



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Interim Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: March 21, 2016

SUBJECT: Indefinite Suspension of Police Officer Geoffrey Freeman # 5340
Internal Affairs Control Number 2016-0115

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters, Police Officers' and Emergency Medical Services Personnel's Civil Service Commission, I have indefinitely suspended Police Officer Geoffrey Freeman # 5340 from duty as a police officer of the City of Austin, Texas, effective March 21, 2016.

I took this action because Officer Freeman 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 specific acts committed by Officer Freeman in violation of Rule 10:

On February 8, 2016, Officer Geoffrey Freeman was on-duty in a full Austin Police Department (APD) uniform and driving a marked police vehicle. At approximately 9:29 a.m., Officer Freeman was dispatched to a "Suspicious Person" call at Bowery Trail and Natures Bend where the caller advised a black male in all black clothing went into the wooded area behind the houses. The caller believed it was the same individual who approached her the day before while she was jogging, causing her to fear for her safety.

Officer Freeman checked the area but did not find the subject, later identified as Mr. David Joseph, [REDACTED]. Prior to leaving, Officer Freeman observed a 9:21 a.m., "Information" call holding at 11824 Natures Bend. After reading the details of the call, Officer Freeman had Dispatch merge the two calls as he believed them to be related. Officer Freeman cleared both calls "Unable to Locate."

At approximately 9:58 a.m., Officer Freeman was dispatched to a "Disturbance Other" call at 305 East Yager Lane regarding a black male chasing a man in the apartment complex. After driving to that location, Officer Freeman met with a witness and obtained information about the incident. Officer Freeman cancelled the back-up officer assigned to the call and broadcasted a physical and clothing description of Mr. Joseph (black male about 6 foot 185 pounds) along with the comments "*no disturbance, no one was hurt or anything like that at all.*"

Officer Freeman was approached by a different witness [REDACTED]

[REDACTED] Officer Freeman then drove around the complex but did not locate the male reportedly being chased or Mr. Joseph. Officer Freeman subsequently left the area.

At 10:22 a.m., a 911 call "Nature Unknown Urgent" generated regarding a naked black male running across the roadway at 12005 Natures Bend. Officer Freeman observed the call on his Mobile Data Computer (MDC) and noticed Officer Michael Metz was assigned to the call and was already responding. Believing this was the same subject from the earlier calls, Officer Freeman advised Dispatch he would respond as well.

At 10:23 a.m., Officer Freeman transmitted "*Let's get a couple of other units on this, it sound like this guy could either be, he's 10-96 (subject with mental illness) and losing it or high or something.*" Officer Christopher Gaines and Officer Rolando Espinosa broadcasted they would respond to the area. Therefore, four officers, including Officer Freeman, were responding to the call. While in route, Dispatch broadcasted updates including, the complainant had driven away, the subject was at 724 Waterfall Way, he's still naked, and was last seen in the Waterfall Way/Natures Bend area.

At approximately 10:25 a.m., Officer Freeman approached the round-about at Natures Bend and Waterfall Way, [REDACTED]

[REDACTED] As Officer Freeman began to maneuver around the

round-about his attention was diverted south onto Natures Bend to Mr. Joseph walking in the roadway. Officer Freeman then drove southbound towards Mr. Joseph [REDACTED]

In the process of driving towards Mr. Joseph, Officer Freeman slowed down to two miles per hour and advised dispatch he had located Mr. Joseph in the 12000 block of Natures Bend walking in the middle of the street completely naked and asked for units 10-18 ("Quickly"). This request initiated a "Code-3" response, activation of emergency lights and sirens by his assigned back up units. Dispatch then broadcasted for all units to "hold the air."

[REDACTED]

[REDACTED]

Officer Freeman chose to confront Mr. Joseph alone, [REDACTED]

[REDACTED] Officer Freeman chose to utilize deadly force to [REDACTED] Mr. Joseph, even though he knew other officers had yet to arrive but were imminently in route.

Officer Freeman acknowledged during his Special Investigations Unit [REDACTED] that he received training (including defensive tactics training) from the APD on "excited delirium." APD Policy 321.4(b) states: "For safety, officers should only engage a subject displaying symptoms of Substance Induced Excited Delirium when adequate back-up assistance is present." [REDACTED]

[REDACTED] Officer Freeman's decision to draw his weapon when he exited his vehicle was unwarranted [REDACTED]

¹ [REDACTED] Notwithstanding, defense of a third person is not a viable defense even if Officer Freeman's presumption was true as Officer Freeman's position was in between the vehicle and Mr. Joseph, who was naked and unarmed posing no threat of serious bodily injury or death to the individual in the red vehicle, over 250 feet away.

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to

However, Officer Freeman increased his speed and continued to drive towards Mr. Joseph, stopping within approximately 90 feet of Mr. Joseph. Officer Freeman turned on his overhead emergency lights as he parked and exited his patrol vehicle.²

Mr. Joseph refused to comply and the DMAV shows Mr. Joseph running towards Officer Freeman's position. As Mr. Joseph got closer, Officer Freeman continued to give commands ("don't move, don't move.") Despite those commands, Mr. Joseph continued running towards Officer Freeman.

he fired two rounds at Mr. Joseph, striking Mr. Joseph in the leg and chest, fatally wounding him.

The physical evidence shows Mr. Joseph ran approximately 90 feet before going out of the camera's view. The time elapsed between when he began running and when shots were fired was approximately 6.7 seconds. It took approximately one minute and twenty seven seconds for Officer Espinoza and one minute and fifty eight seconds for Officer Metz to arrive after Officer Freeman requested the 10-18 response.³

Based upon the findings of the Internal Affairs inquiry,

There were no extenuating circumstances why he could not maintain a safe distance while keeping Mr. Joseph in view,

² Officer Freeman's position is not captured on camera, but the DMAV continued to record his voice.

³ From the time Officer Freeman discharged the two rounds, it took approximately one minute and four seconds for Officer Espinoza and one minute and thirty five seconds for Officer Metz and two minutes forty four seconds for Officer Gaines to arrive at the scene.

⁴ Officer Freeman reasonably believed Mr. Joseph was experiencing [REDACTED]. Even though the toxicology results do not support his conclusion, the results do not change those beliefs and his objectively unreasonable actions based upon those beliefs.

I have concluded Officer Freeman's approach to Mr. Joseph was not objectively reasonable. Furthermore, at the time of his approach, no one was under a threat of imminent harm of suffering serious bodily injury or death by Mr. Joseph.

According to Officer Freeman he had his weapon drawn, while Mr. Joseph was naked, unarmed and had not injured any person.⁵ Officer Freeman chose to immediately respond to this situation with deadly force rather than using a lesser amount of force that was available to him (ASP, Taser, Pepper Spray, physical force).⁶ Furthermore, Officer Freeman had a less-than-lethal force shotgun in his trunk that he failed to make readily available to him despite his belief that he was dealing with an aggressive subject that was mentally ill or experiencing [REDACTED]

In conclusion, Officer Freeman's decision to use deadly force was not objectively reasonable. Furthermore, Officer Freeman's actions leading up to the discharge of his weapon were not objectively reasonable and not in accordance with APD policy. [REDACTED]

By these actions, Officer Freeman 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 200.1: Response to Resistance: Purpose and Scope**

200.1 Purpose and Scope

This policy recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this policy is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This policy is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee.

➤ **Austin Police Department Policy 200.2: Response to Resistance: Response to Resistance Policy**

⁵ Officer Freeman weighed approximately 240 pounds. Mr. Joseph weighed approximately 146 pounds.

⁶ An eye witness indicated Officer Freeman did not draw a weapon until Mr. Joseph was within eight feet of the officer. Notwithstanding either account, the decision to draw lethal force over a non-lethal option at either juncture has been determined not objectively reasonable under the circumstances.

200.2 Response to Resistance Policy

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

- (a) Given that no policy can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate response to resistance in each incident.
- (b) Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use any of the standard tools, weapons, or methods provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.
- (c) While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying objectively reasonable force.
- (d) Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

➤ 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 321.4: Care and Transport of Prisoners: Substance Induced Excited Delirium**

321.4 Substance Induced Excited Delirium

- (a) Substance Induced Excited Delirium is a condition brought on by the use of drugs or the lack of required medication. Subjects in this state often have easily identifiable symptoms and behavioral patterns. For the safety of both officers and subjects, recognition of this condition is imperative. This is especially true in cases when more than two or three symptoms are exhibited at the same time by the same person. Some of the symptoms exhibited may include:

1. Bizarre and/or aggressive behavior such as self-inflicted injuries, jumping into water, hiding behind objects, or public disrobing (due to high body temp).
2. Irrational or incoherent speech or shouting;

3. Dilated pupils, shivering, high body temperature, or profuse sweating;
 4. Fear, paranoia, or panic;
 5. Violence toward others, objects, or in general;
 6. High resistance to pain (standard defensive tactics and OC spray may be ineffective);
 7. Unexpected physical strength.
- (b) For safety, officers should only engage a subject displaying symptoms of Substance Induced Excited Delirium when adequate back-up assistance is present.
- (c) Subjects who display these symptoms and initially resist arrest violently may become suddenly calm. They may seem to be sleepy and resting. This is termed "sudden tranquility" and usually indicates an immediate need for medical attention.
- (d) Once the prisoner is in custody, EMS shall be contacted immediately to evaluate a subject exhibiting these symptoms.

➤ **Austin Police Department Policy 900.4.3(h): General Conduct and Responsibilities: Neglect of Duty**

900.4.3 Neglect Of Duty

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

- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.

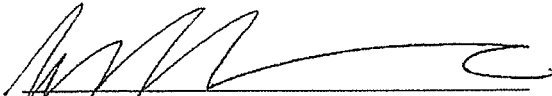
The decision as to whether and under what circumstances an officer should discharge their firearm is one of the most significant decisions a police officer can make. Therefore it is essential all APD officers comply with APD policies on the use of deadly force. In addition, an officer's recognition of mistakes in judgment is critical in deciding whether I can trust that officer to use good judgment in the future, especially when it comes to the use of deadly force.



In summary, Officer Freeman's decision to confront Mr. Joseph alone was not objectively reasonable and not in accordance with standardized policy and training. Officer Freeman admittedly violated Departmental policy, culminating in an unjustifiable use of inappropriate deadly force. Therefore, an indefinite suspension is the appropriate discipline.

By copy of this memo, Officer Freeman 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) calendar 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 Freeman 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.

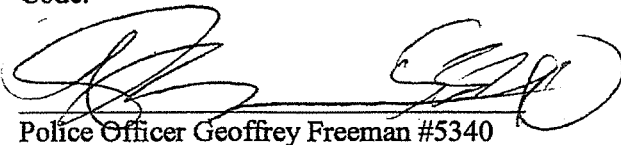


ART ACEVEDO
Chief of Police

03/21/2016
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) calendar 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 Geoffrey Freeman #5340

3/21/16
Date