



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

Human Resources Dept.

2018 DEC 20 AM 11:44

City of Austin

Received

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: December 20, 2018

SUBJECT: Indefinite Suspension of Police Commander Jason Dusterhoft # 3028
Internal Affairs Control Number 2018-0837

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 Commander Jason Dusterhoft # 3028 from duty as a police officer for the City of Austin, Texas effective December 20, 2018.

I took this action because 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 Commander Dusterhoft in violation of Rule 10:

The following factual recitation is based upon evidence obtained during the APD Internal Affairs Division (IA) investigation. The level of detail contained herein gives context to the sustained allegations upon which this indefinite suspension is being imposed.

On August 28, 2018, at approximately 8:34 p.m., a woman (hereafter referred to as Ms. S) who was involved in a sexual relationship with Commander Dusterhoft contacted APD Assistant Chief Frank Dixon and asked, "*If a Commander beats me, do I have anything to say?*" Ms. S sent Assistant Chief Dixon approximately four photographs of bruising to the underside of her chin, left hip, and buttock area. Ms. S advised Chief Dixon that the Commander in question was Commander Dusterhoft and he was responsible for those injuries. Assistant Chief Dixon referred this information to the APD Special Investigations Unit (SIU) and APD IA.

Further investigation determined that on August 24, 2018, Commander Dusterhoft allegedly assaulted Ms. S while they were at the Yellow Rose Gentlemen's Club located at 6528 N. Lamar Blvd., Austin, Texas. Specifically, Ms. S alleged that Commander Dusterhoft slapped her in the face. As will be explained in greater detail below, while a preponderance of the evidence does not support that an assault occurred at the Club, a preponderance of the evidence does support a finding that Commander Dusterhoft assaulted Ms. S on multiple other occasions at his residence during what can be described as "*rough sex*" during which he would strangle Ms. S with his hands with the intent and desire of her losing consciousness. Both Ms. S. and Commander Dusterhoft indicated this conduct was for Commander Dusterhoft's sexual gratification.

The investigation also determined that Commander Dusterhoft met Ms. S and her roommate (hereafter referred to as Ms. C) at the Club on or about August 24, 2018, and agreed to engage in sexual relations with both of them despite knowing that Ms. S had told him that Ms. C was a prostitute who used cocaine and Xanax. Through the course of the investigation, it was also discovered that Commander Dusterhoft was accompanied to the Club by a man who shall be identified as Mr. CL. During that same evening, Ms. C (it was her birthday) stated she would like cocaine and Mr. CL told investigators he paid \$40 of his own money to purchase cocaine for her. The cocaine was delivered to the table at which Commander Dusterhoft and his party were seated. Although there is not a preponderance of evidence to support a finding that Commander Dusterhoft was present at the time the cocaine was delivered to his table, the fact remains that he was associating with person(s) who were purchasing and using illegal drugs.

Finally, the investigation determined that upon being notified on or about August 29, 2018, by an SIU Lieutenant that SIU had a search warrant and needed to meet with him, Commander Dusterhoft left his cell phone at his [REDACTED] house and deleted data from his cell phone that was related to the assault claim that was being investigated by SIU. The act of intentionally leaving his phone at his [REDACTED] home despite his belief the phone was the object of the search warrant, as well as the deletion of data from that phone, individually or collectively, meets the elements for an administrative violation of Texas Penal Code section 37.09, Tampering with or Fabricating Physical Evidence. Moreover, each individual and/or

collective acts were attempts to interfere with, and/or thwart, and/or obstruct a SIU and/or IA investigation, which violate(s) APD's Honesty General Order.

The Strangulation:

On September 7, 2018, IA interviewed Ms. S in regards to this investigation. Ms. S stated that she has known Commander Dusterhoft since July 12, 2018. She stated they met on a dating app called Tinder. She was not definitive as to how many times they had sex, but estimated that it was somewhere between six to ten times. Ms. S explained the intensity of sex with Commander Dusterhoft started low but increased in aggression each time and he began to leave bruises and other marks on her body, and also pulled out clumps of hair from her head. Ms. S stated that this was painful and made her scream and added that Commander Dusterhoft enjoyed hearing her scream in pain and could not achieve sexual gratification unless he was inflicting pain on her.

With regards to the strangulation, Ms. S stated that Commander Dusterhoft would strangle her by placing his hands around her neck. Commander Dusterhoft increased the intensity of those acts as well. Ms. S explained that she was originally okay with it and the strangling started the first time they had sex. Ms. S stated, *"There were, uh, it got to where he wanted to - or couldn't basically get off unless he choked me and the first couple times he did that, uh, I mean it - it wasn't comfortable but I kinda went along with it"*. However, Ms. S told IA about two different encounters when Commander Dusterhoft strangled her to the point that she had to make him stop. Ms. S described the second encounter as follows:

Ms. S: *Um, yeah, when he was - when he was choking so hard and I was pushing his hands away because I said, "I said no, that's too much," because - because my - and I can't even explain that it truly felt like my ears were on fire and - and...*

Sgt. Jennings: *Mm-hm.*

Ms. S: *...it was like - like painful, like - like it felt like he's - he's pushing on - on - on the back of my skull and - and it was - it was - it hurt so much, and between that and - and my ears and I was like, "No. No. that's," and...*

Sgt. Jennings: *Did - was it to the point to where it was the same painful experience?*

Ms. S: *Not - not the - not the same because it was down lower. I - I don't know - I don't know what his deal was with the - right - right at the base of my skull, but no, then he just grab me and finished.*

Ms. S: *"He wanted to choke me out and for me to - to come [sic] to with him, as he said, fucking me, but he said, "You keep fighting me on this," excuse me, and I was like, "Well, I don't know what - I mean, it - it - it scare me a li- like I - like, I'm not gonna let somebody choke me to where I go unconscious."*

Prior to her outcry to Chief Dixon, on August 12 and 13, 2018, Ms. S made multiple outcries regarding the strangulation offense to multiple people and even shared photo(s) of marks to her neck. She also stated and produced text messages stating the following theme in her initial outcries to several friends:

"I took pics in case I ended up dead. I truly was scared about that"

"I just wanted to make sure people know I didn't kill myself"

"If I die tonight and it doesn't – and they're saying it was not a homicide, it – I didn't hurt myself, it was [Commander Dusterhoft] Jason"

In a similar vein, she sent Commander Dusterhoft the following text message on August 13, 2018:

"You scared me the other night" (When asked by IA about this text message, Commander Dusterhoft said he thought this message was part of song lyrics that Ms. S was sending him.)

Commander Dusterhoft's statement regarding the strangulation-based allegations

Commander Dusterhoft corroborated Ms. S's statement that they had sex at least six times and *"it was based around consensual sex that was rough."* He confirmed on or about July 15, 2018, was the first time Ms. S came over to his place and when they first had sex. He stated that he left some marks on her buttocks and that she sent him photographs telling him that he had done a good job marking his territory.

IA then asked Commander Dusterhoft if he ever slapped Ms. S in the face. He responded that he thinks he may have slapped her twice, but it was not hard and did not leave marks. IA asked if he ever slapped Ms. S's breasts. He replied that he pinched her breasts, but did not recall leaving marks. He went on to say Ms. S used clamps and those could have left the bruising, but later on in the interview he stated he did grab her breasts and that may have left bruising. IA spoke to him about pulling Ms. S's hair. He stated he did pull her hair and did pull some of her hair out on one occasion.

More relevantly, Commander Dusterhoft confirmed he participated in the following text exchange(s) with Ms. S:

Cmdr. Dusterhoft: *"I love my hands around your neck"*

Ms. S: *"Yes! So controlling, It turned me on even more"*

Cmdr. Dusterhoft: *"Oh I know you like that!"* (with an evil smiley face)

Ms. S: *"I do too! And when you put your hands around my throat!"*
What you do- what do you want me to do to you that I'm not?"

Cmdr. Dusterhoft: *"Let me choke you out all the way. I love seeing you come back two seconds later and waking up to fucking me."*

Ms. S: *"Do it!"* (with an evil emoji)

Cmdr. Dusterhoft: *"I will."*

Ms. S. *"What are you going to do to make it up to me?"*

Cmdr. Dusterhoft: *"Make you come [sic] really hard after you wake up from – from me choking you."*

He also confirmed he sent the following text to Ms. S after one of their encounters:

Cmdr. Dusterhoft: *"I keep thinking of the second time I came [sic]. Seeing you in pain totally did it."*

While he confirmed Ms. S sent him the following text on August 13, 2018, after one of their sexual encounters (he was unsure if this coincided with the time he tried the hardest to "choke" her to unconsciousness):

Ms. S *"You scared me the other night"*

After being confronted by IA with these texts and photos of bruising to Ms. S's body, Commander Dusterhoft was left with no choice but to confirm, that he would place his hands around Ms. S's neck and squeeze to the point that he wanted her to become unconscious. Commander Dusterhoft stated that he *"choked"* Ms. S three to four times out of the six times they had sex for sexual gratification. Commander Dusterhoft stated that he would either choke her with one hand or two depending on what they were doing. He stated that he would apply pressure to her carotid artery and not her trachea because he did not want to hurt her. Commander Dusterhoft stated and demonstrated to IA that you can do real damage if you apply pressure to the trachea and not the carotid artery. He went on to say that he was conscious and aware not to apply pressure to the trachea and stated that there is a difference between choking and strangling. Commander Dusterhoft concluded when you are performing a sexual act by putting your hands around someone's neck, it is choking, but when you are trying to kill somebody, it is strangling.

Commander Dusterhoft's belief that his actions constitute lawful, consensual *"choking"* during a sexual encounter is wrong from both a legal and medical standpoint. Legal and medical literature states that "Choking" is an internal blocking of the airway by an obstruction, such as food. In contrast, "strangulation" is a form of asphyxiation characterized by the closure or restriction of the airway or vessels in the neck by external pressure. The key words to focus on are "external" and "neck." The closure of a single structure of the neck that supplies oxygen to the brain is all that is required to kill a person. If a person loses consciousness because the brain has been starved of oxygen then there can be permanent brain damage, which may include difficulty in concentration and loss of short-term memory capacity. Death from strangulation can occur in as little as two minutes. In instances where there is no loss of consciousness, it is possible that arteries/veins in the neck can tear internally, causing blood clots. These clots left alone and without immediate medical treatment can lead to stroke and death even weeks later.

While Commander Dusterhoft stated he made sure he was “*choking*” Ms. S in a safe manner, he stated that at times when he was strangling her, he had been drinking and while he cannot remember his exact state of intoxication, he stated he would not have felt comfortable driving in those instances. At a minimum, Commander Dusterhoft engaged in reckless conduct when he repeatedly strangled Ms. S to the point that it was his intent and desire that she become unconscious. Therefore, at a minimum from an administrative perspective, he violated any one and/or all of the following Penal Code Sections by at least a preponderance of the evidence

*For clarification purposes, the only assaultive conduct for which Commander Dusterhoft is being disciplined is the strangulation since Ms. S could legally consent to the other assaultive behavior.

Texas Penal Code Title 5. Offenses Against The Person

Chapter 22: Assaultive Offense:

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;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (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, except that the offense is a felony of the third degree if the offense is committed against:

- (2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

Sec. 71.0021 (b)

- (b) For purposes of this title, “dating relationship” means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.

Sec. 22.02. AGGRAVATED ASSAULT.

- (a) A person commits an offense if the person commits assault as defined in Sec. 22.01 and the person:
 - (1) causes serious bodily injury to another, including the person's spouse; or
- (b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

The definition of "Serious Bodily Injury" in the Texas Penal Code can be found in:

Sec. 1.07(a) (46).

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Sec. 22.05. DEADLY CONDUCT.

- (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.
- (e) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

Commander Dusterhoft contends the strangulation was consensual, and therefore, he claims that he did not commit an assault: Penal Code Section 22.06 (Consent as Defense to Assaultive Conduct):

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT.

- (a) The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Deadly Conduct) if:
 - (1) the conduct did not threaten or inflict serious bodily injury; or
 - (2) the victim knew the conduct was a risk of:
 - (A) his occupation;
 - (B) recognized medical treatment; or
 - (C) a scientific experiment conducted by recognized methods.

Commander Dusterhoft's reliance on the consent argument is legally incorrect. None of the noted exceptions apply. Since strangulation is conduct that can threaten to inflict serious bodily injury, including brain damage, damage to the trachea, and even death, Ms. S could not lawfully consent to being strangled. By his own unknowing statements, Commander Dusterhoft committed, at a minimum, multiple Class A misdemeanors and at a maximum multiple second and/or third-degree felonies. The fact that the District Attorney's Office has not chosen to prosecute Commander Dusterhoft for assault is irrelevant in determining whether he committed an administrative violation of the Penal Code. It is important to note that due to the fact that Commander Dusterhoft was compelled to provide his phone after being ordered to do so by an Assistant Chief, and was compelled to provide a statement to IA, the DA could not use this evidence against him criminally and therefore did not have access to it.

Moreover, Commander Dusterhoft was adamant in suggesting to IA that Ms. S and Ms. C's testimony should be given little to no weight. Even if I give no weight or consideration to the assertions from Ms. S and Ms. C that Commander Dusterhoft disputes, particularly regarding the strangulation, Commander Dusterhoft's own statements, along with the evidence regarding the strangulation-based allegation(s) are more than sufficient grounds for an indefinite suspension.

Remarkably, Commander Dusterhoft indicated he was under the influence of alcohol during some and/or all of the sexual encounters, while he contended Ms. S was sober during each of the encounters. Yet, Commander Dusterhoft attacked Ms. S's credibility while being interviewed by IA by calling her an "*alcoholic on probation*" and someone who was "*severely depressed*," which may cast doubt on the "*consent*" given by Ms. S and her sobriety could have put her in a better condition to recall the disputed events. Even if I disregard Commander Dusterhoft statement that Ms. S. was "*severely depressed*", and that she gave him consent to do everything he testified to doing, that consent under the law as cited above does not absolve Commander Dusterhoft of the fact that at a minimum, a preponderance of the evidence supports an administrative finding of criminal misconduct on multiple occasions.

Associating with Persons who Bring Discredit upon the APD:

On the night they went to the Club, Commander Dusterhoft advised that he was text messaging Ms. S and she wanted him to come over to her home. Commander Dusterhoft stated Ms. S told him it was her roommate's birthday (Ms. C) and Ms. C wanted to have birthday sex with her. Commander Dusterhoft stated Ms. S asked him if he wanted to join in and he replied, "*Hell Yes.*" Commander Dusterhoft stated after he told her, "*Hell Yes*" he asked Ms. S to send him a photograph of Ms. C, which she did. Ms. S then told Commander Dusterhoft, "*Great. She's the prostitute.*" IA asked Commander Dusterhoft what he knew about Ms. C prior to that evening, and he stated that Ms. S told him she found cocaine on her steering wheel once and that Ms. C used Xanax and Lithium. He also advised she called Ms. C a prostitute. Commander Dusterhoft stated Ms. S told him that both her roommates were a disaster and "*one is so fucked up all the time, if it's not drunk its Xanax.*" Despite knowing that Ms. C used illegal drugs and was allegedly a prostitute, Commander Dusterhoft

was willing to engage in a sexual encounter with her and/or be seen in a public place with her.

Moreover, because it was Ms. C's birthday, she wanted to obtain cocaine while she was at the Club. Commander Dusterhoft's acquaintance, Mr. CL, told investigators that he got up from the table and paid someone at the Club \$40 for the cocaine, which was delivered to Commander Dusterhoft's table.

Sgt. Jennings: *But you are saying that Birthday Girl told you that she wanted some cocaine?*

Mr. CL: *Yes.*

Sgt. Jennings: *You took \$40 of your own money and went and gave...*

Mr. CL: *Yes.*

Sgt. Jennings: *...it to somebody, whoever that person is, pointed out which table it was and that somebody delivered a 40-bag of cocaine to them?*

Mr. CL: *That's what I said.*

Mr. CL explained that when he got back to the booth, Ms. C had a baggie of cocaine. He described it as a white powdery substance that he believed to be cocaine and it was in a small zip lock baggy. He stated he did not actually see the women (there was another woman present besides Ms. C) snort or ingest the cocaine, but believed they did. He stated they offered it to him and he declined. Mr. CL stated he believed this was one of the times Commander Dusterhoft was out at the "smoke room" and he believes that Commander Dusterhoft was not aware this took place. Mr. CL said he did not disclose to Commander Dusterhoft that he purchased the drugs or that the women had used cocaine.

As noted earlier, although there is not a preponderance of evidence to support a finding that Commander Dusterhoft was aware that Mr. CL procured the cocaine or that it was delivered to his table, Commander Dusterhoft stated that Mr. CL is an honest person and would take him at his word, thereby lending credibility to Ms. C and Mr. CL's claim that cocaine was delivered to the table. Moreover, Commander Dusterhoft indicated Ms. S told him day(s) later about the drug usage by Ms. C on the evening in question. Commander Dusterhoft indicated that had he been aware of the drug(s), he would have left the gathering, and seemed to scoff at the notion that illegal activity would occur at this particular Club. Not only was his associate, Mr. CL, comfortable facilitating Ms. C drugs that night, but Mr. CL, along with Commander Dusterhoft's friend, the manager of the Club, along with Ms. S and Ms. C all knew that Commander Dusterhoft was a high ranking member of APD. The fact that Commander Dusterhoft met with and/or associated with an individual(s) who use illegal drugs as well as an individual (Mr. CL) who purchased those drugs, brings discredit upon the APD.

When IA asked Commander Dusterhoft about Ms. S's roommates, including Ms. C, he unknowingly acknowledged that he violated APD's prohibited association policy and assumed the risk of bringing discredit to himself and upon APD when he stated in regards to Ms. S's roommates: *"So, obviously, not people I necessarily wanna hang out with."*

The Search Warrant for the Cell Phone:

On or about August 29, 2018, APD SIU went to Commander Dusterhoft's residence to execute a search warrant for his cell phone arising from the initial complaint by Ms. S to Assistant Chief Dixon. The search warrant encompassed the search of Commander Dusterhoft's person, residence, and City of Austin work vehicle. Upon SIU's arrival, Commander Dusterhoft was not home. At 9:40 p.m., SIU Lt. Kurt Thomas called Commander Dusterhoft inquiring to his whereabouts. Commander Dusterhoft was at his [REDACTED] residence about one mile away. Lt. Thomas informed Commander Dusterhoft that he had a search warrant and needed to meet with him.

At approximately 10:57 p.m., Commander Dusterhoft arrived at his residence with his attorney at which time the search warrant was executed. Commander Dusterhoft was then searched as were his residence and work vehicle. The cell phone was not located because Commander Dusterhoft left it at his [REDACTED] residence but did not tell Lt. Thomas that is where the phone was. When the phone was not located, after approximately 45 minutes of searching his home, Commander Dusterhoft was then asked by SIU to direct him to the phone, which he declined to do. Commander Dusterhoft was then issued an order by an Assistant Chief to produce the phone, which he ultimately did.

The investigation determined that after being called by Lt. Thomas, Commander Dusterhoft called a neighbor to verify that SIU was indeed at his home. He then intentionally and knowingly deleted data from the phone, including pictures, and videos that were evidence of his sexual relationship with Ms. S. Commander Dusterhoft confirmed that he deleted multiple Apps, including Snap, Bumble, What's App, Tinder along with sexual videos, including videos of him and Ms. S and other items that would embarrass him if they got out.

Commander Dusterhoft gave IA what appeared to be portions of two videos of Ms. S and him having sex. These videos were not on his phone and had been deleted by him after Lt. Thomas made contact with him. Commander Dusterhoft stated that he was able to retrieve these particular videos from his "iCloud." The videos displayed Commander Dusterhoft and Ms. S having sexual intercourse and showed Commander Dusterhoft strangling Ms. S with his left hand leaving red marks to the right of her neck. The videos displayed Commander Dusterhoft pulling Ms. S's hair and pinching her nipples making her scream. The videos also showed Commander Dusterhoft slapping Ms. S's face on the left side two times with his right hand. They also show that Ms. S was a willing participant, and she did not object to any of the actions taken by Commander Dusterhoft. Clearly these videos were relevant to the pending SIU and/or IA investigations and should not have been deleted.

Commander Dusterhoft stated he did not delete anything work related. Commander Dusterhoft stated he was not definitively aware his phone was the subject of a search warrant when he deleted the items. When questioned by Internal Affairs as to why he deleted these

items, Commander Dusterhoft stated based upon his experiences he knew the Police Department would likely want to search and/or seize his phone and he wanted to delete any personal information that would be embarrassing, specifically pictures and texts of a sexual nature: *Um, I deleted several sexual things from my phone because I do not want any of those to be seen, from several women.*"

Commander Dusterhoft stated that he believed the reason Lt. Thomas was at this residence was in relation to an investigation that APD management was undertaking in regard to overtime sheets and sick time usage. Commander Dusterhoft claims he had no knowledge of the SIU investigation involving his alleged assault against Ms. S., and therefore, he did not tamper with evidence or interfere with or obstruct the pending SIU and/or IA investigations of Ms. S's allegations.

While I do not dispute that Commander Dusterhoft was not aware at that time of the complaint filed by Ms. S, that fact actually hurts him rather than exonerates him. Since Commander Dusterhoft was speculating about what Lt. Thomas wanted, it was improper and a violation of policy for him to leave the phone at his [REDACTED] house and/or selectively delete data without knowing if it was or was not related to an ongoing SIU and/or IA investigation. It turns out the deleted data was highly relevant to the SIU and/or IA investigations. Leaving the cell phone at his [REDACTED] house and/or deleting data from his phone thwarted, interfered with, and/or influenced the criminal and/or administrative investigations. Although Commander Dusterhoft was adamant that he did nothing wrong, he unknowingly admits that he initially was uncooperative and did initially thwart and/or interfere with the SIU and/or IA investigation(s) in the following statement: *"Um, but once I found what it was about I cooperated 100%."*

Honesty:

Commander Dusterhoft's actions in knowingly and intentionally leaving his cell phone at his [REDACTED] house, and/or knowingly and intentionally deleting data from his cell phone after he was notified by Lt. Thomas that he had a search warrant and needed to meet with him is considered an act of dishonesty. While Commander Dusterhoft's claim that he might not have known that the investigation involved his sexual relationship with Ms. S and an alleged assault, he should not have deleted any information from the phone once he was notified by Lt. Thomas that APD had a search warrant and he (Commander Dusterhoft) believed the Police Department might search his phone.

Moreover, Commander Dusterhoft's initial actions (including leaving the phone at his [REDACTED] house and deleting data), his refusal to cooperate with SIU before he arrived at his home, after he arrived at his home, and after SIU searched his home and vehicle for approximately 45 minutes, was an attempt to conceal, divert, or mitigate his true culpability in a situation, and/or an effort to thwart, and/or influence, and/or interfere with an internal and/or criminal investigation.

Conclusion:

The IA investigation yielded conflicting evidence. But even putting aside that conflicting evidence, Commander Dusterhoft's statements alone give me ample reasons to indefinitely suspend him. There are a multitude of individual reasons to indefinitely suspend Commander Dusterhoft based upon his knowing and/or unknowing admissions. I would have made the decision to indefinitely suspend him for any of the following reasons, independent of each other:

- 1) First, his admission that he purposefully left his cell phone at his [REDACTED] home under the reasonable belief that the phone was the likely target of the search warrant meets the elements of an administrative violation of Texas Penal Code section 37.09 Tampering with or Fabricating Physical Evidence and/or was a violation of APD's Honesty General Order (900.3.1) which says: 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 (The fact that the District Attorney's Office has not chosen to prosecute Commander Dusterhoft for Tampering with or Fabricating Physical evidence is irrelevant in determining whether he committed an administrative violation of the Penal Code).
- 2) Second, his admission that he purposefully deleted items off of his phone, not knowing what the search warrant was for also meets the elements of an administrative violation of Texas Penal Code section 37.09 Tampering with or Fabricating Physical Evidence and/or was a violation of APD General Order 900.3.1, which says: 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.
- 3) Third, his admission that he tried to "choke" Ms. S to a state of unconsciousness on at least three occasions during consensual sexual encounters violates APD's Know and Comply Policy (900.1.1) by violating one or more of the following sections of the Texas Penal Code, which are a misdemeanor, felony of the second, and/or felony of the third degree: Assault 22.01, Aggravated Assault 22.02, and/or Deadly Conduct 22.05).
- 4) Fourth, his conduct violates APD General Orders on Acts Bringing Discredit upon the Department (900.3.2). Commander Dusterhoft brought discredit to APD in a multitude of ways. He did in the eyes of Ms. S and all of the people with whom she shared information/photos of her neck injuries with, making them aware of the assaultive conduct of a member of the APD. He did so by socializing with Ms. C and/or Mr. CL, in spite of being generally forewarned about Ms. C's drug use and/or past criminal behavior. Commander Dusterhoft also did so when he called a neighbor to gather information regarding SIU's presence at his home, while he remained at his [REDACTED] residence. He also did so by purposefully leaving his phone at his [REDACTED] home/garage that same evening and deleting data from the phone.

By these actions, Commander Dusterhoft violated Rule 10.03(L) 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**

900.1.1 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 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;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (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, except that the offense is a felony of the third degree if the offense is committed against:

- (2) a person whose relationship to or association with the defendant is
- (3) described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

Sec. 71.0021 (b)

- (b) For purposes of this title, “dating relationship” means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.

Sec. 22.02. AGGRAVATED ASSAULT.

- (c) A person commits an offense if the person commits assault as defined in Sec. 22.01 and the person:
 - (1) causes serious bodily injury to another, including the person's spouse; or
- (d) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

Sec. 22.05. DEADLY CONDUCT.

- (b) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.
- (e) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

Sec. 1.07(a) (46).

“Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT.

- (a) The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Deadly Conduct) if:
 - (1) the conduct did not threaten or inflict serious bodily injury; or
 - (2) the victim knew the conduct was a risk of:
 - (A) his occupation;
 - (B) recognized medical treatment; or
 - (C) a scientific experiment conducted by recognized methods.

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE.

- (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

- (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or
- (c) An offense under Subsection (a) or Subsection (d)(1) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor. (c-1) It is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 that was destroyed as described by Subsection (f)(3)(B) of that section.
- (d) A person commits an offense if the person:
 - (1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense

➤ **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 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 900.3.3: Prohibited Associations**

- (b) Employees will not establish social and/or business dealings with persons they know, or should know, are likely to adversely affect the employee's or Department's credibility. Employees will not associate with convicted felons. Provisions of this section do not apply to association based on kinship or the discharge of official duties.

By copy of this memo, Commander Dusterhoft 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, Commander Dusterhoft 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, Chief of Police

12-20-18
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.



Police Commander Jason Dusterhoft # 3208

12/20/18

Date