

MEMORANDUM

Date: May 21, 2007

To: Cathy Ellison, Acting Chief of Police

From: Cpl. Thomas O'Connor #2654

Re: Response to May 17, 2007 Temporary Suspension/IA Control #06-635

I am writing to formally respond to your May 17, 2007 decision to suspend me for 3 days, in your capacity as the Acting Police Chief, after concluding the DRB in the above referenced matter.

As I mentioned in the DRB, as well as earlier with my chain of command and in my IA interview, I acknowledge that after reviewing the videotape of the incident with Mr. Snelling, I could have used different approaches and acted with more patience. As you know, as most things in life, hindsight is 20/20, and we can all come up with different things after-the-fact. Therefore, as I admitted in DRB, I am willing to accept the IA findings of not acting consistent with the code of conduct, A201.03.

But I must respectfully disagree with your decision that I violated "Use Of Force" policy (B101) for the following reasons:

1. Inconsistent with earlier findings- The IA investigation ruled out this alleged violation after conducting a comprehensive investigation that included reviewing the videotape and offense reports, interviewing all persons involved in this incident, and interviewing my supervisors. Additionally, as reflected in the IA investigative file, my Sergeant also believed that I properly used the taser. There was no justification given to ignore these findings, and in the absence of such justification, these findings should have been respected.
2. Department Policy does not create a higher standard - The "Use Of Force" policy does not create a higher standard of use than that created by law. Specifically, the Department's "Use Of Force" policy clearly states "[t]his order should not be construed as creating a standard of use of force higher than that created by law." Pg. 1, ¶ 1, 5th sentence. In our DRB you seemed to imply a position contrary to what our policy clearly states (i.e., Department expects more than what the law requires for use of force). While I appreciate this position generally, it is contradicted by the clear words of our "Use Of Force" policy.

In the IA investigation, I provided a copy of *Draper v. Reynolds*, 03-14745 (11th Cir. May 17, 2004). In this published opinion, the 11th Circuit Court of Appeals ruled as a matter of law that an Officer's use of a taser on a motorist was legally justified where the motorist was verbally confrontational, agitated, and non-compliant with repeated requests for his drivers license. Although the facts of *Draper* are similar to my situation with Mr. Snelling, the officer in *Draper* was not facing the imminent risk that I was facing of being pushed into oncoming traffic on that busy Thanksgiving Day. Thus, like in *Draper*, I was justified in my use of the taser.

3. Failed to take into account Mr. Snelling's actions justifying the use of the taser – Mr. Snelling was driving a vehicle without visible license plates in the front or back, passing my marked vehicle over the speed limit, not leaving the highway when I signaled for him to pull over, refusing to comply with my repeated requests for his drivers license (which he is legally required to produce upon my request as a police officer), acting verbally aggressive and agitated, and making movements toward me that led me to reasonably believe my safety was in danger if he pushed me into oncoming traffic.

Mr. Snelling's actions were clearly not those of a law-abiding citizen. Instead, these actions had markings of a possible fugitive or felon. Later, it turned out that he was neither. But at the time that I used my taser, these perceptions were reasonable given the totality of circumstances.

4. Concerns about display do not rise to a policy violation – Our department "Use Of Force" policy focuses on the time that the force was actually used. It does not address or otherwise provide any specific procedures or steps before actual use. Nor does it create a separate standard as to when it is proper to display a taser. An officer should have the ability to display his taser if there is a reasonable possibility of its use. Otherwise, his life could be in jeopardy if he has to keep it in his holster until actual use is necessary. In our DRB, you raised concerns about my display of the taser. While you may have legitimate questions about my display of the taser, display is not addressed in the "Use Of Force" policy, and should not constitute a violation.

5. Acted consistent with "Use Of Force" policy – As I told you at the DRB, and as found by the IA investigation and my Supervisor, I continue to believe that I was justified in using the taser on Mr. Snelling because I had a reasonable belief that my safety was in imminent danger (i.e., I met the standard of use in our policy).

Had I not used my taser, I still believe that I faced an imminent threat of being pushed into oncoming traffic, or engaging in a physical confrontation with Mr. Snelling on the busy highway, and thereby exposing both of us to serious injury or death.

As mentioned in DRB, we need to deal with actualities and not hypotheticals. There was much speculation about hypotheticals that ran against my use of the taser. But

what about those hypotheticals in which Mr. Snelling turned out to be an armed and dangerous fugitive or felon.

But in the end, my use was reasonable and it was effective in that it subdued Mr. Snelling and it did not result in any significant harm to him or me.

6. Unusual circumstances – I had never used my taser before. I did not receive comprehensive training on the taser until after the incident, and the incident took place on Thanksgiving when there was pressure to clear calls quickly because we were short handed. Mr. Snelling was not presenting himself as an ordinary motorist stopped for a traffic violation. I was facing a [REDACTED] since I had not eaten since earlier in the morning, and when this happens I become more agitated because of [REDACTED]. These factors do not appear to have been taken into consideration.

For all these reasons, and based on my over all good job record, I expected that the IA findings that I did not violate the “Use Of Force” policy would be affirmed. I nevertheless accepted your suspension given the appeal procedures for contesting suspensions of 3 days or less. I also consider this incident as a learning experience as well as readily accept the additional training that has been provided since and which I will receive in the near future at your direction.

In conclusion, I appreciate your time and consideration and I continue to look forward to serving our community.

c: Mr. Mike Cronig, Assistant City Attorney
Ms. Kathy Rogers, Director of Civil Service, City of Austin
Ms. Jennifer Soldano, Manager of Human Resources, City of Austin
Detective Cara Boyd, Internal Affairs
Cpl. Thomas O’Connor