



# BRENHAM POLICE DEPARTMENT



1800 LONGWOOD DRIVE

PHONE: (979) 337-7337  
FAX: (979) 337-7342

P. O. BOX 682  
BRENHAM, TEXAS 77834-0682

On the date of March 17, 2014 at approx. 3:30am, I learned from Sgt. Lloyd Powell of a call(2014-6221) his squad was summoned to investigate at the Jack-in-the Box restaurant where off-duty officer Kevin Mertz was found asleep in his pickup in the drive-thru line. Sergeant Powell also advised that he could detect the odor of alcohol on Mertz's breath. After extensive analyzation by Sergeant Powell of the situation, he concluded that Mertz was not intoxicated to the level of being a criminal offense, but the combination of lack of sleep, lack of food and consumption of beer hours earlier led to him being overly exhausted.

Sergeant Powell and I agreed that the decision by Mertz to drive to the restaurant in this condition was unwise. I received written statements from Sergeant Powell and his personnel who were present at the time of the call. Those Officers were Corporal Ed Ortega and Officer Mark Pierce. I also summoned Mertz to the PD around noon and directed him to supply a written statement describing his account of that event. I explained to him that this was for an internal inquiry into his actions and the inquiry was not a criminal investigation.

I received and reviewed his letter that same date around 3:30pm. The content of the letter was mostly apologetic for his actions causing his fellow officers burden, but contained no real detail on his part of what he actually did. A disciplinary hearing committee was already convened for a separate situation with a different officer, so I took the opportunity to approach the committee with the situation Mertz was involved in for their review. Committee members in attendance, which included me, were Chief Rex Phelps, City Human Resources Personnel Susan Nienstedt, Lieutenants Trey Gully and Billy Rich, and Sergeants Kelvin Raven, Lloyd Powell and Curtiss Schoen.

Mertz was summoned before the committee to vocalize his account of the situation and was temporarily excused while the committee reviewed all information known at that point. The conclusion of the committee was that Officer Mertz had violated Departmental policy (ies) and that the situation was of such a serious nature that a 2 day suspension without pay was to be imposed.

Mertz was summoned back in to the room and Chief Rex Phelps explained this discipline to him. When asked if he (Mertz) thought it was fair, he replied "yes sir". I later reviewed the schedule to determine which two days would be most efficient for the needs of the Department and determined that March 24<sup>th</sup> and 25<sup>th</sup> (*the immediate Monday & Tuesday*) would be best. I advised Mertz's sergeant, Sgt. Raven and told him he could also relay that information to Mertz.

I Met with Officer Mertz on Thursday, March 20, 2014 to issue his letter of suspension with Lt. Billy Rich being present and signing as a witness.

Lieutenant Dant Lange

*Dant Lange*  
3-20-2014



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## Disciplinary Suspension (2 days)

Officer Kevin Mertz,

On the date of March 17, 2014(*incident # 2014-6221*), on-duty officers responded to a complaint at Jack-in-the-Box in regards to someone who had fallen asleep in the drive-thru line. On their arrival, they discovered that person to be you and also discovered that in combination with being fatigued from lack of sleep and nutrition, you had been consuming alcohol as well. This then led to an internal review and disciplinary hearing.

The disciplinary hearing committee concluded that although evidence indicated you were not drunk in public, you had been operating a vehicle with alcohol in your system and in combination with being overly fatigued from lack of sleep and lack of food, this was deemed unsafe. This also caused on-duty personnel to be put in a situation to determine if you had consumed alcohol in excess and a perception from persons in the general public to assume you had passed out from being intoxicated – as you yourself were in agreeance with during the disciplinary hearing and the written statement you submitted that contained content of apology for your actions.

You have been found in violation of several sections of Brenham Police Department policy and it is the decision of the committee to impose a two(2) day suspension without pay as a result of your actions. Those sections of policy are as follows:

### **Policy 1.1 Mission, Values, and Written Directive System**

**Reference: TBP 1.04.1**

### **III. AGENCY MISSION AND VALUES**

#### **A. Mission:**

The Brenham Police Department is a value-driven organization that will base its relationships and objectives on empathy, edification, enthusiasm, and excellence to continuously make Brenham a safer and better place to live, visit, and conduct business.

## **B. Core Values**

Empathy - Listen, value diversity, see things from the views of others, seek win – win propositions, share information exhaustively, be open, be mature, and forgive

Edification - Build partnership relationships, sell vision then empower, recognize others, be a team member, create value to receive value, honor the absent

Enthusiasm - serve others as customers, improve quality of life for all stakeholders, adapt to change, take ownership, and be passionate

Excellence - Have high expectations, take pride, have high performance and ethical standards, be accountable, be problem-resolution oriented, be quality driven.

## **Policy 2.1 Rules of Conduct**

### **III. CODE OF ETHICS (TBP: 2.02.1)**

All officers shall display the integrity required by the Law Enforcement Code of Ethics:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice, or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

#### **IV. GENERAL DUTIES**

##### **E. Obedience to Rules of Conduct, laws and orders**

All employees, regardless of rank or assignment, shall be governed by the following general rules of conduct. Violation of any of these rules by any officer of the department shall be considered sufficient cause for dismissal, demotion, suspension, or other disciplinary action.

2. Adherence to Departmental Rules. Employees shall abide by the rules of the City Personnel Rules, and the Policy and Procedure Manual and other properly issued internal directives of the Police Department

##### **F. Attention to Duty**

3. Conduct and Behavior. Employees whether on-duty or off-duty shall follow the ordinary and reasonable rules of good conduct and behavior and shall not commit any act in an official or private capacity tending to bring reproach, discredit, or embarrassment to their profession or the department. Employees shall follow established procedures in carrying out their duties as police officers and/or employees of the department, and shall at all times use sound judgment

##### **H. Restrictions on Behavior**

12. Intoxication. Employees shall not be under the influence of any intoxicating beverage or substance during their tour of duty or immediately prior to their tour of duty. Nor shall officers be intoxicated off-duty while in the public view. While off-duty, officers that have consumed an alcoholic beverage to the extent that their mental and physical faculties are impaired shall refrain from exercising any police authority. Officers assigned to special units, or assignments where they may consume alcoholic beverage during the performance of their duties shall not do so to the extent that their mental and physical faculties are significantly impaired. (TBP: 2.19.1)

## **Policy 2.5 Employee Disciplinary Process**

### **I. POLICY**

It is the department's policy to impose any necessary disciplinary action fairly and impartially and to offer adequate appeal procedures to ensure that the rights of employees are protected.

Discipline is a process of taking specific actions which will help train, develop or modify the inappropriate actions of an employee, preferably through positive rather than negative measures. Discipline in the department involves reward of employees and in some cases sanctions for inappropriate actions or behavior.

### **III. DEFINITIONS**

#### **A. Days**

The term "days," as used herein, means work days provided, however, that if the last day of any time period mentioned herein is a Saturday, Sunday, or holiday, the time period shall be extended to the next day.

#### **D. Discipline**

The taking of specific actions intended to help train, develop or modify the actions of an employee. Discipline may be positive (awards and training) or negative (punishment).

#### **G. Demotion or suspension without pay**

1. If the situation warrants, the Chief of Police, in consultation with the city manager and Human Resource Director, may demote an employee, suspend without pay, or take other measures normally considered equivalent, such as the forfeiture of vacation or compensatory time.
2. Suspensions without pay will normally apply to a period of up to 15 days, as determined by the Chief of Police, City Manager and Human Resource Director.
3. If an employee becomes a candidate for suspension a second time within one year after the first suspension, the employee may be dismissed.
4. Suspensions resulting from the arrest or criminal investigation of an employee may be indefinite or result in termination.
  - e. During a suspension, the employee shall not undertake any official duties.

- g. An employee may appeal in keeping with the City of Brenham Employee appeals policy.

As previously stated, the term of discipline shall be in the form of a 2 day suspension, which is set for the dates of Monday, March 24, 2014 and Tuesday, March 25, 2014.



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**Officer Kevin Mertz**

**March 20, 2014**



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**Lieutenant Billy Rich**

**March 20, 2014**



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**Lieutenant Dant Lange**

**March 20, 2014**

Any further instances of a similar nature that may occur in the future can lead to a higher level of discipline up to and including termination for employment with the City of Brenham.

# Brenham Police Department

TO: Officer Kevin Mertz  
From: Lieutenant Dant Lange  
Date: March 17, 2014  
Subject: Internal Investigation

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In Keeping with Brenham Police Policy, 2.4 "Internal Investigation Process" you are hereby ordered as part of your employment with the City of Brenham to provide me a written response to the below listed allegation(s).

- (1) Being the focus of a call for service(2014-6221) at Jack in the Box(3.17.2014 @ 2:51am) where you were reported to have fallen asleep in the drive-thru line while in your pickup truck and responding officers detecting the odor of alcohol on your breath.*

In keeping with said policy, you are advised that this is an internal inquiry only, and you are required to answer, to do so truthfully, and if you refuse you can be subject to discipline up to discharge or removal from office. I assure you that any answers given are to be used solely for internal administrative purposes and may not be used in any subsequent criminal prosecution should one occur. The purpose is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal. By your signature, you are acknowledging receipt of this order.

  
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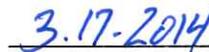
Kevin Mertz, Officer – Patrol Division

  
\_\_\_\_\_

Date:

  
\_\_\_\_\_

Dant Lange, Lieutenant - Patrol Division

  
\_\_\_\_\_

Date:

To: Lieutenant Dant Lange

From: Officer Kevin Mertz

Date: March 17, 2014

Subject: Reply to Allegation

Please accept this as my reply to the allegation involved in Incident # 2014-6221. I am highly embarrassed for my actions on the morning of March 17, 2014 and deeply regret having to put fellow officers and administration in the position that you are in.

I am not going to list excuses for my actions because there are none. I value my career with the Brenham Police Department and would never take it for granted. I look up to each and every one of our administrative supervisors and hold the utmost respect for you all. I know that my actions reflect on everyone at the Brenham Police Department and for that I am truly embarrassed and regret the poor decisions I made.

I have had time to reflect on what I know I need to do to make sure I never put you all in this position ever again. I understand that there will be consequences for my actions and want you to know that I fully accept any type of disciplinary action you have to take.

Respectfully,



Kevin Mertz

# Incident Report

Print Date/Time: 03/17/2014 06:07

Login ID: lpowell

Brenham Police Department

ORI Number: TX2390100

Incident: 2014-00006221

Incident Date/Time: 3/17/2014 2:51:40 AM  
Location: 400 USHY 290 W  
BRENHAM TX 77833

Phone Number: [REDACTED]  
Report Required: No  
Prior Hazards: No  
LE Case Number:

Incident Type: WELFARE CONCERN  
Venue: Brenham

Source: 911  
Priority: ROUTINE  
Status: IN PROGRESS  
Nature of Call:

## Unit/Personnel

Unit	Personnel
3108	0841-Pierce
3124	0653-Ortega
3143	0231-Powell

## Person(s)

No.	Role	Name	Address	Phone	Race	Sex	DOB
	COMPLAINANT	[REDACTED]	BRENHAM	[REDACTED]			

## Vehicle(s)

Role	Type	Year	Make	Model	Color	License	State
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## Disposition(s)

Disposition	Count
HANDLED BY OFFICER	2

## Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
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10V0BMSZView

03/17/2014 02:51:40 Meri-Ane Allen Narrative: E911 Info - Class of Service: WPH2  
Special Response Info: WIRELESS CALLER VERIFY LOCATION  
WIRELESS CALLER Uncertainty: Confidence:  
03/17/2014 02:52:26 Meri-Ane Allen Narrative: SOME ONE SAI SOME ONE IN THE DRIVE  
THRU PASSED OUT  
03/17/2014 02:52:36 Mark Pierce Narrative: Dispatch received by unit 3108  
03/17/2014 02:52:43 Meri-Ane Allen Narrative: THEY ARE IN A BIG TRUCK  
03/17/2014 02:52:56 Meri-Ane Allen Narrative: CALLER IS NOT SURE SHE DOES NOT WANT  
TO GO OUT SIDE  
03/17/2014 02:53:03 Meri-Ane Allen Narrative: SHE IS SCARED  
03/17/2014 02:53:09 Meri-Ane Allen Narrative: CUSTOMER TO HER THIS  
03/17/2014 02:53:19 lpowell Narrative: Dispatch received by unit 3143  
03/17/2014 02:54:04 Meri-Ane Allen Narrative: BLUE CHEVY HE IS GONNA BE IN DRIVE  
THRU LANE  
03/17/2014 02:54:51 Eduardo ortega Narrative: Dispatch received by unit 3124

**INCIDENT  
FROM CAD  
+  
STATEMENTS  
FROM PERSONNE  
RESPONDING TO  
INITIAL CALL**

SGT. LLOYD POWELL

3/17/2014

ON MONDAY MARCH 17, 2014 AT APPROX. 2:51AM I (SGT. LLOYD POWELL) HEARD OFC. MARK PIERCE DISPATCHED TO A SUSPICIOUS VEHICLE CALL AT JACK AND THE BOX. WHEN THE CALL DROPPED I WAS AT FOUR CORNERS EXXON AND WAS THERE IN SECONDS. DISPATCH ADVISED A SUBJECT WAS PASSED OUT IN A TRUCK, BUT COULD NOT DESCRIBE THE VEHICLE.

AS I DROVE UP I NOTICED APPROX. 6 TO 8 VEHICLES IN THE PARKING LOTT IN THE DRIVE TRU LINE. I NOTICED A LARGE OLDER MODEL CHEVY PICK UP. THAT WAS NOT IN THE DRIVE THRU LINE. AS I DROVE UP TO THE VEHICLE I NOTICED A BLACK MALE AND A WHITE FEMALE IN THE VEHICLE, BOTH WERE AWAKE AND ALERT. THE BLACK MALE POINTED TO A DARK BLUE CHEVY SILVERADO AND ADVISED THERE WAS SOMEONE SLEEPING IN IT. I NOTICED THE SILVERADO WAS TWO CARS AWAY FROM THE SPEAKER TO ORDER FOOD. I GOT OUT OF MY VEHICLE AND WALKED TO THE DRIVERS SIDE OF THE TRUCK. UPON LOOKING IN THE VEHICLE I NOTICED A SUBJECT KNOWN TO ME AS KEVIN MERTZ (BRENHAM POLICE OFFICER). I NOTICED THAT MERTZ WAS WEARING A CAMO TYPE PULLOVER JACKET AND BLUE JEANS. MERTZ WAS ASLEEP IN THE VEHICLE. I NOTICED THAT THE VEHICLE WAS IN PARK WITH THE ENGINE RUNNING. I TAPPED MERTZ ON THE SHOULDER AND HE WOKE UP. UPON MERTZ WAKING UP HE SAID SOMETHING TO THE EFFECT OF " HEY SARGE, I GUESS I WAS SLEEPER THAN I THOUGHT". AS MERTZ SPOKE I COULD SMELL A FAINT ODOR OF ALCOHOL ON HIS BREATH. I SCANNED THE VEHICLE AND SAW NO OPEN CONTAINERS. I ASKED MERTZ IF HE HAD BEEN DRINKING HE ADVISED ME HE HAD SOME BEERS EARLIER. MERTZ ALSO ADVISED ME HE HAD BEEN AWAKE SINCE 3AM THE MORNING BEFORE AND WAS TIRED.

I HAD MERTZ PULL HIS VEHICLE UP TO THE PARKING SPOT NEXT TO WHERE WE WERE. UPON PARKING THE VEHICLE I ASKED MERTZ TO WALK TO ME. I WANTED TO ASSES MERTZ'S CONDITION. AS MERTZ WALKED I NOTICED THAT HE DID NOT STAGGER OR STUMBLE. DUE TO THE NUMBER OF CARS AND PEOPLE IN THE PARKING LOT I DID NOT WANT TO CONDUCT MY INVESTIGATION THERE. I ASKED MERTZ TO WALK TO MY VEHICLE WHICH WAS PARKED IN THE FRONT OF THE LOT. I OBSERVED MERTZ AS HE WALKED AND DID NOT NOTICE ANY PROBLEMS.

UPON GETTING IN THE VEHICLE I DROVE MERTZ TO THE POLICE DEPT. MERTZ AND I WENT IN MY OFFICE. I NOTICED THAT MERTZ DID NOT SLUR ANY OF HIS WORDS AND SPOKE NORMALLY. MERTZ INFORMED ME THAT HE DRANK SIX BEERS AND TWO LIME A RITAS FROM 8PM TO 12AM. MERTZ ADVISED HE SLEPT FROM 12A TO 2:30A OR SO. MERTZ ADVISED HE WAS AT HIS GIRLFRIENDS HOUSE AND WANTED TO GO HOME BECAUSE HE HAD A SIDE JOB AT 8AM.

UPON EVALUATING MERTZ IT WAS MY OPINION THAT MERTZ HAD INDEED BEEN DRINKING BUT WAS NOT INTOXICATED. I FEEL THAT MERTZ NOT SLEEPING FOR 24 HOURS ALSO PLAYED A FACTOR IN WHAT HAPPENED. I CALLED LT. DANT LANGE VIA TELEPHONE FROM MY OFFICE AND INFORMED HIM OF THE SITUATION. I ASKED LT. LANGE FOR PERMISSON TO TAKE MERTZ HOME. LT. LANGE GAVE ME

PERMISSON AND ADVISED ME TO INFORM MERTZ THAT HE SHOULD BE HOME AND AVAILABLE FOR A PHONE CALL LATER. I INFORMED MERTZ OF THIS AS I DROVE HIM HOME.

# Memorandum

**To:** SGT POWELL

**From:** CPL EDWARD ORTEGA 3124

**Date:** 3/17/2014

**Re:** OFFICER KEVIN MERTZ

ON MARCH 17, 2014 OFFICERS RECEIVED A CALL AT JACK IN THE BOX ABOUT A PERSON ASLEEP IN HIS TRUCK. UPON MY ARRIVAL I OBSERVED SGT POWELL SPEAKING TO SOMEONE IN A BLUE CHEVY TRUCK. SGT POWELL ASKED THE DRIVER TO PULL UP OUT OF THE LINE AND I APPROACHED THE VEHICLE WITH SGT POWELL. I OBSERVED OFFICER KEVIN MERTZ IN THE DRIVER'S SEAT. SGT POWELL WAS TALKING TO MERTZ. I OBSERVED MERTZ SEEMED TO BE TIRED AND I COULD SMELL ALCOHOL EMITTING FROM HIS VEHICLE. SGT POWELL THEN ASKED MERTZ TO STEP OUT THE VEHICLE. WHEN MERTZ STEPPED OUT OF HIS VEHICLE HE SEEMED TO BE GOOD ON HIS FEET AND WALKED OK. MERTZ NEVER SHOWED ANY SIGNS OF INTOXICATION WITH HIS SPEECH OR WALKING. SGT POWELL ADVISED MERTZ TO PARK HIS VEHICLE AND DROVE HIM TO THE POLICE DEPARTMENT.

CPL EDWARD ORTEGA 3124

*Cpl. Edward Ortega 3124*

CONFIDENTIAL

# MEMO

**DATE: 3/17/2014**

**REFERENCE: OFFICER KEVIN MERTZ**

**OFFICER: MARK PIERCE #3108**

**TO SGT. LLOYD POWELL**

**ON SUNDAY, MARCH 17, 2014, AT APPROXIMATELY 03:00 HOURS, I, OFFICER MARK PIERCE, WAS DISPATCHED TO JACK IN THE BOX IN REFERENCE TO A MAN ASLEEP IN A TRUCK.**

**UPON ARRIVAL, I OBSERVED SGT. POWELL AND CPL. ORTEGA ON SCENE. BOTH OFFICERS WERE STANDING NEAR A DARK BLUE CHEVROLET PICKUP TRUCK. I APPROACHED THE PASSENGER SIDE OF THE TRUCK AND SHINED MY FLASHLIGHT ON THE INTERIOR OF THE TRUCK.**

**I OBSERVED OFFICER KEVIN MERTZ SEATED IN THE FRONT DRIVER'S SEAT. SGT. POWELL AND CPL. ORTEGA WERE STANDING AT THE FRONT DRIVER'S DOOR SPEAKING WITH OFFICER MERTZ.**

**SGT. POWELL THEN HAD OFFICER MERTZ EXIT THE TRUCK AND WALK TO HIS PATROL UNIT. I OBSERVED OFFICER MERTZ TO WALK IN A NORMAL FASHION TO SGT. POWELL'S PATROL VEHICLE. HE STOOD BY THE VEHICLE WHILE SGT. POWELL MOVED HIS TICKET WRITER AND PRINTER. I DID NOT OBSERVE OFFICER MERTZ TO SWAY OR LEAN AGAINST THE VEHICLE TO SUPPORT HIMSELF.**

**SGT. POWELL THEN HAD OFFICER MERTZ SIT INSIDE HIS PATROL VEHICLE. I APPROACHED SGT. POWELL, WHO WAS SEATED IN THE DRIVER'S SEAT OF HIS PATROL VEHICLE, AND ASKED HIM IF NEEDED ANY ASSISTANCE. HE INFORMED ME THAT I WAS NO LONGER NEEDED AND I CLEARED THE SCENE.**

**IT IS TO BE NOTED THAT I DID NOT OBSERVE ANY ALCOHOL INSIDE OFFICER MERTZ'S VEHICLE. I DID NOT SPEAK DIRECTLY WITH OFFICER MERTZ.**