

November 9, 2005

Andy Anderson, Assistant Police Chief
Phoenix Police Department
620 W. Washington St.
Phoenix, AZ 85003

Dear Andy:

I would like to express some concerns PLEA has with an administrative investigation (*see attached*) involving Officer [REDACTED]. Sgt. Frank Kardasz is the author of the investigation and was [REDACTED] supervisor when he was assigned to the [REDACTED] Squad.

The sustained allegation of unprofessional conduct is described on page 5. It reads, "...Det. [REDACTED] removed a bottle of water from the refrigerator and drank it without permission of the owner. The value of the bottle of water is estimated to be between one and two dollars. Det. [REDACTED] later admitted to the act and acknowledged that he made an error in judgment. Det. [REDACTED] controlled the property of another with the intent to deprive the other person of that property in violation of ARS 13-1802A.1. The incident is an act of unprofessional conduct in violation of Ops Order 3.13.6.B.(5) which states: Employees will not commit acts where the elements of felony or misdemeanor crimes are met. The violation is also described in Operations Order 3.18.3.C.(3)(a) – unprofessional conduct: Incident not involving an act of violence where elements of a misdemeanor crime are met, regardless of whether the employee was indicted, prosecuted, or convicted." A recommendation for an 8-60 hour suspension was made.

On page 4 of the investigation there are four employee witnesses listed. On November 3, 2005 Sgt. Kardasz communicated to PLEA that none of the witnesses were tape recorded. It should be noted that Det. [REDACTED] had supplied Sgt. Kardasz with a written memo. The other three employee witnesses did not provide written documentation. **Ops Order 3.19.5.B.(1)** states, "Tape record all interviews with complainants and non-employee witnesses when practical." Officer [REDACTED] interview was tape recorded and transcribed but no reason was provided as to why it was impractical to record the other three employee witnesses.

I spoke with witness [REDACTED] on November 8, 2005 at approximately 1450 hours about her interview with Sgt. Kardasz. She told me that she was not aware of the recording policy and did not advise Sgt. Kardasz that she had objections to being

recorded on the telephone. After I finished reading the section of Sgt. Kardasz's interpretation of their conversation from the draft investigation, I asked [REDACTED] what she thought of how it was written. [REDACTED] stated that what I read to her "made it [Officer [REDACTED] conduct] sound malicious. It was no big deal." She stated that she had told Sgt. Kardasz that [REDACTED] conduct was like a joke, funny, and that all the detectives (including the complaining detective - [REDACTED]) laughed about it." She stated, "It was water for God's sake" and that the impression she had when the incident occurred was that he was thirsty - getting a drink. She concluded by asking me if Det. [REDACTED] was under investigation for using the bathroom and flushing the toilet at the same location on the same date.

PLEA believes that these important omissions from this investigation are facilitated by Sgt. Kardasz failing to adhere to the aforementioned policy. The omitted comments of this witness demonstrate that Officer [REDACTED] fell short of the required state and provides a reason to handle this matter in a less severe and harsh manner. The Association believes this omission is exonerating in nature and is in violation of Ops Order 3.18 .3.F.(1).(b) Addendum A as described in the discipline matrix as a Class E violation - Giving false, incomplete, or misleading statements, or willful omissions during an investigation.

The following exchange found in the transcripts of Officer [REDACTED] interview by Sgt. Kardasz was omitted from the investigation:

Kardasz:	Well a specific violation is described as; controlling property of another. Would you agree that the water bottle was property of another?
[REDACTED]	Yes
Kardasz:	With the intent to deprive the other person of that property. Did you have the intent to deprive him of that property?
[REDACTED]	No, that wasn't my intent at all. My intent was to just get a drink of water.
Kardasz:	Okay. And getting a drink of water would you agree that that would deprive the other person of that water?
[REDACTED]	Uhh Yeah. Had I gotten a drink out of the sink, he still pays the water bill so I'd be depriving him of his water bill then.
Kardasz:	True.

These omitted comments found in the attached transcript demonstrate that Officer [REDACTED] intent was different than Sgt. Kardasz's conclusion and provide a reason to handle this matter in a less severe and harsh manner. The Association believes this omission is exonerating in nature and is in violation of Order 3.18 .3.F.(1).(b)

Addendum A as described in the discipline matrix as a Class E violation – Giving false, incomplete, or misleading statements, or willful omissions during an investigation.

On November 9, 2005 at approximately 10:00 a.m. I spoke with Phoenix City Prosecutor Matt Buesing. Matt was very careful and articulate in informing me that he could not officially inject himself in this case. I shared with Matt PLEA's issues concerning the Department's production of an official public document defining Officer [REDACTED] intent as criminal – controlling the property of another with the intent to deprive. Matt shared that technically, in the legal sense, the intent was there but that that in the real world even they wouldn't have filed on it. He showed me written policy in which this case would not be filed because the facts of the incident do not merit prosecution. We spoke of examples of where Officer [REDACTED] conduct is an everyday and common occurrence - eating a grape in a grocery store to decide a purchase of fruit. Officer [REDACTED] comment that it wasn't a good decision lent credence to the lack of criminal intent. The fact that Officer [REDACTED] took water back in excess of what he had consumed in order to appease Det. [REDACTED] conscience lent credence to the lack of criminal intent. The refusal of Scottsdale PD to take a criminal report when they had a legal obligation to act lent credence to a lack of criminal intent. The fact that in the Arizona desert it is socially acceptable and second nature to stay hydrated lent credence to a lack of criminal intent – Matt had a case of water on the floor of his office to demonstrate this. The fact that businesses routinely offer bottles of water lent credence to the lack of criminal intent. Matt also agreed that turning up the air conditioning in a suspect's apartment/home or using toilet facilities could technically be considered theft of utilities. Matt communicated that what Officer [REDACTED] did could happen to anybody and that it was likely the community standard found in a jury would not support Sgt. Kardasz's findings. These comments provide a reason to handle this matter in a less severe and harsh manner.

I also spoke to County Attorney John Wendell. His opinion was similar to Matt's. Technically, it was a violation of the statute but it would be improbable to get a criminal conviction. John made the distinction between criminal knowledge and criminal desire. If the officer had thought about it, he should have known it was wrong but he clearly did not have a criminal desire to inflict loss. He communicated that Officer [REDACTED] situation did not contain anything that somebody would find him guilty of a crime. These comments provide a reason to handle this matter in a less severe and harsh manner

It should be noted that on the day Sgt. Kardasz interviewed Officer [REDACTED] he communicated that [REDACTED] should feel fortunate that Scottsdale PD did not take criminal action in reference to the bottle of water. The investigation documents a brief non-recorded interview with Lt. Chrzanowski on page 3. On November 9, 2005 at approximately 1650 hours I spoke with Craig Chrzanowski, the commander of the property crimes unit of the Scottsdale Police Department, in order to verify if Officer [REDACTED] should have considered himself fortunate for Scottsdale's lack of involvement. Lt. Chrzanowski told me that after Sgt. Kardasz had called to report the situation, "we were all laughing about it here." I asked him if SPD didn't take action because of a policy or because they thought the situation was silly. He said, "Both." Craig said that

he told the Scottsdale Police Chief about the incident and even he (*the Chief*) was surprised at the course of action being taken by Phoenix. Lt. Chrzanowski believed that the officer should replace the water and receive a "verbal." These comments provide a reason to handle this matter in a less severe and harsh manner.

The Department's past practice of not pursuing criminal misconduct that technically occurred is easily found. Commander Sil Ontiveros technically committed an aggravated assault but was excused from criminal intent by Assistant Chief McCort. Lt. Giebelhausen technically altered public documents but was excused from criminal intent by Assistant Chief Frazier. Sgt. Theresa Clark technically deprived an employee of personal property but was excused from criminal intent by Commander Steve Campbell. Perhaps these cases were not pursued by the Department because, like Officer [REDACTED] conduct, the facts of these incidents did not merit the pursuit of criminal intent. Although the conduct of all of these managers was similar, the sanctions imposed in the cases did not rise above the level of a written reprimand. To impose a suspension upon Officer [REDACTED] and to describe his conduct as criminal in an administrative investigation calls to question the justifications used to remediate the conduct of the listed managers. Past practice with management misconduct provides a reason to handle this matter in a less severe and harsh manner

On September 12, 2005 Sgt. Kardasz interviewed Officer [REDACTED]. Sgt. Kardasz showed [REDACTED] the NOI, had him sign it, and then took it back prior to speaking with him about the allegation of misconduct. Technically, Sgt. Kardasz failed to allow Officer [REDACTED] to retain a copy of the NOI during the interview as required by the MOU. In Section 1-4 G.1 the MOU states, "A copy of the signed and dated Notice of Investigation will be given to the unit member prior to the beginning of the interview. The unit member shall have a right to retain the NOI for his use throughout the entire course of the interview." Technically, this also is in violation of Ops Order 3.19 5.C.(1).(b) Notice of Investigation Procedures – See the appropriate MOU for more information.

This allegation of misconduct occurred during the service of a search warrant. No supervisors were present during the service and/or completion of this search warrant. The Ops Orders state the following:

- 4.11.5.A A sworn supervisor will be in charge of all search warrant executions.
- 4.11.5.A.(1) The supervisor is expected to be in attendance and in approved uniform or departmental jumpsuit for the duration of the search warrant process.
- 4.11.5.B. The supervisor in charge of search warrant execution will be responsible for the following: (2) Warrant information review, procedure, conduct, and security. (5) Other tactical or administrative procedural details.

PLEA believes one of the roles of a supervisor is to assist unit members in succeeding in their job assignments. This policy reinforces this idea. Just as Officer [REDACTED] failed in meeting the standards of the Phoenix Police Department, so too did his chain of command. If this policy had been adhered to and Sgt. Kardasz, a designated supervisor, the squad lieutenant, or bureau commander had been present, perhaps a successful outcome would have been achieved. The Association and its 2200 members has a reasonable expectation for the management team to be held to the same level of accountability as Officer [REDACTED]. Ops Order 2.3.1.A reiterates this expectation by stating, "All supervisors are responsible for the proper performance of their employees under a variety of conditions and circumstances."

In conclusion, the Association believes this administrative investigation was conducted inappropriately, in violation of the MOU, inconsistently with past practice, in opposition to witness statements, and falls short of practical criminal standards. In the spirit of parity, PLEA requests that Sgt. Kardasz be investigated for the aforementioned policy violations. In the spirit of parity PLEA also requests that Officer [REDACTED] investigation be worded in a manner similar to the aforementioned supervisory examples (*without mention of criminal intent*) and be disciplined in a similar manner that Department management has been.

Attached is a signed agreement dated March 14, 2004 in which the City agreed that the Police Department would respond in writing as to the actions it would take in reference to allegations of misconduct brought to their attention by the Association.

Your timely response, input, and direction are greatly valued.

Sincerely,

MARK SPENCER
PLEA Secretary

c: Jake Jacobsen, PLEA President
Michelle Monaco, PLEA Vice President
Jack Harris, Police Chief
Bob Oberstien, Labor Relations
Louis Tovar, Commander