

27 SEP AM 11:05



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: September 27, 2013

SUBJECT: Indefinite Suspension of Police Officer Justin Boehm #6132
Internal Affairs Control Number 2013-0454

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 Justin Boehm #6132 from duty as a police officer of the City of Austin, Texas, effective September 27, 2013.

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 Boehm in violation of Rule 10:

On May 8, 2013, at approximately 7:51 a.m., Officer Justin Boehm was stopped for the red light, eastbound on East 12th Street at Airport Boulevard. Officer Boehm was driving a marked patrol vehicle working his regular duty assignment as a patrol officer. Officer Boehm's in-car camera system was activated, and the following sequence was audio and video recorded. The left turn light changed to green and the traffic in the left turn lane began to move. The vehicle in front of Officer Boehm drove through the red light. Officer Boehm activated his overhead lights and the driver pulled to the right curb and stopped. The driver got out of his vehicle and started walking towards Officer Boehm's patrol car while reaching into his right front pocket. Officer Boehm exited his patrol car, instructed the driver to get back into his vehicle, and then fired one round from his duty weapon. The round did not strike the driver or his vehicle. Officer Boehm ordered the driver again to get back into his vehicle, and then immediately ordered him back out onto the ground where he kept him at gunpoint until back-up officers arrived.

The incident was investigated by both the Special Investigations Unit and the Internal Affairs Division of the Austin Police Department. During his Internal Affairs interview, Officer Boehm stated that he intentionally fired his weapon at the driver because Officer Boehm believed that the driver was going for a weapon after the driver failed to obey Officer Boehm's commands to get back in his vehicle. Video evidence establishes that the black object that the driver pulled out of his pocket was his wallet. The driver told Internal Affairs that he did not hear Officer Boehm's verbal commands until after the shot was fired. Officer Boehm told Internal Affairs that it was a "red flag" that the driver "blatantly" ran a red light in front of him, and that the driver made two movements while inside the vehicle that Officer Boehm considered "odd" and "furtive." The driver told Internal Affairs that after he pulled over, he put down his cellphone and set the parking brake. Officer Boehm further told Internal Affairs that it put him on "alert" when the driver exited the vehicle and approached him because "people generally stay in the vehicle," and "just sit there until you approach them." The driver told Internal Affairs that he got out of his vehicle because he thought that was what he was supposed to do when pulled over by the police. Video, audio and testimonial evidence establish that there was no imminent threat of death or serious bodily harm to Officer Boehm at the time that he discharged his weapon.

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: Response to Resistance: Response to Resistance Policy**

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 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 the appropriate discipline, I took into consideration the fact that Officer Boehm resorted to the use of deadly force when it did not reasonably appear to be necessary under the circumstances in violation of APD's "Response to Resistance" policies. It is undisputed that deadly force was not immediately necessary to protect Officer Boehm from an imminent threat of death or serious bodily injury. Therefore, Officer Boehm also violated APD's "Firearm Discharge Situations" policy.

Further, Officer Boehm's belief that deadly force was justified is not objectively reasonable in light of the facts and circumstances confronting him. Officer Boehm's stated reasons for his use of deadly force were nothing more than the actions taken by a driver during a routine traffic stop. Officer Boehm characterized the driver's running of the red light as "blatant," and the driver's movements of putting down his cellphone and setting his parking brake as "odd" and "furtive." Officer Boehm further stated that it put him on "alert" when the driver exited the vehicle because "people generally stay in the vehicle." Of greatest concern is Officer Boehm's decision to discharge his weapon despite the fact that the driver's actions were consistent with a driver pulling out his identification, and not consistent with a person drawing a weapon. Further, even after the object was clearly identified as a wallet, Officer Boehm failed to accurately assess and de-escalate the situation.

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 "Response to Resistance" and "Firearm Discharge Situations." As described above, Officer Boehm's violations of APD policies not only endangered the driver but posed a potential risk of

injury to other drivers and citizens in the area. Of equal concern to me is the fact that Officer Boehm's escalation of a routine traffic stop into a use of deadly force was not objectively reasonable under the facts and circumstances. Officer Boehm's use of deadly force, contrary to his training and in violation of APD policies, demonstrates an inability to accurately and effectively assess evolving situations, and establishes that Officer Boehm cannot continue to serve the City of Austin as a police officer.

As set forth in APD's Discipline Matrix, the appropriate discipline for an objectively unreasonable use of deadly force is an indefinite suspension. Consequently, under all of the facts and circumstances of this case, indefinite suspension is warranted and appropriate, and is the chain of command's unanimous recommendation to me.

By copy of this memo, Officer Boehm 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 Boehm 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

9/27/2015

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 Justin Boehm #6132

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