



CIVIL SERVICE COMMISSION

City of Tucson

Minutes

**Jaime Gutierrez
Appeal of Termination
Tucson Police Department
April 7, 2016**

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Thursday, April 7, 2016, at City Hall, 255 W. Alameda Street in Tucson, Arizona for an Appeal of Termination filed by Jaime Gutierrez from the Tucson Police Department.

Present were Chair Max Parks, Commission Members Marion Pickens and David Flaughner. Staff present: Sesaly Stamps, Legal Counsel; Kristie Nelson, Human Resources Manager; and Armida Saufley, Executive Assistant of Human Resources (Recording Secretary).

Mr. Michael Storie represented Mr. Gutierrez; Mr. Baird Greene, Principal Assistant City Attorney, represented the Tucson Police Department. Assistant Chief Ramon Batista was also present.

Per Exhibit A, the actions and behaviors of Officer Jaime Gutierrez #53672 are fully documented in the Internal Affairs file OIA #15-0260. These actions were reviewed and served as the basis of this disciplinary action and are incorporated herein, providing just cause for Termination and are synopsisized as follows:

I. Behavior Officer Gutierrez knew or reasonably should have known would result in disciplinary action:

On May 3, 2015, Officers Schrouder, Reese, and Gutierrez were called to investigate a Domestic Violence/Assault (TPD case 1505030050) which originated at a local business. The 911 caller reported that a male struck a female before walking away from the area. Officer Gutierrez located a male and female matching the description provided by the 911 caller. Officer Gutierrez applied force on the male individual in order to detain him after he refused to comply with direction. Although this force was determined to be justified, it met mandatory reporting levels. Officer Gutierrez did not contact his acting supervisor at the time, Sergeant Martinez, until after approximately 40 minutes and only after the male, identified as "Luis", was released without being charged with any crimes. The other officers on scene were not consulted prior to this release even though officers discussed charging the male with Trespassing/disorderly Conduct and Failure to Identify.

During the course of the Internal Affairs (OIA) investigation, it was established that Officer Gutierrez made untruthful statements to Sergeant Martinez at the scene and during his interviews with OIA.

At the scene, when Sergeant Martinez arrived he asked Officer Gutierrez whether he had the male's name and biographical information. Officer Gutierrez told him he did and that



he would incorporate this information on his supplement report so Sergeant Martinez could complete a Use of Force Report. Officer Gutierrez had in fact not obtained the requested information nor did he have conversation with the other officers to confirm that they had attained the required information.

During his OIA interviews, Officer Gutierrez contradicted himself and stated that he told Sergeant Martinez, at the scene, that he did not have the male's information.

Officer Gutierrez also informed Sergeant Martinez, at the scene, that they had released the male because they did not have any criminal charges associated with him. This statement was not true because based on the information he had at the scene, Officer Gutierrez had probable cause to arrest the male for misdemeanor charges of failure to identify and trespassing.

These statements made to Sergeant Martinez on May 3, 2015 and later to OIA in June 2015 were found to be inconsistent and deceptive.

Additionally, Officer Gutierrez stated in his June 16, and 30, 2015, interviews that he was told to release the male. Officer Gutierrez maintains he would have taken him to jail, but that it was Officer Schrouder's case, she was in charge, she made the decision, and had told him to release the male from custody. He maintained that he was told to release the male, but that would not have been his decision based on the way the male had been acting toward him. This scenario is not what occurred at the scene. Officer Gutierrez actually made the decision to release the male without consulting with any other officer on the scene. In fact the other officers were asking what happened to the male subject. The accurate account of the circumstances surrounding the subject's release is captured on audio and video recording, and is consistent with the other officers' statements made in their interviews with OIA. Only after viewing the video on June 30, 2015, did Officer Gutierrez admit that he alone made the decision to release the male.

Officer Gutierrez minimized his involvement in the assault investigation by stating his sole role was to detain the male he had contact with and to provide scene security. The entire contact was captured on a patrol vehicle's video/audio system. The video/ audio of the event shows Officer Gutierrez had a greater role in the investigation. Officer Gutierrez misrepresented his role in his documentation, mislead his supervisor and investigators as to the extent of his participation in the incident.



II. Violations of Department Policy and General Orders

The investigation of OIA #15-0260 established that Officer Gutierrez was in violation of Tucson Police Department policy. A review conducted by Officer Gutierrez' Chain of Command has determined that Officer Gutierrez violated the following General Orders:

1330.19 Untruthfulness

- A. No member shall knowingly make an untrue statement about a fact, either orally or in writing, in connection with any investigation, assignment or inquiry.
- C. Members are required to report completely, honestly, and accurately all facts and information pertaining to any investigation, whether criminal or administrative, or other matter of concern to the Department.

1330.2 Obedience to General Orders, Procedures and Policies Required

All members shall observe and obey all laws, City Administrative Directives, Department General Orders, Department procedures and policies, as well as any procedures and policies established by their Commanders.

1330.7 General Standards of Expected Conduct

Members shall not engage in any conduct, whether on or off duty, which is unbecoming or detrimental to their duties, position, or the Department. All members shall conduct their private and professional lives in such a manner as to avoid adverse reflection upon the Department or themselves as members of the Department. Members shall treat each other and all persons with whom they have contact with respect and courtesy.

2452 Reporting Requirements [CALEA 82.2.2 a-e; 83.2.6]

All members are responsible for properly and adequately documenting official investigations and actions in the appropriate format as the circumstances may dictate. This includes personnel not directly assigned as the case officer (e.g., back up officers, investigators, forensics personnel, etc.).

2600 INVESTIGATIVE PROTOCOLS [CALEA 42.1.1; 42.1.2; 43.1.1; 82.3.5]

Officers encountering criminal cases where probable cause exists to make an arrest will do so. Information that officers develop shall be included in their initial reports, including pertinent information on all interviews and interrogations and evidence collected or observed



During his review of this incident, Sergeant D. Hearn wrote:

“Officer Gutierrez’s contact with the male named “Luis” was extremely unprofessional and his conduct was unbecoming of an officer.”

“Gutierrez’s investigative and reporting requirements were not met for the investigation. Gutierrez had “Luis” under arrest for failure to identify and trespassing/DOC charges. Gutierrez also had to use force to detain “Luis” initially. Gutierrez made the decision on his own to release “Luis”, even though he was intoxicated, uncooperative and belligerent, Gutierrez failed to confirm his identity and/or run him for warrants prior to releasing him. Gutierrez also questioned the victim and suspect in the case. He obtained pertinent information that needed to be documented in his supplement. Gutierrez never even mentioned that he spoke to the two people in his supplement.”

“Gutierrez claimed that he really had nothing to do with the investigation, when in reality he was involved and conducted interviews on both the victim and suspect of the D.V. Gutierrez tried to downplay his involvement and used the other officers as scapegoats in regards to obtaining the initial male’s “Luis” name.”

Additionally, Sergeant D. Hearn wrote:

“Gutierrez was untruthful to Acting Sergeant Martinez at the stop scene. Gutierrez was asked specifically by Martinez if he had the males information that he had used force on. Gutierrez told him that he did have all of his information. Martinez also asked Gutierrez if there were any charges on the male that he used force on and he told Martinez that there were no charges on the male.”

“Gutierrez gave details that were not true about how Schrouder told him to let the male go. This conversation never happened.”

“On June 30, 2015 during a second interview, Gutierrez viewed the IRSA video and admitted that it was his decision to let the male go, nobody else had influenced him to release the male.”

“Untruthfulness is a violation of policy and is a Violation Type E, Level 8. The presumptive sanction for untruthfulness is Termination.”

After his analysis, Lieutenant C. Dogget wrote:

“I find Officer Gutierrez’ untruthfulness to be malicious and intentional.”



"I believe the statements made by Officer Gutierrez to be untruthful. He was inaccurate about Officer Schrouder telling him to release the male from the scene. He gave false information to Acting Sergeant Martinez about having the suspect's name and he was also inaccurate to Acting Sergeant Martinez when asked if the male had any criminal charges."

"There is no question that the officers on scene did not obtain the name of the suspect who had force used against him (Luis) however the statements given by all the officers and acting sergeant show a direct correlation between their decisions made on scene and the fact that no one was affectively communicating."

"Based upon all the other actions of Officer Gutierrez (lying, failing to get the suspect's name, failing to run him for wants/warrants, failing to promptly notify a sergeant of the Use of Force, unprofessional conversation, speech and conduct with the detained individual, failing to seek clarification before releasing the suspect and poor documentation) I concur with Sgt. Hearn's recommendation of a Violation Type E, and the associated discipline of Termination."

Captain J. Graves made the following observations:

"I concur with Lt. Doggett in that I believe that Ofc. Gutierrez intentionally lied and was misleading on several different occasions during both this incident and following investigation; his actions clearly in violation of the Departments untruthfulness policy. I additionally agree that many of his other actions, on the night in question, can be considered misconduct as well as procedural violations."

"Based upon all the actions of Officer Gutierrez: lying, failing to get the suspects name, failing to run him for wants or warrants, failing to properly notify a sergeant of the Use of Force, unprofessional conversation, speech and conduct with the detained individual, failing to seek clarification prior to releasing the suspect and poor documentation. I concur with Lt. Doggett's (as well as Sgt. Hearn's) recommendation of a Violation Type E, associated sanction of Termination. His actions clearly creating or posing the potential for Critical Adverse Impact on public safety or the professional image of the Department."

III. Prior Discipline

November 17, 2013: Type A, Corrective Action, failing to report missing equipment.
May 9, 2015: Type E, Termination, Untruthfulness



V. Disciplinary Action

Based on a review by the Tucson Police Department Management, the Chief of Police has determined that Officer Jaime Gutierrez violated the above listed General Orders and committed a Type E/Level 8 violation. Officer Gutierrez' actions and the listed violations constitute just cause for Termination.

This appeal was held in Open Session; however, the rule was invoked.

Witnesses present were sworn:

Ramon Batista
Jaime Gutierrez
Dallas Hearn

9:07 – 9:11 City's Exhibits entered into evidence

9:12 – 9:31 Mr. Greene's opening statement

9:32 – 9:45 Mr. Storie's opening statement

City's Exhibits Admitted

Exhibit A Tabs 1 – 4 Admitted with No Objection

Tab 1 – Attachment A signed January 26, 2016

Tab 2 – Notice of Intent to Discharge dated January 15, 2016; Notice of Decision signed January 26, 2016; and related PARF effective January 27, 2016

Tab 3 – Notice of Decision dated January 6, 2016 (failed to appear), Attachment A and FedEx delivery

Tab 4 – Appeal letter from TPOA received January 26, 2016

Exhibit B Tabs 1 – 12 Admitted with No Objection

Tab 1 – Internal Investigation Authorization

Tab 2 – Statement LPO Danny Martinez to OIA Sgt. Luis Campos and Wakefield

Tab 3 – Statement of Ofc. Faith Schrouder to OIA

Tab 4 – Second Statement of Ofc. Faith Schrouder to OIA

Tab 5 – Statement of Ofc. Douglas Reese to OIA

Tab 6 – Statement of Ofc. Jaime Gutierrez to OIA

Tab 7 – Second Statement of Ofc. Jaime Gutierrez to OIA

Tab 8 – IRSA audio/video and transcription

Tab 9 – Event Summary, Unit History, Event Chronology

Tab 10 – Investigation Summary

Tab 11 – Police Reports: Faith Schrouder, Jaime Gutierrez, Douglas Reese



Tab 12 – Use of Force Report of LPO Danny Martinez "Incident Report"

Exhibit C Tabs 1 – 10 Admitted with No Objection

Tab 1 – Personnel Report of Sgt. Dallas Hearn

Tab 2 – Personnel Report of Lt. Corey Doggett

Tab 3 – Personnel Report of Capt. Graves

Tab 4 – General Orders:

GO 1330.2 Obedience to General Orders, Procedures and Policies Required

GO 1330.7 General Standards of Expected Conduct

GO 1330.9 Untruthfulness

GO 2452 Reporting Requirement

GO 2600 Investigative Protocols

Tab 5 – Use of Force GO and reporting use of force GO

Tab 6 – Failure to Identify A.R.S. §13-2412

Trespass A.R.S. §13-1501 and 13-1503

Disorderly Conduct §13-2904

Tab 7 – TC Ch. 10, 10-3 Just Cause defined

Tab 8 – TPD Discipline Matrix

Tab 9 – HR File Jaime Gutierrez

Tab 10 – TPD File Jaime Gutierrez

Appellant's Exhibit Admitted

Exhibit 1 – Not entered as evidence

Exhibit 2 – CD Video OIA 15-0260, Gutierrez, Jaime

City called first witness, Sergeant Dallas Hearn

9:46 – 10:45 Sgt. Hearn gave testimony

10:45 – 10:55 Break

10:55 – 11:20 Sgt. Hearn was cross examined

11:20 – 11:25 LPO Martinez gave testimony on redirect; the Commission asked clarifying questions and witness was excused

City called second witness, Assistant Chief Ramon Batista

11:25 – 11:35 Sgt. Hearn gave testimony

11:35 – 11:40 Sgt. Hearn was cross examined; the Commission asked clarifying questions and witness was excused

11:50 City Rests



11:50 – 12:50 Lunch Break

City called third witness, Officer Jaime Gutierrez

12:50 – 1:30 Ofc. Gutierrez gave testimony

1:30 – 1:45 Ofc. Gutierrez was cross examined and excused

1:45 Appellant Rests

1:55 – 2:10 City Closing Argument

2:10 – 2:28 Appellant Closing Argument

2:28 – 2:34 Rebuttal Argument

During the hearing, the Commission went into Executive Session for legal advice from Legal Counsel Sesaly Stamps pursuant to A.R.S. §38-431.03(A)(3).

At 2:34 p.m. Commissioner Parks made a motion to go into Executive Session, the motion was seconded by Commissioner Pickens and the Civil Service Commission went into Executive Session. The Commission resumed the open meeting at 2:44 p.m.

2:45 – 3:10 Civil Service Commission Deliberations

In open session, at the conclusion of closing statements, based on the testimony presented and the exhibits admitted into evidence, Commissioner Pickens made a motion that the Commission find the Appellant knew or should have known that his conduct could lead to disciplinary action and that the appeal of Jaime Gutierrez be denied and that the disciplinary action imposed upon him be affirmed for the reason that there was just cause for the discipline imposed. Commissioner Parks seconded the motion. The vote was 2-1, with commissioner Flaughner dissenting.

Hearing Adjourned at 3:15 p.m.

Max Parks, Chair
Civil Service Commission

05/04/16

Date