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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: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: June 28, 2018

SUBJECT: Indefinite Suspension of Police Officer Brendan Bloom #6367
Internal Affairs Control Number 2018-0008

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 Brendan Bloom #6367 from duty as a police officer for the City of Austin, Texas effective June 28, 2018.

I took this action because Officer Bloom 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 specific acts committed by Officer Bloom in violation of Rule 10:

On January 4, 2018, at approximately 3:20 a.m., Austin Police Department (APD) Officer Brendan Bloom was stopped by the Williamson County Sherriff Office (WILCO) in Hutto, Texas for reckless driving. Officer Bloom was subsequently arrested for Driving While Intoxicated (DWI), Class B misdemeanor. After learning of Officer Bloom's arrest, APD Lieutenant Maurice Forshee signed a complaint directing Internal Affairs (IA) to conduct an Administrative Investigation to determine if Officer Bloom committed any violation of Department Policy, Civil Service Rules or State Law.

Video Footage from Bars and Central Texas Turnpike System tollway records

During the course of the investigation, APD uncovered relevant audio and video footage. Video footage revealed that on January 3, 2018, between 9:26 p.m. and 10:57 p.m., Officer Bloom consumed three vodka tonics at Darwin's Pub in downtown Austin. Video footage also showed that on January 3, 2018, between 11:21 p.m. and 1:21 a.m. (into January 4, 2018), Officer Bloom consumed five vodka tonics and four liquor shots of alcohol at the Coyote Ugly Saloon in downtown Austin.

Video footage then showed that Officer Bloom departed the Coyote Ugly Saloon at 1:41 a.m. on January 4, 2018. Evidence shows that Officer Bloom was driving in the area of State Highway (SH) 45 at Lake Creek Plaza at about 2:13 a.m., on SH 45 RM 620 at approximately 2:16 a.m., on SH Heatherwilde Plaza at about 2:25 a.m., on SH 130 Cameron Plaza at approximately 3:01 a.m., and on SH 130 at Mustang Plaza at about 3:13 a.m. before being stopped by a WILCO sheriff.

911 Audio (WILCO)

IA investigators also obtained audio from WILCO 911 records. This evidence reveals that another motorist was so concerned about Officer Bloom's driving, that he called 911 and stayed on the line to give a running first-person account of what he witnessed. These present sense impressions reveal some alarming behavior prior to intervention by the WILCO sheriff:

- *"We're going past Gattis Road now. He was going south, but he lost control and come across the median, might've been stopping in the middle of the road now he's going back north."*
- *"Uh, there - wait a minute there he goes. Oh, I thought he was gonna hit the wall there."*
- *"Yeah, this guy's pretty messed up, man. You all better do something 'cause this guy - yeah, he's trying to cross that median."*
- *"and then now he's stopping in the middle of the road, he's speeding back up."*
- *"Yeah, this dude - this dudes wasted, man. We can't even pass this guy he's like dead stop in the middle of the highway now. We can't even get around him."*

- *“you have to do something...he’s gonna drive off now he’s - wow I just wanna go past this guy.”*
- *“Yeah, he’s speeding back up now, but yeah, he don’t know what he’s doing that’s for sure. Oh, he’s wasted I mean that’s pretty obvious.”*
- *“Yeah, he’s stopping again in the middle of the road.”*
- *“Yes, ma’am. Yeah, he’s at a dead stop. Yeah, everybody better do something.”*

911 Audio (Georgetown)

The call was then transferred to Georgetown 911 dispatch eliciting further quotes:

- *“Well, he come across the median, lost control, was going south. And then lost control in front of me and then took off north again.”*
- *“He’s just all over the road and I can’t pass him. I’m not going - he keeps on - he’s stopping in the middle of the road.”*
- *“I-29. But yeah he’s way - I mean, he’s messed up. Uh, that guy’s in pretty bad shape.”*
- *“He was going south. He come all the way across and then I (unintelligible), you know. So, I kinda stop obviously and then - then he took off, was swerving real bad. I didn’t call nobody just left it alone. But then he, you know, keeps running over into the median and...”*
- *“And he got off the exit back there and jumped back on the interstate. He stopped in the middle of the road, completely stopping. Like he’s trying to make a left turn into the median.”*
- *“He’s gonna kill somebody.”*
- *“Yeah. You know, that’s what I’m saying. That’s why I was panicked. He stopped in the middle of the road. I’m like, we’re at a dead stop now. I mean at a dead stop.”*
- *“No - no. He keeps running into the median...”*
- *“Yeah, he’s gonna hit a wall. I mean, he-he’s-he’s going to hit a wall, that’s for sure. He going to hit somebody here big - I feel that. Yeah, he going to hit somebody.”*

Mr. C's IA interview

IA was able to locate and identify Mr. C. as the other motorist who called 911 in the early morning hours of January 4, 2018, to report Mr. Bloom's dangerous and reckless driving. IA interviewed Mr. C on January 22, 2018. Mr. C.'s description of Officer Bloom's behavior was similar to what he told 911 dispatchers:

"...Everything started just north going through Mustang Ridge there when you go across that bridge by past that Pilot Truck Stop, went across that bridge and was going and then he - he was going the other way. And then he had come across...he pulled out in front of me and I had to stop and lock the brakes up. And that's when it all started. It went on for - I mean, man, it went on it seemed like forever. He kept stopping in front of me and I'd have to stop and then at one point the UPS got onto the interstate. He had to stop with me. We had to both stop in the middle of the interstate and then he took off again."

Mr. C. explained further,

"Yeah, he was coming to a complete stop. Like I said, a couple times I thought - like I told - I told the operator, I said, "I think this guy is trying to make a left turn. I don't know if he's lost or confused." But he's not - this is a highway. He can't make a left turn here. There's no turn around here... I don't know if he was just confused and didn't know what he was doing, but he was definitely drinking or something because he kept swerving all over the road real bad."

Body Camera Footage

IA also obtained body camera video from responding WILCO officers. On the video, one officer can be heard advising the other officer:

"He [Officer Bloom] is drunk...Oh yeah, he is shoulder to shoulder, grass to grass, almost hitting bridges."

After he was stopped by WILCO deputies/officers, Officer Bloom claimed that he consumed *"three vodka tonics."* He then voluntarily submitted to the Standardized Field Sobriety Tests. Officer Bloom exhibited six out of six clues on the Horizontal Gaze and Nystagmus test, which was another strong indicator that he was possibly impaired by alcohol. He also exhibited one clue (stepped off the line) on the Walk and Turn test, but he passed the One Leg Stand test. Officer Bloom was then asked to submit to a blood draw but he declined to provide a blood specimen. WILCO officers/deputies placed Officer Bloom under arrest, and transported him to the WILCO jail. A WILCO deputy then completed an Affidavit for Evidentiary Search Warrant (human blood) for Officer Bloom.

Blood Results and Extrapolation

On January 25, 2018, a Forensic Scientist IV with the Texas Department of Public Safety (TX DPS) prepared and approved the results of analysis and interpretation of the blood sample of Officer Bloom,

[REDACTED]

A different Forensic Scientist with the TX DPS Crime Laboratory then provided an expert summary report regarding retrograde extrapolation of Officer Bloom's alcohol concentration at the time he was driving. The expert opinion reads as follows:

"Bloom's alcohol concentration would have been between [REDACTED] while he was driving at 3:29 am. Under the Texas Penal Code, as related to driving while intoxicated offenses, intoxication is defined as 0.08 g/100 ml or the loss of the normal use of mental or physical faculties. At the time Mr. Bloom was driving, his calculated blood alcohol concentration was [REDACTED]"

"In my expert opinion, based on my experience in alcohol toxicology, Brendan Bloom was [REDACTED] This is evidenced by his [REDACTED] the erratic driving behavior noted in the records, and the observations recorded during the field sobriety testing."

Officer Bloom's IA interview

IA interviewed Officer Bloom on May 7, 2018. During his interview, Officer Bloom maintained that sleep deprivation contributed to his poor driving, but he did concede that his alcohol consumption contributed to his impaired driving. Moreover, he conceded that he did not recall significant portions of the events of January 3, 2018, to January 4, 2018. He made these concessions after IA provided him and his attorney with a significant amount of the evidence that IA uncovered and revealed to him prior to his interview. Several of Officer Bloom's quotes that corroborated the earlier established evidence:

- *"On the evening of January 3rd, I went out for the evening to, downtown 6th Street area. I went to Darwin's Pub, consumed approximately 3, vodka tonics at that establishment. Was there from I believe 9:30 to approximately 11:30. From there I walk down to, Coyote Ugly Saloon, where I consume several more beverages - alcoholic beverages. Left Coyote Ugly approximately 1:30, 1:45-ish in the morning of the 4th, walked back to my truck which was parked above 250 and at that point slept in my truck for a period of time, until I woke up and felt as though I was safe to drive. Began driving back to Leander, began having difficulty staying awake, falling asleep while I was driving. At some point got turned around ended up, realizing that I was not going the right direction. Turned around to head home, was*

still having difficulty staying awake and was ultimately pulled over by a Williamson County, where I was issued field sobriety tests and ultimately arrested for DWI.”

- *“... It look like I was playing some kind of game flipping a plastic cup, and I may have been consuming shots. I don't know what it was, and to honest with you, prior to watching that video, I had - I was shocked to see that. I don't recall it at all.”*
- *“I was told that I was all over the road, which at the time I believed was mostly due to my inability to stay awake or completely awake while driving. I knew that I had been struggling to stay awake, at points when - at points I remember drifting and correcting, and the dozing off again. So that - that was primarily the factor that I believe led to me being pulled over was the way was drifting out of my lane.”*
- *“I know I had been drinking earlier that evening and I know that my driving was likely sporadic, as a result of my fatigue and the alcohol consumption.”*

Conclusion

During his IA interview, Officer Bloom admitted that he violated APD's Responsibility to Know and Comply Policy by driving while intoxicated on January 4, 2018, in violation of Texas Penal Code –Sec 49.04 - DRIVING WHILE INTOXICATED. Officer Bloom also acknowledged watching the mandatory video released by the department in 2014 and re-released in 2016, placing all officers on notice that a first time offense for violating APD's Responsibility to Know and Comply Policy by driving while intoxicated would result in an indefinite suspension. Officer Bloom's actions have brought discredit to APD not only in the eyes of other law enforcement agencies, but to private citizens who, along with Officer Bloom, are fortunate that the end result was not graver. In conclusion, and consistent with existing policy and practice, Officer Bloom's conduct warrants an indefinite suspension.

By these actions, Officer Bloom 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 900.1.1: General Conduct and Responsibilities: Responsibility To Know And Comply**

900.1 Purpose and Scope

It is the policy of the Austin Police Department that employees conduct themselves at all times in a manner that reflects the ethical standards consistent with APD written directives. This policy shall apply to all sworn and civilian members, including volunteer, part-time, auxiliary, and nonpaid civilians affiliated with the Department through a Department-sponsored program while under the direction of a Department employee. This policy is intended to guide employees in conducting themselves and their affairs, both on-duty and off-duty, in a manner that reflects the professionalism required of Department personnel. Furthermore, this policy is intended for internal use only and shall not be construed to increase or establish an employee's civil or criminal liability, nor shall it be construed to create or establish a higher standard of safety or care.

900.1.1 Responsibility To Know And Comply

The rules of conduct set forth in this policy do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

To wit:

Texas Penal Code Sec. 49.04. Driving While Intoxicated

- (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.
- (b) Except as provided by Subsections (c) and (d) and Section [49.09](#), an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.
- (c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.
- (d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

Texas Penal Code Sec. 49.01. DEFINITIONS. In this chapter:

- (2) "Intoxicated" means:
 - (A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more

➤ **Austin Police Department Policy 900.3.2: General Conduct and Responsibilities: 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.

➤ **Austin Police Department Policy 916.2.3: Drug and Alcohol Free Workplace: Consequences of Violations**

916.2.3 Consequences of Violations

APD has a zero-tolerance standard for any violation of this order. Employees shall be subject to disciplinary action up to and including indefinite suspension or termination.

In deciding the appropriate discipline, I considered a multitude of factors, including the nature of the sustained violations and the fact that Officer Bloom stated his drinking was in part associated with post-traumatic stress from his time in the United States Marine Corp. While I empathize with those issues, it does not negate the seriousness of the charges or the fact that Officer Bloom failed to take advantage of the APD's Employee Assistance Program, the Free Ride Share Program offered by the City of Austin and Austin Police Association, and the self-disclosure provisions of the Department's Drug and Alcohol Treatment policy prior to this incident. Moreover, Officer Bloom and the other motorists are fortunate that the events of that evening did not have a much graver outcome.

By copy of this memo, Officer Bloom 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 Bloom is hereby advised that such section provides for an appeal to an independent third party hearing examiner. 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

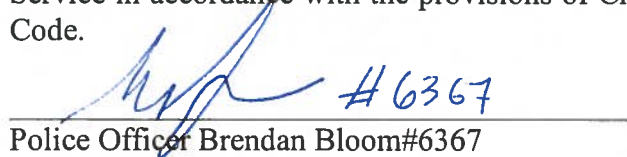
examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.


BRIAN MANLEY, Chief of Police

6-28-18
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.

 #6367
Police Officer Brendan Bloom #6367

6-28-18
Date