



CITY OF PORTLAND, OREGON



Bureau of Police

Sam Adams, Mayor

Michael Reese, Chief of Police

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MEMORANDUM (CONFIDENTIAL)

November 8, 2010

TO: Officer Ronald Frashour #40927
Personnel Division

SUBJECT: Discipline: Termination
2010-B-0004

Your conduct, while employed with the Portland Police Bureau, has not met standards acceptable to the Bureau. The charges include a violation of Directive 1010.10 – Deadly Physical Force, Directive 1010.20 – Physical Force, and Directive 315.30 – Unsatisfactory Performance.

This disciplinary action stems from your involvement in an on-duty incident that occurred on January 29, 2010, in an apartment complex parking lot at 12800 NE Sandy Blvd. in Portland. This incident began as a welfare check call and ended nearly two hours later with a police shooting that resulted in the death of Aaron Campbell (Campbell). You arrived at this call about one hour into it and were assigned the role of lethal cover using a Bureau issued AR-15 rifle. You were the officer who shot and killed Campbell within one minute of his emerging from his apartment. You shot Campbell because he was running away from police after being hit in the buttocks by a less lethal (bean bag) gun. You said you thought Campbell was reaching into the back waistband of his pants for a gun. In fact, Campbell did not have a gun.

Summary of Charges and Reason for Termination

As a matter of common sense, law, policy and training, sworn members of the Portland Police Bureau know that the decision to use deadly physical force is the most important decision that a member will make in the course of his or her career.

The Bureau's overall policy relating to force, Directive 1010.20, states in part that the policy of the Bureau is to accomplish its mission as effectively as possible with as little reliance on force as practical. Members are authorized to use only the force reasonably necessary under the totality of circumstances to perform their duties and resolve confrontations effectively and safely. Totality of circumstances factors at a scene include: (1) the severity of the crime; (2) the impact of the person's behavior on the public; (3) the extent to which the person posed an

immediate threat to the safety of officers, self or others; (4) the extent to which the person actively resisted efforts at control; (5) whether the person attempted to avoid control by flight; (6) the time, tactics and resources available; and (6) any circumstances that affects the balance of interests between the government and the person. In addition, members are expected to develop and display over the course of their practice of law enforcement the skills and abilities that allow them to regularly resolve confrontations without resorting to higher levels of allowable force.

Directive 1010.20 further provides that the Bureau places a high value on resolving confrontations, when practical, with less force than the maximum that may be allowed by law. Bureau policy and long-standing training principles emphasize using de-escalation tools that minimize the need to use force.

In addition to the Bureau's general use of force policy, the Bureau's policy regarding use of deadly force, Directive 1010.10, emphasizes that in order to use deadly force, there must be an immediate threat of death or serious physical injury or a significant and immediate threat of death or serious physical injury to the member or others.

Bureau Directive 315.30 requires members to perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the Bureau. The failure to conform to work standards established for the rank, grade or position is unsatisfactory performance.

Your use of deadly force against Aaron Campbell was not authorized by Bureau policies or training. Your judgment and decision-making violated bureau policies, training and the expectations of you as a City of Portland police officer because:

- Campbell did not pose an immediate threat of death or serious physical injury; nor did he pose a significant and immediate threat of death or serious physical injury to you or others. Further, you were not reasonable in concluding that Campbell posed a threat at the level required to use deadly force.
- You employed a rigid and inflexible approach in assessing the totality of circumstances facing you. Your inability or unwillingness to adapt your thinking and tactics in response to changing circumstances negatively affected your decision-making prior to your decision to use deadly force, your decision to use deadly force, and is still evident in your post-incident explanations for your decision-making.
- In the totality of circumstances at the scene, use of deadly force was not reasonably necessary.

Under City of Portland Human Resources Administrative Rule 5.1(8), a violation of federal or state law, or of the City Charter, ordinances or any City rules or regulations, including Bureau-specific policies, is cause for disciplinary action.

Background

You have been employed with the Portland Police Bureau since November 29, 2001.

There are two incidents in the last two years for which you received counseling for your poor judgment and decision-making in use of force events.

In mid August 2008, you responded to assist another officer who had just performed a pursuit intervention technique (PIT) on a reckless driver. The description of the vehicle driven by the reckless driver was red Honda Accord. You observed a silver Honda with a different plate and damage. You did not verify the description of the suspect vehicle. Thinking it was the reckless driver, you performed a PIT on the silver Honda. The silver Honda was being driven by an innocent person, not the reckless driver. This incident resulted in physical damage and injury. Your application of the PIT was found to be out of policy and lacking probable cause, and in violation of Directive 315.30 - Unsatisfactory Performance. You received command counseling for this on October 24, 2008.

In 2009, you received command counseling for two separate violations of bureau policy that occurred during a use of force encounter with a citizen named Frank Waterhouse. There, you deployed your Taser without first giving a verbal warning and your use of the Taser was found to be out of policy. In addition, the matter was litigated in federal court as a civil rights claim, with a conclusion from the jury that you and another officer were liable for excessive force against Mr. Waterhouse; the judgment was for \$209,188.26 plus interest.

Your background includes approximately 1,300 hours of training through August 2009, including Police Corp, Advanced Academy, defensive tactics, AR-15 operation, patrol tactics, use of force, crowd control, communication tactics, taser operation, less lethal operation, as well as certification as a defensive tactics instructor and firearms instructor. You have received training regarding interacting as a police officer with persons who face physical or mental barriers, including 40 hours of crisis intervention training which was required following the death of a mentally ill person while in Portland police custody. The CIT training taught officers to recognize that a person's mental illness may affect the person's behavior and ability to respond or interact with police.

Along with other training designed to develop sound judgment, police officers at PPB are taught tactical guidelines. The guidelines have been a part of PPB skills training since at least the mid 1980's. The guidelines are designed to assist officers in use-of-force decision-making, minimizing the risk of injury to the subject, officers, and the public.

In the last few years there have been a number of reviews and substantial internal Bureau, City Council and community discussion regarding the Portland Police Bureau's use of force decision-making generally and specifically, where mental health issues are a possibility. In 2008, the Police Bureau modified its force policy to emphasize the central role of the Graham v. Connor "totality of circumstances" analysis in force decision making. At the same time, the Bureau

announced a requirement that every officer develop the skills and abilities necessary to regularly resolve confrontations safely and effectively without resorting to the maximum force allowed by the Supreme Court's Graham standard. The Bureau also announced the policy that members use only the force reasonably necessary under the totality of circumstances to perform their duties and resolve confrontations effectively and safely, and emphasized a high value on the use of de-escalation tools that minimize the need to use force. A force data collection reporting and review system has been established; officers and supervisors both monitor that data.

Over the several years prior to this incident, the Bureau also trained its officers and sergeants on patrol-level responses to potential hostage or barricaded persons incidents. The model response trained by the Bureau required coordination of custody, perimeter and communication functions, management of supervisory span of control, cooperation and collaboration between supervisory personnel and effective management and distribution of information and commands at a scene.

Facts Supporting Action

This matter was investigated and reviewed through the course of the following: Detective Division investigation, grand jury review, Internal Affairs Division investigation, Training Division review, precinct commander review and recommendations, and Use of Force/Performance Review Board review and recommendations. All of this material was considered and is incorporated here by reference.

However, the core explanation for the conclusion that your use of deadly force was outside bureau policy, training and expectations is set out below.

1. Information Available Before You Arrived

At 1725 hours on January 29, 2010 you went to the call, which was at an apartment located at 12800 NE Sandy Blvd. You were responding to a request for an AR-15 operator. You read the data system entry while your partner officer drove to the call. The entry included the following information:

- The call came in about an hour prior (1622 hours).
- The call was generated as a welfare check on a female, Angie Jones.
- Jones' boyfriend, Campbell, was suicidal.
- Campbell was armed with a gun.
- Campbell's brother died that morning and he "is very distraught."
- Campbell was flagged in the system for domestic violence.
- Campbell's most recent criminal justice event occurred nearly a year earlier, in April 2009.
- "Eyes were on" apartment #37; meaning that officers had it under surveillance.
- A number of officers and two sergeants were on-scene and had the location contained.
- Police were setting up for a loud hail.

You also knew that the female (Jones) and three children were thought to be inside the apartment.

2. Information Available to You On-Scene

You arrived and replaced Sergeant Reyna in the role of lethal cover for the custody team. Officer Lewton was assigned as less lethal cover for the custody team. Sergeant Reyna was the incident supervisor. You learned that the female, Ms. Jones, was out of the apartment but the children were still inside. You learned there was a text message from Campbell to Ms. Jones stating something like "Don't make me get my gun, I aint playing." You knew there were numerous officers on scene, and that other officers were working to communicate with Campbell. You were standing very near other members of the custody team, including Officer Lewton. You said you learned that Ms. Jones had said that Campbell had a small gun and you assumed it was a small handgun; you also said you were told that Campbell kept the gun in his sock in the pocket of his coat. (IAD Transcript p. 10.)

At 1732 hours, Officer Quackenbush was talking with Campbell. At 1734 hours, you advised that the three children, who were very young, were coming out the front. At 1735 hours, Sergeant Reyna advised by radio that officers were to hold their positions. At 1751 hours, Sergeant Reyna advised by radio that they were on the phone with Campbell. At 1758 hours, Sergeant Reyna advised by radio that they were getting positive feedback from Campbell and were still in text communication with him.

At 1807 hours, you (or, according to you, Officer Willard) advised by radio that Campbell was walking out. Sergeant Birkinbine, who was working with Officer Quackenbush on communication with Campbell, had not advised by radio of the plan to contact Campbell or the intended message prior to making contact with Campbell shortly before 1807. However, at this same time, Sergeant Birkinbine did advise by radio that Campbell was compliant.

Campbell walked out of the apartment with both hands on the back of his head. In compliance with Officer Lewton's instructions, Campbell slowed his pace, walked backward towards Officer Lewton, you and other officers, with both of his hands on the back of his head, and stopped at least twice in response to commands. Officer Lewton instructed Campbell to put his hands straight up into the air. Campbell remained in the same spot with his both hands on his head and said something to Lewton that you did not hear because of your focused mindset. According to records, at 1808 hours, Officer Lewton deployed less lethal force, which struck Campbell in the buttocks. Campbell's back had been to Officer Lewton and you; he began to run away from you towards the alcove of his apartment. According to records, at 1808 hours, you advised of shots fired, lethal force, and subject down.

When interviewed by detectives on February 1, 2010, Officer Lewton stated that immediately after Campbell fell to the ground, he looked to his left at you. Officer Lewton stated: "And um, he [Frashour] looks at me and says something like um, uh, says something to me about um, his

[Campbell's] hands were going towards his waistband um, and uh, I thought he had a gun. It was something like that."

3. Campbell Was Not a Threat at the Level Required for Deadly Force and It Was Not Reasonable for You to Think So

Campbell did not pose a threat at the level required to support a decision to use deadly force. The Training Division and precinct commander reviews cover this issue in detail but some of the factors include:

- The reason for the initial call was a welfare check.
- Campbell was not reported as having committed a crime.
- Campbell was not wanted for a crime.
- Campbell was reportedly distraught and in need of mental health assistance.
- Campbell was reported to be suicidal.
- The most threatening statement, in the form of a text message that Campbell sent Jones, was reported as: "Don't make me get my gun, I aint playing."
- Campbell sent the small, very young children out.
- Communications between officers and Campbell were occurring and were reported as positive in nature.
- Campbell did not directly threaten officers.
- Campbell did not come out of the apartment with a weapon drawn or in view.
- Campbell came out of the apartment with his hands clasped together on top of his head and he walked backward toward officers and followed commands to slow down and stop.
- Although passively resistant, Campbell was substantially compliant with officer instructions.
- There was no justification for the use of less lethal force in order to force Campbell to put his hands in the air when his hands were already on his head
- That the less lethal rounds would have an effect such as pain (officers are taught that the pain from less lethal is the equivalent of being hit by a baseball/line drive).
- Plenty of resources were available, including other officers providing cover from various vantage points and a K9 (dog).
- The scene was well lit and there were no obstructions to vision.
- You did not hear any of the commands that the less lethal officer was giving Campbell.
- There were considerable resources and tactics available to vigorously pursue a non-fatal resolution of this confrontation while limiting the risk to an acceptable level. There were sergeants on scene, an inner perimeter, an outer perimeter, a communications team and a custody team.
- No officer, including you or Officer Lewton, observed a gun or any weapon in the back of Campbell's waistband.

These are factors that you failed to recognize, or ignored, or you were distracted and did not account for in your decision-making.

4. Examples of Your Rigid and Inflexible Approach

In addition, you saw Campbell as a threat the entire call to the exclusion of any other interpretation of Campbell's actions. Not every example is listed here but they are covered in the review materials. Some examples are set out below.

You characterized the children coming out as a bold action by Campbell. You thought Campbell may be considering suicide by cop and believed he was planning something.

Just prior to Campbell coming out you heard a report from officers covering the back of the apartment that Campbell was looking out the blinds. You interpreted this as Campbell gaining information and planning to attack officers or plan an escape.

Your perspective regarding Campbell's emergence from the apartment and subsequent events is described in a number of additional places, including the IAD Transcript at pages 10-27.

On Campbell emerging from the apartment you explained:

"I was shocked when he came out and alarmed by how determined he seemed. I've seen a lot of people come out to give up and I'd never seen anyone do it the way he did it. It just wasn't right. Uh, normally people move slow - - normally people put their hands straight up in the air, but it was the determined way he seemed to be moving and, uh, it wasn't slow. Normally people are slow, they're methodical, they do not run quickly and have something bad happen. That didn't seem to be the case with him and I noticed that right away. And I don't know if he stopped in the middle of the parking lot on his own or because he was directed to. But as soon as he emerged he was being given voice commands by officer, at least one officer and I assumed my role as lethal cover and I was just looking to the threat. Looking at him. Uh, but he did stop uh and he was facing directly south with his hands on his head."

You described Campbell's hands as on his head with his fingers "interlaced or very close." (IAD Transcript, p. 11). In response to the question, "Could you see his underwear above the pants?" you recalled "seeing a white t-shirt because the arms up on his head raised the coat up a little bit and I could see a white t-shirt. Uh, I don't know if I saw, I couldn't say for sure if I saw underwear or not." You said you were focused on his hands.

You were aware that commands were being given by officers but, "didn't pay attention to the specific wording or details" because they did not seem out of the ordinary. He was walking backwards towards officers with both of his hands on his head; you described his pace as "too fast."

Before he reached a distance of about 15 feet from the police car, which you described as Campbell's stopping point, you switched your aperture sight for closer range shooting. Also,

you had shifted position because you had been squatting/kneeling for a long time, your legs were in pain, and you felt uncomfortable.

You described your observations:

“I heard him [Lewton] say stop. I also (indecipherable) and I heard him say put your hands up and they were on his head. And that was one of the only commands now thinking back that stood out because I thought to myself briefly, well, they’re already on his head. And then I thought, well, but that is how we are suppose to do it.”

“I know you can’t see it on the tape, but he’s looked through me, open hole in his arm made by his elbow with his hand and he looked in the direction, me and Officer Willard because we were the farthest ones up on the police car. I don’t know that he would – I don’t know if he, it’s right to say he was looking at Officer Lewton, but he looked in the direction of me. I don’t know if he saw me, but he looked in my direction and he yelled and I don’t know, I – the dog is barking and he so it’s loud out there, but he yelled something and it was, I took it, I understood it to be aggressive and hostile and loud. And I’ve heard people yell when we’ve been trying to take them into custody and I’ve heard people be happy about it and I’ve heard people say things like sir, I want to comply with you, I can’t for example, if he had a bad leg, or a broken arm and can’t raise his hand, or whatever. He was not trying to communicate any intent to comply. Very much not trying to do that. He was communicating an intent and showing not to comply. He was yelling back at the commands that were being given by Officer Lewton. And other than the command to put your hands up, I again don’t remember the others. He just yelled something that I understood right away to be aggressive. Um, his hands were still on his head. I-then he was hit with the bean bag gun. He was hit with the bean bag because I saw it, I saw the bean bag bounce off of him, I believe in the rear-end, or just below, he was hit with the bean bag and it bounces to the ground and I saw it and heard it. And I knew what it was right away.” (IAD Transcript. p.16.)

Yet, you said that you did not see Campbell fail to comply with any commands other than the command to move his hands from the back of his head to straight up in the air. (IAD Transcript. p. 17) As a less lethal operator, you know or should know that use of less lethal force must be reasonable under a totality of the circumstances. While there is no mechanical model, the range of options under the Bureau’s levels of control guidelines provides that at a minimum, Campbell had to display at least aggressive physical resistance or the intent to engage in aggressive physical resistance before less lethal force could be deployed.

From your perspective, Campbell “stumbles forward” as a result of the less lethal. He regained his balance and stood back up. He kept his hands on his head. Then you describe Campbell as “reaching that left hand straight down in the back of his waistband into his pants”, turning and running away from officers toward a silver Volvo that was parked near the alcove. You viewed Campbell as “grabbing his gun.” Your perspective was that it was a “deliberate movement of the hand.”

“When he started running I think I had to catch up with the gun and get it on him again. And it’s almost like I was waiting for him to have a chance to have an empty hand. I think I, I think I was justified in deadly force when the hand went in the pants based on the information that we’ve been talking about, knowing he’s armed and yelling. Oh, I knew I was justified then, but that wasn’t when my decision to use deadly force was made, not when he first reached, not when he first ran, but when he continued to run and continued to have a hand in his pants. It’s like I was waiting for him to give up, but I knew he cannot get to the front of the Volvo, the direction he was running, I can’t let him get to the Volvo. And he gets to the Volvo, his hand is still down in the back of his pants and I remember getting a sight picture and I remember like going and taking my eye off the front site and looking back at the hand again and it was still there and I remember thinking the word jumped into my mind, gun. And I remember thinking that gun, I mean the way he’s moving it, it looks like he’s pulling, he’s about to pull it out. He’s going to start shooting at the police. I cannot let him shoot at the police. I cannot let him do it from a position of cover behind that car. I’ve got to shoot him. I mean that just all came right to my mind, I thought I have to shoot him and I did.” (IAD Transcript pp. 21-22).

At that moment, there were a number of other resources and options available besides deadly force. A number of officers were also providing cover from a variety of locations, and the K-9 officer was present and in fact, had released the dog.

You said the reason you used deadly force is that you thought Campbell was digging for a gun in the back of his waistband while running away from you and other officers, and that Campbell was going to shoot at officers. Your answers to IAD investigator questions are troubling.

You indicated:

- You never considered the possibility that Campbell was unarmed.
- You would not acknowledge that the less lethal rounds could cause a pain reaction.
- When you were asked whether it would have made a difference to you if you had known that Campbell was coming out at the request of one of the officers at the scene you said: “I guess it would have shown some compliance on his part and I would have registered that as some compliance on his part. It wouldn’t have affected the end result, I can tell you that. I know that’s not, I’m just, but yeah, it would have shown compliance on his part and it would have taken some of the alarm off I suppose of what was going on[.]” We understand this response to mean that you were so certain he was digging for a gun, Campbell’s seeming compliance with an officer request to come out would not have mattered in your weighing of the circumstances.
- At the time you fired you did not realize that the K9 officer had released his canine, but said: “In fact, I can even tell you that even if I had seen the dog running I would have shot him anyway, it wouldn’t have mattered because he was pulling a gun out. That wouldn’t have weighed on my decision, I don’t think.”

Your post-incident explanations regarding your thinking about your decision to use deadly force, shows how rigid and inflexible you interpreted the overall situation. You saw Campbell as a threat during the entire call to the exclusion of any other interpretation of Campbell's actions.

5. Your Use of Force Was Not Reasonably Necessary Under the Totality of Circumstances

This situation involved a call to police to help determine the whereabouts and safety of Angie Jones and her three children, and assist Aaron Campbell, who was described as distraught and suicidal because his brother had just passed away. Police told Campbell that they were there to help him. Although certainly there were facts in favor of a cautious approach, police were not there because Campbell had committed a crime, he was not wanted for a crime and he did not pose an immediate threat.

There were updates on communications with Campbell, text messages between Campbell and Officer Quackenbush, release of the children, and Campbell's exit from the apartment after communications with the police. You demonstrated an inability or unwillingness to adapt your mindset even though the situation appeared to be de-escalating. The facts and circumstances available to you, in their totality, could not have led you to reasonably conclude that Campbell posed a threat justifying deadly force.

I agree with the analysis that you have been trained that circumstances may change your situation and warrant de-escalation, but there is little evidence in your thinking and actions of you reasonably balancing the threat information at the scene with other counterbalancing information. Or, that you sought to absorb information available to you about the totality of the situation. To the contrary, there is evidence that you steadfastly remained focused on absolute threat control to the purposeful exclusion of participating in the information sharing, group planning and decision making and coordinated action that officers are taught.

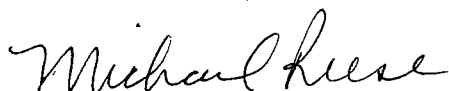
SUMMARY

The Performance Review Board met on Thursday, August 26, 2010, and recommended the conclusion that you violated Directive 1010.10 – Deadly Physical Force, and Directive 315.30 – Unsatisfactory Performance. I agree. In addition, your actions are also in violation of Directive 1010.20 – Physical Force.

I have carefully considered the information you provided at your due process meeting with me on October 19, 2010. I have determined that termination of your employment is the appropriate level of discipline in this matter.

A copy of this letter will be placed in your personnel file. Under the provisions of the current labor agreement, you are entitled to file a grievance through your union, if you believe this action was not for just cause.

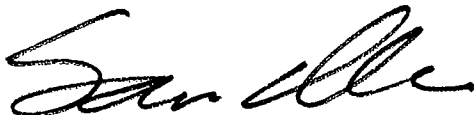
You are not being disciplined for political or religious reasons, but in good faith, and for the purpose of improving public service.



Michael Reese
Chief of Police

11/15/10

Date



Sam Adams, Mayor
Commissioner In Charge

11-15-10

Date

Read and Reviewed:



Officer Ronald Frashour #40927

11-16-10

Date/Time

I certify that I have read and received a copy of this notice.

- c: PPA President Daryl Turner
- Director Yvonne Deckard - Bureau of Human Resources
- Wayne Ferrell - Bureau of Human Resources
- Steve Herron - Bureau of Human Resources
- Police Bureau Personnel File (201)
- Discipline File

RECORD RETENTION: 10 years after separation **AUTHORITY:** OAR 166-200-0090(7)