

Received  
City of Austin  
2016 JAN 13 PM 1:47  
Human Resources Dept

## 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:** January 13, 2016

**SUBJECT:** Temporary Suspension of Police Officer Christopher Van Buren #7563  
Internal Affairs Control Number 2015-0798

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 agreed to temporarily suspend Police Officer Christopher Van Buren #6766 from duty as a City of Austin, Texas police officer for a period 90 days. The agreed temporary suspension is effective beginning on January 13, 2016 and continuing through April 12, 2016.

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

On August 27, 2015 Officer Christopher Van Buren was dispatched along with Officer Daniel Jackson to the area of 2706 Gonzalez Street, Austin, Texas for a report of a man urinating in public. Upon arrival at the scene and after interviewing witnesses, Officer Van Buren along with Officer Jackson approached the suspect, who was lying on his back under a tree with his head resting under his hands on his duffel bag. The ensuing encounter was captured on Officer Van Buren's in-car video. Officer Van Buren drew his Taser and ordered the suspect to get up and the suspect showed his hands as he got up from the lying down position and moved up to a seated position. Officer Van Buren continued to order the suspect to stand up and ordered the suspect to walk towards the patrol vehicle, while warning him that he would tase him. The suspect expressed bewilderment at the prospect of being tased and remained in the seated position. Although Officer Van Buren stated to Internal Affairs that he had a concern about a potential weapon in the suspect's bag, this concern was unwarranted and is unsupported by the video evidence of Officer Van Buren's actions before and after the tasing.

Before the suspect was given a reasonable opportunity to voluntarily comply, Officer Van Buren unjustifiably tased the man in violation of department policy. Officer Van Buren deployed the Taser in spite of having an additional officer present and being unable to articulate a reasonable justification for the tasing. He repeatedly advised Internal Affairs that his justification for using the Taser was the fact that the suspect "sucked his teeth", which he perceived to be "preparatory aggression" but the suspect never engaged in any conduct that an objectively reasonable officer would consider an imminent threat to Officer Van Buren or his partner's safety. After watching the video at his Disciplinary Review Hearing with his entire Chain of Command, Officer Van Buren acknowledged that his use of force was not objectively reasonable and he expressed sincere regret and contrition.

By these actions, Officer Van Buren 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 208.1: Taser Device Guidelines: Purpose and Scope**

**208.1 Purpose and Scope**

The TASER® is intended to control a violent or potentially violent individual while minimizing the risk of serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

➤ **Austin Police Department Policy 208.1.1: Taser Device Guidelines: Philosophy**

**208.1.1 Philosophy**

The use of a TASER Device upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, has an objectively reasonable belief that it is necessary to gain control of the subject.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force to protect the public welfare requires a careful balancing of all human interests.

➤ **Austin Police Department Policy 208.3(a): Taser Device Guidelines: Verbal Warnings**

**208.3(a) Verbal Warnings**

A verbal announcement of the intended use of the TASER Device should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

(a) The purpose of the warning is for the following:

1. Provide the individual with a reasonable opportunity to voluntarily comply.
2. Provide other officers and individuals with warning that a TASER Device may be deployed.

➤ **Austin Police Department Policy 208.4.1: Taser Device Guidelines: Application of the Taser Device**

**208.4.1 Application of the Taser Device**

Authorized personnel may use the TASER Device when circumstances known to the officer at the time indicate that such application is objectively reasonable to control a subject in any of the following circumstances:

- (a) Apprehend a subject fleeing lawful arrest or detention.
- (b) A violent or physically resisting subject.
- (c) There is reasonable expectation that it will be unsafe for officers to approach within contact range of the subject.
- (d) A subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm officers, himself, or others.
  - 1. Officers should give a verbal warning of the intended use of the TASER Device followed by a reasonable opportunity for the subject to voluntarily comply, when practicable.
  - 2. Officers must be able to articulate their use of the TASER Device in an incident report.

➤ **Austin Police Department Policy 208.4.2: Taser Device Guidelines: Prohibited Uses**

**208.4.2 Prohibited Uses**

The following are prohibited uses of the TASER Device:

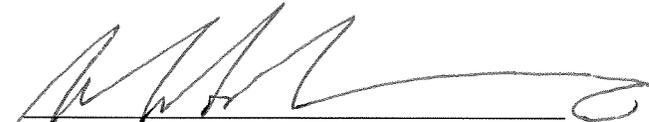
- (a) The TASER Device shall not be used to torture, psychologically torment, elicit statements or to punish any individual.
- (b) Horseplay or practical jokes.
- (c) Demonstrations, without the permission of a supervisor.
- (d) Against passively resisting subjects.
- (e) Individuals who are covered in, or in close proximity to, any combustible material.

In addition to this agreed suspension, Officer Van Buren agrees to the following additional terms and conditions:

1. Officer Van Buren shall be evaluated by the Austin Police Department Psychologist or a qualified professional designated by the Chief.
2. If the Psychologist or qualified professional recommends a program of counseling, Officer Van Buren must successfully complete that program of counseling.
3. If a program of counseling is recommended, said program will be completed on Officer Van Buren's off duty time, unless the Chief approves the use of accrued vacation leave.
4. Officer Van Buren shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
5. If Officer Van Buren fails to successfully complete the program of counseling, the Chief may, at his sole discretion, indefinitely suspend him without right of appeal to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and Officer Van Buren may not file a grievance under Article 20 of the Meet and Confer Agreement.
6. If this evaluation and/or the program of counseling raises a question of whether Officer Van Buren is sufficiently mentally or physically fit to continue his duties as a police officer, it could trigger the fitness for process set forth in Texas Local Government Code Chapter 143.081.
7. Officer Van Buren shall attend any training specified by his chain of command.
8. Officer Van Buren shall assist the cadet training academy staff as determined by his chain of command and the academy staff.
9. Officer Van Buren agrees to a one (1) year probationary period to begin on the day he returns to duty after serving this agreed suspension. Officer Van Buren agrees that if during that one year period the Chief of Police sustains another violation involving the same or similar conduct (Officer Van Buren agrees that the Chief of Police has the final decision whether the conduct is the same or similar and that decision is not subject to review or appeal), he will be indefinitely suspended without the right to appeal that indefinite suspension to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.
10. Officer Van Buren understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.
11. Officer Van Buren may not appeal this agreed suspension or any of these additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.

12. Officer Van Buren is put on notice that should he be indicted and/or convicted of a crime, that indictment or conviction may form the basis of additional disciplinary action, up to and including indefinite suspension.

By signing this Agreed Discipline, Officer Van Buren understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Officer Van Buren waives all right to appeal to this disciplinary action, as well as the additional terms and conditions included herein, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.

  
ART ACEVEDO, Chief of Police

January 13, 2016  
Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above. I further understand and agree that by entering into this agreement, I have no right to appeal this suspension or the additional terms and conditions included herein to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to the District Court, and I may not file a grievance under Article 20 of the Meet and Confer Agreement.

  
Police Officer Christopher Van Buren #7563

1/13/2015  
Date