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FROM THE DESK OF
MIKE McMEEKIN

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FAX: (406) 523-2890

Monday, 02 May, 2005

TO: Deputy Doug Hartsell

SUBJECT: Suspension from duty without pay

Disciplinary decision:

1. You are suspended from your duties as a deputy sheriff, without pay, for six (6) weeks (240 duty hours). The suspension will commence on Tuesday, 03 May, 2005. Unless you log duty hours for court testimony (see *Administrative notes* below), you will return to duty on Tuesday, 14 June.
2. This is the final step in progressive discipline. You are placed on permanent notice that continuing unacceptable behavior will result in the termination of your employment with this department.

Administrative notes:

1. You will make an appointment with Human Resources today or tomorrow to discuss the impacts of this suspension on your various employee benefit programs and to advise them how you want these matters handled.
2. If you are called to testify at trial or other court proceedings during the period of suspension:
 - a. You will attend the court proceedings as directed, including any preparation activities requested by the county attorney's office;
 - b. You will check with the prosecutor in advance of your appearance to determine whether they want you in uniform or civilian attire. If they request civilian attire, that means either a suit or slacks/sport coat/tie;
 - c. You will notify your division commander, in writing, of the hours worked. The documentation will be submitted not less than one business day following the court proceeding or preparation. Captain Ibsen will enter those hours on the payroll and you will be compensated at straight time.
3. I am obliged by administrative rule to notify the P.O.S.T. Council of your arrest and of this suspension. Actions taken by the P.O.S.T. Council, if any, are completely separate from our department administrative sanctions.
4. You will relinquish your department patrol vehicle to Captain Ibsen for the duration of your suspension. You are specifically prohibited from engaging in any activities associated with your employment as a deputy sheriff with this department except as noted in #2 above (court appearances).

PAGE 1 OF 4

Missoula County 000001

Basis for decision: You were arrested for DUI by the Montana Highway Patrol in Ravalli County on Saturday, 23 April, 2005 following a non-injury motor vehicle accident and alleged stop sign violation. Breath tests administered by the arresting patrolman indicate that you were, in fact, intoxicated at the time of the accident.¹ Based upon the accident, arrest and subsequent events, review of Captain Ibsen's investigation report and review of your files, I find that:

1. You violated the "Laws/Orders" regulation under "Duty Requirements" of the department manual that expressly orders employees to "obey the laws of the United States and the State of Montana."
2. You violated the "Intoxicants" section of the "Personal Conduct" regulation of the department by drinking an alcoholic beverage to an extent "...which results in the commission of an obnoxious or offensive act which might tend to discredit the department."
3. The mere fact of your arrest for DUI has caused the County Attorney's office to request dismissal (with prejudice) of charges against Kevin Michael Payne. You were the arresting deputy and primary witness against Mr. Payne on charges including DUI, obstructing justice, careless driving, possession of drug paraphernalia and driving while suspended. Prosecutors are also faced with the extra burden of researching other pending cases in which you are the arresting deputy and/or a witness, then asking the courts for continuances while your own case works its way through the system. This has placed an unacceptable, and completely preventable, additional workload on both the County Attorney's office and the courts.
4. The resulting media coverage of your arrest has certainly tended to bring reproach or discredit upon the department; a result of your behavior that is prohibited in the "General Behavior" section of the "Personal Conduct" regulation of the department.

and,

5. Your overall work performance prior to last Saturday's incident has been unacceptable (see below). You have received remedial training, been counseled, received repeated oral and written warnings from supervisors and commanders, and were recently suspended without pay; none of which have been successful in significantly correcting the deficiencies.

Mitigating factors: According to Captain Ibsen's investigation, you cooperated fully with responding Ravalli County deputies and with the highway patrolman. There is no indication of any attempt to influence their response decisions by referring to your professional status as a law enforcement officer. You took steps to advise your immediate supervisor of the arrest and personally notified me by telephone the following morning. It is my understanding that you have apologized to some of your peers for the embarrassment you have caused them.

¹ This information is for internal administrative use only and is not to be construed as a comment on your ultimate innocence or guilt in the pending court proceedings.

Exacerbating factors:

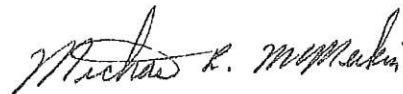
1. At the commencement of your employment with us, I directed (in writing) that your field training program and probationary period include specific training and monitoring designed to watch for and correct significant performance deficiencies brought to our attention by your previous law enforcement employer, prosecutors and the courts.
2. In the past twelve months your supervisors and division commanders have found it necessary to issue at least eight (8) memorandums and warning letters due to your failure to follow standard department procedures governing completion of reports and documentation of evidence.
3. In the space of ten months, between May of 2004 and March of 2005, you missed two trials for which you had been subpoenaed as a witness. As a result of the most recent incident you were found in contempt of court.
4. In December of 2004, at the direct order of your division commander, you authored a corrective plan of action to remedy deficiencies in your reports and evidence documentation. One day later, you violated those standard procedures by not writing a report on an out-of-county arrest (by warrant) and taking less than the full bond amount set by the court.
5. In March of 2005, Captain Ibsen asked you to present a physician's statement that you were fit for duty. This was in response to a medical ailment you referred to during testimony at your contempt of court hearing. You told Captain Ibsen you were fine and would not need the physician's statement. He then ordered you to provide the physician's release and explained why we needed it. You failed to comply with his direct order until after he had placed you on administrative leave (with pay) until we got the statement. Ignoring your division commander's direct order was unacceptable.
6. In April of 2005, Captain Ibsen suspended you for one day (12 duty hours) following your refusal to follow a direct order from your sergeant (immediate tire repair) and the instructions of your assistant shift supervisor to properly document and store evidence that you had left on a counter.

Doug, I expect you to give serious consideration during the suspension as to whether you wish to continue a law enforcement career with this department. The combined and intensive efforts of your trainers, peers, supervisors and commanders have failed to instill any meaningful change in your behavior. Counseling, warnings, a contempt of court conviction and an earlier suspension without pay haven't worked. The bottom line is that you know what the rules, policies and procedures are; you simply elect to ignore the ones that seem inconvenient or insignificant to you at any given time. We've had enough. You make repeated references in the corrective plan of action you wrote earlier this year to "clerical work" and obviously refuse to accept standard reporting procedures as an integral part of the law enforcement function. In the same document you write about asking your "team members, dispatchers and supervisor to assist in making sure I stay on the task at hand and to check my work before it is turned in." The implication is that you somehow feel it is their responsibility to make sure you do what you are supposed to. Once again, that is unacceptable reasoning; getting the job done correctly and on time is your responsibility and no one else's. You will either meet your full responsibilities as a deputy sheriff or need to find employment elsewhere.

Missoula County has several resources available to assist you and your family. I strongly encourage you to take advantage of them. The employee assistance program (EAP) offers confidential, cost free, evaluation and counseling in a variety of areas including personal finances, marital & other family issues and substance abuse. Please check with the Human Resources office for information on accessing these resources.

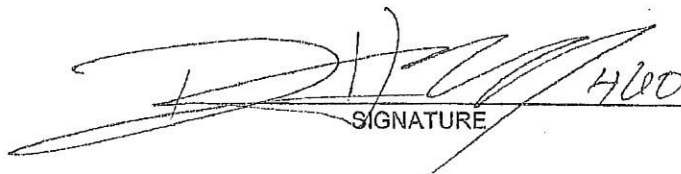
As I have already explained to you, the Montana Supreme Court has ruled in the *Bozeman Chronicle* and *Great Falls Tribune* cases that disciplinary decisions involving law enforcement officers are a matter of public record. You and your family need to be prepared for the fact that we must release this memo to the media and/or public if any requests are received.

Employee rights: Article 34 of the current bargaining agreement between Missoula County and the Missoula County Deputy Sheriff's Association ("Association") provides a remedy should you disagree with my decision in this matter. Article 35 describes various rights you have in disciplinary matters. You should be familiar with these articles. I encourage you to discuss your employee rights with an officer of the Association.



Michael R. McMeekin, Sheriff / Coroner

Acknowledgement: I acknowledge receipt of this suspension notice on the 2nd day of May, 2005, at 1000 hours. I understand that I have specific employee rights to file a grievance in this matter and/or to file a written response with the Missoula County Department of Human Resources.


SIGNATURE

Cc: Department of Human Resources – payroll and personnel file
Allen Horsfall, Executive Director, Peace Officer Standards & Training Council
Undersheriff Dominick
Captain Ibsen
File

Douglas Hartsell

Internal Investigation

2017-23861

Investigation synopsis



Detective Captain David Conway

Case: 2017-23861 Title: Investigation synopsis

Date: 2/9/2018

Deputy Douglas Hartsell was alleged to have: utilized excessive force, been insubordinate, and demonstrated poor work performance. These allegations resulted from an arrest that occurred on November 19th, 2017 at 605 Tolliver Loop.

Deputies: Hartsell, Wafstet, and all responded to a physical disturbance which led to the arrest of an uncooperative suspect (Brandon Shea). At one point or another all Deputies utilized some amount of force to control Brandon.

and Wafstet ordered Brandon to the ground at Taser point and handcuffed him. and took Brandon to the ground to control him as they attempted to walk him to the patrol car. After being kicked by Brandon, Hartsell pulled him from the rear patrol car seat and placed his hand(s) around Brandon's throat. Hartsell's level of force appeared excessive to Deputy who was the acting supervisor). So, physically pulled Hartsell free from Brandon. Hartsell immediately returned to placing his hands around Brandon's throat, and was forced to pull him off again. Hartsell turned to and said something to the effect to of "don't ever fucking pull me off again". Prior to this, Hartsell had challenged Brandon by offering to take the handcuffs off of him.

Deputy Wafstet described Hartsell as "....out of control and his actions needed to be stopped." Deputy described Hartsell's actions as ".....appeared to be a fit of rage". also described it as "....I was worried he had gone too far".

During the course of the interviews and statements with the three witness Deputies, they each relayed that Hartsell's use of force was beyond that which was reasonably necessary to control the arrestee. They each relayed that Hartsell was insubordinate to efforts to get him to stop using excessive force. They each relayed that Hartsell's challenge of "taking the cuffs off" demonstrated poor work judgement.

On March 21st, 2018 I attempted to contact Brandon Shea (the arrestee), his phone went directly to voicemail, which was not set up so I could not leave a message. I contacted the brother (who he lives with) and he advised me that he would pass along the message to contact me to Brandon. He expected Brandon to be home after 1700hrs, so I provided my cell phone number. Brandon never returned my call. On March 22nd, 2018 I asked Cpl Sargent to go to 605 Tolliver loop during the evening and attempt to make contact with Brandon. He went there a couple of times that



Detective Captain David Conway

evening/night and found no one at home. At this point it is apparent that Brandon does not wish to have contact with us, and we are therefore unable to obtain a statement from him.

However, Deputy [redacted] did provide photographs of Brandon's neck from the night of the incident. These photos were taken at the jail, once he was booked in on November 19th, 2017. The photographs appear to show fingernail marks or marks that are consistent with the allegations. The only video showing the incident is a body camera worn by Deputy [redacted]. The angle of the video does not directly show where Deputy Hartsell's hands are placed, however statements by made by both Hartsell and Brandon can be heard. Brandon makes a comment about being choked and not being able to breath. Hartsell advises him that he can breath.

At the on-set of the investigation, I sent Deputy Hartsell a letter pursuant to MCSDA Contract: article 10 section 2; "an employee shall be notified of any non-criminal investigation, which may result in any adverse action before such investigation begins". Prior to the on-set of the investigation, Deputy Hartsell had been injured and was on medical leave. Deputy Hartsell chose not to participate in an interview until he was cleared by his Doctor to return to work. To this point Deputy Hartsell has not been interviewed, and therefore due process for formal discipline cannot be completed. While there are compelling statements and evidence that support that Deputy Hartsell was insubordinate, demonstrated poor work judgement, and utilized excessive force I have been unable to interview him or hear his side of the story.

I am unable to proceed further with the investigation without speaking to Hartsell. Based on the witness statements, photographs of injuries, and video, it does appear that all three of the allegations against Deputy Hartsell are valid and do constitute violations of MCSO policy and employee expectations.

Cpt. Conway

258-3786

dconway@missoulacounty.us

Douglas Hartsell

Internal Investigation

2017-23861

Witness statement/interview summary



Detective Captain David Conway

Case: Use of force Title: Witness Officer statements/interviews

Date: 2/9/2018

Cpl Sargent and I conducted scheduled interviews with Deputy Wafstet, and Deputy Detective Garrett VanHoose attended as Association Representation for each of the three interviews. Deputy Travis

These interviews were in reference to an incident that occurred on Nov 19th, on Tolliver Loop. Each of these three Deputies had previously provided written witness statements to Sgt. Schmill (at his request). All three witness statements indicated that Deputy Douglas Hartsell had made a challenging statement to the arrestee. All three indicated that when the arrestee made a comment about how many Deputies that it had taken to gain control of him, Hartsell responded by saying something to the effect of "I will take the handcuffs off, and it will be only me". All three witness Deputies felt that Hartsell's comment was unprofessional, unproductive and served only to make matters worse. All three Deputies then described that once Hartsell was kicked by the arrestee he violently pulled him from the car and began to choke him. recognized that Hartsell was utilizing a greater amount of force than necessary, so he attempted to pull Hartsell away from the arrestee. However, Hartsell immediately went back to choking the arrestee once free from After the second time that pulled Hartsell away, Hartsell turned to and said "Don't ever fucking pull me off again".

Deputy Wafstet described Hartsell as "....out of control and his actions needed to be stopped." Deputy described Hartsell's actions as ".....appeared to be a fit of rage". also described it as "....I was worried he had gone too far".

During the course of the interviews and statements with the three witness Deputies, they each relayed that Hartsell's use of force was beyond that which was reasonably necessary to control the arrestee. They each relayed that Hartsell was insubordinate to efforts to get him to stop using excessive force. They each relayed that Hartsell's challenge of "taking the cuffs off" demonstrated poor work judgement.

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Douglas Hartsell

Internal Investigation

2017-23861

Timeline of investigation



Detective Captain David Conway

Case: 2017-23861 Title: Douglas Hartsell investigation.

Date: 2/9/2018

Summary Timeline of Events:

- November 19th, 2017, Deputies Hartsell, [redacted] and Wafstet responded to a disturbance at Tolliver loop. During the course of the arrest Deputy Hartsell was alleged to have used excessive force, or force beyond that which was reasonably objective. Deputy Hartsell was also alleged to have been insubordinate to Deputy [redacted] (acting shift supervisor) when [redacted] attempted to stop him from using excessive force. Deputy Hartsell was also alleged of utilizing poor work judgement by verbally challenging the arrestee to fight.
- December 18th, 2017, Sgt. Gordon Schmill composed a letter to Lt. Jace Dicken outlining his concerns. Sgt. Schmill had requested witness statements from the other deputies who witnessed the events.
- Late January 2018, Cpt. Taylor caused a level 3 "division" use of force review to occur.
- By early February 2018, the division Sergeants completed and submitted their reviews.
- Early February 2018, Cpt. Taylor submitted the division review findings to the Sheriff with a recommendation that an internal investigation be initiated.
- February 9th, 2018, I was requested to conduct an investigation into the events surrounding the incident on Tolliver Loop.
- February 14th, 2018 I sent Deputy Hartsell a letter informing him that an investigation was underway into: excessive use of force, insubordination, and poor work judgement. Further I advised Deputy Hartsell that I would need to conduct an interview with him. Deputy Hartsell was off work for a medical leave of absence at that time. However, we corresponded and he exercised his right to postpone the interview until he could be cleared to return to work by his Doctor.
- February 15th, 2018 I sent letters to Deputies [redacted] Wafstet, and [redacted] scheduling interviews with them.
- February 19th, 2018 Cpl Zach Sargent and I interviewed Deputy [redacted]
- February 19th, 2018 Cpl Zach Sargent and I interviewed Deputy Wafstet.
- February 22nd, 2018 Cpl Zach Sargent and I interviewed Deputy [redacted]
- March 21st, 2018 I attempted to contact Brandon Shea (the arrestee), his phone went directly to voicemail, which was not set up so I could not leave a message. So, I contacted the brother (who he lives with) and he advised me that he would pass along the message to contact me to



Detective Captain David Conway

Brandon. He expected Brandon to be home after 1700hrs, so I provided my cell phone number. Brandon never returned my call.

- March 22nd, 2018 I asked Cpl Sargent to go to 605 Tolliver loop during the evening and attempt to make contact with Brandon. He went there a couple of times that evening/night and found no one at home.

Cpt. Conway

258-3786

dconway@missoulacounty.us

Douglas Hartsell

Internal Investigation

2017-23861

Sgt. Schmill report and statement



MISSOULA COUNTY SHERIFF'S OFFICE

Memo

To: Lt. Jace Dicken

From: Sgt. Gordon Schmill

CC:

Date: December 18, 2017

Re: Deputy Doug Hartsell

Lt. Dicken,

I was gone for the better part of November and the first week of December so I'm sorry for the timeliness of this memo. Of course the issues that I'm going to bring forth to you needed some questioning and investigating on my part on concerns brought before me by several deputies about several issues involving Doug Hartsell. The issues that were brought forth to me are being insubordinate to an acting supervisor and mistreatment of suspect (excessive use of force). With an open mind and knowing the diverse people we deal with every day I spent a serious amount of time looking into issues I've described. My investigation has unfolded some serious concerns of Doug Hartsell's thought process about handling stressful situations, using county property, and making conscious decisions to disregard acting supervisor directives. It is my concern that these are repetitive decisions he has made not only while on FTO (documented as such) but now off probationary status and then some (documented as such). Doug Hartsell has not been spoken to about the matters at hand. At this time I believe Article 35 applies and other deputies have exercised their right under Article 38 section 1.

In summary; On 11/19/2017 at approximately 2000 hours deputies responded to 605 Tolliver Loop for a disturbance between two brothers. Upon deputies arrival Brandon Shea had left on foot. Deputies left the residence and were later called back because Brandon had returned. A short foot pursuit ensued and Brandon was quickly taken into custody.

was obvious that Brandon didn't like LE, the course of action LE took, and he was intoxicated. Brandon was escorted to patrol car. While being escorted

Brandon lunged at deputies and tried pulling away growling and yelling. Brandon was taken to the ground while being escorted because he was fighting and Brandon was eventually escorted to patrol car and place in the back seat. Hartsell was in the door way and Wafstet was on the other side to buckle the seatbelt. Brandon kicked Hartsell in the groin. Hartsell grabbed Brandon's feet and pulled Brandon out of the vehicle. Mind you, Brandon was handcuffed behind the back so he had no way of protecting his head. Brandon came out of the vehicle on his back hitting his head on the floorboard and on the ground.

Wafstet writes; I went to the passenger side to help pull Brandon into the car by his jacket. When I opened the door, Brandon was pulled from the car by his legs by Deputy Hartsell without any communication or announcement from Hartsell. As Brandon fell to the ground, I heard a loud noise which sounded like Brandon's head hitting the patrol car door frame. I went back to the other side of the car to assist with getting Brandon under control. Brandon was yelling, "you gonna fuckin' choke me bitch". Deputy Hartsell had his hand around Brandon's throat". Wafstet goes on in his email to me saying Hartsell was out of control and saw and heard the incident with pulling Hartsell off of Brandon. See attached email sent to me by Wafstet. Wafstet and I spoke about the incident and his email to me reflects our conversation.

Hartsell stood over Brandon holding him down with his left hand and his right hand on Brandon's throat. Wafstet, and observed this. acting shift supervisor, observed Hartsell's action and pulled him off the Brandon. Hartsell pulled away from and went back down to Brandon. pulled Hartsell off Brandon a second time and Hartsell again pulled away from and went back to Brandon. For the third time, pulled Hartsell off of Brandon and Hartsell told "Don't you ever fucking pull me off again". All this took place in a matter of seconds. Brandon was ultimately secured (hands and feet) and placed in patrol car.

stated he was trying to reach in and hold Brandon when he felt Brandon being pulled past him and out the door. stated he wasn't able to get out of the way from Brandon being pulled out. stated he saw Brandon's head hit the floorboard and the ground. felt a sharp pain in his knee and had step back. See attached emails from and about this incident.

went to St. Pat's Hospital to get his knee evaluated. Due to the knee injury he took the rest of the night off and the rest of the week (2 Days).

Hind sight is 20/20 but had Hartsell not lost his cool wouldn't have been injured. Secondly, Hartsell's display of decision making is troublesome. Hartsell's decision to pull Brandon out of the patrol car (already handcuffed behind his back) not only injured but could have caused undue injury to Brandon. There was no point standing over Brandon, holding Brandon down with one hand and putting his other hand on Brandon's throat. Hartsell was mad and displayed that by his actions. overlooking the scene recognized Hartsell's aggression and tried to make

Hartsell step away to defuse the situation and he refused three times. Infact Hartsell threaten the third time he pulled Hartsell off of Brandon.

With the concerns of Hartsell holding Brandon down by his neck, photos were taken of Brandon's neck. I was told that there were clear makes of Hartsell's hand around Brandon neck.

Attached to this document are emails from Wafstet, and Additional. 3 photos of red marks on Brandon's neck and a DVD of the incident from body camera.

Please review this and let me know if there is anything additional I need to do to better inform you. I believe this incident needs to be reviewed and addressed appropriately.

Respectfully,

Sgt. Gordon Schmill

Douglas Hartsell

Internal Investigation

2017-23861

Division Level (3) use of force report/findings



Missoula County Sheriff's Office
200 W. Broadway
Missoula, MT 59802

Robert L. Taylor
Patrol Captain

Missoula County Sheriff's
Office

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(406) 274-0097

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FAX: (406) 721-8575

Re: Findings for use of force (UoF) review for 2017-23861

Sheriff McDermott,

The following is a summary of findings of the level three (division Sergeants') review of this incident. In this document, my aim is to follow the UoF review document formatting utilized by the reviewers and collate their findings when similar. I will also note when there is dissenting opinions among the reviewers.

You should know that this review is complex and this review had to be reassigned to the reviewers after its initial release as more information from the involved parties was documented and turned in to Lt. Dicken. Additionally, each of the involved deputies' actions was reviewed separately by the Sergeants.

The reviewers in this UoF review are Sergeants
Sergeant [redacted] did not participate as he was off work with an injury when this review was assigned by Lt. Dicken.

The deputies involved in this incident were Deputies [redacted] (acting supervisor),
Wafstet, and Hartsell.

1. Good Tactical Decision Making:

It was the consensus of the reviewer's that most of the decisions made during this incident were sound with the exception of Hartsell. It is also all four Sergeants' opinion that Hartsell's decision making was alright as well, right up until the point that the suspect became resistive when being seated in the patrol car. At this point, every reviewer stated that Hartsell's decision making became flawed.

2. Effective Training:

It was the consensus of the reviewers that the actions taken by the deputies showed that they had the proper training, with a couple of the reviewer's pointing out that Hartsell apparently abandoned his training to varying degrees when he took independent actions against the combative suspect by pulling him out of the car without announcing his intent to the other deputies and applying what the reviewers commented was excessive force to re-gain the suspect's compliance.

3. Adequate Equipment:

All reviewers concur that there was adequate equipment available to the deputies to handle this call. However, valid comments about the gross underuse of body worn cameras by all but [redacted] the choice to use leg irons instead of a "leash" or "hobble" foot restraint, and

apparently using his weapon light as his primary illumination device all have merit and were mentioned as secondary issues.

4. Appropriate Application (of force):

All reviewers generally agree that force up until the point that Hartsell reportedly grabbed the suspect by the throat and allegedly began strangling him was appropriately applied. One point gleaned is that the use/display of Taser(s) was not well enough documented to know if it was appropriate under the circumstances, although a reader would conclude it likely was.

5. Accurate, Comprehensive Incident Documentation:

This category was widely commented on by the reviewers with the most salient comment being that the documentation by all involved deputies, while varying somewhat in completeness and detail, was sorely lacking and inadequate. Specifically, it was noted in the reviews that [redacted] did not even mention that he deployed his Taser (display only) to affect the initial arrest, or that he received an injury to his knee during the incident. Also noted was the fact that none of the involved deputies detailed alleged excessive use of force or insubordination by Hartsell until they were asked to provide information that some of them were reporting verbally to SO staff in the way of a written statement. One reviewer noted that Hartsell should have better described the apparent assault on him by the suspect so that it could have been charged appropriately.

6. Legal Justification for the Deputy being at the scene:

All reviewers agree that all deputies present had legal standing to be there.

7. Important Training Points:

Several themes and some individual observations came from the reading the four reviewers' comments in this section. In no particular order, here are the more important ones in my opinion:

1. All deputies must use body worn videos cameras at all times unless it compromises their immediate safety or citizen safety.
2. When dealing with a combative subject, it is better to use a hobble than leg irons.
3. One reviewer made the observation that it was wise to have plenty of deputies on scene to deal with a combative suspect.
4. If it is suspected that a suspect may have been injured in a use of force, the supervisor must ensure that he is medically cleared before being remanded to the jail.
5. If there is evidence to be collected on an investigation at the jail, deputies should collect that evidence if at all possible (photos of marks on suspect's throat).

Additional Comments Section:

In the additional comments section of the reviews, the reviewers all addressed the issues of policy violations and violations of Montana State Law. The summary of those comments is as follows:

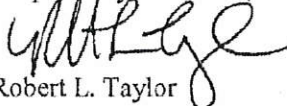
1. All reviewers said that Hartsell violated MCSO use of force policy by using excessive force on a handcuffed subject. One reviewer's comments summed up the consensus by pointing out that the force used was not objectively reasonable under the circumstance and was in excess of what was required to perform his lawful duty.
2. Two of the four reviewers make specific reference to Hartsell being clearly insubordinate to Deputy who was the acting supervisor as repeatedly ordered him to cease his alleged strangulation of the suspect. Defiantly swearing at your supervisor and telling him never to touch you while engaged in an improper act certainly fits the definition of insubordination.
3. Three of the four reviewers concluded that Hartsell's alleged actions constituted a crime under Montana Codes Annotated, two of them cutting and pasting the statute into their review. They allege Hartsell's actions to be violations of MCA 45-5-204(1)(a) Mistreating Prisoners.

I am attaching copies of all of the reviews to this memo for your independent review if you would like to see the specific comments I have attempted to summarize here.

Due to the nature of this review and it's possible personnel action implications, I am returning to the Sergeants a copy of only Sections 1-7 of this document for them to review with their teams as a training tool.

As the Patrol Commander, in light of the attached reviews, I am recommending that an inquiry be made by the Professional Standards Section into the two policy violations summarized above as well as the allegation of violation of MCA 45-5-204(1)(a).

Respectfully submitted,



Robert L. Taylor



Missoula County Sheriff's Office
200 W. Broadway
Missoula, MT 59802

Gordon Schmill
Sergeant
Patrol Division

**Missoula County Sheriff's
Office**

(406)258-3353 Office
e-mail: gschmill@missoulacounty.us
FAX: (406) 721-8575

To: Probationary Deputy Douglas Hartsell
CC: Captain William Burt
Date: 02.10.2017

Re: Written Reprimand for breach of Departmental Policy

On 01/31/2017 I, Sgt. Schmill, was in the sergeant's office when I was made aware of a conversation that Probationary Deputy Hartsell was involved in on social media pertaining to the arrest of two individuals. I was shown a Facebook conversation between retired Missoula Police Officer [redacted] and Probationary Deputy Hartsell. It read as follows:

"I thought I was retired from this stuff! I was glad to see Douglas Hartsell and let him have the paperwork!"

Douglas Hartsell; "I wish I could say I did more then I did. Deputy [redacted] did a great job finding these 2 shitheads with the help of Deputy [redacted] and put them in jail where they belong. I was there merely as eye candy for the public. I guarantee they hit more houses up there and hope the victims call in to report the crimes."

"Well it was great to see old [redacted] Been a few years! Be safe guys, I'll buy coffee sometime you are out the way!"

In the Missoula County Sheriff's Office policy and procedure manual (page 66) Personal Conduct, under subsection General Behavior it states; "Employees, whether on duty or off duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior and shall not commit any act tending to bring reproach or discredit upon the Department or the County of Missoula."

In today's society law enforcement officers have to be ever so mindful of the public, their conduct on and off duty, social media, and the safety of other law enforcement officers. Calling individual(s) "shitheads" on social media in regards to an incident that Deputy Hartsell was involved with is not good conduct or behavior and could bring reproach or discredit upon the Department as well as the County of Missoula. Though this department does not have a policy specifically pertaining to social media, this is still a clear violation of General Behavior policy and furthermore, Deputy Hartsell publicly names the other two deputies directly involved with the incident. Although the general public can, at a later time, obtain who was involved with an event by obtaining a report and/ or the case going to trial, Deputy Hartsell directly naming the two deputies on an open social media forum is not only in poor taste, but it completely unacceptable.

In this incident Deputy Hartsell has exhibited extremely poor judgement and has openly brought discredit and possible ridicule to our department by naming the suspects in this case as "shitheads". This type of behavior is not acceptable and as the sergeant I will not accept it from a member of my department let alone a member of my team.

This incident is a clear example of not only a breach of policy, but extremely poor judgement on the part of Probationary Deputy Hartsell. This type of poor decision making has been observed in the past (see supervisory notes for further detail regarding prior incidents), and has subsequently been dealt with through verbal counseling sessions.

Missoula County 000021

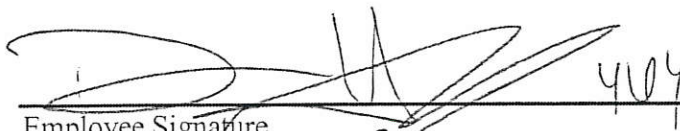
This letter is a result of reoccurring incidents that are a direct result of poor decision making and judgement on the part of Probationary Deputy Hartsell, as documented in supervisory notes. These incidents are as follows:

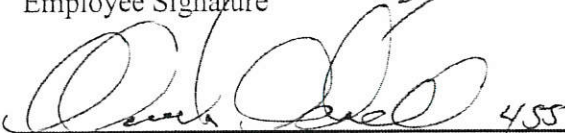
- 1) 1.24.2017 (incident# 2017-1491) – Deputy Hartsell entered and cleared a trailer house in the Blue Mountain trailer court by himself when he was informed that back up was only moments away. The caller stated that the trailer had been vacated and no one was supposed to be in the trailer. The caller also advised that she believed that she had observed flashlights from within the trailer.
- 2) 1.31.2017 – Deputy Hartsell conducted a traffic stop on Hwy 93 South that he failed to radio into dispatch. This stop was only brought to light after the male that had been stopped filed a complaint.
- 3) 2.05.2017 – Deputy Hartsell failed to answer his radio when dispatch repeatedly called him, and only responded once a text message was sent to him by the team Corporal.

It is important to note that all of the above concerns have been both dealt with (via documented verbal counseling) and documented. They only serve as examples in this matter.

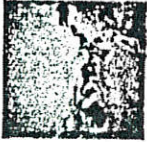
At this time no further corrective action will be taken in this matter. However, any further issues will be dealt with accordingly and will result in further disciplinary action.

My signature below indicates receipt of this letter and not that I necessarily agree with the content.

 4104
Employee Signature _____ Date 2/21/17

 455
Patrol Supervisor _____ Date 2/21/2017

 439
Patrol Lieutenant _____ Date 2/21/2017



I thought I was retired from this stuff! I was glad to see **Douglas Hartsell** and let him have the paperwork!

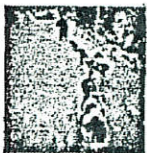
Jan 17 at 8:53 PM • Like



Douglas Hartsell

I wish I could say I did more then I did. Deputy did a great job finding these 2 shitheads with the help of Deputy and put them in jail where they belong. I was there merely as eye candy for the public. I guarantee they hit more houses up there and hope the victims call in to report the crimes.

Jan 17 at 9:50 PM • Like •  2



Well it was great to see old Been a few years! Be safe guys, I'll buy coffee sometime you are out this way!

Jan 17 at 9:53 PM • Like

MISSOULA
COUNTY



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TJ MCDERMOTT
SHERIFF/CORONER

RICHARD MARICELLI
UNDERSHERIFF

04-12-17

**INVESTIGATIVE REPORT AND FINDINGS SUBMITTED BY UNDERSHERIFF
MARICELLI AND CAPTAIN DAVID CONWAY**

RE: PROBATIONARY DEPUTY DOUGLAS HARTSELL

ALLEGATIONS and FINDINGS:

- Improper contact with informants = Unsubstantiated
- Ineffective traffic stop procedures = Substantiated
- Poor work judgement = Substantiated

SUMMARY:

Improper contact with informants:

Deputy Hartsell's supervisors came to believe that he was potentially providing information to _____ which was detrimental to law enforcement efforts. This was based largely on circumstances of known dealings between Deputy Hartsell and _____ and the statement of an uninvolved informant.

The specific known dealings between the two are captured on a jail booking video and a watchdog traffic stop video. During these encounters it appears that Hartsell and _____ are overly friendly (hugging, in holding cell). During the traffic stop Hartsell purposely placed _____ in a position of tactical advantage, and made no effort to control his movements. The only reasonable explanation of Deputy Hartsell's lack of any form of officer safety tactics is that he is extremely comfortable with and trusting of this known criminal and drug user.

An interview with Hartsell and _____ revealed a clearer understanding of the relationship between the two. We find no evidence to substantiate that Hartsell ever intentionally provided _____ with any information. However, based on _____ obvious and clear attempts to gain counter intelligence we have no doubt that he did gain some information from Hartsell. We do not believe that Hartsell had any malicious or willful intent to provide confidential information to _____ but none the less believe that _____ may have been able to manipulate Hartsell.

Based on the above, we find the allegation of "improper contact with informants" to be UNSUBSTANTIATED.

SUMMARY:

Ineffective traffic stop procedures:

As mentioned above, Deputy Hartsell's placed [redacted] in a position of tactical advantage during a traffic stop. He told [redacted] to "go back to the patrol car" while he dealt with two other unknown passengers. [redacted] stood behind the lights of Hartsell's car, thus in a position where Hartsell could not even clearly see him. Hartsell did this without even searching "patting down" this known criminal and drug user. Hartsell then proceeded to turn his back on [redacted] while he dealt with the other passengers. Then, Hartsell made no attempt whatsoever to control movements. He allowed [redacted] to dig through the passenger compartment and trunk of the car (while the other passengers were still inside) and while Hartsell stood at his patrol car running names through dispatch.

Based on the above, I find the allegation of "ineffective traffic stop procedure" to be SUBSTANTIATED.

SUMMARY:

Poor work judgement:

Deputy Hartsell claims that his dealings with [redacted] were exclusively for the purpose of turning him into an informant for Detectives. However, his dealings appear to be much more of that of a friendship, which was confirmed by [redacted]. By Hartsell's admission, both Detectives Williams and Cochran advised him that they could not use [redacted] as an informant while he is still actively involved in criminal activity, and that [redacted] is "playing both sides". Williams and Cochran felt that [redacted] was attempting to gain as much information as he was willing to give. Hartsell knew this was their assessment, and still pursued the development of this relationship with [redacted].

Deputy Hartsell chose not to arrest, nor to cite [redacted] in the above mentioned traffic stop even though he had a suspended drivers license. Also, Hartsell chose not to make any attempt to conduct a DUI/D investigation during the traffic stop, even though he did have some (however slight) inclination that there may be impairment.

By Deputy Hartsell's admission he has no specific knowledge of the three MCSO policies regarding the issues mentioned above. Even though he was dealing with issues clearly defined in policy, he did not avail himself the opportunity to become familiar with them.

Based on the above, we find the allegation of "poor work judgement" to be SUBSTANTIATED.





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e-mail: wburt@missoulacounty.us

To: Sheriff McDermott
Re: Level 3 Use of Force Review 2017-6099
Date: 4/26/2017

A level 3 use of force review was put out to each team several weeks ago. Four of the five reviews have been completed and I sent out a reminder for the 5th. The results of the reviews pertaining to Deputy Hartsell's pursuit indicated that he used good tactical decision making, was effectively trained, possessed adequate equipment, had appropriate application, and two of the four indicated he completed accurate and comprehensive reports. The other two reviewers felt there were portions of the report that were not believable, not clear, or could have had better documentation. Some reviewers also expressed concern about going through a couple of the intersections at a speed too great to adequately clear the intersection, a perceived policy violation.

It should be noted that all reviewers felt Deputy Hartsell did some excellent law enforcement work throughout this event. Working as a single deputy, he was able to accomplish a lot with very little assistance and should be commended for a lot of what he did. However, had he reviewed his report and video he might have been able to clear up some confusion by the readers and there is no doubt that he should have used a little more caution in at least one intersection.

Sgt. King is now Deputy Hartsell's immediate supervisor. Upon receiving the final review, I will have Sgt. King review the findings with Deputy Hartsell and have him document any counseling that will take place.

William K. Burt



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Re: Findings for use of force (UoF) review for 2017-22972

Sheriff McDermott,

The following is a summary of findings of the level three (division Sergeants') review of this incident. In this document, my aim is to follow the UoF review document formatting utilized by the reviewers and collate their findings when similar. I will also note when there is dissenting opinions among the reviewers.

The reviewers in this UoF review are Sergeants _____ as well as Corporal _____

The deputies involved in this incident were Deputies _____ (acting supervisor), Wafstet, and Hartsell.

1. Good Tactical Decision Making:

It was the consensus of the reviewer's that the decision by Deputies Hartsell and Wafstet to attempt to catch and join this pursuit were incorrect.

The reviewer's agree that _____ Should have been the only deputy running code to respond to the request by Missoula PD for mutual aid as he was the closest unit and that _____ should have gone that direction as the supervisor, but were somewhat critical of the code response since he was in Lolo when the PD's pursuit began and that he told dispatch he and Wafstet were "out of position" while continuing to respond code from Lolo.

Every reviewer commented to one degree or another that _____ did not control the team as the supervisor and thus made poor decisions about the MCSO involvement and resource allocation.

Additionally, all reviewers commented to varying degrees that Deputies _____ Wafstet, and Hartsell operated their vehicles in violation of MCSO policy and, at times, violation of MCA statute regarding the operation of authorized emergency vehicles. The details of these comments can be gleaned from reading the individual reviews.

2. Effective Training:

It was the consensus of the reviewers that the actions taken by the deputies showed that while they demonstrated that they had the proper training, a couple of the reviewers commented that several of the deputies seemingly ignored their training. One reviewer commented that two of the deputies are MCSO FTOs and should have known better.

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One reviewer pointed out that it is possible that the involved deputies may not have had recent training (currency) on PVOC driving.

3. Adequate Equipment:

All reviewers concur that there was adequate equipment available to the deputies to handle this call. However, there were several problems discovered with on board video systems either shutting down all together or lacking audio. One reviewer notes that Deputy Hartsell was the only deputy utilizing his body worn video

4. Appropriate Application (of force):

All reviewers agree that the display of weapons, verbal commands, and other actions taken by Deputies involved in the final phase of the pursuit where the suspect was taken into custody were appropriately applied. It is mentioned by some reviewers that the pursuit driving demonstrated is also an application of force of sorts and that it was likely not applied appropriately.

5. Accurate, Comprehensive Incident Documentation:

The reviewers noted that no one involved in this incident reduced the events they participated in to writing in any form. They correctly noted that, at a bare minimum, the supervisor should have written a summary report to detail the request for aid, response, and use of force (display of firearms) at the conclusion of the pursuit. The lack of such a summary is unacceptable.

6. Legal Justification for the Deputy being at the scene:

The reviewers note that the Deputies standing for participation was the mutual aid request made by Missoula PD.

7. Important Training Points:

Several themes and some individual observations came from the reading the four reviewers' comments in this section. In no particular order, here are the more important ones in my opinion:

1. One reviewer noted that upon arrival at the crash scene, Deputies appeared to come together, utilize proper force, and execute an ad-hoc arrest plan. This success needs to be shared, discussed, and repeated across the teams.
2. An in depth review of the MCSO pursuit policy, MCA 61-8-107 and the implications therein regarding pursuit driving, and the policy and standard of care of issued MCSO vehicles is in order for all Deputies.
3. Supervisors, whether ranked or not (senior Deputy on duty or acting Cpl./Sgt.), must be prepared to assert authority over the shift Deputies and make "big picture" decisions and orders.
4. Several of the reviewers allude to some of the "what if" scenarios that could've occurred in this instance. Sound decision making skills can be developed through supervisor led discussion, training, and reviewing the decisions of others....both good

and bad. The opportunity exists for supervisors to take this and other incidents to their subordinates in an effort to foster "correct" work and tactical thinking.

5. Deputies are individually responsible for their issued equipment and its use. The intentional non-use or failure to recognize and repair video and audio recording equipment (in-car and body worn) is not acceptable.

(The portion in red is my proposed corrective actions, if needed. This portion is for the Sheriff and Undersheriff and not available in the UoF folder.)

In summary, every reviewer opined that at least some of the involved deputies violated MCSO policy(s) during this incident, namely pursuit policy and care and use of equipment (vehicle). Some argued that there were violations of MCA 61-8-107. They also all made mention that the involved deputies made faulty decisions to enter the pursuit, to respond code, to drive without due regard for their own or public safety. In my opinion, the reviewers are pointing out failures of the involved deputies to make sound decisions and officer/public safety errors.

Additionally, the majority of the reviewers were critical of supervision of the team.

Corrective actions:

I will instruct the current supervisors of Deputies Wafstet and Hartsell to conduct formal counseling (written, but not forwarded to HR, to be mentioned in yearly eval) regarding decision making (to include officer/public safety and weighing the response against the offense), pursuit driving and policy, potential for violating MCA 61-8-107, and care and use of their issued patrol cars.

I will instruct Deputy current supervisor to do the same as above, with the additional inclusion of supervisor's responsibilities when managing a pursuit.

It should be noted that the only criticism of Deputy that I saw in these reviews was the decision to use his sidearm in lieu of a long gun at the final stop. I view this as quite minor and will only recommend that his supervisor have a short discussion about long gun vs. handgun choice with him.

