

CIVIL SERVICE COMMISSION MINUTES

Friday, August 27, 2010

1. Pursuant to due call and notice the Civil Service Commission of the City of Dickinson met at City Hall, Friday, August 27, 2010 at 10:00 AM.

2. ROLL CALL:

Commissioners Present: Ray Ann Kilen, Ron Lisko, Glen Roshau, Erv Bren and Cal Kolling

Also Present: Matt Kolling, Chuck Rummel, Robert Stock, Parke Little, Joe Cianni, Dustin Dassinger and Clarence Tuhy.

3. GENERAL ISSUES

a. Grievance Appeal – Parke Little

City Attorney Matt Kolling reviewed the procedure/process for the grievance hearing.

Opening statements were given by Robert Stock, Vogel Law Firm, the attorney representing Parke Little and by Matt Kolling, City Attorney.

Robert Stock called Parke Little to testify. Matt Kolling questioned Little. Stock asked Little additional questions. The Commission was given the opportunity to ask any questions they may have had. Following the questioning of Parke Little the Commission took a brief recess.

Following the recess, Matt Kolling called on Chuck Rummel to testify. Robert Stock questioned Rummel. The Commission was given the opportunity to ask any questions they may have had.

Ray Ann Kilen Civil Service Commission Chair, stated the Commission has three options in giving an order on the matter presented one we could approve the disciplinary action; two we could reinstate the Parke Little; or three we could do such other action as deemed appropriate.

Kilen asked if the Commission was ready to make a decision. The Commission stated they were not. Both attorneys indicated they would submit their Findings of Facts to the Commission on or before September 3, 2010 to Kristi Cianni to be forwarded to the Commission.

Please see Attachment A for complete transcripts of the hearing.

6. ADJOURNMENT:

MOTION BY: Ron Lisko

SECONDED BY:

Glen Roshau

To adjourn the meeting at 12:16 PM

OFFICIAL MINUTES PREPARED BY:

Kristi Cianni

Assistant to City Administrator

ATTACHMENT A: Parke Little Grievance Hearing Transcripts

Opening Statements:

Robert Stock (RS) – Good morning as I stated I'm an attorney with Vogel Law Firm and I'm here on behalf of Parke Little representing him in his appeal of his termination from the Dickinson Police Department. For the record we have distributed a set of exhibits marked 10 – 15 I will have those explained by Mr. Little during his testimony. I asked that those be entered into the administrative record. What we're here for is the appeal of Parke Little. Mr. Little is a resident of Dickinson and is a former employee of the Dickinson Police Department. Mr. Little is a Vietnam veteran, a combat veteran from the Vietnam war, he has also served in the gulf war. So he's had extensive military background and experience and he's also had approximately 20 years of law enforcement experience at the time he was terminated from the police department. He spent about 15 years out in California as a police officer and a deputy sheriff and then about five and half years here with the Dickinson Police Department before he was terminated. And so these allegations essentially revolve around one day. There are two separate allegations revolving on one day, June 16, 2008. And on that day officer Little, Sgt. Little I should say was on duty and he got called to a hit and run around the Prairie Oak Drive area in Dickinson and what it was there two suspects that had fled from a vehicle at the scene and once by the time Mr. Little had got there actually officer one of the officers had already apprehended one of the suspects his name was Ty Maus I believe. And by the time officer Little got there Mr. Maus was already in officer Grosz's car at that point, he was handcuffed in the back seat and the door was open and Mr. Little came up to Mr. Maus and was concerned about they knew at that time there was another suspect she was a female somewhere, they didn't know where she was they didn't know if she was hurt what was going on. So Mr. Little concerned for the wellness of the second suspect asked Mr. Maus where the second suspect was. And while he's doing that he's kind of leaning into leaned into the car door or into the back of the seat and as he's asking Mr. Maus that Mr. Maus turns his head and to Mr. Little it seemed like Mr. Maus is going to spit on him. And so as a result of that and Mr. Little will demonstrate this he does grab kind of the back of his neck and just pushes of Mr. Maus's head away from him so he can't spit on him. You'll hear Mr. Little talk about this he did not grab his throat he did not grab Mr. Maus's throat which is one of the allegations and you'll see that actually Mr. Maus himself during an investigation said that Mr. Little grabbed the back of his neck not his throat like officer Grosz said and you'll see also that officer Grosz as a basis of his statement is actually back by the trunk of his car and would not have even had a clear view. The second incident goes on from there a couple minutes later he Mr. Officer Little hears over the radio that Kristy Kuntz the second suspect has been found out in the slew underneath a tree. And I believe it was officer Wallace that had found her at that point. Officer Wallace had her under or had her at the tazer point at that point she's laying on the ground handcuffed. Once officer Little gets there officers Gates and Hanel also arrive around the same time or maybe a little bit before. The allegations are that my client Mr. Little stepped over to Ms. Kuntz and actually grabbed the handcuffs by the chain and lifted Mrs. Kuntz, or Ms. Kuntz up from

the ground. What you'll hear from Mr. Little is that it is essentially impossible it's impossible to lift someone from the ground by the chain of her handcuffs for a couple of reasons one if you did so the handcuffs are going to pinch her hands and the pain will be excruciating for the officer it doesn't make sense for him to do that and two you would be risking severe injury to the individual and it would be almost impossible to lift straight up you would have to lift back words and almost tip her over it just doesn't make sense that officer Little would do it this way. And he'll explain to you how he lifted her up and he actually grabbed her by the arm the upper arm and lifted her up to her feet. He didn't roll her over either because there were sticks and other things underneath the tree at that point that would have been a danger to her now you may hear testimony regarding why he didn't actually roll her over first before raising her up. And that will essentially be it, that's essentially the two allegations and as a result of these allegations an investigation was started and what you'll see is that the complaint here is actually Lt. Stenberg. You'll see that Lt. Stenberg filed a complaint although he wasn't there he didn't see any of this happen all this complaint is based on is hearsay statements from the officers involved. You'll also see that the victims the alleged victims themselves never filed a complaint. Neither one of them actually filed a complaint formally themselves and what you most importantly will see is that officer Hanel in his statement says that he saw absolutely no physical injuries on either one of these alleged victims, no physical injuries whatsoever as a result of officer Little. What you'll also hear from officer Little is this isn't the first time that he's had some sort of run in with Lt. Stenberg. He's had a few of them throughout his career the first one involved or maybe not the first one, but one of them involved a DUI arrest in early 2005 one of Lt. Stenberg's friends. You'll hear from officer Little that Lt. Stenberg actually instructed him not to appear at an administrative hearing and actually that Lt. Banyai actually told Mr. Little that Stenberg didn't want him to appear and also told him that he was disappointed when he actually did appear at the administrative hearing. When captain, when the Chief was pushed on the issue officer Little was told to stop at that point. There also was an incident at the Maverick Bar where the Chief, Lt. Stenberg and I believe its officer VanDoorne were involved where Mr. Little was called to arrest a patron there. Mr. Little made some complaints as a result of that arrest he did feel it was a lawful arrest. And he made a complaint as a result of that and that also strained the relationship between Lt. Stenberg and officer Little. You'll also see that officer Little doesn't have the greatest relationship with Chief Rummel as well. He made a complaint against Chief Rummel regarding an alleged first amendment violation. Chief Rummel asked officer Little and the other officers involved or at the department to go to a mandatory meeting with a chaplain. Sgt. Little did not feel that was necessary or lawful and thought it was a first amendment violation and made a report on that as well. Again, not being in the good graces of Chief Rummel and Lt. Stenberg. And what you'll also hear this morning is that this investigation it's self was important and a violation in fact of officer Little, Sgt. Little's due process rights. For one there was no exit interview ever there was an interview of officer Little by an investigator but there was no exit interview done by Chief Rummel. Exit interviews are generally required by Dickinson Municipal Code. Also you'll also see that Lt. Stenberg is the one that does the final review of the interview excuse me the investigation. While he is the actually one that was the complainant, having the complainant

do the actual final review of the investigation is a due process violation by its self and enough to reverse Mr. Little's termination. And you'll also see that Mr. Lt. Stenberg based his decision part on the allegations that were found to be not sustained. Lt. Shirey the investigator on this case actually found the allegations regarding Mr. Maus the first allegations regarding the car door to be not sustained and not a basis of those factual allegations. Although you'll see that Lt. Stenberg bases in part his final review on those exact allegations that were found not to be sustained. In fact you should not and cannot consider the Maus allegations a part of Mr. Little's termination. So in the end, I think what you're going to see is that the allegations here are simply that there was no excessive force these allegations are not true or a misunderstanding by the officers involved and maybe just didn't have a good look, but the bottom line is here Mr. Little did not use excessive force that was found to be true with the Mr. Maus and you'll see by testimony Mr. Little that it's not excessive force with regard to Ms. Kuntz either. You'll also see that this essentially was an opportunity for Lt. Stenberg and Chief Rummel to get rid of who they thought may be a problem employee. And who they hadn't gotten along was making too many complaints and rattling the cage a little bit too much for them and this gave them an opportunity to get rid of him with no cause. In the end we'd ask for reinstatement for Mr. Little and all back pay up to the current date. Thank you.

Matt Kolling (MK) – Thank you Commissioners. I appreciate Mr. Stock's recitation of the facts to the case and the underlying facts, I think that is important background information for you to know as to how this incident in June of 2008 happened. What is key for you to remember though is that those incidents are not at issue in this case. Is not your job as a Civil Service Commission to determine the truth of those allegations the truth of those that incidents that is the job of Chief of Police that is the job of the investigators that compiled and completed the investigation of this incident. Civil Service jobs role is more limited than that you are not sitting here this Commission does not sit as sort of a super Chief of Police to reinvestigate the matter. Rather your decision and you're you're process here is to evaluate the decision that the Chief made in deciding to terminate Mr. Little's employment. It's a limited role and I think that's important for you to keep in mind. You're not determining whether the termination was in fact justified, but rather whether it was justifiable whether the Chief had adequate cause and adequate evidence in order to base his decision to terminate. Now if the Chief had adequate cause adequate evidence to terminate Mr. Little then that decision is entitled to deference. It's only if you determine that Mr. Rummel's decision or the Chief's decision was arbitrary or capricious or an abuse of his discretion or that it was frivolous only in those circumstances is Mr. Rummel's decision entitled to be reversed. Now the evidence that you will hear from Mr. Rummel is that he will go over all the evidence that he had in basing his decision to terminate Mr. Little. He'll tell you about the documents that he went through, the investigation that was completed, we'll go through the officers' reports and you'll be able to read through those reports and have Mr. Rummel tell you the information that he received from those reports. He'll tell you about the process that the Police Department goes through when it receives a complaint of excessive use of force and you'll see the departmental investigation that Lt. Shirey

completed. You'll also see the report and memorandum and recommendations of Cpt. Stenberg. Cpt. Stenberg was the Assistant Chief of Police at the time and he made his recommendation after review of the evidence. You'll hear from Mr. Rummel what role those recommendations played in his decision. And you will also hear from Mr. Rummel his conclusion after reviewing all the evidence as to whether excessive use of force occurred in this instance. And that's the decision that is under review here. It is Mr. Rummel's decision to terminate Mr. Little. It was not Cpt. Stenberg's decision. And it was not Lt. Shirey's decision, the only decision that is under review is that of Mr. Rummel and your job as the Civil Service Commission is to determine whether that decision is justifiable. Whether it was supported by adequate evidence and adequate cause. And the question that you are faced with is not whether or you believe Mr. Little or whether you believe Mr. Rummel. The only question is whether there was adequate cause for the Chief to make his decision as he did. Ultimately under our Civil Service Code you will be asked to determine one of the there are three outcomes of this case you can approve the disciplinary decision that Chief Rummel made, you can reinstate the employee or you can take such other action as you deem appropriate. And I believe after you heard from Chief Rummel and reviewed the documents you will see there was adequate cause for Chief Rummel to make his decision that an excessive use of force was or did occur in this instance and that decision is entitled to deference.

Ray Ann Kilen (RK) stated she just wanted to clarify one more time in my language our role here today is not to determine whether or not in fact that this incident excessive force was used, our role is to look at the process that Chief Rummel undertook to move towards termination against Mr. Little and identify whether or not there was any that that went appropriately or I mean we want to make sure that the decision he made was right, fair and progressive and all of the you know that there wasn't a violation of Mr. Little's right by the decision that was made it isn't about whether or not we feel there was excessive force right? MK – That is correct, the decision is not whether excessive force was used it's whether the Chief had adequate evidence before him to make a determination that excessive force was used. The Civil Service Commission isn't the Chief of Police and it doesn't have the professional expertise that a Chief of Police would bring to that decision in making those credibility determinations. Your decision is more of a process one. Was the process followed and did the Chief have adequate evidence before him to make the decision that he did. Ray Ann Kilen thanked Matt Kolling.

Questioning of Witnesses:

RS – Thank you at this time we are going to call Mr. Parke Little (PL)

RS – Mr. Little can you please state your name for the record.

PL – Parke Little

RS – And go ahead and state your name (microphone was off the first time it was stated)

PL – Park Little

RS – Can you tell the Commission a little bit about your background.

PL – Well I was a when I got out of high school I went into the Marine Corp and I served in Vietnam for two years, got of the Marine Corp and joined the Las Anglos Police Department and I served approximately 10 years with the Las Angeles Police Department and after that I had a job as an electrician, an electrical business in California which the reason was that when I was a Policeman in Los Angeles the pay was about \$640 a month and the pay was about three times that much so I decided to go for the money and after I had that for a while I moved to Colorado where I worked as a reserve deputy sheriff there and I also worked in construction and I had a dairy farm and I eventually got on with working with the railroad as an electrician and I worked with them for quite a few years and actually that's what brought me to North Dakota. Then I hired I saw the application in the paper and put in the application for a position with the Dickinson Police Department and I passed all the tests and they hired me after they hired a two others people neither one of them were Veteran's I was at that point was a disabled Veteran which was a violation of the century code. So they did eventually hire me I served approximately five years with the Dickinson Police Department, before this incident took place.

RS – And this incident took place on June 16, 2008 is that right

PL – That's right

RS – What rank were you at that point

PL – I was a Sergeant

RS – And let's turn to that date of the two incidents involved, were you working that day

PL – Yes I was

RS – And tell me, tell the Commission generally what happened

PL – we were in the police station at the law enforcement center and the call came out that there was a hit and run on Prairie Oaks Drive and the suspects had fled the vehicle. We all proceeded in that direction to set up a perimeter and look for the suspects that had run. There was a description of a male and female suspect. We found the vehicle and knew basically who had been driving the vehicle and where they lived by previous contact with them. We searched the area and had the perimeter. And Tom Grosz I believe it was originally spotted Mr. Maus as he was running North across 21st Street ran into the church there on 21st Street just west of Century Apartments. And he located in the church and he was he had been injured apparently from the traffic accident or from injuries he sustained while fleeing. And so they had a little altercation with him and they put him in the back of the police car so he would be officer Grosz was the one there that arrested him put him in the back of the police car and when they put him in the police car he slipped his handcuffs to the front of him and they dragged him back out of the police car and placed him in on ground and re-handcuffed him at that point. Apparently he had tried to kick at one of the officers and they placed him back in the police vehicle. I arrived at the location and went to ask him if he could tell me if the female was injured, where the female was or you know, verifying her name so we could call for her by name. And as I was doing that he had his head down like this (PL demonstrated) and he turned his head up like that to I thought to spit at me after previous history and I put my hand around the back of his neck and shoved on his on a portion of his jaw bone to shove his head away from me (PL

demonstrated this) so he couldn't spit on me when I asked him the question. And he was obviously an intoxicated person and he did not want to respond or I don't think he ever responded to me other than saying I didn't do it I didn't do it type of thing. And a few minutes after that officer Wallace notified us by radio that he had located the other person Kristy Kuntz, and she was under a tree down in the slew it would be SE of the location across 21st Street down in that slew down there. So I went to that location, Mike Hanel was the second one to arrive there and he placed the handcuffs on Ms. Kuntz and Nick Gates also showed up. And I was the last person to arrive at that scene. Officer Wallace had had his tazor pointed at her at the time of the handcuffing and he was standing to the rear of her. Mike Hanel was standing to the right of her, Nick Gates was over by her the left side by the I was standing of her I said let's get her out of here and reached down to check the handcuffs for fit to make sure they weren't too tight, reached up and grabbed a portion of her arm and walked her back words. The proper way apparently the proper way of doing it is you roll them over and then sit them up and then stand them up but there was debris and branches and other items in the grass that probably would have caused injury if I had done that. So I chose the way of of raising her from the ground that would cause the least injury to her.

RS – Mr. Little did you actually lift her by the chain on her hand cuffs?

PL – No I did not

RS – And why didn't I guess explain to the Commission why that isn't even possible

PL – well it's it's virtually impossible because if you have a person prone on the ground and you lift them up all you're going to do is dislocate their shoulders. There's absolutely no leverage to get them to their feet that way other than just raising their arms up to a point where it will eventually rip them loose. The only way a person could possibly raise a person from that the prone position to their feet is to grab the hand cuffs and pull straight back on um. To do that you would have to be standing behind them. Officer Wallace was standing behind her. It is also very painful to grab the chains on handcuffs and exert any force. The chain on a handcuff is not very long (Mr. Little showed the Commission a pair of handcuffs.) And they come together and they pinch if you pull. And I would be happy to lay on the ground and any one of you could try to pick me up, you will not be able to do it by using these handcuffs.

RS – Mr. Little were you are you aware of any injuries to Ms. Kuntz's shoulders in this case

PL – there were no injuries according to the reports I read. There were not even normally people you get red marks on their wrists from wearing handcuffs from what I remember there was there was no red marks or bruising or any sort of thing that would have occurred by the amount of force it would have taken to lift her or I mean pull her back with the handcuffs.

RS – Mr. Little eventually were you ever informed that an investigation was taking place

PL – The day that Rick Shirey called me

RS – And what did Mr. or what did Mr. Shirey tell you

PL – He he asked me to come in and he wanted to talk to me about an incident

RS – And what did you tell him

PL – I told him I would come in to talk to him

RS – And did you eventually go talk to him

PL – I did

RS – And did you tell him anything different than what you told the Commission here today that you remember

PL – Well he he asked me, well first first I went in there and he says, he says well I came in here to talk to you about the incident with Ty Maus and Kristy and I said okay. And he he says well I've I've reviewed it and I at first I had no idea there was even a complaint he said I've reviewed the tapes and I thought it was something to do with the criminal charges against them I believe he was charged with reckless endangerment or something it was a felony he was charged with but he says yeah I've reviewed the tapes and all this and he says that he would ask me some questions and that you know he knew what was happening he kind of indicated that he would help me along with this to refresh my memory. And then he started out with Kristy Kuntz and he says well did you pick her up by the handcuff chain. I said no I didn't I picked her up by the arm. He says well these statements here say that you know you picked her up by the I said I didn't do it it's impossible you can't do it. At some point in time after we talked for a while he asked he said he wanted to record this this incident. I said that's fine go ahead and record it so I don't know exactly at what point I don't remember at exactly what point he started the recording but he told he asked me about that and he asked me about the Ty Maus incident. He says well he goes weren't you trying to find out about her I said yes that was my intent, I told him my intent was to try and find her in case she was injured. I asked him the name so we could call to her by name see if we could locate her or if he if they had fled together if he knew where she had stayed when he ran further was my intent. And that's pretty well our discussion on that thing

RS – Did Mr. Shirey ever tell you who the actual complainant was in this in both these incidents

PL – I don't believe he did

RS – Did you ever find out who the complainant was

PL – Oh yes I did

RS – And who was that?

PL – Captain Stenberg

RS – And have you had any other previous involvement with Mr. Stenberg

PL – Yes I have

RS – Once kind of the explain to the Commission the first time you that you had any issues with Mr. Stenberg

PL – Well one of them was a I don't remember if it was the first one or not but one of them was I had arrested a person for driving under the influence of an intoxicating beverage and during the process of the arrest he made the statement to him to me that Larry Buck and Stewart Stenberg were in the bar and they were far drunker than him and they were driving home why did they get arrested and he got arrested. That was and I actually put that in the report his voluntary statement that he had been drinking with them and they were all intoxicated. But then another incident I arrested an employee of Maverick's Saloon. And I was told by Lt. Banyai through or to that Cpt. Stenberg had ordered him to tell me not to appear at the administrative hearing so she wouldn't lose her driver's license. Well I appeared at the administrative hearing. I later heard from Cpt. Banyai, I'm sorry Lt. Banyai that Cpt. Stenberg had told him that he was very disappointed in me and that I was to not appear at the court hearing which is a C Felony.

It's an A misdemeanor for me not to appear and a C Felony for him to tell me not to appear. I made the complaint to Chief Rummel and nothing seemed to happen. I complained to several people and eventually got a letter from Lt. Banyai through there was one sent by Chief Rummel pretty well telling me that I shouldn't continue with it my complaint about the captain and his criminal activity that if I continued to do that it was demoralizing against the police department and then I would have disciplinary action taken against me.

RS – Mr. Little I'll just interrupt you quick

RS – The Commission has in front of them what has been marked as exhibit 10 and can you just explain to them what you're referring to.

PL – This is the letter to Rod Banyai, Lt. Rod Banyai from Chief Rummel and this is the memo from Lt. Banyai to me.

RS – And are these the memos that you were just referring to in your testimony

PL – yes

RS – and what if anything happened as a result of your complaints to Chief Rummel

PL – nothing that I know of, there was no investigation or anything that I know of. It says in the letter that he had conferred with the State's Attorney on this matter. And Tom Henning. And Sometime later I had the Sheriff, Clarence Tuhy, I did a formal complaint with him and he actually took the complaint up to, he told me he took the complaint up to the State's Attorney and the SA had never had any knowledge of this occurring. And did not want to deal with it.

RS – Mr. Little the Commission also has an exhibit numbered 13 can you, is that the letter that you wrote to Sheriff Tuhy

PL – It is

RS – And that's the same complaint you just referred to

PL – It is

RS – And did anything result as or did anything come of a result of that complaint

PL – The sheriff told me he took it to Tom Henning up at the SAO and that he didn't and that he wasn't going to do anything with it and he took it to BCI and apparently the statute of limitations had expired and they decided not to do anything with it.

RS – Mr. Little I've handed you what has been marked as exhibit 11 and that's also in front of the Commissioners, can you explain to them what that document is

PL – This is a memo to it would be Sgt. Dassinger and myself and it would be from Lt. Wallace there was an incident at Maverick's it says "I brought your concerns to the attention of", well you guys can read it, but any way it was an incident of a false arrest and a violation of the man's civil rights. And present at the time of the arrest were Chief Rummel, Cpt. Stenberg and Ron VanDoorne. And Ron VanDoorne is the one that said he actually made the arrest. They are all frequenters of Maverick's Saloon. And Ron VanDoorne not knowing the employee in there is a ludicrous statement and the fact that it he basically falsified a report in my opinion and it and nothing was ever done about that.

RS – So, did anything come about your complaint about the Maverick Bar incident.

PL – Not that I know of no

RS – Mr. Little I've now handed you what I believe to be marked as exhibit 12

PL – That is correct

RS – Can you please explain to the Commissioners what that document is

PL – It's a memorandum from Lt. Banyai to all the personnel and it basically says we're all required to attend a mandatory meeting with the police Chaplin Hesler for our spiritual wellness which is a violation of first amendment rights. I called the FOP Attorney and got his opinion on it. His opinion was it was a violation of the first amendment rights. He contacted Chief Rummel and told him it was a violation of the first amendment rights. I chose not to attend. I was called by Lt. Wallace and informed that it was a mandatory meeting and I was to attend. I attended a portion of the meeting and there was another meeting afterward that I attended. The people that attended were paid overtime. And you're only paid overtime on mandatory meetings. Later on when I had a conversation with Chief Rummel about this incident I was told by Chief Rummel that it was his police department, he would run it any way he wanted and if I didn't like the way he run it I could quit or he would get rid of me. As he did by forcing Rick Bartz out for whatever reason he decided to force him out.

RS – So Mr. Little, after these complaints do you feel you were actually terminated as a result of use of excessive force in this incident.

PL – no I was terminated because I stood up for my first amendment rights I pointed out the violations in the law and the other Capt. Stenberg's total disrespect for the law and ordering me to not appear in court on a criminal action it was I believe it was all retaliation and they conjured up this excessive force thing and unfortunately for them that they picked excessive force that's impossible to do.

RS – I have no further questions at this time.

MK – Mr. Little you testified that if somebody had grabbed the handcuffs chain and lifted a suspect to her feet that that would cause extreme pain is that right?

PL – Would you like to try it? I would be happy to handcuff myself and you could try it.

MK – Do I have your testimony right that that would cause extreme pain?

PL – To the person picking them up by the chain it would yes

MK- Would it cause extreme pain to the suspect the person that was handcuffed

PL – It would cause more pain to the person lifting than the person being lifted

MK – Am I correct though it would cause severe pain to the person being lifted up

PL – It depends on how you're going to lift them. If you're going to lift straight up on the handcuffs it would dislocate their shoulders and put them in excruciating excruciating pain.

MK – If somebody did that if an officer lifted somebody by the handcuffs would you consider that an excessive use of force?

PL – Well since it's impossible to do

MK – I'm not asking about the possibility I'm asking if somebody lifted a suspect by the handcuff chain behind her back would you consider that an excessive use of force?

PL – Lifted what one inch above her back two inches I'm not following your lifted her to her feet using that

MK – I take it you understand you understand the allegation in this case is that you lifted the suspect by the handcuff chain to her feet. Right?

PL – Okay

MK – Would you consider that an excessive use of force?

PL – I you're asking me a question that's impossible I don't have an answer for you it can't be done to lift them, to pull them back like that probably could be done

MK – If an officer lifted someone to her feet in a manner that would cause extreme pain and possible injury would you consider that an excessive use of force?

PL – Yes

MK – If an officer, the other allegation in this case I should say is that you applied a pressure point choke hold to Mr. Maus the male suspect in this case. If an officer applied a pressure point choke hold to somebody who was immobilized, handcuffed in the back of a patrol vehicle would you consider that an excessive use of force?

PL – Yes

MK – You testified as to a couple of incidents with Cpt. Stenberg prior to this incident that led to your termination. Am I correct that the first one the DUI incident happened in 2005?

PL – I think it was somewhere around there yeah

MK – And you were, you continued employment with the DPD for about three, three and a half years after that incident is that right

PL – Well it depends on when in 2005. I believe it was wintertime so it would be the end of 2005

MK – For some extended period of time though

PL – Yes

MK – You testified as to an incident at Maverick's Saloon, I believed that happen in 2008, correct?

PL – That is correct

MK – Did you receive any employee disciplinary action as a result of that incident?

PL – no

MK - Were you given a warning or put on restrictive duty or anything like that?

PL – no

MK – You testified that you had made a complaint to Sheriff Tuhy and the SA what you alleged to be falsification of a report or tampering with a witness is that right?

PL – correct

MK – And am I correct that the state's attorney decided to take no action on that

PL – that's what Sheriff Tuhy told me

MK – is it safe to say that the SA probably figured that no criminal violation occurred?

PL – that would be assuming something I don't know

MK – safe to assume though that if a criminal violation did occur that the SA would prosecute that is that a safe assumption

PL – Like I said earlier the SA came to a conclusion the statute of limitations ran out, he didn't want to deal with it and also said that Chief Rummel had not brought it up with him as it says in the memo

MK – Mr. Little am I correct that police officers generally receives extensive training on appropriate use of force and what constitutes excessive use of force

PL – yes

MK - ok and that training starts at basic I assume and that's sort of drilled into police officers generally as long as they are police officers is that right

PL – it updates yes, there are new case decisions and all that about over and excessive force

MK – Okay, and if an officer did use excessive force would you consider that a terminable offense

PL – It depends on the extent of the excessive force

MK – So you believe that an officer could use excessive force and that it would not justify termination

PL – I do

MK – You are aware that excessive use of force is a civil rights violation

PL – It is

MK – It subjects the city to liability under section 1983 including damages to the party that is abused you are aware of that

PL – yes

MK - You are aware that it is a crime you still believe an officer can use excessive use of force and not be terminated from the police department

PL – I've seen it happen

MK – So your testimony is that an officer

PL – they have been disciplined but they have not been terminated, I seen that happen a lot of times

MK – have you ever seen that in the DPD

PL – oh yes

MK – I'll have Chief Rummel testify about that as well he may have some different opinions regarding that. I have no further questions of this witness

PL – I can bring witnesses in that observed a member of the Los Angeles or the DPD point his gun at some person's head, nothing was done about it. I mean there, if that's what you want I'm sure we can bring a bunch of that sort of thing.

RS – Just a couple of quick questions Mr. Little. Did you lift Ms. Kuntz causing her excruciating pain

PL – No

RS – Did you ever hear her say ouch ouch anything like that

PL – No

RS – And what did Mr. or Lt. Shirey find in regards to the allegations about Mr. Maus

PL – unfounded or not sustained I mean

RS – I have nothing further

Ron Lisko (RL) – I have a question, you mentioned branches and debris being in the way so you couldn't turn the individual over. Could you tell me a little bit more about the branches and debris, the location, and size

PL – You're familiar with the slew area down there just

RL – No I'm not familiar with it no

PL – Okay, it's right it south of 21st Street by Prairie Oak Avenue there's some condominiums and duplexes that sit there and below that there is the slew it has trees and that sort of thing in

it. She was hiding under the tree there in the slew. And the dead branches and stuff from the tree had fallen down in there and it's not maintained down there and there was branches and other rocks and whatever else down there in the grass. And the fact that I didn't roll her over and set her up was there and I didn't want to roll the grass was high it hadn't been mowed and the chance of rolling her over onto to something sharp and dangerous would have injured her.

RL – Were there any branches of particular size that you happened to see or

PL – oh yeah I mean there was you know inch and half or so branches in there that had fallen off the tree. Substantial branches not just little twigs, but substantial branches.

RS – Other questions from the Commission?

RK – I do have one question I'm sorry, you talk about different violations that you visited maybe with Tom Henning about or that you brought to the attention like the first amendment whatever. Is there any documentation of the formal complaint or response to a formal complaint on any of those or were those all verbal.

PL – Those were verbal complaints

RK – Thank you

Glen Roshau (GR) – I have just one question. You haven't talked about the termination process that's what were supposed to really consider, what is your view of that termination process and how it happened is that appropriate at this point

PL – My view of the termination process was it was strictly retaliation for these incidents that I brought up and the fact that Chief Rummel told me that it was his police department and he'd run it any way he wanted and if I didn't like it I could quit or he'd get rid of me and I took that now as a threat that especially after this Maverick's incident that if I didn't if I complained about wrongs and Mr. Kolling was mentioning about civil rights violations, well here is a perfect example of a civil rights violation a false arrest and false imprisonment. There was no substance to the arrest, after this I took the reports up to the SAO asked Rhonda Ellis who had immediately dismissed the case on the same thing she said there's no merit to this it's definitely a false arrest and false imprisonment and they dismissed it so it would go away.

RK – I agree with you Glen the whole muddying of the issue with excessive force was used or not is a little frustrating because our role is to determine whether process was followed not whether excessive force was used. So even though it's interesting it's beyond my head and I want to get back to process. The disciplinary process in municipal code talks about that misconduct is defined and that there is action taken. A written reprimand, suspension without pay, demotion or disciplinary reassignment or dismissal, my question to you is was the disciplinary action process, whether you agree or not is not the question, the question is were you was there a written reprimand was there a progressive disciplinary process that you participated in that identified the allegations of the behavior. Like I said whether you agree or not is not the issue did the process happen as you recall.

PL – Well the process happened that I talked to investigator Shirey, and talked to Cpt. Stenberg and Chief Rummel and I was fired.

RK – Now my question is not that my question is were you given a written reprimand. It says the appropriate supervisor may discipline an employee by written reprimand as warning that the behavior is considered misconduct.

PL – No I was not

RK – Okay, thank you

RS – Any other questions before Mr. Little is done? Okay Mr. Little I believe you are finished.

RK – Thank you.

RS – No further witnesses.

RK – Matt before we move on can we take a five minute break

MK – Sure

RK – Stretch our legs, thank you.

MK – I'll call Police Chief Rummel to the witness stand

MK – Mr. Rummel can you state your name for the record please

Chuck Rummel (CR) – My name is Chuck Rummel

MK – And you are the Police Chief for the City of Dickinson

CR – That's correct

MK – How long have you been Police Chief

CR – Since 2005

MK – And how long have you been in law enforcement generally

CR – over 32 years

MK – Can you give me a little bit about your professional background your work experience

CR – I started off as a walking Police Beat Cop in the city of Dickinson, I moved up through the ranks to Sgt., I was while being Sgt. on patrol I was moved into investigations, I stayed in investigations a couple years, when I was then promoted to lieutenant and I headed up the investigative unit as Lt. for 15 years, and then followed by that I was promoted to Chief of Police in 2005.

MK – And you were the Chief of Police at the time when Mr. Little was terminated from employment is that right

CR – yes I was

MK – And was it your decision to terminate Mr. Little or was that someone else's decision

CR – That was my decision

MK – You have in front of you a stack of exhibits that the Commission has as well. I point you to exhibit number one. And can you just tell me what that exhibit is?

CR – This is the letter notifying Mr. Little that his services would no longer be required by the police department, just sustaining the information that we had previously talked on June 30th about where he was then let go or he had the um the ability you know the opportunity to resign

MK – And to the best of your knowledge that's Mr. Little's signature on the bottom of that document

CR – yes it is

MK – We'll get into it in little bit greater detail but can you tell me the reasons why Mr. Little was terminated from employment, just in brief

CR – In brief, There was an accusation of of Mr. or Sgt. Little at the time had used extreme force or unnecessary force in his duties on two different people, two different suspects and it was

brought to our attention and an investigation ensued with that investigation completed I made the determination based on the facts in that investigation

MK – And did you review any documents or other information in reaching your decision in this case

CR – I reviewed all the documents pertaining to this incident

MK – And what were some of the documents that you looked at

CR – witness statements from officers that were there, witnesses, statements from witnesses, a DVD player, our DVD made from the car video, and of course then the reports from Lt. Shirey who was the investigating officer and the report substantially from Cpt. Stenberg

MK – Are there any other documents that you based your decision on

CR – None that I can think of

MK – Did you have an opportunity to look at the video of the arrest

CR – Yeah I said that yeah the DVD

MK – I'm sorry I missed that. How did you first learn that there had been a complaint of excessive force used in this case

CR – The the info, the complaint came in from the officers on Sgt. Little's shift complaining about Sgt. Little to Cpt. Stenberg with the excessive force complaint.

MK – And what action did you take when that report came through

CR – With, Cpt. Stenberg came into me with the information just the basic information, I then instructed him to conduct an investigation an administrative investigation into this

MK – Can you tell me, I would imagine there other complaints you get about police officers from time to time. Is this a fairly typical procedure of how you initiate an investigation or how you respond to a complaint?

CR – yes

MK – Is there anything that deviated from this in any way

CR – No

MK – I want to direct your attention to exhibit number three in front of you. Can you tell me what exhibit that is?

CR – That is a statement by Officer Grosz to Lt. Wallace on use of force

MK – and can you tell us who Officer Grosz is

CR – Officer Grosz was one of the officers that responded to the incident involving Ty Maus

MK – Can you, how long had officer Grosz been a police officer at this point, do you recall

CR – I'm not sure, it was I'm not sure how long he was

MK – Can you tell me what information you took from this report

CR – What I took from this is in the second ah second paragraph where the where he was standing and observed Sgt. Little confront Ty Maus he began a particularly about the choke hold or pressure point that what was used on Ty Maus. And that he was right there seeing that and then the fact that he said Ty responding what's this pressure point bull shit, and the fact that I can't hear you, this is Sgt. Little talking to Ty Maus. I took this information.

MK – And can you comment on there is an audio portion to the police DVD on this. Can you comment at all on this report as it compares to the DVD the police car report?

CR – Sure that's exactly well not exactly but that's pretty much verbatim what was being said on that DVD on that recording.

MK – I noticed in the first paragraph there's comment made by officer Grosz that he Mirandized Ty or gave him his Miranda warnings. Did you hear that on the police video?

CR – I believe so but I don't recall I it's been a while since I listened to it, but I believe it was on there yes.

MK – Do you know whether Sgt. Little was making these questions of the male suspect before or after the Miranda warnings were given

CR – It was after the Miranda warnings

MK – Would it have been an appropriate police practice for Mr. Little to apply pressure points in order to get information at this point

CR – I certainly hope not, no it was not

MK – And why is that?

CR – Well we might as well torture people if we're going to do that. You know that's exactly Miranda you have the right to remain silent and officers need to observe that that's a constitutional right

MK – I point you to exhibit number four in front of you. Can you tell me what this exhibit is?

CR – This is a written statement from Officer Mike Hanel who was also on the scene

MK – And can you tell us who Officer Hanel is?

CR – Officer Hanel is I believe the senior officer on scene right underneath Sgt. at that time Sgt. Little

MK – And can you tell me what information you took from this report?

CR – This information I took out of Officer Hanel's was the incident concerning Kristy Kuntz and the handling of her at the time. The fact that he observed at he observed he was right there and he observed Sgt. Little grab the handcuffs by the chain and lifted Kuntz from the ground and Kuntz exclaiming ow , ow ow and your hurting me several times as she was lifted from the ground. I took that pretty much from there.

MK – and the date on this report is June 16, 2008.

CR – correct

MK – that's the same date as the incident it's self is that

CR – that's correct

MK – are you aware of any run-ins or any tension between Mr. Little and Officer Hanel prior to this report being written

CR – none

MK – Would Officer Hanel have any reason to make stuff up in this report or claim that the victim was saying ow ow ow when she actually didn't

CR – no

MK – Now from your experience as a Police Officer and as a Police Chief would it have been an appropriate police practice for Mr. Little to raise the suspect here to her feet using only the handcuff chain.

CR – absolutely not

MK – and why is that

CR – First of all if it's a single officer if there's one officer you are to roll them on their side just as Sgt. Little had told you already. You roll them on to the side and you pick them up so that you do not hurt them because this very he was exactly right again you pick them up like that there's chances of dislocating their shoulders, tearing ligaments all kinds of things. We are not trained to do it that way. And when there is more than one officer on scene you use, you use the other officers as well to assist you instead of rushing in and doing it yourself.

MK – At this point am I right there were four on scene with the female suspect at this time

CR – that's right

MK – Would there have been any reason for Mr. Little to raise the suspect in any manner by himself

CR – none

MK – Mr. Little had testified that he believed it to be impossible to raise a suspect using the handcuffs. Can you comment on his testimony.

CR – That's untrue you can, you can lift and he said it would hurt the officer doing that. Not if they're wearing gloves which many of them do, they wear tactical gloves, even if they weren't wearing gloves as he grabbed the handcuffs you can tell he was trained in grabbing them that way because that's how you apply them. You apply them and take them off in the same way. If you're grabbing both ends that's not going to hurt you, it will hurt the suspect but it won't hurt you.

MK – Do officers receiving any training regarding this regarding how to handcuff people and how to lift them?

CR – All kind, yes all kinds of training that way

MK – Would any reasonable officer having received that training assumed that it appropriate to lift the suspect using only the handcuff chain.

CR – No

MK – I want to point you to exhibit number seven in the packet if you can turn there. Can you tell me what this exhibit is?

CR – I believe this is Lt. Shirey's report final report on this incident.

MK – Can you tell us who Lt. Shirey is

CR – Lt. Shirey at that time was the Lt. in charge of investigations and as and one of the responsibilities in that position is to do internal investigations so he was in charge of investigations and appropriately doing this investigation

MK – Now from the report can you tell who Lt. Shirey interviewed or who he talked to in this report, in compiling this report.

CR – Sure, he spoke with Ty Maus, he spoke with Tom Grosz, he spoke with Officer Hanel, he spoke with Parke Little and Officer Senior Officer Nick Gates and with Kristy Kuntz so all the parties pretty much that were

MK – Pretty much covers all the parties that were on the scene

CR – Pretty much

MK – And what did, can you tell me I guess what information what you took from this report

CR – Well after, I read the whole report and got a general consensus, I mean I got an idea of what would happen. The findings of fact is what I really on page four is where I went to to

make my decision. Actually above that too, the fact that he was talking to Kristy Kuntz and Kristy Kuntz just told him she was lifted, you know he had lifted her by the handcuffs and then the findings of fact I went over that.

MK – Am I correct in this report Officer Hanel was interviewed and Lt. Shirey makes some comments on what officer Hanel observed. This would be on page two of the report does officer Hanel make any comments as to whether Mr. Little raised the female suspect by the handcuffs?

CR – yes he does

MK – And what does he report on that

CR – That Hanel had told him, Lt. Shirey she was lifted only by the handcuff chain which was causing the cuffs to dig into her wrists and her arms and shoulders to hyperextend upward.

MK – Now Officer Gates was also at the scene and was interviewed as a part of this report statement with respect to Officer Gates appears on page three

CR – correct

MK – the bottom of that page, what does officer Gates report as to whether Mr. Little lifted the female suspect by the handcuffs.

CR – that he began to do lift her by the handcuffs he set her back down because they had not yet double handcuffed locked the handcuffs and then again went to raise her again just by the handcuffs and while they were standing right there.

MK – And would you already made comment with regard to the interview with Kristy Kuntz that she was interviewed by Lt. Shirey and also stated that she was lifted by the handcuffs by Mr. Little is that correct.

CR – That's correct

MK – Can you comment at all on how you used this report in making your decision with regard to employee discipline or discipline of officers, how do you use this report in coming to those conclusions?

CR – One of the things in this report that concerned me, extremely was the extreme use of force on a suspect one that was already apprehended in the backseat of the car using what I believe to be pressure points tactics to get information from that person. Second of all from this report I feel that Officer Parke was punishing them, punishing both Ty and Kristy with the comments that were made by both Kristy and the officers because in one part he you know he even said, this is what he's telling Kristy, something to the effect this is what you get when you run from the police when in fact she was a passenger in the car not charged with anything. So the grievousness of this incident alone I felt could not be overlooked. Civil Lawsuits that are looked upon at police departments, on the cities, on the officers and all that have to do with this very thing. It's called a 1983 ACT. And it has to do with did you do it to get the maintain peace or did you do it maliciously. And I found through this report that it was done maliciously. And I believe that it just opens up to a lawsuit and this kind of behavior will not be tolerated by with the Dickinson Police Department.

MK – Mr. Rummel, Chief Rummel I would direct you to exhibit number six in your packet. Can you tell me what that exhibit is?

CR – That is a report of from Cpt. Stenberg of concerning this complaint against Parke Little

MK – Can you tell us who Cpt. Stenberg is?

CR – Cpt. Stenberg is was now retired is now retired was the Assist Chief with the Dickinson Police Department for about 11 years

MK – And there's been a lot of talk about Cpt. Stenberg having a strained relationship with Mr. Little, were you aware of any of that, can you comment on that

CR – Yes I was, I was aware of this. Sgt. Little had continued to allege that Cpt. Stenberg had a target on his back. Now where he got that from I don't know, Cpt. Stenberg addressed issues as they came up that is part of his duties and if it concerned Sgt. Little then they were addressed with him. There was no target and in fact I don't know where he gets those allegations from but he was it was a strained relationship absolutely.

MK – Now there's been some testimony regarding an incident a DUI incident in 2005. Did you make your decision to terminate Mr. Little based upon that incident in 2005

CR – That didn't even into come to mind no

MK – Did you make the testimony also regarding the 2008 incident at Maverick's Saloon in town. Did you make your decision to terminate Mr. Little based upon that 2008 incident in at Maverick's.

CR – I didn't know there was an incident a concern from Sgt. Little so no

MK – I imagine you keep a personnel file regarding employees was Mr. Little reprimanded or disciplined in any manner for these incidents these prior incidents

CR – No

MK – And why is that

CR – Well on the first incident with Cpt. Stenberg he, Sgt. Little and I met outside of work to discuss this and he told me his concerns. I did not agree with him on those concerns that Cpt. Stenberg committed a C Felony and all that other. So I just said listen let it go I mean it's a done deal okay you don't have target on your back because that was his concern his main concern not so much that Cpt. Stenberg committed a C Felony, but now there's going to be a target on his back, the conspiracy theory thing and that did not happen and so I told him to let it go. He continued not to let it go, in fact he talked to other people about it and so eventually a memo was written to Lt. Banyai the other lieutenants, Lt. Wallace and Lt. Banyai was aware of this they too were fed at a point sick and tired of that attitude because that was not true. So that's how that case happened or that incident. After the memo I don't believe Sgt. Little brought it up again, I had never heard about it after that. The other incident was the Maverick's thing I never even like I said I never knew there was a problem Sgt. Little had not come had not come to me and said that's illegal that you can't do that when in fact it was in fact a legitimate case. I do know he made some strong allegations about Officer VanDoorne making a false report. That was not true, an incident happened, we were asked to take action, we did we called in a car as we as the people were watching us several people in Maverick's were watching at the time we just happened to be in there. And while we were in there this person was disorderly this causing a ruckus we did what we had to do and Sgt. Little escorted him that's all he had to do. So, I didn't know Sgt. Little had such an issue with this thing.

MK – Do I understand from your testimony that the reason you made the decision you did to terminate Mr. Little was based solely on this incident in June 2008.

CR – That is correct, that is correct

MK – Now this is this is one incident, one day does it justify a termination in your opinion if an officer uses excessive force once. It's only one day, how do you what is your opinion?

CR – My opinion is it's absolutely justified. It would be different if there was a confrontation of any sort from these people where Sgt. Little was involved trying to maintain the peace, but to do this maliciously as I see him doing that in through this report and through these statements. I felt that that just cannot be tolerated that just not only opens up to a lawsuit but it makes us it breaks the trust with the public and these words get out, I mean this town incidents like that will spread and that will tarnish the image of the DPD.

MK – And in your opinion would it have been appropriate to issue Mr. Little a reprimand or a written warning for an incident of excessive force in this case.

CR – No

MK – And why is that why is a reprimand not appropriate here

CR – A reprimand is made for, I believe a reprimand would have been sufficient if this incident was so was not so grievous. This was to in my opinion one of the most grievous I have come across in law enforcement.

MK – I want to point you back to exhibit number six there. You testified this is a memorandum from Cpt. Stenberg. Can you tell me what information you took from this report?

CR – I just gleamed, as I read it, what Cpt. Stenberg does is he just reiterates the highlights of the incident of the report from Lt. Shirey. And that you know that the facts of finding that we see that Mr. Maus was handcuffed at the time in custody within the patrol car the fact that Sgt. Little denies these allegations constantly and that any physical force was intentionally applied did not correspond at all with what the DVD said with what witnesses said mainly Officer Grosz was right there. Secondly, Officer Little act in total disregard to pain from Kristy Kuntz, concerning Kristy Kuntz in the improper way he picked her up and handled her and that of course leads into what I had just told you it just it damages the image and breaks the trust of the community with the police department and then the recommendation from Cpt. Stenberg that this that he would be terminated.

MK – Now Mr. Rummel at this time Sgt. Little was a Sgt. he was in a supervisory role, can you tell me what sort of supervisory responsibilities he had.

CR – Sgt. as a Sgt you are the online supervisor you are to mentor you are to ensure that all of the proper policies and procedures are followed by your people. And that you are to be an example for your subordinates.

MK – And at this time Mr. Little was supervising Officer Grosz am I right

CR – Correct

MK – And supervising Officer Hanel

CR – Correct

MK – Am I correct that these are younger officers within the department or a least they were at this time

CR – At this time yes

MK – When you have a younger officer who use one of his superiors is using excessive force how does that affect the training role that you want to accomplish for the younger officers and the superior officer's ability to accomplish that

CR – Well as you can imagine it sets a bad example and if a superior officer would get away with something like this just thing of the moral not only the moral but the message administration would be sending to the subordinates to the younger officers that you can do this and get away with it.

MK – Chief Rummel the report from Cpt. Stenberg or the memorandum includes the finding that Mr. Little used excessive force on Ty Maus using some sort of choke hold or pressure point or something like that. Now you are aware that Lt. Shirey in his report did find that allegation to be unsupported is that right

CR – correct

MK – Why does Cpt. Stenberg find differently in this report.

CR – Well I think Cpt. Stenberg and I both concur. Lt. Shirey in looking at this is looking for facts that are cannot be disputed. He's giving this investigation the benefit of the doubt rather than like in a court of law you would only need a certain percentage to charge out or have probable cause he's actually giving Sgt. Little the benefit of the doubt here because only because of Ty Maus's inability as a drunk, I mean as someone intoxicated at the time to recollect whether or not it was on the front of his neck or the back the hand of Sgt. Little was on the front of his neck or the back of his neck. But Ty Maus did in fact recall the pressure point. It is on the DVR. It is clear as you know quit using the pressure points you can't use that bullshit on me, it's on there. Even in his intoxicated state he felt the pressure points which anybody that's had pressure point training understands, one that it doesn't leave marks, two it is extremely painful even if you are intoxicated.

MK – Maybe we should back up a little bit. What is a pressure point and why does it cause such pain.

CR – A pressure point is applying pressure to certain nerve ending points in your body. Now the neck is, now the neck, the shoulder there's a lot of them. There's some above the elbow, the wrist, above the hand, I mean if you want to just take your finger and go like this, push against your lip, there's a pressure point it's extremely painful, it will not leave a mark.

MK – It's mine understanding, I'll ask you if you agree, that Lt. Shirey found there was reason for doubt whether that pressure point tactic occurred.

CR – I'm sorry I missed the first part

MK – Just wanted to review Lt. Shirey's report. Am I correct Lt. Shirey found there was some reason to doubt whether that pressure point tactic

CR – Yes yes

MK – Have you come to a conclusion as Police Chief whether that pressure point tactic was applied and was used

CR – I believe it was

MK – And what do you base that decision on

CR – I base that on the DV on the not only the DVD which Ty Maus says you know that won't work on me or whatever, you know its quit using that. And then follow that up by a an

interview with Ty Maus after he sobers up and Lt. Shirey interviews him again while in jail and he again remembers it vividly.

MK – Now as to the second allegation excessive use of force Lt. Shirey in his report finds there is no reason for doubt regarding that, have you come to a conclusion as Chief regarding whether excessive use of force was used in that incident.

CR – I believe it was

MK – and what do you base that conclusion upon

CR – Just based on everything that everything that was in this in the reports, the statements from the witnesses, and Officer or Lt. Shirey's conclusion after doing the investigation.

MK – Now Lt. Shirey comes to a third conclusion in his report, it's at the bottom of page four in that departmental investigation and he states there that there exists reason to believe that Sgt. Little did not answer to these allegations in an honest and forth right manner as would be expected of someone in his position of authority and responsibility. Have you had opportunity to address that allegation.

CR – Well, um I've address it prev, I mean I previously to this if I can go back in history a little bit or do you want me to just to

MK – Lt. Shirey was just addressing the

CR – Okay I totally

MK - allegations on this

CR – I totally concur that Sgt. Little was not forth coming and totally honest when talking to Lt. Shirey.

MK - So I understand the documents that you relied on in making your decision you had the report from Officer Grosz, the report from Officer Hanel, Officer Shirey, Cpt. Stenberg and then your own conclusions as Chief of Police. Am I correct all of these reports all the officers indicated that Mr. Little did use excessive force either against Mr. Maus or Ms. Kuntz.

CR – That is correct

MK – And Mr. Little denied using excessive force are you aware of that

CR – Yes I'm aware of that

MK – And is that the basis for finding that Mr. Little was not truthful in answering the allegations in this case.

CR – Yes

MK – Were there any other documents or reports that you used in coming to your decision to terminate Mr. Little other than the ones we've gone over here.

CR – No

MK – As Police Chief do you have any doubt today that Mr. Little used excessive force in this case.

CR – No doubt what so ever

MK – I don't have any further questions

RS – Good morning Chief Rummel

CR – good morning

RS – Now you just testified that you actually weren't aware of Mr. Little's concerns regarding the Maverick's Bar incident right

CR – That is correct

RS – I'm going to show you an exhibit marked number 11 that the Commission has in front of them. That's actually a memorandum from Lt. Wallace and actually states he brought those concerns to your attention, correct.

CR – That's correct

RS – and you're also aware of the as you testified the incident regarding the DUI arrest of a friend of Lt. Stenberg, is that right

CR – Am I, am I, I am aware of it yes

RS – And you're aware of Mr. Little's allegations that Lt. Stenberg instructed him not to appear at the administrative hearing is that right

CR – That is what Sgt. Little states, yes

RS – If in fact Lt. Stenberg did instruct Sgt. Little not to appear that would be, that would be hampering, tampering with excuse me with a witness correct

CR – I don't know, I really don't know

RS – And in fact you didn't do anything about those reports though correct

CR – Correct

RS – And Mr. Little did have an incident where he reported where he thought were first amendment violations to you is that right

CR – yes

RS – And those stemmed from you requiring him to attend a mandatory meeting where I guess a pastor or parishioner would be there

CR – yes

RS – And you are aware that Mr. Little talked to you about those complaints is that right

CR – He voiced his objections to it yes

RS – And you told him that it was your department and you would run it the way you wanted to

CR – I don't recall that but I probably possibly could have yes

RS – And turning to the basis of the actual investigation here. Now you agree you weren't at the scene of the incident in June of 2008, correct

CR – no

RS – And your decision is completely based on the testimony and hearsay of other officers correct

CR – and the witness and the victims yes

RS – and the report of Lt. Stenberg right

CR – Correct

RS – And, cuz you didn't do the investigation yourself

CR – No

RS – And in fact you would agree with me that Officer Hanel actually said there was no visible injuries on either one of these alleged victims correct?

CR – correct

RS – And isn't it true that if in fact someone was raised by the chains in their handcuffs they would leave marks on their wrist from the handcuffs

CR – If I believe so, yeah if the handcuffs weren't double locked absolutely

RS – And there was no marks on Ms. Kuntz's wrist in this case were there

CR – none that were mentioned

RS – And you covered this a little bit, but Mr. Lt. Shirey did the investigation right

CR – Correct

RS – and he actually found that the allegations regard to Mr. Maus were not sustained is that right

CR – Correct

RS – and the definition of not sustained within the police I guess the Dickinson Police Department regulations actually states unable to verify the truth of the matters under investigation there is not sufficient evidence to proof or disprove the allegations is that right

CR – that is correct

RS – But you disregarded Lt. Shirey's views that those allegations were not sustained correct

CR – Correct

RS – And in fact regarding the Maus incident, Officer Grosz was actually back by the trunk at the time that the accident occurred or that incident occurred correct

CR – correct

RS – And Mr. Shirey, Lt. Shirey points out the inconsistent statements in his investigation right

CR – yeah in the statements

RS – Right, correct or actually Mr. Maus said that the location of any touching was on the back of his neck just like Mr. Little testified right

CR – no , well Sgt. Little didn't testify that he grabbed him by the back of his neck, it was his jaw area if I recall correctly it was his jaw turning his head so that he wouldn't spit or assume to spit on him

RS – Well I think Mr. Little demonstrated where that location was. And you would agree that Mr. Maus told actually Officer that it was on the back of his neck right

CR – I believe so yes

RS – and that's different than what Officer Grosz said right

CR – correct

RS – And the fact is you relied on Lt. Stenberg's report in making your decision right

CR – correct

RS – and it's true that Lt. Stenberg was actually the complainant in this specific incident

CR – yes

RS – and despite being the complainant in this incident he actually did the review of the investigation right

CR – yes

RS – and you would agree that's important to have an impartial person review the investigation wouldn't you

CR – That's my job

RS – and would you agree that if Mr. Maus was about to spit on Mr. Little he'd have it was correct for him to push his head away at that point

CR – Sure, absolutely

RS – And you would agree if Mr. Little actually helped Ms. Kuntz out, up by the arms that would be proper right instead of by the handcuffs

CR – Still no, no

RS – And that's because you you're assuming that he should have had three or four people help him up her up

CR – assuming that they were there and they were standing right there

RS – The fact is there were no complaints filed by the actual alleged victims in this case right

CR – no

RS – and you didn't get a statement from or Mr. or I should say Mr. Shirey didn't get a statement from Officer Wallace did he

CR – I didn't see one no

RS – and Officer Wallace would have been at that location of Ms. Kuntz correct

CR – yes

RS – The fact is that you testified that you just didn't give Mr. Little the benefit of the doubt at all correct

CR – I'm sorry what was the question

RS – You talked about you know whether or not how Mr. Shirey did his investigation

CR – right

RS – and the fact is he found that the Maus allegations were unsustained or not sustained I should say correct

CR – correct

RS – But you disregarded that correct

CR – Correct

RS – You talked about how Mr. Shirey gave Mr. Little the benefit of the doubt in that situation because there was conflicting testimony correct

CR – Oh that Lt. Shirey gave the benefit of the doubt, yes

RS – The fact is you didn't give Mr. Little the benefit of doubt to Mr. Little in this case at all correct

CR – No

RS – It's because you disregarded all the evidence that would show that these actual allegations didn't happen correct

CR – Again I didn't follow I'm sorry

RS – Well it's because, Chief Rummel it's that your actually disregarding any evidence that shows Mr. Little didn't do these allegations. You are disregarding that evidence in making your decisions in his termination is that correct

CR – No

RS – what evidence, the fact is you didn't you just didn't believe Mr. Little that he didn't raise her by the handcuffs right

CR – correct

RS – And you just didn't believe Officer Stirey or Officer Shirey excuse me if I'm saying it wrong, that there was no not sufficient evidence to sustain the Maus allegations either right

CR – That’s not what I said. Lt. Shirey is going to look, as I stated for firm hard facts without any dispute. He gave the benefit of the doubt to Sgt. Little, but the evidence clearly showed, I believe, that Sgt. Little applied pressure points to Ty Maus

RS – And that’s you would agree that generally if somebody did provide or cause excessive force that would cause injury on the victim

CR – It causes pain yes, not a permanent injury kind of thing, I mean it depends upon but it causes pain

RS – Again we’ve already gotten to the point that there just were no physical injuries to the alleged victims here right

CR – That is correct

RS – I have no further questions

MK – Mr. Rummel when you were making this decision you had a number of documents before you, you had testimony from the reports from the officers, the report of the investigation, recommendation from Cpt. Stenberg all of which you testified pointed to an excessive use of force by Mr. Little. You also had Mr. Little’s statements that he denied using excessive force is that correct

CR – that is correct

MK – And your job as Chief of Police is to make essentially a credibility determination right

CR – that is correct

MK – You had to determine whether four officers and the captain were telling the truth and coming to the correct conclusions or whether Mr. Little was coming to a correct conclusion correct

CR – That is correct

MK – No one is going to do that job for you, you are the police officer, the Police Chief you’ve got to do it right

CR – correct

MK – Do you have any doubt in your mind as to whether you came to the correct conclusion based upon the evidence before you.

CR – Absolutely no doubt

MK – No further questions

RK – Any Commissioners, any of you have questions for Chief Rummel

GR – I have one, I would like to ask in your tenure as Chief have you had other excessive force issues or officers that you’ve found guilty of excessive force and what were you’re reactions to those

CR – I have not had any, this is the first

RK – Before you were Chief do you recall well that’s not fair that would be gossip. Ron any questions

Ron Lisko (RL) – No questions

RK – Cal

Cal Kolling (CK) – no

RK – Erv

Erv Bren (EB) – no

RK – I do. What I want to know is that my questions go to the investigative process and disciplinary process primarily. As everybody's been talking I've been looking back at the century code and the complaints against police personnel rules and regulations. Okay. And what my concern is I believe that our role is to understand it's a decision if there was adequate cause in evidence termination and was the process followed. So, it looks like that if there is an internal investigation that a complaint is received and then from that complaint it is assigned to someone to investigate it. The investigative report comes back, it goes to the next layer and then it comes to you for recommendation. That process was followed, is that what you are saying to me?

CR – yes

RK – Okay. And you know because we just got the documents today it's hard to really kind of tie all that together that that did happen.

CR – Sure

RK – So I'm just asking you. Have there been other times when you've had internal investigations in the police department because another officer brings an allegation forward on another officer because of misconduct or whatever, whatever would warrant an internal investigation.

CR – yes

RK – And was that process followed then

CR – yes

RK – okay, so what I'm wondering here from the little bit I'm looking at is that, because there's some confusion on Cpt. Stenberg filing the complaint and then reviewing it. But what it looks like is that he receives memos and I haven't read this through, but it looks like he received memos from the officers that were there, his subordinates, on the site that had expressed some concerns and then he in his role filed the formal complaint because of the memos that he got from them

CR – correct

RK – Okay and then he and then it went to Officer Shirey who's like in another area that creates that protection against conflict of interest in the investigation. So is he outside of he's the internal investigations person for the

CR – yes

RK – Okay. So then he wraps back with his report it goes to Cpt. Stenberg who then makes an opinion sends it to him and recommends. So process was followed. Okay. How about the disciplinary process. There is a clear disciplinary process in the century code that's not uncommon to any business that talks about progressive discipline. You know it starts with maybe verbal or written and then it moves up the rank. Unfortunately code doesn't say when it's bad stuff that you go right away.

MK – Excuse me. I just want to make one comment to clarify the record. I think you're referring to Dickinson Municipal Code rather than Century Code.

RK – Okay, I'm referring to the code that they gave me, Dickinson Municipal Code.

MK – Dickinson Municipal Code

RK – Okay thanks. And in here it talks about you know written reprimand, suspension without pay, demotion or discipline area reassignment and dismissal. And we all know that sometimes if the perceived cause is enough you can move right past those early steps. Was there documentation at any level, how do I know as a how do I as Mr. Little know when I've, through training, through other policy how do I know what's the take you right to you're out of here kind of offense. I mean if, as I'm an employee here I know that if I take a pencil here I might have stolen property and I might get a verbal reprimand and it'll go in my file. But at what point do I understand as an employee what those issues are that are cause for immediate termination, either actual or implied. You know, how do I know?

CR – I believe that through training and you pretty much heard from Sgt. Little that excessive force is a no no, that's an absolute no no. You will you will be terminated through your training you receive that information. Not only that but you can be charged criminally as well so there, if it's if it falls under an act that can be charged criminally and we can you can put the department and city in danger of being sued those are all elements that should be that determine whether or not you will. Now is it written out that we have to you know, that we can jump and depending again about the grievousness of this I just felt that this could not be tolerated. And Sgt. Little was given every opportunity throughout that entire investigation to come clean to say he screwed up, I need I guess I didn't realize I was doing this, he could have done any of those things to reach out and say I didn't realize I had done that or whatever. He didn't he denied he continued to deny and he denied it for a reason, he knew full well doing these things would terminate his position. End of story.

RK – What are the other types of things what would be cause for immediate cause for termination in the police department

CR – Well

RK - just examples

CR – An example I can give you an example of an officer that used drugs on duty. He was okay, you know. There was an individual that lied, he had just been hired and he lied on his application, he was terminated. What we have to be so careful with people is the integrity of the officers. There's new court rulings and all these issues whenever you falsify anything that has to now because of a federal ruling has to be passed on the SAO. So for instance anybody lies in court, on a report or anything that information gets passed on to the SAO who makes a determination whether or not that goes into or the defense gets a hold of it. Okay. So you're credibility is shot how can you be used as a police officer in the court of law anymore. So I had to make those determinations not only not only did this grievous act and I believe it happened, no question in my mind, but he lied about it. End of story.

RK – I have a couple other questions for you. If this was another situation and officers brought a complaint to the captain on duty or whatever that hierarchy is and they brought written complaints and it would be that captain's role to file a written complaint just like Cpt. Stenberg did?

CR – yes

RK – That is standard operating practice okay

CR – correct

RK – And then the, I am curious about the exit interview though that implies it be required by code, because did that not happen or would that have been something that would have been one of these earlier

CR – If you recall in my letter to Sgt. Little we did speak June 30th and I did ask him about this. At first he didn't want to talk with me and he wanted his attorney present as we I said okay I'm going to talk with you then, then we did talk. He continued to deny, I questioned his truthfulness and it stopped at that.

RK - The

RL – I'm looking at item or section 200804110 Disciplinary Process item four and it indicates that the City of Dickinson may but is not required to apply these actions progressively. So you felt in this situation that the progressiveness of the disciplinary action was not required.

CR – correct

RL – And why

CR – again because well two reasons, again I have to fall back, unless you really understand. It shocked, it shocked his subordinates that they came forward with it. That and the fact that he's a sergeant, knows better, been trained better, understands this and still continued to do this maliciously and then lie about it. I can't put it any simpler than that.

RK – Is there any documentation in his personnel file about the exit interview, anything formal other than the letter that says you know in our conversation is there do you have your own notes or anything.

CR – I just got a few notes, I have a few notes on a page

RK – But nothing that he would have signed at the time

RL – Is the DVD available

CR – The DVD is available

RK – My other question on the whole investigative process, sorry Matt is you know when I look through here there's a lot of resources available to the investigative officer, but my first question was did he go to the ER and ask were there injuries. You know after the fact you know or is that something that would be inappropriate because it would be a HIPPA thing for the patient.

CR – Well that probably the HIPPA thing would fall into place here, but Mr. Maus was taken to the emergency room because of the injuries of the accident, that kind of thing.

RK – oh okay and then what about

CR – she wasn't

RK –she wasn't so she wasn't seen

CR – It not in the report and I don't recall it

RK – Sorry Matt I'll

MK – Just a comment on the DVD, that is available if you want to see it. It's rather lengthy, it has video of the arrest of Ty Maus. It's just a windshield DVD or windshield video. Kristy Kuntz was apprehended several back in the slew so it's that part is not on the DVD

RK – I have one more question before I think I'm done. One of my questions here as I'm reading through all of the resources is there is a timeliness issue that I don't understand.

There's a certain amount of time that you have to file a complaint and then there's a certain

amount of time that we have to respond to the complaint but clearly we're outside of that. Can you just give me a little background on that again Matt. I know I've heard this that we may be have a hearing coming for some time.

MK – Yeah we are in somewhat of an unusual situation if you want to take a look at exhibit number one that is the letter that Chief Rummel signed indicating that Mr. Little's termination was or employment was terminated. The initial meeting between Chief Rummel and Mr. Little occurred on June 30th of 2008. That was the notice that was given to Mr. Little that he was going to be terminated, Mr. Rummel elected to give him the opportunity to resign or be terminated. And under our code there is a five day window there for an employee to file an appeal. The letter was not sent out to Mr. Little until July 15th, he signed it on the 22nd and then filed his appeal on the 24th. That created sort of a strange issue for us and we've corrected it in code now of whether the official date, where the five days starts to run started on June 30th or on July 22nd and we initially denied the right to appeal because we felt the June 30th date was the one applicable. Because we wanted to avoid an issue and avoid the potential he could take this into court and have to litigate over what the appropriate date was we elected to grant Mr. Little the right to appeal even though he might be out of the five day window. That was in January of 2009. And it has taken since January of 2009 and until the present for us to schedule a hearing a time when Mr. Little could be here and a time when his attorney was available to represent him so. It is unusual and I would expect if there are future grievance hearings they'll happen much, much faster than this one has.

RK – Well my apologies because it seems like a long time ago and it's hard to remember and it's hard to have people that are still even around that have clarity of thought and I was just curious as to where the drag came. Does anyone else have any questions.

GR – I just have one, it seems like why is Wallace's testimony missing here, I mean he was an officer present. If we've got this kind of allegation did his conflict the other people or to me it's you should have all the officers testifying on this that were present and I don't see anything on him.

CR – Yeah, I'm not sure, I'm not, I cannot answer that Glen sorry. Why Lt. Shirey elected not to speak with him I don't know, maybe it was redundant, I'm not sure but it's not there.

RK – if there are no further questions, I thank you all for your patience and entertaining the questions. I want to remind us that the, the request at hand is to ask for reinstatement of Mr. Parke Little and all back pay be reinstated up to date. Our role as a Civil Service Commission is to evaluate the decision by the chief to determine whether adequate cause and evidence for termination were followed and what if the process was followed. So, I'm not, I think what our decision is, is that we need to say we agree with the disciplinary action and we would agree that proper process was followed, that we or we could disagree and recommend for reinstatement of the employee or we could come to some other conclusion that we find appropriate. Is that correct understanding of everyone. I would like to ask my fellow Commissioners if they feel prepared at this time to make a decision. Erv?

EB – I guess at this point I don't we've been given a lot of information earlier which I would like to go through and read and kind of layout a timeline as to when these incidents occurred and it would clarify things in my mind quite a bit.

RK – Glen?

GR – I agree, and as we talk about the one the dates and the timeline, I noticed one of these documents says the wrong date. It's exhibit three. What is the date supposed to be on that?

MK – The date is June 17th on Officer Grosz's report. I think it says "07" there and it should say 17.

GR – Thank you

EB – what was that was that June 17th

MK – 17th

RK – Ron are you prepared to make a decision today?

RL – No I'd rather look through this

RK – and Cal?

CK – Yeah I feel the same way

RK – Okay, it seems to be consensus cuz I agree, it's a lot of information to think through process you're listening you're reading, you're trying to get through code and policy and make sure that everything is appropriate. Now we have a certain response time I believe it's 10 days according to.

KC – 10 business days

RK – 10 business days so our response needs to be prepared by (Ray Ann Kilen looks at Kristi Cianni who gives the specific date a response is need by) the 13th. So then our role would be to be able to, what I would like to propose is that we end the hearing today, take the information that's before us, have some time to read through it, get our arms around the information. And when we have a next regularly scheduled meeting or do we have another hearing to provide the outcome, what is the process. We can make recommendation without.

MK – In order to decide the matter you'll have to make findings and facts, conclusions and then order. One suggestion may be for each of the parties to submit a proposed findings and facts, conclusions and order for your consideration. We can do that fairly soon and that may help you in your decision making process as well.

RK – So it's a findings and facts, conclusion and

MK – order

RK – order. Order being approve, reinstate or such other

MK – correct

RK – okay, okay would that be reasonable to set a target date for you to be able to review and then provide your comments in writing and then we can assimilate that and make a final decision at a coming meeting.

MK – I think that

RK – or do we just individually make our findings of fact.

MK – You'll need to come to a majority though. It would have to be at least three of you that agree on the what the order should be and what the document should state. I don't know what Mr. Stock's opinion is, but I think it may be helpful for you if we draft something proposed, we'll do something from the City's side and Mr. Little can do something from their side. We can submit that to Kristi and she can get that to you and you can whatever

RK – And we can respond to the information you've provided and agree or disagree or amend or.

MK – and you may take some of our findings that we propose and some that Mr. Stock proposes and meld that into an order

RK – when should we expect to have those from either of you so that we know when we need to be prepared and we meet the deadline.

(Attorney's confer as to a date the findings and facts and order can be available for Civil Service)

MK – A week from today would be

RK - September 3rd

MK – September 3rd. I think that's sufficient for both of us

RK – okay, does that seem reasonable to the rest of you. Get this adjusted, finding of fact, conclusion and order. Whatever you can give us to guide us. We can look at the information, get our arms around our own comfort level with what it looks like may have happened here and then we can respond to yours. And at that point Matt after we come to an agreement, do we get a hold of you to what's. Does it go through Kristi, does it go to

MK – It's the City's responsibility to actually serve the order so when you come to an order that at least three of you agree to you can submit that to Kristi, she'll get that to me and I'll take care of the service process.

RK – okay. Thank you. Are there any other questions. Any comments from the attendees in the back? Time to wake up. Okay if that is all we have then I'll entertain a motion to adjourn.

RL – So moved

RK – Thank you Ron, a second

GR – Second

RK – All in favor, Ron?

RL – aye

RK- Cal?

CK – aye

RK – Erv?

EB – aye

RK – Glen

GR – aye

RK – chair votes aye. We'll call this meeting adjourned. We will have an answer to you. Thank you.