

**AMERICAN ARBITRATION ASSOCIATION**

*In the Matter of Arbitration Between:*

**FRATERNAL ORDER OF POLICE, LODGE #5**

**and**

**CITY OF PHILADELPHIA**

**AAA Case #01-19-0000-3393  
(Gr: Jessica Kovacs Discharge)**

**Walt De Treux, Esq.**

*Hearing Date: 1/24/20*

*Decision Date: 3/18/20*

**Appearances:** For the FOP – Ralph J. Teti, Esq., *WILLIG WILLIAMS & DAVIDSON*  
For the City – Kia Ghee, Esq., *ASSISTANT CITY SOLICITOR*

**Introduction and Statement of Relevant Facts**

In the early morning hours of [REDACTED], off-duty City of Philadelphia Police Officer M [REDACTED] B [REDACTED], traveling in his personal vehicle at speeds up to 128 mph, led the Pennsylvania State Police (PSP) on a high speed chase on I-95 North in Philadelphia. B [REDACTED] exited the highway at Academy Road. PSP terminated its pursuit after B [REDACTED] continued to speed on city streets with his lights off. The troopers continued to search for his vehicle, soon finding it at a duplex owned by his girlfriend, City of Philadelphia Police Officer Jessica Kovacs.

The troopers approached the house and saw B [REDACTED] peering out the window and quickly closing the blinds. The troopers, joined by officers from the Philadelphia Police Department, repeatedly knocked on the door of the duplex and received no response. By this time, 10-15 troopers and officers were on scene. The tenant in the upstairs apartment threw her keys to the troopers so they could enter the front door. Once inside, they knocked on the

door of Officer Kovacs' first floor residence, but again received no response. The responding officers and troopers left the scene after approximately 90 minutes.

After further investigation, PSP learned that Officer Kovacs had texted her neighbor during the police response, instructing her not to answer the door. She texted, "I'm really sorry, just don't answer the door It's just a drinking & driving thing"

In December 2018, a Grand Jury determined that there was sufficient evidence to indict both B [REDACTED] and Officer Kovacs. Officer Kovacs was arrested and charged with two misdemeanors: Hindering Apprehension or Prosecution and Obstructing Administration of Law. Those charges were dismissed at the preliminary hearing.

On the same day Officer Kovacs was arrested, Philadelphia Police Commissioner Richard Ross suspended her for 30 days with intent to dismiss. She was charged with two violations of Conduct Unbecoming.

Officer Kovacs timely grieved her discharge. The parties were unable to resolve the grievance through the contractual steps, and the matter was referred to arbitration. On January 24, 2020, a hearing was held at the Philadelphia offices of the American Arbitration Association, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties closed their presentations with oral argument, and the matter was submitted to the Arbitrator for a decision.

**Issue**

The parties stipulated to the following issue,

*Did the City of Philadelphia have just cause to discharge Officer Jessica Kovacs? If not, what shall be the remedy?*

**Relevant Provisions of the Department Disciplinary Code**

<u>Section</u>	<u>Charge</u>	<u>1<sup>st</sup> Offense</u>
1-§021-10	Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department	30 Days or Dismissal
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1-§026-10	Engaging in any action that constitutes the commission of a felony or a misdemeanor which carries a potential sentence of more than (1) year... Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.	30 days or Dismissal

## Analysis and Decision

Through the testimony of two Pennsylvania State Troopers who were on scene, the City established that B [REDACTED] fled to Officer Kovacs' residence after leading police on a dangerous high speed chase on I-95 and onto the streets of the Torresdale section of Philadelphia. Grievant did not submit to an investigatory interview nor did she testify at the arbitration hearing, so it remains unknown whether she knew her boyfriend had engaged police in the high speed chase. Her text to her upstairs tenant, however, demonstrated that she knew he had been drinking and driving and that she knew police were massed outside her house attempting to get her or B [REDACTED] to answer the door. In short, Grievant assisted in shielding a DUI suspect from 10-15 law enforcement personnel, including members of her own Department, by not responding to the officers knocking on her door and by instructing her tenant not to answer the door.

Grievant does not contest that she was in the residence. Her failure to testify leads to an adverse inference that she was present. Her text to the upstairs neighbor reinforces that conclusion. Through her argument at hearing, she effectively concedes that she was in the residence. Grievant maintains that she was off-duty and a private citizen who had no obligation to open the door to law enforcement. Grievant's argument fails to recognize that police officers have an obligation to maintain the standards of the Department on and off-duty and to maintain their own integrity as law enforcement professionals even when off-duty. Grievant compromised the Department and sacrificed her own integrity when she chose to aid a DUI suspect rather than the law enforcement personnel pursuing him. At the very least, she was

obligated to answer the door or step outside with the officers, even if her boyfriend chose to remain inside.

1-§021-10 of the Department's Disciplinary Code prohibits any course of conduct "which indicates an employee has little or no regard for his/her responsibility as a member of the Police Department." As Acting Commissioner Christine Coulter testified at hearing, Grievant had an obligation to cooperate with law enforcement and failed to do so. She found Grievant's conduct unprofessional. She opined that it impacted the Department because she was not responding to her own police colleagues. The City argued that Grievant's actions sent a message to her fellow officers and to her tenant that she, as a police officer, did not have to obey the law or cooperate with law enforcement personnel.

The Department's arguments have merit and the conclusions it drew comport with the seriousness of Grievant's unbecoming conduct. It bears repeating that Grievant, a sworn police officer, ignored other law enforcement personnel, including members of her own Department, to protect a DUI suspect. She made the situation even more egregious by instructing her tenant to also be uncooperative. She chose loyalty to her boyfriend over her responsibility to her profession. That choice may be one that Grievant can personally justify and would do again, but there is no professional justification for a police officer to shield a criminal suspect from law enforcement. In making her choice, she demonstrated her unwillingness to live up to the standards and integrity required of a police officer.

The disciplinary code violation mandates a penalty ranging from a 30-day suspension to dismissal. Grievant abandoned her role as a police officer to protect a DUI suspect. She ignored 10-15 law enforcement personnel knocking on her door and gathered outside her

home. She induced her tenant to be uncooperative with police because “it’s just a drinking & driving thing.” She offered no credible defense for her actions and expressed no remorse. Under these circumstances, discharge is an appropriate penalty, particularly since Grievant has given no indication that she acknowledges her wrongdoing or that she would not repeat her behavior in a similar situation in the future.

For all these reasons, I find that the City of Philadelphia had just cause to discharge Officer Jessica Kovacs.

*WALT DE TREUX*

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WALT De TREUX