

Officer James Van Kirk, #1743
San Antonio Police Department
San Antonio, Texas

2016 JAN 27 PM 12:31 PM

Fire Fighters' and Police Officers' Civil Service Commission
111 Soledad, Suite 123
San Antonio, Texas 78205

AGREED SUSPENSION

Commissioners and Officer James Van Kirk:

WHEREAS, Officer James Van Kirk, pursuant to Article XXVIII, Section 2 of the Collective Bargaining Agreement by and between the City of San Antonio and the San Antonio Police Officers' Association, was served on December 13, 2015, with a contemplated indefinite suspension; and

WHEREAS, pursuant to said contract, Officer Van Kirk was given an opportunity to rebut those charges being brought against him to Police Chief William P. McManus; and

WHEREAS, said opportunity was exercised by Officer Van Kirk; and

WHEREAS, Officer Van Kirk and Chief McManus have agreed to reduce the discipline in this matter to a five-day suspension without pay: **NOW THEREFORE**:

The undersigned parties hereby enter into this suspension agreement wherein it is provided that Officer Van Kirk shall be suspended without pay from the San Antonio Police Department for a period of five days, commencing on February 5, 2016, and ending on February 9, 2016. Officer Van Kirk waives any rights to appeal this Agreed Suspension and agrees no administrative or judicial body shall have power to review this Agreed Suspension or alter the terms of this agreement.

Officer Van Kirk has violated Subsection C of Rule XIII of the City of San Antonio Fire Fighters' and Police Officers' Civil Service Commission Rules, said rules having been adopted on February 23, 1998, and thereafter from time to time amended, by the Fire Fighters' and Police Officers' Civil Service Commission as the Civil Service Rules for the Fire and Police Departments of the City of San Antonio. The particular civil service rules violated by Officer Van Kirk and grounds for suspension are as follows:

- (12) Violation of an applicable fire or police department rule or special order.

The Rules and Regulations and Procedures of the San Antonio Police Department which Officer Van Kirk has violated are as follows:

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RULE 4.13 - DUTY TO TAKE ACTION: Officers are charged with the responsibility to enforce local ordinances, state laws, and federal statutes, to preserve the peace, and to protect lives and property. All officers will take immediate action to prevent any obvious felony offense, or to arrest, if reasonably possible, any known felony offender, and to protect all persons and property from imminent harm.

PROCEDURE 401 - OFFENSE/INCIDENT/SUPPLEMENTAL REPORTS (.04) THE PRELIMINARY INVESTIGATION: The Offense Report is prepared and submitted when the preliminary investigation reveals any of the following: (F) Any assault offense, regardless of punishment classification.

PROCEDURE 503 - OBTAINING AND EXECUTING ARREST WARRANTS (.01) INTRODUCTION (C) It is the duty of every officer to execute an arrest warrant in the manner provided by law, by the guidelines established in this procedure, and by adhering to each respective unit's standard operating procedures. An officer does not refuse to execute a valid warrant on other than legal grounds.

PROCEDURE 606 - IMPOUNDING PROPERTY (.15) RELEASING PROPERTY TO OWNER IN LIEU OF IMPOUNDING (B) In felony offenses, property consisting of evidence is processed and photographed by a Crime Scene Unit Investigator prior to release. (D) When property is released at the scene, SAPD Form #113-2R, Release of Property, (green form) is completed in triplicate. The officer writes the words "FIELD RELEASE" on the form and routes the form as follows: (1) The original to Records Office; (2) A copy to the appropriate investigative follow-up unit; and (3) A copy to the owner of the property. The owner is asked not to dispose of the property until final disposition of the case.

The factual basis for the instant disciplinary suspension is as follows:

On or about August 23, 2015, Officer James Van Kirk was dispatched to a theft investigation reported at an HEB grocery store with an address of 2929 Thousand Oaks. Officer Van Kirk arrived and contacted HEB personnel where he learned an individual identified as Marco Zavala had been detained after committing a theft. Officer Van Kirk was informed the suspect had exited the store and failed to pay for store merchandise in his possession. After conducting his investigation, rather than arresting Mr. Zavala, Officer Van Kirk released Mr. Zavala from custody.

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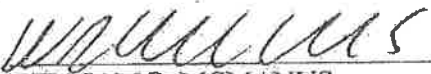
Officer Van Kirk arrived and contacted HEB personnel, who presented the stolen property possessed by the theft suspect, Mr. Marco Zavala. Prior to leaving the scene, Officer Van Kirk released the stolen/recovered property back to HEB personnel but failed to have the evidence processed, and failed to utilize SAPD Form #113-2R as required by procedure, to record the identity of the items returned.

During his investigation, Officer Van Kirk was informed there may be outstanding warrants for Mr. Zavala's arrest. Officer Van Kirk wrote in his 200-OR report, explaining his actions, that Mr. Zavala had active Municipal Court and Justice of the Peace warrants. Officer Van Kirk failed to place Mr. Zavala under arrest for the warrants as he was required to do and instead released him from custody at the scene.

Finally, in his offense report, Officer Van Kirk wrote that the stolen/recovered merchandise possessed by Mr. Zavala had been returned to stock prior to his arrival. HEB personnel who were present when Officer Van Kirk conducted his investigation state the stolen/recovered property had not been returned to stock but was instead present and contained in the shopping cart used by Mr. Zavala.

A copy of the instant disciplinary suspension order is being filed with the Fire Fighters' and Police Officers' Civil Service Commission.

AGREED TO BY:


WILLIAM P. MCMANUS
CHIEF OF POLICE
SAN ANTONIO POLICE DEPARTMENT

JAN 22 2016
DATE

 1743
OFFICER JAMES VAN KIRK, #1743
SAN ANTONIO POLICE DEPARTMENT

1-26-16, 2016 B45
DATE TIME

On this 26 day of JANUARY, 2016, I hereby acknowledge receipt of the original of the foregoing Agreed Suspension. I acknowledge having received notification that I have fifteen days from the date of receipt of this suspension during which to file a written appeal of this suspension with the Personnel Director of the City of San Antonio requesting either

arbitration or the hearing of my appeal by the Fire Fighters' and Police Officers' Civil Service Commission. I acknowledge that I have been informed that if I appeal to a hearing examiner/arbitrator, I waive all rights to appeal to a district court except as provided by subsection 143.057(j) of the Texas Local Government Code. I also acknowledge that I have been informed that my right to appeal the decision of a hearing examiner/arbitrator to district court pursuant to section 143.057 of the Texas Local Government Code may have been modified by the provisions of article 28 of the current Collective Bargaining Agreement by and between the City of San Antonio and the San Antonio Police Officers' Association. I further acknowledge that in light of my entry into this Agreed Suspension, I shall have no right to appeal said suspension nor will any administrative or judicial body have power to review same or alter its terms. I do hereby waive any and all rights to appeal said suspension and no administrative or judicial body shall have power to review same or alter its terms.

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OFFICER JAMES VAN KIRK, #1743
SAN ANTONIO POLICE DEPARTMENT

WITNESSED BY:

Sgt. [Signature] #3347 TIME: 1345 DATE: 1-26-16
Sgt. K. Bell #1455 TIME: 1345 DATE: 01-26-16

FILED on this the 27th day of Jan., 2016, with the Fire Fighters' and Police Officers' Civil Service Commission.

[Signature]
DIRECTOR, FIRE FIGHTERS' AND POLICE
OFFICERS' CIVIL SERVICE COMMISSION

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