



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: Sergeant John Birkinbine #29351
North Precinct

SUBJECT: Discipline: Suspension without Pay
80 Hours
2010-B-0004

You are hereby notified that your conduct, while employed with the Portland Police Bureau, has not met standards acceptable to the Bureau. The charges include a violation of Directive 315.30 - Unsatisfactory Performance. 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.

This disciplinary action stems from your involvement in an on-duty incident that occurred on January 29, 2010, in an apartment complex parking lot located 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 correctly self-dispatched to the call, thinking that it needed the support of more than one sergeant. According to records, you arrived on-scene to this call at 1721, about one hour and 38 minutes into the call.

Your performance in this matter did not meet expectations in the critical areas of communication or coordination.

BACKGROUND

You have been employed with the Portland Police Bureau since April 21, 1994.

In February 2000, you received a one day suspension without pay for a violation of General Order 4.01.030 (G8); you initiated a pretext stop with no reasonable justification for doing so.

In July 2001, you received a one day suspension without pay for violations of General Order 315.00 – Laws, Rules, Orders, at it related to General Order 1010.20 – Use of Physical Force; you struck a handcuffed subject in the back of the head with an open hand.

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City Information Line: 503-823-4000, TTY (for hearing and speech impaired): 503-823-6868 Website: www.portlandpolice.com

Your background includes over 2,200 hours of training through November 2009, including Basic and Advanced Academy, specialized hostage negotiation communication skills and hostage use of force scenario based training, communication skills, patrol tactics, defensive tactics, incident command training, supervising critical incidents, and other supervisory training such as sergeant's command school. You have received training regarding individuals 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 was designed to teach officers to recognize that a person's mental illness may affect the person's behavior and ability to respond or interact with police. Your background also includes certification as a taser operator, and an instructor in the operation of police vehicles and firearms.

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 around 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.

The core explanation and supporting facts for your suspension is set out below.

This incident began with a request from a citizen to check the welfare of a woman and three children believed to be in an apartment with her boyfriend, Aaron Campbell, who was reported to be possibly suicidal, armed, and despondent over the death of his brother. Responding officers established containment and set up perimeter, custody and communication teams.

Prior to direct contact with Campbell, the woman (Jones) came out of the apartment in response to contact from her family; Jones' father was on scene with police. When you arrived on scene Jones was out of the apartment. You contacted Sergeant Reyna, the incident supervisor and asked what you could do. She said there was nothing she needed, had no direction for you, and returned her attention to directing other officers already on scene. There were a number of officers on scene; Officer Quackenbush was the designated communications officer. You saw that Quackenbush had a cell phone as well as Jones' cell phone. You have experience and training with the Hostage Negotiation Team; HNT negotiators are deployed as two-person teams when called out. You decided to partner with Quackenbush. At this point, the children were inside the apartment.

Before Officer Quackenbush made contact with Campbell for the first time, Sergeant Reyna communicated by radio that contact was going to be made so that police personnel could be ready in the event that Campbell came out.

Eventually, Officer Quackenbush established contact with Campbell and communicated to Campbell that police were worried about the children, Campbell's welfare, and that police were not there to hurt him. You were located next to Officer Quackenbush. Officer Quackenbush said something to the effect that police could not leave until the kids were out; you said that the phone went dead and "within seconds" the three little children were out. In your IAD interview you stated: "They had obviously been given direction because, from Mr. Campbell, because of the way they came down. They looked immediately for police officers and they walked right to them." Officers said they were not prepared for the children to come out because it occurred so quickly; the children were secured.

With only Campbell left in the apartment, the circumstances had changed. You, Reyna, and some officers exchanged information and tried to reach decisions on how to handle the situation. The officers in the custody team, including the less lethal and lethal cover officers remained in place and were not included in the discussion.

Between 1735 and 1758, you and Sergeant Reyna were in an alcove discussing tactical options; you described the discussion as centering on "what threshold do we need to achieve for us to withdraw police resources?" Sergeant Reyna was considering withdrawing police presence from the scene. You wanted to be sure that Jones and the children had a safe place to stay in case the police walked away. You also felt like there needed to be a face to face conversation with Campbell or other significant assurance that he was not going to harm himself or anyone else.

At 1759, Sergeant Reyna asked Officer Quackenbush to solicit from Campbell a promise that he will not hurt himself; she then left the alcove to brief Captain Day who had arrived. After text communication between Quackenbush and Campbell, you told Quackenbush to call Campbell and tell him police would like him to come out. Officer Quackenbush did so. Campbell came outside immediately, without saying he was going to come outside.

A number of coordination, communication, supervision and poor judgment issues were identified in the review of this matter, but to be clear the following decisions on your part were not correct:

1. You did not take steps to communicate critical information to other officers on-scene.

Given your experience and training as a sergeant and officer, and in particular, your work with the Hostage Negotiation Team, you understand how important it is to communicate your plans and critical information to other police and support personnel.

You failed to notify Sergeant Reyna and on-scene officers about the timing or substance of the communications team's contacts with Campbell before initiating contact with him or after; nor is there evidence to show that you made adequate efforts to inform others of the context of the communications with Campbell.

In your due process meeting, it was suggested that you did not have enough time to make these notifications because the intent was to float the ideas to Campbell about providing for the safety of the children and to only suggest he come outside, and as a result Campbell's actions were unexpected. You did not make sure that others were prepared to deal with the consequences of having the communications with Campbell; this is counter to your training as an HNT member which requires making sure that other officers on scene are ready before contact is initiated and to expect the unexpected.

Because of these communication failures, there was not a shared situational awareness and the officers on the custody team who used lethal and less lethal force indicate that they were surprised by both events (the children coming out and Campbell coming out of the apartment) and interpreted Campbell's actions negatively, instead of positively.

2. You did not coordinate effectively with Sergeant Reyna.

You should have inserted yourself into a leadership role instead of the passive role you chose. Sergeant Reyna was the incident supervisor in a complex and lengthy call with a communications team, custody team and perimeter team. You should have formally taken control of the communications team. If Sgt. Reyna had said no to your insertion in this role, it would have been appropriate for you to contact the lieutenant and apprise him of the situation. There was a need for you and Sergeant Reyna to work together effectively to coordinate and oversee the various functions in play. You and Sergeant Reyna ended up working independently of each other.

As one example, you did not coordinate with Sergeant Reyna before suggesting to Campbell that the children come outside. Sergeant Reyna, members of the custody team, and even you, described being surprised that the children were out. As a second example, before Reyna left the alcove her direction was to get a promise from Campbell that he would not hurt himself. Officer Quackenbush did this; in response to Campbell's response text, you gave the direction to suggest that Campbell come outside. You failed to communicate this next step to Sergeant Reyna and on scene officers. Further, you did this without taking steps to inform other officers on scene before contact was made.

3. At no point did you make a command notification to Lieutenant Rodrigues.

You are an experienced supervisor; you should have recognized that even though Sergeant Reyna refused your assistance, this was a complex call involving multiple teams, with more than a dozen officers. In addition, you and Sergeant Reyna had different ideas about what additional steps, if any, should be taken with respect to Campbell once the children were out. There are a number of points in time when you could and should have taken the initiative to contact the relief lieutenant.

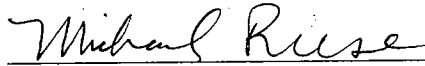
SUMMARY

The Performance Review Board met on Thursday, August 26, 2010, and recommended the conclusion that you violated Directive 315.30 - Unsatisfactory Performance. I agree.

I have carefully considered the information you provided at your due process meeting with me on October 19, 2010. I have determined that an eighty (80) hour suspension without pay 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.

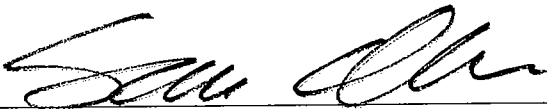
You are not being disciplined for political or religious reasons, but in good faith, and for the purpose of improving public service.



Michael Reese
Chief of Police

11/15/10

Date




Sam Adams, Mayor
Commissioner In Charge

11-15-10

Date

Read and Reviewed:



Sergeant John Birkinbine #29351

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

11 15 10

Date/Time

- 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)