



OFFICE OF
POLICE OVERSIGHT

MEMORANDUM

TO: Chief Chacon, Police Chief, Austin Police Department

FROM: Sylvia Hardman, Interim Director, Office of Police Oversight

DATE: January 25, 2023

SUBJECT: Disciplinary Recommendations 2021-0036, Officer Gutierrez and Officer Serrato

Pursuant to Article 16, Section 4(1)(2) of the Meet and Confer Agreement (the Agreement), the Director of the Office of Police Oversight (OPO) may make non-binding written disciplinary recommendations on “critical incidents” as defined in Article 16, Section 2(d) of the Agreement. I write to you today to set forth OPO’s recommendations related to case number 2021-0036.

On January 5, 2021, Officers Gabriel Gutierrez and Luis Serrato were involved in a critical incident. Officer Gutierrez was off duty and fired his personal firearm. Officer Serrato was on duty and responded to a “shots fired” call. After arriving on scene, Officer Serrato fired his APD-issued weapon. Mr. Alexander Gonzales, Jr. was shot multiple times by Officers Gutierrez and Serrato and died at the scene. Ms. Jessica Arellano was also in the vehicle with Mr. Gonzales and was shot multiple times, ultimately she survived the incident.

A Travis County grand jury declined to indict Officers Gutierrez and Serrato on or about December 27, 2022. The Internal Affairs Division (IA) of the Austin Police Department (APD) conducted an administrative inquiry of this critical incident.

On January 23, 2023, IA provided the interim OPO director and the Community Police Review Commission (CPRC) with a private case briefing. We also heard input from members of the community during the public session of the January 23, 2023 CPRC meeting.

Recommendations

Based on my review of the IA file, IA’s private briefing, (including video of the incidents and officer interviews), and input from the community, I make the following recommendations:

1. Officer G. Gutierrez, indefinite suspension
2. Officer L. Serrato, counseling and guidance
3. Department policies warrant review
4. Changes to training of officers

Background Summary

On January 5, 2021, Officer Gutierrez was off duty and traveling in his personal vehicle. He states that while driving he noticed another vehicle driving erratically. Officer Gutierrez reports that he did not call 911 to report the erratic behavior as he did not believe anyone was in danger. Officer Gutierrez states, and evidence supports, that the other vehicle eventually pulled up along the side of his vehicle. Officer Gutierrez states that he saw the driver of the car pointing a gun in his face and he thought he was going to get shot and was going to die. The driver of the car was later identified as Mr. Alexander Gonzales, Jr.

Officer Gutierrez states that he grabbed his personal firearm and shot eight times at Mr. Gonzales, emptying his magazine. He states that he reloaded and looked at Mr. Gonzales, who appeared to have been shot in the side of the head. Officer Gutierrez states that he saw that Mr. Gonzales' face was covered with blood and he was slumped over. Officer Gutierrez states that he then heard screaming and realized that someone else was in the car. He states that, prior to that, he didn't know that anyone else was in the car. The other car started to move away and Officer Gutierrez called 911.

The vehicle driven by Mr. Gonzales rolled a short distance and stopped on a curb. Officer Gutierrez followed the vehicle. Mr. Gonzales exited his vehicle, bloody and staggering. Mr. Gonzales' passenger, Ms. Jessica Arellano, exited the passenger side of the vehicle and fell to the ground. Officer Gutierrez identified himself as an officer and held Mr. Gonzales at gun point shouting to Mr. Gonzales to put the gun down. Officer Gutierrez did not see a gun in Mr. Gonzales's hand or, but still shouted "put the gun down."

On-duty officers arrived on the scene within minutes. Officer Gutierrez informed the on-duty officers that Mr. Gonzales had a gun in the driver passenger side. The on-duty officers gave Mr. Gonzales several commands to put his hands up and Mr. Gonzales initially complied with the commands. Mr. Gonzales began slowly walking and staggering from the driver's side of the vehicle to the rear passenger side of the vehicle. Officers provided several commands, including "stop walking" and "don't reach into the car." Mr. Gonzales opened the rear passenger seat and reached into the back of the car. Officer Serrato fired ten shots at Mr. Gonzales. Mr. Gonzales died at the scene.

Ms. Arellano was behind Mr. Gonzales on the ground moaning. When officers approached to render aid, they learned that Ms. Arellano had been shot three times and there was a baby in the rear passenger seat. The evidence shows that Officer Gutierrez shot Ms. Arellano. The evidence is inconclusive as to whether Officer Serrato also shot Ms. Arellano. A gun was located on the floor of the car in the front driver's side.

Mr. Gonzalez never fired a weapon during this incident. The evidence supports that Mr. Gonzalez did not know that Gutierrez was an off duty officer. The investigation revealed that there was no weapon in the rear passenger seat of Mr. Mr. Gonzalez's car. The evidence further indicates and that when Mr. Gonzales opened the rear passenger door, he was most likely checking on the safety of his infant child who was in a car seat in the rear passenger seat of the car. The infant was not injured.

Basis for Recommendation

I understand that your final decision regarding discipline is due by January 26, 2023. While my recommendation is based on many factors, in the interest of time, I will summarize the relevant factors at the center of my recommendations.

Officer Gutierrez

- Officer Gutierrez was engaged in a “road rage” incident. One person, Mr. Alexander Gonzales, Jr. was shot multiple times and died as a result. Another person, Ms. Jessica Arellano was also shot multiple times and severely injured.
- Officer Gutierrez recklessly fired his weapon into a car, failing to verify whether anyone else was in the car.
- Officer Gutierrez did not take any action to de-escalate the situation.
- Based on video of the first incident, it appears that Officer Gutierrez began firing his weapon less than three seconds after Mr. Gonzales pulled up alongside of him.
- Officer Gutierrez states that there was no verbal communication between himself and Mr. Gonzales during this time. A civilian witness to the incident stated that there was an exchange of words between the occupants of the cars. This inconsistency impacts Officer Gutierrez’s credibility.
- Officer Gutierrez failed to inform 911 dispatch or other officers that he shot Mr. Gonzales.
- Officer Gutierrez continued to shout “put the gun down” despite the fact that he saw Mr. Gonzales’s hands and knew that he did not have a gun in his hands.

Officer Serrato

- Officer Serrato’s action of firing his weapon appear to be within policy, as he and the other on-duty officer on scene provided several commands to Mr. Gonzales to not reach into the car. Officer Serrato reasonably believed that Mr. Gonzales had a weapon and that Mr. Gonzales was attempting to retrieve a weapon.
- While it appears that Officer Serrato’s actions were reasonable considering all factors, it is concerning that he fired 10 times at an individual who had already been shot.
- It is understood that officers are trained to shoot until the threat has ended. This standard/training should be reviewed and revised to provide more direct guidance on what this standard actually means. Under the facts and circumstances of this case, it appears that 10 shots may have been excessive. In short, the policy and training on “stop the threat” should be reviewed.
- Lastly, it is concerning that Officer Serrato fired his weapon 10 times at someone while an injured bystander was nearby and could have or may have been shot. While this is a concern and possible training issue, under the circumstances I cannot conclude that the action was unreasonable.

General Orders/Scope of Inquiry

The scope of the Internal Affairs inquiry was limited to General Order 200.4 Deadly Force Application.

As you make your decision, please consider whether the officers' actions were consistent with all General Orders, laws, good judgment, your expectations of an APD officer, and those expectations held by Austin community members. Other applicable General Orders may include:

- 200.2.1 Assessment and De-Escalation; and
- 364 Off-Duty Law Enforcement Actions.

Conclusion

Recognizing the unique complexity of this critical incident involving off and on-duty officers, and after reviewing the IA investigative file and obtaining an IA briefing, I recommend indefinite suspension of Officer Gabriel Gutierrez. I also recognize that there is a deadline for issuing discipline. Consequently, this recommendation is brief in order to provide input to you in a timely manner. If you have any questions or would like to discuss further, please let me know.

Sincerely,

Sylvia Hardman

Sylvia Hardman
Interim Director, Office of Police Oversight