

CITY OF HOUSTON

INTER OFFICE CORRESPONDENCE

TO: Police Officers'
Civil Service Commission
Of the City of Houston

FROM: Art Acevedo
Chief of Police

DATE: September 10, 2020

SUBJECT: Indefinite Suspension
Benjamin Leblanc,
Police Sergeant
Employee # [REDACTED]
Northeast Division
Issue #56011-2020

In accordance with the provisions of the TEX. LOC. GOV'T. CODE, Chapter 143 (formerly Art. 1269m), commonly known as the Fire Fighters' and Police Officers' Civil Service Act, you are hereby advised that as of the close of business on the date stated above, I have indefinitely suspended **Benjamin Leblanc, Police Sergeant**.

Benjamin Leblanc, Police Sergeant, has been indefinitely suspended for acts and conduct in violation of Rule V, Section 6, Subsections (b) and (k) of the City of Houston Police Officers' Civil Service Commission's (the "Commission") Rules Governing Members of the Houston Police Department (the "Department"), which reads as follows:

"SECTION 6 - CAUSES FOR REMOVAL OR SUSPENSION

"No classified employee shall engage in, or be involved in, any one of the following acts or conduct and the same shall constitute cause for the disciplinary or indefinite suspension of a classified employee:

"(b) violations of a municipal charter provisions;

"(k) violation of an applicable police department rule or special order."

Additionally, by his conduct, as detailed below, **Benjamin Leblanc, Police Sergeant**, has violated the Houston Police Department's General Orders. Compliance with the General Orders is required of all members of the Houston Police Department, and violation thereof is grounds for disciplinary action as provided in Rule V, Section 6, Subsection (k) of the Commission's Rules, quoted above.

The following facts serve as the basis for the indefinite suspension of Sergeant Leblanc:

Investigation revealed that on April 21, 2020, at approximately 8:55 p.m., Sergeant Benjamin Leblanc responded to the scene of a person in mental crisis, who was later identified as Mr. N. Chavez, in a parking lot at or near the intersection of Gazin Street and the I-10 East Freeway

Service Road. Sergeant Leblanc arrived at the location at about the same time that Officer Luis Alvarado and Officer Omar Tapia arrived. Shortly thereafter, Officer Nancy Leija arrived on scene. All officers were assigned to the Northeast Patrol Division and all four officers were wearing body worn cameras (BWC) and had timely activated their BWCs in accordance with Department policy.

Mr. Chavez was positioned behind a light pole in a squatted position on the south side of the parking lot. As the officers approached Mr. Chavez, he was yelling. Sergeant Leblanc described the parking lot in his Internal Affairs interview as a *"big commercial parking lot that's attached to this restaurant,"* and that *"a safe estimate would be that the paved parking lot is probably at least half a football field."* On the south side of the parking lot is a wooden fence and on the west side, there are two vehicle entrances and two shallow ditches.

Officer Tapia and Officer Alvarado attempted to speak with Mr. Chavez after they arrived. Soon after, Sergeant Leblanc tried to establish communications with Mr. Chavez. Sergeant Leblanc said in his interview, *"I started saying, 'Hey bud, hey man, we're here to help you.' He immediately got up and his exact words were, 'Shoot ho. Fuck you. Kill me.' And I saw right then and there, as soon as he stood up, he had something in his hand that appeared to be a knife."* After observing that Mr. Chavez had a metal object in his hand, Sergeant Leblanc went back to his vehicle and retrieved his beanbag shotgun. Sergeant Leblanc returned and instructed the officers to get their Conducted Energy Devices (CED) out to provide less lethal options. Officer Alvarado and Officer Leija armed themselves with their CEDs and Officer Tapia armed himself with his duty weapon.

As Mr. Chavez started walking around the parking lot, Sergeant Leblanc gave Mr. Chavez verbal commands to get on the ground. Mr. Chavez did not comply with verbal commands and began stabbing himself with the metal object. Sergeant Leblanc deployed his beanbag shotgun at Mr. Chavez with no apparent effect, and Mr. Chavez remained standing. Sergeant Leblanc told Internal Affairs that he fired his beanbag shotgun because, *"He was actively trying to kill himself in front of us. That's what I believed, that's what it showed, and so I fired my beanbag shotgun and struck him right then and there."*

Just a few seconds later, Sergeant Leblanc deployed a second beanbag round at Mr. Chavez. Mr. Chavez began walking towards Sergeant Leblanc, and Sergeant Leblanc deployed a third beanbag round. Mr. Chavez continued walking, and Sergeant Leblanc deployed a fourth beanbag round. The beanbag rounds had no apparent effect on Mr. Chavez. After Sergeant Leblanc deployed his fourth beanbag round, he directed officers to use their CEDs on Mr. Chavez. Both Officer Alvarado and Officer Leija discharged their CEDs two times, which also had no apparent effect on Mr. Chavez.

Harris County Constable Precinct 6 Deputy Art Garduno arrived and was standing to the left of Sergeant Leblanc. Mr. Chavez began to advance towards Sergeant Leblanc and Deputy Garduno. As Sergeant Leblanc backed up, Mr. Chavez began advancing quickly towards him

and Deputy Garduno. Sergeant Leblanc deployed his last two beanbag rounds at Mr. Chavez for a total of six beanbag rounds. Sergeant Leblanc told Internal Affairs that, *"He then started charging right towards us. Uh, I fired two more rounds from my beanbag shotgun as I was backing up. As he charged towards us I backed up so did the deputy and I fired those last two rounds from my bean bag shotgun. They had no effect he was still noncompliant. And I turn around and at that point and I ran behind my patrol vehicle."*

When asked by Internal Affairs why he deployed less than lethal force when Mr. Chavez was charging towards him with what he believed to be a knife, Sergeant Leblanc said, *"I didn't wanna shoot and kill the guy,"* and, *"I just didn't, I - I - the guy was clearly in some type of crisis and I wanted to get him the help that I initially wanted to get him on the scene, um, and I - I didn't want it to end in a shooting I just didn't you know? I didn't want it to end where this guy forced us to have to take his life and so I'm still trying to give him every benefit of the doubt that he at some point will comply, that it will click in his head and he will give up peacefully and let us take him into custody without us having to shoot him."*

After Sergeant Leblanc had deployed all of his beanbag rounds, he placed the beanbag shotgun in the trunk of his police vehicle. As Sergeant Leblanc was standing at the trunk of his police vehicle, Mr. Chavez again advanced quickly in the direction of Sergeant Leblanc and Deputy Garduno with the metal object in his hand. Sergeant Leblanc un-holstered his duty weapon and discharged his duty weapon at Mr. Chavez two times. At the same time, Deputy Garduno discharged his CED, striking Mr. Chavez.

Sergeant Leblanc told Internal Affairs, *"He is coming directly at us with his edged weapon up he's looking directly at the deputy but I'm standing right next to the deputy, he's coming at us and at that point I think I say, like, "Hey bud," I'm still trying to talk nice to this guy, I hear some other yelling I don't know if the officers are telling him to stop, I - I don't know but he's clearly with - there - there's no doubt in my mind he was coming at us with his weapon to use it on us and he's clearly coming at us and he, uh, comes through the ditch I fire my weapon twice at his mid torso area simultaneously to me firing the Precinct 6 deputy tasers him and he falls down to the ground."*

After Sergeant Leblanc discharged his firearm and Deputy Garduno deployed his CED, Mr. Chavez fell into a ditch near a police vehicle. Shortly thereafter, Officer Tapia, Officer Alvarado, and Officer Leija moved up towards Mr. Chavez from the south. When the officers got within a few feet of Mr. Chavez, Mr. Chavez rolled over, yelled *"Fuck you"* at the officers, and slashed at them with the metal object. The officers immediately backed up. Sergeant Leblanc instructed the officers not to approach due to Mr. Chavez's aggressive behavior. At no time during the remainder of this incident did the officers attempt to approach Mr. Chavez again to try to take him into custody.

While Mr. Chavez was in the ditch, he remained noncompliant to verbal commands and continued stabbing himself in the head and neck with the metal object. Sergeant Michael Reedy

arrived on scene with another beanbag shotgun and took cover behind Sergeant Leblanc's patrol vehicle. Sergeant Leblanc estimated about eight to ten additional officers began arriving on the northwest side of the scene, closer to the freeway service road. Sergeant Leblanc stated that he began getting officers into position to avoid a crossfire situation. At that time, Sergeant Leblanc stated that the officers on scene had formed three sides of a square around Mr. Chavez to contain him. Additionally, Sergeant Leblanc asked for patrol vehicles to shut down the freeway service road.

At this time, several officers began arriving on the northwest side of the scene. Evidence from the investigation revealed that both Officer Kevin Nguyen and Officer Joseph Adovasio took positions to the west of where Mr. Chavez was located. Sergeant Leblanc maintained verbal communications with Mr. Chavez as he was lying in the ditch and provided instructions to arriving officers to avoid a crossfire situation.

The investigation showed that during this time, Sergeant Reedy fired his beanbag shotgun at Mr. Chavez three separate times. Each time Sergeant Reedy fired his beanbag shotgun, Mr. Chavez was trying to slowly crawl out of the ditch. After Sergeant Reedy fired his third round, Sergeant Leblanc got on the radio and asked for a sergeant with another beanbag shotgun.

Sergeant Leblanc began speaking with Mr. Chavez and explaining that they wanted to take him to the hospital to get help. Officer Adovasio was also on scene and started speaking with Mr. Chavez, trying to calm him down. Suddenly, Mr. Chavez stood up and lunged at the officers to the south with the metal object in his hand. Officer Nguyen, who was standing on the west side, discharged his duty weapon one time at Mr. Chavez. At the same time, Sergeant Reedy, who was still behind Sergeant Leblanc's patrol vehicle, discharged his beanbag shotgun. Mr. Chavez fell to the ground and rolled over and up onto his knees.

Sergeant Leblanc stated in his Internal Affairs interview, "*He - he's looking at us like he wants to come get us and he's trying to scan the scene to - to see what would be his best route out of that ditch to come at us, you could just tell by his look and so he - at one point makes a - a statement, makes a noise and he lunges out of the ditch and Sergeant (Reedy) shoots the beanbag shotgun at him, I'm still standing behind Sergeant (Reedy) and the other officers to the east of my patrol car at this point and time. I even kinda back up and run away a little bit because the guy came at us, Sergeant (Reedy) shoots the guy with the beanbag shotgun, it slows him down a little bit but now he has positioned himself closer to us and he's out of the ditch and back on the high ground or the elevated parking lot with us.*"

After Mr. Chavez came out of the ditch, Sergeant Leblanc backed up. Sergeant Reedy placed his beanbag shotgun on the ground and backed away from his position. BWC evidence shows that the officers to the south standing next to Sergeant Leblanc backed up when Mr. Chavez came out of the ditch and Officer Nguyen discharged his firearm and Sergeant Reedy deployed his beanbag shotgun. Sergeant Reedy and the officers then moved forward until Mr. Chavez crawled towards them causing them to back up again until an officer yelled "*stay the line*" and

the officers stopped. Sergeant Leblanc estimated the distance between Mr. Chavez and the officers to be 15 to 20 feet. Sergeant Leblanc also estimated Sergeant Reedy to be about 10 feet away from Mr. Chavez and Sergeant Reedy had moved behind a patrol vehicle to place cover between himself and Mr. Chavez.

Sergeant Leblanc drew his weapon again and walked towards Mr. Chavez. Mr. Chavez got up on his knees, crawled forward and looked around for several seconds. Sergeant Leblanc stated that it appeared that Mr. Chavez was about to throw the metal object, and Sergeant Leblanc began giving Mr. Chavez verbal commands not to throw the object. After looking around for several seconds, Mr. Chavez threw the metal object in the direction of the officers. When Mr. Chavez threw the metal object, Sergeant Leblanc backed up.

When questioned by Internal Affairs regarding why he did not use force to prevent Mr. Chavez from throwing the metal object if he believed that it could cause serious bodily injury or death, Sergeant Leblanc stated, *"He wasn't aiming it directly at me. Where he - where it looked like he was aiming was at these other officers to my right. I just made the decision right then and there not to do that because I wanted to give him the chance to comply and it wasn't like it was directed directly at me."*

After Mr. Chavez threw the metal object, Sergeant Leblanc pointed his weapon down. Then Mr. Chavez looked at the ground and grabbed the wires of a CED that had already been deployed and was laying on the ground. Mr. Chavez started pulling the CED towards him. Sergeant Leblanc stepped towards Mr. Chavez as he was pulling the wires, pointed his weapon at him, and stated, *"Don't do it."* When Mr. Chavez obtained the CED in both of his hands, Sergeant Leblanc discharged his weapon two (2) times at Mr. Chavez. After Sergeant Leblanc discharged his weapon, Officers Rubio, Tapia and Alvarado also discharged their weapons. Sergeant Leblanc and the officers discharged a total of twenty-one (21) rounds at Mr. Chavez, fatally wounding him.

The Houston Police Department (HPD) places the highest value on the life and safety of its employees and members of the community. The Houston Police Department's "Use of Force" policy provides that employees must use only the amount of force reasonably necessary to protect themselves or others to effect an arrest, or bring an incident under control, even if under the circumstances the law would allow the use of greater force. HPD policy requires that the "use of force must be objectively reasonable based on the totality of the circumstances." Additionally, HPD policy states, "the use of deadly force is limited to those circumstances in which officers reasonably believe it is necessary to protect themselves or others from the imminent threat of serious bodily injury or death." Pursuant to HPD policy, "employees who use force against any person must detail the specific reasons for using such force."

In both my messages to cadets on their first day at the Training Academy and in my video message to the entire Department, I present the Department's general principles on the use of force and stress that deadly force should only be used when there is an imminent threat of serious

bodily injury or death and when it is absolutely necessary. I emphasize that in handling critical incidents, the goal is for everyone, the officers, the suspects and citizens, to go home safely. To assist in achieving that goal, I discuss four tactics that an officer should use to his or her advantage to ensure the safe handling of an incident: time, distance, numbers, cover and concealment. If officers utilize these four tactics, as applicable and available to them under the totality of the circumstances, it will likely reduce the need to use force and ensure that any use of deadly force was necessary to protect themselves or others from the imminent threat of serious bodily injury or death.

As stated above, HPD policy requires that the use of force against a person must be objectively reasonable under the totality of the circumstances and that employees who use force against any person must detail the specific reasons for using such force. Sergeant Leblanc was asked to detail the specific reasons why he used force against Mr. Chavez for all of the lethal and less lethal force that he used against him during the incident. Sergeant Leblanc's "specific reasons" are detailed below:

Sergeant Leblanc explained in his Internal Affairs interview that he made the initial decision to discharge his beanbag shotgun at Mr. Chavez to prevent him from harming himself. Sergeant Leblanc stated, *"I have to make the – the decisive decision that I needed to shoot him with the beanbag shotgun to subdue him, to preserve his safety of life from himself. He was actively trying to kill himself in front of us. That's what I believed, that's what it showed, and so I fired my beanbag shotgun and struck him right then and there. I wanted it to incapacitate him, because, like I talked about, emergency detat- or detention orders earlier, he qualified for that right then and there. He's a danger to himself, he is a danger to others, who are us, his disobeying every lawful command from a police officer that was given to him, and I knew that we needed to detain this man and take him into custody for that at the very least."*

Under the totality of the circumstances, Sergeant Leblanc's use of his beanbag shotgun to prevent Mr. Chavez from harming himself was an objectively reasonable amount of force under the totality of the circumstances to attempt to detain Mr. Chavez and keep him from committing suicide.

Sergeant Leblanc told Internal Affairs that he deployed additional beanbag rounds at Mr. Chavez because Mr. Chavez started to advance towards him and Deputy Garduno with the metal object in his hand. Sergeant Leblanc stated, *"So I engage him with the, uh, soft-impact beanbag shotgun. He doesn't go down. I start - I shoot him three more times pretty quickly with that, because whenever I started shooting the first time, he got amped up and he started taking steps towards us."* Sergeant Leblanc went on to state, *"I immediately started back-peddling, and walking backwards quickly to keep distance between, uh, him and myself, and I fired the beanbag shotgun two more times pretty quickly. One right after another, because he's charging at me and he's still got his edged weapon, and he's holding it up in his hand, and he's showing no signs of complying or getting on the ground or that he doesn't want to hurt us, he's showing every sign that now he wants to come directly at us so I shoot the last two bean bag rounds that I*

have. I know I have no more and I see that this angry, agitated guy who was suicidal now appears to be homicidal because he's coming at me with his edge weapon and displaying every characteristic that he wants to hurt me directly now."

Under the totality of the circumstances, Sergeant Leblanc's use of his beanbag shotgun to prevent Mr. Chavez from causing harm with the metal object to Sergeant Leblanc or Deputy Garduno was objectively reasonable.

With regard to his first use of deadly force against Mr. Chavez, Sergeant Leblanc told Internal Affairs that he discharged his firearm at Mr. Chavez because Mr. Chavez was walking towards him and Deputy Garduno with a deadly weapon. Sergeant Leblanc stated, *"It's an edged weapon he could stab us with it and he's already displayed a will to stab himself and he has shown that he knows how to use that weapon in himself and I believe that he's gonna do it to us, he just stabbed himself in the head and the neck. If he's willing to do that to himself he's gonna do that to us and he's disobeying every command we gave him and he knows that he's coming at the police, he doesn't think that we're any regular citizen, he knows that we're police officers and he's coming at us to bring that deadly weapon to fight and harm us with."*

Sergeant Leblanc observed Mr. Chavez's erratic behavior cursing at the officers and inflicting injuries on himself with a metal object that he perceived to be a knife. Sergeant Leblanc and the other officers on scene made repeated attempts to verbally de-escalate the scene and utilized intermediate weapons that did not have the desired effect of gaining Mr. Chavez's compliance. In addition to using less lethal force, Sergeant Leblanc also used the tactics of distance and cover before using deadly force against Mr. Chavez by walking backwards quickly and retreating behind the cover of his patrol vehicle. Mr. Chavez then advanced towards Sergeant Leblanc and Deputy Garduno in an aggressive manner closing the gap to what Sergeant Leblanc believed to be within 10 feet of him. At this time, Sergeant Leblanc had an objectively reasonable belief that deadly force was necessary to protect himself and Deputy Garduno from an imminent threat of serious bodily injury or death and discharged his firearm two times in short succession. Under the totality of the circumstances, Sergeant Leblanc's use of deadly force when Mr. Chavez advanced towards both Sergeant Leblanc and Deputy Garduno was objectively reasonable and necessary to protect himself and Deputy Garduno from an imminent threat of serious bodily injury or death.

With regard to his second use of deadly force against Mr. Chavez, evidence from the investigation establishes that the following circumstances existed. At the time that Sergeant Leblanc used deadly force against Mr. Chavez for the second time, there were approximately 28 officers, deputies, and sergeants on the scene of this incident. Prior to Sergeant Leblanc's decision to use deadly force against Mr. Chavez, Mr. Chavez was seriously injured from being shot by firearm, struck by beanbag rounds, tased and stunned by CED, and multiple self-inflicted stab wounds. Sergeant Leblanc, being one of the first officers on scene, was present during all of the facts and circumstances leading to Mr. Chavez's physical condition prior to his use of deadly force. In fact, as detailed above, Sergeant Leblanc had himself deployed six beanbag rounds and

discharged his firearm two times at Mr. Chavez, and ordered officers to deploy their CEDs at Mr. Chavez. While no officer on the scene may have been fully aware of all of the prior uses of force, less lethal or deadly, that were used against Mr. Chavez or their effect, the evidence clearly establishes that prior to Sergeant Leblanc's second use of deadly force, Mr. Chavez was bleeding heavily and had at best limited mobility having spent the last 10 minutes of the incident inside a ditch either on his back or his knees. Additionally, the evidence shows that after the firearm discharge by Officer Nguyen and the simultaneous beanbag discharge from Sergeant Reedy, Mr. Chavez appeared to only be able to crawl on his knees.

Evidence from the investigation shows that when Mr. Chavez grabbed the wires of the CED and began to pull it towards him, Sergeant Leblanc moved towards Mr. Chavez and stated, "Don't do it." Evidence further shows that when Mr. Chavez obtained the CED in both of his hands, Sergeant Leblanc, Officer Tapia, Officer Rubio, and Officer Alvarado discharged their duty weapons at Mr. Chavez. In this second instance, Sergeant Leblanc discharged his firearm two (2) times at Mr. Chavez.

Sergeant Leblanc stated, "So Mr. (Chavez) pulls this taser towards him. He grabs it in the shooting grip. Like if you were gonna grab a pistol or you're going to shoot a taser. He grabs it in that type of grip. He doesn't turn it at himself to inflict pain or harm or death on himself. He never looks at it to shoot himself. He looks directly at me. I told you I'm telling him, 'Don't - don't do it.' I explained this as what it was and what - what had happened." Sergeant Leblanc went on to say, "I'm afraid he's gonna shoot me in the head. He's gonna shoot me somewhere that that's gonna incapacitate me, cause me serious bodily injury and or death and at that moment I make the decision to fire my duty weapon - my pistol at him two more times to end that threat."

Given the totality of the circumstances described above, Sergeant Leblanc's second use of deadly force against Mr. Chavez is not objectively reasonable. First, the evidence establishes that the CED obtained by Mr. Chavez did not pose an imminent threat of serious bodily injury or death to Sergeant Leblanc, which was the only "specific reason" for using force that he detailed. Evidence from the investigation establishes that the CED was fully deployed by Officer Leija and placed on the ground by her to prevent Officer Tapia from tripping over the wires. The CED remained on the ground for an additional 10 minutes without any officer, including Sergeant Leblanc, picking it up or determining whether it had a dart in it.

Additionally, Sergeant Leblanc told Internal Affairs that he "believed that I was like 15-20 feet range which I know is still the effective range for if he shot taser darts at me that it could have an effect on me." Sergeant Leblanc admitted to Internal Affairs that he knew from his training in the Academy that the "effective" range of a CED is "roughly 21 feet." Evidence from the investigation establishes, however, that Sergeant Leblanc was approximately 30 feet away from Mr. Chavez prior to Mr. Chavez pulling the wires of the CED and Sergeant Leblanc's own BWC video clearly shows him advancing closer to Mr. Chavez while telling Mr. Chavez, "Don't do it." Even with advancing towards Mr. Chavez, the evidence establishes that Sergeant Leblanc

still remained outside of the effective range of the CED when he used deadly force against Mr. Chavez. In fact, the evidence establishes that at the time Sergeant Leblanc and the other officers used deadly force against Mr. Chavez based on their perceived threat of the CED, only Sergeant Reedy was within the effective range of the CED and he was behind the cover of a patrol vehicle. Despite being the closest distance to Mr. Chavez and within the effective range of a CED, Sergeant Reedy did not discharge his weapon when Mr. Chavez obtained the CED.

Even if the CED had not been fully deployed and Sergeant Leblanc or the other officers were within its effective range, Sergeant Leblanc's use of deadly force was not necessary to protect himself or the other officers from an imminent threat of serious bodily injury or death under the totality of the circumstances. Sergeant Leblanc estimated the size of the parking lot to be *"at least a half football field."* Further, BWC video shows both he and other officers creating distance between themselves and Mr. Chavez continually throughout the scene when Mr. Chavez threatened them with what all believed to be an edged weapon. Yet, when faced with the option of moving out of what he perceived to be the effective range of the CED or using deadly force, Sergeant Leblanc chose to move towards the perceived threat and to use deadly force. When asked by Internal Affairs if he could have created distance, Sergeant Leblanc replied, *"At that point I didn't see anywhere else we could really go at that point. We had patrol vehicles and some random car behind us that, uh, I think it was like a black Buick or something that was not involved in the scene it just happened to be in the parking lot. That is right behind us, um, and then right behind that you have that tall perimeter fence unless it was on the south side of - of the, uh, restaurant parking lot."*

Sergeant Leblanc's claim that there was nowhere for him or the other officers to go to create distance from the perceived threat of the CED is contradicted by the evidence, including his own statements. The evidence establishes that if he and the other officers would have moved back towards the available space in the direction of the *"random car behind us"* or the *"tall perimeter fence,"* they would in fact be clearly outside of the effective range of the CED in the hands of Mr. Chavez. Additionally, Sergeant Leblanc's statement that they had nowhere else to go and maintain the scene is also contradicted by Crime Scene Unit Photo #13938865 which shows the perspective of the parking lot and all of the surrounding area that Sergeant Leblanc could have utilized around him to create distance from the perceived threat of the CED.

When Internal Affairs asked Sergeant Leblanc if at any point he could have created distance, Sergeant Leblanc responded, *"No I did not see that opportunity and I did not see that opportunity because that happened very quickly. That was one of those times where things were happening very fast and like I said that six to seven seconds that's very quick and I did not see an opportunity to do that."* Again, Sergeant Leblanc's statement is contradicted by his own actions. Sergeant Leblanc's BWC video shows Sergeant Leblanc had time to and in fact did move forward towards Mr. Chavez while Mr. Chavez was pulling in the CED. If Sergeant Leblanc believed himself to be within the effective range of the CED, then he had time to move backwards to create distance instead of forward towards Mr. Chavez. In any event, the evidence

establishes that Sergeant Leblanc remained outside of the effective range of the CED even after moving forward towards the perceived threat.

As detailed above, at the time of Sergeant Leblanc's firearm discharge, Mr. Chavez was seriously injured and had limited mobility. Given the number of officers on the scene, Mr. Chavez's physical condition, and the amount of space available in the parking lot, Sergeant Leblanc's decision to move forward towards the perceived threat and use deadly force rather than to create distance is not objectively reasonable under the totality of the circumstances.

In addition to failing to create distance, Sergeant Leblanc also failed to utilize the cover and concealment that was available to him and the officers on the scene. Officer Tapia, who was on scene, admitted to Internal Affairs that the officers could have used either of the two patrol vehicles nearby to protect themselves from the CED if necessary. Crime Scene Unit Photo #13938865 shows a patrol vehicle to the left of Sergeant Leblanc and one to the right of Sergeant Leblanc. Sergeant Leblanc could have used either of these vehicles as cover instead of using deadly force against Mr. Chavez. In fact, Sergeant Reedy utilized the patrol vehicle to the officers' left for cover and concealment and did not discharge his weapon when Mr. Chavez obtained the CED. Additionally, there was a personal vehicle, described by Sergeant Leblanc as a Buick, which also could have been utilized by Sergeant Leblanc to provide cover and concealment while still maintaining a sightline of Mr. Chavez.

Sergeant Leblanc stated to Internal Affairs that at the time of his use of deadly force that *"I didn't see anywhere else we could really go at that point. We had patrol vehicles and some random car behind us that, uh, I think it was like a black Buick or something that was not involved in the scene it just happened to be in the parking lot."* When Mr. Chavez is fully mobile and charging towards Sergeant Leblanc and Deputy Garduno earlier in the incident, Sergeant Leblanc described both creating distance and taking cover: *"As he charged towards us I backed up so did the deputy and I fired those last two rounds from my bean bag shotgun. They had no effect he was still noncompliant. And I turn around and at that point and I ran behind my patrol vehicle."* Yet, when a seriously injured Mr. Chavez is pulling in a CED while on his knees, Sergeant Leblanc chose to use deadly force against him rather than to move to a place of cover and concealment behind a vehicle.

In sum, the evidence from the investigation, including BWC video and Sergeant Leblanc's own statements, clearly establish that his use of deadly force was not objectively reasonable under the totality of the circumstances, including but not limited to the number of officers on the scene, Mr. Chavez's physical condition, position, threat to and distance from the officers, the available space in the parking lot, and the available cover and concealment. Further, Sergeant Leblanc's use of deadly force was not necessary to protect either himself or others from the imminent threat of serious bodily injury or death. Therefore, Sergeant Leblanc violated HPD's "Use of Force" policy.

Additionally, Sergeant Leblanc violated the Department's policy on supervisory conduct when he failed to take control of the scene as the supervisor in charge and devise a plan that would de-escalate the situation and bring the incident under control. Approximately 28 officers arrived at the scene. Many of these officers drew their firearms when they arrived, but Sergeant Leblanc failed to give them specific instructions about where to go and what their role would be. Additionally, Sergeant Leblanc failed to take and maintain command of the scene when he allowed multiple, less experienced officers to also give commands to both Mr. Chavez and other officers on the scene. Although Sergeant Leblanc instructed the officers not to approach Mr. Chavez, Sergeant Leblanc failed to continuously assess the situation and to instruct the officers to maintain or create distance or to look for cover and concealment as necessary. When Mr. Chavez started to pull the CED towards him, Sergeant Leblanc chose to engage Mr. Chavez, and to use deadly force against him rather than to utilize other readily available options and to instruct the officers to do so as well. Rather than supervise the incident by devising a plan and giving the officers on-scene commands and de-escalation options, Sergeant Leblanc chose to engage Mr. Chavez and become part of the scene that resulted in the death of Mr. Chavez.

Sergeant Leblanc was asked by Internal Affairs if there was anything he learned from this incident that he could pass on to other sergeants. Sergeant Leblanc responded, "*You know. I really don't think that there's anything that could've changed the outcome of this but if we're talkin' about things that could be better maybe let's, uh, try to explore other better less lethal options.*" Sergeant Leblanc's failure to identify other options and acknowledge how his use of deadly force could have been avoided is concerning to me. When Sergeant Leblanc could have used any option such as time, distance, numbers, and cover and concealment to eliminate any imminent threat that he may have perceived was posed by the CED and create more time for the safe handling of this incident, Sergeant Leblanc instead inexplicably used deadly force against Mr. Chavez in violation of HPD policy. Further, his failure to adequately supervise the other officers on the scene and instruct them on the use of available options of creating distance and taking cover, contributed to the officers' failure to comply with the Department's "Use of Force" policy.

Based on all of the factors above, Sergeant Leblanc's use of deadly force was not objectively reasonable under the totality of the circumstances. Additionally, Sergeant Leblanc's actions at the scene demonstrated a clear lack of sound judgment and were not reasonable or prudent.

The General Orders violated by Sergeant Leblanc are as follows: 200-08 – Conduct and Authority and 600-17 – Use of Force. Sergeant Leblanc was previously furnished copies of these General Orders.

GENERAL ORDERS

Conduct and Authority, Order No. 200-08, dated May 9, 2019, states in part, but is not limited to:

1 CONDUCT AND BEHAVIOR

SOUND JUDGMENT

Employees are expected to exercise sound judgment at all times. Employees' behavior shall be limited to conduct that is reasonable and prudent. No employee shall commit any act on or off duty in an official or private capacity that may bring reproach, discredit, or embarrassment to the department.

8 SUPERVISORY CONDUCT

Supervisors shall actively enforce the law and the policies and procedures of the Houston Police Department. Supervisors shall not permit or otherwise fail to prevent violations of the law or the rules, regulations, policies, or procedures of the Houston Police Department by any employee.

Use of Force, Order No. 600-17, dated September 30, 2015, states in part, but is not limited to:

1 GENERAL USE OF FORCE PRINCIPLES

Use of force must be objectively reasonable based on the totality of the circumstances. The circumstances justifying the initial use of force may change during the course of an event. It is the duty of all employees to constantly assess the situation and adjust the use of force accordingly. Employees who use force against any person must detail the specific reasons for using such force.

Employees are authorized by law to use force to protect themselves or others, to effect an arrest, or to maintain custody of those arrested. When dealing with members of the community, suspects, or prisoners, employees must use only the amount of force reasonably necessary to protect themselves or others, to effect an arrest, or to bring an incident under control, even if under the circumstances the law would allow the use of greater force.

5 USE OF DEADLY FORCE

The use of deadly force shall be limited to those circumstances in which officers reasonably believe it is necessary to protect themselves or others from the imminent threat of serious bodily injury or death. Officers shall consider their immediate surroundings and the safety of uninvolved persons before using deadly force.

Pursuant to all applicable statutory and case law, on September 2, 2020, Sergeant Leblanc was given an opportunity to meet and explain the above events to his chain of command and me at his Disciplinary Review Hearing (DRH). At his DRH, Sergeant Leblanc read a prepared

statement and respectfully advised that he would not answer questions from me or his chain of command. In his prepared statement, Sergeant Leblanc told me that he believed he acted in accordance with his "training, HPD policy, sound judgment and common sense" under the "circumstances present" and the "changing dynamics at the scene." At his DRH, Sergeant Leblanc further stated that he believed that it "should be obvious" to anyone reviewing the BWC video that "all the officers at the scene wanted this incident to end peacefully."

What was "obvious" to the chain of command and me from watching the BWC video of this incident is that Sergeant Leblanc and the other officers on the scene utilized the tactics of verbal commands, creating distance and taking cover in accordance with "training, HPD policy, sound judgment and common sense" during their initial encounter with Mr. Chavez, when he was fully mobile, armed with an edged weapon and arguably posed the greatest threat. Additionally, it was "obvious" that Sergeant Leblanc and the officers continued to utilize these tactics throughout this incident. Yet, when a seriously injured, heavily bleeding Mr. Chavez, while on his knees started pulling the wires of the empty CED towards himself and obtained it, Sergeant Leblanc chose to use deadly force against him rather than create distance or take available cover. In fact, the evidence clearly establishes that Sergeant Leblanc was outside of the effective range of the CED and that he actually moved towards the perceived threat of the CED rather than utilize any of the other options available to him.

It is the duty of all employees to continuously assess the situation and to adjust their tactics and force options accordingly. Sergeant Leblanc's belief that his only option when Mr. Chavez was pulling the wires of the CED toward himself was to yell "*Don't do it,*" move towards the perceived threat and use deadly force against Mr. Chavez was not objectively reasonable under the totality of the circumstances. Sergeant Leblanc told Internal Affairs that deadly force was necessary to protect *himself* from being shot by the CED: "*He's gonna shoot me somewhere that that's gonna incapacitate me, cause me serious bodily injury and or death and at that moment I make the decision to fire my duty weapon - my pistol at him two more times to end that threat.*"

Sergeant Leblanc did not and cannot explain to his chain of command and me how the CED posed an imminent threat of serious bodily injury or death to him given Mr. Chavez's physical condition, the number of officers on scene and most significantly, Sergeant Leblanc's distance from Mr. Chavez. Nor can Sergeant Leblanc explain why, if he believed that the CED posed an imminent threat of serious bodily injury or death once obtained by Mr. Chavez, he chose to move from his position outside of the effective range of the CED towards the perceived threat rather than utilize any of his other available options. Contrary to his prepared statement, Sergeant Leblanc's actions were neither reasonable nor prudent and did not comply with HPD's "Use of Force" policy.

Further, Sergeant Leblanc's conclusory statement at his DRH that "it was Mr. Chavez's own actions that compelled the use of deadly force" is extremely concerning given the facts and circumstances detailed above. For Sergeant Leblanc to state that he was "compelled" to use deadly force against Mr. Chavez totally contradicts the mandate of the Houston Police

Police Officers'
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Of the City of Houston

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Indefinite Suspension
Benjamin Leblanc
Police Sergeant
Employee # [REDACTED]

Department and of policing in general to uphold the fundamental guiding principle to protect and preserve the sanctity of life. Sergeant Leblanc's use of deadly force was not objectively reasonable under the totality of the circumstances nor was it necessary to protect himself or others from an imminent threat of serious bodily injury or death. If an officer's use of deadly force is determined not to be objectively reasonable under the totality of the circumstances in violation of HPD policy, indefinite suspension is mandated and is why it is the unanimous decision of the chain of command.

I have also considered Sergeant Leblanc's disciplinary history, work record, and history in the Houston Police Department in determining the severity of discipline. Sergeant Leblanc is hereby reminded of his right to appeal my decision and is informed that he has 15 days after receipt of a copy of this memorandum within which to file a written appeal to the Police Officers' Civil Service Commission, located at 611 Walker, 4th Floor, Houston, Texas 77002. Sergeant Leblanc is informed that pursuant to Section 143.1016 of the Texas Local Government Code, he may elect to appeal to an independent third party hearing examiner instead of to the Commission. If Sergeant Leblanc elects to appeal to an independent third party hearing examiner, he waives all rights of appeal to a district court except as provided by Subsection (j) of Section 143.1016 of the Texas Local Government Code.


Art Acevedo
Chief of Police

aa:djy

cc: Benjamin Leblanc
Police Sergeant

MC/650K