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City of Austin
Civil Service Office
September 29, 2021
12:18pm



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Joseph Chacon, Interim Chief of Police

DATE: September 28, 2021

SUBJECT: Agreed Temporary Suspension of Police Officer Katherine Alzola #9045
Internal Affairs Control Number 2021-0316

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 temporarily suspended Police Officer Katherine Alzola #9045 from duty as a City of Austin, Texas police officer for a period of ninety (90) days. The agreed temporary suspension is effective beginning on September 29, 2021 and continuing through December 27, 2021.

I took this action because Ofc. Alzola 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 Ofc. Alzola in violation of Rule 10:

On March 12, 2021, at 2:04 AM, Officers Katherine Alzola, James DeStaso, and Eric Perez responded to an apartment on Townesouth Circle for a "Nature Unknown - Urgent" call for service. While inside the apartment at the invitation of one of the occupants, Ofc. Perez recognized an occupant of the residence as Mr. CJ, who had a warrant for his arrest for Assault with Injury - Family Violence. Officers Perez and DeStaso attempted to detain Mr. CJ to confirm the outstanding warrant. Mr. CJ displayed resistance and a Response to Resistance (R2R) ensued involving Officers Perez, DeStaso, and Alzola.

Within seconds, a fourth officer (hereafter Officer #4) arrived and also engaged in the response to resistance, striking Mr. CJ's back with his baton. As officers were attempting to gain control of Mr. CJ and apply cuffs to him, Mr. CJ inadvertently handcuffed himself during the struggle. Ofc. Perez then completely secured the handcuffs, without effectively communicating to the other three officers that he had done so. Then, while perceiving that Mr. CJ was still resisting, Officer #4 deployed his Taser against Mr. CJ three times after the handcuffs had been applied.

While the officers were still on the scene, and before a supervisor arrived, Ofc. Alzola asked Ofc. Perez if he would turn off his Body Worn Camera (BWC), so they could have an unrecorded conversation. Ofc. Perez turned his camera off accordingly and, as was later admitted to Internal Affairs, the two had a conversation about the incident.

Ofc. Alzola reactivated her BWC at some point. When a supervisor arrived on-scene to conduct the routine field investigation of the officers' use of force, Ofc. Alzola gave the supervisor an incomplete account of her knowledge and observations.¹ She also wrote an incident report that was incomplete as to her knowledge and observations.

Ofc. Alzola also took photographs of the injuries that Mr. CJ had sustained during the R2R. The injuries consisted of linear-shaped swollen contusions upon Mr. CJ's back. Five or more of these injuries were located along or across the area of Mr. CJ's spine. These injuries were consistent with the delivery of expandable baton (ASP) strikes. There were also skin punctures on the upper-right portion of Mr. CJ's back from the deployment of Taser probes.

Thereafter, the Austin Police Department (APD) Force Review Unit (FRU) reviewed the R2R per policy and completed an Incident Review Packet (IRP). During the review of the R2R, the FRU identified possible policy violations regarding Officer #4's use of force. These possible policy violations were addressed separately in IA case number 2021-0305. The FRU also identified possible policy violations, including failure to intercede by Officers Alzola, DeStaso and Perez.

¹ All four of the officers were required to give an initial field interview with the on-scene supervisor and to report their involvement and observations to the supervisor. They were each also required to write an incident report of their involvement and their observations.

The officers' Commander generated an internal complaint memorandum requesting that Internal Affairs (IA) initiate an administrative investigation to determine if any violation of Department policy, Civil Service rules, or state law had been committed by Officers Alzola, DeStaso, and/or Perez.

The Austin Police Department's General Order 200.1.3 (*Duty to Intercede*) requires:

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

At the conclusion of the IA investigation, Ofc. Alzola's Chain-of-Command and I concluded that she did not violate the Duty to Intercede General Order during the R2R, but that she did violate the Duty to Intercede General Order reporting requirement in the immediate aftermath of the R2R. The Chain-of-Command based its conclusion upon the following factors:

- 1) Ofc. Alzola did not have a reasonable opportunity to prevent the harm to Mr. CJ. While Mr. CJ was still resistant, it would have been impractical to expect Ofc. Alzola to physically intercede within the few seconds when the baton strikes were applied, without placing herself, her fellow officers, and the other occupants of the household in danger.
- 2) Ofc. Alzola did not realize Mr. CJ was handcuffed when the baton strikes were delivered, nor when the Taser was administered by Officer #4.
- 3) This is corroborated by the fact that Ofc. Alzola asked Ofc. Perez, prior to their supervisor's arrival and after the conclusion of the R2R, if Mr. CJ was handcuffed during the struggle. According to Ofc. Alzola, Ofc. Perez confirmed her suspicions that Mr. CJ was handcuffed prior to being tased by Officer #4.²
- 4) While it may not have been reasonable to have expected Ofc. Alzola to physically intercede, prior to officers gaining control of Mr. CJ and placing him under arrest, Ofc. Alzola did not promptly report her observations to a supervisor in accordance with the Duty to Intercede General Order.
- 5) Specifically, Ofc. Alzola made no mention to the supervisor that the baton was used to strike Mr. CJ multiple times in the back/spine area. She also did not mention that Mr. CJ was tased multiple times and that he was handcuffed at the time of the tasing.

Ofc. Alzola's Chain-of-Command and I also concluded that she violated APD General Order 303.3.3 (*When Department Issued BWC System Deactivation is Authorized*) when

² Ofc. Alzola suspected that Mr. CJ might have been handcuffed during the R2R when she noticed Ofc. Perez pull out his keys to unlock the handcuffs during the struggle, but she did not confirm her suspicions until their conversation in the immediate aftermath of the R2R.

she deactivated her BWC in the immediate aftermath of the R2R and then had a conversation with Ofc. Perez about the incident. Ofc. Alzola acknowledged to IA that she violated General Order 303.3.3 and accepted responsibility for prompting Ofc. Perez to turn off his BWC and then having this conversation prior to the conclusion of the incident.

Ofc. Alzola also indicated that Ofc. Perez told her during this unrecorded conversation, that Mr. CJ was handcuffed during the application of the baton strikes, and prior to the application of the multiple Taser cycles by Officer #4. By verifying this information, Ofc. Alzola advised IA that she perceived that Officer #4 may have used objectively unreasonable force on Mr. CJ and she perceived that Ofc. Perez failed to adequately intercede to prevent further harm to Mr. CJ in accordance with APD General Orders. Yet she did not report these potential policy violations to a supervisor.

Ofc. Alzola's Chain-of-Command and I also concluded that she violated APD General Order 211.4.1 (*Employee Reporting Guidelines For All Force Level Incidents*) by failing to provide a detailed description of the force used against Mr. CJ in her incident report, including but not limited to her observation of Officer #4 striking Mr. CJ's back multiple times with his baton and using his Taser against Mr. CJ. The fact that she turned off her BWC and omitted this information in her oral description to the on-scene supervisor and again in her written report was given significant weight by me and her Chain-of-Command in deciding her level of discipline.

In sum, it was significant to me and the Chain-of-Command that Ofc. Alzola took full responsibility for her actions and inactions at her DRH—including by admitting to violating the General Orders for which she was sustained upon included in this suspension memorandum.

By these actions, Ofc. Alzola 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 200.1.3: Response to Resistance: Duty to Intercede**

200.1.3 Duty to Intercede

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

➤ **Austin Police Department Policy 211.4.1: Response to Resistance Inquiry, Reporting, and Review: Employee Reporting Guidelines For All Forced Level Incidents**

211.4.1 Employee Reporting Guidelines For All Forced Level Incidents

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

- (a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.
- (b) Supplements shall be completed by:
 - 1. All other employees who are involved in a force incident.
 - 2. Employees who witness a force incident.
 - 3. Employees assisting at the scene of a force incident.
 - 4. A supervisor is required to complete a supplement to the response to resistance incident report of Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.
- (c) The following information shall be included in each report and supplement:
 - 1. The original reason for police presence on the scene.
 - 2. The name and employee number of the supervisor notified of the incident.
 - 3. A detailed description of the circumstances and subject actions that resulted in the response to resistance.
 - 4. A detailed description of the force used.
 - (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
 - 5. Subject and witness information.
 - 6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
 - 7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.
- (d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other

personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.

➤ **Austin Police Department Policy 303.3.3: Body Worn Camera Systems: When Department Issued BWC System Deactivation is Authorized**

303.3.3 When Department Issued BWC System Deactivation is Authorized

Once the BWC system is activated it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.

- (a) For purposes of this section, conclusion of an incident has occurred when:
 - 1. All arrests have been made and arrestees have been transported; and
 - 2. No further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive.)
- (b) Employees may choose to discontinue a recording currently in progress for any non-confrontational encounter with a person, including an interview of a witness or victim.
- (c) Employees shall adhere to posted policies of any Law Enforcement, Court, or Corrections entity that prohibit the use of BWC systems therein (i.e. TCSO, Courts, Juvenile Detention Centers).
- (d) Employees may deactivate the audio portion by engaging the mute button on the body worn camera, for administrative reasons only, as follows:
 - 1. The reason for audio deactivation must be recorded verbally prior to audio deactivation; and
 - 2. After the purpose of audio deactivation has concluded, employees will reactivate the audio track.
- (e) For purposes of this section, an "administrative reason" refers to:
 - 1. Personal conversations unrelated to the incident being recorded;
 - 2. Employee to employee training (e.g., when a Field Training Employee or Field Training Supervisor wishes to speak to an employee enrolled in the Field Training Program about a training issue);
 - 3. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall be stated prior to the audio deactivation.

In addition to this agreed temporary suspension, Ofc. Alzola agrees to the following terms and conditions:

1. Ofc. Alzola shall attend any training specified by her Chain-of-Command.
2. Ofc. Alzola agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, she commits the same or a similar act of misconduct for which she is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), she will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one-year period begins on the day Ofc. Alzola returns to duty after completing her agreed suspension. Should Ofc. Alzola commit the same or similar violation outside the one-year period, she will be indefinitely suspended but retains the right to appeal that suspension.
3. Ofc. Alzola understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass her for a future promotion in accordance with APD Policy 919.11.
4. Ofc. Alzola agrees that she, and all others claiming under her named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind or nature whatsoever that she now has, or may have in the future, including without limitations, claims arising under any federal, state or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
5. Ofc. Alzola acknowledges that she had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with a representative of her choosing prior to signing her acceptance where indicated below.

By signing this Agreed Discipline, Ofc. Alzola understands and agrees that I am forgoing my right to indefinitely suspend her for the conduct described above and that by agreeing to the suspension, Ofc. Alzola waives all right to appeal this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, and to District Court.



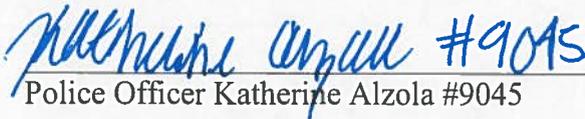
JOSEPH CHACON, Chief of Police

Date

9/28/2021

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 and that by agreeing to the suspension, I have no right to appeal this disciplinary action, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.



Police Officer Katherine Alzola #9045

Date

9/28/21