

Received

City of Austin

2017 JUL 13 PM 4: 20

Human Resources Dept



## **MEMORANDUM**

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

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

**FROM:** Brian Manley, Interim Chief of Police

**DATE:** July 13, 2017

**SUBJECT:** Temporary Suspension of Police Officer Brian Yarger #6499  
Internal Affairs Control Number 2017-0187

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 Brian Yarger #6499 from duty as a City of Austin, Texas police officer for a period of five (5) days. The temporary suspension is effective beginning on July 14, 2017, and continuing through July 18, 2017.

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

On January 21, 2017, Officer Brian Yarger patrolled a motel parking lot searching for stolen vehicles/wanted persons. Officer Yarger located a vehicle showing involvement with a suspect. Officer Yarger ran the suspect's name for warrants and located a misdemeanor Deadly Conduct, Discharge of a Firearm, Theft, as well as other class C misdemeanor traffic warrants. After confirming the suspect was a registered guest of the motel, Officer Yarger asked Officer Eric Lindsey and Officer Craig Ritchie for assistance.

The three officers approached the suspect's motel room. Officer Yarger knocked on the door approximately seven times and identified himself as a police officer. No one answered the door, but Officer Yarger noticed the curtains moving. Officer Yarger then went to the front desk and obtained a magnetic room key, and a pair of bolt cutters. Contrary to policy and prior to gaining entry, no threat assessment was conducted by the three officers.

Thereafter, using the magnetic room key and bolt cutters, the officers gained entry making contact with a female and four children. The suspect was subsequently located inside the restroom and arrested. Officer Yarger took the suspect outside of the motel room, and directed the suspect to sit on the second floor breezeway. Officer Yarger walked back inside the motel room leaving the suspect alone, who then fled from the area. Officer Yarger and Officer Ritchie ran around the area of the motel and re-apprehended the suspect.

Officer Yarger acknowledged to Internal Affairs that there were no exigent circumstances that justified the search and that his actions violated department policy. Specifically, Officer Yarger acknowledged he failed to contact and receive supervisor approval before proceeding with the search. Moreover, Officer Yarger admitted he failed to follow department policy by neglecting to conduct a threat assessment before gaining entry into the motel room. Officer Yarger also acknowledged as the lead officer, he failed to sufficiently communicate with the other officers, resulting in inaccurate assumptions and contributed to improper safety protocol and policy violations. Lastly, Officer Yarger admitted he violated policy when he apprehended the suspect and the suspect briefly fled.

By these actions, Officer Yarger 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 319.2.1: Arrests: Warrant Service Guidelines**

**319.2.1 Warrant Service Guidelines**

Officers attempting to conduct a warrant service shall adhere to the following guidelines:

- (a) Before any warrant service is attempted at a private residence or place of employment (as listed in the PICKUP supplement) officers shall:

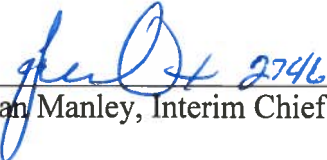
1. Review the incident report in its entirety to determine if and when a previous warrant service has been attempted.
    - (a) Officers shall not normally return to a location to serve a warrant where an attempt has been previously made unless additional information has been developed suggesting the offender has returned.
  2. Verify the warrant status by contacting the Central Records/Warrant Unit or Teletype, either directly or through Communications.
  3. Supervisors shall be notified and a "Threat Assessment Form" (APD Form 11) shall be completed prior to any warrant service where a forced entry is planned or anticipated.
- (b) Officers receiving information that a person with an arrest warrant is inside a third party private residence may NOT enter and search for the violator. Courts have held that this includes, but is not limited to a home, apartment, or hotel/motel room. The exception to this rule is when:
- (a) The officer is in possession of a valid search warrant for that specific residence/location. (There is no requirement for a search warrant of PUBLIC areas of a commercial establishment); or
  - (b) The officer has received consent from the person/s in care, custody and control of the location. Consent procedures are outlined in Policy 306 (Search and Seizure); or
  - (c) The officer can clearly articulate exigent circumstances that delaying entry would expose a person to serious injury or death or allow the violator to escape.

➤ **Austin Police Department Policy 321.3.1: General Guidelines**

- (c) The prisoner must be under observation at all times to reduce opportunities for escape, disposal or destruction of contraband, and/or attack on the transporting officer.

By copy of this memo, Officer Yarger 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 Yarger 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.

*For CHIEF MANLEY*  
  
\_\_\_\_\_  
Brian Manley, Interim Chief of Police

*July 13, 2017*  
\_\_\_\_\_  
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) 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 Brian Yarger #6499

*7/13/17*  
\_\_\_\_\_  
Date