



OFFICE OF POLICE OVERSIGHT

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May 22, 2024

TO: Robin Henderson, Interim Chief, Austin Police Department
FROM: Gail McCant, Director, Office of Police Oversight
SUBJECT: OPO Recommendation, Case # 2023-1145, APD #23-350510
Officer Andrew Kabbah #9239

Dear Chief Henderson,

On December 16, 2023, Officer Andrew Kabbah proactively responded to 200 E. 6th Street for HOTSHOT, shots fired in the area. Upon reaching the scene Officer Kabbah determined a shooting had occurred and the crime scene needed to be secured. Officer Kabbah approached two unidentified subjects and requested they get on the sidewalk and out of the crime scene, to which they complied. He then approached a male identified as Robert Patten standing in the street. Officer Kabbah asked Mr. Patten to “get on the sidewalk, please,” however, Mr. Patten remained in the street looking somewhat bewildered. Officer Kabbah asked again, “Sir, get on the sidewalk,” and Mr. Patten responded, “why?” At that time Officer Kabbah pushed Mr. Patten to the ground and a brief scuffle ensued (Axon 2023-12-16 X60AA864S – 23:55:18). Officer Kabbah subsequently detained Mr. Patten for not leaving the crime scene. Mr. Patten had injury to his face because of the incident.

During Officer Kabbah’s initial Response to Resistance interview with Corporal Paul Murray, #7946, he (Kabbah) stated Mr. Patten was noncompliant and he (Kabbah) went hands on with him and Mr. Patten ended up falling to the ground, and after falling he injured his face (2023-12-17 X60AA351H – 00:51:00). Corporal Murray asked Officer Kabbah if the force used was Level 3 takedown with possible injuries, and Officer Kabbah stated, “yes.” (2023-12-17 X60AA81E – 00:53:55). During his IAD interview Officer Kabbah stated to the interviewing investigator his (Kabbah) “actions resulted in Mr. Patten falling, but that was not my intent at all.”

At the conclusion of Officer Kabbah’s interview with IAD he noted, *“I think it’s just very - I think it’s important to highlight that my actions this night are not actions that - are not within my character or my actions in a normal operating procedure as a police officer in Downtown. I think unbeknownst to me, I returned back to work super early than I was - I - I should have. I don’t think, understanding now, [REDACTED] and things that I wasn’t aware of, in the [REDACTED] and things of that nature. I - I wasn’t experiencing those things in that moment that were visible to me to - ultimately survivor’s guilt. And which I believe led - led me into the hyper stress and hyper reactive mode*



that I was in. In order to almost undo the actions of November 11, where I lost a really good friend of mine. And I never want to experience that or want anybody to experienced that. And that was where my framework - where my headspace was at to keep people safe. I just think that's very important to know. And I just wanted that to be said."

Improper use of force has become a recurring behavior with Officer Kabbah. OPO shares empathy with the officer and respect his desire to continue to work as an APD officer, however, we must continue to balance the officers needs with that of the community.

OPO's review of Kabbah's BWC demonstrates he did not use objectively reasonable force in getting Mr. Patten to comply to his command. Officer Kabbah used force on Mr. Patten who was exhibiting verbal noncompliance.

OPO recommends a classification A and C based on the following policies;

***APD's General Orders, Chapter 2 Response to Resistance
Section 200.3 Resistance reads:***

In any force encounter, and regardless of the tool/weapon/tactic chosen by the officer, the officer's decision to use the tool/weapon/tactic is dependent upon the suspect's level of resistance, the threat reasonably posed by the suspect to the officer or another, and the totality of the circumstances known to the officer at that time.

(a) Types of Resistance

2. Passive Resistance (Non-Compliant) - A passively resistant subject that fails to take voluntary physical action to obey officer commands yet do not offer physical resistance when officers are forced to take physical control of them due to non-compliance. (a) An example would be a subject going limp during an arrest. Among other things, General Orders do not allow for the use of a Taser when the only resistance offered is passive resistance.

Section 200.4 Response to Resistance reads:

All responses to resistance must be objectively reasonable. In other words, another reasonable officer, faced with the same circumstances, could believe that the officer's response to resistance was reasonable based on the threat, level of resistance, and totality of the circumstances. 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 order.

Section 200.4.1 Determining the Objective Reasonableness of Force reads:

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



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question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them.

(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. Reasonable opportunity for the officer to engage in de-escalation;*
- 2. The conduct of the individual being confronted as reasonably perceived by the officer at the time;*
- 3. Officer and subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers versus subjects;*
- 4. Influence of drugs and alcohol or mental capacity.*

APD's General Orders, Chapter 900 General Conduct and Responsibilities

Section 900.3.2 Acts Bring Discredit Upon the Department reads:

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department.*

Regards,

Gail McCant
Director
Office of Police Oversight