



## **MEMORANDUM**

### **Austin Police Department *Office of the Chief of Police***

**TO:** Mark Washington, Director of Civil Service

**FROM:** Art Acevedo, Chief of Police

**DATE:** October 12, 2012

**SUBJECT:** Indefinite Suspension of Police Officer Christopher Allen #5320  
Internal Affairs Control Number 2011-1358

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 Christopher Allen #5320 from duty as a police officer of the City of Austin, Texas, effective October 12, 2012.

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

On December 5, 2011, Austin Police Officer Christopher Allen and Probationary Officer Justin Cummings responded to an "Assist Other Agency" call. Travis County deputies were in pursuit of a stolen vehicle when the suspect crashed the vehicle and eluded police on foot within a community located in southwest Austin. Officer Allen came into contact with the suspect as the suspect attempted to flee from a garage in another stolen vehicle. Officer Allen fired fourteen rounds from his handgun at the suspect in the moving vehicle hitting the suspect twice. The suspect subsequently crashed that stolen vehicle and barricaded himself in a residence that was located nearby. The suspect was later arrested without further incident and transported to the hospital for treatment.

The incident was investigated by both the Special Investigations Unit and the Internal Affairs Division of the Austin Police Department. Evidence obtained during the investigations revealed the following:

On December 5, 2011, Travis County deputies were involved in a pursuit of a stolen vehicle. After crashing the vehicle, the suspect fled on foot in a community located in southwest Austin, leaving behind two weapons that were seized by an officer with the Sunset Valley Police Department. Once the suspect was on foot and evading police, Austin Police officers became involved in establishing a perimeter and actively searching for the suspect.

When Officer Allen arrived in the area of 3708 Aspen Creek Parkway, Officer Allen saw Travis County deputies in the area but there was no communication between him and the deputies regarding the suspect. A description of the suspect was broadcasted as well as the fact that the suspect may be in possession of firearm. According to Officer Allen, the only information that he had about the suspect was that the suspect had stolen a vehicle, that the suspect had crashed that vehicle, that the suspect had a gun and that the suspect was in a backyard trying to get into a house. Two homeowners ran from their home at 3708 Aspen Creek Parkway and told Officer Allen that the suspect was inside their home. Officer Allen broadcasted on FRANK radio that the suspect was inside the residence and mistakenly identified the location as 3708 Leadville.

While inside the residence, the suspect took the keys to the homeowner's vehicle and could be heard by officers entering the garage. The suspect, now driving the homeowner's vehicle, slowly backed out of the garage. The suspect was given verbal commands by several officers to stop the vehicle and to show his hands. The suspect was seen to have his hands up by Officer Allen and several Travis County deputies. At some point, the suspect moved his left hand to the steering wheel and dropped his right hand towards the console area. The vehicle was clearing the driveway and had its wheels turned to proceed eastward down the street. Contrary to the training that Officer Allen has received on high risk/felony approaches and without communicating his intent, Officer Allen approached the vehicle from the left side of the driveway with his arms hanging by his side and his



firearm in his right hand. As Officer Allen closed the distance between himself and the moving vehicle, he raised his firearm. As the vehicle turned to proceed down the street away from Officer Allen, Officer Allen fired four shots into the driver's side window. The vehicle left the scene at a high rate of speed and Officer Allen ran after the vehicle firing ten more rounds at the vehicle as it sped away, despite the potential of injury to officers and citizens present on the perimeter and in the immediate area. Thirteen of Officer Allen's gun shots were accounted for during the analysis of the stolen vehicle. Six shots entered the vehicle, four shots ricocheted off of the vehicle and three shots were terminated by the vehicle. Officer Allen's actions caused the suspect to suffer gunshot wounds to his upper left shoulder, wrist and his middle left side.

Officer Allen's statements regarding the incident provided during his interviews were not supported by the evidence and in many aspects were contradicted by the evidence. Officer Allen stated that he backed away from the vehicle as it came down the driveway due to the shrubs lining the left side of the driveway. Video evidence does not support this statement. Officer Allen further stated that the vehicle started to come at him and that this is when he initially fired at the vehicle. Video and forensic evidence do not support either the threat to Officer Allen of being struck by the vehicle or that Officer Allen fired his weapon at the vehicle while it was backing down the driveway.

With regard to his approach to the vehicle as it proceeded to clear the driveway, Officer Allen stated that he approached the vehicle to render aid because he thought that he had already shot the suspect and that the vehicle was coming to a stop. As stated above, evidence establishes that Officer Allen had not yet fired his weapon so the suspect could not have been shot. During his interviews, Officer Allen stated that the reason that he fired his weapon at the suspect was that Officer Allen "thought this guy was gonna kill me." No other officer on the scene at the residence discharged his weapon or perceived a threat requiring the use of deadly force.

Additionally, Officer Allen admitted to Internal Affairs that the suspect's vehicle was no longer a threat as it was moving away from him. Yet, Officer Allen chased the vehicle down the street while firing his weapon. Officer Allen stated that his intent was to prevent the suspect from harming anyone else yet Officer Allen also admitted that he had no memory of actually chasing the vehicle on foot and firing multiple rounds at it. Officer Allen admitted that his actions posed a danger to persons other than the suspect and stated that he was not even aware that he ran down the street after the speeding vehicle until Officer Allen watched videos of the incident. Despite evidence of policy violations, Officer Allen does not think that he made a mistake when he fired his weapon at the subject and believes that his actions on that day were within policy:

By these actions, Officer Allen 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 Policy 200.2.1: Response To Resistance:  
Determining The Objective Reasonableness Of Force**

**200.2.1 Determining The Objective Reasonableness Of Force**

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

(a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

1. The conduct of the individual being confronted as reasonably perceived by the officer at the time.
2. Officer/subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers vs. subjects.
3. Influence of drugs/alcohol or mental capacity.
4. Proximity of weapons.
5. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained.
6. Time and circumstances permitting, and the availability of other options (what resources are reasonably available to the officer under the circumstances).
7. Seriousness of the suspected offense or reason for contact with the individual.
8. Training and experience of the officer.
9. Potential for injury to citizens, officers and subjects.
10. Risk of escape.

11. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

12. Other exigent circumstances.

➤ **Austin Police Department Policy 202.1.3: Firearm Discharge Situations: Moving Vehicles**

**202.1.3 Moving Vehicles**

Shots fired at or from a moving vehicle are rarely effective and are generally discouraged.

- (a) Officers should exercise good judgment and not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.
- (b) Unless it reasonably appears that it would endanger officers or the public, officers are expected to move out of the path of any approaching vehicle.
- (c) This is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others.

➤ **Austin Police Department Policy 202.1.1: Firearm Discharge Situations: Policy**

**202.1.1 Policy**

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances.

- (a) An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):
  - 1. Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.



2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
  - (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
  - (b) The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

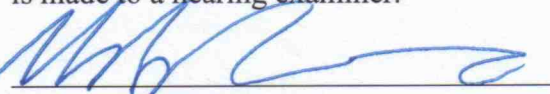
In determining discipline, I and the chain of command took into consideration the fact that Officer Allen's use of deadly force violated several APD policies. Not only did Officer Allen's decision to discharge his firearm violate policy but Officer Allen's continued firing of his weapon while chasing the vehicle down the street posed an unreasonable risk of injury to other officers on the scene as well as citizens and constituted negligent and reckless conduct. The street where this shooting occurred is located in a residential area and both sides of the street were lined with houses. A stray gunshot could have caused serious bodily injury or death to a citizen inside or outside of their home or as they prepared to leave for work. In addition, there were several law enforcement officers from TCSO and APD in the immediate area who were also potentially endangered by the multiple rounds fired by Officer Allen. All of these potential risks to others should have been weighed by Officer Allen in his decision to continue firing at the vehicle as it drove away. That Officer Allen could not even remember running down the street and firing his weapon 10 additional times without being shown the video of him so doing is deeply disturbing to me. Discharging a firearm under these circumstances is not authorized under APD's policies and alone warrants Officer Allen's indefinite suspension under the Discipline Matrix. Further, Officer Allen's recall of the incident, including but not limited to Officer Allen's perceived need to discharge his firearm and to continue firing his weapon at the vehicle are not supported by the evidence and are contradicted by the evidence in several aspects.

The decision as to whether and under what circumstances one should discharge his or her firearm is one of the most significant decisions a police officer can make and therefore it is essential that all Austin police officers comply with APD's policies on firearm discharge situations. As described above, Officer Allen's violations of APD's policies not only caused injury to the suspect but negligently and recklessly posed a great safety risk to the other officers and citizens at the scene. Of equal concern to me is Officer Allen's inability to accurately assess and evaluate the situation as reflected by his own statements and the evidence. If Officer Allen cannot recognize and acknowledge how his actions violate these important policies and create unnecessary risk of injury to himself, other officers and citizens, then Officer Allen cannot serve the City of Austin as a police officer.

Consequently, under all of the facts and circumstances of this case, indefinite suspension is warranted and appropriate under the Discipline Matrix, and is the chain of command's unanimous recommendation to me.

By copy of this memo, Officer Allen 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 Allen 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.



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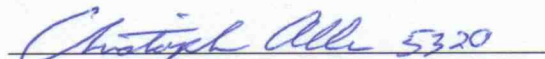
Chief of Police

10/12/2012

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.

  
Police Officer Christopher Allen #5320

10-12-12

Date