

CITY OF HOUSTON

INTER OFFICE CORRESPONDENCE

TO: Police Officers'
Civil Service Commission
Of the City of Houston

FROM: Charles A. McClelland, Jr.
Chief of Police

DATE: June 23, 2010

SUBJECT: Indefinite Suspension
John W. McClellan
Police Sergeant
Employee
Westside Division
Issue #36612-2010

In accordance with the provisions of the TEX. LOC. GOV'T. CODE, Chapter 143 (formerly Art. 1269m), commonly known as the Fire Fighters' and Police Officers' Civil Service Act, you are hereby advised that as of the close of business on the date stated above, I have indefinitely suspended **John W. McClellan, Police Sergeant**.

John W. McClellan, Police Sergeant, has been indefinitely suspended for acts and conduct in violation of Rule V, Section 6, Subsections (b) and (k) of the City of Houston Police Officers' Civil Service Commission's (the "Commission") Rules Governing Members of the Houston Police Department (the "Department"), which reads as follows:

"SECTION 6 - CAUSES FOR REMOVAL OR SUSPENSION

"No classified employee shall engage in, or be involved in, any one of the following acts or conduct and the same shall constitute cause for the disciplinary or indefinite suspension of a classified employee:

- "(b) violations of a municipal charter provisions;
- "(k) violation of an applicable police department rule or special order."

Additionally, by his conduct, as detailed below, **John W. McClellan, Police Sergeant** has violated the Houston Police Department's General Orders. Compliance with the General Orders is required of all members of the Houston Police Department, and violation thereof is grounds for disciplinary action as provided in Rule V, Section 6, Subsection (k) of the Commission's Rules, quoted above.

The following facts served as a basis for the indefinite suspension of Sergeant McClellan.

Police Officers'
Civil Service Commission
Of the City of Houston

- 2 -

Indefinite Suspension
John W. McClellan
Police Sergeant
Employee

On April 23, 2010, the Department received in the mail a surveillance video taken on March 23, 2010, from a law firm in Dallas that represents a local business, Uncle Bob's Self Storage. The video captured the arrest of four burglary suspects at 12300 Wellington Park. The video served as the basis of a complaint by the Chief of Police regarding the use of excessive force against several Houston Police officers. Sergeant John McClellan, as the supervisor of the Westside Gang Unit, was the supervisor over the investigation.

An Internal Affairs Division investigation revealed that, on or about, March 23, 2010, officers of the Westside Division Tactical Unit and Gang Unit were involved in an extensive investigation into several burglaries in the area and observed several suspects in the act of committing a burglary of a residence. The four suspects left the scene of the burglary in a white pickup truck, followed by Houston Police units. The suspect vehicle stopped in the 12300 block of Wellington Park, and two suspects in the bed of the truck fled on foot. One of those suspects was Chad Holley, a juvenile. The video received by the Houston Police Department shows Mr. Holley running along a chain link fence in an attempt to evade arrest. Officer P. N. Bryan attempted to block Mr. Holley's escape by driving his police vehicle over a curb. As a result, Officer Bryan's police vehicle struck a chain link fence, causing minor damage to both the vehicle and the fence belonging to Uncle Bob's Self Storage. Mr. Holley unsuccessfully attempted to hurdle the hood of the police vehicle, and he fell to the ground on the other side of the vehicle. The video clearly shows that Mr. Holley subsequently lay on the ground and placed his hands behind his head and neck area, in an obvious position of surrender.

Video evidence shows that several officers surrounded Chad Holley and struck and kicked him repeatedly. Officers under Sergeant McClellan's supervision either struck or kicked Chad Holley, and one officer kicked Mr. Holley after he was handcuffed and no longer a threat. Additionally, some of these officers utilized inappropriate compliance techniques. Three other suspects were arrested at the scene, and some form of force was used during the arrest of each of those suspects. Chad Holley, Henry Villalobos, and Elijah Broussard each showed signs of injury when they were booked into Houston Police facilities.

The Internal Affairs investigation revealed that Sergeant McClellan displayed improper supervisory conduct when he neglected to ensure the accident was properly reported and documented, as required. In his administrative statement, dated May 21, 2010, Sergeant McClellan admits to this infraction and states, "At the scene, I observed a patrol vehicle positioned on the sidewalk and grassy area near the fence. I assumed that the vehicle as positioned this way to block in a suspect from escaping. I do not recall seeing any damage to

any private property. I did observe a minor scrape to the front of the patrol vehicle, but I could not tell if this was old or new damage. However, the damage to the front of the police vehicle was so minor, that I did not believe that it was necessary to make an accident report or a damage to shop entry." As the supervisor who became aware of this accident, he failed to ensure that the accident was properly reported and documented in accordance with departmental policy.

Sergeant McClellan also failed to use sound judgment when he neglected to ensure the accident was reported. Additionally, Sergeant McClellan failed to notify the property owner where the fence was located of the damage.

Further, Sergeant McClellan displayed improper supervisory conduct and unsound judgment while at the scene of the arrests. By his own admission, Sergeant McClellan "was at the scene of the arrests for approximately 5 minutes." Sergeant McClellan was aware of the severity of the scene involving the arrest of four felony burglary suspects- some of whom had tried to avoid capture by the police before being arrested. He was also aware that at least one police vehicle accident had occurred at the location. Sergeant McClellan left a scene of this magnitude without a supervisor. With such an active scene with numerous officers on the scene, he should have stayed to ensure proper coordination of all on-scene activities. Had he conducted himself properly by staying at the arrest scene, he would have learned that there was a second police vehicle accident involving two police vehicles as well as a Conducted Energy Device (commonly referred to as a taser) discharge in which one officer accidentally shocked himself. Instead, Sergeant McClellan left the arrest scene and went to the location of where the burglary of the habitation had occurred. Sergeant McClellan clearly neglected his supervisory duties.

The General Order violated by Sergeant McClellan is as follows: General Order 200-08 - Conduct and Authority. Sergeant McClellan was previously furnished a copy of this General Order.

GENERAL ORDER

Conduct and Authority, Order No. 200-08, dated September 28, 2005, states in part, but is not limited to:

1 CONDUCT AND BEHAVIOR

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Sound Judgment

Employees' behavior will be limited to conduct which is reasonable and prudent. No employee will commit any act on-duty or off-duty in an official or private capacity that tends to bring reproach, discredit, or embarrassment to the department. Employees are expected to exercise sound judgment at all times.

3 OBEDIENCE TO LAWS AND RULES

Employees will abide by the laws of the jurisdiction they are in. Employees will also abide by the laws and rules of the various governmental entities that have jurisdiction over affairs in which the employees are engaged (e.g., Civil Service Commission and TCLEOSE).

8 SUPERVISORY CONDUCT

Supervisors will actively enforce the law and the policies and procedures of the Houston Police Department. Supervisors will not permit or otherwise fail to prevent violations of the law or the rules, regulations, policies, and procedures of the Houston Police Department by any employee.

Supervisors who fail to take appropriate action when they are aware or should have been aware an employee was in violation of the law or department policy will be held accountable.

The sustained cites above signify serious misconduct that would alone warrant significant disciplinary action be taken against Sergeant McClellan. In making a determination about whether or not to salvage his career, a review of his employment history was conducted. During his 38 years with the Houston Police Department, Sergeant McClellan has amassed a number of commendations, but his disciplinary history includes a significant incident which resulted in an 84-day suspension given on January 31, 2003. As a result of that investigation, Sergeant McClellan was cited for violations of General Order 200-08 for Sound Judgment, Attention to Duty, and Supervisory Conduct. According to HPD's Corrective Action Manual, a disciplinary case may be enhanced based on past discipline when the employee has been cited in a past discipline case for same or similar misconduct regardless of reckoning periods. The Corrective Action Manual further states that the Chief of Police will consider all previous misconduct to determine if an employee is suitable for continued employment. In this case,

Police Officers'
Civil Service Commission
Of the City of Houston

- 5 -

Indefinite Suspension
John W. McClellan
Police Sergeant
Employee

Sergeant McClellan is cited with two violations that are same or similar to what he was cited for in his 2003 suspension: Sound Judgment and Supervisory Conduct. Due to the same or similar nature of the citations, a brief discussion of the prior case is therefore warranted.

On January 31, 2003, Sergeant McClellan was given an 84-day suspension as a result of the investigation into Operation E-Racer. Operation E-Racer was designed to combat illegal street racing along Westheimer Road. The operation resulted in the arrests of 302 persons. The arrests were made without probable cause, and were subsequently dismissed. The internal affairs investigation revealed that during the period between August 16 and August 18, 2002, he was assigned as the supervisor of a surveillance team whose task it was to find large crowds, infiltrate the crowds, and identify any persons committing criminal violations. Instead, Sergeant McClellan's squad did not infiltrate the crowds, but rather observed the crowds at a distance. By his inaction, he failed to document any probable cause for the 302 persons arrested that night, and thereby failed to prevent the unlawful arrests of those persons.

As stated, as a result of the investigation into E-Racer, Sergeant McClellan was cited for violations of General Order 200-08 for Sound Judgment, Attention to Duty, and Supervisory Conduct. Additionally, pursuant to Section 143.119(f) of the Texas Local Government Code, Sergeant McClellan entered a last chance agreement wherein he agreed that this was his last chance to become a productive member of the Houston Police Department. By accepting the last chance agreement, he understood that the agreement was a final attempt to salvage his career. The agreement further placed him on notice that any future misconduct could result in an indefinite suspension.

In making my decision to indefinitely suspend Sergeant McClellan, I considered his complete history with the Houston Police Department, both positive and negative. In addition, I considered what is in the best interest of the citizens of the City of Houston and Sergeant McClellan's fellow officers. I also contemplated the severity of Sergeant McClellan's conduct and the impact his actions have had and will continue to have on the relationship between the community and the police department. Additionally and pursuant to all applicable statutory and case law, on June 15, 2010, Sergeant McClellan was given an opportunity to meet and explain the above events to me. After listening to Sergeant McClellan and his attorney's comments and explanation, and weighing them against the evidence documented in the Internal Affairs investigation, I have decided that Sergeant McClellan must be indefinitely suspended.

Sergeant McClellan is hereby reminded of his right to appeal my decision and is informed that he has 15 days after receipt of a copy of this memorandum within which to file a written

Police Officers'
Civil Service Commission
Of the City of Houston

- 6 -

Indefinite Suspension
John W. McClellan
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appeal to the Police Officers' Civil Service Commission, located at 611 Walker, 4th Floor, Houston, Texas 77002. Sergeant McClellan is informed that pursuant to Section 143.1016 of the Texas Local Government Code, he may elect to appeal to an independent third party hearing examiner instead of to the Commission. If Sergeant McClellan elects to appeal to an independent third party hearing examiner, he waives all rights of appeal to a district court except as provided by Subsection (j) of Section 143.1016 of the Texas Local Government Code.



Charles A. McClelland, Jr.
Chief of Police

cam/adw/bam

cc: John W. McClellan
Police Sergeant

SF/370A

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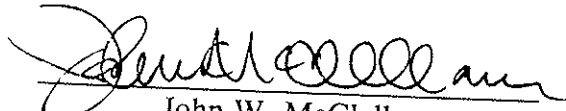
THE STATE OF TEXAS §

COUNTY OF HARRIS §

RECEIPT OF LETTER OF INDEFINITE SUSPENSION

This is to acknowledge that I, **John W. McClellan**, employee employed in the City of Houston Police Department as a Police Sergeant, have on this day received a copy of a letter of an **Indefinite Suspension** from Charles A. McClelland, Jr., Chief of Police, to the Police Officers' Civil Service Commission of the City of Houston. By this letter, I am informed of the reasons for my indefinite suspension and that I may appeal my suspension in accordance with all applicable provisions of TEX. LOC. GOV'T. CODE, Chapter 143. I have been further advised that I have fifteen (15) calendar days from the date shown on this receipt in which to appeal my indefinite suspension.

SIGNED this the 23 day of JUNE, 2010.


John W. McClellan

WITNESS

Issue #36612-2010
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