, I was in a car in the driver's seat and he was out in the - passing on the sidewalk. So I don't think it was rude. I didn't believe I yelled at him or scream or cursed at him.*

IA: *Okay so how would you describe your tone of voice?*

Ofc. McDonald: *I think it was a healthy professional conversation. I don't think it was loud or out of professional courtesy.*

IA: *So more like conversational or...*

Ofc. McDonald: *I think so - more like conversational.*

IA: *Okay and so in between the time when the DMAV was deactivated and then your body-worn camera was activated -- that three to four minutes that were not captured on body-worn camera or DMAV can you explain the conversation that took place in between those three to four minutes?*

Ofc. McDonald: *I remember that he said he spoke Spanish on a prior call. And so I spoke to him in Spanish and I was trying to explain to him also what I said in English making sure that he could understand. I explained to him in Spanish, the same thing, as far as when you complain this is what happened. And I did not do what you're saying I did. I didn't trip you. I didn't throw you down. I didn't, you know, push you or anything like that.*

Ofc. McDonald explained the purpose of telling Mr. P about the complaint process was to educate him about what happens and what officers go through when they receive a complaint. Ofc. McDonald reiterated that the conversation he had with Mr. P was a healthy, professional conversation and Mr. P did not appear to be intimidated. Ofc. McDonald further said he did not harass Mr. P and he could not see how the conversation could be viewed as a veiled threat because he was just explaining things to Mr. P.

In sum, Ofc. McDonald stated that he did not recall deactivating his DMAV, nor could he offer an explanation for deactivating the system. He also admitted that he failed to initially activate his BWC and should have done so from the inception of the interaction with Mr. P. Ultimately, Ofc. McDonald only admitted to violating General Order (GO) 303.3.1, When Department Issued BWC System Use Is Required.

Conclusion

I agree with Ofc. McDonald's Chain-of-Command who recommended to me that Ofc. McDonald should be sustained for and disciplined for the following GO violations.

- 301.2 Impartial Attitude and Courtesy**
- 303.3.1 When Department Issued BWC System Use Is Required**
- 304.3 Digital Mobile Audio Video Recorder Operation**

While I empathize with all officers, including Ofc. McDonald, who may be subject to a false accusation, the manner in which Ofc. McDonald handled this situation is inconsistent with my and his chain-of-command's expectations and is inconsistent with APD GOs.

Specifically, I concur with Ofc. McDonald's chain-of-command, who concluded that he violated GO 301.2 Impartial Attitude and Courtesy and advised Ofc. McDonald in part in his Notice of Sustained Allegations (NOSA), issued on October 26, 2022, of the following:

"[Ofc. McDonald] confronted the complainant by advising him that [he was] getting 'jammed up' by his complaint. The complainant who has a right to file a complaint, construed this dialogue to be an actual and/or veiled threat. Moreover, this conduct is unprofessional and inconsistent with General Orders, which state in part that Employees will perform all duties objectively and without regard to personal feelings and/or animosities. [Ofc. McDonald] should have allowed the complaint process to run its course and not confront the complainant for filing the complaint against [him]."

Moreover, I concur with the chain-of-command which advised Ofc. McDonald how he violated the BWC GO 303.3.1 in part for the following:

Once [Ofc. McDonald] contacted the individual who had an active complaint against [him], knowing [he] may confront him about it, [Ofc. McDonald was] required to activate [his] BWC...[Ofc. McDonald's] failure to activate [his] BWC,

which did not capture all or a significant portion of the dialogue, is inconsistent with policy. Activating the BWC in these instances, is in part, designed to protect both participants of the interaction from false claims or disputed recollections, and leaves the chain-of-command with an incomplete picture of the entirety of the events.”

Lastly, and similar to the BWC violation above, Ofc. McDonald left me and his chain-of-command with an incomplete picture of the entirety of the events. I also concur with the chain-of-command’s conclusion that he violated the DMAV system GO 304.3. The NOSA issued by the chain-of-command advised Ofc. McDonald:

“[The DMAV] initially began recording when you activated the in car PA system. However, you then manually stopped the recording, preventing a significant portion of the interaction from being captured on the DMAV system. Electronic records confirm you deactivated the DMAV system.”

By these actions, Ofc. McDonald 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 301.2: Responsibility to the Community: Impartial Attitude and Courtesy**

301.2 Impartial Attitude and Courtesy

Employees shall provide equal and fair protection of all rights under local, state, and federal law for all members of the community. Law enforcement will be conducted in an impartial and equitable manner.

In an effort to create an organizational culture that is inclusive and nondiscriminatory, employees shall act professionally, treat all persons fairly and equally, and strive to interact with the community in a positive manner. Employees will perform all duties objectively and without regard to personal feelings, animosities, friendships, financial status, occupation or employment status, sex, disability status, housing status, mental health or ability, citizenship, language, national origin, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity, gender expression, ethnicity, or social or ethnic background. Employees will endeavor to understand and respect cultural, national, racial, religious, physical, mental, and other differences.

- (a) Employees will not express or otherwise manifest any prejudice concerning any of the categories or characteristics listed in this section in a context or manner that would cause a reasonable person to question the employee’s fairness or impartiality related to 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.
- (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 treat all persons with dignity, will be courteous and respectful toward all persons, showing consideration for the welfare of all persons with whom they interact.
- (f) Officers shall not encourage, condone, or ignore any of the behaviors described in subsections (a)-(e)

➤ **Austin Police Department Policy 303.3.1: Body Worn Camera Systems: When Department Issued BWC System Use Is Required**

303.3.1 When Department Issued BWC System Use 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;
 2. Have detained or arrested a person;
 3. Are attempting to detain or arrest a person;
 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 employee 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, including the execution of a search warrant for a vehicle or physical structure (this includes the entire duration of the search);
 5. Investigatory stops; or

6. Any contact that becomes adversarial in an incident that would not otherwise require recording.
 7. While interviewing an employee during a Response to Resistance review.
- (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.
 - (e) There may be instances in which an employee is required to take immediate action in response to an event which may not allow time to activate their BWC. In those situations, it may be impractical or unreasonable for employees to activate their BWC system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate their BWC system to record the remainder of the incident. Employees shall articulate the reasoning for the delayed activation of their BWC in an offense report, supplement, or other form of Department approved documentation.

➤ **Austin Police Department Policy 304.3: Digital Mobile Audio Video Recording: Digital Mobile Audio Video Recorder Operation**

304.3 Digital Mobile Audio Video Recorder Operation

- (a) The DMAV system is designed to turn on automatically when any of the following are detected:
 1. Emergency lights.
 2. Siren.
 3. Driver's door opening.
 4. Crash sensor.
 5. Speed in excess of 90 MPH.
 6. Activation of a wireless body microphone.
 7. Manual activation by pressing the record button on the camera, the mobile data computer, or the Video Processing Unit.
- (c) Employees shall not:
 1. Bypass or override the automatic activation of the equipment.
 2. Erase, alter, or delete any recording produced by the DMAV.

By copy of this memo, Ofc. McDonald 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. McDonald 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

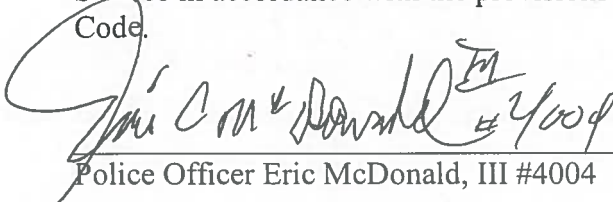
third-party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State 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.


JOSEPH CHACON, Chief of Police

11-7-22
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.


Police Officer Eric McDonald, III #4004

11-07-22
Date