

**IN THE MATTER OF ARBITRATION
BEFORE BRIAN CLAUSS, ARBITRATOR**

PIERCE COUNTY DEPUTY SHERIFF'S)	
INDEPENDENT GUILD, #1889)	
)	
Union,)	
)	
and)	Grievant: Deputy [REDACTED]
)	Termination
PIERCE COUNTY, WASHINGTON/ PIERCE COUNTY SHERIFF'S DEPARTMENT)	Grievance: 134823-P-22
)	
)	
Employer.)	

APPEARANCES

For the Union:

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For the Employer:

Jana Hartman
Pierce County

Hearing Date: August 4, 2022
Hearing Location: Video Conference

INTRODUCTION

Pierce County Deputy Sheriff's Independent Guild, #1889 ("Union") and the Pierce County/ the Pierce County Sheriff's Department ("Employer" or "Department") are parties to a Collective Bargaining Agreement. [REDACTED] ("Grievant") was a deputy. Following an investigation and disciplinary proceedings, Grievant was terminated for violating the Department's Truthfulness Policy.

The Union filed a grievance alleging the termination was without just cause. The parties were unable to resolve the matter through the grievance process, and it was set for hearing. The arbitrator was selected pursuant to the procedures of the Washington State Public Employment Relations Commission Law Enforcement Arbitration Roster and the hearing was held via the Zoom platform on August 4, 2022. All parties were given full opportunity to present witness testimony, documentary evidence, photographs, videos, and opening statements at that hearing. The parties submitted post-hearing briefs.

FACTS

The parties agreed that the facts are not in significant dispute. [REDACTED] has been Undersheriff since July 2017. He joined the Department as a Patrol Deputy in 1989 and rose through the ranks. A complaint was received by the Department regarding Grievant's testimony in a domestic violence prosecution. The complaint came from the Deputy Prosecuting Attorney who had handled the prosecution of Grievant's father for domestic battery. Grievant's father is a Sergeant in the Department. The complaint was that Grievant produced a photograph prior to trial and that Grievant's testimony at trial regarding her mother's injury differed from Grievant's description of those injuries during the interview with detectives. According to the prosecutor, Grievant minimized her mother's injury and first supplied the photograph to her father and not to the prosecutor or the assigned detectives. Grievant told detectives that her father was the aggressor and told the court that her mother was the aggressor.

Undersheriff [REDACTED] explained that the Department's Command Channel Review is through a sergeant, lieutenant captain or Bureau Chief, and Undersheriff. The Sheriff

has the ultimate decision to terminate a Department member. The Sheriff decided to terminate Grievant.

The Undersheriff continued that Grievant was terminated for violating the Truthfulness Policy found in Department Policy 1001.3. According to the Undersheriff, veracity obviously is fundamental to police work. Grievant took an oath when she joined the Department and her actions violated that oath. Absent truthfulness, law enforcement cannot function.

He continued that Grievant joined the Department in 2017 and was the first hire of the year. She came with prior experience. Her onboarding process lasted approximately six weeks and then she went to the Academy for training. Following graduation from the Academy, she had sixteen weeks on patrol with a Field Training Officer. She was released to the street following successful completion of her FTO rotation. She has been the initial or supplemental report author in more than one hundred domestic violence matters while a street deputy.

Undersheriff [REDACTED] agreed that Department training for testimony is to answer what is asked and not to volunteer additional information. A Department member shall not intentionally omit pertinent facts. If a Department member recalls more facts about an incident, they are obligated to notify the Department. It was troublesome to the Undersheriff that Grievant first noted that her mom was the aggressor at trial. He was not aware if the investigation was considered closed at the time of trial.

The Undersheriff detailed Grievant's disciplinary history as a written reprimand in October 12, 2020, and a twenty-hour suspension in March 2021 for a failure to report a domestic violence incident involving her father. Here, the decision to terminate deviated from progressive discipline because it was a major cause infraction warranting dismissal from the Department. Grievant was discharged for her untruthfulness. The Undersheriff was part of Command Channel Review and concurred with the Sheriff's termination decision. He reviewed Grievant's statement prior to his concurrence.

The Undersheriff explained that this was not an out of court untruthful statement. Because the untruthful testimony was under oath, it was a serious infraction warranting

discharge. Her discharge was also reported to the Criminal Justice Training Commission as a Do Not Hire.

The Undersheriff discussed a matter in which another deputy was not disciplined for lying about the Sheriff throwing chairs during a meeting. Because it occurred as part of Union-related activity, the deputy was not disciplined. He also discussed another deputy who lied about a collision and tried to get another deputy to lie about it. He discussed another matter involving discipline for a deputy who displayed his credentials when stopped on a DUI while boating incident. The Undersheriff saw a distinction between those matters and this matter because this matter involved courtroom testimony under oath. Further, the disciplined deputies cited above acknowledged their misconduct – something Grievant did not do.

The Undersheriff agreed that neither Grievant's mother nor her father, the accused in the underlying DV prosecution, were interviewed by Department investigators about this incident. During the investigation, Grievant was pulled from a training and interviewed about the DV incident. She was asked three times whether she had any photos. She told investigators that she had no photographs. A "selfie" photograph of Grievant and her mother was later turned over to the prosecutor by the defense attorney for Grievant's father. Upon receipt, the photo was added to the investigation. No detective was assigned to perform subsequent investigation following the tendering of the photograph.

The Undersheriff agreed that Grievant was not an occurrence witness to the incident that led to criminal charges against her father. She was a witness to her mother's statement about the incident. He also agreed that deputies are trained to answer what is asked and not elaborate.

The Undersheriff also noted that the photograph produced by Grievant was consistent with her trial testimony. There was no observable bruising in the photograph. The Undersheriff could see no injury in the photograph. He noted that Grievant had been with the Department for approximately 18 months when the incident between her parents occurred. He also agreed that Grievant provided the photograph when discovered. Her method of first sending the photograph to her father was wrong. The photograph should have gone to the investigators first.

The Undersheriff agreed that Grievant was a young deputy put into a difficult situation.

[REDACTED] is a Deputy Prosecuting Attorney for Domestic Violence and Human Trafficking prosecutions in Pierce County. She joined Pierce County in 2019 after thirteen years with another county prosecutor's office. In the other county, she also held a position as a Sex and Trafficking prosecutor. Ms. [REDACTED] testified about receiving a photograph of Grievant and her mother. She received the photograph from the criminal defense attorney in the DV case approximately three days before the December 9, 2020, trial date on the DV charges.

Ms. [REDACTED] called Grievant on December 6, 2020 and discussed the photograph. The conversation was not recorded and Ms. [REDACTED] also did not take notes during the discussion. According to Ms. [REDACTED], Grievant "provided some different information during the interview" than what was contained in the police reports. Ms. [REDACTED] testified that she did not have a third party witness on the telephone call.

Ms. [REDACTED] stated that Grievant told her that she and her mother were extremely intoxicated at a bachelorette party when her mom made the statements about the possible DV incident. Grievant stated that intoxication affected her observations during the conversation. Despite not having notes of the conversation, Ms. [REDACTED] recalled the different perspective Grievant had during the conversation and how it deviated from her earlier statements to detectives.

According to Ms. [REDACTED], at trial Grievant testified that (i) her mother had admitted being the aggressor, (ii) her mother lies while intoxicated, and (iii) the incident began over a TV remote. Grievant originally told investigators that the bruising was a cause for concern and that Grievant was also concerned for her mother's safety. Grievant also admitted to giving the photograph to her father upon discovery. Grievant also told Ms. [REDACTED] that the photograph had not yet been tendered to the police.

The matter was continued on the December 6, 2020 trial date. It was also reset on January 6, 2021. The case went to trial on February 12, 2020. The verdict was a not-guilty.

Ms. [REDACTED] agreed that the bond order or other court orders did not prohibit Grievant from having contact with her father or her father having contact with Grievant. Following her receipt of the photograph from defense counsel and her conversation with

Grievant, she did not direct the detectives to contact Grievant for a follow up interview. The photograph was shown to the jury. According to Ms. [REDACTED], Grievant testified that her mother lies while intoxicated and that Grievant was also intoxicated during the conversation with her mother at the party. Ms. [REDACTED] stated that Grievant's testimony was supportive of her father.

Grievant testified that she joined the Department as a Correctional Officer in January 2017 and received an offer to become a patrol deputy in February 2017. Her onboarding process lasted approximately six weeks and then she went to the Academy for training. Following graduation from the Academy, she had sixteen weeks on patrol with a Field Training Officer. She was released early from the FTO program after fourteen weeks due to successful completion of the program. She was released from her FTO in December 2017 and began working a normal street deputy rotation of four ten-hour shifts. She started out on third watch working overnights and was moved to the wing shift in 2018. She was later assigned to a school resource officer position for six months at a local school. She returned to street patrol in January 2019 until July 2019.

Grievant had been in patrol approximately one year when the incident happened with her parents and her father was charged. Her father was a patrol sergeant in the Department. She explained that she was downloading photographs in early December and found the selfie with her mother. The photograph was taken at the August bachelorette party. She sent the photo to her father with the text message "what do I do?" Her father replied, "I will send it to [defense counsel]." Her father sent the photograph to defense counsel who forwarded it to Ms. [REDACTED]. Grievant confirmed with her father that the photograph had been forwarded.

Grievant had a conversation with Ms. [REDACTED] later that day for approximately ten minutes. She informed the prosecutor that the photograph was discovered when downloading photographs on her cell phone. Ms. [REDACTED] asked Grievant what the photograph showed and Grievant replied "I cannot see a lot of bruising in that photograph." When asked about how the incident began, Grievant said, "I was highly intoxicated. . . but that mom said it was about the [television] remote." The prosecutor asked if Grievant was still willing to testify. Grievant replied "[I] will do it if needed, but this should not go to trial."

Grievant continued that she recalled seeing bruising on her mother's face. She testified to that fact at trial. Her fiancé was also present at the wedding on September 9 when her father poured a drink on her mother. The incident with the remote happened, according to her mother, the day before the bachelorette party. The bachelorette party was on August 24 so the incident involving the television remote was August 23. The selfie was taken August 24.

Grievant continued that the detectives pulled her from a Department training to interview her on September 10, 2019. She had no intent to mislead the detectives and did not believe she had any photographs. She also told the deputies that both she and her mother were highly intoxicated during the bachelorette party conversation. She also explained that her father developed a drinking problem following the line of duty murder of Deputy McCartney in 2018. Deputy McCartney was on Grievant's watch and responded to an in-progress burglary without backup due to other in-progress calls. Grievant was also on duty when the incident occurred. Deputy McCartney was murdered by the burglary suspect. According to Grievant, her father took the loss of one of the deputies in his command very hard. That is when her father's drinking started.

Grievant further testified that she had not been a deputy for long when interviewed by the Detectives. She answered their questions as trained, with straightforward answers. She elaborated if asked to elaborate. She was highly intoxicated during the conversation with her mother at the bachelorette party and, as time passed, began to remember more about the conversation. Also, she never denied that there was "an altercation" between her parents. Grievant felt isolated and did not ask a supervisor what to do with the photograph. Instead she asked her father. She did not tell the detectives that her mom spoke of being the aggressor during their drunken conversation.

Grievant was placed on administrative leave approximately two weeks after her father's trial in March 2020. She was de-deputized. The Attorney General declined prosecution in May 2021 and she was terminated on June 11, 2021. The IAD report cited her for a failure to report the incident at the wedding reception and for lack of truthfulness while testifying. Her fiancé was also disciplined for the failure to report the wedding reception incident.

ISSUE

Whether the Pierce County Sheriff's Department had just cause to terminate Deputy [REDACTED] and, if not, what remedy?

POSITIONS OF THE PARTIES

The Employer

The Department maintains that it has just cause to terminate Grievant. Grievant was faced with a choice to testify truthfully or to testify untruthfully in support of her father. Unfortunately, she chose the latter and made herself untrustworthy as a deputy. According to the Department:

Ms. [REDACTED]'s failure and future inability to testify credibly prevents her from performing the official functions of a PCSD deputy. For these reasons her termination is supported by just cause and should be affirmed. (Dept. Br. at 3)

The Department's rule provides: "Employees shall not intentionally omit or withhold pertinent information or make false or fraudulent statements, either orally or in writing, or induce others to do so." According to the Department, the decision of the Attorney General not to charge Grievant with perjury is irrelevant because the criminal law has a higher burden of proof. When analyzing the instant matter under a "preponderance of the evidence" standard, Grievant violated the cited rule.

The Department argues that the key inquiry is "whether the discrepancies between the statements, and Ms. [REDACTED]'s withholding of physical evidence from investigators, amount to a violation of PCSD Policy 1001.3." (Dept. Br at 4) According to the Department, Grievant should be judged as a trained law enforcement officer familiar with investigations and criminal proceedings. Grievant had been trained, taken reports in scores of domestic violence matters, and was familiar with court proceedings. The Department maintains that Grievant testified untruthfully when asked the question at trial whether she "[knew] anything about domestic violence investigations", and Grievant responded "No, I do not." According to the Department this was a "demonstrably untrue statement."

The Department points to the following as an example of Grievant's untruthfulness at pages 5 and 6 of the Brief:

During her September 2019 investigative interview with Det. [REDACTED] and Det. Sgt. [REDACTED], Ms. [REDACTED] stated she "knew something wasn't right" regarding the altercation between her mother and father. (Ex. 15 at 9). However, at trial [REDACTED] testified she "wasn't concerned for her mom's safety and didn't feel a need to report it."

The Department sees these two statements as an indication of untruthfulness.

The Department also argued that she failed to tell the investigators that witness [REDACTED] stated that Grievant's father beat Grievant's mother, [REDACTED].

The Department contrasts another statement to investigators with trial testimony to demonstrate untruthfulness at Brief page 6. According to the Department, Grievant told investigators :

[S]he saw bruising on her arm "kind of tucked weird under one of her arms" (Ex. 15 at 18-19); she described the bruise to her mother's eye as "[i]t was to the top part of her eye and it was just kind of the whole top part. It was just black." (Ex. 15 at 18-19); she described a bruise to the thigh, stating, "[s]he did have a bruise on the inner part of one of her thighs. As well too. And that looked like a few multiple bruises." (Ex. 15 at 18-19)

The Department notes the trial testimony as evidence of untruthfulness by "minimizing and omitting those details" as follows:

When asked if she noticed "a couple of bruises on her [mother]", Ms. [REDACTED] testified, "I believe so...the whole thing is pretty foggy, but I believe so. I'm not 100 percent." (Ex. 13 at 8). She continued that "I thought I might have noticed a tiny little cut or bruise on her nose, but at that time I didn't notice anything else." (Ex. 13 at 31). When asked on the stand if she could describe in detail what the bruise on her eye looked like, contrary to the description she provided during her investigative interview Ms. [REDACTED] testified, "Not really, no. I just saw that there was a tiny bruise on her eye." (Ex. 13 at 19).

The Department also cites at Dept. Brief pages 6-7 the September 2020 IAD interview as evidence of the untruthfulness of Grievant's trial testimony:

Ms. [REDACTED] stated she was "unsure" about whether her mother had sustained a black eye, stating, "...I only remember what appeared to possibly

look like a black mark, but we were unsure if it was make-up or if it was her eye.” (Ex. 1 at 2).

According to the Department, Grievant provided investigators with “a very clear, detailed recollection of her mother’s statements” including that her mother did not say anything about a physical altercation. Further,

[Grievant] elaborated that her mother and father had been in a verbal altercation and “at one point [her father] had apparently put her [mother] in some type of hold around her neck...[a]nd that she had been trying to pull away and get his arm off of her, and apparently that’s how the bruises happened”. (Ex. 15 at 2). She described her mom feeling like she couldn’t breathe and that she was scared.

The Department notes a significant change between the above account provided to investigators and the testimony at trial. The Department notes at Dept. Brief pages 7-8, that Grievant completely changed her account of her mother’s statement at trial when Grievant testified:

“She said that her and my dad had been in an argument the night before...apparently at one point she had started getting physical”; “at one point she had kicked him in the ribs”. (Ex. 13 at 8-10). When asked to clarify that her mother had told Ms. [REDACTED] “[s]he said she was getting physical”, Ms. [REDACTED] responded, “Yes. The whole thing started because she was getting physical over the remote, is what started the whole thing.” Ex. 13 at 8-10). She again stated “[i]t started with her getting physical and that is why my dad grabbed her.”

According to the Department, the testimony contradicts her statements to investigators and is more than additional recollection of facts. The Department sees the testimony as a fabrication.

The Department cites the photograph as indication of untruthfulness. Grievant told investigators that she had no photographs of her mother from the bachelorette party -- both during the interview and again when an investigator contacted her. However, she testified at the hearing that she found a photograph when downloading photographs. This discovery occurred after the motions *in limine* had been argued at the father’s trial. The Department asserts that sending the photograph to her father instead of contacting detectives or the prosecutor was an example of untruthfulness. The Department argues

that Grievant's arbitration testimony about being confused should be rejected as a further example of untruthfulness.

The Department maintains that Grievant was untruthful in her conversation with the prosecutor on December 6, following the discovery of the photograph. First, Grievant "materially added to the story she previously provided to the investigative interviewers" that it was difficult to see bruising on her mother's face because of makeup. Second, Grievant told the prosecutor that she was highly intoxicated at the bachelorette party, and it affected her recollection of what she observed.

The Department continues that Grievant was also untruthful when she did not disclose that her mother stated she was the aggressor in a dispute about a television remote. The Department reaches this conclusion from the email that the prosecutor sent to defense counsel pursuant to Brady obligations. According to the Department, because the prosecutor's disclosure did not include the points about the remote and the wife being the aggressor, Grievant never told her. To the Department, this is another example of untruthfulness.

The Department also argues that Grievant's trial testimony that she was not disciplined for failing to report the domestic violence incident is untrue. Grievant testified:

I've already been questioned by my department regarding that and have faced whatever they have decided regarding that incident, and I did not receive any disciplinary action in the eyes of the department."

However, the investigation interview was September 2019 regarding the domestic violence incident and the IAD investigation did not commence until July 2020. The investigation and recommendation was not completed until December 2020. The IAD investigation was initiated five months after trial, therefore Grievant was untruthful when she stated that she had been questioned by the Department and had not faced discipline.

The Department notes at Dept. Brief page 9 that Grievant admitted not being truthful with an investigator:

Ms. [REDACTED] admitted at trial that she was untruthful during her investigative interview. She was asked, "So this statement that you gave to Sergeant [REDACTED] regarding this particular piece of it is not true?" Ms. [REDACTED] responded, "That's correct." (Ex. 13 at 41-43).

The Department also urges rejection of Grievant's testimony about her recall of events over a period of five months from the interviews to the trial. Grievant's memory of who was the aggressor and the television remote returned, but the memory of her mother's injuries faded is simply unbelievable.

The investigation of Grievant's conduct was proper and the command channel review process was followed. Grievant was afforded all her rights under the Agreement and termination was the agreed discipline.

The Department maintains that termination was a proper result and that other officers' discipline for untruthfulness is not comparable. The Department relies on a decision of the North Carolina Supreme Court in a disciplinary matter involving a North Carolina State Trooper as providing the framework for how disciplinary matters should be analyzed. According to the Department, the North Carolina Supreme Court cited the factors of:

[S]everity of the violation, the subject matter involved, the resulting harm, the trooper's work history, and discipline imposed in other cases involving similar violations was an appropriate and necessary component of a decision to impose discipline.

Regarding the facts of this matter, the Department points out that Grievant provided untruthful statements during a DV investigation. She was also untruthful at trial when her "testimony in trial and under oath that was inconsistent (at best) with her prior statements." (Dept. Br at 12) Moreover, Grievant first indicated that her mother was the aggressor while testifying and had never told investigators or the prosecutor. This was material evidence that affected the outcome of the trial.

In short, Grievant cannot be trusted because "[Her] change in testimony and omission of relevant and material evidence constituted a severe violation of Policy 1001.3. (Dept Br. at 12-13)

The decision to terminate was proper. In her short career Grievant had two prior disciplines, a written reprimand for "Performance" and "Courtesy" from October 2020 and a twenty-hour suspension for "Department Responsibilities" and "Member Actions" in March 2021. Here, the Department appropriately deviated from Progressive Discipline because she was untruthful to investigators and while testifying. In comparison to other

officers who received lesser penalties for being untruthful, the Department distinguishes those because they did not affect the outcome of a criminal trial and did not occur on the witness stand. Specifically, Deputy [REDACTED] lied about his whereabouts during a workday, and Deputy [REDACTED] lied about damage to his patrol vehicle. Those infractions were minor in comparison to Grievant's misconduct.

The Union

The underlying criminal prosecution of Grievant's father, a sergeant with the Department, was over allegations of domestic violence that occurred on August 23, 2019, and September 7, 2019. Grievant was not a witness to the August 23, 2019, event. She learned of the event during a discussion with her mother and others on August 24, 2019, at a bachelorette party. Grievant did not report the matter to the Department and received a twenty-hour suspension for the failure to report. She had one prior written discipline for failure to respond to a trial subpoena.

The Union maintains that the Department lacks just cause to discipline Grievant. First, she did not violate the cited policy on Truthfulness. Second, even if she did violate the policy, her punishment was far more severe than the discipline for other deputies who violated the same policy. Those deputies served minor suspensions, or their misconduct was ignored by the Department. The discipline in this matter was issued because the State was not able to convict Grievant's father of domestic violence and seeks a scapegoat in Grievant.

The Department cannot meet the burden of proof because the policy provides that a violation exists where a Department member "intentionally omit[s] or withhold[s] pertinent information." The language is specific in the requirement that the omission or withholding be "intentional." Even if Grievant omitted or withheld pertinent information, it was not intentional conduct.

The Union continues that this investigation began when Grievant did not report the possible domestic abuse involving her father. Following the trial in which her father was acquitted, the Department investigated Grievant for being untruthful. The Union cites the report of Sergeant [REDACTED], Lieutenant [REDACTED], and Chief of Patrol [REDACTED] are "somewhat of a moving target as to what the true allegations of

untruthfulness entail.” (Union Br at 3). However, there seems to be agreement among command channel review that Grievant’s court testimony differed from what she told the investigating detectives and is therefore untruthful.

The Union cites the Attorney General’s declination letter of May 19, 2020, following a perjury investigation of Grievant and her fiancé, Deputy [REDACTED]. The Assistant Attorney General questioned whether Grievant’s testimony was “material” when the testimony was compared to the testimony of Deputy [REDACTED] and Grievant’s mother. Further, Grievant was intoxicated when she spoke with her mother about the incident. Grievant was not a witness to the incident and only recounted what her mother told her – a memory affected by alcohol.

The Union continues that Grievant told investigators that she did not know what started the incident between her parents but later testified that it was over the remote. What the Department fails to consider is that when the photograph was discovered, it was tendered to the prosecutor. The prosecutor and Grievant had a conversation that day and Grievant told the prosecutor that the dispute was over the remote. The prosecutor then notified defense counsel pursuant to a Brady obligation to disclose possible exculpatory evidence.

The Union continues that the prosecutor’s failure to notify investigators of the new information is the prosecutor’s failure. That failure to follow-up has no bearing on whether Grievant testified consistently with her telephone discussion with the prosecutor. Grievant was truthful with the prosecutor and testified consistently with the discussion. The prosecutor failed to notify the detectives of the new information. The prosecutor failed to memorialize the conversation. The prosecutor failed to request additional interviews of Grievant based upon the newly discovered photograph. Grievant was truthful about what she remembered and told the prosecutor.

The Union continues that trial testimony about a struggle over the remote is consistent with what [REDACTED] told investigators about the incident. Regardless of what started the incident, it is ultimately immaterial. Whether it was about the remote is irrelevant to whether domestic violence occurred.

The Union continues that the photograph is not an issue because Grievant was truthful. The investigating detectives asked Grievant whether she “took any photos of her mother

showing any injuries.” (Union Br. At 5) Grievant confirmed to the detectives that she did not photograph any injuries on her mother. Grievant answered their question truthfully because she did not document any injuries on her mother. She later discovered a selfie and disclosed it. Grievant answered the question truthfully when asked if she took photos of the injuries.

The statement to detectives about the eye bruising was consistent with her testimony at trial. The detectives never asked her to describe the bruising. She also agreed that she told the detectives that her mother’s eye was black on top. When looking at the selfie, it does not show black above the eye. There was nothing inconsistent about the statement to detectives or prosecutors. According to the Union, Grievant added specificity to her description and testified consistently with what she told the prosecutor during a telephone conversation and what she told detectives during the interview. The detectives did not ask additional questions which would have provided the information.

The Union points to Chief of Patrol [REDACTED]’s erroneous conclusion that Grievant’s testimony “most likely changed the outcome of the trial.” This conclusion ignores the testimony of other witnesses at trial. Moreover, any claim by the prosecutor that Grievant somehow caused an acquittal is not convincing. The prosecutor had not only the selfie photograph, but also her conversation. The prosecutor must not have had reservations about Grievant’s testimony, or she would not have called Grievant as a witness. The Union argues in its Brief at page 9, that “Miniscule inconsistencies or clarifications do not give rise to a level of untruthfulness. “ The prosecutor seeks to blame Grievant for the not guilty jury verdict.

The Union argues that the Department has ignored progressive discipline. Further, the Department has also disparately applied discipline for similar untruthfulness conduct. That disparate application of discipline led the Department to dismiss a lie directly to the Sheriff as somehow exempt because it was related to Union activity. Moreover, the Department never even investigated Deputy [REDACTED] who also testified at trial. The Department cannot claim to be fairly applying discipline in this matter when it has excused or lightly disciplined similar misconduct. The other deputies who were untruthful were given twenty- and twenty-five-day suspensions, and the deputy who lied to the Sheriff had his case closed.

The Union notes that Grievant had been a Department member for approximately eighteen months when the incident arose with her parents. Grievant was placed in an unenviable position and accepted the discipline for the failure to report the domestic violence incident. Grievant never intended to mislead or omit. She was truthful.

ANALYSIS

In a discipline case, the burden is on the Department to prove just cause for the discipline. In order to establish just cause, the Department must show that there was a known work rule, that the Grievant violated the work rule, that there was an appropriate investigation into the misconduct, and that the discipline was commensurate to the misconduct.

Here, the evidence shows that the Department has a known work rule:

PCSD Manual

Section 1001.3 Truthfulness

Employees shall not intentionally omit or withhold pertinent information or make false or fraudulent statements, either orally or in writing or induce others to do so.

The second inquiry is whether Grievant violated the known work rule. In its brief, the Department alleges several examples of Grievant violating the cited Department policy by her actions and omissions during the investigation of the incident by Detectives on September 9, 2019, her tendering a photograph and subsequent conversation with the prosecutor on December 6, 2019, and her testimony at trial on February 18, 2020. As analyzed below, the Department cannot prove that Grievant violated the policy. Accordingly, the other factors of the analysis need not be addressed.

The Union cites the plain language of the policy in support of the argument that omissions and withholding must be of pertinent information or evidence and must be intentional acts by the Department member. According to the Union, oversight or failure to recall do not establish a violation. The Department counters that it has proven the violations by a preponderance of the evidence.

The plain language of the cited policy supports the Union's argument. The Department must show that Grievant intentionally omitted or withheld information that was pertinent.¹

The Department alleges that Grievant was untruthful when she testified that she did not know about DV investigations. The Department focuses on a single question and answer for the contention that Grievant violated the Truthfulness Policy. The trial transcript provides relevant context to this allegation:

Q: And what do you need to do for a typical domestic violence investigation as a law enforcement officer?

A: I don't follow up because I'm not a detective. I only take the initial reports.

Q: Do you know anything about domestic violence investigations?

A: No, I do not.

A review of these questions and answers indicates that Grievant was truthful in her answers. Grievant was a patrol officer. Grievant was asked a broad question about "typical domestic violence investigation" to which she replied that she does not do the follow up because she is not a detective. The question from the prosecutor about a "typical domestic violence investigation" was an open-ended question subject to interpretation. The prosecutor knew Grievant was a recent patrol deputy with less than two years on the Department. The prosecutor is experienced and has the sophistication to ask additional questions. That the prosecutor did not follow-up the line of inquiry with questions about the role of a patrol deputy responding to a DV scene, the role of a patrol deputy in making initial inquiries of witnesses and documenting the information, or the role of a patrol deputy in preserving evidence is not Grievant's responsibility. At the arbitration hearing, Grievant discussed how her police academy training instructed new deputies to answer the questions posed and not to expound beyond the question.

The Department not only cannot show that this was a policy violation, but also the statement is the truth. Grievant was a patrol deputy and she accurately described her role.

¹ The Attorney General's declination of perjury charges correspondence is helpful. Although not dispositive because the "proof beyond a reasonable doubt" standard of review applies to charging decisions, the analysis of whether Grievant's conduct involved material evidence provides a worthwhile perspective regarding whether the information was "pertinent" under the Department policy.

Patrol takes the initial case reports, preserves on-scene evidence, performs the on-scene arrest. Detectives are then assigned to do the investigation. Grievant is not a detective. Grievant is not trained as a detective. When taken in context the above questions and answers show that Grievant was answering the question asked of her. She is not a trained investigator and does not know how a detective conducts a domestic violence investigation any more than she would know how a detective would conduct an armed robbery or murder investigation - beyond her patrol deputy involvement. The Department has not proven that Grievant violated the policy for her answers about DV investigations.

The Department alleges that Grievant minimized or omitted details about her mother's injury at trial and compares Grievant's statement to detectives to her testimony at the trial. The Department notes that Grievant stated arm bruising was "kind of tucked weird under one of her arms", the eye bruise was "to the top part of her eye and it was just kind of the whole top part. It was just black," and a thigh bruise as "a bruise on the inner part of one of her thighs. As well too. And that looked like a few multiple bruises." The Department compares this to Grievant's response to questions about bruising to which she replied "I believe so...the whole thing is pretty foggy, but I believe so. I'm not 100 percent." (Ex. 13 at 8). Later in her testimony she stated, "I thought I might have noticed a tiny little cut or bruise on her nose, but at that time I didn't notice anything else." (Ex. 13 at 31)

The statement about her memory being foggy and not 100 percent is not an untruthful statement. Although the detectives inquired about her drinking at the wedding, they did not inquire about Grievant's drinking at the bachelorette party or whether she was inebriated. The record contains many references to the lengthy period over which a substantial quantity of alcohol was consumed during the evening's bachelorette party trip to The Makery for a sign painting outing, to Samurai for dinner, and some bars on the way back to [REDACTED]'s family home for a bonfire. This was an alcohol-fueled evening. There is nothing in the record to suggest that Grievant's statement about being "pretty foggy" is anything other than an accurate statement. Her admission that the night was somewhat foggy is not a violation of the Department policy.

The Department seeks to compare Grievant's statement to detectives with her trial testimony that "she might have noticed a tiny little cut on her [mother's] nose." Her testimony must be considered in context. The trial transcript indicates the following:

Q: And at what point did you meet up with your mother?

A: So I don't remember if she met at my house or if I picked her up. It was one or the other, and then we drove together to [REDACTED]'s house and then we drove with them to The Makery.

Q: What did you do at your house?

A: We just hung out at my house and then I drove us over to [REDACTED]'s house, which is in Roy.

* * *

Q: And approximately what time did you arrive at [REDACTED]'s house?

A: Sometime in the early afternoon.

Q: And at that point when you were with your mother did you notice any bruising?

A: I thought I might have noticed a tiny little cut or bruise on her nose, but at that time I didn't notice anything else. (Trial Transcript at 30-31)

In context, Grievant's testimony discusses when she first saw her mother in the afternoon. At some point prior to returning to [REDACTED]'s family home later in the evening, Grievant and her mother took a selfie. This selfie confirms Grievant's testimony about what she saw when she first saw her mother. This testimony was not untrue or fabricated. It conformed to the evidence.

In its Brief, the Department asserts that Grievant's "testimony in trial and under oath that was inconsistent (at best) with her prior statements." (Dept. Br at 12) The Department conflates ability to recall for untruthfulness and sees variations in remembering as an intent to omit details. Grievant was interviewed on September 10, 2019 and testified more than five months later on February 19, 2019. The only intervening discussion of the evidence was a brief conversation with the prosecutor on December 6, 2019. Moreover, Grievant was not given the opportunity to review her earlier statement prior to testifying at the criminal trial. In addition, as Grievant repeatedly noted, she and her mother were intoxicated during their discussion on August 24, 2019 at a bachelorette party. Grievant

testified at the hearing from memory of a discussion and observations she had six months prior, while intoxicated.

Failure to recall is not fabrication. The Department cannot show evidence that the difference between the September interview and the February trial testimony was due to anything other than the lapse of time. The evidence shows that Grievant testified to what she recalled and observed while intoxicated. Further, when Ms. [REDACTED] confronted Grievant at trial with a prior inconsistent statement to detectives, Grievant acknowledged providing a more detailed description of her mother's bruises in her initial statements to the detectives. The Department cannot show how Grievant intentionally omitted information or intended to mislead.

The Department cites Grievant's failure to report [REDACTED]'s statement as evidence of misconduct. According to the Department, [REDACTED] told Grievant that her father beat her mother. The Department cites the failure to inform detectives of the specific term "beat" as a violation of the policy. The Department's conclusion is based upon the following statement of [REDACTED]:

A: And about, I want to say an hour later, 45 minutes later, [REDACTED] comes into the trailer and she says tell me this isn't true. And I said what. And she said did my dad beat my mom.

Q: Okay.

A: And I said I can't tell you that. And she says please tell me. And I said yes.

Q: Okay.

A: This is what your mother told me. And she started crying. She goes I don't know what to do. She says we are stuck in a position, considering their job.

The Department's conclusion is based upon a faulty premise – a faulty premise acknowledged in the Bureau Chief Findings and Recommendations of Chief of Patrol [REDACTED] at Page 6, wherein he writes:

Per [REDACTED], [REDACTED] was aware that her mother had been assaulted. While I recognize that this statement comes from [REDACTED], and not [REDACTED], [REDACTED] does admit to speaking with [REDACTED] too. [REDACTED] told Det. [REDACTED] in their original interview that she denied using the term "beat" but did admit to asking [REDACTED] if "something" happened to her mom.

The Bureau Chief findings are not only based upon a faulty premise, but also are not supported by the transcript of Grievant's interview. The Bureau Chief is using the statement of one witness about her conversation with Grievant as evidence that Grievant lied. A review of the [REDACTED] statement does not show a direct quote. It indicates what she recalled of the conversation. Further, there is little specificity to [REDACTED]'s account of her conversation with Grievant.

A review of the Bureau Chief's findings suggest that he combed the record for the term "beat" and was not satisfied that the terms "assault" and "chokehold" were already in the record. Chief [REDACTED] arrived at his conclusion based solely upon [REDACTED]'s statement. This account of what [REDACTED] states she told Grievant at an alcohol-fueled bachelorette party is not reliable evidence that Grievant intentionally omitted evidence in her interview.

A review of the interview transcript shows that the detectives never asked Grievant if the term "beat" was used – contrary to the Bureau Chief's conclusion. Even if [REDACTED] did use the specific term "beat" the Department cannot show that Grievant intentionally omitted it. The Department's conclusion that Grievant intentionally omitted the term "beat" during her interview is based upon a faulty premise and is unsupported by the evidence.

The Department contends that Grievant's trial testimony about her August 24th conversation with her mother about the incident differed from what Grievant told the investigators about the conversation. The Department maintains that the difference was significant and this difference indicates that Grievant was untruthful. According to the Department, Grievant told investigators that "at one point [her father] had apparently put her [mother] in some type of hold around her neck...[a]nd that she had been trying to pull away and get his arm off of her, and apparently that's how the bruises happened". The Department contrasts that statement with Grievant's testimony at trial. Grievant testified about her mother's account of the incident. Grievant testified that her parents "had been in an argument the night before...apparently at one point she had started getting physical" and that "at one point she had kicked him in the ribs." When asked a follow-up question, Grievant stated that [REDACTED]'s statement was about "[my mother] getting physical

over the remote, is what started the whole thing” and also “[i]t started with her getting physical and that is why my dad grabbed her.”

The Department argues that

This difference in her description of the incident is more than a mere recollection of new details. It is an entirely new version of the events that places her mother as the assaulting party.

The Department cites Grievant for adding additional facts beyond what she told investigators. However, as noted elsewhere in the analysis, the Department cannot show that this was intentional. Grievant testified at the hearing and the record indicates that this had been a night of heavy drinking for Grievant and her mother at the bachelorette party. She recalled things after the interview. She testified that she was not given the opportunity to review her statement to detectives prior to testifying. As noted by the Attorney General, and as is clear in the evidence, that her mother started an altercation over a remote was already in the record from [REDACTED]’s handwritten statement and testimony.

The record does not establish that Grievant purposely omitted details to the investigators or purposely changed her story. What the record shows is that a substantial amount of alcohol was involved at the bachelorette party, that Grievant was not allowed to review her statement to detectives, and that Grievant testified to what she recalled. Further, at trial, when the prosecutor asked Grievant about her statements to detectives, Grievant admitted to what she told detectives in her interview.

The Department cites Grievant’s discovery and tendering of the photograph as another example of untruthfulness. According to the Department, sending the photograph to her father instead of contacting detectives or the prosecutor was an example of untruthfulness by omission. The Department argues that Grievant’s arbitration testimony about being confused should be rejected as a further example of untruthfulness.

The Union maintains that detectives asked Grievant whether she photographed her mother’s injuries and not a more general question about photographs. As Grievant explained in her IAD interview and also at the hearing, she did not specifically photograph injuries to her mother. A review of the evidence shows this to be a truthful answer –

Grievant did not photograph her mother's injuries while they both were intoxicated at a bachelorette party.

However, the analysis must also address whether Grievant mishandled the photograph upon discovery. Grievant testified that she discovered the photograph when downloading photographs from her cell phone. Although the circumstances of this discovery may seem odd, a review of the IAD interview contains the explanation -- Grievant was preparing for a vacation and was downloading photographs because the thousands of photographs on her cell phone made it slow and would prevent her from adding many vacation photos.² She discovered a selfie taken prior to her conversation with her mother at the bachelorette party.

Contrary to the Department's argument, Grievant immediately forwarded the photograph. That Grievant forwarded it to the defendant and not to the Department, the prosecutor, or defense counsel is improper. Grievant was not specifically cited for evidence procedure violations, rather, the Department cited it as an example of her untruthfulness. According to the Department, Grievant never disclosed the photograph to investigators and only turned it over at the eleventh hour.

Again, the Department cannot show that Grievant intentionally omitted the photograph from disclosure to Detectives. Grievant stated that the Detectives asked her if she had photographs of her mother's injuries. Grievant did not take any photographs in an effort to document her mother's injuries. She did, however, take a selfie earlier in an evening of heavy drinking at a bachelorette party. As her IAD interview indicates, she had thousands of photographs on her telephone. She testified she forgot about the selfie taken earlier during the bachelorette event.

There is no dispute that the selfie does not show black eyes or other injuries to [REDACTED]. As noted by Grievant and others, it shows a mark and possible swelling or bruising. This photograph would have been helpful to disclose during the investigation. The photograph would have been at odds with some of the accounts of the incident and would have shown no evidence for claims of a black eye and facial bruising. There was no motive for Grievant to purposely exclude exculpatory evidence from the investigators. To

² The relevant portion of the IAD interview is attached as Addendum 1.

the contrary, the exculpatory evidence could have possibly ended the criminal investigation or affected the charging decision. The Department cannot show that the Grievant's failure to remember the photograph was purposeful or anything other than an oversight.

What the Department has proven is that Grievant mishandled pertinent evidence once it was discovered. Although Grievant testified that she felt alone during this ordeal, she was still a deputy who had been trained in patrol procedures. Even a rudimentary understanding of law enforcement procedure informs that sending newly-discovered evidence to the defendant is an improper course of action – regardless of whether the defendant is your father and a member of law enforcement. Grievant is trained on inventory procedures and chain of custody. As a member of law enforcement, Grievant knows that she should have contacted the Department to advise of the discovery. At the very least, she could have asked her father what to do with a newly-discovered photograph instead of sending him the photograph and asking for his advice.

Grievant should have contacted the Department. The Department has proven that Grievant violated evidence procedures when she sent the photograph to her father upon discovery.

The Department also maintains that Grievant was untruthful in her discussion with the prosecutor because she “materially added to the story she previously provided to the investigative interviewers” by stating that it was difficult to see bruising on her mother's face because of makeup. When the photograph is considered, there is little doubt about the veracity of Grievant's statement because there is no visible black eye or other noticeable injury in the photograph – save for a small cut and possible swelling. The photograph renders unsupported the Department's claim of untruthfulness because Grievant's trial testimony was consistent with the photograph. In addition, Grievant was intoxicated at the time of the incident and stated that her memory of the conversation and observations at the bachelorette party returned in piecemeal fashion over time. The Department cannot show that Grievant omitted or withheld pertinent information when she testified it was difficult to see injury on her mother's face.

The Department also argues that Grievant's trial testimony regarding whether she was disciplined for failing to report the domestic violence incident, is untrue. Grievant testified:

I've already been questioned by my department regarding that and have faced whatever they have decided regarding that incident, and I did not receive any disciplinary action in the eyes of the department.

The Department cannot show how this was anything other than a mistake. Grievant was a recent addition to the Department with less than two years on the job and she was interviewed by investigators about the incident by being pulled out of a training. She wrongly concluded that the interview was the end of the inquiry, The Department cannot show that this was anything other than a mistake by Grievant about whether she was going to be cited for failing to report the DV incident. The Department cannot show that Grievant was intentionally omitting or withholding pertinent information. The evidence shows that Grievant was mistaken. A mistake about the facts is not the same as intentionally misleading testimony.

Similar to the prior contention that Grievant added material evidence during her testimony, the Department also claims Grievant was untruthful when she did not disclose that her mother stated she was the aggressor in a dispute about a television remote. Grievant testified that she provided this information regarding her mother and the remote to the prosecutor during their short conversation in December 2019. The Department bases its claim on the prosecutor's subsequent Brady disclosure about the photograph. According to the Department, because there was no Brady disclosure about [REDACTED] being the aggressor or that the incident began about the remote, therefore, Grievant never told the prosecutor.

The Department's argument makes an unsupported leap in logic. The prosecutor testified at the hearing that the conversation with Grievant lasted less than ten minutes. According to the prosecutor, she and Grievant never discussed (i) [REDACTED] lying while intoxicated, (ii) [REDACTED] being the aggressor, or (iii) that the incident arose over the remote. However, the prosecutor also noted that despite having received newly discovered photographic evidence that might be exculpatory prior to the conversation, she did not have a witness to the telephone conversation, did not take notes, and did not

contact investigators to do a subsequent interview about the photograph and other possible developments. If the disclosed photograph was of such consequence, the prosecutor should have safeguarded the investigation. The only two participants to the conversation have different recollections of portions of the conversation. Contrary to the Department's argument, there is no basis for accepting one person's account over the other person's account.

Even if one were to accept Ms. [REDACTED]'s account of the conversation, the Department nonetheless cannot establish that Grievant's failure to mention that (i) [REDACTED] was the aggressor or (ii) the incident started because of the remote, was intentional. Moreover, the Department cannot show that it was pertinent information. Further, there is nothing in the record to show whether detectives asked Grievant about her mother's veracity while intoxicated.

Had Ms. [REDACTED] preserved the conversation, a review of the Department's contentions nevertheless fails because the additional information is immaterial. [REDACTED]'s hand-written statement detailed how she began the altercation and that the altercation was about the television remote.³ This was not new information to the prosecutor – the alleged victim told authorities that she started the altercation. The Attorney General's declination letter is instructive on this point. It is immaterial whether a hearsay witness to a conversation knew what started the altercation or what it was about.

Similarly, the Department cannot show that Grievant's testimony -- that her mother lies while intoxicated -- violated the policy. According to the Department, this information should have been disclosed. However, the Department fails to state to whom and when such information should have been disclosed. The Union maintains that the Department seeks to have Grievant testify when it is helpful to the prosecution yet omit pertinent information when it is not helpful to the case. The Department cannot show that this information about [REDACTED] lying while intoxicated was ever the subject of inquiry. Further, like the facts surrounding the remote, it is immaterial. As noted by the Attorney

³ [REDACTED] provided a handwritten statement on the Handwritten Statement Form dated September 10, at 2:46 pm. The handwritten statement is part of the Domestic Violence Supplemental Report taken by Detective [REDACTED]. The detective began the interview with Grievant at 3:30 pm that day.

General's declination letter, there was conflicting evidence in this matter. It appears that [REDACTED] said different things to different people and in her handwritten statement. The Department also argues that Grievant violated the truthfulness policy at trial when she answered the question, "So this statement that you gave to Sergeant [REDACTED] regarding this particular piece of it is not true?" with her response, "That's correct." (Ex. 13 at 41-43).

This testimony must be read in context rather than the isolation the Department suggests.

Q: Did you tell Sergeant [REDACTED] that your mother never said anything about starting the physical altercation?

A: Yes, I Did tell him that.

Q: But today your testimony is that she did, in fact, tell you she started the physical altercation?

A: Yes. Since I've had a little bit . . . since I was so heavily intoxicated, I've had little bits come back of memory of stuff from that night and have remembered since cause this was two weeks after this supposed night and ever since then I've had more information pop back into my head.

Q: So this statement that you gave to Sergeant [REDACTED] regarding this particular piece of evidence is not true?

A: That's correct.

Taken in context, this is not an admission to fabrication as the Department argues. Grievant testified both at trial and at the hearing as to the reason she recalled more of the event. What is apparent through the testimony and interviews is that Grievant was testifying about a conversation with her highly intoxicated mother when Grievant was also highly intoxicated.

Ignoring the inherent questions of the reliability of statements of one highly-intoxicated person about the statements of another highly-intoxicated person, and also ignoring that nearly six months had passed since the event and more than five months after the initial investigatory interview, there is still a question about witness recall. As the Union notes, Grievant was recalling what occurred as it came back to her and was not omitting, withholding, or fabricating.

A review of the above quoted transcript, supports the Union's position. There is nothing in the record to support the Department's position that Grievant was intentionally

withholding or fabricating. To the contrary, the trial testimony shows that Grievant explained her additional recall at more than one point in her testimony and also to IAD. In context, when Grievant agreed that her statement to the detective was untrue, it is obvious that it was untrue in comparison to her later recollection. The evidence shows that Grievant did not intentionally make an untrue statement to the detective.

As the Attorney General noted in the declination letter, there is also the question of whether the information was material to the matter at issue. Materiality is similar to the question of whether the information was “pertinent” under Department policy. As the Attorney General noted, there were varying accounts of what occurred from the victim and from witnesses to the victim’s statements. There were only two occurrence witnesses, the accused and [REDACTED]. The dispute began over the remote. [REDACTED]’s handwritten statement provides that she began the incident and that it was over the remote. [REDACTED]’s statement that she started the altercation was already known to the prosecutor. That Grievant later recalled her mother making the statement during an intoxicated conversation is not evidence that she violated Department policy.

The evidence shows that Grievant was highly intoxicated at an alcohol-fueled bachelorette party that stretched well into the following day. Her mother was at the party and was also highly intoxicated. Grievant’s mother told a friend, Grievant’s fiancé, and Grievant about a possible domestic violence incident. Grievant and her boyfriend did not report the incident. The friend reported the incident. Grievant and her boyfriend were later disciplined for the failure to report. Grievant was interviewed on September 10, 2019. She testified on February 18, 2019. In the interim, she discovered the selfie taken earlier that evening and forwarded it to her father, who forwarded it to defense counsel, who forwarded it to the prosecutor, who contacted Grievant. Grievant and the prosecutor spoke on the day that the photograph was discovered. Despite the newly-discovered evidence, the prosecutor did not request an additional detective interview of Grievant.

Grievant was not an occurrence witness. She did not review her statement to detectives prior to testifying at trial in a highly-emotional prosecution involving her parents. She testified to a conversation between two highly intoxicated people following an evening of drinking at a series of events associated with a bachelorette party. Grievant noted at trial and during her interviews that she was highly intoxicated. She testified at trial that her

memory of events during the alcohol-fueled evening came back in “bits and pieces.” The Department has not shown that Grievant’s recall over time somehow meant that she omitted or withheld pertinent information during her initial interview.

The Department cannot show that Grievant was intentionally untruthful. The Department has picked isolated pieces of testimony to allege that Grievant violated the Truthfulness Policy. When the evidence is considered in context, and not by picking isolated statements from the record, it is apparent that Grievant was answering questions during the investigation and subsequently testifying at trial, to the best of her recall. There is nothing in the record to suggest that she intentionally omitted or withheld pertinent information in her initial statement to detectives. When Grievant spoke with detectives, she was recalling a conversation with her mother, while both of them were highly intoxicated.

Further, as the Attorney General noted in the declination letter, the complained-of statements were not material to the prosecution. The information was known to the prosecutor.

The Department has not proven the violations of the Truthfulness policy and therefore has not established just cause to terminate Grievant for violating the policy.

The Department was rightfully concerned about the photograph that Grievant forwarded to her father. The Department has proven that Grievant mishandled evidence. As discussed above, Grievant forwarded a relevant photograph to her father, the defendant in a criminal prosecution for which Grievant had been subpoenaed to testify. Although Grievant stated that she felt “alone and confused,” she was nonetheless a Sheriff’s Deputy with a duty to preserve evidence. Obviously, Grievant should have contacted the Department or the prosecutor upon discovery.

Failing to inventory evidence is a serious violation for which serious discipline is warranted. The Department follows progressive discipline and a review of Grievant’s prior complimentary and disciplinary history indicates a written reprimand for failure to appear in court and a twenty-hour suspension for failing to report a domestic violence incident underlying the criminal matter.

Based upon Grievant's prior discipline, a forty-hour suspension would serve the corrective purpose of progressive discipline. Grievant is on notice that her conduct in handling evidence was improper and that future misconduct may have harsher consequences.

AWARD

Grievance granted in part and denied in part.

The Department has not proven a violation of the Truthfulness policy and just cause to terminate is therefore not established.

The Department has proven that Grievant violated evidence preservation and inventory procedures. Grievant to serve a forty hour suspension for the evidence preservation and inventory procedure violation.

Grievant to be reinstated to her position as a deputy and made whole, with a period of forty-hours pay deducted for her inventory procedures violation.

Jurisdiction is retained for a period of ninety days to address any issues relating to the remedy in this matter.

Brian Clauss, Arbitrator

September 23, 2022

Addendum 1

Excerpt of IAD Statement of Grievant, September 16, 2020.

Q: Okay following that incident you were interviewed by Detective Sergeant [REDACTED] is that correct?

A: Yes sir.

Q: Alright that would have been you were interviewed by him I believe it was on September 10th of last year.

A: Yes sir.

Q: Okay. During the interview with Detective Sergeant [REDACTED], he asked you what was the argument between your parents about.

A: Uh huh.

Q: You responded I don't know is that correct?

A: Yes sir.

Q: Alright he asked you did your mom ah...tell you what it was about and you answered I honestly do not remember if she did. Does that sound correct?

A: Yes sir, yes.

Q: Alright he also asked did your mom say anything about starting the physical altercation and that would be with your father. Your answer was no she did not tell me anything about that. Does that sound right?

A: Yes sir.

Q: Alright and that was on September 10th.

A: Yes sir.

Q: And then in court.

A: Uh huh.

Q: When was court, that was ah...in February wasn't it?

A: End of February yes sir.

Q: End of February. In court the ah...prosecutor asked the same questions um...but this time when she asked if your mom had told you anything about it and you answered yes the whole thing started because she was getting physical over the remote is what started the whole thing.

A: Uh huh yes sir.

Q: So the discrepancy is you told Detective Sergeant [REDACTED] that your mom didn't tell you why. You didn't know and then in court you said yes she did tell you why.

A: Uh huh.

Q: Why the difference?

A: So when I was first interviewed by Detective [REDACTED] and I believe, Detective [REDACTED] was also in the room. I was pulled out from the training by a chief and also spoken to by a lieutenant and with someone I mean I was uniform, I had this I was in complete shock by everything. I cried in my interview with [REDACTED]. I was stressed out the entire time. That was probably one of the most stressful situations I've ever been in in my life and um...that's not me trying to make any excuses or trying to get around it, but it was very difficult in trying to remember from a night where I was intoxicated at the bachelorette party was also extremely difficult. This interview was three or four weeks after that had happened. So at that time trying to remember everything, I just tried to do quick answers, I just tried to do whatever I could and then over time between until then and the trial I was never interviewed again and I remember certain things about that because when you're drunk and when you're in stress things come back later over time.

At no point was I intentionally trying to omit information or not answer it correctly, it's just certain things about that night would come up later throughout time passing.

Q: Okay and another one of those things that came up later ah...you told Detective Sergeant [REDACTED] that ah...you did not take any photos of your mom or her injuries correct?

A: And at that time I did not, correct sir.

Q: Okay in court it came up that you did have a photo and you provided it to your dad right?

A: Yes sir.

Q: And you said that you had later realized that you did have a cell phone photo.

A: Yes sir.

Q: Tell me about that?

A: So at the time I didn't remember taking any photos. I hadn't posted any on social media from the day and I have thousands of photos of my phone. My phone was slow so I was downloading the photos from it onto my desktop computer in about December I think it was. It was the end of the year and as it was going I noticed photos that I didn't realize were there and I saw a photo of me and mom from the day of the bachelorette party. As soon as I saw it, I didn't know what to do it had been months since I'd been interviewed or spoken to. So my instinct was just to give it to my dad. At that time he was still with the department. He was still so I knew if I gave it to him it would go to all the right people.

Q: Okay so when you gave it to him, were you hoping it would also go to the right people? I mean did that cross your mind?

A: Yes absolutely. I knew that it would go to the prosecution, defense and everyone that needed it.

Q: Okay um...were you aware that when [REDACTED] spoke to [REDACTED] and that's ah...[REDACTED]'s mom right?

A: Yes that's correct.

Q: Um...on September 9th the day before he spoke to you that [REDACTED] had provided him cell phone photos of your mom?

A: No I had no idea.

Q: Is that new to you right now?

A Yeah I did not know that until this moment.

Q: Okay I just wanted to make sure that you didn't know about that photo at that time?

A: No I did not even know at all.

Q: Okay.

A: I don't speak with [REDACTED].

Q: Okay is that because of this incident?

A: Yes.

Q: Alright. Did you at any time purposely withhold or minimize information to anybody on the Sheriff's Department?

A: Not intentionally, no.

Q: Okay anything [REDACTED]?

Q ([REDACTED]) Real quick let's put the pictures into perspective too okay.

A: Uh huh.

Q: ([REDACTED]) So the photos were they what was the photo that you gave to your father?

A: It was just a picture of me and my cell on a selfie on my camera phone from the bachelorette party at the Makery.

Q: ([REDACTED]) Okay so it wasn't like a picture that was the next day and you look at mom's injury of her eye.

A: Uh huh.

Q: ([REDACTED]) Or anything like that?

A: No we were just taking a picture together because we were at the bachelorette party.

Q: ([REDACTED]) Having fun?

A: Uh huh.

Q: ([REDACTED]) Kind of in context of that, not anything related to the domestic violence situation?

A: Yes that's correct.

Q: ([REDACTED]) Okay.

A: Yes.

Q: ([REDACTED]) So and then later on that's when you discovered...

A: Uh huh.

Q: ([REDACTED]) when as you're downloading you see oh hey that's around the timeframe not hey that's a picture of mom with an injury?

A: Uh huh, no it was around the timeframe, it was from the event that they were asking about and that's when I was like oh I didn't realize I had this.

Q: ([REDACTED]) Now if I remember correctly, you told us that um...the reason you were downloading all those is because you were getting ready to go on vacation and you wanted to make room for additional pictures?

A: Yes that's correct. We were going to California to visit [REDACTED]'s family.

Q: Okay and then so you were trying to empty, clear up space on your phone?

A: Yes that's correct.

Q: Okay um...real quick here. It was also mentioned that what you described to Detective Sergeant [REDACTED] the injury on your mom you said it was something like a little bit above her eye and um...slight bruising around and you also mentioned that ah...possibly some puffiness?

A: Yes.

Q: Okay in court ah...said that testified that you attempted to minimize the bruising and claimed that you're not sure if you saw any bruising. Is that accurate?

A: If I did that was not, I haven't seen the transcripts. If I did it was not intentional.

Q: Okay I just want to make sure that you weren't trying to minimize anything between what you told Detective Sergeant [REDACTED] and in court?

A: At no point was it intentional and it was I didn't realize how much more stress it was going to be being on the stand regarding having to look at my dad, having to spend those months with my mom living with us, having to deal with all that while still working for the Sheriff's Department and having to experience everything was definitely more intense than I realized it would ever be.

Q: And I didn't think about that until this moment you mentioned it. So you were in court and your dad is right there in front of you?

A: Uh huh yes that's correct.

Q: Alright ,um...just reading a statement here regarding this. It mentioned that [REDACTED] said that she did have a photograph of her mother that showed an injury to her mother and that she her photograph to her father. She claimed she knew her statement to law enforcement was inaccurate because her memory changed but she did not think it was necessary to inform law enforcement at that time as she had provided incorrect information. Is that accurate?

A: I, I'm confused on what that's pertaining to. I don't.

Q: When you gave your dad the photo, that you did not think that there was any need to that the photo did not show. Photograph of mother with injury, it didn't show an injury basically?

A: In the photo it does not look like there is any visible markings. That was my first time I mean once it was printed out seeing it.

Q: And is that why you gave it to your dad that it could help his case because it was the night of the party.

A: I gave it to him because I mean I'm a daddy's girl, it's I mean always been there for me and I knew he would know who to give it to and what to do without me having to contact the prosecutor, detectives, defense. I just gave it to him so it would go to all the people that needed it.

Q: And did, as far as you know did it go to the people that it needed to go to?

A: Yes, yes everyone received it.

Q: Is it important in any investigation to get accurate witness statements?

A: Correct. But, again, detectives handle that. I do not as a patrol deputy.