



P o l i c e D e p a r t m e n t
I n t e r - O f f i c e C o r r e s p o n d e n c e

DATE: **March 27, 2018**

TO: **All Sworn Personnel**

FROM: **Joel F. Fitzgerald, Ph.D.**
 Chief of Police

SUBJECT: **After Arbitration Review 2018-AA-01**

This information is intended for training purposes. Personnel still employed by the City will be referred to by their rank and/or role in the case.

Incident Summary

On Tuesday, June 23, 2015, at approximately 3:25 A.M., the officer was involved in a shooting a 1329 New York Avenue. The officer responded to a priority one prowler call from a resident at 1329 New York Avenue. The details provided by the 911 caller stated an unknown black male with a knife was knocking on his front door. The officer was working in a uniformed capacity, driving a marked patrol unit, and was in the vicinity of the call. The officer arrived at the location first and observed a male in the street near the call location. The male matched the description of the suspect in the call. The officer confronted the male, who was armed with what the officer believed to be a knife. The officer exited his patrol vehicle with his shotgun and aimed at the male while giving him verbal commands to drop the knife, turn around, and get on his knees. The male partially complied by dropping what was later determined to be a barbeque fork and kneeling on one knee. During the process, the officer was still aiming his shotgun at the male. While aiming at the male, the officer inadvertently discharged the shotgun and struck the male in the right arm.

The following allegations were brought against the officer:

FORT WORTH POLICE DEPARTMENT GENERAL ORDERS/CODE OF CONDUCT

G.O. 306.03 Definitions

- A. Force is defined as the compulsion or restraint exerted upon or against a person for the purpose of
1. Compelling a person to comply with an officer's direction; or

2. Overcoming resistance by a suspect during arrest or detention; or
 3. Defending any person or yourself from an aggressive action by a suspect or another which represents a threat of physical injury or death.
- B. Excessive control/force results when the use of force is greater than that justified by the violator's level of resistance.
- C. Deadly force is any force that is reasonably likely to cause death or serious physical injury.
- D. Control for the purposes of this section, is defined as the actual physical control of a subject that allows for the completion of a lawful arrest.

G.O. 306.04 Force Options

Under no circumstances will the force used by an officer be greater than necessary to make an arrest or a detention or to protect oneself or another, nor will the force be used longer than necessary to subdue the suspect, and deadly force shall not be used except as specifically provided in this directive.

G.O. 410.02 Disciplinary Action: Civil Service Employees

B. The following twelve (12) rules as set forth in Chapter 143, Local Government Code, and the Rules and Regulations of the City of Fort Worth Civil Service Commission, are causes for disciplinary action, including moral turpitude:

3. Acts of incompetency
12. Violation of any of the rules, regulations, or any orders of the police department.

General Order 703.00- Professional Conduct

B. Neglect of duty on the part of any employee is cause for disciplinary action. The offender shall be disciplined according to the severity of the violation, the commensurate responsibility or accountability of their rank or position, the results brought about by the action or inaction, and the effect it has upon the discipline, good order, and best interest of the department. Neglect of duty includes, but is not limited to, the following:

6. Using unnecessary and/or excessive force, toward any person.

Texas Penal Code 22.05 Deadly Conduct

- (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

- (b) A person commits an offense if he knowingly discharges a firearm at or in the direction of:
1. One or more individuals . . .
- (c) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

Findings & Disposition

The officer failed to follow the training guidelines offered by the Fort Worth Police Department, in regards to deploying a shotgun. This failure to follow departmental training ultimately resulted in the officer recklessly pointing his loaded shotgun and later accidentally discharging the shotgun, striking a male. Based on these facts, the investigation showed that the officer used unnecessary and excessive force. The incompetency and deadly conduct of the officer resulted in him using force greater than necessary in the investigation. The officer's overall actions are not consistent with the conduct expected of a Fort Worth Police Officer. The Chief of Police suspended the officer indefinitely. An appeal was filed with the City of Fort Worth Firefighters' and Police Officers' Civil Service Commission.

Arbitration Action

The officer appealed the indefinite suspension to the City of Fort Worth Firefighters' and Police Officers' Civil Service Commission. On February 27, 2018, both parties appeared through counsel and represented that they were in agreement to forego a hearing on the merits of the appeal pursuant to the following findings of the hearing examiner.

Findings

The Hearing Examiner sustained the allegation of excessive force against the officer for violation of Fort Worth Police Department General Order 306.04. The Hearing Examiner sustained the allegation of deadly conduct against the officer for violation of Texas Penal Code 22.05(a)(1)(c).

No other allegations were sustained.

Disposition

The Hearing Examiner found that the officer's indefinite suspension should be reduced to a 65-day suspension without pay. In addition, the Hearing Examiner was notified that the officer tendered his resignation from the department effective immediately.