



Police

Michael Berezin
Chief of Police



Memorandum

To: Captain Dwayne Williams

From: Lieutenant Jeffrey York
Supervisor Michael Curry

CC: Assistant Chief Keith Jemison
Captain Kevin Williams
Assistant Chief Lance Bothell

Date: July 26, 2016

Re: PSI #16-0011 Investigative Report Summary

INTRODUCTION

This Internal Affairs Division investigative report responds to the administrative inquiry initiated by the Chief of Police against Sergeant Daryl Smith Employee# 266 of the Missouri City Police Department Patrol Division.

The Chief of Police's allegation against Sergeant Smith is for violation of policy 20-07 Use of Force. This incident took place in the 19800 block of South University Boulevard on May 28, 2016 at approximately 1347 hours.

On 5-28-16 at about 1233 hours, Officers were dispatched to a report of a stolen vehicle located by the owner. The Officers located the vehicle and attempted to arrest the sole subject in the vicinity of the stolen vehicle. This subject was able to escape the Officers and drove away in the vehicle with the hood in the up position. A pursuit was initiated by the Officers on scene. The pursuit lasted approximately 18 minutes, including 3 instances in which the suspect and pursuing Officers drove against traffic. Sergeant Smith was the only supervisor on duty at the time of the pursuit and was in command of the pursuit. The pursuit was ended when the suspect wrecked his vehicle in the 19800 S. University Blvd.

Upon approaching the vehicle Officers Limbousis, Fahey, Larson, Stahl, and Sergeant Smith removed the suspect from the vehicle and took him into custody. During the course of a review of the pursuit, several instances were observed on video indicating the pursuit should have been terminated by the pursuing Officers as well as Sergeant Smith in his supervisory role.



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During the course of the investigation of PSI 16-0010, the investigator reviewed all body cam videos from the arrest of the suspect. During this review it was observed that

Sergeant Smith places the point of his left knee into the side of the neck of the suspect, at what appears to be a point nearest where the suspect's spine and skull meet. Sergeant Smith placed his knee on the suspect's neck as soon as the suspect was removed from the vehicle and placed in a prone position. Sergeant Smith's knee remained on the suspect's neck while the suspect was being handcuffed. After the suspect was secured, Sergeant Smith's knee remained on the neck of the suspect until Officers on scene requested the suspect be turned over, to facilitate the completion of their search.

DISCOVERY

During the course of completing the investigation of PSI 16-0010, the investigator reviewed all body cam videos from the arrest of the suspect. During this review it was observed that Sergeant Smith placed the point of his left knee into the side of the neck of the suspect, at what appears to be a point nearest where the suspect's spine and skull meet. Sergeant Smith placed his knee on the suspect's neck as soon as the suspect was removed from the vehicle and placed in a prone position. Sergeant Smith's knee remained on the suspect's neck while the suspect was being handcuffed. After the suspect was secured, Sergeant Smith's knee remained on the neck of the suspect until Officers on scene requested the suspect be turned over, to facilitate the completion of their search.

This resulted in Sergeant Smith's knee, and the bulk of his body weight, being applied to the suspect's neck for a total of 44 seconds (14 seconds while he was being handcuffed, and an additional 30 seconds after he was secured).

COMPLAINT REQUIREMENTS

The Chief of Police has adopted this complaint because the following misconduct is alleged, and there is no complainant willing or able to give a notarized statement. The alleged behavior is for an excessive use of force, which brings into question the integrity of the subject officer and/or the Missouri City Police Department. The alleged behavior was observed by a supervisor and was determined to be a possible violation of departmental rules. There is no complainant; therefore, because the Chief is accountable for the behavior of the employees in the department and is responsible for the management of the department, the case will be adopted in the Chief's name.



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OFFICER STATEMENTS

Assisting officer statements, in their entirety, have been included in this investigative package.

Voluntary Statement of Officer Eric Stahl, Employee #687, Patrol Division Day Shift 0600 – 1800 hours MCPD Mini-Station 1703-A Missouri City, TX 77489 . Station Telephone - (281) [499-4171].

Relationship: Officer Stahl was an assisting officer and joined the pursuit late but was one of the first officer on the scene when the subject wrecked the vehicle.

The following is Officer Stahl's voluntary statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Officer Stahl voluntary statement dated July 6, 2016

"My name is Eric Stahl and I am employed with the Missouri City Police Department as a Police Officer. I am assigned to the Patrol Division and my assigned duty hours are 0600 hours until 1800 hours.

On Wednesday, 07/06/2016 at 1200 at the Missouri City Police Department, I was ordered to submit this statement by J York, lieutenant. I submit this statement at his/her order as a condition of employment. In view of possible job forfeiture, I have no alternative but to abide by this order.

It is my belief and understanding that the department requires this statement solely and exclusively for internal purposes and will not release it to any other agency. It is my further belief that this statement will not and cannot be used against me in any subsequent proceeding, including criminal proceedings other than disciplinary proceedings within the confines of the department itself.

For any and all other purposes, I hereby reserve my constitutional right to remain silent under the Fifth and Fourteenth Amendments to the United States Constitution and other rights prescribed by law. Further, I rely specifically upon the protection afforded me under the doctrines set forth in Garrity vs. New Jersey, 385 U.S. 493 (1967), and Spevack vs. Klein, 385 U.S. 511 (1967), should this report (statement) be used for any other purpose of whatsoever kind or description.



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Finally, from the information provided me to date, I have fully cooperated and have answered all issues presented to me to the best of my ability and recollection. However, I reserve the right to supplement and/or amend this statement should additional facts be brought to my attention through further investigation, subsequent reflection on the matter, because of an honest defect in perception of the event(s), or the common shortcomings of the human memory."

On 05/28/2016, I, Officer E Stahl #687, was involved in a pursuit of a stolen vehicle. The suspect vehicle wrecked out and I approached the vehicle along with another officer. The suspect's left arm appeared to be hand cuffed to the steering wheel. I was ordering the suspect to exit the vehicle when he responded and said he can't, his arm was hand cuffed to the steering wheel. I grabbed the suspect's right arm and the other officer removed the hand cuff from the steering wheel. Myself and other officers removed the suspect from the vehicle and placed him on the ground. In the process of placing the suspect on the ground, his left arm was under his body. I attempted to pull the suspect's arm out from under his body but was unable to. The suspect appeared to be tense but did not appear to be resisting. I got the hand and brought it to the suspect's back where he was handcuffed with both hands. Once the suspect was handcuffed, I kept my hands on his back where his hands were to keep him from attempting to get up, while other officers secured the vehicle. Myself and another officer started searching the suspect but was unable to roll him over. I looked toward the area of the suspect's body that wasn't able to be rolled over and noticed Sgt Smith holding the suspect down. I asked Sgt Smith if we could roll the suspect over and he released him. Once the suspect was searched, I rolled him over and sat him up on the curb. I asked the suspect if he was ok as it appeared the suspect was in a daze and was not responding clearly to questions being asked of him. The suspect had slurred speech and was not speaking clearly when I asked him if he was ok, it appeared genuinely that there was cause for concern of the suspect's wellbeing. Officers helped the suspect get up and walk over to another curb where EMS checked him out. I rode in the ambulance as EMS transported to suspect to the hospital. The entire time in the ambulance and for approximately two hours while at the hospital, the suspect continued to have slurred speech and was very hard to understand while being asked questions by the nurses and Dr. The nurses and Dr. were not sure what was wrong with the suspect, they stated the suspect could possibly be faking his actions. After approximately two hours at the hospital, the suspect sat up and started speaking better and everyone was able to understand him. Hospital staff reviewed the tests that they took and determined there was no medical condition requiring the suspect to stay at the hospital. The suspect was released from the hospital and walked outside to the back of a patrol car where he was transported to the Fort Bend County Jail by another officer.

End of voluntary statement- Officer Eric Stahl



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Investigator's Note: Officer Stahl confirmed during this interview that when he first came in contact with the suspect (at the open door of the vehicle once it came to a stop) the suspect was speaking in a normal manner and was able to communicate effectively. Officer Stahl further stated that the suspect was handcuffed to the steering wheel during the pursuit and that the suspect was cooperative with officers and complied with their commands while they were removing the cuff. Once the cuff was removed, the suspect was taken out of the vehicle and placed on the ground. During this time Officer Stahl had some trouble getting the suspect's left hand out from under him, but was not sure if this was because the suspect fell onto his left arm, or if he was just tensed up. Officer Stahl did clarify that he did not feel that the suspect was actively resisting officers attempt to get him into handcuffs or keep him under control.

During this time Officer Stahl was aware that Sergeant Smith was in the group of officers, but could not provide specifics as to Sergeant Smith's actions or position. Officer Stahl also stated that once the suspect was placed in handcuffs, he provided no resistance against the officers. Officer Stahl did not see or feel any action on the part of the suspect that would have justified any further control tactics from officers.

Once the suspect was in handcuffs, Officer Stahl searched the suspect and to facilitate completing that search he tried to turn the suspect over onto his back. Officer Stahl told investigators that he was unable to turn the suspect over because the top portion of his body was unable to move. He looked and stated Sergeant Smith was holding the suspect down, but could not provide a further description of this. Stahl asked Sergeant Smith if he could turn the suspect over and Sergeant Smith released the suspect. Once the search was complete and the suspect was moved to a seated position, Officer Stahl told investigators that he saw a difference in the suspect's demeanor and became concerned for his welfare. Officer Stahl asked the suspect if he was okay, and recommended the suspect be left out of a vehicle until he could be checked by medical personnel.

Officer Stahl was not able to provide a specific incident that caused the suspect to change his behavior, or what may have been the cause. Officer Stahl did however state that the suspect was now unable to converse in a normal manner and that he definitely needed medical attention.

Officer Stahl accompanied the suspect to the hospital and advised that over the course of the next several hours the suspect recovered and was again able to speak and communicate in a more normal manner.



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Administrative Statement of Officer Konstantino Limbousis, Employee #619 Patrol Division, Shift -Day shift Station Address - 3849 Cartwright Road Missouri City, TX 77459. Station Telephone - (281) [403-8700].

Relationship: Officer Limbousis was the primary officer and the first to contact the subject. Officer Limbousis was also the one of the first officers to make contact with the subject after the vehicle wrecked.

The following is Officer Limbousis' administrative statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Officer Limbousis' administrative statement dated July 6, 2016

On 5/28/16 at approximately 1230 hours I officer G. Limbousis # 619 while working in and for the city of Missouri City, Fort Bend County arrived on scene after the suspect vehicle had wrecked. I ran up to the vehicle to the driver door in an attempt to detain the suspect who was driving the stolen vehicle. At first glance I see the suspect still sitting inside the vehicle so I thought the door might have been damaged due to the accident. I then pulled on the door and discovered the door was operational but that the suspect had hand cuffed his left hand to the steering wheel. I then asked another officer to hold the suspects right arm away from my gun side so I could release the cuff from the steering wheel.

The suspect was then taken out of the vehicle and placed onto the ground. The suspect had taken both of his arms including the left arm witch still had my hinged cuffs on it and placed then under his body on the ground .At this point officer Stahl #687 yelled at everyone and advised them to step back so the suspect could finish being cuffed. I don't feel that at this point any further force was needed. I then proceeded to my vehicle.

End of administrative statement - Officer Konstantino Limbousis.

Investigator's Note: Officer Limbousis confirmed during this interview that the suspect was able to communicate in a calm and clear manner during the time they first approached him in the suspect vehicle. Officer Limbousis also stated once the suspect was removed from the vehicle he saw there was some trouble getting the suspects hands from underneath his body, but was uncertain if he was resisting or if he was unable to comply due to the amount of officers on top of him.



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Officer Limbousis was near the suspect while the handcuffs were applied, but did not have much physical involvement in the arrest. Officer Limbousis was unable to give any details as to Sergeant Smith's actions or position. Officer Limbousis also did not have any contact with the suspect after the suspect was arrested or while he was transported to the hospital or jail.

Administrative Statement of Officer Patrick Fahey, Employee #817 Patrol Division, Shift -Varies Station Address - 3849 Cartwright Road Missouri City, TX 77459. Station Telephone - (281) [403-8700].

Relationship: Officer Fahey was an assisting officer during the pursuit and the third officer to contact the subject.

The following is Officer Fahey's administrative statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Officer Fahey's administrative statement dated July 6, 2016

My name is Patrick Fahey and I am employed with the Missouri City Police Department as a Police Officer. I am assigned to the Patrol Division and my assigned duty hours are 0800 hours until 2000 hours.

On Wednesday, 7/6/2016 at 1407 at the Missouri City Police Department I was ordered to submit this statement by Michael Curry, Supervisor. I submit this statement at his/her order as a condition of employment. In view of possible job forfeiture, I have no alternative but to abide by this order.

It is my belief and understanding that the department requires this statement solely and exclusively for internal purposes and will not release it to any other agency. It is my further belief that this statement will not and cannot be used against me in any subsequent proceeding, including criminal proceedings other than disciplinary proceedings within the confines of the department itself.

For any and all other purposes, I hereby reserve my constitutional right to remain silent under the Fifth and Fourteenth Amendments to the United States Constitution and other rights prescribed by law. Further, I rely specifically upon the protection afforded me under the doctrines set forth in Garrity vs. New Jersey, 385 U.S. 493 (1967), and Spevack vs. Klein, 385 U.S. 511 (1967), should this report (statement) be used for any other purpose of whatsoever kind or description.



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Finally, from the information provided me to date, I have fully cooperated and have answered all issues presented to me to the best of my ability and recollection. However, I reserve the right to supplement and/or amend this statement should additional facts be brought to my attention through further investigation, subsequent reflection on the matter, because of an honest defect in perception of the event(s), or the common shortcomings of the human memory."

Upon arrival to the wrecked vehicle, I exited my patrol car and ran towards it. I observed Officers Limbousis and Stahl had the subject who had been driving at gunpoint. As I got closer, Officer Stahl advised the subject was handcuffed to the steering wheel. As I rounded the front of the vehicle with my weapon drawn, Officer Stahl freed the subject's handcuffed hand and pulled him to the ground.

I initially assisted with attempting to get the subject's hand behind his back. Multiple other officers arrived on scene and also jumped on the suspect, so I backed off. The subject did not seem to be resisting, so I advised officers to "calm down". Once the subject was in handcuffs, I walked off to turn off the sirens from other patrol vehicles.

End of administrative statement - Officer Patrick Fahey.

Investigator's Note: Officer Fahey advised that he first came in contact with the suspect as he was being removed from the vehicle and placed on the ground. At this point he observed officers struggling to get the suspect's hands out from underneath him, but felt that this was due to the number of officers that were on him. Officer Fahey stated the suspect was not resisting and advised other officers on scene to calm down. Officer Fahey had little physical involvement in the arrest as there was no real room for him to assist.

After the suspect was placed in handcuffs, Officer Fahey left the immediate area to assist in turning sirens off on the Police vehicles. He had little interaction with the suspect after this point, but did however briefly see him being assisted to the vehicle by officers. Officer Fahey described this as the officers assisting the subject by walking next to him, and gave a general impression that the suspect looked "out of it". Officer Fahey had no further contact with the suspect.



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Administrative Statement of Officer Robert Larson, Employee #856 Patrol Division,
Shift -Varies Station Address - 3849 Cartwright Road Missouri City, TX 77459.
Station Telephone - (281) [403-8700].

Relationship: Officer Larson was an assisting officer during the pursuit and the third officer to contact the subject.

The following is Officer Larson's sworn statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Sworn statement of Officer Robert Larson dated July 6, 2016.

I, Officer R. Larson #856 upon arriving at the crash scene as a result of a vehicle pursuit in this case, I observed Sgt. D. Smith near the trunk of the suspect vehicle. As I approached the suspect vehicle, I observed that the suspect driver had been pulled outside from the driver's seat of the suspect vehicle and was placed face down on the ground. As I made it to the trunk area of the suspect vehicle, I stated to Sgt. D. Smith "let's go sarge" to assist in securing the suspect. I ran up to the two officers who were attempting to handcuff the suspect, Officer Stahl and Limbousis. I took a position where I could assist with placing the second cuff on the suspect's wrist, which I did by placing one hand on the handcuff and grabbing the suspect's wrist and uniting the two to secure him. Once the suspect was handcuffed, I walked around the suspect and took a position on his legs in the attempt to prevent him from either kicking any officers or moving. I did not observe the suspect attempting to resist any officers attempt to secure him once he was placed face down on the ground. Officer Stahl at this point made the command to roll the suspect over to one side in the attempt to bring him up to his feet. Officer Stahl stated to Sgt. D. Smith that we needed to roll the suspect up, Sgt. D. Smith was keeping the suspect's head area secured with one of his knees. The suspect was rolled to a sitting position and then to his feet. Once the suspect on his feet, he was walked across the street and placed on the curb in the shade. The suspect appeared to be having difficulty staying awake. Officer Stahl asked the suspect if he was on anything and he stated a drug that I do not recall. EMS was requested to respond to check the suspect's wellbeing based on his inability to stay awake. I was concerned that the suspect might be attempting to plan an escape by getting himself admitted into the hospital. I did not observe anything at the scene that would have caused the suspect to have been injured as a result from being secured or walked over to the shaded curb.

End of sworn statement- Officer Robert Larson.



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Investigator's Note: Officer Larson assisted in securing the suspect after he was removed from the vehicle. As Officer Larson approached and assisted by grabbing the suspect's right arm he saw no active resistance from the suspect. Officer Larson did realize that Stahl had some trouble getting the other arm out from under the suspect but was uncertain of why. Once that arm was freed, he had no trouble getting the second wrist placed in the handcuff. Once the suspect was cuffed Officer Larson moved his hands to the suspect's legs and held them there, in case the suspect attempted to resist. He stated he had his hands resting on the suspect, but felt no indication that additional force would have been necessary. Officer Larson did recall Sergeant Smith having his knee on or near the suspect's head.

Officer Larson advised after the suspect was taken into custody and searched, he felt the suspect's behavior showed a need for him to be medically evaluated, however he was also concerned this may have been a ploy for the suspect to attempt an escape at the hospital.

NOTIFICATION REQUIREMENT

On July 6, 2016, Compliance Supervisor Michael Curry and Lieutenant Jeffrey York issued Sergeant Smith a written Letter of Notification, informing him of the nature of the investigation. Specifically, they were informed that the investigation was adopted by the Chief of Police and the nature of the allegation filed. The Letter of Notification was delivered in person.

Sergeant Smith was also provided with a copy of the following documents:

1. Copy of MCPD Incident Report #16-003614.
2. Copy of MCPD Arrest Report
3. Copy of Notification letter



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SUBJECT OFFICER STATEMENT

Administrative Statement of Sergeant Daryl Smith, Employee #266 Patrol Division, Shift- Day shift Station Address - 3849 Cartwright Road Missouri City, TX 77459. Station Telephone - (281) [403-8700].

Relationship: Sergeant Daryl Smith was an assisting officer during the pursuit and the fourth officer to contact the subject. Sergeant Smith was the on duty supervisor during this incident.

The following is Sergeant Smith's administrative statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Officer Smith's administrative statement dated July 6, 2016

On 5/28/2016 after the suspect wrecked out, I assisted the officers while they tried to handcuff the suspect. I put my knee across the suspect shoulder area to keep him on the ground while officers tried to remove his hands from under his body. The suspect was actively resisting and it took several officers to get the handcuffs on him.

The suspect was keeping his hands underneath his body and tensing his body. The officers had to force his hands from underneath so they could apply the handcuffs. The level of force I would say active aggression only because I use my knee across his shoulder area. I felt it was necessary at the time. There was very little pressure I believed was put on the suspect.

No I do not feel the suspect move against my knee. I felt that was the best course of action at the time.

Yes I do understand that placing your knee and body weight excessively in a subject's neck/ shoulder/ spine area can possible result in serious bodily injury.

End of administrative statement – Sergeant Daryl Smith's.

Investigator's Note: Sergeant Smith began this interview by denying that he had placed any pressure against the suspect with his knee. Sergeant Smith argued this point vehemently and stated he only had his knee against the suspect to keep him from moving around as the Officers placed him in handcuffs. Sergeant Smith stated he placed his knee against the suspect because he was resisting the Officers attempts to get the handcuffs on him and "tussling" with them. The investigators asked Sergeant Smith to provide a description of the resistance and he was unable to articulate what that resistance was. Sergeant Smith did not feel any resistance from the suspect against his knee, but repeatedly stressed there had been resistance, and as the situation developed very quickly he was unable to articulate what it had been.



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Investigators questioned Sergeant Smith about placing his knee against the suspect's neck, and he denied that this had happened. Sergeant Smith stated he placed his knee across the suspect's shoulder and on his back only. When investigators showed Sergeant the video and pointed out his knee clearly on the neck of the suspect, his response was again that the situation developed very quickly. Sergeant Smith continued throughout the interview to state that his knee was only on the suspect's shoulder and back and never on his neck.

Investigators then questioned Sergeant Smith about his claim to have put no pressure on the suspect with his knee. Sergeant Smith made several attempts to show investigators how it was possible for him to have only one foot and one knee down and still have no pressure on the suspect. He was not however able to make any convincing argument or explanation to this effect. When presented with basic arguments about how his body weight was distributed, Sergeant Smith would not accept these, and repeat that there had been no pressure on the suspect. At one point investigators had Sergeant Smith use the plastic wastebasket as a prop to show his point, and he now seemed to have a memory lapse as to how he had been kneeling and did not follow through with the exercise.

Investigators also asked Sergeant Smith how long he had his knee against the suspect. Sergeant Smith felt the situation happened quickly and stated as soon as the suspect was in handcuffs, he removed his knee. It became apparent during this conversation that Sergeant Smith was not aware that the subject was handcuffed within the first 14 seconds of the contact, and that he kept his knee in position for an additional 30 seconds while the subject was being searched. Sergeant Smith was not aware the subject had been cuffed, and stated he was busy scanning the area and directing officers.

Investigators now started a conversation with Sergeant Smith about the use of force policy to gauge his level of understanding. Investigators asked Sergeant Smith to explain his level of force as he understood it. Sergeant Smith stated he used [REDACTED] for [REDACTED]". Investigators asked Sergeant Smith to describe the suspect's level of resistance and he stated it was "up there" but did not know how to describe it further. (When shown the use of force policy Sergeant Smith now described the suspect's resistance as a [REDACTED])



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When asked to read the levels of officer response to resistance Sergeant Smith now classified his level of force [REDACTED] When asked why he felt it was level 3 despite the fact he did not use [REDACTED] he stated [REDACTED]. Sergeant Smith was unable to make the connection with his force, as he explains it, as a control technique. It was evident that Sergeant Smith did not fully understand the use of force policy or levels of resistance/force options.

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PHYSICAL EVIDENCE

All items of physical evidence, which are included in this section, are attached to this investigative package.

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CRIMINAL CHARGES FILED

There are currently no criminal charges filed related to this investigation.

ADDITIONAL INFORMATION

Investigators completed their investigation and will now outline the charge and list supporting information for same.

Sergeant Smith #266 was charged with the following policy violation:

Policy 20-07 Use of Force

In regards to Policy 20-07 Use of Force investigators found evidence of the following Policy violation:

Police 20-07 Use of Force – (Excessive Force)

It is clear that the physical arrest of the suspect in this case was a dynamic situation at the culmination of a long and stressful pursuit. It is also clear that the suspect in this case offered limited, if any, resistance, during the physical arrest as evidenced by the statements of officers on scene in physical contact with this subject.

This investigation revealed clear and compelling evidence that Sergeant Smith placed the point of his knee on the neck of the suspect and applied pressure for approximately 44 seconds. The investigation revealed it took approximately 14 seconds for officers to secure the subjects hands in restraints. Even during dynamic encounters, a Police Officer must maintain their composure, situational awareness, and be accountable for their actions. Whether Sergeant Smith placed his knee on the suspect's neck on purpose, or if he missed his intended target of the suspect's shoulder, the force was still applied, and for an extended period of time past what was necessary. The neck and spinal area are very sensitive areas and has very limited protection from injury. In either case, the significance of that amount of force applied to an extremely sensitive portion of the body must not be understated.



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It is the opinion of the investigators that Sergeant Smith should have certainly been aware of where his knee was in relation to the suspect's neck. Sergeant Smith stated that his intended target was the shoulder of the suspect. Within the time frame that the subject was secured (approx. 14 seconds) if Sergeant Smith missed his target he should have quickly identified his error and readjusted especially given the grunts and sounds that the suspect was making. Officer Larson called over the radio mere feet from Sergeant Smith that the suspect was secure. Sergeant Smith's explanation that he didn't realize the suspect was secure is invalid due to the fact that his purpose for applying force was to ensure the suspect was secured in hand restraints as well as the fact that he was facing the officer who was securing the suspect. Sergeant Smith was within close proximity to the officers who were securing the suspects hands. Review of the body camera video (Larson) does not show Sergeant Smith giving instructions to anyone within the time frame between when the suspect was called "secure" and when he was requested to roll the suspect over. Review of the body camera video (Larson) revealed after the suspect was secured Sergeant Smith's knee remained on the suspect's neck for an additional 30 seconds. If Sergeant Smith missed his intended target, he most certainly should have noticed within 44 seconds that he had in fact landed on the neck of the suspect.

While reviewing the body camera videos (Larson 14:04:44) it appears that Sergeant Smith drives his knee into suspect's neck while lifting his toe off the ground. At the same time Sergeant Smith is seen grabbing the suspect's shirt pulling it in an upward motion. The investigators felt that this action was as a result of Sergeant Smith losing his balance. The length of time and tactics used to balance on the suspects neck shows at most intent, and at least negligent behavior on the part of Sergeant Smith. In addition when confronted with the video showing the actual placement of his knee on the neck of the suspect, Sergeant Smith refuses to acknowledge this fact. At one point during the review of the video Sergeant Smith asked investigators, "who is that?"

The use of a knee to apply body weight or pressure to the neck of a suspect is not a trained technique in any defensive tactics system that the investigators are aware of. Quite the opposite, the neck receives special attention and warning in Police defensive tactics training as it is a sensitive area and improperly applied force can result in serious bodily injury or death.

As the tactic of pressing the point of a knee into the neck of a suspect is not a trained or recognized technique, it is difficult to classify where it would fall in the use of force continuum. This application of force could certainly result in damage to the airway, restriction of blood flow to the brain, damage to the spine of the suspect, and in the case at hand positional asphyxiation. These possible results lead to classifying this use of force towards the deadly force end of the continuum.



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Clearly a use of force of this nature was not warranted during the arrest of this suspect. In addition once the suspect was placed in handcuffs, he was offering no resistance and was clearly under control of the officers that were searching him. Sergeant Smith continued this use of force for an additional 30 seconds.

The suspect in this offense, when first approached by officers, was speaking clearly and coherently. After the arrest his behavior changed dramatically. The suspect was now unable to communicate in a clear manner and appeared to be, in the opinion of the officers, in need of medical attention. This change in behavior, while not directly tied to Sergeant Smith's use of force at this time, is certainly a possible outcome of the excessive force.

Investigators explored an additional explanation for the suspect's drastic change in behavior. After the physical arrest Officer Stahl asked the suspect what was wrong and the suspect indicated that he needed medicine. Officer Stahl inquired what type of medicine and what was it for. The suspect, in his slurred speech, indicated what sounded like to the investigators the anti-anxiety medication Lorazepam. Lorazepam belongs to a group of drugs called benzodiazepines. It affects chemicals in the brain that may be unbalanced in people with anxiety. The drug is a central nervous system depressant that slows the body down. Lorazepam should not be taken while drinking alcohol as it may heighten the effects of the drug. In many cases Lorazepam and drugs within the family are considered pill forms of alcohol as they have similar effects on the body.

Lorazepam may impair an individual's thinking or reaction time. The effects of the medication are not instant and will affect the body over a period of time depending on the dosage and how much was taken by the subject. The investigators are not aware of any pills or pill bottles that were found on the suspect's person.

Given the suspect in this incident was coherent prior to physical contact with officers, and his behavior changed drastically after the contact (about 44 seconds) it does not appear that the change in behavior was a result of a reaction to medication.

Investigators reviewed the many different angles of the physical arrest at length. Investigators could find no other force applied to this suspect beyond pulling his arms out from under him and handcuffing him, indicating a likely link between the change in behavior of the suspect and Sergeant Smith's use of force. Review of the video indicated that the suspect made several declarations that he was suffering from head and or neck pain but he did not appear to be able to articulate the extent of the issue.



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It is the belief of the investigators that Sergeant Smith's actions on May 28, 2016 and the results of the subsequent investigation, provide evidence to **sustain** the charge of 20-07 Use of Force (Excessive Force) cited in PSI #16-0011.



Police

Michael A. Berezin
Chief of Police



Memorandum for Record

To: Keith Jemison, Assistant Chief of Police
From: Dwayne Williams, Captain
Date: August 3, 2016
Re: PSI Case #16-0011 Daryl Smith

This investigation focuses around a use of force incident that occurred on Saturday, May 28th, 2016, at approximately 1347 hours in the 19800 block of South University Boulevard, Missouri City, Texas where Sgt. Daryl Smith assisted with the arrest of a suspect who wrecked a stolen vehicle after being pursued by several Missouri City police officers. Once the suspect was physically removed from the wrecked stolen vehicle and forced to the ground in the prone position, Sgt. Daryl Smith held the suspect down on the ground by placing his left knee on the suspect's neck and using his body weight to hold the suspect down until the suspect was detained in handcuffs.

The alleged use of force policy violation was discovered when Lt. York was investigating professional standards investigation (PSI) 16-0010 which was initiated due to alleged pursuit policy violations committed by officers while pursuing a suspect in a stolen vehicle.

The professional standards investigation was assigned to Lt. Jeff York on Friday, July 1, 2016.

On July 6, 2016, Sergeant Daryl Smith was notified in writing that a professional standards investigation was being performed on him for the following alleged department policy violation:

1. Policy 20-07 Use of Force

This investigative analysis will address the alleged use of force policy violation against Sgt. Daryl Smith for the type and amount of force used against the suspect when the suspect was being detained after wrecking a stolen vehicle. Was the amount of force used by Sgt. Daryl Smith within departmental policy, federal, state law and standards governing the use of force, including the Fourth Amendment to the U.S. Constitution; applicable judicial interpretations law?

The Missouri City Police Department Use of Force policy 20-07 provides guidelines on use of force utilized by Missouri City police officers are in line with federal, state law and standards governing the use of force, including the Fourth Amendment to the U.S. Constitution; applicable



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Chief of Police



This investigation revealed that on Saturday, May 28, 2016, Sergeant Daryl Smith's use of force in the detention of the suspect was not within policy based on the fact the suspect was actively not resisting his detention. Sgt. Daryl Smith's application of force by placing his knee on the suspect's neck is not taught in the Missouri City Police Department's defensive tactics training and there were no extenuating circumstances which indicated the need for the type of force utilized.

In evaluating the totality of circumstances surrounding this use of force incident, there were several factors confronting Sgt. Daryl Smith as follows:

- The suspect actively resisted the original officer that attempted to detain him and fled in a stolen vehicle.
- The suspect evaded in a stolen vehicle for approximately 18 minutes and only stopped because he wrecked out.
- When Sgt. Daryl Smith approached the suspect, the suspect's hands were under him possibly leading Smith to believe the suspect was resisting arrest.

In Sgt. Daryl Smith's statement, he advised he assisted the officers while they tried to handcuff the suspect. He advised he put his knee across the suspect's shoulder area to keep him on the ground while officers tried to remove his hands from under his body. Smith advised the suspect was actively resisting and it took several officer to get the handcuffs on him. He also stated the suspect was keeping his hands underneath his body and tensing his body.

The body camera videos does not show the suspect resisting arrest when Sgt. Smith's knee was on his neck. Even if the suspect was resisting, it would not be permissible by policy to apply a knee to his neck. If Sgt. Smith meant to pin the suspect's shoulder and accidentally pinned his neck, he should have removed his knee once the suspect was detained in handcuffs. The investigation revealed Sgt. Smith's knee remained on the suspect's neck for approximately 30 seconds after the suspect was detained in handcuffs.

Based on the videos from the arrest scene, Sgt. Smith should have utilized no higher than

a [REDACTED] (b) (6)

Based on all evidence presented at the time of this investigation and in evaluating the totality of circumstances, the investigation reveals Sergeant Daryl Smith was not within departmental policy guidelines when he applied physical force against the suspect in order to detain him. I am recommending the charge of Improper Use of Force to be **SUSTAINED**.



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Chief of Police



I pointed my firearm at the suspect at the very end of the pursuit when the suspect was not coming out of the vehicle. I did complete a use of force form. I was informed the computer was logged in as Officer Stahl's numbers by LT York. I was wearing a body camera and was sure I activated it when I first made contact with the suspect. My body camera has had nonstop issues from day one. I have made supervisor Pahl # 632 aware of it on several occasions. Unknown if my camera is the problem or the docking station in my shop. I have had my camera work on one traffic stop and then not work on the next for no reason. I have also advised dispatch of this several times when this has occurred. The camera will not download in my vehicle for almost all incidents. I had supervisor Pahl # 632 try to manually get the video from my camera but nothing was on it. It was discussed that the camera might be malfunctioning and not activating so he gave me another one to use. I did not remember to put this in my report on accident. After this whole incident was over I had some questions for the on duty supervisor but was not able to get any direction from him. I had to find an off duty Sgt Luera in the back parking lot to help me with my questions. I do not think Sgt Smith reviewed any of our stuff that evening and advised us he had been mandatory and that we would get it all squared away on the next work day.

End of administrative statement - Officer Konstantino Limbousis.

Investigator's Note:

Officer Limbousis was allowed to watch the video from his vehicle at the start of the interview. He confirmed what was seen on the video, that he approached the suspect in this case as he was outside the vehicle and attempted to detain him. The suspect was able to escape with a handcuff on one of his wrists and re-enter the vehicle. As the vehicle drove away, Officer Limbousis was aware that the hood was in the up position and indicated this to dispatch via the radio. Officer Limbousis initiated a pursuit with the suspect vehicle and as it entered Highway 6 he was able to tell the hood was still in the up position. Officer Limbousis described the driver's actions at this time as driving erratically and swerving back and forth. Officer Limbousis stated he backed off of the vehicle a little at this time and believed the vehicle posed a danger to the other vehicles on the roadway. At this point he stated he was gathering his thoughts as to whether to continue the pursuit, or if it would be called off by the Sergeant. He felt at this time that the Sergeant would call off the pursuit, but continued after the vehicle.



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As the vehicle was passing through the Kroger parking lot at the Fort Bend Tollroad, Officer Limbousis was third behind the suspect vehicle. Officer Limbousis was aware by notification via radio that the suspect vehicle struck another vehicle in the parking lot and continued the pursuit. As the vehicle entered Highway 6, driving head on into the oncoming lanes, Officer Limbousis paused for a second and considered turning the correct direction and going down to make a u-turn instead of following the suspect vehicle. Officer Limbousis was considerably worried about the safety of the suspect vehicle driving against the flow of traffic and felt that oncoming vehicles may not see him and there could be a head on collision. Limbousis chose to follow the vehicle so that he would be able to provide some warning to oncoming traffic. It was his belief that following on the correct side of the roadway would cause oncoming traffic to look towards the Police vehicles and away from the suspect who was in their path. He followed the vehicle as it then entered back into the correct lanes of travel.

As the vehicle continued northbound on Highway 6, it veered into oncoming traffic again. Officer Limbousis again followed the vehicle directly into oncoming traffic, which was forced to take evasive action to avoid a collision with the suspect vehicle and his patrol vehicle. Officer Limbousis pulled toward the side of the road and almost stopped, during which time he stated he was again worried about a head on collision, but pulled over to hear what the Sergeant had to say on the radio. Officer Limbousis then continued back into the pursuit and heard the Sergeant state he should catch up to the suspect.

At this point the investigator asked Officer Limbousis to offer his opinion on whether the offense for which the pursuit was started, coupled with the suspect's behavior during the pursuit, was cause enough to outweigh the safety of the officers, suspect, and general public during this pursuit. Officer Limbousis confirmed at this point that his opinion is now that he should have handled the call in a completely different manner.

As to the use of force, Officer Limbousis confirmed that he did point his weapon at the suspect and that he completed the use of force report on the computer. During the interview Officer Limbousis was not sure if he pointed his firearm or his Taser at the subject. The record does indicate that he used force, however no narrative was completed, leading to Stahl adding the only narrative on the record.



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The investigator questioned Officer Limbousis as to whether he had activated his body camera during this incident or not, and he was unable to confirm. He did state that he had been having issues with the body camera and that they started prior to this date. He advised he had spoken to Supervisor Pahl about the issues and had been given a new camera. He then stated that there was a possibility that he forgot to turn it on, and that if we couldn't find it, then obviously he did not activate it. The investigator now mentioned to Officer Limbousis that he did not have any body camera videos for the entire shift on the date of the pursuit.

Officer Limbousis then reversed this statement and said that he did not feel the camera had been working correctly. Officer Limbousis reiterated that he had been working with Supervisor Pahl on the issue and that he had been given another camera to replace his original. Officer Limbousis then stated that he had attempted to download the videos at the end of that shift and got an error when he docked his body camera. Officer Limbousis stated the dock did not recognize his body camera and no videos were present. Officer Limbousis now stated he was uncertain if he didn't turn the camera on, or if he did and it did not work correctly. Officer Limbousis stated he did not think to enter this information into the narrative of his report when he was writing it.

At the end of the interview the investigator asked Officer Limbousis what he meant by his earlier statement that he would have handled the call in a different manner. Officer Limbousis stated that when he saw the vehicle driving with the hood up and seeing that it would get away, he would not have pursued the vehicle. He also stated he felt that on the day in question, a part of him felt the Sergeant would terminate the pursuit and he only continued because he felt that would happen.

After the conclusion of the interview, in order to determine if the lack of videos was a one-time occurrence or a regular oversight by Officer Limbousis, the COBAN system was searched for bodycam videos for Officer Limbousis for the month of May 2016. The result of this search revealed there were only four videos for the entire month, and they all were recorded on May 10, 2016.

A search of Officer Limbousis activity for the month of May shows that he worked 11 days during the month. During these 11 days he wrote 6 reports and made 13 traffic stops. This number does not include calls for service that did not generate a report or field investigations and consensual contacts. The fact that Officer Limbousis only has four videos for the month is cause for concern and merited further investigation.



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The four videos recorded by officer Limbousis during May 2016 are for a suspicious vehicle, 2 videos from a 911 unknown and an alarm. However, none of these videos were ever classified in the system as per policy and all show the default "other" code. In addition none of these videos are for the reports written by Officer Limbousis in May.

In addition investigators printed copies of the narrative of each of the six reports written by Officer Limbousis during the month. Of the reports written, 4 state in the narrative that Officer Limbousis had his body camera on, one states the body camera was not working and one makes no mention of the body camera at all. Given the consistent lack of videos, conflicting information in the reports and lack of coding of existing videos, Investigators determined Officer Limbousis should be interviewed again in an attempt to explain these occurrences.

Note: The following is Officer Limbousis' second administrative statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Officer Limbousis' administrative statement dated July 11, 2016

My name is Gus Limbousis and I am employed with the Missouri City police department as a (patrol officer). I am assigned to the (patrol) Division and my assigned duty hours are _0600_ hours until _1800_ hours.

On 7/11/16, at 1330 hours at The Missouri city police department I was ordered to submit this statement by (LT York),. I submit this statement at his/her order as a condition of employment. In view of possible job forfeiture, I have no alternative but to abide by this order.

It is my belief and understanding that the department requires this statement solely and exclusively for internal purposes and will not release it to any other agency. It is my further belief that this statement will not and cannot be used against me in any subsequent proceeding, including criminal proceedings other than disciplinary proceedings within the confines of the department itself.

For any and all other purposes, I hereby reserve my constitutional right to remain silent under the Fifth and Fourteenth Amendments to the United States Constitution and other rights prescribed by law. Further, I rely specifically upon the protection afforded me under the doctrines set forth in Garrity vs. New Jersey, 385 U.S. 493 (1967), and Spevack vs. Klein, 385 U.S. 511 (1967), should this report (statement) be used for any other purpose of whatsoever kind or description.



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Finally, from the information provided me to date, I have fully cooperated and have answered all issues presented to me to the best of my ability and recollection. However, I reserve the right to supplement and/or amend this statement should additional facts be brought to my attention through further investigation, subsequent reflection on the matter, because of an honest defect in perception of the event(s), or the common shortcomings of the human memory

I have asked my immediate supervisor on at least one occasion on how to incorporate the body cam into my report and had stated that I was logging the body cam serial number. I was advised it would be sufficient to just state body camera worn following what shop I was driving. I had read the body camera policy and am now aware my actions were not sufficient on what I was supposed to be doing. I am now aware that there have only been 4 videos for the month of May. I understand that the body camera should be turned on at any time you would have to have your coban camera running. There are numerous times that I have had to advise on primary to dispatch to log that my body camera will not activate. But in those cases I used my coban as stated by policy and continued to my calls for service. I do not recall which body camera was used in the pursuit since I was given a second one to use. I have spoken to supervisor Pahl # 632 on many occasions about my coban camera and my body camera but I cannot recall the specific dates and times.

End of administrative statement - Officer Konstantino Limbousis.

Investigator's Note:

Prior to this interview investigators spoke with Supervisor Pahl about any conversation he may have had with Officer Limbousis in relation to body cameras. It appears that the first mention of issues with the missing body cameras between Supervisor Pahl and Officer Limbousis came on the heels of the pursuit on May 28, 2016. Supervisor Pahl indicated that while attempting to download all pertinent videos from Coban related to the pursuit he noted that Officer Limbousis did not have a body cam video. Supervisor Pahl stated that he notified Officer Limbousis that his video was missing and that he needed to upload his videos. Officer Limbousis stated that he had been downloading the videos. Supervisor Pahl asked Officer Limbousis to show him how he was downloading videos. Supervisor Pahl stated that Officer Limbousis was following the procedure for in-car downloading.

Investigators noted that Officer Limbousis was following only part of the procedure for downloading. Officer Limbousis explained in his interview that he thought that all he had to do was dock body camera to download. Officer Limbousis explained that he was unaware of second portion of the process by which he would be required to tag each respective video. If Officer Limbousis was completing the entire procedure he would have known that his body camera was not downloading entire shifts worth of video.



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Officer Limbousis wavered on whether or not he informed the appropriate supervisor of his issues with the body camera. Officer Limbousis did indicate that he was having charging issues prior to May 28, 2016 that he addressed with Supervisor Pahl. Supervisor Pahl stated that he took a look at the charging cradle inside Officer Limbousis's vehicle. The time prior to May 28, 2016 Supervisor Pahl was unaware that Officer Limbousis was having download issues also.

It is now clear to the investigators that Officer Limbousis knew that there was something possibly wrong with his body camera prior to May 28, 2016. Investigators are also clear that Officer Limbousis never made any "official" attempts to trouble shoot any issues beyond the body camera not charging properly. Investigators also were able to determine that if Officer Limbousis was docking, uploading, and tagging his videos everyday as instructed he would have clearly caught the fact that there were major issues with his issued body camera. It is unclear to investigators the extent of how much video documentation has potentially gone missing due to this negligent disregard of body camera procedures.

Investigators also noted another glaring disregard for body camera procedures in relation to how Officer Limbousis enters into his narrative information regarding a working body camera. Officer Limbousis does not however confirm that the statement is accurate by confirming the videos are in the system and coding them correctly.

While Supervisor Pahl was conducting a secondary investigation related to being able to determine if body camera videos are uploaded to the vehicle first prior going to Coban server he uncovered several missing videos. Supervisor Pahl was able to locate Officer Limbousis' missing body camera videos from May 28, 2016, including the pursuit on May 28, 2016. It appears at this time that the original body camera Officer Limbousis was issued was recording correctly, however somewhere in the process of being downloaded from the camera to the server the dates were not recorded properly. This error in recording was not caught due to Officer Limbousis not logging in and coding the videos or confirming they downloaded.



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Administrative Statement of Officer Patrick Fahey, Employee #817 Patrol Division, Shift -Varies Station Address - 3849 Cartwright Road Missouri City, TX 77459. Station Telephone - (281) [403-8700].

Relationship: Officer Fahey was an assisting officer during the pursuit and the third officer to contact the subject.

Note: The following is Officer Fahey's administrative statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Officer Fahey's administrative statement dated July 6, 2016

My name is Patrick T. Fahey and I am employed with the Missouri City Police Department as a Police Officer. I am assigned to the Patrol Division and my assigned duty hours are 0800 hours until 2000 hours.

On Wednesday, 7/6/2016 at 1040 at the Missouri City Police Department, I was ordered to submit this statement by Officer Curry. I submit this statement at his order as a condition of employment. In view of possible job forfeiture, I have no alternative but to abide by this order.

It is my belief and understanding that the department requires this statement solely and exclusively for internal purposes and will not release it to any other agency. It is my further belief that this statement will not and cannot be used against me in any subsequent proceeding, including criminal proceedings other than disciplinary proceedings within the confines of the department itself.

For any and all other purposes, I hereby reserve my constitutional right to remain silent under the Fifth and Fourteenth Amendments to the United States Constitution and other rights prescribed by law. Further, I rely specifically upon the protection afforded me under the doctrines set forth in Garrity vs. New Jersey, 385 U.S. 493 (1967), and Spevack vs. Klein, 385 U.S. 511 (1967), should this report (statement) be used for any other purpose of whatsoever kind or description.



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Finally, from the information provided me to date, I have fully cooperated and have answered all issues presented to me to the best of my ability and recollection. However, I reserve the right to supplement and/or amend this statement should additional facts be brought to my attention through further investigation, subsequent reflection on the matter, because of an honest defect in perception of the event(s), or the common shortcomings of the human memory."

On 5/28/2016, I responded to a call of a citizen reporting she had observed her vehicle, which had been stolen the previous day, in a parking lot. Other officers arrived and the suspect fled the scene in the stolen vehicle, with officers pursuing the vehicle southbound on SH 6.

I caught up to the pursuit around the area of Glenn Lakes Ln. and SH 6. I recall the vehicle was being driven above the posted speed limit with the hood of the vehicle up. I felt at this time he was a danger to other drivers on the roadway.

We lost sight of the vehicle when it exited SH 6 at the Fort Bend Tollway. Construction workers on the median indicated the vehicle turned south on the Fort Bend Tollway at the same time another officer radioed the vehicle had gone south towards Sienna Pkwy. I proceeded south, where I observed the vehicle stopped on the shoulder with the driver, who appeared to be outside the vehicle, closing the hood. I attempted to catch up to the vehicle before he could drive away again, though he did, and continued the pursuit. I did not consider stopping the pursuit at this point. The pursuit continued south into Sienna, where the vehicle turned into a neighborhood and back onto Watts Plantation, where Sgt. Smith was waiting and took the lead spot.

The pursuit continued back across the tollway and into the Kroger parking lot, with Sgt. Smith still lead. The pursuit crossed the front of the business where people were walking. As we exited the parking lot at SH 6 near the Firestone, the suspect vehicle struck another vehicle pulling into the parking lot. I paused briefly when the suspect vehicle turned the wrong direction as I tried to determine the appropriate course of action. When I observed the vehicle's reckless driving, I decided to follow the vehicle so oncoming cars could see my overhead lights and take appropriate evasive action. I did it a second time a short distance up SH 6 while following Officer Limbousis for the same reasons. We pulled into oncoming traffic and slowed down so other vehicles would be able to see us and move out of the way. I did feel it was dangerous to myself and the oncoming traffic, but I felt if they hadn't seen our lights, a head on collision would have occurred.



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The suspect was being pursued for unauthorized use of a motor vehicle (UUMV). I do not feel the need to arrest the suspect should outweigh the lives of the officers, citizens, and the suspect.

Use of force reports should be completed any time force is used. I did point my firearm at the suspect, which is a use of force, requiring a use of force. I added my name to a use of force completed by Officer Stahl and Officer Limbousis, under the impression one was needed for the event.

End of administrative statement - Officer Patrick Fahey.

Investigator's Note:

Officer Fahey was given an opportunity prior to the interview to review his video regarding this case. I also allowed Officer Fahey to review his supplement prior to notifying him of the alleged allegations. Officer Fahey stated that he felt he had enough information to proceed with the interview. Officer Fahey was given the opportunity to read notification document and had no additional questions. Officer Fahey described the incident and his understanding of the call he was dispatched to. As he arrived and was able to visually see the suspect vehicle, and he described the vehicle as driving above the posted speed limit and driving with the hood up. Upon catching up with the pursuit, Officer recognized that the driver was a danger to the other drivers on the roadway.

As Officer Fahey crossed into the Kroger parking lot at 10000 block of SH6 he observed the parking lot to be full of pedestrians and vehicles. Officer Fahey recognized the lead vehicle in the pursuit as being Sergeant Smith. Officer Fahey recognized that the suspect vehicle had just struck a vehicle in the Kroger parking lot. When Officer Fahey was asked whether or not he considered terminating the pursuit he stated, "Sergeant Smith was in the lead and figured he would make the call." I questioned Officer Fahey as to why when the suspect driver first went contraflow on highway 6, he paused before going contraflow with the suspect. Officer Fahey indicated that he wasn't sure it was the right thing to do but gave chase anyway. Officer Fahey stated he recognized it was against the policy but felt it would give the vehicles in the southbound lanes some sort of notice that a vehicle was on the wrong side of the road. Officer Fahey explained in his opinion following the suspect for the safety of the citizens was not a safe maneuver.



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Chief of Police



When the subject drove contraflow for the second time and Officer Fahey gave chase, he felt that it was dangerous to himself and oncoming traffic. Officer Fahey admitted that he did not consider terminating the pursuit at that time because he felt at that time it was the decision of the lead vehicle. Officer Fahey did feel that the suspect and the officers driving on the wrong side of the road were a danger to oncoming traffic. Officer Fahey stated that he did recognize that arresting the subject should not take precedence over the life of a citizen, officer, or the suspect.

Officer Fahey explained that his understanding of when a use of force report should be completed was anytime a use of force was used. However, he was operating under the belief that if a use of force form was completed for the incident by any officer, if he used the same force, he would not be required to complete his own use of force form. This topic was discussed with several different supervisors at the agency and it appears that there may be conflicting directives in regards to the matter. Based on the current information there may be a need for administrative review of the current process for completing use of force forms and the workflow for the forms through the chain of command.

Administrative Statement of Sergeant Daryl Smith, Employee #266 Patrol Division,
Shift -Varies Station Address - 3849 Cartwright Road Missouri City, TX 77459.
Station Telephone - (281) [403-8700].

Relationship: Sergeant Daryl Smith was an assisting officer during the pursuit and the fourth officer to contact the subject. Sergeant Smith was the on-duty supervisor during this shift and was in command of the pursuit.

Note: The following is Sergeant Smith's administrative statement verbatim. The original is included in the "Statements" section of this investigative package. The grammar, spelling, punctuation, and context were not changed.

Officer Smith's administrative statement dated July 6, 2016

On 05/28/2016 Saturday at approximately 1233 hrs officers responded to a possible stolen vehicle in the Chilies parking lot on SH6. I heard via radio that the suspect pulled away from Officer Limbousis, got into the stolen vehicle and left location. Officer Limbousis stated the suspect had the hood opened when he left location. Officer Limbousis stated the suspect was traveling at a high rate of speed on SH 6. Officer Limbousis kept dispatch informed with the speed and direction of the suspect vehicle. Officer Limbousis initiated the pursuit because the vehicle was reported stolen out Fort Bend Co. and resisting arrest. I first can in contact with the suspect at the intersection of Watts Plantation and Diamond Spring.

. 108(b)



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The suspect was driving at a high rate of speed, approximately 55 mph. When the vehicle entered the Kroger's parking I instructed the other units to slow down and watch for pedestrians while in the parking lot. The vehicle left the parking lot and entered the north bound lane of highway 6. This was not acceptable by policy and at that location it was for a very short time. The medium was too high for the vehicle to cross. I knew that being on that side of the roadway was very dangerous.

The vehicle did not lose its tire, the vehicle had a blowout and the suspect was driving the vehicle on the rim. The suspect was in control of the vehicle and the safety of others were still a high concern [REDACTED]

[REDACTED] and I explained that to them after the [REDACTED] 108(b)

I do not ever recall telling the officers to hurry up and catch the suspect, I told them to hurry up and get on the right side of the roadway. When the vehicle entered the second Kroger's parking lot, I felt there was always a danger, that's why I told them to slow down again. The speed in the second Kroger's parking was not excessive. But traveling through any parking lot chasing a suspect can be dangerous. With slow speed at that time I did not feel we should terminate the pursuit. When the vehicle wrecked out, I did approach the vehicle with my weapon drawn. I did not see the suspect in the driver's seat. I could not see anyone in the vehicle. I did hear the officers say their where no one else in the vehicle. After looking at the video replay I did point my weapon at the vehicle. I did not fill out a use of force form for pointing my weapon at the vehicle and I do know it is my responsibility to review the use of force for the officers. I was busy and I could not print them from my computer.

End of administrative statement – Sergeant Daryl Smith's.

Investigator's Note:

Sergeant Smith was given an opportunity prior to this interview to review any videos relevant to the case. Sergeant Smith was also given the opportunity to review any reports generated by the department in relation to this incident. About 2 weeks prior to this interview, Sergeant Smith and Assistant Chief Jemison discussed this pursuit, use of force forms and reports generated as a result at length. Assistant Chief Jemison notified Sergeant Smith that the review was being conducted and that the incident would be investigated.



Police

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During the time between that conversation and this interview, Sergeant Smith had ample opportunity and access to review any departmental record or video related to this incident. It was clear to the investigators during the investigative interview that after his interview with Assistant Chief Jemison that he had not reviewed the files related to this case.

Sergeant Smith confirmed during this interview that he was aware of the incident and its nature as soon as it was dispatched over the radio. Sergeant Smith was the supervisor on duty and heard the report of the stolen vehicle and heard officers check out on scene. Shortly afterwards, Sergeant Smith heard Officer Limbousis advise the suspect had gotten away from him and was now fleeing in the vehicle. Sergeant Smith also confirmed that he heard Officer Limbousis advise that the hood on the suspect's vehicle was up and that the suspect was fleeing at a high rate of speed.

Sergeant Smith continued to monitor the pursuit as he was driving towards the area. Sergeant Smith realized by the direction the vehicle was heading that he would be able to intercept it at the intersection of Watts Plantation and Diamond Springs. Sergeant Smith waited at this intersection and observed the vehicle drive through the ditch on Diamond Springs then turn onto Watts Plantation. There were several patrol vehicles following the vehicle at this time, however Sergeant Smith pulled directly behind the vehicle and became the primary pursuit unit instead of remaining focused on his role of supervising the incident.

Sergeant Smith followed the vehicle along Watts Plantation, turning onto Knights Road. While on Knights Road Sergeant Smith observed one of the tires on the passenger side of the vehicle blow out. The vehicle continued on Knights road and crossed the Fort Bend Toll Road into the parking lot of Kroger. Sergeant Smith stated that he recognized that the pursuit speed through the park lot was approximately 50 mph.

While reviewing this incident, investigators heard on the audio from in-car videos Sergeant Smith advise there were pedestrians in the parking lot and for officers to slow down. However during this interview Sergeant Smith (who had reviewed the videos with investigators) stated he did not advise officers of pedestrians in this parking lot and in fact that occurred in another parking lot later in the pursuit. Sergeant Smith stated when they entered this Kroger parking lot it was not busy and that no pedestrians were in any danger. Investigators showed Sergeant Smith a video of the incident and he again stated there were no pedestrians present. Investigators once again played the video and pointed out that the suspect vehicle as well as pursuing officers passed at least 6 pedestrians standing in the parking lot within 20-30 feet of the pursuit. Sergeant Smith now admitted there were pedestrians present but stated that they were in no danger.



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Chief of Police



Sergeant Smith stated they were not in danger since they were not exiting the store and walking in front of the pursuit or between the involved vehicles.

As the suspect vehicle continued through the parking lot and exited next the Firestone Sergeant Smith was the lead vehicle on the pursuit as the suspect vehicle began traveling contraflow in the southbound lanes of travel. Sergeant Smith continued to follow the suspect contraflow. Investigators asked him whether or not he knew that [REDACTED] during this incident [REDACTED] Sergeant Smith replied, "Yes, but it was only for a short time." Sergeant Smith continued to put emphasis on the fact that the contraflow driving was only for a short period of time. Sergeant Smith also explained to investigators that he felt there was nothing else that could be done.

10f(b)

The suspect vehicle returned to the northbound lanes of travel and proceeded to drive recklessly on three wheels back toward Glenn Lakes. Just before making it to Glenn Lakes the suspect vehicle went back on the southbound lanes driving contraflow against traffic. Two patrol officers (Limbousis and Fahey) traveled into the southbound lanes with the suspect vehicle. Investigators noticed on the videos that the two officers slowed down almost to a stop before they proceeded to follow the subject. Around the time that the two officers stopped Sergeant Smith is heard over the radio, saying "keep up with him."

Sergeant Smith made reference to the pedestrians in the second Kroger parking lot that contradicted his prior statement. Sergeant Smith stated that the pedestrians in the Kroger parking lot in the 6000 block of SH6 were in danger from the vehicles engaged in the pursuit. However, Sergeant Smith was clear that the pedestrians in the Kroger parking lot in the 10,000 block of SH6 were not in danger from the pursuing vehicles.

Investigators asked Sergeant Smith a direct question regarding whether there was any point of the pursuit where it should have been terminated. Sergeant Smith stated, "No". Investigators continued with a similar line of questioning and asked Sergeant Smith, after reviewing the videos should the pursuit have been terminated. Again, Sergeant Smith replied with "it should not have been stopped". Investigators then asked if nothing that transpired in the current pursuit was grounds enough to terminate the pursuit, then what in his opinion would be grounds for termination. Sergeant Smith replied with an incoherent response that essentially stated if the subject had almost hit someone then he would call it off. Sergeant Smith attempted to make a distinction between whether the pursuit should be terminated if a pedestrian (citizen outside a vehicle) is in danger versus a citizen driver (citizen operating a motor vehicle) within the parking lot was in danger.



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Sergeant Smith insinuated that the citizen drivers that the suspect struck in two different Kroger parking lots were not cause to terminate, but if a pedestrian had been in danger it would have been grounds for termination.

Investigators now began to question Sergeant Smith about his involvement in the arrest of the individual after he wrecked the suspect vehicle. This line of questioning was pertinent due to Sergeant Smith's earlier conversation with Assistant Chief Jemison. During that conversation Sergeant Smith stated he had completed a use of force form for himself in error, and that he never pointed his firearm at the suspect. While reviewing video footage for this investigation investigators clearly saw Sergeant Smith approaching the suspect vehicle with his weapon drawn and pointing directly at the suspect and suspect vehicle. When looking at the use of force form for Sergeant Smith, the form lists only Sergeant Smith as the officer using force and firearm pointed as the force used. The remainder of the form was blank and no narrative was included. An investigation into the audit trail of this record revealed that the form was entered by Officer Aven at Sergeant Smith's request.

During this interview investigators asked Sergeant Smith if he pointed his weapon at the suspect or suspect vehicle. Sergeant Smith stated he did not recall if he had or not. When asked why the use of force form was entered he stated he was covering all bases in case he had used the force. He stated he reviewed the videos and confirmed in his mind that he did not point his weapon at the suspect. When asked if he reviewed the use of force form that listed him, Sergeant Smith stated he had not. Sergeant Smith also confirmed that he had not reviewed any of the use of force forms for this incident due to the fact that he could not print them from his computer. Sergeant Smith further stated that due to his workload he never returned to the forms to check them for accuracy.

At this time Sergeant Smith again reiterated that he had reviewed the videos and confirmed that he had not pointed his weapon at the vehicle. Investigators now showed Sergeant Smith a video that clearly shows him pointing his firearm at the suspect and his response was "oh I don't recall that one". Investigators asked Sergeant a direct question regarding what his responsibility was as a supervisor related to submitting use of force forms. Sergeant Smith replied that the officers submit the use of force, he would review it, and then submit to the Lieutenant. Sergeant Smith indicated to the investigators that he was aware that he was responsible for reviewing, printing, and having the use of force forms from his officer signed by the end of the shift. Sergeant explained that the shift was busy and he was unable to complete this process. Investigators challenged him on why he did not complete the process the next day and and/or at least communicate to his Lieutenant. Sergeant Smith stated we could look back on a lot of things and say we could do it better but offered no further explanation.



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Investigators transitioned the line of questioning to the discrepancies with the submitted paperwork from the pursuit scene. Investigators review of all the documentation revealed conflicting statement within the submitted white paper, primary officer report, and multiple supplements. Investigators found glaring differences in what officers submitted as their official reports that if in fact a supervisor had reviewed them would have been readily apparent. Sergeant initially stated that he didn't recall whether or not he approved all the supplements. Investigators revealed to Sergeant Smith that he in fact approved all supplements and supporting documents. Sergeant Smith indicated that he understood his role as a supervisor is to ensure that relevant facts of the case are consistent throughout each report. Sergeant Smith also stated that he would have caught relevant fact that were completely out of the norm.

Investigators found in Officer Limbousis's original report that the subject would be kept overnight. Conflicting information was found in Officer Stahl's supplement that indicated the subject was released and transported to Fort Bend County jail. Sergeant Smith attempted to offer the explanation of some of the supplements had not been submitted prior to him leaving for the day. However, when shown by investigators that he had actually approved the reports. Sergeant Smith stated to investigators that he could not argue the fact that this pertinent information was overlooked during his review.



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.108(b)

CRIMINAL CHARGES FILED

There are currently no criminal charges filed related to this investigation.

ADDITIONAL INFORMATION

Investigators have completed their investigation and will now itemize each of the subject officers and their alleged charges. Investigators will outline each charge and give supporting information regarding each charge.

Officer Limbousis

Officer Konstantino Limbousis #619 was charged with the following departmental charges:

Policy 30-19 Pursuits

Policy 20-07 Use of Force

Policy 30-16 (B) Mobile Video Recording, Body Worn Cameras

In regards to Policy 30-19 Pursuits investigators found several violations of policy within this specific policy.

Policy 30-19 Pursuit IV.F.2 - (Failure to exercise due care in a pursuit)

As evidenced by Officer Limbousis's own statements that he recognized that [REDACTED] and posed a significant danger to the public. Investigators believe that by his own admission of understanding the policy and knowing the inherent risk to the public by [REDACTED] that he failed to exercise due care in this pursuit.

Policy 30-19 Pursuit IV.H.2.c - (Fail to terminate pursuit when required)

After reviewing all Officer Limbousis's actions during this pursuit, and given his own statements that he would do it differently now, it is clear that Officer Limbousis had the opportunity and knowledge that he should have terminated this pursuit. Officer Limbousis realizes that he was pursuing a vehicle with limited visibility and erratic driving, as well as pursuing the vehicle into oncoming traffic. He now realizes this meets [REDACTED]



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In regards to Policy 20-07 Use of Force investigators found one violation of policy within this specific policy.

Policy 20-07 Use of Force VII.A.2 Reporting Requirements (Officers)

After reviewing Officer Limbousis' use of force form, investigators determined that he filled out only a portion of the form, instead of completing the form in its entirety. Officer Limbousis did not complete the narrative portion of the form describing the use of force and its justification.

In regards to Policy 30-16 (B) Mobile Video Recording, Body Worn Cameras, investigators found one violation of policy within this specific policy.

Policy 30-16 (B) MVR, Body Worn Cameras IV.A.6 (Operating Procedures)

Investigators were able to determine that Officer Limbousis did have his body camera on and functioning on the day of the pursuit. However, the investigation revealed that due to Officer Limbousis's negligent behavior regarding properly downloading and classifying videos daily he was unaware that his camera was not functioning properly. Officer Limbousis claimed to have been having issues with the body worn camera and didn't know some times whether or not it was recording or not. If the correct downloading procedures were being followed on a consistent basis Officer Limbousis would have readily been able to determine that there was an issue with his videos being uploaded to the server. By Officer Limbousis's own admission he did not classify any of his videos from the body camera.

It is the belief of the investigators that Officer Limbousis' actions on May 28, 2016 and the results of the subsequent investigation, provide evidence to **sustain** the charges cited in PSI #16-0010.

Officer Fahey

Officer Patrick Fahey #817 was charged with the following departmental charges:

- Policy 30-19 Pursuits
- Policy 20-07 Use of Force

.108(b)



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In regards to Policy 30-19 Pursuits investigators found several violations of policy within this specific policy.

Policy 30-19 Pursuit IV.F.2 - (Failure to exercise due care in a pursuit)

As evidenced by Officer Fahey's own statements that he recognized that [redacted] 10f(b) and posed a significant danger to the public. Investigators believe that by his own admission of understanding the policy and knowing the inherent risk to the public by [redacted] that he failed to exercise due care in this pursuit. 10f(b)

Policy 30-19 Pursuit IV.H.2.c - (Fail to terminate pursuit when required)

When the subject drove contraflow during this pursuit Officer Fahey felt that it was dangerous to himself and oncoming traffic. Officer Fahey admitted that he did not consider terminating the pursuit at that time because he felt at that time it was the decision of the lead vehicle. Officer Fahey stated that he did recognize that arresting the subject should not take precedence over the life of a citizen, officer, or the suspect. Officer Fahey now realizes this meets [redacted] 10f(b)

In regards to Policy 20-07 Use of Force investigators found one violation of policy within this specific policy.

Policy 20-07 Use of Force VII.A.2 Reporting Requirements (Officers)

Officer Fahey explained that his understanding of when a use of force report should be completed was anytime a use of force was used. However, he was operating under the belief that if a use of force form was completed for the incident by any officer, if he used the same force, he would not be required to complete his own use of force form. This topic was discussed with several different supervisors at the agency and it appears that there may be conflicting directives in regards to the matter. Based on the current information there may be a need for administrative review of the current process for completing use of force forms and the workflow for the forms through the chain of command.

It is the belief of the investigators that Officer Fahey's actions on May 28, 2016 and the results of the subsequent investigation, provide evidence to **sustain** the charge of 30-19 Pursuits cited in PSI #16-0010. It is also the belief of the investigators that Officer Fahey's actions on May 28, 2016 and the results of the subsequent investigation, provide evidence to **exonerate** the charge of 20-07 Use of Force cited in PSI #16-0010.



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Sergeant Smith

Sergeant Daryl Smith #266 was charged with the following departmental charges:

Policy 30-19 Pursuits

Policy 20-07 Use of Force VII A.3

(Use of Force form not completed)

Policy 20-07 Use of Force VIII G

(Use of Force forms not forwarded)

In regards to Policy 30-19 Pursuits investigators found one violation of policy within this specific policy.

Policy 30-19 Pursuits IV.H.2.c – (Fail to terminate pursuit when required)

As the supervisor in charge of the pursuit, Sergeant Smith was the final safeguard for the safety of all parties involved in and affected by this pursuit. Sergeant Smith had firsthand knowledge of the actions of the suspect in this case as well as the actions of the officers. By his own admission Sergeant Smith felt [REDACTED] and admitted it was a risk to the safety of the suspect, officers, and citizens of the city. The fact that Sergeant Smith did not terminate the pursuit on the day in question, and still asserts that this was a correct decision, show a clear [REDACTED]

In regards to Police 20-07 Use of Force investigators found two violations of policy within this specific policy.

Policy 20-07 Use of Force VII.A.3 - (Use of Force not completed)

During this investigation it was clearly evident that Sergeant Smith pointed his firearm at the suspect. Sergeant Smith gave an initial directive to Officer Aven to enter a use of force for him, but by his own admission later felt that was done in error. Also by his own admission, Sergeant Smith never reviewed or completed that use of force form.

Policy 20-07 Use of Force VIII.G - (Use of Force forms not forwarded)

Sergeant Smith, by his own admission, did not follow through on his responsibility as the supervisor on duty to check the use of force forms, print them out, have them signed by both himself and the officer, and forward them through his chain of command.

It is the belief of the investigators that Sergeant Smith's actions on May 28, 2016 and the results of the subsequent investigation, provide evidence to **sustain** the charges cited in PSI #16-0010.



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.108(b) - with(hole) same throughout

In addition, the investigation revealed the following additional charges discovered during this incident:

Code of Conduct 10-01 V.B.10 – (Ignorance of Law/Policy)

Code of Conduct 10-01 V.C.2 – (Fail to take corrective action as supervisor)

Code of Conduct 10-01 V.D.28.d (Unbecoming conduct)

In regards to Code of Conduct 10-01 Investigators found the following three violations within that specific policy.

Code of Conduct 10-01 V.B.10 – (Ignorance of Law/Policy)

In relation to the above charge of Policy 30-19 Pursuits (Fail to Terminate) it is clear that Sergeant Smith is not able to grasp an understanding of his responsibilities as the supervisor in charge of a pursuit. Sergeant Smith readily admits that allowing the suspect and pursuing officers ([REDACTED]) to [REDACTED]

[REDACTED] Also by his own admittance *108(b)* this was a dangerous practice. Sergeant Smith does not however admit, nor seem to understand, that these actions clearly endanger the suspect, officers, and general public to the degree that the risk clearly outweighs the need to apprehend the suspect in a UUMV and resisting/evading arrest case.

Code of Conduct 10-01 V.C.2 – (Fail to take corrective action as supervisor)

Sergeant Smith was aware of violations of policy by both Officers Limbousis and Fahey during this pursuit. Sergeant Smith also had the responsibility to discover the violation of the use of force policy by Officer Limbousis after the pursuit. These violations rose to the level of this PSI being initiated, however Sergeant Smith took no corrective action of a similar nature, nor did he bring the policy violations to the attention of his chain of command.

Code of Conduct 10-01 V.D.28.d (Unbecoming conduct)

Sergeant Smith's actions during this incident go beyond the violations listed above. As the supervisor of the shift he was responsible for not only supervising the officers, but processing, approving, and forwarding the paperwork associated with this incident, as well as informing command staff of the pertinent facts of the case. In reviewing the paperwork for this case, investigators discovered there was never an accident report completed for the suspect's crash at the end of the pursuit. As the supervisor on duty, it was Sergeant Smith's responsibility to ensure all portions of the department's response to this incident were assigned and completed.



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Sergeant Smith's failure to terminate this pursuit, failure to complete his use of force paperwork, failure to ensure the accuracy and forward the officer's use of force paperwork, failure to ensure the offense report and supplements contained factual and consistent information, failure to ensure all applicable reports were completed, and failure to send out an accurate white paper, led to a significant impairment of the operation and efficiency of the department.

It is the belief of the investigators that Sergeant Smith's actions on May 28, 2016 as well as his actions since, and the results of the subsequent investigation, provide evidence to **sustain** the additional charges cited in this summary of PSI #16-0010.



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Memorandum

To: Keith Jemison, Assistant Chief of Police
From: Dwayne Williams, Captain
Date: August 5, 2016
Re: PSI Case #16-0010 Discipline Recommendations

This investigation focuses on a vehicle pursuit Officers Konstantino Limbousis, Patrick Fahey and Sgt. Daryl Smith were involved in on Saturday, May 28, 2016 at approximately 1347 hrs.

Officer Limbousis was dispatched to a report of a stolen vehicle located by the owner. The Officers located the vehicle in the parking lot of 5750 Highway 6 and attempted to arrest the sole subject in the vicinity of the stolen vehicle. This subject was able to escape the Officers and drove away in the vehicle with the hood in the up position. A pursuit was initiated by the Officers on scene. The pursuit lasted approximately 18 minutes, including 3 instances in which the suspect and pursuing Officers drove against the normal flow of traffic. Sergeant Smith was the only supervisor on duty at the time of the pursuit and was in command of the pursuit. The pursuit was ended when the suspect wrecked his vehicle in the 19800 S. University Blvd.

The department discovered this incident about a week after it occurred. Chief Berezin saw the video while another supervisor was reviewing in car video footage and brought it to the attention of Assistant Chief Jemison. Assistant Chief Jemison reviewed the videos and assigned Lieutenant York to this administrative inquiry.

Officer Konstantino Limbousis was notified of this professional standards investigation with the following alleged policy violations:

1. Policy 30-19 Pursuit IV. F.2 (Fail to exercise due care in a pursuit)
2. Policy 30-19 Pursuit IV. H.2.c (Fail to terminate pursuit when required)
3. Policy 20-07 Use of Force VII.A.2 (Reporting Requirement)
4. Policy 30-16(B) Mobile Video Recording (Operating Procedures)
Body Worn Cameras



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.108(b)

I reviewed the four (4) alleged policy violations and the investigation revealed that Officer Limbousis violated all four (4) policies by:

1. Driving into oncoming traffic and posing significant danger to the public. 108(b)
Investigators believe that by his own admission of [REDACTED] and [REDACTED] knowing the inherent risk to the public by [REDACTED] that he failed to exercise due care in this pursuit. MCPD policy 30-19 IV, F.2. states:

[REDACTED] 108(b)

with same throughout
.108(b)

2. Failing to terminate the pursuit upon observing the suspect had limited visibility from the hood being up on the stolen vehicle and erratic driving, pursuing through two retail parking lots with pedestrians as well as pursuing the suspect vehicle into oncoming traffic. MCPD policy 30-19, IV, H. 2. D. states:

[REDACTED] 108(b)

with same throughout
.108(b)

The pursuit clearly presented risk and danger to all involved and the public. The pursuit should have been terminated.

3. By not filling out his use of force form correctly. The investigation determined that he filled out only a portion of the form, instead of completing the form in its entirety. Officer Limbousis did not complete the narrative portion of the form describing the use of force and its justification.

MCPD policy 20-07, VII.A. states: Officers shall complete the "Use of Force Report" form when any of the following apply:

1. Use of compliance control techniques and/or intermediate weapons.
 2. An intermediate weapon is used and/or deployed with the implied threat of immediate use.
 3. A lethal weapon is used, including the pointing of a firearm at a subject.
 4. Any force used outside of normal handcuffing techniques.
4. By not utilizing his department issued body worn camera as directed by departmental policy and capturing the video evidence during the call for service, pursuit and arrest. The investigation revealed that Officer Limbousis routinely violated the body worn camera policy by not using it as directed by policy. Supervisor Benjamin Pahl provided a memorandum advising Officer Limbousis did ask about the camera



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charging prior to the date of the pursuit and he checked the dock of Limbousis assigned vehicle and determined the dock did have power. Supervisor Pahl stated in his memorandum that he advised Officer Limbousis to have his Echo completely charged before shift and to use the docking station as a trickle charge throughout the day. In Officer Limbousis statement he advises his body worn camera has had nonstop issues from day one. He goes on to advise he has made Supervisor Pahl aware on several occasions. He advised its unknown if his camera is the problem or the docking station in his vehicle. Either way, Officer Limbousis is not taking responsibility for ensuring that he had an operational body worn camera as directed by policy. He could have requested more training on the operation of his assigned camera or let his supervisor know there was an issue with his body worn camera so the issue could be resolved. MCPD policy clearly states it is the officers responsibility to ensure their body worn camera is in proper working order. See policy except below:

MCPD policy 30-16 (B) states:

IV. Procedures

A. Operating Procedures

1. Officers will be responsible for the care and custody of all BWC equipment assigned to them while it is in their possession;
2. Officers will inspect their assigned BWC devices daily to ensure that there is no visible damage and the device is in proper working order. Damage will be promptly reported to the shift supervisor who will in turn report it to the Support Services Captain for replacement.
3. Officers will ensure that the camera has been sufficiently charged prior to reporting for work, whether in an on-duty or extra employment status;
4. If an incident report is required, officers will document in the incident report whether a BWC recording is available.
5. Officers will also document in a crash report whether a BWC was used during the investigation.
6. Officers will classify all BWC recordings during their shift and ensure that all videos are up-loaded by properly docking the BWC at the beginning of their first shift worked following the shift during which the recording was made, but not later than 24 hours after the end of the shift during which the recording was made. Downloads must be done prior to days off that extend beyond the



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24 hour period. Officers may be directed to download the data more frequently or sooner.

Please find my finding and recommendations for the policy violations:

1. Policy 30-19 Pursuit IV. F.2 (Fail to exercise due care in a pursuit)
Findings: **Sustained**
Discipline Range: C-Dismissal
Recommendation: **One Day Suspension**

2. Policy 30-19 Pursuit IV.H.2d. (Fail to terminate pursuit when required)
Findings: **Sustained**
Discipline Range: C-3 days suspension

Recommendation: **One Day Suspension**

3. Policy 20-07 Use of Force VII.A. (Reporting Requirement)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **Written Counseling**

4. Policy 30-16 Mobile Video Recording IV.A.6 (Operating Procedures)
Body Worn Cameras
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**

Officer Patrick Fahey #817 was notified of this professional standards investigation with the following alleged policy violations:

1. Policy 30-19 Pursuit IV. F.2 (Fail to exercise due care in a pursuit)
2. Policy 30-19 Pursuit IV. H.2.c (Fail to terminate pursuit when required)
3. Policy 20-07 Use of Force VII.A.2 (Reporting Requirement)

I reviewed all three (3) policy violations and the investigation revealed that Officer Fahey violated all three (3) policies by:

1. By pursuing the suspect through two busy retail parking lots and pursuing the suspect on the wrong side of the roadway on two occasions during the pursuit and posing



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significant danger to the public. Investigators believe that by his own admission of understanding the policy and knowing the inherent risk to the public by driving directly into oncoming traffic that he failed to exercise due care in this pursuit. MCPD policy 30-19 IV, F.2. states

[REDACTED] (b)

2. By not terminating the pursuit when reducing the danger to public outweighed the capture of stolen vehicle suspect. Failing to terminate the pursuit upon observing the suspect driving through two retail parking lots with pedestrians as well as pursuing the suspect vehicle into oncoming traffic. MCPD policy 30-19, IV, H. 2. D.

[REDACTED] (b)

The pursuit clearly presented risk and danger to all involved and the public. The pursuit should have been terminated.

3. By not completing his use of force report form as required by policy. Officer Fahey advised he added his name to the use of force form completed by Officer Stahl and Limbousis and was under the impression one form was needed for the event. It is noted that training is needed department wide on the proper use of force reporting procedure.

MCPD policy 20-07, VII.A. states: Officers **shall** complete the "Use of Force Report" form when any of the following apply:

1. Use of compliance control techniques and/or intermediate weapons.
2. An intermediate weapon is used and/or deployed with the implied threat of immediate use.
3. A lethal weapon is used, including the pointing of a firearm at a subject.
4. Any force used outside of normal handcuffing techniques.

Please find my findings and recommendations for Officer Fahey's policy violations:

1. Policy 30-19 Pursuit IV. F.2 (Fail to exercise due care in a pursuit)
Findings: **Sustained**
Discipline Range: C-Dismissal
Recommendation: **One Day Suspension**
2. Policy 30-19 Pursuit IV.H.2d. (Fail to terminate pursuit when required)
Findings: **Sustained**
Discipline Range: C-3 days suspension



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Recommendation: **One Day Suspension**

- 3. Policy 20-07 Use of Force VII.A. (Reporting Requirement)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **Written Counseling**

Sgt. Daryl Smith was the patrol supervisor on the day of the unauthorized use of motor vehicle call and subsequent pursuit.

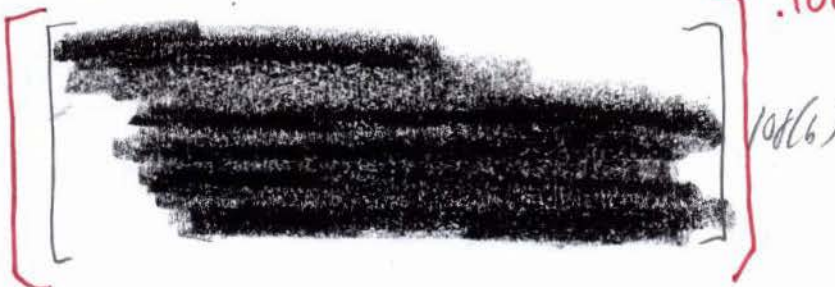
Sgt. Smith was notified of this professional standards investigation with the following alleged policy violations:

- 1. Policy 30-19 Pursuit IV. H.2.c (Fail to terminate pursuit when required)
- 2. Policy 20-07 Use of Force VII.A.3 (Use of Force form not completed)
- 3. Policy 20-07 Use of Force VIII.G (Use of Force form not forwarded)

I reviewed all three alleged policy violations and the investigation revealed Sgt. Smith violated all three policies by:

- 1. Failing to terminate the pursuit upon hearing Officer Limbousis call in the pursuit over the police radio and state the suspect was evading in the stolen vehicle with the hood up and driving erratically, pursuing through two retail parking lots with pedestrians as well as pursuing the suspect vehicle into oncoming traffic. Additionally, Sgt. Smith was aware that the suspect caused a vehicle accident with an injury. Sgt. Smith was the field supervisor when the pursuit occurred. He should have terminated the pursuit because the risk of danger to the officers involved in the pursuit, the suspect and the public became too substantial when the suspect drove with the hood up on the vehicle, through crowded retail parking lots and on the wrong of the roadway while evading officers. The pursuit should have been terminated.

MCPD policy 30-19, IV, H. states:



.108(b) - withhold same throughout

108(b)