



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: December 22, 2020

SUBJECT: Agreed Temporary Suspension of Police Officer Jason Denney #7499
Internal Affairs Control Numbers 2020-1543

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 Jason Denney #7499 from duty as a City of Austin, Texas police officer for a period of thirty (30) days. The agreed temporary suspension is effective beginning on December 23, 2020 and continuing through January 21, 2021.

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

On June 28, 2020, Austin Police Department (APD) officers responded to a 911 call regarding a two-vehicle collision at 1800 S IH 35 SVRD SB. Officer Jason Denney was the first officer to arrive at the scene. Upon arrival, Officer Denney interacted with the two drivers (Mr. H and Mr. R) involved in this collision. Officer Denney determined that Mr. H failed to stop and rear-ended Mr. R. Officer Denney conducted a Driving While Intoxicated (DWI) investigation of Mr. H and made the decision not to arrest Mr. H, in spite of evidence that Mr. H may have been driving while intoxicated in violation of Texas Penal Code Sec. 49.04. Moreover, Officer Denney did not complete an APD incident report, but did complete a Texas Peace Officer's Crash Report (form CR-3) to document the collision and arranged for and had Mr. H's vehicle towed.

On July 16, 2020, Commander Cumins filed an internal complaint requesting that Internal Affairs (IA) initiate an administrative investigation to determine if any violation of APD policy, civil service rules, or state law had been committed by Officer Denney.

IA reviewed the following APD General Orders/Policy in relation to this investigation:

- *APD Policy 900.4.3 Neglect of Duty*
- *APD Policy 900.3.4 Personal Conduct*
- *APD Policy 346.5.2 APD Incident Reporting*
- *APD Policy 346.2.1 Towing from Crash*
- *APD Policy 350.2.1 Towing Situations*

At the conclusion of the IA investigation, Officer Denney's chain of command concluded that he did not make a DWI arrest when he had probable cause to do so. Officer Denney established the following probable causes to arrest Mr. H at the scene, and yet he failed to ask the necessary follow-up questions, investigate further, document his findings in an APD incident report, and arrest Mr. H:

- Mr. H admitted to Officer Denney to being at fault for the collision, which is evidence of negligent or erratic driving. Mr. H's fault was further evidenced by the statements from Mr. R, who did not dispute Mr. H's version of events.
- Mr. H admitted to Officer Denney that he smelled like an alcoholic beverage was emanating from his person (regardless of whether Officer Denney smelled it or not).
- Mr. H initially admitted to Officer Denney that he had recently consumed 4 beers prior to operating his motor vehicle.
- Mr. H later admitted to Officer Denney he recently consumed 2 whiskey espressos, which have a significantly greater alcoholic content than the average alcoholic beverage, and two sours (a type of beer), prior to operating his vehicle.

- Officer Denney understood on the scene that he had admissions from Mr. H that he had consumed at least the 2 significantly concentrated alcoholic beverages, and potentially up to 8 alcoholic beverages in total, prior to operating his vehicle.
- Officer Denney advised Mr. H at the scene that he discerned Mr. H's speech was slurred. Officer Denney confirmed this fact to IA. This is an indication of intoxication that officers are trained to recognize.
- Mr. H advised Officer Denney that he thought the time of day was 1:30 am when it was in fact approximately 10:30 pm. This is an indication of intoxication that officers are trained to recognize.
- Mr. H advised Officer Denney that he was heading towards a friend's house. Yet Officer Denney was able to determine that Mr. H was driving in the wrong direction and was actually driving further away from his purported destination. This is an indication of intoxication that officers are trained to recognize.
- Mr. H made a series of untruthful, inconsistent, and/or outrageous assertions to Officer Denney, which could be further evidence of impairment, including but not limited to the following:
 - Trying to explain why he did not have license, Mr. H claimed he gave his wallet and all of its contents, including his license, to Mr. R. (Officer Denney was able to verify this was untruthful).
 - Mr. H later claimed to Officer Denney that his wallet and license were in the center console of his vehicle the whole time, when these items were not at the scene at all. (Mr. H was never able to produce identification.)
 - To explain why he smelled like an alcoholic beverage, Mr. H told Officer Denney that he drank a good amount of wine in the immediate aftermath of the collision. Mr. H claimed that the bottle of wine he drank from was still in the back of his vehicle. (Officer Denney was able to verify that there was no bottle of wine, empty or otherwise, in Mr. H's vehicle.)
 - To explain why he smelled like an alcoholic beverage, Mr. H also told Officer Denney that he was a bartender. Officer Denney never verified whether Mr. H's assertion that he was a bartender was truthful or another untruthful statement. (In all likelihood, Mr. H (admittedly) smelled like alcohol because of the significant amount of alcohol that he previously admitted to consuming.)

- Officer Denney advised IA that Mr. H admitted at the scene that he had taken medication before driving, in addition to the copious amounts of alcohol he had admitted to consuming.
- Officer Denney also advised IA that Mr. H exhibited “erratic behavior” and concluded that Mr. H was “unsafe to drive.” Yet Officer Denney gave limited to no consideration to the possibility that those observations could demonstrate probable cause of Mr. H’s impairment (driving while intoxicated) due to Mr. H’s admitted consumption of alcohol and medication use. (Officer Denney claimed to attribute his decision that he did not have probable cause of Mr. H’s impairment to a possible preexisting brain injury suffered by Mr. H, head injury from crash that Mr. H had been involved in, or perhaps Mr. H’s normal disposition.)
- Undermining his explanation that he did not have probable cause of Mr. H’s impairment, Officer Denney decided to tow Mr. H’s vehicle because--as Officer Denney could be repeatedly heard to say on his Body Worn Camera (BWC) at the scene-- he deemed Mr. H to be “drunk.” Towing the vehicle is consistent with Officer Denney’s repeated assertions at the scene that Mr. H was “drunk” and the above-mentioned probable cause that Officer Denney established, but failed to act on by making an arrest.

In spite of the aforementioned actions taken by Officer Denney, the admissions he garnered, and the probable cause he developed, Officer Denney did not arrest Mr. H and did not take Mr. H to submit to a breath sample, urine sample, or blood sample. Officer Denney’s neglect was not only inconsistent with APD General Orders, but it was also contrary to Texas Code of Criminal Procedure 2.13(b)(4) which states:

(b) The officer shall:

(4) arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

Rather, Officer Denney allowed Mr. H to leave the scene with his girlfriend. The fact that Officer Denney was unable to establish further probable cause through the administration of Field Sobriety Tests (FSTs), does not negate the probable cause that Officer Denney had to make an arrest. I agree with Officer Denney’s chain of command that Officer Denney demonstrated an unwillingness or inability to perform the main objective of his assigned task at this scene.

Moreover, Officer Denney failed to document this call in an incident report, in contradiction of APD General Orders requiring him to report when a driver is impaired due to alcohol or drug usage. Of significant note, Officer Denney insisted to IA that he did not have probable cause to arrest Mr. H in spite of overwhelming evidence gathered by Officer Denney of Mr. H. Counterintuitively, Officer Denney claimed he towed Mr. H’s car without probable cause or the legal authority to do so, and in spite of Mr. H’s request that his vehicle not be towed from the scene. If Officer Denney indeed felt like he did not have

probable cause, he neither followed APD General Orders, nor did he have legal authority to tow Mr. H's vehicle without Mr. H's consent.

Additionally, during Officer Denney's interaction with Mr. H (captured on his BWC), Officer Denney can be heard using indecent, profane, harsh, or belittling language towards Mr. H. in violation of APD Personal Conduct General Order 900.3.4.

Of significant note to myself and Officer Denney's chain of command was the fact that Officer Denney took full responsibility for his actions during his Disciplinary review hearing. He acknowledged he violated each of the General Orders sustained by his chain of command, including the Neglect of Duty General Order.

By these actions, Officer Denney 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 900.3.4: General Conduct and Responsibilities: Personal Conduct**

900.3.4 Personal Conduct

- (c) While on-duty or on the premises of City facilities, employees will not:
 - 1. Use loud, indecent, profane, harsh, derogatory language, or use belittling term in any communications.
 - 2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.

➤ **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:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (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.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.

➤ **Austin Police Department Policy 346.5.2: Crash Investigation and Reporting:
APD Incident Reporting**

346.5.2 APD Incident Reporting

In addition to completing the appropriate crash report form(s), officers shall also complete a detailed incident report when crashes involve any of the following:

- (a) Life threatening injury or death.
- (b) Crime Scene Unit response (regardless if victim condition is upgraded).
- (c) Driver impairment due to alcohol or drugs is suspected.
- (d) Leaving the Scene (LTS) incident.
- (e) Failing to Stop and Render Aid (FSRA) incident.
- (f) An APD leased, owned or rented vehicle as outlined below.
- (g) An arrest for any offense.

➤ **Austin Police Department Policy 350.2.1: Vehicle Towing and Impound:
Towing Situations**

350.2.1 Towing Situations

Vehicles shall be towed using an authorized Preference or Non-Preference wrecker in the following situations:

- (a) Vehicles disabled due to a traffic crash that must be removed from the scene regardless of whether the driver is arrested, as outlined in General Order 346 (Crash Investigation and Reporting).
- (b) All other disabled vehicles where the driver is on-scene, officers are providing assistance and the driver is requesting the vehicle be towed.

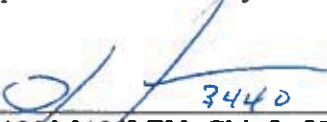
In addition to this agreed temporary suspension, Officer Denney agrees to the following terms and conditions:

1. Officer Denney shall attend any training specified by his chain of command.
2. Officer Denney shall, be evaluated by a qualified professional designated by the Chief.
3. If that professional recommends a program of counseling, Officer Denney must successfully complete that program of counseling (it is expected that any program of counseling will last for at least twelve months but that is for the qualified professional to determine).
4. The program of counseling will be completed on Officer Denney off duty time, unless the Chief approves the use of accrued vacation leave.

5. Officer Denney shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
6. If Officer Denney fails to successfully complete the program of counseling, the Chief may, at his sole discretion, indefinitely suspend him without right of appeal to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and Officer Denney may not file a grievance under Article 20 of the Meet and Confer Agreement.
7. If this evaluation and/or the program of counseling raises a question whether Officer Denney is sufficiently mentally or physically fit to continue his duties as a police officer, it could trigger the fitness for process set forth in Texas Local Government Code Chapter 143.081.
8. Officer Denney agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, he commits the same or a similar act of misconduct for which he is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one-year period begins on the day Officer Denney returns to duty after completing his agreed suspension. Should Officer Denney commit the same or similar violation outside the one-year period, he will be indefinitely suspended but retains the right to appeal that suspension.
9. Officer Denney 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.
10. Officer Denney agrees that he, and all others claiming under him named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind or nature whatsoever that he now has, or may have in the future, including without limitations, claims arising under any federal, state or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
11. Officer Denney acknowledges that he had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with

a representative of his choosing prior to signing his acceptance where indicated below.

By signing this Agreed Discipline, Officer Denney 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 Denney waives all right to appeal this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.


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BRIAN MANLEY, Chief of Police
FOR CHIEF MANLEY

12/22/2020

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, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.


7499

Police Officer Jason Denney #7499

12-22-20

Date