



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: January 19, 2011

SUBJECT: Indefinite Suspension of Police Officer Keith McCook # 4937
Internal Affairs Control Number 2010-1204

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's and Police Officer's Civil Service Commission, I have indefinitely suspended Police Officer Keith McCook # 4937 from duty as a police officer of the City of Austin, Texas, effective January 19, 2011.

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

Neglect of Duty

On September 17, 2010, at approximately 7:05 pm, Officer McCook was dispatched on an Assist Complainant on [REDACTED] Drive. Officer McCook arrived at the scene at approximately 7:21 pm. Officer McCook spoke with the occupant (hereafter referred to as Mr. X) for approximately 2 minutes and 7 seconds and determined that the matter was a civil matter. Officer McCook left the residence at approximately 7:23 pm and did not document the incident in a police report. Officer McCook cleared from the call at approximately 7:32 pm.

At approximately 7:31 pm, 911 received a call from Mrs. X who was not at the location but had received a text message from her husband which led her to be concerned about his well being (the text message was sent at 7:20 pm but Mrs. X thought it was sent a couple of hours earlier). A Check Welfare-Urgent call was entered into the CAD system and two additional police units were sent to the location to check on Mr. X at 7:32 pm. Officer McCook was still in the general vicinity and was notified by another officer that another call had been dispatched to the residence. Without the knowledge or permission of his supervisor, the Watch Commander, or the dispatcher, Officer McCook called the Communications Supervisor at 7:34 pm on his cell phone and had the call downgraded to an Assist Complainant, had the original two units assigned pulled from the call, and had the call assigned to him. He did this despite not reading the comments on the CAD (Computer Aided Dispatch) system about the nature of the call and without speaking with Mrs. X. Instead of returning to the residence, Officer McCook called Mrs. X on his cell phone at 7:38 pm. Mrs. X provided information that Officer McCook was not aware of during the initial call and he failed to return to the residence to check on Mr. X's welfare (he was an alcoholic, there were hunting rifles in the house, think he is hurting himself). Officer McCook cleared the second call without speaking with Mr. X and without writing a report. Officer McCook was available for calls at 7:56 pm. After clearing the call Officer McCook met another officer for his lunch break at 8:02 pm. Coincidentally, one of the officers who was dispatched on the second call was an officer who Officer McCook had made prior arrangements to meet for dinner at 7:00 pm a restaurant at Parmer Lane and Avery Ranch.

When the police dispatcher learned that the second call had been downgraded she became concerned and noticed that the GPS map of the various units in her sector showed that Officer McCook was not at the residence even though he claimed to be. She was concerned that no one was going to the location to check on Mr. X despite the statements by Mrs. X referenced above that would warrant a police response. The dispatcher notified the Watch Commander. While Officer McCook was eating, his Corporal met with him and ordered him to return to the residence and write a report documenting this incident. Officer McCook questioned the need to go back or write a report. Officer McCook returned to the residence at approximately 8:45 pm but Mr. X did not answer the door and

did not answer his phone. The garage door was open but Officer McCook did not see if the door to the residence was open (it was). Officer McCook did not walk around the back of the house either. Officer McCook did not contact his supervisor or request a Mental Health Officer which he should have done given the nature of the CAD comments and what he was told on the phone by Mrs. X. On September 18, 2010, at approximately 7:02 pm, Mr. X was found by relatives in the back yard with a gunshot wound to his head. Mr. X had committed suicide.

Officer McCook was negligent in the discharge of his duties in the following respects:

- He downgraded the second call from an urgent Check Welfare-Urgent to an Assist Complainant before speaking with Mrs. X and without knowing exactly what the nature of the call was.
- He disregarded the two responding units without knowing the nature of the call and before speaking with Mrs. X.
- He downgraded the call and disregarded the other units without notifying the dispatcher.
- He downgraded the call and disregarded the other units by calling a Communications Supervisor rather than doing so with the dispatcher over the radio.
- He failed to read the CAD comments which would have warranted a return to the location to check on Mr. X.
- He failed to respond back to the location even though Mrs. X provided him with new information he was unaware of at the time he spoke with Mr. X. He admitted that had he known the information Mrs. X provided to him on the phone at the time he was speaking with Mr. X he would have asked Mr. X more questions.
- He failed to conduct a thorough investigation upon returning to the residence.
- He failed to notify his Supervisor after Mr. X was non-responsive.
- He failed to request a Mental Health Officer.
- He failed to check whether Mr. X had any prior involvement with APD even though his junior partner suggested they do so.
- He was untruthful regarding the reasons he did not go back to the location: (e.g. he did not want Mr. X to know his wife had called the police).

During his Internal Affairs interview and his Dismissal Review Hearing on January 18, 2011, Officer McCook admitted that he was neglectful in his duties with respect to the handling of this incident. The chain of command and I believe that Officer McCook was neglectful in his duties because he had made plans to eat dinner with another officer and that was his priority. Officer McCook stated that he did not return to the location because he felt the parties were calling the police on one another and Mr. X would be mad if he returned and informed him that his wife had called the police: we find that not to be a credible explanation. He claims that Mrs. X did not provide him with any additional information that would lead him to believe that he should return to the residence: the CAD and phone call prove otherwise. He claims she did not request that he return to the

residence: that is why she called 911 to begin with. The chain of command and I do not find these arguments to be credible but rather we believe Officer McCook wanted to eat and failed to devote the time and attention this matter deserved, as he has done so in the past.

Honesty

In his conversation with the Communications Supervisor, through the use of his MDC, in his police reports prepared on September 17, 2010 and September 18, 2010, during conversations with his Sergeant, and during his Internal Affairs interview on November 2, 2010, Officer McCook made several false statements in order to mitigate his culpability, including but not limited to:

- His report states that he spoke with Mr. X for about 15 minutes when in fact the videotape of the incident shows he spoke with him for 2 minutes and 7 seconds.
- He reported that he was at the residence handling the second call when in fact he never returned to the location until being ordered to do so.
- He waited a few minutes and then reported the matter was under control when in fact he never went back to the residence to give the impression he was at the location and had handled the call.
- He stated that he told the dispatcher over the radio or MDC that he would take the second call but rather he called the Communications Supervisor on his cell phone.
- He stated that he believed Mrs. X was speaking with 911 when he was speaking with her husband. The time line proves that Officer McCook had left the residence approximately 8 minutes before Mrs. X called 911.
- Officer McCook told his Sergeant that he had just spoken with Mr. X “five minutes ago” and he was fine. When Officer McCook spoke with his Sergeant, it had been at least 30 minutes since he spoke with Mr. X.
- His report fails to include the significant fact that he called the Communications Supervisor and had the call downgraded.
- He told Internal Affairs during his interview on November 2, 2010, that Mrs. X provided him with no new information but the CAD and her phone call prove she did provide new information.
- He told his Sergeant that he was going to write a report but the Sergeant believes he had no intention of writing a report until ordered to do so.
- He told his Sergeant he had taken care of the call, a statement that the Sergeant believes was intentionally misleading.
- He told his Sergeant his first conversation with Mr. X had not been recorded on the in-car video when in fact it had.
- His report states that he evaluated Mr. X's mental state when the evidence proves no such evaluation was conducted.

These false statements were an effort by Officer McCook to justify his neglectful behavior. Officer McCook sought to mislead the Communications Supervisor, the

investigators and his supervisor into believing that he conducted a more thorough investigation than he did in order to mitigate his culpability.

By these actions, Officer McCook 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 General Orders Policies and Procedures
A201c.01(J)(9)(c): Responsibility to the Department: Neglect of Duty**

.01 Responsibility to the Department

J. Requirements of Duty

9. Neglect of Duty

Employees shall satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- c. Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.

➤ **Austin Police Department General Orders Policies and Procedures
A201a.02(A)(1)(3): Individual Responsibilities: Honesty**

.02 Individual Responsibilities

A. Honesty

Employees will speak the truth at all times. All reports and written communications from any member of the Department shall also reflect the truth.

- 1. Any statement or omission of pertinent information which intentionally, knowingly, or recklessly misrepresents facts or misleads others will be considered a false statement.
- 3. Employees shall not attempt to conceal, divert, or mitigate their true culpability in a situation, nor shall they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

The chain of command and I believe that Officer McCook was neglectful in his duties. We also believe he was dishonest with the Communications Supervisor, in his official police reports, with his supervisor, and with Internal Affairs. He continued his efforts to

deceive his chain of command during his Dismissal Review Hearing. In deciding the appropriate disciplinary action, one of the factors the chain of command and I considered is that Officer McCook was suspended in 2005 for a sustained dishonesty allegation. He also has a documented history of performance issues that this latest incident shows have not corrected his behavior. The chain of command and I are unanimous in sustaining the policy violations cited herein and we are unanimous in the belief that each charge individually warrants an indefinite suspension, but when both charges are sustained, indefinite suspension without question is warranted.

By copy of this memo, Officer McCook 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 McCook 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

1-19-2011
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) 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.

Keith McCook 4937
Police Officer Keith McCook # 4937

11/19/2011
Date