

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between

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

OPINION & AWARD

**AAA No. 01-17-0007-5746
(P/O Angelo Romero)**

-- and --

CITY OF PHILADELPHIA

ARBITRATOR: James M. Darby, Esq.

APPEARANCES: For the FOP:
Ralph J. Teti, Esq.
Willig Williams & Davidson

For the City:
Cara Leheny, Esq.
Divisional Deputy City Solicitor

This case arose on November 6, 2017, when the City of Philadelphia (“the City”) Police Department (“the Department”) terminated Police Officer Angelo Romero (“the Grievant”) for conduct unbecoming an officer. Specifically, the Department determined that the Grievant gave false statements on two occasions after he sustained a gunshot wound during an off-duty incident on [REDACTED]. The Fraternal Order of Police, Lodge #5 (“the Union”) filed a grievance alleging that the City’s discipline action lacked just cause, which was denied by

the City. On December 18, 2017, the Union filed a Demand for Arbitration. (Joint Exhibits 2-3; City Exhibit 5.)

By letter dated January 17, 2018, from the American Arbitration Association (“AAA”), the undersigned was notified of his selection as Arbitrator of this dispute. Hearings were held on August 23, 2018, January 11, 2019 and January 14, 2019, at the AAA offices in Philadelphia, Pennsylvania, where the parties were afforded a full opportunity to present testimony, exhibits and arguments in support of their positions. The parties presented oral closing arguments in lieu of filing post-hearing briefs, and the record was closed. After fully considering all of the evidence and arguments presented, the matter is now ready for final disposition.

QUESTIONS TO BE RESOLVED

At the hearing, the parties stipulated to the following issue to be resolved by the Arbitrator:

Did the City have just cause to terminate the Grievant, Angelo Romero? If not, what shall the remedy be?

FACTS

A) Summary of the Department’s Investigation

The Department hired the Grievant as a police officer on March 30, 2015. Prior to the instant case he had a clean disciplinary record.

On the afternoon of [REDACTED], police officers were dispatched to the area of 10th and Ogden Streets to respond to a radio call for gunshots and “Assist Officer.” Officers from five districts responded. Two responding officers found the Grievant, who was off-duty, several blocks away from the area. The Grievant told the officers that he was involved in a crossfire between two groups of individuals and was shot at 1000 Parrish Street. He asked the officers to transport him to [REDACTED] to check on his son. While checking on his son, he showed Sgt. T [REDACTED] D [REDACTED] the crime scene. Then he was taken to Thomas Jefferson University Hospital (“Jefferson”) by ambulance to treat a gunshot wound to his left thumb.

That same evening Detective D [REDACTED] V [REDACTED] from the Homicide Unit (“Homicide”) interviewed the Grievant. The Grievant told him that his truck was parked on the 1000 block of Parrish Street while he was with his two-year old son. As he was getting his son out of vehicle, he saw three black teenage males walking on the opposite side of the street with their hoodies up and their hands in their pockets. The Grievant stated that he then saw a fourth black male wearing blue jeans and a black coat jogging towards the three black teens. Suddenly, one of the three teens (wearing a burgundy hoodie) motioned as though he was pulling out a gun. The Grievant told V [REDACTED] that as he was turning towards his son he heard gunshots. He felt a pain in his right rear end and both legs and fell to his knees. The Grievant was then shot in his left hand,

at which time he jumped in his truck and covered his son with his body. (City Exhibit 7, IAB26-27.)

The Grievant told V [REDACTED] that after the shooting stopped, he gave his son to a friend from the neighborhood named "C [REDACTED]" and asked him to take his son to the Grievant's aunt's house located at [REDACTED]. The Grievant then drove to his aunt's house to check on his son. While he was there his aunt called 911 and the Grievant was transported to Jefferson. (City Exhibit 7, IAB27.)

On [REDACTED], Homicide Lt. P [REDACTED] R [REDACTED] interviewed the Grievant to address discrepancies between the version of the event as told by the Grievant to V [REDACTED] and information R [REDACTED] received from several informants. During the interview, the Grievant told R [REDACTED] that there was no one with him or near his vehicle at the time he was shot. (*Id.*) R [REDACTED] showed the Grievant an arrest photo of C [REDACTED] B [REDACTED], who the Grievant identified as the "C [REDACTED]" who he handed his son to after he was shot. He told R [REDACTED] that he did not know C [REDACTED]' last name. The Grievant also told R [REDACTED] that he did not see the black male who was jogging after the three teens, and he did not see any of the teens with a gun. R [REDACTED] also showed the Grievant a photo of a male who the Grievant identified as "S [REDACTED]." The Grievant told R [REDACTED] he was not sure that S [REDACTED] was the individual jogging towards the teens. (City Exhibit 7, IAB27-28.)

On [REDACTED], Homicide recovered surveillance video from a location at [REDACTED]. The video shows the Grievant standing with his truck at 1000 Parrish St for close to two hours with two other individuals who

remained there until the gunshots were fired. The video does not show the Grievant being shot. (City Exhibit 7, IAB20-21, 24.)

On December 13, 2016, Internal Affairs Lt. Mark Bugieda interviewed the Grievant and showed him a photo of "S■■" taken from surveillance video the day of the shooting. The Grievant told Bugieda that S■■ was the man chasing the three teens and that S■■ was wearing in the photo the same clothes he had on the day of the shooting. He then told Bugieda that he did not actually see anyone firing a gun. The Grievant informed Bugieda that he knew that S■■ was the man chasing the teens on the day he was shot, but did not want to disclose this information because it would put his family in danger. The Grievant also informed Bugieda that after he was shot he jumped into his truck to protect his son. (City Exhibit 7, IAB28.)

Additionally, the Grievant informed Bugieda that he gave inaccurate information when he told Homicide detectives that he was alone when he was shot – he was actually speaking with C■■■■■■ B■■■■■■ and two other males he knew from the neighborhood prior to being shot. He did not mention this to Homicide because he did not want to involve these men in the investigation or let it be known to them that he provided their names to detectives. The Grievant acknowledged that he should have been "up front" with Homicide, but he "panicked" after being shot. (City Exhibit 7, IAB28-29.)

The Internal Affairs Division determined that the Grievant gave false and misleading information to Homicide on two occasions when he withheld

information about witnesses. It also concluded that as a result of the Grievant's actions, the individuals involved in the shooting were not positively identified and arrested. (City Exhibit 7, IAB29.) The matter was referred to a Police Board of Inquiry ("PBI"). The PBI determined that the Grievant's actions violated Section 1-§009-10 (Conduct Unbecoming) of the Disciplinary Code (Lying or attempting to deceive regarding a material fact during the course of any Departmental investigation). This infraction carries with it a penalty range for a first-time offense of 10-days suspension to dismissal. On September 25, 2017, the PBI unanimously found the Grievant guilty and recommended a penalty of dismissal. (City Exhibit 2.)

On October 10, 2017, the Police Commissioner suspended the Grievant for thirty days with an intent to dismiss (City Exhibit 3). That same day the Union filed the instant grievance (Joint Exhibit 2). On October 27, 2017, the Department served the Grievant with a Notice of Intention to Dismiss (City Exhibit 4). The Department furnished the Grievant with a Notice of Dismissal effective November 6, 2017. The Notice cites to Section 1-§009-10 as the basis for dismissal and also states: "The course of conduct you engaged in indicates you have little or no regard for your responsibility as a member of the Philadelphia Police Department." (City Exhibit 5.)

B) Material Facts Adduced at the Arbitration Hearing

Sgt. D testified that when the Grievant arrived at his aunt's house after the shooting, he told **D** that he was walking with his son on Parrish towards his aunt's house when he saw two groups of males exchanging gunfire. He jumped on his son to cover him. The Grievant then ran to his aunt's house with his son and then left on foot to chase the shooters. **D** described the Grievant at the time as stable and coherent with blood on his hand. He also testified that there are not many street shootings like this in that neighborhood. **D** described the protocol used by the Department if an officer fears for his or her family's safety. A patrol car is assigned to the officer's home or the family can be relocated. **D** testified that he instructed officers to secure the crime scene as it was described to him at that time by the Grievant.

Officer D **W** testified that she and her partner picked up the Grievant when he was standing in the area of 1000 Poplar after the shooting occurred. The Grievant told them that he was with his son walking on the side of his aunt's house at **██████████** when the shooting took place. He told them that he recognized the shooters and that he could identify them if he saw them again. In her statement to homicide explaining these events, **W** stated that the Grievant was "hyperventilating and very excited" when they picked him up. (City Exhibit 7, IAB118.) She testified that he was "scared" and "shaky."

Homicide Detective L **H** testified that she spoke to the Grievant at the hospital. The Grievant told her that the gunfire started as he

was inside the cul-de-sac behind his aunt's house as he was carrying his son to his aunt's house. He also told her that he saw three black males involved in the shooting who he had previously seen three hours before at the Dunkin Donuts and the barber shop, but could not describe them. H [REDACTED] testified further that the Grievant told her he left his off-duty weapon in the truck and that she was determined to find and secure the truck. The Grievant told her that either his uncle or his mother had the keys. She spoke to the Grievant's mother who told her that the Grievant had the keys – that neither she nor his uncle had them. When H [REDACTED] went back to the Grievant, he insisted that his uncle had the truck and did not provide a complete answer regarding the truck keys. H [REDACTED] described the Grievant as coherent, not panicked, but excited because he was injured. In her opinion he was not in shock or traumatized.

Homicide Sgt. C [REDACTED] C [REDACTED] introduced a 75-48 Incident Report pertaining to the [REDACTED] [REDACTED] incident. It states that the Grievant ("Complainant") told officers he was "in the yard near his relative's residence when he heard and observed several males shooting" (City Exhibit 7, IAB58.) C [REDACTED] added that when the Grievant came to Homicide that evening to be interviewed he immediately asked if there was any video or witnesses of the incident. In a brief summary he gave to C [REDACTED], the Grievant told him that he parked his truck outside of his uncle's house (at [REDACTED]) with his two-year old son in the truck. While getting his son out of the truck he heard numerous

shots and jumped into the truck to cover his son. A friend then took his son and the Grievant left in his truck to go to the hospital.

O [REDACTED] also testified that they found the Grievant's truck near 13th and Harper St. and that it had no signs of damage or strike marks. He stated that there was blood found in the truck. O [REDACTED] also explained that when witnesses fear for their families' safety the Department will detail a patrol car to the residence and as a case proceeds through the DA's Office relocate the family if necessary. He added that he has never had officers claim fear for their families' safety.

Homicide Detective V [REDACTED] testified that prior to discussing the incident with him on the night in question, the Grievant was interested in knowing whether any video of the incident had been obtained. V [REDACTED] stated before the interview started he tried to build a rapport with the Grievant to calm him down. In the interview the Grievant told him that after checking on his son at his aunt's house he left in his truck to drive to Temple Hospital. On his way there he got stuck in traffic and saw a female friend who is a nurse who observed he was bleeding. She then started to drive him to the hospital when the Grievant flagged down a highway patrol vehicle to take him back to his aunt's house to check on his son.

V [REDACTED] testified that he stopped the interview once to explain to the Grievant that he was not making sense and the Grievant told him he was telling the truth and signed the interview. He stated that the Grievant never mentioned

anything about fearing for his family's safety. On cross-examination, V ██████ remarked that he told the Grievant to "calm down" when they first sat down because he knew that the Grievant had been injured and because when he first arrived he was "barking" orders, and asking about any video and asking about any evidence the Department had concerning the incident.

Homicide Lt. R ██████ testified that the day after the incident he was briefed about the same and was concerned that the Grievant's descriptions of his actions on ██████ did not make sense. Specifically, R ██████ questioned the extent of the Grievant's injury, his leaving the scene, leaving his truck "somewhere with a gun in it," and failing to remain with his son who he was "so worried about." R ██████ stated he learned from informants that the Grievant was standing with C ██████ B ██████ for a considerable time and that B ██████ had six or seven prior arrests (on one occasion with the Grievant's relative). He also testified that he had a picture of "D ██████" or S ██████ from the day of the shooting and he was "dressed like a Christmas tree" with a mint green jacket, red and green sleeves, a hat and a long beard.

He testified further that he brought the Grievant in for a second interview on ██████. Before the interview, Lt. R ██████ told the Grievant that they had other information indicating that there were "problems with his story" and "that he needed to decide which team he wanted to be and needed to tell us the truth. And he said he understood." The Grievant then generally repeated to R ██████ what he previously told Det. V ██████, including that no one else was present

with him at the time of the shooting. R█████ testified that at the time, while the story did not make sense he could not say the Grievant was lying.

R█████ testified that the following day, after he reviewed the video from the scene, he knew that the Grievant was “unequivocally” lying. At the hearing the video¹ of 1000 Parrish was played and Riehl explained that at approximately 2:52 p.m. B█████ gets out of his vehicle and walks over to the sidewalk. A minute later the Grievant pulls up in his truck near B█████. He then stands up on the driver’s side outside his truck and speaks to another individual who pulls up in an SUV while B█████ remains nearby. At 3:26 p.m. the Grievant leaves in his truck and returns two minutes later. At various points between 3:28 and 4:42 p.m., the Grievant is shown speaking with these other men. At 4:42 p.m., while the Grievant is standing by his truck along with B█████ and an unidentified black male, three black males walk past the group on the opposite side of the street, followed by another black male with a beard running after them (who R█████ identifies as “D█████”). Then at 4:43 p.m. the Grievant, B█████ and the other male are seen ducking down behind the Grievant’s truck. The Grievant’s truck then disappears. (City Exhibit 13.)

R█████ testified that the video does not show any sign of the Grievant’s son being present. He stated after watching the video he spoke to Captain L█████ and they agreed that due to the discrepancies the matter should be referred to

¹ The video camera was motion-sensored. As a result, it does not produce a continuous video but only records segments of time when the camera is triggered by external motion.

Internal Affairs. On December 1, 2016, the Grievant called Homicide to speak to R■■■■. He told R■■■■ that S■■■ was one of the shooters. R■■■■ told the Grievant that Internal Affairs was handling the case and that he should provide the information to them. (City Exhibit 7, IAB65.) R■■■■ testified that the Grievant's lies hampered the investigation and that it became a conspiracy of lies, inasmuch as B■■■■ told the same lies during his interview.

Internal Affairs Lt. Bugieda testified that he was assigned the Grievant's internal affairs case and ultimately the criminal investigation surrounding the shooting. He explained how he investigated and determined the name of the other man standing with the Grievant and B■■■■ (M■■■■ B■■■■) and the name of the shooter (R■■■■ W■■■■ or "D■■■■" or "S■■■"). Bugieda also stated that he interviewed the Grievant on December 13, 2016, at which time the Grievant admitted lying to Homicide regarding whether he knew who the shooter was and whether others were with him at the time of the shooting. The Grievant told Bugieda that if he told homicide that he was with B■■■■ when the shooting took place "they would have grabbed him ... word would have gotten out that I gave a statement ... and my family would have been in danger" (City Exhibit 7, IAB45). He also lied to Homicide about his knowledge of "S■■■" for the same reason.

On cross-examination, Bugieda testified that as part of the criminal investigation, on January 4, 2017, his office filed an application for a search warrant of R■■■■ W■■■■' home and cell phone. The probable cause affirmation

attached thereto was based on the Grievant's statements regarding the [REDACTED] incident. (City Exhibit 7, IAB165-166.) Bugieda also averred that he showed the Grievant the surveillance video during his December 13 interview.

Lt. J [REDACTED] W [REDACTED] testified that he is the commanding officer in the Department's Office of Forensic Science. He stated that the casings from the [REDACTED] incident showed that three guns were used. This information was entered into the National Integrated Ballistic Information Network ("NIBIN"). W [REDACTED]'s office was later informed by the Camden County Police Department that the same guns were used in five shootings and assaults taking place in that county in April and May of 2017 (City Exhibit 14). W [REDACTED] also averred that the guns have also been used in other shootings in Philadelphia.

Police Commissioner Richard Ross testified that when deciding whether to terminate the Grievant he considered especially his lying/deception and lack of integrity. He expects honesty and forthrightness from any witness, but especially police officers involved in off-duty shootings, in order to combat the serious problem of gun violence in the city. Ross added that had the Grievant mentioned to homicide his fear for his family's safety it would have been looked into and relocations made if necessary. Patrol cars can also be stationed outside officers' or family members' homes, whether within or outside of the city. Commissioner Ross also noted that because of his misrepresentations to Homicide in this case, the District Attorney's Office has identified the Grievant

as an officer who should not be called to testify unless a Deputy D.A. approves (City Exhibit 15).

The Grievant testified he currently works as a contractor for Homeland Security. He disclosed his termination from the Department to Homeland Security prior to working as a contractor. The Grievant obtained a security clearance for this position and carries a weapon. He testified that on the day in question he was off-duty and drove to the area of 1000 Parrish St. to help his uncle move furniture. The Grievant grew up in that neighborhood, his grandmother, aunt and uncle live there, and his son lives with his mother three blocks away. According to the Grievant, the area is known for a high volume of shootings and drug deals.

The Grievant testified that he pulled up to 11th and Parrish with his son and saw guys he knew from the neighborhood and began talking with them. His two-year old son then jumped from the rear to the driver's seat and was "bouncing around." The Grievant stated he lost track of time. After the three males walked by, then the male jogging after them, he saw one of the three males turn around and motioned like he was reaching for a gun. The Grievant averred that he started walking towards his truck and heard shots fired. He was struck in the rear, then in his hand as he was reaching for the door handle. The Grievant testified that he then jumped on top of his son. When the shooting stopped B [REDACTED] took the Grievant's son to the aunt's house and then the

Grievant also drove to his aunt's house to tell her he was shot and check on his son.

The Grievant testified further that he left in his truck to go to Temple Hospital but got stuck in traffic at 13th and Harper. A female from the neighborhood who is a nurse was also stuck in traffic and saw him with his hand out the window dripping blood. She offered to drive him to the hospital. Before he got into her car he walked around his vehicle because he "couldn't believe how I got shot from where I was standing at." Rather than driving him to the hospital, the Grievant asked the woman to return to his aunt's house so he could check on his son. The Grievant stated on the way there he flagged down the highway unit while in the car, then got out of the vehicle and got into the highway patrol car. The highway patrol drove him back to his aunt's house.

The Grievant averred that there was a huge police presence at the house when he returned, with "[e]veryone telling me to calm down." He stated he was "traumatized" from having been shot and just wanted to be with his son. The Grievant was taken to the hospital where he was "zoned out" and could not remember what responses he was giving to all the questions being asked by multiple police officials. Later that evening he and Captain L [REDACTED] went to Homicide to be interviewed. According to the Grievant, upon arrival he never asked any questions about whether there was a video. He explained he "didn't tell [V [REDACTED]] that I was out there talking to people. I didn't tell him that one of

the guys that ran past that was involved in the shooting that I knew I recognized him from the area.”

The Grievant explained why:

Because those guys are from the neighborhood, and all I'm thinking about at this point now is I'm a cop and my family lives down there, my children live down there, and that all these guys get to talking, and then it's going to be a blow back, and I got to worry about the safety of my children and my aunt and grandmom and my uncle, so that was running through my mind at the time....

I'm worrying about retaliation, if something happens to my kids while I'm not down there because they don't live with me.

The Grievant also testified that when he met with Lt. R [REDACTED] he had the feeling from the questions being asked that “they weren’t here to help me.” When asked why he did not disclose to R [REDACTED] his knowledge about “S [REDACTED]” (R [REDACTED] W [REDACTED]), the Grievant and his counsel had the following exchange:

Q. Did you tell Lt. R [REDACTED] that he was involved in the shooting or that you saw him that day?

A. No.

Q. Why?

A. Because I felt as though he was trying to target me and put me in with the situation of what was going on with the other males at the time, and I - my trust wasn’t there.... I felt as though they were trying to do something other than help me.

Q. Were you still concerned about your family and son?

A. Yes, I was.

The Grievant testified that when he spoke to R [REDACTED] he gave him some new information; namely, that [REDACTED] was the name of the teenage male who looked

as though he was reaching for his gun. He also stated that after his conversation with R ■■■ "it wasn't sitting well on his conscience" so he called Capt. L ■■■ and told him that he actually knew more than he told Homicide and wanted "to clear it up." He called R ■■■ that same day and told him that S ■■■ was the male that was jogging after the males. R ■■■ "shunned him off" and told him to tell Internal Affairs. The Grievant was then called in to speak with Lt. Bugieda at which time he "explained everything" and "gave them the names of everybody that was involved." He averred that he wants to be reinstated because "being a police officer was my calling" and he was raised in a rough neighborhood and "just always wanted to help clean and fix crime up." The Grievant claimed that in hindsight he wishes he had been more forthcoming but "his first priority was the safety of my children, and I wasn't thinking in a rational mind state."

The Grievant testified in response to a question from the undersigned that he first learned there was video obtained when he was interviewed by Internal Affairs.

Cpt. L ■■■ testified on rebuttal that on the night of the incident he gave the Grievant the choice to wait until the next day to speak with Homicide. The Grievant said he was fine and wanted to meet with Homicide that evening. Additionally, L ■■■ testified that after the Grievant was called to meet with Internal Affairs he called L ■■■. In that phone call, L ■■■ told the Grievant that he should just tell the truth and they have a video that "didn't match up with his story."

On cross-examination, L [REDACTED] testified that the Grievant told him at some point that he was going to call R [REDACTED] back, but L [REDACTED] could not recall if the Grievant ever told him that he had made such a call to R [REDACTED]. When asked whether his conversation with the Grievant about the video was before or after the Grievant called R [REDACTED] back, L [REDACTED] replied that “it was probably after.”² Additionally, L [REDACTED] testified that during his conversations with the Grievant prior to his speaking with Internal Affairs, the Grievant expressed fear for his family’s safety.

DISCUSSION

The parties’ positions can be briefly summarized.

The City argues that this case is solely about the appropriate level of discipline, and that the evidence clearly shows that “there is no way that this officer can continue to be a Philadelphia police officer.” He had an obligation to be truthful when reporting what occurred while he was off-duty, yet he lied repeatedly to multiple people regarding the number of individuals present during the shooting and their identities. These lies led to lost opportunities to identify and arrest the shooters and secure the guns. The City maintains that the Grievant also lied to officers about where he was when the shooting took

² Counsel for the City objected that there was no foundation for this response. The undersigned agrees that L [REDACTED]’s response regarding the timing of his conversation with the Grievant about the video in relation to the Grievant’s call to R [REDACTED] is unreliable, given L [REDACTED]’s prior testimony that he could not recall being told by the Grievant that he actually called R [REDACTED].

place. This made it more difficult for the police to properly secure the crime scene.

The City also contends that the Grievant mentioned for the first time at the hearing that he was grazed in the buttocks by a bullet and shot in the hand while grabbing the door handle. It argues that there is no ballistics evidence supporting these claims. The Grievant's claim at the time that he was protecting his son, made solely to make himself look good, resulted in another diversion of Department investigatory resources. The City also raises questions regarding the Grievant's various versions of why he left the scene; his actions upon coincidentally meeting up with a female friend at 13th and Harper; leaving his truck (which was crime evidence) several blocks away which contained his gun; and handing over his son to B [REDACTED], who has a criminal record.

The City submits that the Grievant also lied about when he learned about the surveillance video, neglecting to tell the undersigned that L [REDACTED] had told him about the video before he met with Internal Affairs. It also rejects the Grievant's claim that he feared for his family's safety because he never mentions this to Homicide. Additionally, he gave R [REDACTED] the name of [REDACTED] who was the teen who reached for his gun, so he was obviously not fearful of any retaliation by [REDACTED]. The City also insists that the officers who testified herein had no motivation to lie, whereas the Grievant has every reason to do so. Indeed, R [REDACTED] gave him an opportunity to be truthful and the Grievant rejected the same.

The Union reminds the undersigned that the Grievant was the victim here – the only individual in the incident who was shot. The City attempts to pin a multitude of wrongs on the Grievant with respect to how his actions impeded a criminal investigation, none of which is supported by any evidence. The Union also argues that there is not a shred of evidence supporting the City’s insinuation that the Grievant was engaged in some criminal conspiracy to “protect” his former neighbors in the area. The Union accuses the City of attempting to “dirty up” the Grievant after he was only charged with two instances of lying.

Furthermore, the Union submits that the Grievant’s version given to Internal Affairs – the version that the City claims makes no sense and is full of holes – was relied on by the City to procure warrants in the criminal investigation of the shooting. The evidence also shows that the Grievant was traumatized after the shooting, which explains away any inconsistencies he may have given soon after the shooting. “[W]e see a guy who looks and smells and acts like a victim and who is hyperexcited.” The Union also insists that the Grievant explained why he was not forthcoming initially – because of his fear for his family’s safety. It also acknowledges that while some discipline may be appropriate, the Grievant has shown he can still function as a sworn officer. He currently has a federal security clearance and carries a weapon. The Union requests the undersigned to focus on what the City charged him with – not on what the City has unsuccessfully tried to pin on him at the hearing.

Finally, the Union insists that the City has the heavy burden to demonstrate it had just cause to discharge the Grievant. There is a range of penalties for the violation of 1-§009-10, from a 10-day suspension to dismissal. The Grievant may have made a “bad choice,” but the Union insists it has presented sufficient evidence of mitigation to warrant against upholding the City’s termination decision.

If the facts of this case reflected above appear confusing and complex to the reader, that is because they were as equally confusing and complex to this Arbitrator. This is primarily due to the multiple number of versions of this one single event given by the Grievant and other witnesses. It is for this reason that I decided to start with the Department’s Internal Affairs findings in order to present a “baseline” of facts to describe the [REDACTED], event.

Notwithstanding this apparent confusion, without question one conclusion can readily be drawn; namely, that the Grievant failed to be truthful and honest when twice questioned by Homicide about the circumstances surrounding the shooting incident on [REDACTED]. Specifically, he admits he lied about who he was with at the time he was shot in the hand and buttocks, as well as about the scope of his knowledge of the identities of those involved. The fact that the Grievant believes he had a valid reason to initially lie about the events does not absolve him from a finding that his actions violated

Article I – Conduct Unbecoming, Section 1-§009-10 – (lying or attempting to deceive regarding a material fact during the course of any Departmental investigation). I find that the Grievant is clearly guilty of violating this provision of the Disciplinary Code. The only question that remains is whether the punishment of termination “fits the crime.”

The Disciplinary Code provides a range of penalties for a first-time violation of Section 1-§009-10; namely, 10-days to dismissal. Thus, as an initial matter the City’s termination decision herein does not violate the Disciplinary Code.

Furthermore, in addition to the misrepresentations already cited that serve as a basis for establishing the Grievant’s guilt, the record also contains a number of inconsistencies in the Grievant’s explanation, as well as questionable actions on his part. As argued by the City, these circumstances provide further justification for disqualifying the Grievant from continuing to serve as a sworn police officer. This includes, but is not limited to, the Grievant’s following actions/statements:³

- Providing different versions to various officers regarding where he was located when he was shot.
- Providing different versions to various officers regarding where the shooting took place.

³ The Union objects to the City raising these other instances on the ground that the City never charged Grievant with the same. To the extent this evidence is being considered, it is done solely for the purpose of determining whether the discipline imposed was appropriate, i.e. whether reinstatement is in order. This proffer by the City is no different than, and is just as relevant as, the mitigation evidence presented by the Union in support of the Grievant being reinstated which is addressed *infra*.

- Providing different versions to various officers regarding where on his body he was shot.
- Providing different versions after the shooting to various officers regarding how many shooters were involved.
- Providing different versions after the shooting to various officers regarding why he left the scene.
- Claiming initially that he was shot while removing his son from the truck, but later admitting he was standing outside the truck when the shooting took place.
- Failing to adequately explain why he was engaging with the three other men, some with criminal backgrounds, for two hours prior to the shooting.
- Failing to adequately explain why, if he was so concerned about his son, he left the scene.
- Failing to adequately explain why he handed his son off to a “friend” with a criminal record to walk through the crime scene to the aunt’s house, then immediately drive himself to the aunt’s house.
- Leaving his truck, which was part of the crime scene, several blocks away with a gun contained within.
- Failing to provide a straight answer regarding who had the keys to his truck.
- Meeting (coincidentally) a female friend while driving himself to the hospital, parking his truck, and then getting in the friend’s car to go to the hospital, but then deciding to return to check on his son.
- Claiming he was shot in the buttocks while standing next to the truck and in the hand while grabbing the door handle, yet the truck sustained no damage.
- Wanting to know immediately upon arriving at homicide whether a video existed and what evidence the homicide detectives had obtained.
- Failing to raise the issue regarding his fear for his family’s safety at any time in his interviews with homicide.
- Deciding to tell the truth to Internal Affairs only after he was informed by Cpt. L [REDACTED] there was a surveillance video that did not match his story.

The foregoing provides strong evidence that the Grievant’s conduct throughout was less than forthright (including after he claims he told the truth

to Internal Affairs). This weighs against a finding that the Grievant should be returned to his position as a police officer.

The Union relies on two primary mitigating factors to support its claim that the Grievant should be reinstated. First, that the responses he gave initially at the scene and thereafter during the homicide investigation must be discounted because he was still traumatized by the shooting. Second, that his reason for not being forthright during his interviews with homicide was based on his sincere fear that if he told the truth he would expose his family to retaliation by the involved individuals.

The record contains conflicting evidence as to whether the Grievant was in a sufficiently stable mental state to provide accurate information at the time right after the shooting, as well as when he was first interviewed by Homicide on the evening of the incident.⁴ Regardless, I find it is unnecessary to resolve this conflict. Thus, it is undisputed that three days later before his second Homicide interview, Lt. R■■■■ told the Grievant that they received other information indicating that there were problems with his story and “that he needed to decide which team he wanted to be and needed to tell us the truth. And he said he understood.” The Grievant proceeded to tell R■■■■ the same untruths he

⁴It is undisputed that Cpt. L■■■■ specifically gave the Grievant the option to wait until the following day to speak with Homicide, but the Grievant was anxious to meet that evening. Moreover, when the Grievant arrived at Homicide, the credible evidence shows that he immediately engaged in a “take charge” mode, demanding information about his case. This tends to support the City’s view that the Grievant was fit to be interviewed and his alleged trauma cannot excuse his deceptive responses.

previously told Det. V [REDACTED] on the evening of [REDACTED]. I conclude that this was a watershed moment in the investigation, wherein a sufficient amount of time had passed and the Grievant nonetheless decided to double-down on his false story regarding the events of [REDACTED].

I also conclude that based on the totality of the evidence, the Union's contention that the Grievant had a legitimate fear for his family's safety is not sustainable, for several reasons.

First, with respect to any fear that "S [REDACTED]" would retaliate against his family if he learned that the Grievant identified him, the Grievant continued to assert that his knowledge of S [REDACTED] was only in "passing." There is an inconsistency in claiming he had a sincere realistic fear of S [REDACTED], yet at the same time averring that he actually knew very little about him. Furthermore, the Grievant gave up the name of [REDACTED] (the teen who was reaching for the gun) to R [REDACTED] in his second Homicide interview, which is at odds with his claim that he was scared about giving up any names of those involved out of fear for his family's safety. Also, to a certain extent, the Grievant's alleged fear for his family's safety is a factor that unfortunately, in this day and age, all police officers have to deal with.

Perhaps the most telling evidence casting doubt on the sincerity of the Grievant's "family safety" claim was adduced when he was questioned by counsel as to why he did not provide R [REDACTED] with truthful information. The Grievant's first response was as follows:

Because I felt as though he was trying to target me and put me in with the situation of what was going on with the other males at the time, and I - my trust wasn't there.... I felt as though they were trying to do something other than help me.

This testimony reflects that the Grievant was motivated by a fear of being accused of hanging out with bad guys in his old neighborhood. Counsel then had to follow-up with a leading question asking whether he also had a fear for his family, to which the Grievant simply responded: "Yes, I did."

There is other evidence casting doubt on the veracity of the Grievant's story to Internal Affairs as to what took place on [REDACTED]. Thus, despite closely examining the video evidence I am unable to see the Grievant's son in his truck at any point during the almost two-hour period his truck was parked on Parrish St. Although part of this may be attributable to the quality of the video, the distance involved, and the fact the video was on a motion-sensor, I am also cognizant of the Grievant's other testimony that as a two-year old, his son was in the front seat and "bouncing around" (at least until the Grievant handed the child his phone). It is most plausible that over a two-hour period one would see at least *some* motion from a two-year old, with or without a cell phone to play with.

Furthermore, I credit the testimony that the Grievant was extremely inquisitive about whether homicide had any video of the seen when he arrived to be interviewed. This was not the action of a "zoned out" individual, but the actions of someone who wanted as much information as possible before crafting

a story. I am also deeply concerned by the Grievant's testimony (rebutted by Cpt. L [REDACTED]) that he was unaware of the existence of the video until he met with Bugieda. I am left with the impression that the Grievant's guilty conscience may have been triggered – at least in part -- by his learning that there was a video that did not square with his initial version of events.

This Arbitrator is also troubled by the evidence showing that the Grievant's first version of the event as told to Homicide – which he admits was false and was proffered solely to protect his family – was corroborated in part by B [REDACTED] when interviewed by Homicide. This opens a door to a host of unanswered questions regarding the Grievant's ongoing relationships with criminal elements from his old neighborhood and whether he was indeed placing the interests of his neighborhood friends over those of law enforcement.

The undersigned also cannot conclude that the Department's use of the Grievant's statements to support search warrants for the criminal investigation, as well as the Grievant's status as a Homeland Security contractor, warrant a reinstatement order. These developments are not evidence that the Department can *per se* trust the Grievant going forward to consistently exercise good judgment and always perform his police duties in an honest and forthright manner, especially given all of the evidence suggesting the contrary herein.

While I found the Grievant to have an amiable demeanor and his current professional work shows he is obviously a capable individual, the proffered mitigating circumstances are simply too thin and questionable to override the

Department's determination, unanimously arrived at by the PBI and the Police Commissioner, to dismiss the Grievant's employment as a police officer.

Accordingly, based on the foregoing, the grievance is denied. The City had just cause to terminate the Grievant for violating Section 1-§009-10 of the Disciplinary Code.

Consistent with the foregoing discussion and findings, the Arbitrator renders the following

AWARD

The grievance is denied.

The City had just cause to terminate the Grievant, Angelo Romero.

A handwritten signature in black ink, appearing to read 'James M. Darby', written over a horizontal line.

JAMES M. DARBY
Arbitrator
Lancaster, Pennsylvania
June 25, 2019