

Received

City of Austin

2015 OCT 20 AM 11: 58

Human Resources Dept



## MEMORANDUM

### Austin Police Department

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

**FROM:** Art Acevedo, Chief of Police

**DATE:** October 20, 2015

**SUBJECT:** Agreed Suspension of Police Officer Eric Copeland #6766  
Internal Affairs Control Number 2015-0362

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, Article 18 of the Meet and Confer Agreement between the City of Austin and the Austin Police Association, 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 Eric Copeland #6766 from duty as a City of Austin, Texas police officer for a period 90 days. The agreed temporary suspension is effective beginning on October 20, 2015 and continuing through January 17, 2016.

I took this action because Officer Copeland 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 specific acts committed by Officer Copeland in violation of Rule 10 were uncovered during the department's standard response to resistance reporting and review process:

On April 25, 2015 Officer Copeland accompanied by a civilian rider, arrived to assist Officer Mark Bergeson at the scene of a family violence related assault. Prior to Officer Copeland's arrival, Officer Bergeson spoke to the two victims. During this brief interaction, Officer Bergeson was advised that Mr. Adrian Aguado struck one of the victims and that he was still inside the 5300 Jimmy Clay Drive apartment. Officer Bergeson proceeded to go into the apartment, which was in a state of disarray, and found an angry Mr. Aguado drinking a bottle of beer. Officer Bergeson ordered Mr. Aguado to place his beer down and also drew his Taser and pointed it at Mr. Aguado, while warning him he would be tased unless he followed the officer's commands. Mr. Aguado complied with the commands and Officer Bergeson was able to handcuff and secure Mr. Aguado into custody and then into his patrol vehicle without incident.

As Officer Bergeson was completing the escort of Mr. Aguado into his patrol car, Officers Gabriel Vasquez and Copeland arrived to assist Officer Bergeson. After initially assisting, Officer Vasquez departed, while Officer Copeland remained at the scene with Officer Bergeson. Officer Copeland's presence allowed Officer Bergeson to begin the process of securing more information from the victims, while Officer Copeland watched over Mr. Aguado, who was handcuffed in the back of Officer Bergeson's patrol unit.

During that time, Officer Copeland sat in his patrol vehicle with his civilian rider and accessed Mr. Aguado's criminal history. This information induced a discussion about Mr. Aguado, during which Officer Copeland advised his civilian rider *"if you act like you're going to fight with me, you are going to get hurt."* Separately, Mr. Aguado was seated in the back of Officer Bergeson's patrol unit, when he periodically yelled anti-police and profanity laced statements and at some point began to use the seatbelt fastener to bang against the plastic seat. The banging prompted Officer Copeland to get out of his patrol unit to check on the noise and Mr. Aguado.

Once Officer Copeland approached Officer Bergeson's patrol unit, Mr. Aguado was still secured in the handcuffs behind his back. Officer Copeland proceeded to ask Mr. Aguado if he took any medications, which elicited sarcastic responses from Mr. Aguado. Officer Copeland countered by asking Mr. Aguado if he used something for *"mental retardation"* while telling Mr. Aguado he *"seemed slow."* The exchange continued with the two trading insults, including Officer Copeland suggesting Mr. Aguado was overweight. Also during the verbal sparring, Mr. Aguado challenged Officer Copeland to a fight. Officer Copeland responded to the challenge by making additional inappropriate comments. Mr. Aguado then slipped his left hand from the handcuff and challenged Officer Copeland to fight then and there. The majority of these series of events and the following interaction and dialogue were captured on the "DMAV" (Digital Mobile Audio Visual) of Officer Bergeson.

Officer Copeland radioed for Officer Bergeson to assist him with Mr. Aguado. They moved to the passenger side of the car and Officer Bergeson unlocked the doors and then Officer Copeland proceeded to open the rear door and told Mr. Aguado to “*turn around.*” Mr. Aguado began to exit the vehicle and was told a second time to “*turn around*” by Officer Copeland. Officer Copeland’s later told IA, his intention was for Mr. Aguado to “*turn around*” in the vehicle, but admitted that he gave unclear, confusing commands to Mr. Aguado. Thus, as Mr. Aguado was exiting the vehicle, Officer Copeland tased Mr. Aguado, causing Mr. Aguado’s hands to go towards his chest and fall to his knees and then to the ground face down. Once on the ground, Officer Copeland dropped his body weight onto Mr. Aguado using his right knee to the left shoulder area of Mr. Aguado. Also, once Mr. Aguado fell to the ground, Officer Copeland failed to give Mr. Aguado proper warning or time to respond to commands prior to activating the taser for a second cycle. Officer Bergeson proceeded to re-handcuff Mr. Aguado at the end of this encounter. Mr. Aguado was then placed back in Officer Bergeson’s patrol unit.

Officer Copeland acknowledged to Internal Affairs (IA) he did not try to de-escalate the situation with Mr. Aguado and that his comments agitated Mr. Aguado and “*played a part*” in inducing Mr. Aguado to slip out of his handcuffs. He also acknowledged to IA he did not give Officer Bergeson nor Mr. Aguado clear directions or instructions prior to using the Taser. Officer Copeland also advised he uttered some inappropriate statements and he failed to warn Mr. Aguado he would be tased as he “*rushed through his steps.*”

The fact that Officer Bergeson was able to single-handedly secure Mr. Aguado without incident prior to Officer Copeland’s arrival was given consideration in addition to the taunting that led to Mr. Aguado becoming angered and the resulting physical encounter. Officer Copeland’s statement to IA, that his conduct “*played a part*” minimized the weight of his actions on the resulting effect. However, Officer Copeland took full responsibility for his actions at his Disciplinary Review Hearing (DRH) and acknowledged his actions played a central role in the resulting effect. He also acknowledged at his DRH that his Response to Resistance (R2R) was contrary to policy.

Officer Copeland provided a verbal account to Sergeant Greenwalt for the R2R and a written report to supplement Officer Bergeson’s police report. Officer Copeland admitted to IA his description to Sergeant Greenwalt in the R2R that “*he walked up and saw Mr. Aguado trying to slip his handcuffs and that he told Mr. Aguado not to slip them,*” was not a good description of what happened. He further stated that he rushed through his report and gave a poor and brief summary of the events. Officer Copeland also acknowledged he failed to mention the verbal interaction between himself and Mr. Aguado because he felt it was not a part of the R2R. He also advised his own conduct was embarrassing and he did not want to think about the verbal interaction. He also stated his descriptions of the events that lead to and occurred during the two different uses of the Taser were also inaccurate.

Additionally, Officer Copeland wrote in the supplement to the report, “*I heard loud banging from the back of Bergeson’s patrol vehicle to see what was going on. Aguado was banging and attempting to slip his cuffs off.*” Officer Copeland stated this was

accurate but lacking in detail because he had been on duty for nearly twelve hours. He also acknowledged his description of Mr. Aguado as “*instantly confrontational, aggressive, and threatening*” was not an accurate statement but a byproduct of him “*lumping*” his entire encounter with Mr. Aguado together. Lastly, Officer Copeland admitted the statements “*I told Aguado that we were going to put his cuffs back on, and he needed to turn around. When we opened the door, Aguado ignored commands and got out of the vehicle,*” were both inaccurate. During his DRH Officer Copeland freely acknowledged and accepted full responsibility for writing a report that did not include the level of details required and contained inaccurate descriptions of the incident.

By these actions, Officer Copeland 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 un-resisted handcuffing.

➤ **Austin Police Department Policy 301.2: Responsibility to the Community: Impartial Attitude and Courtesy**

**301.2 Impartial Attitude and Courtesy**

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, or social or ethnic background.

- (a) Employees will not express or otherwise manifest any prejudice concerning race, religion, national origin, age, political affiliation, sex, or other personal characteristics in the performance of their duties.
  - 1. Employees will respect the rights of individuals and will not engage in discrimination, oppression, or favoritism whether by language, act, or omission.
  - 2. The use of racial or ethnic remarks, slurs, epithets, words or gestures, which are derogatory or inflammatory in nature to or about any person or group of persons is strictly prohibited.
- (b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.
- (c) Employees will make every effort to be courteous and respectful toward all persons.

➤ **Austin Police Department Policy 402.2: Incident Reporting and Documentation: Incident Reporting**

**402.2 Incident Reporting**

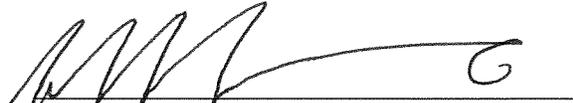
A well-written report can help make a case just as easily as a poorly written report can ruin a case. Employees have the responsibility to write clear, factual, and complete reports.

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

- 1. Copeland shall be evaluated by a qualified professional designated by the Department.

2. If that professional recommends a program of counseling, Copeland must successfully complete that program of counseling (it is expected that any program of counseling will last for at least twelve months but that is for the qualified professional to determine).
3. The program of counseling will be completed on Copeland's off duty time, unless the Office of the Chief approves the use of accrued vacation leave.
4. Copeland shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
5. If Copeland 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 Copeland 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 whether Copeland 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. Copeland took the Corporal/Detective promotional examination on October 9, 2015. Copeland shall voluntarily request that his name be permanently removed from that promotional eligibility list by notifying the Acting Director of Civil Service in writing within forty-eight (48) hours of the effective date of this Agreed Suspension of that decision.
8. Although Officer Copeland sought out and successfully completed tactical training on his own accord after this incident, he shall participate in all additional training specified by the Department.
9. Copeland agrees to a one (1) year probationary period to begin on the day he returns to duty after serving this agreed suspension. Copeland agrees that if during that one year period the Chief of Police sustains another violation involving the same or similar conduct (Copeland 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 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. Copeland 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. Copeland 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.

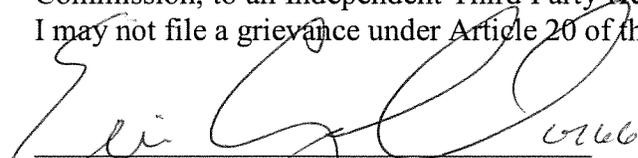
By signing this Agreed Discipline, Officer Copeland understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Officer Copeland waives all right to appeal to this disciplinary action, as well as the additional 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

10/20/2015  
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 Eric Copeland #6766

10/20/2015  
Date