



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

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City of Austin
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Human Resources Dept

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Interim Chief of Police

DATE: January 6, 2017

SUBJECT: Indefinite Suspension of Officer Michael Stone # 7106
Internal Affairs Control Number 2016-0821

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 Michael Stone # 7106 from duty as a City of Austin, Texas police officer effective January 6, 2017.

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

Over the past few years Officer Stone was romantically involved with another officer whose identity he is aware of and will be referred to as "Officer X" for the purposes of this memorandum. Officer X lives in Kyle Texas. Officer Stone does not live with Officer X and her house is not his official residence, although he would stay there on occasion, had a key, knew the alarm code, and had personal property at the residence.

The July 13, 2016 Incident:

In the first week of July 2016, Officer X informed Officer Stone that she no longer wished to continue their relationship. Officer Stone was not happy about this development. Officer Stone was also unhappy that Officer X refused to communicate with him in the days leading up to July 13, 2016. Subsequently, Officer Stone attempted to reach Officer X on July 13, 2016, but he elicited no response from her.

Prior to 3:37 p.m. that day Officer Stone conveyed concern for Officer X in messages he sent early on July 13, 2016. However, at approximately 3:37 p.m., Officer Stone texted a mutual friend of his and Officer X (who will be referred to as Officer "G" for the purposes of this memorandum) asking if he had heard or seen Officer X since she refused to communicate with him (Officer Stone). Officer G responded that he had not but he knew Officer X had posted a picture on Facebook (FB), which Officer G immediately forwarded to Officer Stone. The FB posting was a picture of a man and a woman in an intimate embrace with the caption, "I prefer nights like this over nights in the club any day." After seeing the FB posting, Officer Stone texted to Officer G, "Wtf, I'm going to lose my shit...."

Officer Stone then went to Officer X's residence several hours later and broke into her home on the pretext of checking on her welfare. Officer Stone's claim that he had concerns for Officer X's safety when he broke into her home is untruthful. This purported concern is contradicted by his own text message exchange with Officer G, which leads me to conclude that Officer Stone actually went to Officer X's residence out of jealousy as he suspected she was seeing someone else.

Regardless of his true motivation, it is clear to me that it was not out of concern for the welfare or safety of Officer X, which Officer Stone repeatedly stated to investigators. Moreover, statements by Officer Stone regarding his relationship history with Officer X, his communications with Officer X prior to July 13, 2016, his communication with Officer X's mother just days before July 13, 2016, along with the timing of the forced entry, also contradict his assertions regarding any concern for Officer X's welfare or safety.

When Officer Stone arrived at Officer X's residence, Officer X was home but she remained silent and refused to answer the front door. Officer Stone tried to use his key to open the door but it was dead-bolted. Officer Stone then went around the back of the house and tried to look through a window but could not see anyone. Officer Stone then accessed the garage using the garage door code and tried to use his key to unlock the interior door leading from

the garage to the utility room but the door would not open. Officer Stone admitted he felt resistance but was able to forcibly open the door. Officer Stone then entered the utility room, where he was confronted by Officer X, and a verbal disturbance ensued. The damage that Officer Stone caused to the door was depicted in photos provided to investigators.

Officer Stone was interviewed by Internal Affairs (IA) on October 27, 2016 and December 19, 2016. Officer Stone told IA he never entered the residence but rather he only stood at the threshold of the garage and utility room. Officer X states he did enter her residence and she confronted him inside the utility room. Officer Stone's statement to IA that he never entered the residence was untruthful. Officer Stone was also untruthful regarding the amount of force he used to force open the door. Officer Stone was not only untruthful with IA by minimizing the damage he caused to the door, but by claiming he did not immediately know that he caused any damage.

Officer Stone advised IA that the door had been damaged prior to July 13, 2016 to support his denial and minimization. Even if this were true, it does not change the fact that I do not believe Officer Stone's statements regarding his actions, knowledge, and motivations surrounding the July 13, 2016 incident. Moreover, Officer Stone's actions in damaging the utility door and entering Officer X's residence, without her permission constitute criminal mischief and other potential criminal offenses. In fact, Officer Stone later purchased a replacement door and gave Officer X \$200 for the repairs.

During his initial interview, and before IA investigators were able to retrieve the contents of the FB post, Officer Stone attempted to mislead investigator's to believe the contents of the post supported his concern for the well-being and safety of Officer X. He was asked about the contents of the post in the initial interview but Officer Stone stated that he did not remember what the posting said or what the picture depicted. I find Officer Stone's statements regarding the post to not only be untruthful, but purposefully misleading to bolster his claim that there was a need to check the welfare of Officer X.

Additionally, not only did Officer Stone attempt to mislead IA in his statements, he also attempted to mislead IA by only producing a selective portion of his text exchange with Officer G, without the revealing context. However, after Officer Stone's initial interview, IA was able to get a copy of the full text message exchange between Officer G and Officer Stone. The exchange included the FB post and Officer Stone's above-mentioned reaction to the posting to Officer G.

Officer Stone was confronted with this FB post and his response in his second interview and he subsequently admitted that he intentionally and deliberately deleted those specific text messages and could not give a credible reason why. Officer Stone purposefully misled IA and either failed to cooperate with the IA investigation by intentionally deleting select text messages and destroying relevant information or he intentionally destroyed potential evidence that could have been used against him in a potential criminal matter, while only sharing or preserving the text messages that would support his contention that he was checking on Officer X's welfare. Not only is that failing to cooperate with investigations, it constitutes dishonesty.

The August 4, 2016 Incident:

On August 4, 2016, Officer Stone went back to Officer X's residence. Officer Stone advised IA that he went to Officer X's neighborhood only to speak with her neighbor regarding a vehicle collision that occurred in October 2015 and he had no intention of going to Officer X's residence. I find Officer Stone's statement that he only went to discuss financial parameters from a collision that occurred nearly a year earlier to be untruthful. His statements regarding returning a picture to Officer X contradicts this notion.

Officer Stone also claimed he parked on the street and not in Officer X's driveway and he only went over towards Officer X's residence after her dog's prompted him by barking and because one of the dog's was attempting to get out of the yard through a gap in the fence. Officer Stone claimed he happened to have dog snacks in his cargo pants and he only went over to Officer X's residence to resolve his happenstance concern for the dogs. Officer Stone claimed he never entered Officer X's backyard or home that day and he merely went up to the fence and immediately left after his brief encounter with the dogs.

Additionally, Officer Stone advised IA, in his first interview, that the dogs caught his attention when he was on the front porch of the neighbor who'd been involved in the collision with him in 2015. He further stated he grabbed a notepad out of his cargo pocket to leave a note for the neighbor regarding the collision. Whereas, Officer Stone advised IA in his second interview that he had returned to the car for his notepad and contemplated returning a picture to Officer X and at that point the dogs caught his attention. Notably, Officer Stone admitted he never communicated with the neighbor nor left a note for the neighbor, which was his claimed sole purpose for going to the neighborhood in the first place.

Officer X's next-door neighbor witnessed the August 4, 2016, incident from her window and she immediately contacted 911 in a recorded conversation. She indicated to both 911 and IA investigators that Officer Stone parked in Officer X's driveway. She also stated the dogs were not barking as Officer Stone described. The neighbor also described that she saw Officer Stone open the gate to Officer X's backyard and go into the backyard. She indicated he went out of her sight for no more than five minutes. She did not know whether Officer Stone entered into Officer X's home or not.

The neighbor is an unbiased witness. Her story is credible given that she thought Officer Stone might be trying to break into Officer X's house so she called the Kyle Police (KPD). She gave a vivid present sense description to 911 that she consistently repeated while depicting her vantage point in her subsequent IA interview, several months after the fact.

The KPD responded to the scene but Officer Stone left before they arrived. Shortly thereafter, Officer X received a phone call that someone was trying to break into her house and notified an APD Sergeant who drove to her home and spoke with the KPD officers. The KPD called Officer Stone and requested to meet with him so they could give him a

criminal trespass warning but Officer Stone refused to do so at that time, stating he needed to speak with his attorney and his APD supervisor first.

Officer Stone never met with KPD and never spoke with his chain of command at that time as he told the KPD officers he was going to do. Officer Stone failed to properly notify his supervisor in accordance with policy that he was involved in an incident that resulted in a police response and only did so after his chain of command confronted him about the incident first. Officer Stone was untruthful with IA when he stated that he approached his chain of command to discuss this incident when in fact it was his Sergeant that approached him about it first.

In connection with this incident, Officer Stone committed, at the very least, criminal mischief, was dishonest with the KPD, and was dishonest with IA during both of his interviews. In addition, Officer Stone's actions brought discredit to himself and the Austin Police Department. Not only did KPD Officers know he worked for APD, the neighbor who called 911 on August 4, 2016 also referenced her knowledge of Officer Stone's employment with the APD in the 911 call.

The May 2015 Incident:

In addition, in May 2015, the KPD responded to a disturbance call at Officer X's residence that involved her and Officer Stone. Officer Stone failed to notify his chain of command that he was involved in an off-duty incident that resulted in a police response. While this specific incident is outside the 180-day window for suspension purposes, it is relevant because it shows a pattern of behavior on the part of Officer Stone, rather than an isolated incident.

In addition, when asked about this incident by IA, Officer Stone was untruthful when he stated that he received a phone call from someone pretending to be a police officer when in fact he knew it was an officer and he should have notified his chain of command about the police response. Although the May 2015 incident is outside the 180-day time frame, his untruthful statements to IA on this incident occurred during the 180-day window and are another example of the series of untruthful statements made by Officer Stone.

Moreover, this incident is just another example of a pattern of behavior of being involved in multiple domestic disturbances that resulted in a police response, and failing to report that involvement to his chain of command. Bringing it up after it was brought up to him by his chain of command did not absolve Officer Stone of his initial responsibility and is also a violation of policy.

By these actions, Officer Stone 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: Purpose and Scope**

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.

➤ **Austin Police Department Policy 900.1.1: 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.
- (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: Criminal Mischief:

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

- (1) he intentionally or knowingly damages or destroys the tangible property of the owner;
- (b) Except as provided by Subsections (f) and h), an offense under this section is:
 - (2) a Class B misdemeanor if the amount of pecuniary loss is \$100 or more but less than \$750;

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

900.3 General Conduct

This section contains the expectations and requirements of employee conduct, both on-duty and off-duty, and causes for disciplinary action due to employee misconduct. This is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Department service.

➤ 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":
 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: 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 and 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 902.4.1: Administrative Investigations: Cooperating with Assigned Investigators**

902.4.1 Cooperating with Assigned Investigators

- (a) Employees will cooperate with any assigned investigator as if they were addressing the Chief. Employees who fail or refuse to cooperate with an assigned investigator will be subject to disciplinary action, up to and including indefinite suspension.
- (b) Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times during interviews with investigators as outlined in Policy 900 (General Conduct).
 - 1. Employees who are found to have given a false official statement are subject to indefinite suspension as outlined in the Discipline Matrix ("Dishonesty - False Official Statements").

➤ **Austin Police Department Policy 908.4: Reporting of Employee Arrests and Police Involvement: Reporting Procedures**

908.4 Reporting Procedure

- (a) Employees who are arrested will inform the booking officer they are employed by APD and request APD Communications be immediately notified of the arrest.
- (b) Employees shall immediately report to their supervisor, with a follow-up memorandum through the chain-of-command to the Chief, of:
 - 1. Any arrests, criminal charges, and/or criminal court actions brought against the employee (to include the name of the arresting agency, a description of the nature of the charges, and the style, court and cause number of the charge or indictment, if any); or
 - 2. Anytime an employee is involved in an off-duty incident that results in a response from any law enforcement agency with the exception of traffic violations, minor collisions, and other minor calls for service where the employee is not considered to be a suspect (e.g. alarm calls, noise complaints); or

3. Anytime an employee becomes the subject of a family violence protective order issued by a court of competent jurisdiction.

In deciding the appropriate discipline, I considered a multitude of factors, including the nature of the sustained violations. Dishonesty with IA and with an officer conducting a criminal investigation of the officer's behavior (KPD) is considered a false official statement. The penalty for the first occurrence of a false official statement under the APD Disciplinary Matrix is indefinite suspension. Mischaracterizing statements, offering misleading statements or evidence, or withholding evidence from IA also warrants an indefinite suspension. Any one of Officer Stone's dishonest or misleading statements or actions constitutes Brady material and his collective dishonesty is intolerable.

In one text message to Officer G, Officer Stone stated, "I could care less about APD" This shows he did not care or have an appreciation for the discredit his actions would have on the APD. Officer Stone accepted no responsibility for his actions and his violation of a multitude of significant APD policies compels my acceptance of the unanimous recommendation from Officer Stone's chain of command that he be indefinitely suspended.

By copy of this memo, Officer Stone 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 Stone 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.




BRIAN MANLEY, Interim Chief of Police

1-6-17

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 Michael Stone # 7106

1-6-17

Date