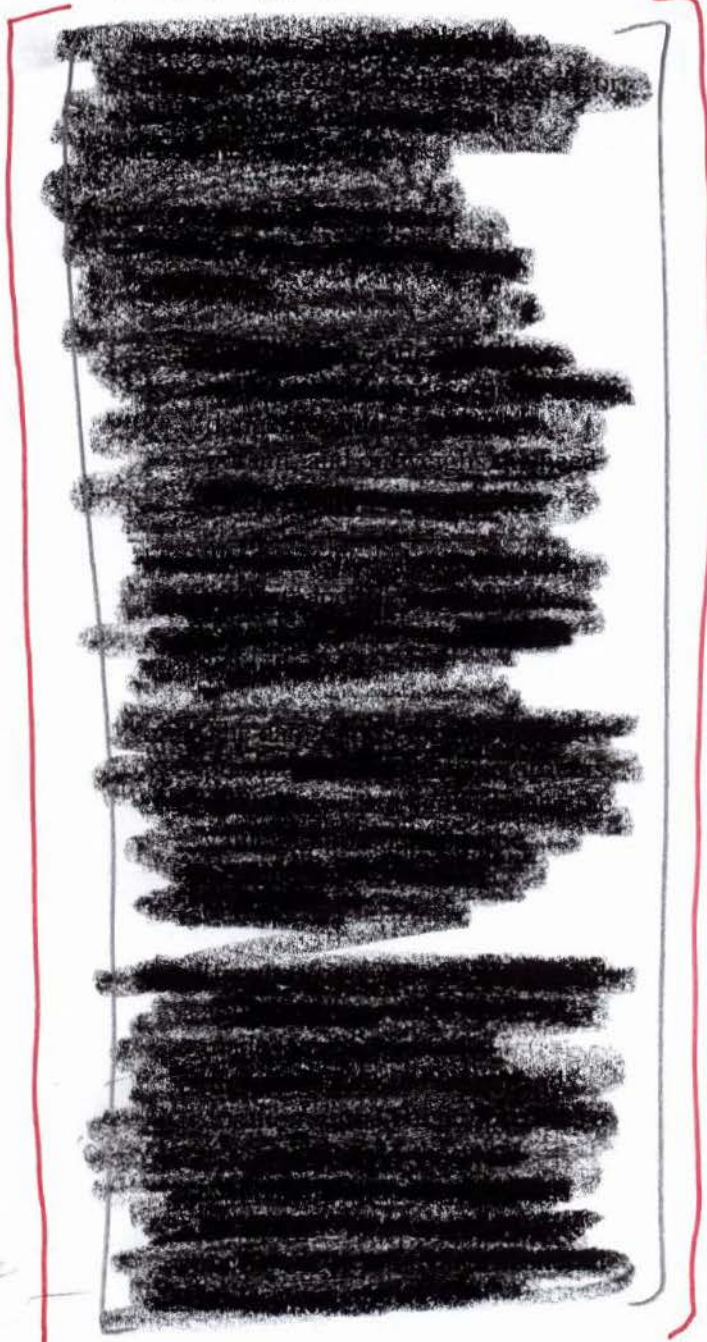




Police

Michael A. Berezin
Chief of Police



*.108(b) - withheld same
throughout*

108(b)

2. By not completing his use of force report form as required by policy. The investigation revealed Sgt. Smith directed an officer to complete his use of force form. During the investigation, Sgt. Smith advised he shouldn't have had the officer complete the form because he did not use force however, videos from the arrest after the pursuit clearly shows Sgt. Smith used physical force against the suspect while the



Police

Michael A. Berezin
Chief of Police



suspect was being detained. Sgt. Smith should have filled out a use of force form indicating he pointed his weapon at the suspect as well as physically held the suspect down when the suspect was being detained in handcuffs.

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.
3. By not completing his use of force report form and submitting it as required by policy as well as reviewing the officers' use of force reports, signing them and forwarding them up the chain of command. MCPD policy 20-07 Use of Force VIII.G states: The RMS Use of force form (PD-82) shall be printed and signed by both the officer and supervisor and submitted through the chain of command.

Please find my findings and recommendations for Sgt. Smith's policy violations:

1. Policy 30-19 Pursuit IV.H. (Fail to terminate pursuit when required)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**
2. Policy 20-07 Use of Force VII.A.3 (Use of Force not completed)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**
3. Policy 20-07 Use of Force VIII.G (Use of Force forms not forwarded)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**

During this investigation, there were three additional policy violations discovered involving Sgt. Smith as follows:

1. Code of Conduct 10-01 V.B.10 – (Ignorance of Law/Policy)
2. Code of Conduct 10-01 V.C.2 – (Fail to take corrective action as supervisor)
3. Code of Conduct 10-01 V.D.28.d (Unbecoming conduct)



Police

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Chief of Police



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 (including himself) to drive against the normal flow of traffic, directly into oncoming vehicles, [REDACTED] Also by his own admittance ^{1 of (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.

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.



Police

Michael A. Berezin
Chief of Police



I have reviewed the three additional charges against Sgt. Smith and recommend the charges be sustained.

I recommend an additional two days suspension in addition to the three day suspension recommendation for failing to terminate the pursuit, not completing his use of force form and forwarding the use of force reports as required for a total of five (5) days suspension.

In addition, I recommend Sgt. Smith be required to review pursuit and use of force policies as well as attend police pursuit training.

Respectfully submitted,

Captain Dwayne Williams,



Police

Michael A. Berezin
Chief of Police



MEMORANDUM FOR RECORD

To: Michael Berezin, Chief of Police

From: Keith Jemison, Ed.D.
Assistant Chief of Police

Date: August 17th, 2016

Subject: Disciplinary Recommendation

Reference: PSI 16-0010

I have reviewed the Professional Standards Investigation (PSI) surrounding the actions of Officers Konstantino Limbousis, Patrick Fahey, and Sgt. D. Smith, that occurred starting on May 28th, 2016 and continuing throughout the course of the investigation. After reviewing the investigation, I am satisfied with it as to form and content and note that all officers involved were properly notified pursuant to Texas Government Code 614.023 on June 30th, 2016 (**PSI 16-0010: Exhibit L**) as well as on July 6th, 2016 (**PSI 16-0010: Exhibit M & Exhibit N**) and were permitted to respond to the departmental charges on those same days respectively.

I have reviewed Captain Dwayne Williams' assessment of the investigation and generally support his findings. With the exception of Sgt. D. Smith's findings, which will be addressed in a separate memorandum, those findings are outlined as follows:

Officer Konstantino Limbousis

Findings 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**



Police

Michael A. Berezin
Chief of Police



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**

Assistant Chief Jemison Recommendation: I concur with the aggregate suspension recommendation of Three Days (36 Hours) without the benefit of pay for the identified policy violations.

Officer Patrick Fahey

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**

Findings and recommendations for the policy violations:

Assistant Chief Jemison Recommendation: I concur with the aggregate suspension recommendation of Two Days (24 Hours) without the benefit of pay.



Police

Michael A. Berezin
Chief of Police



SYNOPSIS

As noted by Captain D. Williams, the behavior of all officers involved in this incident represented a failure to fully embrace the responsibility entrusted to all law enforcement agencies with regard to performing the responsibilities of the office that they hold. More specifically, those responsibilities include carefully weighing the inherent risk to the public sometimes necessary in executing their duties, while simultaneously balancing the need to exercise due care for the community that they serve. Unfortunately, this balance act comes under the strictest scrutiny when public safety professionals are tasked with deciding what means to employ to achieve lawful objectives. In this case, Officers Fahey and Limbousis actions fell far short of the expectations of the organization.

Both employees engaged in conduct detrimental to the interests of the department. Officer Limbousis' initial actions upon contact with the suspect were clearly outside the departmental training that he has been provided; to wit, failing to properly secure a felony suspect through the use of felony stop procedures (ie. directing the suspect into a prone position prior to initiating handcuffing techniques), and/or waiting for back-up units to arrive prior to initiating contact. It is conceivable that had Officer Limbousis done so, the pursuit would likely have never occurred. Further, once the pursuit had begun, it was clear that the suspect vehicle was entering onto a major thoroughfare with limited vision, due to the hood of the vehicle being in the raised position. With that limited vision, the vehicle began to accelerate rapidly, while initiating evasive maneuvering on a heavily populated roadway. The level of danger associated with the evasive maneuvering was later exacerbated by the fact that the suspect was driving contraflow during an extended stretch of the pursuit, after having driven through several area grocery store parking lots and causing at least two known traffic collisions. Further, the approximately twenty minute (20) pursuit reached speeds of upwards of 103 miles per hour, at points, and was occurring on a holiday weekend (Memorial Day) at approximately 1345 hours in the afternoon. At some points during the pursuit, the suspect entered active intersections without slowing down. Officer Fahey's conduct is similarly alarming after he joined the pursuit shortly after its initiation by Officer Limbousis, considering the same aforementioned circumstances.

The expectations of any employee of the Missouri City Police Department have to be evaluated from a standard of reasonableness. In this case, Officer Limbousis has 10 years and 9 months of experience and Officer Fahey has 4 years and 5 months of experience in law enforcement and each should be reasonably expected to know and

.108(b) - withheld same throughout



Police

Michael A. Berezin
Chief of Police



apply the standards of MCPD's Pursuit Policy #30-19. Policy #30-19 specifically directs departmental members to

[REDACTED]

108(b)

MCPD's Pursuit Policy #30-19 further states that officers engaged in pursuits

[REDACTED]

108(b)

and that they will

[REDACTED]

Further, Policy #30-19 identifies that terminating pursuits

[REDACTED]

in them, and that they (pursuits) may be

[REDACTED]

Finally, MCPD Policy #30-19 (H. 2.) says explicitly that pursuits

[REDACTED]

In this case, the circumstances clearly dictate that those participating had an obligation to terminate their pursuit of the suspect vehicle. While some may differ about what particular point that threshold was crossed, the definitive line in the sand would appear to be when the suspect vehicle began driving against the flow of traffic. This is after having driven through multiple store parking lots at a high rate of speed, driven with an obstructed view at a high rate of speed while recklessly swerving through traffic, at times on the shoulder, and making multiple evasive maneuvers. It is reasonable to expect that veteran officers would make the decision to disengage. They did not. I do note that the supervisor of the named employees was intimately involved within the pursuit and did not order the termination of the pursuit. The supervisor's failure to direct the officers to terminate the pursuit did not obviate the responsibility of the officers. In fact, in some respects, it underlines the necessity that MCPD employees know and adhere to the department's policy, and is a part of why all participating employees are empowered through the policy, to make the termination decision.

Based upon the totality of the investigation, I must affirm Captain D. William's recommendation that Officer Limbousis be suspended for **Three Days (36 Hours) without the benefit of pay for the identified policy violations** and that Officer Fahey be suspended for Two Days (24 Hours) without the benefit of pay.



Police

Michael A. Berezin
Chief of Police



LETTER OF DISCIPLINE

To: Daryl Smith, Sergeant
From: Michael Berezin, Chief of Police
Date: September 6, 2016
Re: PSI Case #16-0010, #160011

PSI # 16-0010

The investigation regarding PSI Case #16-0010 has been completed. Based upon the available evidence, the results are as follows:

1. Policy 30-19 Pursuit IV. H (Fail to terminate pursuit when required)
Findings: **SUSTAINED**
Discipline Range: C-3 days suspension
Recommendation: **3 Day Suspension**
2. Policy 20-07 Use of Force VII.A.3 (Use of Force not completed)
Findings: **SUSTAINED**
Discipline Range: C-3 days suspension
Recommendation: **1 Day Suspension**
3. Policy 20-07 Use of Force VII.G (Use of Force forms not forwarded)
Findings: **SUSTAINED**
Discipline Range: C-3 days suspension
Recommendation: **1 Day Suspension**

PSI # 16-0011

The investigation regarding PSI Case #16-0011 has been completed. Based upon the available evidence, the results are as follows:

1. Policy 20-07 Use of Force, V. B (Improper use of Force)
Findings: **SUSTAINED**
Discipline Range: C-Dismissal
Recommendation: **One Week Suspension**

I have reviewed the results of the investigation of PSI 160010 and 160011. Upon review, accept the findings of the investigating officer and now invoke the following discipline:



Police

Michael A. Berezin
Chief of Police



You will receive a suspension of **ten days (10)** days or one hundred-twenty (120) hours of time off without the benefit of pay. The suspension date will begin on September 9th, 2016 at 0600 hours and end on September 25th, 2016 at 1800 hours. The specific days will include, September 9th, 10th, 11th, 14th, 15th, 19th, 20th, 23rd, 24th, and the 25th. You are to surrender your department issued handgun, police badge and police identification to your Division Captain by 0600 hours on September 9th, 2016 and your supervisor will return those items at the end of your suspension. During your suspension you are relieved of all official police authority.

You will be required to review the Missouri City Police Department Pursuit and Use of Force policies. Once you have reviewed the policies, print a copy, sign the copies and forward them to the Administrative Captain within three days of receiving this letter of discipline.

In addition to your suspension, you are hereby reassigned to the Police Mini-Station as a Desk Sergeant. You will be responsible for manning the Mini-Station and assisting the Community Outreach Officer (Sergeant Heard) with community outreach projects. You will **not** be authorized to fill patrol supervisor shifts or work patrol in any fashion. You will no longer be assigned a marked take-home vehicle. You will coordinate with the Administrative Captain for your new fleet assignment.

My decision-making in this matter took into consideration the following disciplinary history from the last five years:

1. **May 2012:** Written warning for Unbecoming Conduct as a result of his involvement in a disturbance with Constable Ruben Davis at Constable Davis' campaign office located at Texas Parkway at Turtle Creek Drive in Missouri City.
2. **September 2013:** 40 hour suspension for a sustained complaint of arrest procedure and mobile video recording policy violations.
3. **May 2014:** 20 hour suspension for a sustained complaint of Unbecoming Conduct and Discourteous Temperament policy violations.

Consideration of the aforementioned disciplinary history compounds the impact of the current **SUSTAINED** Professional Standards Investigations (PSI). As a supervisor, the responsibility of leadership necessarily brings with it the reality that our actions will be evaluated through the lens of the strictest scrutiny, when it comes to performing those responsibilities. In this case, your actions fell short of the organizational expectations of one who has been empowered with supervisory authority.



Police

Michael A. Berezin
Chief of Police



You are cautioned that any future violations may result in progressive discipline up to and including termination.

Michael A. Berezin 09/08/2016
Michael Berezin, Chief of Police

Daryl L. Smith 09-8-2016
Daryl Smith, Sergeant

MCPD STATUS CHANGE FORM – Revised July 15, 2015

Employee's Name Daryl Smith	Employee No. 266	Date 9/9/2016
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Attach a valid copy of the supporting document to HR/OD, for processing on effective date of approval

				Effective Date
<input type="checkbox"/> Bilingual Pay (<i>Spanish only</i>)	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Intermediate Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Intermediate TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Advanced Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Advanced TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Master Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Master TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Instructor's Certificate	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> TCO Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Field Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> S.W.A.T. Certification	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Special Crime Unit	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Clothing Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$37.50	
<input type="checkbox"/> Voice & Data Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$	
<input type="checkbox"/> SHIFT CHANGE: From Shift		To Shift		

PROMOTION/TRANSFER/TEMP ASSIGNMENT/SUSPENSION/ DEMOTION/SUSPENSION

Current \$

New \$

From: September 9, 2016 To: September 25, 2016

With Pay:

Without Pay: Without Pay

SEPARATION:

RESIGNED RETIRED TERMINATED TRANSFER/OTHER DEPT

LEAVE: Family Medical Leave (FML) Return from FML Light Duty

Workers' Comp (WC) Leave Return from WC Leave Other

COMMENTS: The suspension dates are 9,10,11,14,15,19,20,23,24,25.

Wayne Williams

Wayne Williams Supervisor's Signature

Supervisor's Printed Name

Supervisor's Signature

Keith Jemison

Asst. Chief Keith Jemison Department Head's Signature

Department Head's Printed Name

Department Head's Signature



Police

Michael A. Berezin
Chief of Police



MEMORANDUM FOR RECORD

To: Michael Berezin, Chief of Police

From: Keith Jemison, Assistant Chief of Police

Date: August 17th, 2016

Subject: Sergeant D. Smith Disciplinary Recommendation

Reference: PSI 16-0010 & PSI 16-0011

I have reviewed the Professional Standards Investigation (PSI) surrounding the actions of Sgt. D. Smith that occurred starting on May 28th, 2016 and continuing throughout the course of the investigation. After reviewing the investigation, I am satisfied with it as to form and content and note that Sgt. D. Smith was properly notified pursuant to Texas Government Code 614.023 on June 30th, 2016 (**PSI 16-0010: Exhibit L**) as well as on July 6th, 2016 (**PSI 16-0011: Exhibit L**) and was permitted to respond to the departmental charges on that same day.

I have reviewed Captain Dwayne Williams' assessment of the investigation and generally support his findings outlined as follows:

Sergeant Daryl Smith (PSI 16-0010)

1. Policy 30-19 Pursuit IV.H. (Fail to terminate pursuit when required)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**
2. Policy 20-07 Use of Force VII.A.3 (Use of Force not completed)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**
3. Policy 20-07 Use of Force VIII.G (Use of Force forms not forwarded)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**



Police

Michael A. Berezin
Chief of Police



Sergeant Daryl Smith (PSI 16-0010, Discovered Violations)

1. Code of Conduct 10-01 V.B.10 (Ignorance of Law/Policy)
2. Code of Conduct 10-01 V.C.2 (Fail to take corrective action as supervisor)
3. Code of Conduct 10-01 V.D.28.d (Unbecoming conduct)

PSI 16-0011

1. Policy 20-07 Use of Force, V. B (Improper use of Force)
Findings: **SUSTAINED**
Discipline Range: C-Dismissal
Recommendation: One week suspension

SYNOPSIS (PSI 16-0010)

Captain D. Williams's assessment of Sergeant D. Smith's performance during the pursuit on May 28th, 2016 aptly identifies a failure to fulfill his responsibilities as a supervisor within the Missouri City Police Department. More specifically, Captain D. Williams identifies Sgt. Smith's inability to grasp "an understanding of his responsibilities as the supervisor in charge of a pursuit", his failure to fully embrace his responsibilities to take corrective action in situations warranting substantive employee correction and redirection, and finally, the importance of completing the appropriate documentation to accurately reflect the circumstances of the event, as well as his own actions in his supervisory capacity.

These realities are evidenced in the fact that Sgt. Smith was not only involved in the pursuit that ran contraflow to traffic on a holiday weekend, in the early afternoon, but he was also the lead vehicle for a substantial portion of the pursuit, including, during the most dangerous parts. At times, Sgt. Smith can be heard on the radio actually encouraging subordinates to "catch up" to the suspect vehicle irrespective of the fact that the continued engagement in the pursuit was clearly outside the parameters of MCPD's current policy, and unnecessarily placed the motoring public at grave risk of bodily injury, or even possibly death. Compounding the supervisory failures, Sgt. Smith failed to make sure that the appropriate documentation was completed. Lieutenant J. York identified that "none" of the paperwork was completed accurately including, the white paper, conflicting police reports and supplemental reports, the crash report, as well as the



Police

Michael A. Berezin
Chief of Police



use-of-force forms. Inconsistencies of this magnitude and frequency, expose the organization unnecessarily to scrutiny, and potentially jeopardize the efficacy of the case as well as internal operations. When there was an inquiry as to why the paperwork was not appropriately completed and proofread, Sgt. Smith at one point, offered by way of explanation, that the next day was his regularly scheduled day off. This is wholly unsupportable as an explanation, and rather, more fittingly sums up Captain D. William's assessment of Sgt. D. Smith's failing to fulfill his responsibilities as a MCPD supervisor and his inability to grasp the breadth and scope of the seriousness of those failures.

SYNOPSIS (PSI 16-0011)

At the conclusion of the pursuit outlined in PSI 16-0010, body camera footage captured a use of force by Sgt. D. Smith that was alarming. The body camera footage captures the suspect from the pursuit being placed upon the ground by responding officers. Upon initial contact with the suspect, he appears to be lucid and at one point, calmly explains that he cannot comply with the officer's directives because his hand was handcuffed to the steering wheel. After his hand was freed from the steering wheel, he was taken to the ground by multiple officers and handcuffed.

During the handcuffing process, the suspect was placed upon the ground, and body camera footage documents Sgt. D. Smith leaning down on one unsupported knee and placing said knee on the suspect's neck, at what appears to be the point closest to where the top of the spine and the head (skull) meet. Sgt. D. Smith's other leg is out at an angle, and in one hand, he is attempting to holster his duty weapon, while his other hand is out on the suspect's shirt. In that position, Sgt. Smith's weight would have been largely upon the suspect's neck. With the suspect now being handcuffed, he (suspect) would have been unable to support or protect his neck, an extremely vulnerable area, and was clearly at risk, in my opinion, for serious bodily injury or death. It is virtually impossible for Sgt. D. Smith to have been able to balance himself and keep his weight off of the suspect's unprotected neck. It should be noted that Sgt. D. Smith's height is in excess of 6 feet, 1 inch, and weighs at least 220 lbs.

During the review of body camera footage, the suspect can be heard grunting several times, a fact that was denied by Sgt. D. Smith, but that is verifiable through the body camera audio. Sgt. D. Smith's knee was on the suspect's neck for approximately 45 seconds, 30 of which, the suspect had been called in "custody" by one of the primary officers. Sgt. D. Smith's assertions that the suspect was "actively resisting", as documented by his supplemental report, is not only **unsupported** by the body camera footage, it is also in conflict with the officer reports as well as the statements given during the course of the professional standards investigation. Even if Sgt. D. Smith's assertion that his force was justified because of "active" resistance were to be given any



Police

Michael A. Berezin
Chief of Police



credence, unless the suspect's resistance was with "aggravated active aggression", the knee in the neck would have still been inappropriate, and the additional 30 seconds would be still unjustified, and de facto excessive.

[REDACTED] 10f(b)
[REDACTED] Sgt. D. Smith's tactics in this circumstance are wholly unsupported by his training as well as by MCPD policy and evidence a failure to understand and appropriately apply the policy. If Sgt. D. Smith can't be counted upon to understand and apply the policies, it is unlikely that he can be reasonably relied upon to do so, and/or model them for, the employees that he is charged with.

I am alarmed at both Sgt. D. Smith's performance during the pursuit as well as his use of force against the suspect. More concerning, is his lack of understanding of the issues, especially given his tenure as a police officer and a more importantly, as a supervisor. A look back at Sgt. D. Smith's disciplinary history over the last five years reveals a pattern of supervisory missteps that leave my confidence in his ability to lead the employees of the Missouri City Police Department shaken. As it stands, he has been suspended more times within that time period than any other supervisor, and most are connected to his supervisory responsibilities. Multiple times during both the current investigation and investigations past, he has vacillated in his statements of the facts. Unfortunately, these apparent conflicts have caused me to be concerned for the veracity of the content thereof. I am not sure that the intent is of a deceptive nature, however, what I am convinced of, is that a law enforcement organization has to be able to place the highest level of confidence in the supervisors entrusted to lead.

This recommendation is meant to be summative in nature and is in no way meant to capture all of the details of Sgt. D. Smith's career. It is however, a synopsis of his disciplinary history, which is the backdrop for my disciplinary recommendation. In this case, based upon the totality of the circumstances, I believe that separation from employment has to be a consideration as a possible outcome. I am unconvinced that Captain D. Williams' recommendation that Sgt. D. Smith be suspended adequately takes into consideration his actions under both circumstances, nor do I feel that a suspension is likely to rehabilitate his performance. With great reticence, I believe that the circumstances, indicate to me, that he cannot fulfill the expectations of a supervisor here at MCPD.



Police

Michael A. Berezin
Chief of Police



LETTER OF DISCIPLINE

To: Patrick Fahey, Police Officer
From: Mike Berezin, Chief of Police
Date: August 30, 2016
Re: PSI Case #16-0010, Patrick Fahey

The investigation regarding PSI Case #16-0010 has been completed. Based upon the available evidence, the results are as follows:

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 day's suspension
Recommendation: **One Day Suspension**
3. Policy 20-07 Use of Force VII.A. (Reporting Requirement)
Findings: **Sustained**
Discipline Range: C-3 day's suspension
Recommendation: **Written Counseling**

I have reviewed the results of the investigation and upon review, accept the findings of the investigating officer and now invoke the following discipline:

You will receive a suspension of two (2) days or twenty-four (24) hours of time off without the benefit of pay. The suspension date will begin on September 12, 2016 at 0800 hours and end on September 13, 2016 at 2000 hours.



Police

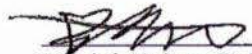
Michael A. Berezin
Chief of Police



You are to surrender your department issued handgun, police badge and police identification to your Division Captain by 0600 hours on September 12, 2016 and your supervisor will return those items at the end of your suspension. During your suspension you are relieved of all official police authority. You are hereby instructed to review Policy 30-19 Pursuit IV. F.2, Policy 30-19 Pursuit IV.H.2d, Policy 20-07 Use of Force VII.A Print a copy of the policies and forward signed copies to the Administrative Captain within three days of receiving this letter of discipline.

You are cautioned that any future violations may result in progressive discipline up to and including termination.


Michael Berezin, Chief of Police


Patrick Fahey, Police Officer

MCPD STATUS CHANGE FORM -- Revised July 15, 2015

Employee's Name Patrick Fahey	Employee No. 817	Date 9/01/16
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Attach a valid copy of the supporting document to HR/OD, for processing on effective date of approval

				Effective Date
<input type="checkbox"/> Bilingual Pay (<i>Spanish only</i>)	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Intermediate Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Intermediate TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Advanced Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Advanced TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Master Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Master TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Instructor's Certificate	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> TCO Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Field Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> S.W.A.T. Certification	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Special Crime Unit	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Clothing Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$37.50	
<input type="checkbox"/> Voice & Data Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$	
<input type="checkbox"/> SHIFT CHANGE: From Shift		To Shift		

PROMOTION/TRANSFER/TEMP ASSIGNMENT/SUSPENSION/ DEMOTION/SUSPENSION

Current \$

New \$

From: September 12, 2016 To: September 13, 2016

September 12, 2016

With Pay:

Without Pay:

SEPARATION:

RESIGNED RETIRED TERMINATED TRANSFER/OTHER DEPT'

LEAVE: Family Medical Leave (FML) Return from FML Light Duty

Workers' Comp (WC) Leave Return from WC Leave Other

COMMENTS:

Dwayne Williams

Dwayne Williams

Supervisor's Printed Name

Supervisor's Signature

Kelth Jemison

Asst. Chief Kelth Jemison

Department Head's Printed Name

Department Head's Signature



Police

Michael A. Berezin
Chief of Police



LETTER OF DISCIPLINE

To: Konstantino Limbousis, Police Officer
From: Mike Berezin, Chief of Police
Date: August 24, 2016
Re: PSI Case #16-0010 Konstantino Limbousis

The investigation regarding PSI Case #16-0010 has been completed. Based upon the available evidence, the results are as follows:

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**



Police

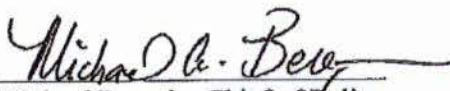
Michael A. Berezin
Chief of Police




I have reviewed the results of the investigation and upon review, accept the findings of the investigating officer and now invoke the following discipline:

You will receive a suspension of (3) days or thirty-six (36) hours of time off without the benefit of pay. The suspension date will begin on September 2nd, 2016 at 0600 hours and end on September 4th, 2016 at 1800 hours. You are to surrender your department issued handgun, police badge and police identification to your Division Captain by 0600 hours on September 2nd, 2016 and your supervisor will return those items at the end of your suspension. During your suspension you are relieved of all official police authority. You are also instructed to review the Missouri City Police Department Pursuit, Use of Force and Mobile Video Recording policies. Once you have reviewed each policy, print copies of each policy, sign, and forward the copies to the Administrative Captain within three days.

You are cautioned that any future violations may result in progressive discipline up to and including termination.


Michael Berezin, Chief of Police


Gus Limbousis, Police Officer

MCPD STATUS CHANGE FORM – Revised July 15, 2015

Employee's Name Konstantino Limbousis	Employee No. 619	Date 9/01/16
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Attach a valid copy of the supporting document to HR/OD, for processing on effective date of approval

				Effective Date
<input type="checkbox"/> Bilingual Pay (<i>Spanish only</i>)	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Intermediate Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Intermediate TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Advanced Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Advanced TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Master Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Master TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Instructor's Certificate	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> TCO Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Field Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> S.W.A.T. Certification	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Special Crime Unit	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Clothing Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$37.50	
<input type="checkbox"/> Voice & Data Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$	
<input type="checkbox"/> SHIFT CHANGE: From Shift		To Shift		

PROMOTION/TRANSFER/TEMP ASSIGNMENT/SUSPENSION/ DEMOTION/SUSPENSION

Current \$

New \$

From: September 2, 2016 To: September 4, 2016

September 2, 2016

With Pay:

Without Pay:

SEPARATION:

RESIGNED RETIRED TERMINATED TRANSFER/OTHER DEPT

LEAVE: Family Medical Leave (FML) Return from FML Light Duty

Workers' Comp (WC) Leave Return from WC Leave Other

COMMENTS:

Dwayne Williams

Dwayne Williams

Supervisor's Printed Name

Supervisor's Signature

Kellh Jemson

Asst. Chief Kellh Jemson

Department Head's Printed Name

Department Head's Signature



Police

Michael A. Berezin
Chief of Police



MEMORANDUM FOR RECORD

To: Michael Berezin, Chief of Police

From: Keith Jemison, Ed.D.
Assistant Chief of Police

Date: August 17th, 2016

Subject: Disciplinary Recommendation

Reference: PSI 16-0010

I have reviewed the Professional Standards Investigation (PSI) surrounding the actions of Officers Konstantino Limbousis, Patrick Fahey, and Sgt. D. Smith, that occurred starting on May 28th, 2016 and continuing throughout the course of the investigation. After reviewing the investigation, I am satisfied with it as to form and content and note that all officers involved were properly notified pursuant to Texas Government Code 614.023 on June 30th, 2016 (**PSI 16-0010: Exhibit L**) as well as on July 6th, 2016 (**PSI 16-0010: Exhibit M & Exhibit N**) and were permitted to respond to the departmental charges on those same days respectively.

I have reviewed Captain Dwayne Williams' assessment of the investigation and generally support his findings. With the exception of Sgt. D. Smith's findings, which will be addressed in a separate memorandum, those findings are outlined as follows:

Officer Konstantino Limbousis

Findings 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**



Police

Michael A. Berezin
Chief of Police



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**

Assistant Chief Jemison Recommendation: I concur with the aggregate suspension recommendation of Three Days (36 Hours) without the benefit of pay for the identified policy violations.

Officer Patrick Fahey

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**

Findings and recommendations for the policy violations:

Assistant Chief Jemison Recommendation: I concur with the aggregate suspension recommendation of Two Days (24 Hours) without the benefit of pay.



Police

Michael A. Berezin
Chief of Police



SYNOPSIS

As noted by Captain D. Williams, the behavior of all officers involved in this incident represented a failure to fully embrace the responsibility entrusted to all law enforcement agencies with regard to performing the responsibilities of the office that they hold. More specifically, those responsibilities include carefully weighing the inherent risk to the public sometimes necessary in executing their duties, while simultaneously balancing the need to exercise due care for the community that they serve. Unfortunately, this balance act comes under the strictest scrutiny when public safety professionals are tasked with deciding what means to employ to achieve lawful objectives. In this case, Officers Fahey and Limbousis actions fell far short of the expectations of the organization.

Both employees engaged in conduct detrimental to the interests of the department. Officer Limbousis' initial actions upon contact with the suspect were clearly outside the departmental training that he has been provided; to wit, failing to properly secure a felony suspect through the use of felony stop procedures (ie. directing the suspect into a prone position prior to initiating handcuffing techniques), and/or waiting for back-up units to arrive prior to initiating contact. It is conceivable that had Officer Limbousis done so, the pursuit would likely have never occurred. Further, once the pursuit had begun, it was clear that the suspect vehicle was entering onto a major thoroughfare with limited vision, due to the hood of the vehicle being in the raised position. With that limited vision, the vehicle began to accelerate rapidly, while initiating evasive maneuvering on a heavily populated roadway. The level of danger associated with the evasive maneuvering was later exacerbated by the fact that the suspect was driving contraflow during an extended stretch of the pursuit, after having driven through several area grocery store parking lots and causing at least two known traffic collisions. Further, the approximately twenty minute (20) pursuit reached speeds of upwards of 103 miles per hour, at points, and was occurring on a holiday weekend (Memorial Day) at approximately 1345 hours in the afternoon. At some points during the pursuit, the suspect entered active intersections without slowing down. Officer Fahey's conduct is similarly alarming after he joined the pursuit shortly after its initiation by Officer Limbousis, considering the same aforementioned circumstances.

The expectations of any employee of the Missouri City Police Department have to be evaluated from a standard of reasonableness. In this case, Officer Limbousis has 10 years and 9 months of experience and Officer Fahey has 4 years and 5 months of experience in law enforcement and each should be reasonably expected to know and

Following Pages: Withheld consistent with prior markings



Police

Michael A. Berezin
Chief of Police



apply the standards of MCPD's Pursuit Policy #30-19. Policy #30-19 specifically directs departmental members to consider and balance, among other things, the

[REDACTED]

108(b)

MCPD's Pursuit Policy #30-19 further states that officers engaged in pursuits

[REDACTED]

Further, Policy #30-19 identifies that terminating pursuits

[REDACTED]

Finally, MCPD Policy #30-19 (H. 2.) says explicitly that pursuits

[REDACTED]

108(b)
(paragraph)

In this case, the circumstances clearly dictate that those participating had an obligation to terminate their pursuit of the suspect vehicle. While some may differ about what particular point that threshold was crossed, the definitive line in the sand would appear to be when the suspect vehicle began driving against the flow of traffic. This is after having driven through multiple store parking lots at a high rate of speed, driven with an obstructed view at a high rate of speed while recklessly swerving through traffic, at times on the shoulder, and making multiple evasive maneuvers. It is reasonable to expect that veteran officers would make the decision to disengage. They did not. I do note that the supervisor of the named employees was intimately involved within the pursuit and did not order the termination of the pursuit. The supervisor's failure to direct the officers to terminate the pursuit did not obviate the responsibility of the officers. In fact, in some respects, it underlines the necessity that MCPD employees know and adhere to the department's policy, and is a part of why all participating employees are empowered through the policy, to make the termination decision.

Based upon the totality of the investigation, I must affirm Captain D. William's recommendation that Officer Limbousis be suspended for **Three Days (36 Hours) without the benefit of pay for the identified policy violations** and that Officer Fahey be suspended for Two Days (24 Hours) without the benefit of pay.



Police

Michael A. Berezin
Chief of Police



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



Police

Michael A. Berezin
Chief of Police



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. Investigators believe that by his own admission of understanding [redacted] 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] 10/6

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] 10/6

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



Police

Michael A. Berezin
Chief of Police



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



Police

Michael A. Berezin
Chief of Police



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



Police

Michael A. Berezin
Chief of Police



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]) 10/6(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. states:

[REDACTED] 10/6(b)

d.) 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



Police

Michael A. Berezin
Chief of Police



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.

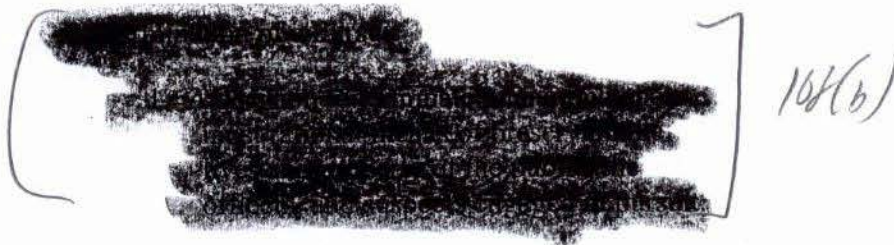
Sgt. Smith was notified of this professional standards investigation with the following alleged policy violations:

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.

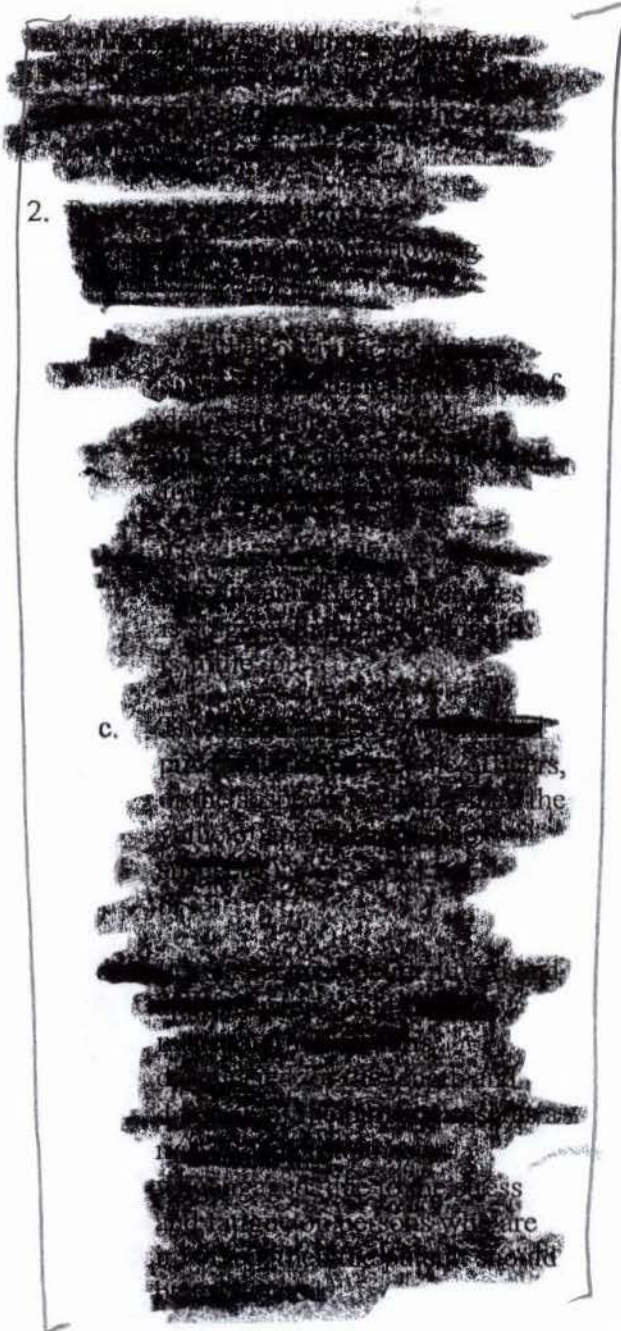
MCPD policy 30-19, IV, H. states:





Police

Michael A. Berezin
Chief of Police



2.

c.

(b)(6)

2. By not completing his use of force report form as required by policy. The investigation revealed Sgt. Smith directed an officer to complete his use of force form. During the investigation, Sgt. Smith advised he shouldn't have had the officer complete the form because he did not use force however, videos from the arrest after the pursuit clearly shows Sgt. Smith used physical force against the suspect while the



Police

Michael A. Berezin
Chief of Police



suspect was being detained. Sgt. Smith should have filled out a use of force form indicating he pointed his weapon at the suspect as well as physically held the suspect down when the suspect was being detained in handcuffs.

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.
3. By not completing his use of force report form and submitting it as required by policy as well as reviewing the officers' use of force reports, signing them and forwarding them up the chain of command. MCPD policy 20-07 Use of Force VIII.G states: The RMS Use of force form (PD-82) shall be printed and signed by both the officer and supervisor and submitted through the chain of command.

Please find my findings and recommendations for Sgt. Smith's policy violations:

1. Policy 30-19 Pursuit IV.H. (Fail to terminate pursuit when required)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**
2. Policy 20-07 Use of Force VII.A.3 (Use of Force not completed)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**
3. Policy 20-07 Use of Force VIII.G (Use of Force forms not forwarded)
Findings: **Sustained**
Discipline Range: C-3 days suspension
Recommendation: **One Day Suspension**

During this investigation, there were three additional policy violations discovered involving Sgt. Smith as follows:

1. Code of Conduct 10-01 V.B.10 – (Ignorance of Law/Policy)
2. Code of Conduct 10-01 V.C.2 – (Fail to take corrective action as supervisor)
3. Code of Conduct 10-01 V.D.28.d (Unbecoming conduct)



Police

Michael A. Berezin
Chief of Police



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 (including himself) to drive against the normal flow of traffic, directly into oncoming vehicles, [REDACTED] Also by his own admittance (100(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.

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.



Police

Michael A. Berezin
Chief of Police



I have reviewed the three additional charges against Sgt. Smith and recommend the charges be sustained.

I recommend an additional two days suspension in addition to the three day suspension recommendation for failing to terminate the pursuit, not completing his use of force form and forwarding the use of force reports as required for a total of five (5) days suspension.

In addition, I recommend Sgt. Smith be required to review pursuit and use of force policies as well as attend police pursuit training.

Respectfully submitted,


Captain Dwayne Williams,



MISSOURI CITY
T E X A S

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 18, 2016

Re: PSI #16-0010 Investigative Report Summary

INTRODUCTION

This Internal Affairs Division investigative report responds to the administrative inquiry initiated by the Chief of Police against Officer Konstantino Limbousis, Employee# 619, Officer Patrick Fahey, Employee #817, and Sergeant Daryl Smith Employee# 266 of the Missouri City Police Department Patrol Division.

The Chief of Police's allegation against Officer is for violation of policy 30-19 Pursuits and policy 20-07 Use of Force. This incident took place in the 5700 block of SH6 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 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.

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.



Police

Michael Berezin
Chief of Police



DISCOVERY

The date of incident was May 28, 2016. 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.

COMPLAINT REQUIREMENTS

The Chief of Police has adopted this complaint as an administrative inquiry because the following misconduct is alleged, and there is no complainant willing or able to give a notarized statement. The alleged behavior is something other than criminal, discharge of firearm, excessive use of force, or domestic violence, 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.

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 Evening Shift 1300 – 2300 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 officers on the scene when the subject wrecked the vehicle.

Note: 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.



Police

Michael Berezin
Chief of Police



Officer Stahl voluntary statement dated September 10, 2014

"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 0600 hours.

On Wednesday, 07/06/2016 at 1100 hours 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.

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 was involved in a pursuit of a stolen vehicle. After the pursuit ended, I exited my patrol vehicle with my gun drawn and approached the suspect vehicle. The suspect was then placed into custody. After the incident was over, I approached Sgt Smith to fill out a use of force form. I sat in Sgt Smith's office as he entered the initial information into the form (ie. officers and suspect information.) Once that information was entered into the form through RMS, I logged back into RMS and searched for the form using the case # and typed a brief narrative of the incident involving force. End of report.

End of voluntary statement- Officer Eric Stahl



Police

Michael Berezin
Chief of Police



Investigator's Note:

During the initial review of this case, there was some question as to one of the use of force reports entered. The form indicated Officer Limbousis as the officer of record, but the narrative was written by Officer Stahl. Officer Stahl was interviewed to shed some light on the matter, indicating the form had already been entered and at a later time Officer Stahl entered his narrative into RMS under the same record.

Several of the other interviews indicated that there seemed to be a disconnect in understanding of who should complete a use of force report. The disconnect in understanding appears to go beyond officer level and reaches into the supervisory ranks. This may indicate a need for explanation to ensure in the understanding of all sworn personnel.

NOTIFICATION REQUIREMENT

On July 6, 2016, Compliance Supervisor Michael Curry and Lieutenant Jeffrey York issued Officers a written Letter of Notification, informing them 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.

On July 6, 2016, Compliance Supervisor Curry and Lieutenant Jeffrey York met with all involved officers at Missouri City Public Safety Headquarters and them written statement notification warning which included a Letter of Notification. All officers were also provided a copy of the following documents:

1. Copy of Officer administrative statement dated July 6, 2016.
2. Copy of MCPD Incident Report #16-003614.
3. Copy of MCPD Arrest Report
4. Copy of Fort Bend County Sheriff's Office Inmate Booking packet
5. Copy of Notification letter



Police

Michael Berezin
Chief of Police



SUBJECT OFFICERS STATEMENT

Administrative Statement of Officer Konstantino Limbousis, Employee #619 Patrol Division, Shift -Varies 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.

Note: The following is Officer Limbousis'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 Limbousis' administrative statement dated May 20, 2014

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 7/6/16, at 8am 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.

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



Police

Michael Berezin
Chief of Police



On 5/28/16 at approximately 1230 hours I officer Limbousis # 619 was dispatched to a report of a stolen vehicle located by the owner. Upon arrival near the Chili's parking lot I observed the stolen vehicle in question backed into a parking spot near the shrubs. I then observed the suspect near the ground behind the vehicle attempting to put stolen plates that were just stolen from random vehicles near the Ross parking lot. The vehicle had the hood raised upon arrival. The vehicle appeared to be operable but that cannot be determined just by a quick look at the vehicle. I made contact with the suspect and asked him to show me his hands. The suspect kept stating the vehicle was owned by either his mom or grandmother. I told the suspect to get on the ground so I could detain him. I was able to get a cuff on the left arm when the subject started resisting. I ended up in the driving compartment of the vehicle with the suspect trying to detain him. I was not able to get his hands together to finish cuffing the suspect and at this point it became apparent my safety was in danger in close quarters with that subject. The subject managed to put the car in drive and drove off. The suspect left down SH6 with the hood open near the Murphy express. I then slowed down and pulled to the left of Sh6 in an attempt to give more space to the suspect and other vehicles to prevent any accidents. After exiting the Kroger's parking lot I heard another officer state on the radio the suspect had possibly struck a vehicle in the Kroger parking lot. It was my determination an officer stayed behind with that accident. After leaving the Kroger parking lot I paused because I was trying to decide whether I was going to go to the right and take the turn around and risk losing the suspect vehicle and any video footage of what actions he was performing during this incident.

I followed the suspect vehicle twice the wrong side down SH6 in the effect to further warn drivers with my lights and sirens and in an attempt to prevent any head on collisions with the suspect vehicle. I pulled my vehicle to the right side and almost came to a stop so that the vehicle coming towards us could see the lights. My thinking was the cars driving down Sh6 would look over to the units on the correct side of the road with their lights and sirens and would not pay attention to the suspect vehicle coming towards them. I did what I did in an attempt to help other vehicles make sure they saw what was going on in front of them. I pulled my vehicle to the right and stayed there with lights and sirens for a few moments to help further warn. At that point i heard Sgt Smith telling units to continue on and stay with the suspect vehicle. I then turned into the murphy Express parking lot and continued with the pursuit. I then requested DPS thinking they might have an alternative way of stopping the vehicle in order to have this pursuit end quicker. At this point I did not think I could terminate the pursuit since the on duty supervisor was a part of the pursuit and even lead at some points of the pursuit. I felt that based on what I heard on the radio from the supervisor that if decided to end the pursuit it would have been denied given the circumstances.



Police

Michael Berezin
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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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 Pahle # 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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

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T E X A S

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
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.



Police

Michael A. Berezin
Chief of Police



The Professional Standards Investigation was performed and at the conclusion of the investigation, the investigator, given the evidence provided herein, that the charge listed in the PSI# 16-0011 recommend be **SUSTAINED**.

I reviewed the alleged policy violation and recommend that the charge be sustained. Please find my findings and recommendations for the alleged policy violation:

1. Policy 20-07 Use of Force, V. B (Improper use of Force)
Findings: **SUSTAINED**
Discipline Range: C-Dismissal
Recommendation: One week suspension

In addition to the one week suspension recommendation, I would recommend Sgt. Smith attend a mandatory use of force class. As a supervisor, he is required to know use of force and evaluate officers' use of force under his command.

Respectfully submitted,

Captain Dwayne Williams



Police

Michael A. Berezin
Chief of Police



LETTER OF DISCIPLINE

To: Daryl Smith, Sergeant
From: Michael Berezin, Chief of Police
Date: September 6, 2016
Re: PSI Case #16-0010, #160011

PSI # 16-0010

The investigation regarding PSI Case #16-0010 has been completed. Based upon the available evidence, the results are as follows:

1. Policy 30-19 Pursuit IV. H (Fail to terminate pursuit when required)
Findings: **SUSTAINED**
Discipline Range: C-3 days suspension
Recommendation: **3 Day Suspension**
2. Policy 20-07 Use of Force VII.A.3 (Use of Force not completed)
Findings: **SUSTAINED**
Discipline Range: C-3 days suspension
Recommendation: **1 Day Suspension**
3. Policy 20-07 Use of Force VII.G (Use of Force forms not forwarded)
Findings: **SUSTAINED**
Discipline Range: C-3 days suspension
Recommendation: **1 Day Suspension**

PSI # 16-0011

The investigation regarding PSI Case #16-0011 has been completed. Based upon the available evidence, the results are as follows:

1. Policy 20-07 Use of Force, V. B (Improper use of Force)
Findings: **SUSTAINED**
Discipline Range: C-Dismissal
Recommendation: **One Week Suspension**

I have reviewed the results of the investigation of PSI 160010 and 160011. Upon review, accept the findings of the investigating officer and now invoke the following discipline:



Police

Michael A. Berezin
Chief of Police



You will receive a suspension of **ten days (10)** days or one hundred-twenty (120) hours of time off without the benefit of pay. The suspension date will begin on September 9th, 2016 at 0600 hours and end on September 25th, 2016 at 1800 hours. The specific days will include, September 9th, 10th, 11th, 14th, 15th, 19th, 20th, 23rd, 24th, and the 25th. You are to surrender your department issued handgun, police badge and police identification to your Division Captain by 0600 hours on September 9th, 2016 and your supervisor will return those items at the end of your suspension. During your suspension you are relieved of all official police authority.

You will be required to review the Missouri City Police Department Pursuit and Use of Force policies. Once you have reviewed the policies, print a copy, sign the copies and forward them to the Administrative Captain within three days of receiving this letter of discipline.

In addition to your suspension, you are hereby reassigned to the Police Mini-Station as a Desk Sergeant. You will be responsible for manning the Mini-Station and assisting the Community Outreach Officer (Sergeant Heard) with community outreach projects. You will **not** be authorized to fill patrol supervisor shifts or work patrol in any fashion. You will no longer be assigned a marked take-home vehicle. You will coordinate with the Administrative Captain for your new fleet assignment.

My decision-making in this matter took into consideration the following disciplinary history from the last five years:

1. **May 2012:** Written warning for Unbecoming Conduct as a result of his involvement in a disturbance with Constable Ruben Davis at Constable Davis' campaign office located at Texas Parkway at Turtle Creek Drive in Missouri City.
2. **September 2013:** 40 hour suspension for a sustained complaint of arrest procedure and mobile video recording policy violations.
3. **May 2014:** 20 hour suspension for a sustained complaint of Unbecoming Conduct and Discourteous Temperament policy violations.

Consideration of the aforementioned disciplinary history compounds the impact of the current **SUSTAINED** Professional Standards Investigations (PSI). As a supervisor, the responsibility of leadership necessarily brings with it the reality that our actions will be evaluated through the lens of the strictest scrutiny, when it comes to performing those responsibilities. In this case, your actions fell short of the organizational expectations of one who has been empowered with supervisory authority.



Police

Michael A. Berezin
Chief of Police



You are cautioned that any future violations may result in progressive discipline up to and including termination.

Michael A. Berezin 09/08/2016
Michael Berezin, Chief of Police

Daryl L. Smith 09-8-2016
Daryl Smith, Sergeant

MCPD STATUS CHANGE FORM – Revised July 15, 2015

Employee's Name Daryl Smith	Employee No. 266	Date 9/9/2016
---------------------------------------	----------------------------	-------------------------

Attach a valid copy of the supporting document to HR/OD, for processing on effective date of approval

				Effective Date
<input type="checkbox"/> Bilingual Pay (<i>Spanish only</i>)	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Intermediate Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Intermediate TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Advanced Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Advanced TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Master Peace Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Master TCO	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$30	
<input type="checkbox"/> Instructor's Certificate	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> TCO Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> Field Training Officer	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$50	
<input type="checkbox"/> S.W.A.T. Certification	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$100	
<input type="checkbox"/> Special Crime Unit	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$150	
<input type="checkbox"/> Clothing Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$37.50	
<input type="checkbox"/> Voice & Data Allowance	<input type="checkbox"/> Add	<input type="checkbox"/> Subtract	\$	
<input type="checkbox"/> SHIFT CHANGE: From Shift		To Shift		

PROMOTION/TRANSFER/TEMP ASSIGNMENT/SUSPENSION/ DEMOTION/SUSPENSION

Current \$

New \$

From: September 9, 2016 To: September 25, 2016

With Pay:

Without Pay: Without Pay

SEPARATION:

RESIGNED RETIRED TERMINATED TRANSFER/OTHER DEPT

LEAVE: Family Medical Leave (FML) Return from FML Light Duty

Workers' Comp (WC) Leave Return from WC Leave Other

COMMENTS: The suspension dates are 9,10,11,14,15,19,20,23,24,25.

Dwayne Williams

Dwayne Williams Supervisor's Signature

Supervisor's Printed Name

Supervisor's Signature

Keith Jemison

Asst. Chief Keith Jemison Department Head's Signature

Department Head's Printed Name

Department Head's Signature



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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MISSOURI CITY
TEXAS

Police

Michael A. Berezin
Chief of Police



judicial interpretations law. Force in the MCPD policy is defined as the amount of active power, strength or energy that is necessary to overcome an actor's physical resistance.

Non-deadly force is defined as force employed that is not likely to cause death or serious bodily injury.

Deadly force is defined as force employed that is likely to cause death or serious bodily injury.

The amount of force necessary to overcome an actor's physical resistance varies according to the circumstances.

Use of Force Continuum - A variable force continuum

Force continuum is a variable force continuum that ranges from non-deadly force to deadly force. The amount of force necessary to overcome an actor's physical resistance varies according to the circumstances. The amount of force must be objectively reasonable based on the totality of the circumstances.

Level 1: Verbal commands

Level 2: Physical force that is not likely to cause death or serious bodily injury, such as a baton, etc.

Level 3: Deadly force, such as a handgun, rifle, shotgun, etc. or any other weapon that is capable of causing death or serious bodily injury.

Level 4: Deadly force, such as a handgun, rifle, shotgun, etc. or any other weapon that is capable of causing death or serious bodily injury.

The MCPD has set force levels for various circumstances as follows:

Level 1: Verbal commands

Level 2: Physical force that is not likely to cause death or serious bodily injury, such as a baton, etc.

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Police

Michael A. Berezin
Chief of Police



.108(b)

[REDACTED]

[REDACTED]

Subject's level of assistance

Subject's claim of the target

Multiple sources of information

Subject's current status

Subject's

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. [REDACTED]
[REDACTED] believe [REDACTED]
[REDACTED] necessary to [REDACTED]

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(page)



Police

Michael A. Berezin
Chief of Police



108(b)

a. make or assist in making a search, or to prevent or assist in preventing a escape after arrest if:

i. the police officer reasonably believes the arrest or search is lawful, if the arrest or search is made under a warrant, the officer reasonably believes the warrant is valid, and

ii. the police officer reasonably believes officer, conducting a search, or an arrest or search and identifies himself as a police officer, unless the police officer reasonably believes his name and identity are already known by or cannot reasonably be made known to the person to be arrested;

b. protect the police officer or others from what the police officer believes is an imminent use of deadly force or

c. protect the community public officer safety.

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(page)

2. When using non-deadly force, an officer shall adhere to applicable federal and state law and standards governing the use of force, including the Fourth Amendment to the U.S. Constitution; applicable judicial interpretations; and this policy, particularly the guidelines describing the use of force continuum set forth in this policy.
3. At all times, when practical, an officer should issue verbal commands in an attempt to gain voluntary compliance by the actor. It is important to note that sometimes, because of the actor's actions, it may be necessary to skip certain levels in the use of force continuum. In addition, the use of force continuum works in both directions. Any time the level of resistance by the accused is increased or decreased, the officer must adjust their level of response accordingly.

B. Deadly Force

1. The policy of this Department shall be in accordance with federal and state law, including the Fourth Amendment to the U.S. Constitution, and applicable judicial interpretations applying those laws.

A police officer may use deadly force if the officer reasonably believes the person poses a threat to the officer or others.



Police

Michael A. Berezin
Chief of Police



108(b)

a. Protect the police officer or others against another's use or attempt to use unlawful deadly force, or
b. Whenever a person has in his or her possession, control, or use a deadly weapon, and

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(page)

if the police officer reasonably believes the conduct for which the person is authorized to use the use or attempt use of deadly force, or
if the police officer reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the police officer or another if the arrest is delayed.

2. The use of deadly force is not authorized or allowed in any misdemeanor offense.

3. Whenever reasonably possible, an officer shall give a verbal warning before the use of deadly force.

4. A person who is arrested shall not be discharged.

5. A person who is arrested shall not be discharged unless all other means have been exhausted. An officer shall not voluntarily or excessively use force against a person who is not a threat to the officer or others.

6. A person who is arrested shall not be discharged unless all other means have been exhausted.

7. The use of force against a person who is a threat to the officer or others is not authorized if the person is a child, elderly person, or person with a physical or mental disability, unless the officer reasonably believes that the use of force is necessary to protect the officer or others from serious bodily injury or death.

8. A person who is arrested shall not be discharged unless all other means have been exhausted.





MISSOURI CITY
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Police

Michael A. Berezin
Chief of Police



9. [REDACTED]

10. [REDACTED]

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Police

Michael A. Berezin
Chief of Police



The Professional Standards Investigation was performed and at the conclusion of the investigation, the investigator, given the evidence provided herein, that the charge listed in the PSI# 16-0011 recommend be **SUSTAINED**.

I reviewed the alleged policy violation and recommend that the charge be sustained. Please find my findings and recommendations for the alleged policy violation:

1. Policy 20-07 Use of Force, V. B (Improper use of Force)

Findings: **SUSTAINED**

Discipline Range: C-Dismissal

Recommendation: One week suspension

In addition to the one week suspension recommendation, I would recommend Sgt. Smith attend a mandatory use of force class. As a supervisor, he is required to know use of force and evaluate officers' use of force under his command.

Respectfully submitted,

Captain Dwayne Williams



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



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.



Police

Michael Berezin
Chief of Police



When asked to read the levels of officer response to resistance Sergeant Smith now classified his level of force as level 3, due to the fact that he used his knee. When asked why he felt it was level 3 despite the fact he did not use any strikes he stated level three lists body parts like feet etc. 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.



Police

Michael Berezin
Chief of Police



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Police

Michael Berezin
Chief of Police



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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Michael Berezin
Chief of Police



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

Joel Fitzgerald, Sr.
Chief of Police



WRITTEN WARNING

To: Sergeant Daryl Smith

Cc: Lt. Kevin Burleson
Assistant Chief Mike Berezin
Chief Joel Fitzgerald

From: Captain Dwayne Williams

Date: May 14, 2012

Ref: **Written Warning**



On Friday, 5/11/12, at approximately 1935 hrs, you (Sgt. Daryl Smith) requested a civil stand-by at 1308 Turtle Creek while you make contact with Constable Ruben Davis in reference to requesting him to move his campaign signs from over your signs in the 1200 block of Texas Parkway, Stafford, Texas, 77477. Officers Nolen and Urban responded to 1308 Turtle Creek and stood by while you spoke with Constable Ruben Davis. Constable Ruben Davis asked you to leave the office and began calling Chief Fitzgerald. Officer Nolan requested a supervisor to the scene and I responded to the Turtle Creek office.

Once I arrived you explained to me you were asking Constable Davis to remove his signs off of your signs in the 1200 block of Texas Parkway. Knowing that you already reported the damage to your signs to the Stafford Police Department, I asked you to take photos of the damage to your signs and just file your report with The Stafford Police Department and let their agency handle the investigation. I asked you, Officers Nolen and Urban to leave the 1308 Turtle Creek address since Constable Ruben Davis had asked you to leave and the request was causing a disturbance.

Being an employee of the Missouri City Police Department, you are to abide by the Department's Code of Conduct which states:

28. Employees shall not conduct themselves in a manner which:

Brings the Department into disrepute;



Police

Joel Fitzgerald, Sr.
Chief of Police



Reflects unfavorably upon the employee as a member of the Department;

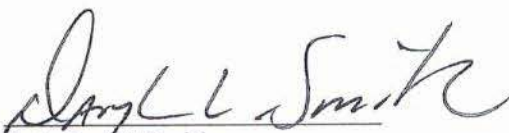
Damages or affects the reputation of any employee of the Department;

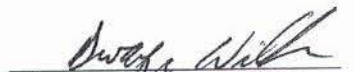
Impairs the operation or efficiency of the Department or any employee.

The fact that you are supervisor in the Missouri City Police Departments requires that you are held to a higher standard than officers in the Department. The memo will service as written notice to not engage in any conduct which would reflect poorly on our agency or The City of Missouri City. I asked you to leave Constable Davis' office on Friday and I am directing you not to go to any of Constable Davis Offices to confront him about campaign matters. You should use better judgment in the future and not involve Missouri City Officers in your campaign. Obviously, you have the right to request police service if there has been a criminal offense.

Please let this serve as a notice that you are hereby receiving a written warning for policy violation:

1. MCPD Policy 10-01, V, D, 26, Unbecoming Conduct


Sgt. Daryl Smith


Captain Dwayne Williams

