

IN THE MATTER OF AN APPEAL OF INDEFINITE SUSPENSION**OFFICER AARON ALFORD**
Appellant**and****CITY OF SAN ANTONIO, TEXAS****Respondent****AWARD**

On December 18, 19 & 20, 2017, a hearing in this matter was held in San Antonio, Texas. Attorneys Michael Siemer and Richard Riley represented the City. Attorney Robert Leonard represented the Grievant. Appearing as witnesses were Aaron Alford, Deputy Chief Gustavo Guzman, SGT James Jones, Detective Jason Andrada, Live Oak Police Chief Dan Pue, Officer Curtis Sanders, Ranger Keith Pauska, SGT Jay Allen, Chief William McNamus, Albert Ortiz, Deputy Chief Jeff Humphrey, SGT Tonya Brandt, and Detective Michael Helle.

The parties agreed on a deadline to submit post hearing briefs as March 2, 2018. On March 1st Appellant submitted an unopposed request to extend the deadline to March 16, 2018. The request was granted. Both parties timely submitted post hearing briefs on March 16, 2018.

The following exhibits were admitted:

JOINT EXHIBITS

1. Chapter 143 of the Texas Local Government Code
2. CBA-SAPOA & COSA
3. Relevant portions of the General Manual (GM) (SAPD Rules and Regulations)
4. Results of CARB dated 2 December 2015
5. Chief's upholding of CARB
6. Contemplated indefinite suspension dated 8 December 2016
7. Letter notifying Firefighters' and Police Officers' Civil Service Commission of Aaron Alford's suspension dated 11 January 2016
8. Aaron Alford's Notice of Appeal
9. SAPD Internal Affairs Case: IL 2015-245
10. CD-SAPD Investigative Report IL 2015-245 and SAPD GM
11. CD-Aaron Alford's response 11/11/5
12. CD-Officers' Responses
13. CD- Live Oak PD (Disc 1 of 11) Dash Cam Alexis A. aka Stephanie Flores
14. CD-Live Oak PD (Disc 2 of 11) Primary Witnesses
15. CD-Live Oak PD (Disc 3 of 11) Officers' Interviews; GPS/AVL; text messages; warrants; photos; conf agreements; misc.

LEGAL ADVISOR'S OFFICE

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SAN ANTONIO POLICE DEPARTMENT

16. CD-Live Oak PD (Disc 4 of 11) Azelea Campos 8/28/15
17. CD-Live Oak PD (Disc 5A of 11) Secondary Witness Statements
18. CD-Live Oak PD (Disc 5B of 11) Secondary Witness Statements
19. CD-Live Oak PD (Disc 6 of 11) Albert Sanchez 8/11/15
20. CD-Live Oak PD (Disc 7 of 11) Sally Cobos 8/13/15
21. CD-Live Oak PD (Disc 8 of 11) SAPD Officer Jason Chamness
22. CD-Live Oak PD (Disc 9 of 11) Officer Phillip Barnett 8/12/15
23. CD-Live Oak PD (Disc 10 of 11) Cellebrite Search Report; Charlotte Olivia Long's Phone
24. CD-Live Oak PD (Disc 11 of 11) Text Messages Original Form
25. Text messages
26. Text messages from Alexis A.'s phone between Alexis and Alford
27. Case review log dated 12/2/15
28. November 16, 2017 letter from Mr. Siemer with A. Ortiz bio

GRIEVANT'S EXHIBITS

1. Comparative Discipline Documents

RESPONDENT'S EXHIBITS

1. Transcript of recording between Alford's wife and LOPD Det. Andrada and SGT Jay Allan
2. Transcript of recordings between Alford and Texas Ranger Pauska 23
3. Transcript of IA interview between Alford and SGT James Jones
4. Business records of Chapa's Sprint cell phone account
5. Transcript of recordings between Alford and Chief Pue of the LOPD
6. Transcript of interview between SGT James Jones and Texas Ranger Pauska
7. Transcript of interview between Alford and Texas Ranger Pauska,
8. Transcript of interview between Alford and Det. Andrada
9. Advisory Board Statistics dated 12-2-15

This proceeding is a Chapter 143, Texas Local Government Code (TLGC), civil service appeal by Appellant Aaron Alford taken to a third-party hearing examiner via § 143.057, TLGC. The City of San Antonio acting through its Police Chief, terminated Officer Alford for violations of civil service rules and departmental policy.

MOTION IN LIMINE

At the onset of the hearing Appellant filed *Motion in Limine, For Hearing to Determine Relevancy and Reliability of Expert Testimony and for Disclosure of Facts and Data Underlying Expert Opinion*. Argument was heard. After consideration of the matter, the Motion is denied. In his post hearing brief Appellant renewed his pre-trial objection to Respondent's witness former SAPD Police Chief Albert Ortiz. The objection is overruled. That said, Respondent met their burden of proof in this matter without the testimony of Chief Ortiz.

ISSUE

The issue before this Arbitrator is whether or not the City of San Antonio had just cause to

terminate Aaron Alford, and if not, what is the appropriate remedy?

STIPULATION

The parties stipulated that the issue of damages and mitigation of damages would be bifurcated from the evidentiary hearing and addressed at a later date if one or both parties request the evidentiary hearing.

RELEVANT PROVISIONS

Texas Local Government Code¹

Section 143.051 Cause for Removal or Suspension

A commission rule prescribing cause for removal or suspension of a fire fighter or police officer is not valid unless it involves one or more of the following grounds:

- (1) conviction of a felony or other crime involving moral turpitude;*
- (2) violations of a municipal charter provision;*
- (3) acts of incompetency;*
- (4) neglect of duty;*
- (5) discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;*
- (6) acts showing lack of good moral character;*
- (7) drinking intoxicants while on duty or intoxication while off duty;*
- (8) conduct prejudicial to good order;*
- (9) refusal or neglect to pay just debts;*
- (10) absence without leave;*
- (11) shirking duty or cowardice at fires, if applicable;*
- (12) violation of an applicable fire or police department rule or special order.*

Section 143.052 Disciplinary Suspensions

(b) The head of a fire or police department may suspend a fire fighter or police officer under the department head's supervision or jurisdiction for the violation of a civil service rule. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period. An indefinite suspension is equivalent to dismissal from the department.

(c) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the hour of suspension, file a written statement with the commission giving the reasons for the suspension. The department head shall immediately deliver a copy of the statement in person to the suspended fire fighter or police officer.

(e) The written statement filed by the department head with the commission must point out each civil service rule alleged to have been violated by the suspended fire fighter or police officer and must describe the alleged acts of the person that the department head contends are in violation

1. Joint Exhibit 1

of the civil service rules. It is not sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated.

Relevant Provision of Collective Bargaining Agreement²

Article 28-Disciplinary Actions

Section 1. Authority of Chief.

The Chief shall have authority to demote and/or suspend not to exceed forty-five (45) calendar days, or indefinitely suspend (as provided for in Chapter 143 of the Local Government Code) any Officer for the causes set forth in the Rules and Regulations of the Commission. The Officer may appeal such actions, if any, as provided for herein. Nothing contained herein prevents the Chief and the accused Officer from reaching an agreed settlement on any matter so long as both parties concur in writing in advance of such settlement. Officers suspended for three (3) days or less who appeal the suspension shall not serve the suspension unless a suspension with loss of pay is awarded by an arbitrator.

Rules and Regulations of the San Antonio Police Department³

RULE 3.04 –RESPONSIBILITY TO SERVE THE PUBLIC: Members shall serve the public through direction, counseling, assistance, and protection of life and property. Members shall also respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

Subsection C-Conduct & Behavior

C. Conduct and Behavior: Members, on-duty or off-duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit on themselves or the department.

RULE 4.17-COOPERATION WITH OTHER AGENCIES: Members shall cooperate with all agencies engaged in the administration of criminal justice and other public departments, giving to each all aid and information they might be entitled to receive.

NOTICE OF INDEFINITE SUSPENSION⁴

The notice of indefinite suspension in this matter states the follows:

Under and by virtue of the authority vested in me by Title 5, Subtitle A, Chapter 143 of the Local Government Code, V.T.C.S., said chapter entitled "Municipal Civil Service", I do hereby suspend Officer Aaron L. Alford from paid duty with the San Antonio Police Department, indefinitely, without pay, from his position as an officer of the San Antonio Police Department, effective immediately.

Officer Alford has violated Subsection C of Rule XIII of the City of San Antonio Fire Fighters' and Police Officers' Civil Service Commission Rules, said rules having been adopted on February 23, 1998, and thereafter from time to time amended, by the Firefighters' and Police Officers' Civil Service Commission as the Civil Service Rules for the Fire and Police Department of the City of San Antonio. The particular civil service

2. Joint Exhibit 2

3. Joint Exhibit 3

4. Joint Exhibit 7

rule violated by Officer Alford and ground for suspension is as follows:

(12) Violation of an applicable fire or police department rule or special order.

The Rules and Regulations of the San Antonio Police Department that Officer Alford has violated are as follows:

RULE 3.04- RESPONSIBILITY TO SERVE THE PUBLIC:

Members shall serve the public through direction, counseling, assistance, and protection of life and property. Members shall also respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment. (C) CONDUCT AND BEHAVIOR: Members, on-or-off duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit on themselves or the department.

RULE 4.17-COOPERATION WITH OTHER AGENCIES:

Members shall cooperate with all agencies engaged in the administration of criminal justice and other public departments, giving to each all aid and information they might be entitled to receive.

The factual basis for the instant disciplinary suspension is as follows:

On or about June 13, 2015, at approximately 12:08 a.m., Officer Aaron L. Alford texted a female acquaintance and asked her if she wanted to make extra money, as much as \$35.00 an hour and up to \$5000.00 per day. Officer Alford advised this female, "This may sound sketchy but I swear it's legit." He further advised this female, "I am looking for VERY good looking females to help with some undercover stuff," and told her it was a covert operation and to not tell anyone. Later that day, Officer Alford texted the female a telephone number to contact and told her to use him as a reference.

A criminal investigation, conducted by the Texas Department of Public Safety and the Live Oak Police Department, revealed there was no undercover or covert operation, and criminal charges were filed against Officer Alford and two other San Antonio police officers who were allegedly posing as undercover officers. Officer Alford failed to use sound judgment when he advised the female to use the number to contact someone regarding an alleged undercover operation and when he stated to the female, "This may sound sketchy but I swear it's legit," and when he further stated in an interview with investigators it "sounded fishy to begin with" and "it sounded weird from the git go."

On or about June 22, 2015, officers from the Live Oak Police Department went to the home of Officer Aaron L. Alford in an attempt to contact him regarding information he may have pertaining to an alleged sexual assault, arising from the solicitations of the females in June. When the Live Oak PD officers found Officer Alford not home, they called Officer Alford's cell phone and left a message. When Officer Alford called the Live Oak officer back, he used abusive and profane language toward the Live Oak officer, such as, "What the fuck are you doing at my house?" and "I don't really give a fuck," and told the Live Oak officer if he wanted to talk to him to contact him (Officer Alford) at work. Officer Alford's language and verbal abuse brought reproach and discredit upon him and the San Antonio Police Department.

On or about June 23, 2015, Department of Public Safety Ranger Keith Pauska spoke to Officer Aaron L. Alford on the phone in an attempt to gain information from him pertaining to an alleged sexual assault, a felony. During that conversation, Officer Alford refused to give the Texas Ranger extremely important and pertinent information regarding the alleged felony and demanded the Texas Ranger meet him at his roll call the next day at 5:00 p.m. to get that information. Officer Alford failed to cooperate with either the Live Oak Police officer or the Department of Public Safety Texas Ranger when he refused to give aid and information they were entitled to receive in conducting their criminal investigation.

On or about September 24, 2015, Officer Aaron L. Alford was arrested and booked into jail for an outstanding warrant for Official Oppression. Officer Alford brought reproach and discredit upon himself and the San Antonio Police Department when he was arrested and booked into jail for that warrant.

A copy of the instant disciplinary suspension order is being filed with the Fire Fighters' and Police Officers' Civil Service Commission.

Following separation from the Department, the training requirements to maintain an officer's peace officer's license for the current training cycle and unit are that officer's responsibility. An officer should refer to the TCOLE website <http://www.tcole.texas.gov/content/training-requirements> for further information and to establish a TCOLE account to review current training records.

BURDEN OF PROOF

Respondent City of San Antonio has the burden of proof in this matter. The burden is a preponderance of the evidence. Respondent has met their burden of proof.

DISCUSSION

Two San Antonio Police Officers Alex Chapa and Emmanuel Galindo were convicted of sexually assaulting four (4) women.⁵ The victims of these assaults were lured into a fictitious scheme believing that they were trying out for a job working undercover for an unnamed federal agency. The job entailed drinking alcohol and engaging in sexual behavior in order to fit in. This scheme was made up by Chapa and Galindo who participated in the fake job interviews of the victims. Officer Chapa and Appellant were good friends.⁶

On June 13, 2015 Appellant referred his friend [REDACTED] to Officer Chapa for participation in this scheme. Appellant told [REDACTED] that even though the undercover job sounded sketchy it was legitimate.⁷ Appellant noted the undercover operation wanted good looking females to help with some undercover stuff. Appellant also told her the pay was between \$35.00 per hour up to \$5000.00 per day with untaxed federal money. Appellant texted [REDACTED] the contact telephone

5. Transcript Vol. III page 216

6. Transcript Vol. III page 173

7. Joint Exhibit 26

number for the covert operation and told her to use him as a reference. Appellant received the telephone number from his friend Alex Chapa.⁸ [REDACTED] thereafter looked into the fake undercover position and was subsequently raped while applying for the fake undercover position.⁹

When [REDACTED] reported the assault to the Live Oak Police Department (LOPD), she informed them she received the contact information for the assailant from Officer Alford. Appellant thereafter failed to cooperate with the Live Oak Police Department officials who were investigating the rape of [REDACTED].¹⁰ Appellant also impeded the investigation by asking Chapa what to say to the investigators and giving Chapa time to shut down relevant Google Voice Accounts that were used to contact the victims.

On June 22, 2015, Appellant became profane and verbally abusive to the Live Oak Police Officers who were trying to obtain relevant information from Appellant. Appellant also failed to be forthcoming with relevant information regarding Officer Chapa.¹¹ The LOPD officials were entitled to this information. This was a violation of Rules 3.04 and 4.17.

During the investigation of the sexual assault, Appellant was evasive when Texas Ranger Pauska asked him for the name and telephone number of Chapa.¹² Ranger Pauska expressed concern to Appellant that the investigation was losing time and the information regarding the assailant was needed.¹³ Appellant was still not forthcoming regarding the name and telephone number of Chapa. Ranger Pauska was entitled to this information. Appellant failed to cooperate with Ranger Pauska in violation of Rule 4.17. When Ranger Pauska was trying to obtain the name and telephone number of Chapa from Appellant, Appellant became used profane language and was rude to Ranger Pauska. This conduct was in violation of Rule 3.04.

The suspension letter asserts that on or about September 24, 2015, Officer Alford was arrested and booked into jail for an outstanding warrant for Official Oppression thereby bringing discredit upon himself and the San Antonio Police Department. These charges were dismissed.¹⁴ Therefore, this allegation is not persuasive in sustaining the indefinite suspension.

Respondent conducted an investigation into the alleged misconduct of Officer Alford.¹⁵ After a review of all of the evidence submitted, the undersigned has determined the investigation completed by Respondent in this matter was legally sufficient.

The Advisory Action Board Meeting was held on December 2, 2015. The Board reviewed the

8. Transcript Vol III page 206

9. Transcript Vol. I pages 10-11

10. Joint Exhibit 25

11. Respondent Exhibit 8; Transcript Vol. 2 pages 37-40

12. Respondent Exhibit 2; Transcript Vol 2 page 278

13. Respondent Exhibit 2 page 2

14. Transcript Vol. III page 216

15. Joint Exhibit 9

allegations concerning Appellant Alford and recommended indefinite suspension.¹⁶ The Chief of Police concurred with the Board.¹⁷

The applicable civil service rule violated by Appellant Alford and grounds for suspension is §143.051(12)-Violation of an applicable fire or police department rule or special order.

It is important for police officers to act in a manner that is above reproach, to cooperate with fellow agencies that are investigating serious crimes, and to not cover up for fellow police officers who have committed serious crimes. Appellant failed to meet these three standards. The actions of Appellant showed poor judgment and brought discredit onto himself and the San Antonio Police Department. Respondent had just cause to terminate the employment of Appellant. The discipline imposed was not excessive, arbitrary, capricious, or unreasonable. There are no significant mitigating factors for Appellant's actions and poor judgment.

Disparate Treatment

Appellant asserted disparate treatment in this matter. However, the evidence does not support the assertion there was disparate treatment in this matter. Chief McManus considered cases of other officers and found those cases were not comparable in terms of the nature and severity of the offense and that Appellant's conduct warranted indefinite suspension.¹⁸ This Hearing Officer agrees with Chief McManus on this issue.

FINDINGS OF FACT

1. Appellant Aaron Alford became a police officer with the City of San Antonio Police Department in July of 2011.¹⁹
2. Appellant Alford was indefinitely suspended from employment at the City of San Antonio on January 12, 2016.²⁰
3. 4. On or about June 13, 2015, Appellant Alford referred [REDACTED] to a fake undercover operation. Appellant told [REDACTED] that this operation was looking for very good-looking females to help with some undercover stuff; that [REDACTED] could make \$35.00 per hour and up to \$5000.00 per day, and that the money was untaxed.²¹ The undercover opportunity was a scam. Introducing and referring [REDACTED] to this scam showed a lack of sound judgment on behalf of Appellant Alford in violation of Rule 3.04.
4. Introducing and referring [REDACTED] to the undercover scam was a failure of Appellant's responsibility under Rule 3.04 to serve and protect the public. [REDACTED] is a civilian.²²

16. Joint Exhibit 4

17. Joint Exhibit 5

18. Transcript Vol. III pages 38- 40

19. Transcript Vol. III page 171

20. Joint Exhibit 7

21. Joint Exhibit 26

22. Transcript Vol. III page 174

5. On or about June 16, 2015 the woman identified as [REDACTED] while interviewing for the fake undercover job, was sexually assaulted in the City of Live Oak, Texas, by one of the men involved in the undercover scam.

6. Appellant Alford was a fact witness to the sexual assault in that he had information pertaining to the assailant of [REDACTED]

7. When the Live Oak Police Department and a Texas State Ranger investigated the sexual assault, Appellant became verbally abusive with the investigators on June 22, 2015 and June 23, 2015, in violation of Rule 3.04 in that his behavior brought discredit upon himself and the Department.²³

8. During the criminal investigation of the sexual assault, specifically on June 22 & 23, 2015, Appellant was not cooperative with the criminal investigators who were investigating the sexual assault, in violation of Rule 4.17. Mr. Alford failed to cooperate with the investigators and provide relevant information related to the sexual assault.²⁴

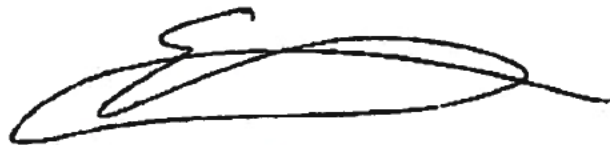
9. The applicable civil service rule violated by Appellant Alford and grounds for suspension is §143.051(12)- Violation of an applicable fire or police department rule or special order.

12. Respondent met their burden of proof in this matter. Respondent had just cause to indefinitely suspend Aaron Alford from employment with the San Antonio Police Department.

CONCLUSION

Appellant's actions in referring [REDACTED] to the undercover scheme of his friend Alex Chapa showed poor judgment in violation of Rule 3.04. It was a failure to protect and serve the public. Appellant's lack of cooperation with the law enforcement officials who were investigating the rape of [REDACTED] was a failure to cooperate with other law enforcement agencies in violation of Rule 4.17. Appellant's language and behavior towards the law enforcement officials investigating the rape of [REDACTED] was conduct unbecoming and it brought discredit onto both Appellant and the San Antonio Police Department in violation of Rule 3.04. Respondent had just cause to indefinitely suspend Aaron Alford from employment with the City of San Antonio Police Department. The grievance is denied in its entirety.

Signed this 9th day of April, 2018.



Sherry R. Wetsch, Hearing Examiner

Received by:

Yvette Ramirez for
F & P 5/3/18

23. Respondent Exhibits 2 & 8

24. Respondent Exhibits 2, 3, 7 & 8