

RECEIVED
CITY OF AUSTIN
CIVIL SERVICE OFFICE
6-17-2020
4:16 p.m.



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: June 16, 2020

SUBJECT: Temporary Suspension of Police Officer Jonathan La Borde #5193
Internal Affairs Control Numbers 2020-0428 and 2020-0045

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 Jonathan La Borde #5193 from duty as a City of Austin, Texas police officer for a period of ten (10) days. The temporary suspension is effective beginning on June 17, 2020 and continuing through June 26, 2020.

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

Internal Affairs Control Number 2020-0045

On December 23, 2019, Officers Jonathan La Borde and Uri Tamez worked an overtime assignment funded by the Downtown Austin Alliance (DAA) in a marked patrol vehicle. During the DAA assignment, Officer La Borde was involved in a Level IV response to resistance (R2R) and realized his Body Worn Camera (BWC) was powered off during the R2R. He informed his responding supervisor, that his BWC was not powered on. The audit history for the BWC assigned to Officer La Borde revealed the camera itself was powered off the duration of the assignment. It was only turned on for the first time during that assignment after the occurrence of the R2R.

Thereafter, Lieutenant James Nisula performed an audit of the activity that Officers La Borde and Tamez had engaged in during the overtime assignment, including their DMAV and BWC videos for December 23, 2019. The audit revealed the officers did not log onto their vehicle's Mobile Data Computer (MDC) or sign into the Digital Mobile Audio Video (DMAV) system at the beginning of their shift. Moreover, they did not have DMAV and/or BWC videos for all of their calls for service.

On May 13, 2020, Internal Affairs conducted an interview with Officer La Borde. During the interview, Officer La Borde admitted that he did not sign into the MDC and DMAV system, did not test the DMAV system or his BWC at the beginning of his shift, and did not use the DMAV and BWC as required by APD General Orders on December 23, 2019.

Internal Affairs Control Number 2020-0428

On April 7, 2020, Lieutenant Nisula conducted a DMAV audit of Officer La Borde. During the audit he discovered Officer La Borde and Officer Daniel McCameron worked a DAA overtime assignment on December 2, 2019. They operated a patrol vehicle during the assignment, but they had no DMAV recordings for that date. Lieutenant Nisula discovered that the officers did not log into the MDC or DMAV system while working this assignment.

Lieutenant Nisula subsequently reviewed the BWC system recordings for December 2, 2019, which revealed Officers La Borde and McCameron did not have a video for a Criminal Trespass call (APD incident 19-3360348) for which a criminal trespass notice report was completed under Versadex report #2019-3360348.

On May 13, 2020, Internal Affairs conducted an interview with Officer La Borde. Officer La Borde acknowledged to Internal Affairs that he violated APD General Orders 303.3.1, 304.3.1, 304.3.2, and 305.2, on December 2, 2019. These are the same General Orders he acknowledged violating in Internal Affairs Control Number 2020-0045.

By these actions, Officer La Borde 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 303.3: Body Worn Camera Systems: Department Issued Body Worn Camera**

303.3 Department Issued Body Worn Camera

BWC equipment is to be used primarily by uniformed personnel as authorized per assignment by the Department and must be used unless otherwise authorized by a Commander or above.

- (b) Employees equipped with a Department issued BWC system must be trained in the operation of the equipment prior to its use. BWC equipment will be used in accordance with Department training and the BWC operations manual.
- (c) Unless otherwise authorized by the Chief of Police or his/her designee, BWC's will be worn consistent with the training and manufacturer's recommendations, in regards to fields of view and employee safety. Employees will adhere to the following dimensions for placement of the BWC:
 - 1. From the center of the sternum, no more than four inches to the right or left on the outermost layer of clothing such that the camera has an unobstructed view.
 - 2. No higher than four inches below the top button of the uniform shirt and no lower than six inches below the top button of the uniform shirt.
 - 3. Exemptions to the placement of the BWC in accordance with this order will be authorized by a Commander or above. Examples for exemptions may include, but are not limited to, SWAT, OCD, Executive Protection, and Mounted Patrol.
- (d) Employees shall ensure that their BWC equipment has adequate battery charge and storage space to complete their regular tour of duty.
 - 1. Employees assigned to the units below are required to power on the device at the beginning of their tour of duty and not power the device off until the end of that tour of duty.
 - (a) Patrol,
 - (b) DTAC Patrol,
 - (c) George District Representatives,
 - (d) Mounted Patrol,
 - (e) Court Services,

- (f) Park Patrol,
- (g) Lake Patrol,
- (h) Commercial Vehicles,
- (i) DWI,
- (j) Motors,
- (k) Metro Tac,
- (l) Patrol K9,
- (m) Gangs,
- (n) Criminal Interdiction.

2. Employees not assigned to the units above are not considered to be “first responders” and are therefore not required to power on their assigned Body Worn Camera at the beginning of their tour of duty. However, if at any time their duties and responsibilities require any type of field work where they could be called upon to take enforcement action, their device will be properly attached and powered on for the entirety of the time they are in that role.
3. Employees not engaged in a law enforcement action shall power the device off or remove it from their body when using a restroom, locker room, changing room, or any other location where the employee has an expectation of privacy. Immediately upon exiting such a facility or room, the employee shall ensure the BWC equipment is powered back on and appropriately placed according to this order.

- (e) Employees shall test the BWC equipment at the commencement of their tour of duty and shall categorize the video as '10-41'.
- (f) The BWC equipment test shall consist of employees recording the following:
 1. Employee name;
 2. Employee number; and
 3. The current date and time.
- (g) Employees shall review the recording to verify the BWC microphone is operational, and the date and time is accurate.

➤ **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;
 - 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.

- (c) Employees that are issued a BWC shall utilize the BWC when engaging in Off-Duty LERE Overtime.

- (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 304.3.1: Digital Mobile Audio Video Recording: Required DMAV Testing**

304.3.1 Required DMAV Testing

Employees driving DMAV equipped vehicles during field duty assignments where the required use of the DMAV is likely (e.g., patrol, metro-tactical shifts, traffic enforcement) must be trained in the operation of the equipment prior to its use.

- (a) Employees will test the vehicles DMAV equipment:
 - 1. At the commencement of their tour of duty.
 - 2. Anytime they switch cars during a shift.
 - 3. When the DMAV media has been replaced for an approved reason.
- (b) Employees will classify the video as '10-41'.
- (c) The DMAV equipment test will consist of employees recording the following:
 - 1. Employee name; and
 - 2. Employee number; and
 - 3. The current date and time.
- (d) Employees will review the recording to verify the in-car and body microphone is operational, and the date and time is accurate.

➤ **Austin Police Department Policy 304.3.2: Digital Mobile Audio Video Recording: When DMAV Use is Required**

304.3.2 When DMAV Use is Required

This order is not intended to describe every possible situation where the system may be used. In some circumstances it is not possible to capture images of the 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.

- (a) All units responding to a scene shall activate their DMAV equipment when they:
 - 1. Arrive on-scene to any call for service; or
 - 2. Are attempting to detain or arrest a person; or
 - 3. Have detained or arrested a person; or
 - 4. By nature of the incident, are likely to detain or arrest a person.

- (b) Examples of when the DMAV system must be activated include, but are not limited to:
1. Traffic stops.
 2. Pursuits, until completion of enforcement action.
 3. DWI investigations including field sobriety tests.
 4. Warrant service.
 5. Investigatory stops when the subject is on foot or in a vehicle.
 6. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be impractical or unreasonable for officers to activate their DMAV system before taking police action. It is expected that once the immediacy of the situation is over, officers will activate their DMAV system to record the remainder of the incident.
 7. While interviewing an employee during a Response to Resistance review when the BWC recording system is unavailable.
- (c) 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.

➤ **Austin Police Department Policy 305.2: Radio and Mobile Data Computer Use: Mobile Data Computer Use Guidelines**

305.2 Mobile Data Computer Use Guidelines

- (a) The mobile data computer (MDC) shall be used for official police communications only.
- (b) There is no expectation of privacy concerning sending or receiving messages via the MDC system. Messages may be reviewed by supervisors at any time without prior notification.
- (c) The MDC will remain docked and the docking switch will be in the locked position when the vehicle is in motion or if the MDC is left unattended unless otherwise approved by a supervisor.
- (d) Employees will not intentionally disrupt the GPS signal.
- (e) Employees driving vehicles equipped with an MDC shall:
1. Accept all updates to the MDC prior to logging on and while at a hot-spot; however, employees reporting to duty from a


location that is not a hot-spot shall ensure the updates are downloaded as soon as practicable.

2. Log on at the start of a shift with complete and accurate information.
3. Log off at the end of the shift.

Officer La Borde 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, Officer La Borde 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, Officer La Borde 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.

 3840 For Chief 6/16/2020
BRIAN MANLEY, Chief of Police B. Manley 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.

 5193 6/16/20
Police Officer Jonathan La Borde #5193 Date