



## MEMORANDUM

### Austin Police Department *Office of the Chief of Police*

**TO:** Joya Hayes, Interim Director of Civil Service

**FROM:** Art Acevedo, Chief of Police

**DATE:** April 27, 2016

**SUBJECT:** Indefinite Suspension of Police Officer Mark Manley #6805  
Internal Affairs Control Number 2015-1015

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 Mark Manley #6805 from duty as a City of Austin, Texas police officer effective April 27, 2016.

I took this action because Officer Manley 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.

Received  
CITY of Austin  
2016 APR 27 PM 2:55  
Human Resources Dept

The following are the specific acts committed by Officer Manley in violation of Rule 10:

On Saturday, October 31, 2015, Officer Mark Manley #6805 attended an outdoor Halloween party at his neighbor's residence in Cedar Park, Texas. Mr. and Mrs. H hosted the party. During the event, Officer Manley had a discussion with another neighbor, Ms. A, about current events, including national police related stories. Several witnesses indicated the discussion turned "heated." Two witnesses advised Internal Affairs that Officer Manley made the comment "Mexicans are only good for dishwashing." A third witness indicated Officer Manley said "Oh dishwashers, probably Hispanic" and "dishwashers are Hispanic." Officer Manley did not specifically recall what he said but acknowledged he may have made similar statements meant as a joke.

Ms. A confronted Officer Manley about his comments, which contributed to the "heated" discussion. According to witness accounts, Officer Manley then made further offensive comments towards Ms. A about the number of men coming through her house. Officer Manley does not recall making this statement either, but admits he may have made this comment. According to multiple witnesses, Officer Manley was then asked to leave the property by Ms. H. Officer Manley states he did not hear that order.

When Officer Manley failed to comply with Ms. H's lawful order to leave her property, she sprayed him with a garden hose. Officer Manley described being sprayed with the hose to be a "fight or flight" situation, even though he advised Internal Affairs that he was aware that he "was not being attacked" and that he was being sprayed with "water." Officer Manley then admittedly charged at Ms. H knocking her to the ground as their bodies collided. Officer Manley ended up on top of Ms. H, until a male neighbor, Mr. S, had to physically separate them by lifting Officer Manley off of Ms. H.<sup>1</sup>

As a result of the assault committed by Officer Manley, Ms. H sustained significant visible bruising to her arms and bruising to her legs, causing her pain, as a result of the struggle. Witnesses, including Officer Manley, corroborated Ms. H was wearing clothing that revealed the areas of her arms and legs where she sustained the bruising. Witnesses also corroborated that Ms. H did not have visible bruising prior to the assault by Officer Manley.

It is important to note that Officer Manley was intoxicated to the point that he believed it was unsafe for him to operate a motor vehicle.<sup>2</sup> Intoxication is not a defense to committing an assault, nor an excuse to making racially derogatory/offensive statements.

Furthermore, even if Officer Manley did not hear the lawful order to leave, being sprayed by a garden hose is not a justification to commit assault. Officer Manley himself stated that he knew this was not a "threat" and it was merely water. Therefore this act of assault by Officer Manley alone warrants an indefinite suspension.

---

<sup>1</sup> Ms. H. was approximately 5'6 145lbs. Officer Manley was approximately 5'11 220lbs.

<sup>2</sup> The witnesses in attendance at this party acknowledged consuming alcoholic beverages.

To compound matters, Officer Manley offered dishonest statements during the course of this investigation. When Internal Affairs originally questioned Officer Manley, Internal Affairs was not initially privy to on scene video statements, including Officer Manley's account to the Cedar Park Police Department (CPPD). Upon obtaining those statements, Officer Manley was brought in for a second Internal Affairs interview and given a chance to explain the inconsistencies.

During the second Internal Affairs interview, Officer Manley maintained his dishonest statements and attributed the inconsistencies to the fact that his statement to the CPPD was given immediately after the conclusion of the incident.<sup>3</sup> Officer Manley's claim that he had no chance to clarify his statements to the CPPD is inaccurate. A review of the witness statements, and most importantly, Officer Manley's own immediate vivid description to the CPPD, reveals his dishonesty.

Officer Manley told the CPPD that he saw the female homeowner, Ms. H, with the hose in her hand immediately before being sprayed. However, Officer Manley advised Internal Affairs he was blindsided and was unaware of who sprayed him until the conclusion of the physical assault, in an apparent attempt to bolster a self-defense claim. Officer Manley even described Ms. H coming from around a certain side of the house with the hose in hand to the CPPD, contradicting his Internal Affairs statement.

Officer Manley advised the CPPD that Mrs. H was angry with him for offending her friend, Ms. A, and although he could not specifically recall what she said, he knew she was telling him to leave her property prior to being sprayed with the hose. In fact, Officer Manley told the CPPD on multiple occasions he was aware that Ms. H. told him something to the effect of "leave my property," but he did not want to misquote what Ms. H said. Officer Manley, however told Internal Affairs he was totally unaware of Ms. H's orders and did not hear her say anything to him until after the assault.

Officer Manley disbelievably advised the CPPD and Internal Affairs that Ms. H assaulted him by spraying him with the hose. I am unconvinced that Officer Manley considered being sprayed by a garden hose as a prelude to a "threat" that justified assaulting his neighbor. Whether Officer Manley knew or did not know he was being given a lawful order to leave, his actions, which were described as a tackle, is an assault that warrants an indefinite suspension.

On the night in question, the CPPD responded and documented a Physical Disturbance Information report. Originally an Assault with Injury charge was filed with the CPPD and a warrant was issued for Officer Manley's arrest on December 21, 2015. The Williamson County Attorney's Office conducted an additional investigation and ultimately issued a complaint and charged Officer Manley by Information with a Class "A" misdemeanor assault on April 15, 2016. Although the criminal charge is pending, the outcome of the criminal case has no bearing on my finding that from an administrative standpoint Officer Manley committed an unjustified assault against Ms. H.

---

<sup>3</sup> After giving a statement the night of the assault, Officer Manley asked if he could provide a requested written statement after he sobered up. He was given a form to fill out by CCPD, which he never submitted.

Officer Manley's act of assault brings discredit upon himself and the APD. If Officer Manley believed he was defending law enforcement officers from unjustified verbal criticism by Ms. A, his discriminatory, offensive verbal comments coupled with a criminal assault have the exact opposite effect. Officer Manley's comments about Hispanics could be perceived as demonstrating a biased attitude, and could be Brady material (exculpatory evidence) that a prosecutor must disclose in any future criminal proceeding, in which he is a witness.

By these actions, Officer Manley 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(a)(c): General Conduct and Responsibilities: Responsibility to Know and Comply**

**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.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

**To Wit:** Assault: Texas Penal Code 22.01(1)(3):

**Sec. 22.01. ASSAULT.** (a) A person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
  - (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor
  - (c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor

➤ **Austin Police Department Policy 900.3.1(a)(c): 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.
- (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.

➤ **Austin Police Department Policy 900.3.2(a): 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.

By copy of this memo, Officer Manley 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.

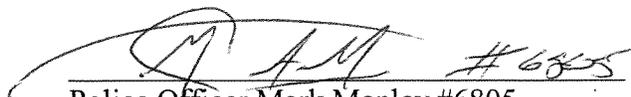
By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Manley is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance 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

4/27/2016  
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.

  
Police Officer Mark Manley #6805

4/27/16  
Date