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## **MEMORANDUM**

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

**TO:** Joya Hayes, Director of Civil Service

**FROM:** Brian Manley, Interim Chief of Police

**DATE:** January 19, 2018

**SUBJECT:** Indefinite Suspension of Police Officer Bryan Richter #6824  
Internal Affairs Control Number 2017-0948

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 Service Personnel's Civil Service Commission, I have indefinitely suspended Police Officer Bryan Richter #6824 from duty as a police officer for the City of Austin, Texas effective January 19, 2018.

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

On July 26, 2017, units within the Organized Crime Division (OCD) of the Austin Police Department (APD) took part in an operation to arrest a subject for narcotics-related offenses and an outstanding third degree felony assault warrant. During the operation, the subject was followed around Austin, eventually leading officers to the Barton Creek Mall parking lot where he was taken into custody. When the subject was taken into custody Officer Bryan Richter and Detective Steven McCurley used force while effecting the arrest.

After the subject was arrested, Officer Richter and Detective McCurley immediately approached the subject's unoccupied vehicle and breached the windows on the passenger side to clear the interior of the vehicle. While still at the scene, Officer Richter and Detective McCurley reported the damage to the subject's vehicle to Sergeant Kevin Yates and Sergeant Randy Dear, respectively. However, neither Officer Richter nor Detective McCurley mentioned their response to resistance R2R/use of force during the arrest to any supervisor at the scene.

Later that day, at the OCD office after the operation, Officer Richter approached Sergeant Dear and inquired if an R2R needed to be done since the operation was planned. Sergeant Dear then asked Officer Richter if an R2R had taken place during the operation. Officer Richter's initial response to Sergeant Dear was that the subject was guided to the ground during the arrest. Sergeant Dear, not believing that force had been used, based upon Officer Richter's account during this initial conversation, told Officer Richter they would discuss the matter further the next day.

On the morning of July 27, 2017, Officer Richter met with Sergeant Dear and began to give an account of his actions during the arrest. During this conversation, Sergeant Dear noted inconsistent details in Officer Richter's portrayal of the incident from the day before. Thus, Sergeant Dear instantly summoned Sergeant Yates into the office and then Officer Richter gave his account of his actions to the two Sergeants. Sergeant Dear noted further inconsistencies in this portrayal and the one given to him by Officer Richter the day before.

Officer Richter was then directed to contact APD's Air Support Unit (Air One) and inquire if they were able to capture video of the operation. Upon receiving and viewing video from Air One, Sergeant Dear and Sergeant Yates noted the details provided to them by Officer Richter about his involvement were not consistent with what was captured in the video. The Sergeants also discovered that Detective McCurley used force during the incident.

The Sergeants promptly notified their chain of command of these developments. Thereafter, on August 1, 2017, Lieutenant Oliver Tate signed an Internal Complaint Memorandum requesting Internal Affairs (IA) investigate possible policy violations by Officer Richter and Detective McCurley. The APD Special Investigations Unit (SIU) conducted a concurrent investigation into this incident. As of the date of this memorandum, the SIU investigation is suspended pending Officer Richter's decision to give a statement to the SIU.

Internal Affairs investigators reviewed the video that captured part of the incident. Relevant times noted are drawn from the digital source using the 24-hour clock:

**Video Footage Timeline**

- 13:27:12** Officer Richter made contact with the subject and performed a take down.
- 13:27:17** Detective McCurley pushed Officer Aguilar-Lopez to the side. The subject was on the ground.
- 13:27:18** Detective McCurley delivered a kick, with his right foot, to the subject's right abdominal area. The kick made the subject's shoulders move.
- 13:27:20** Detective McCurley placed his right foot on the subject's right forearm. The subject's hands were behind his back.
- Officer Richter placed his right foot on the subject's head. Officer Richter took a stutter step that made his left foot completely leave the ground while his right foot was still on the subject's head.
- 13:27:22** Officer Richter removed his right foot from the subject's head. The subject's hands were behind his back.
- 13:27:26** Officer Garcia kneeled down to take the subject into custody by beginning to secure the subject's hands.
- 13:27:27** Officer Richter jogged away from the arrest scene toward the area where the subject's vehicle was parked.
- 13:27:28** Detective McCurley delivered a kick, with his right foot, to the subject's right side.
- 13:27:44** Officer Richter took cover to the rear and next to a vehicle, about two parking spots away from the subject's vehicle. Two Hays County Deputies were seen forming up behind Officer Richter.
- 13:27:51** Detective McCurley walked away from the arrest scene toward the area where the subject's vehicle was parked.
- 13:28:08** Detective McCurley and Officer Richter struck the windows on the Passenger side of the subject's vehicle with the barrel of their rifles.

On August 9, 2017, SIU Detectives interviewed the subject at the Travis County Correctional Complex (TCCC) in Del Valle, Texas. The subject advised detectives that while he was on the ground handcuffed one officer (Officer Richter) put his foot on the left side of his face. The subject told detectives while the officer had his foot on his head, he felt pressure/pain and added he had headaches afterwards.

During the interview, an SIU Detective noted the subject had the following visible injuries which he attributed to having been thrown to the ground by police;

- Abrasion/road rash to left elbow
- Abrasion/road rash to inside of left knee

### **Dishonest with Sergeant Randy Dear**

On October 5, 2017, Sergeant Dear was interviewed by Internal Affairs. Sergeant Dear indicated that Officer Richter approached him a few hours after the incident and described the following portrayal in their initial discussion, well before anyone confirmed that the July 26, 2017 incident was captured on video:

Officer Richter asked Sergeant Dear, *'Hey, uh, you know, since this was a planned operation do we still have to do a R2R?'* Sergeant Dear responded affirmatively and asked Officer Richter if an R2R occurred to which Officer Richter replied:

*'...I just guided him (the subject) to the ground, you know, I gave him a buncha commands and, you know, you could tell in his face that he didn't know what was goin' on so I just guided him to the ground.'*

Sergeant Dear advised investigators that he then specifically re-asked Officer Richter if he *'took down'* the subject or if he *'guided him'* to the ground. Officer Richter responded *'I guided him,'* while also failing to mention that he stepped on the subjects head. Sergeant Dear advised Officer Richter that they would continue their discussion the following day, as Sergeant Dear was left with the impression that force was not used.

Sergeant Dear indicated that he and Officer Richter met the following morning. Officer Richter began to describe to Sergeant Dear that he gave the subject *'multiple commands'* before he took the subject *'down to the ground.'* Sergeant Dear immediately interrupted Officer Richter and successfully sought out Sergeant Yates to join the meeting. According to Sergeant Dear, Officer Richter then gave him and Sergeant Yates the following portrayal before anyone realized that the July 26, 2017 incident was captured on video:

*'I got him (the subject) to the ground.'* This prompted the Sergeants to ask Officer Richter if he hip tossed the subject. According to Sergeant Dear, Officer Richter responded by saying *'I hip tossed him, uh, took him to the ground and I had to put my knee in his back.'* Sergeant Dear also vividly remembered that Officer Richter then stressed to him and Sergeant Yates that *'I promise you, very, very gently I had to put my boot up on his head.'*

However, Sergeant Dear indicated that upon seeing the video of the incident, he realized that Officer Richter's depiction of the incident was not consistent with what he articulated to him and Sergeant Yates. Specifically, Sergeant Dear noticed that Officer Richter did not seem to give any commands to the subject, and certainly not the amount of commands that he had portrayed. Sergeant Dear was also alarmed by the force used on the subject, particularly since he'd never *"seen anybody that compliant."* Moreover, Sergeant Dear told



Internal Affairs that he was surprised to see Officer Richter stand on the subject's head with his weight on the subject and certainly not in the "gentle" manner that he portrayed.

Sergeant Dear's interview closed with him advising Internal Affairs that he believed that Officer Richter using his foot on the subject's face was unreasonable force in this case. Sergeant Dear also indicated after viewing the video, he realized Officer Richter "absolutely" lied to him in his two portrayals of the incident.

### **Dishonest with Sergeant Kevin Yates**

On September 28, 2017, Sergeant Yates was interviewed by Internal Affairs. Sergeant Yates gave Internal Affairs a recount of the July 27, 2017, meeting with Sergeant Dear and Officer Richter, before anyone realized that the July 26, 2017 incident was captured on video. Sergeant Yates remembered Officer Richter giving the following portrayal:

*'I (Officer Richter) got out of the vehicle and I gave him (the subject) multiple commands to, uh, to get down on the ground...'; 'He just kinda looked at me. And, um, you know, kinda confused and wasn't answering me so, you know, I just, you know, took him to the ground.'*

Sergeant Yates indicated Richter went on to say, 'Well, I did a hip throw and threw him to the ground,' in response to a follow-up question. Officer Richter ultimately acknowledged to Sergeant Yates and Sergeant Dear that his actions likely caused the subject pain.

Sergeant Yates stated Officer Richter elaborated that:

*'I (Officer Richter) got down and I put my knee in his back, holding him down...'; 'his (the subject's) head was moving a lot and I thought he was looking around for somebody.'*

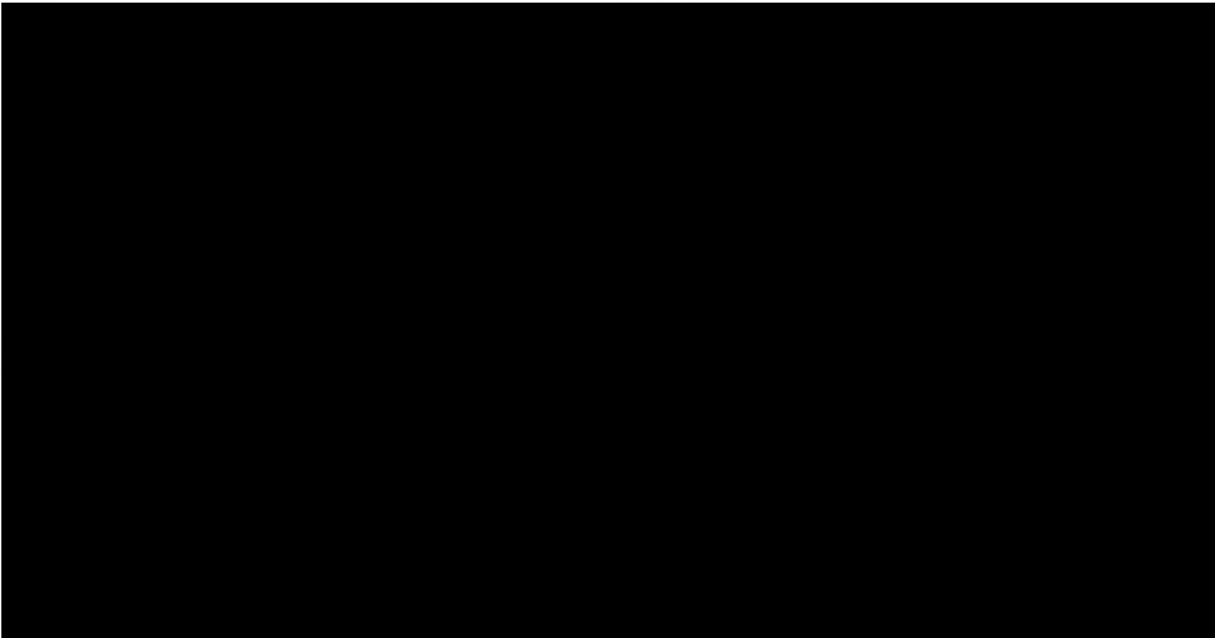
Sergeant Yates vividly remembered that Officer Richter then stressed that:

*'...I do this ever (sic) so gently. I promise I did this lightly. I - I barely touched him but I took my foot and I held his head down, um, with my foot. But I promise Sarge, it was just ever (sic) so lightly. Just very gently.'*

Sergeant Yates indicated that upon seeing the video of the incident, he immediately notified Sergeant Dear that Officer Richter's depiction of the incident was not consistent with what he articulated to him and Sergeant Dear. Specifically, Sergeant Yates perceived that Officer Richter did not seem to give any commands to the subject. He also noticed that Officer Richter did not kneel on the back of the subject. Sergeant Yates also took issue with the fact that Officer Richter "was standing up and stood with his foot on his (the subject's) head which wasn't what he told us and I had issues with that obviously."

**Officer Bryan Richter's Internal Affairs Statement**

On December 14, 2017, Officer Richter was interviewed by Internal Affairs. Officer Richter gave the following description of the July 26, 2017, operation.



Officer Richter was asked if he, at any point, put his entire body weight on the subject's head. He replied, "[REDACTED]" Internal Affairs investigators then played a portion of the video beginning at 13:27:20 for Officer Richter and asked him to look at his feet, particularly his left foot and describe what he saw. The following exchange occurred:

TORRES: *Okay. Look at your left leg. Did you see that?*

RICHTER: [REDACTED]

TORRES: *What did you just see?*

RICHTER: [REDACTED]

TORRES: *Okay. How it is possible that your left leg comes up off the ground, your right leg is on (the subject's) head, but yet you're not putting your entire body weight on his head?*

RICHTER: [REDACTED]

Officer Richter also acknowledged [REDACTED]

[REDACTED] He

nonetheless indicated [REDACTED]

[REDACTED] Regardless, Officer Richter conceded [REDACTED]

Officer Richter further acknowledged [REDACTED]

[REDACTED] Officer Richter asserted to IA that [REDACTED] Officer Richter justified his action to IA by [REDACTED] apparently giving no consideration to the extremely hot pavement (historical data shows around 1:30pm on July 26, 2017, Austin temperature was approximately 97 to 100 Degrees Fahrenheit). Of further significance, Officer Richter stated [REDACTED]

Officer Richter then [REDACTED]

[REDACTED] Of greater significance, Officer Richter [REDACTED]

Officer Richter [REDACTED]

[REDACTED] Officer Richter stated he told Sergeant Dear and/or Sergeant Yates the following:

[REDACTED]

Although Sergeant Dear and Sergeant Yates both vividly recalled Officer Richter using the words "*gently*" or "*lightly*" when describing the placement of his foot on the subject's head, Officer Richter [REDACTED]

[REDACTED] before the video proof surfaced. Also, Officer Richter [REDACTED]

## Conclusion

Although Officer Richter [REDACTED]

[REDACTED], he did concede to me and his chain of command in his DRH that stepping on the subject's head was not reasonable. Moreover, Officer Richter did not comply with policy and properly report his use of force in spite of two opportunities to do so on the day of the incident. Officer Richter not only failed to make any mention of his use of force at the scene, but he misled Sergeant Dear, minimizing and omitting pertinent information in the aftermath of the operation.

The following day, Officer Richter did reveal that he stepped on the subject's head. However, his description to Sergeant Dear and Sergeant Yates was inconsistent with what video evidence eventually revealed. The picture Officer Richter portrayed minimized his actions and was suggestive that he did not inflict pain on the subject and that this force was necessary under the circumstances. Upon seeing the video, Sergeant Yates expressed to Sergeant Dear that they had been deceived by Officer Richter. Sergeant Yates confirmed the same sentiment to Internal Affairs. Additionally, the evidence shows that Officer Richter's misrepresentations eroded the trust Sergeant Dear had in him.

Furthermore, Officer Richter's actions and misrepresentations have eroded the trust I and the chain of command had in him. The evidence in this case shows, but for the Air One footage fortuitously capturing the arrest of the subject, we would not have an accurate account of what transpired. If an officer demonstrates that he cannot or will not give a truthful account of the force that they used, I as Chief of police would be remiss in my duties and responsibilities if I allowed such an Officer to be bestowed the power to continue to have the duties and responsibilities that are designed to protect and serve the public. Therefore, after careful consideration and deliberation with Officer Richter's chain of command, the unanimous decision was made to indefinitely suspend him.

By these actions, Officer Richter 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 211.4.1: Response to Resistance Inquiry, Reporting, and Reviewing: Employee Reporting Guidelines for All Force Level Incidents**

**211.4.1 Employee Reporting Guidelines for All Force Level Incidents**

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

- (a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.

- (b) Supplements shall be completed by:
  - 1. All other employees who are involved in a force incident.
  - 2. Employees who witness a force incident.
  - 3. Employees assisting at the scene of a force incident.
  - 4. A supervisor is required to complete a supplement to the response to resistance incident report for Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.
- (c) The following information shall be included in each report and supplement:
  - 1. The original reason for police presence on the scene.
  - 2. The name and employee number of the supervisor notified of the incident.
  - 3. A detailed description of the circumstances and subject actions that resulted in the use of force.
  - 4. A detailed description of the force used.
    - (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
  - 5. Subject and witness information.
  - 6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
  - 7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.
- (d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.
- (e) A copy of the response to resistance incident report, any supplements, and any ancillary documents should be submitted to the reviewing supervisor prior to the end of the employee's tour of duty.

➤ **Austin Police Department Policy 900.3.1: General Conduct and Responsibility: Honesty**

**900.3.1 HONESTY**

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

(a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":

1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.

2. Verbal or written statements made by an officer in connection with their official duties to:

(a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.

(b) A supervisor conducting an inquiry into the officer's use of force.

(c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.

(b) Employees who obtain their employment by willful misrepresentation or false statements may be dismissed from the Department.


(c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

(d) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.

(e) Employees will not falsely report themselves ill or injured, or otherwise deceive or attempt to deceive the Department as to the condition of their health.

By copy of this memo, Officer Richter is hereby advised of this indefinitely suspended 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 Richter 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.

  
BRIAN MANLEY, Interim Chief of Police

1-19-18  
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.

 6824  
Police Officer Bryan Richter #6824

1/19/18  
Date