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City of Austin

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Human Resources Dept



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: July 20, 2015

SUBJECT: Indefinite Suspension of Police Officer Blayne Williams #5833
Internal Affairs Control Number 2015-0170

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 indefinitely suspended Police Officer Blayne Williams #5833 from duty as a City of Austin, Texas police officer effective July 20, 2015.

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

On January 23, 2015 Officer Williams was dispatched to a family disturbance in the area of 8412 Garcreek Circle. He encountered 18 year old Walkendallin Mitchell (“Mitchell”), daughter of Letitia Serialle (“Serialle”). Mitchell advised she was involved in a physical altercation initiated by Serialle, where she sustained no injury. Mitchell also advised in the initial conversation, “... mom pulled a knife on me and threatened to kill me ...” No knife was recovered and no other witness including the neighbors made mention of any knives or threats on anyone’s life. Moreover, Mitchell herself never reiterated anything similar to this statement in subsequent conversations during this investigation. In fact when Officer Williams finally questioned Mitchell about the details of the knife, Mitchell’s story was inconsistent and contained vague details, yet Officer Williams did not probe this issue further.

Officer Williams then spoke separately with Serialle. In Officer Williams’s initial conversation with Serialle she advised him that she was in a physical altercation initiated by Mitchell where she stated Mitchell, “... pushed me, forearm hit me, ... and me trying to get her off of me.” Serialle went on to say, “I’m all bruised up, scratched up, arms all beat up where she hit me with the chairs.” Serialle also mentioned that she had a pacemaker and that Mitchell “did dig her fingers straight in” to the area of the pacemaker. She also advised Officer Williams in this initial conversation that she attempted to call the police for assistance during this assault but Mitchell, “[took] my cell phone, she took it and crashed it as I was trying to call the police, grabbed my phone and threw it, its broke, across this fence.” Moreover, Serialle advised Officer Williams this was not the first time Mitchell assaulted her, and that she had assault related incidents.

Officer Williams then separately spoke to Serialle’s other daughter and Mitchell’s sister, Tamequia Lindsey (“Lindsey”). Lindsey corroborated Serialle’s version of the events.

After speaking to the above mentioned witnesses, Officer Williams contacted Sergeant Robin Orten. Officer Williams advised Sgt. Orten that no one in this incident complained of pain or exhibited visible injury. There were also several pertinent and/or material omissions by Officer Williams. Officer Williams did not tell Sgt. Orten that Mitchell claimed a knife and a threat on her life was made by Serialle. Officer Williams did not advise Sgt. Orten that both Serialle and Lindsey advised him that Mitchell used chairs to strike Serialle. He also failed to mention the information surrounding the grabbing of Serialle’s pacemaker and the destruction of Serialle’s phone to prevent a call to 911. Officer Williams also advised Sgt. Orten that Serialle may be the primary aggressor, in spite of the omitted information.

Officer Williams subsequently spoke to Detective Mark Ferris. He conveyed the same message, including omissions, to Detective Ferris.

Thereafter, Officer Williams spoke to Serialle on two more occasions where she repeated the same consistent, already corroborated statement with further detail. Serialle

continuously reiterated the injuries, bruises, scratches she sustained and the fact that she was struck with a chair and kicked in the face along with her statements about her pacemaker and the destruction of the cell phone. In spite of APD Policy 418.2.1, which mandates that an arrest will be made under these circumstances, Officer Williams did not arrest Mitchell for Assault-Family Violence and or Interference with an Emergency Call. Rather, Officer Williams concluded this was a mutual combat situation and decided against arresting either individual. Once Officer Williams conveyed his decision to Serialle, she requested a supervisor.

At that point, Officer Williams obliged her request and contacted Corporal Garrison and advised him that Serialle had changed her statement and now has “marks”. Serialle complained of “marks” in every conversation she had with Officer Williams. To compound matters, on page 7 of the 28 page police report Officer Williams indicates that “Leticia later stated that her phone was taken from her hand while she was trying to call 911”. The statement that this information was acquired “later” is contradicted by the facts that can be found in the DMAV. Serialle told Officer Williams the same information regarding the cell phone with no deviation as he suggests in the police report. Additionally, after requesting Corporal Earl Garrison’s presence, Officer Williams spoke to Sgt. Orten over the phone yet again arrived and also advised him that Serialle changed her statement. A careful review of the DMAV shows otherwise. Serialle’s statement was consistent and never changed.

Once at the scene, Corporal Garrison conducted his own investigation, and in doing so spoke to Serialle. The statement conveyed to Corporal Garrison by Serialle was the same statement she had conveyed to Williams on three occasions and corroborated by Lindsey, and according to Corporal Garrison, the neighbor as well. After Corporal Garrison elicited the information that Officer Williams omitted telling him, Sergeant Orten, and Detective Ferris, Corporal Garrison concluded that probable cause existed and ordered Officer Williams to arrest Mitchell for Assault-Family Violence and Interference with an Emergency Call. But for Serialle requesting a supervisor and Corporal Garrison efforts, no arrest would have been made despite policy and State law mandates.

Corporal Garrison, Sgt. Orten, and Detective Ferris all indicated that Officer Williams neglected to convey pertinent and/or material information in their different conversations with them. Officer Williams’ actions and/or omissions nearly resulted in the non-arrest of Mitchell for Family Violence and Interference with an Emergency Call. As stated above, Officer Williams not only conveyed inaccurate information to each of his supervisors but he also wrote inaccurate information in the police report in this case. All of these facts are corroborated by the recorded conversations and documentation of this case.

Lastly, Officer Williams violated the Honesty policy in this case through his acts and omissions which intentionally misrepresented the facts and misled others. A specific breakdown of those acts includes but is not limited to the following:

- 1) After Serialle requested a supervisor, Officer Williams told Corporal Garrison that Serialle had changed her statement and now has “marks” when in fact her statement had been consistent.
- 2) After Serialle requested a supervisor, Officer Williams advised Sgt. Orten via telephone that Serialle had changed her statement when in fact her statement remained consistent.
- 3) After being directed by Corporal Garrison to arrest Mitchell for Assault with injury- Family Violence and Interference with an Emergency Call Officer Williams wrote the following on page 7 of his police report: “Leticia later stated that her phone was taken from her hand while she was trying to call 911”. Serialle told Officer Williams the same statement regarding the cell phone with no deviation as he suggests in the police report.

While his omissions include the following:

- 1) Officer Williams advised Sgt. Orten that no one in this incident complained of pain or exhibited visible injury.
- 2) Officer Williams did not tell Sgt. Orten that Serialle indicated that “I’m all bruised up, scratched up, arms all beat up where she hit me with the chair.”
- 3) Officer Williams did not tell Sgt. Orten that Mitchell claimed a knife and a threat on her life was made by Serialle.
- 4) Officer Williams did not advise Sgt. Orten that both Serialle and Lindsey advised him that Mitchell used chairs to strike Serialle.
- 5) Officer Williams failed to provide this information surrounding the grabbing of Serialle’s pacemaker by Mitchell.
- 6) Officer Williams failed to advise Sgt. Orten that Serialle tried to call 911, but Mitchell thwarted this attempt by grabbing the phone, destroying it, and throwing it over the fence.
- 7) In his conversation with Detective Ferris Officer Williams made the same omissions as he did with Sgt. Orten in 1-6 above.
- 8) In his conversations with Corporal Garrison Officer Williams made the same omissions as he did with Sgt. Orten and Detective Ferris in 1-6 above.

Corporal Garrison ordered Officer Williams to make an arrest for Assault-Family Violence and Interference with an Emergency Call, and but for that Order, Williams would not have made the arrest despite there being probable cause to arrest Mitchell for both offenses. The above mentioned omissions of pertinent and/or material information intentionally misrepresented facts, misled, and deprived Sgt. Orten and Detective Ferris of pertinent and/or material information they needed to make an informed decision whether probable cause existed for an arrest.

By these actions, Officer Williams 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: Family Violence: Purpose and Scope**

418.1 Purpose and Scope

Family Violence is alleged criminal conduct and it is the policy of the Austin Police Department to stress enforcement of criminal laws related to family violence, the protection of the victim and the availability of civil remedies and community resources.

418.1.1 DEFINITIONS

Family - Individuals who are related either by blood or by marriage. Family includes former spouses, parents of the same child regardless of the marital status or the legitimacy of the child and foster child/parent relationships (Tex. Fam. Code § 71.003).

Family Violence - An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault. However, family violence does not include actions taken in self defense (Tex. Fam. Code § 71.004).

Primary Aggressor - The person who appears to be the most significant aggressor rather than the first aggressor. In identifying the primary aggressor an officer shall consider:

- (a) The intent of the law to protect victims of family violence from continuing abuse.
- (b) The threats creating fear of physical injury.
- (c) The history of family violence between the persons involved.
- (d) Whether either person acted in self-defense.

418.2 ENFORCEMENT GUIDELINES

The primary duties of an officer who investigates a family violence allegation, or who responds to a disturbance call that may involve family violence, are to protect any potential victim of family violence and enforce the law by making lawful arrests of violators.

Officers making an arrest for any incident involving family violence shall direct file all charges as outlined in Policy 323 (Booking and Arrest Review), unless directed otherwise by the appropriate investigator.

418.2.1 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; and
 - 2. The suspect is still on-scene; and
 - 3. The assault meets the definition of "family violence" or "dating violence."
- (b) If both parties have been assaulted, officers shall make reasonable efforts to identify the primary aggressor. Arrests of both parties should be avoided unless warranted.
 - 1. If officers at the scene cannot determine the primary aggressor, an on-duty supervisor shall be contacted to make the determination.
 - 2. If the on-duty supervisor cannot determine the primary aggressor and there is adequate and articulable probable cause to believe that each person contributed to the violence, supervisors may authorize officers to make multiple arrests.
- (e) Supervisors may authorize an exception to an arrest if there are articulable facts that lead a reasonable person to believe the alleged suspect was acting in self-defense. The facts leading to the decision for an exception shall be fully documented in the incident report, along with the name of the supervisor approving the exception.

418.2.7 INTERFERENCE WITH EMERGENCY TELEPHONE CALL

Interference with emergency telephone call has its own arrest authority (Tex. Code of Crim. Pro. art. 14.03(a)(5)) that is separate from the arrest authority for family violence.

- (a) Officers should consult with their supervisor or Arrest Review to confirm there is enough probable cause for the arrest of this offense. If enough probable cause exists, officers may make an arrest.

➤ Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty

900.4.3 Neglect of Duty

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.
- (i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

➤ **Austin Police Department Policy 900.3.1: General Conduct and Responsibilities: 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.

- (c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

After considering the facts of this case in a light most favorable to Officer Williams, he clearly neglected his duty and withheld pertinent and/or material information from his supervisors and the investigator. He also intentionally misrepresented the facts and misled his supervisors and the investigator into believing there was no probable cause to make an arrest. Even if I was to believe that Officer Williams did not intentionally misrepresent or mislead his supervisors and the investigator into believing no probable cause existed, I am left with the conclusion that either he is unwilling, unable, or not competent to follow Department policy and take appropriate action upon the commission of a crime.

The behavior exhibited in this incident is even more egregious given Officer Williams' prior disciplinary history, which includes a 90-Day Agreed Suspension on September 15, 2011 in lieu of indefinite suspension (a disturbing incident at the HEB involving an elderly citizen) and an indefinite suspension on October 2, 2013 (an egregious neglect of duty incident at the Hyatt Hotel), which was reduced to a 15 day suspension on appeal on October 31, 2014. With respect to the prior indefinite suspension, it is important to note that the Hearing Examiner stated that Officer Williams deserved more than a 15 day suspension in light of his prior 90 day suspension but the Hearing Examiner incorrectly stated that he was constrained by the law (the Meet and Confer Agreement allowed a suspension of up to 180 days).

A brief synopsis of the second disciplinary case revolves around a secondary employment position Officer Williams held at the Hyatt hotel. During one of his shifts, Officer Williams recovered a recording device, a cellular phone, that was surreptitiously placed in a women's hotel room shower ceiling panel. Rather than seize the phone and maintain control and process it into evidence, Officer Williams turned the phone over to hotel staff, shirking his duties and responsibilities as an officer and compromised not only the chain of custody of the evidence, but the entirety of the investigation.

This current indefinite suspension is Officer Williams' third significant suspension within a 4 year period. Every one of those cases involves his failure to comply with Department policy, poor judgment, and the failure to perform his police duties in a satisfactory manner. This disciplinary history also demonstrates a pattern of behavior and constitutes a written record of repeated violations of APD policy for which Officer Williams has failed to learn from his mistakes, failed to correct his behavior, and is apathetic when it comes to complying with Department policy and correcting his behavior. Furthermore, on May 5, 2014, I bypassed Officer Williams three times for promotion to Corporal/Detective based upon his disciplinary history, and those bypasses were upheld on appeal on June 8, 2015.

Even setting aside the dishonesty allegation, the acts of January 23, 2015, when combined with Officer Williams' sustained disciplinary history, warrant indefinite suspension. Based upon this history, if Officer Williams is retained, his chain of command and I are unanimous in the belief that he will continue to commit acts of misconduct resulting in further disciplinary action.

By copy of this memo, Officer Williams 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) calendar 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 Williams 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

7/20/2015
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) 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.

Unable to obtain signature *
Police Officer Blayne Williams #5833

7-20-15
Date

* Per officer Williams Attorney (Greg Cagle), Officer Williams will be out of state until the end of the month (July) and will not appear. A copy of this letter will be sent via certified mail to Attorney Cagle and to officer Williams home address. Copies will also be sent via e-mail to Attorney Cagle and to officer Williams personal e-mail address.