

IN ARBITRATION BEFORE  
MICHAEL E. CAVANAUGH, J.D.

KING COUNTY SHERIFF'S OFFICE, )  
 )  
Employer, ) ARBITRATOR'S  
 ) DECISION AND AWARD  
and )  
 )  
KING COUNTY POLICE )  
OFFICERS' GUILD, )  
 )  
Union. )  
 )  
(Grievance of James Schrimpsheer) )

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I. INTRODUCTION

The King County Sheriff's Office ("KCSO") discharged Deputy James Schrimpsheer after finding that he had been dishonest and had given "misleading" answers to questions during an internal affairs investigation. The Guild contends that Grievant honestly answered, to the best of his recollection, the specific questions put to him in connection with two citizen complaints. Grievant had no legal obligation to volunteer additional information, according to the Guild. That is particularly so, the Guild argues,

because the specific areas of inquiry involved in the findings of dishonesty fell outside the scope of the subjects specified in the notices to Grievant at the outset of the investigations.<sup>1</sup>

At a hearing held in the offices of Guild counsel on February 6, 9, 13 and March 10 and 11 of 2009, the parties had full opportunity to present evidence<sup>2</sup> and argument, including the opportunity to cross examine each other's witnesses. A certified court reporter transcribed the proceedings, and the parties furnished a copy of the transcript for my use in evaluating the evidence. Counsel filed simultaneous post-hearing briefs dated May 29, 2009,<sup>3</sup> and with my receipt of the briefs, the record closed. Having carefully considered the entire record in light of the detailed briefing provided by the parties, I am now prepared to render the following Decision and Award.

## II. STATEMENT OF THE ISSUE

In stipulating to the issue to be decided, the parties agreed on a standard just cause formulation, namely

Did the County have just cause to terminate Deputy Schrimpsheer? If not, what is the appropriate remedy?

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<sup>1</sup> The Guild also contends that the investigator was "biased" because he filed the follow-up charge of dishonesty when he became convinced that Grievant was being evasive and less than fully truthful in the underlying investigations. At that point, contends the Guild, the investigator should have recused himself.

<sup>2</sup> The parties presented the testimony of 19 witnesses, with a transcript of nearly 1,100 pages, as well as supporting documentary evidence consisting of five large binders that fill a banker's box. Each party's post-hearing written argument consisted of a brief covering approximately seventy pages. I have carefully reviewed all of the testimony, the evidence, and the arguments of the parties. Nevertheless, in this Decision and Award I confine myself to the most important aspects of the case in order to expedite issuance of the Award and to provide the parties with my thinking on the issues that are actually critical to the result.

<sup>3</sup> I appreciate the parties' willingness to grant an extension of the normal thirty-day period for rendering an Award, necessitated by my schedule.

Tr. 16. In addition, the parties stipulated that I should retain jurisdiction, in the event I find that some remedy is appropriate, to resolve disputes in connection with implementation that the parties are unable to resolve on their own. *Id.*

### III. FACTS

Deputy Schrimpsheer was employed by the KCSO from 2003 until his discharge effective December 14, 2007. Exh. G-7. He had prior law enforcement experience, including experience as an air marshal after September 11. Sometime in 2005, a Sergeant encouraged Grievant to consider joining the "Metro Unit," a specialized team within KCSO that provides law enforcement services to the County's public transportation system under a contract between KCSO and King County Metro Transit. Deputies in Metro are expected to focus their activities on Metro properties, e.g. bus stops, transit centers, and the downtown bus tunnel, as well as the buses themselves. At the same time, if deputies see significant criminal activity underway, or are approached by citizens about an alleged crime in progress, they are expected to exercise their police powers to apprehend criminals and to protect the public, even if the activities involved would ordinarily be the responsibility of another jurisdiction such as the Seattle Police Department ("SPD"). The Metro unit is also expected to be "proactive," i.e. to actively patrol assigned areas, seeking out and controlling activities that might discourage the public from riding the bus, as opposed to a more traditional law enforcement model of waiting to be dispatched to deal with incidents reported via 911 calls from the public. During the time Grievant was assigned to Metro, deputies in that unit were assigned on a day-to-day basis to one of several broad geographical districts, e.g. the north end, the downtown business district, Capitol Hill, southwest, or Rainier Valley.

A. Luke Bulyca and Anthony Alvarez

On December 27, 2006, Grievant was working with Deputy James Keller in the north end. They were utilizing Deputy Schrimpsheer's blue "slick top," an unmarked Crown Victoria that would be less identifiable as a law enforcement vehicle than a standard patrol car.<sup>4</sup> While patrolling along University Way NE in the University District just before 4:00 PM, Grievant and Keller noticed two male subjects smoking in a bus shelter, a violation of Metro Transit's code of conduct. As the deputies approached the subjects in their patrol vehicle, the subjects quickly left the bus shelter and jaywalked across the street. Grievant stopped his vehicle in the middle of the street and contacted the two individuals, asking them for identification. Deputy Keller ran the names on the laptop computer in Grievant's vehicle. He also "on viewed"<sup>5</sup> to dispatch and asked dispatch to run the names of the two contacts. One came back "clear" from dispatch (i.e. no outstanding warrants), but the other, Luke Bulyca, had an outstanding felony warrant from Nevada. Grievant testified that the deputies were told by dispatch that "it looks like the warrant is non-ex," i.e. that it looked like the warrant was one that could not support an arrest of Mr. Bulyca for extradition back to Nevada.<sup>6</sup> Because the issue was not entirely clear to the Deputies, however, they placed Bulyca under arrest while they did additional research. On the other hand, the "CAD Report" in the record seems to indicate that dispatch said the warrant was "non-ex," not "it looks like the warrant is non-ex."

Exh. E-36 at 00207.

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<sup>4</sup> Although none of the witnesses ever defined "slick top," I understood the term to apply to a police vehicle that does not have emergency lights on top.

<sup>5</sup> Officers "on view" to notify dispatch that they are dealing with a situation that they have happened upon in the course of their patrol, as opposed to being dispatched as a result of a 911 call.

<sup>6</sup> Apparently, Bulyca's warrant was only extraditable within 50 miles of Nevada.

While attempting to determine whether the warrant was extraditable, the deputies moved their vehicle out of the middle of the street around the corner to a widened portion of Brooklyn Avenue NE between NE 43<sup>rd</sup> and NE 45<sup>th</sup>. According to the deputies, they then attempted to contact "Data," a section of the KCSO that has access to hard copies of outstanding warrants. During the IIU interviews, each deputy said the other contacted Data, announced the appropriate call sign for the vehicle, and received an immediate response of "stand by." The recording of calls on the Data channel for the period 3:58 PM through 4:55 PM on December 27, however, does not reflect calls to Data from any Metro unit. Exh. E-35 at Tab 29. At the hearing, the deputies suggested that perhaps they heard "stand by" before even having a chance to announce their call sign, and the tape for the day does in fact contain a number of "stand bys" from Data during that time frame.

While the deputies were parked along Brooklyn Avenue waiting to verify the Bulyca warrant, their vehicle was approached by Anthony Alavarez who started "chipping" disrespectfully at the deputies. Grievant described Alavarez as wearing clothing consistent with being a member of a gang, although some of the witnesses subsequently gave a very different description to Sgt. Corey, the IIU investigator. Alvarez eventually moved north toward 45<sup>th</sup> Street, but the deputies saw him returning a short time later,<sup>7</sup> allegedly forming both his hands into pretend handguns and motioning as if he were firing them.<sup>8</sup> Grievant testified that he became concerned that Alvarez was intentionally attempting to distract them from dealing with Bulyca, a situation that could

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<sup>7</sup> Apparently, Alavarez had gone to a record store near 45<sup>th</sup> and then returned south along Brooklyn Avenue.

<sup>8</sup> On the other hand, the record store owner told Sgt. Corey during the IIU investigation that Alvarez had purchased some albums and left with a plastic bag in one hand, so Sgt. Corey questioned how Alvarez could have made "gun motions" with both hands.

constitute the crime of "obstruction." In any event, as Alvarez returned toward the deputies' vehicle, Grievant exited and confronted him, moving him to the rear of the vehicle and patting him down for weapons.<sup>9</sup> During the Deputies' interaction with Alvarez, a female drove up behind them and told Deputy Keller that she was Alvarez's wife who had driven to that location to pick him up and take him home. Ms. Alvarez also told the Deputies that her husband had just come from being treated for a serious heart condition at University Hospital, that he was angry because of his condition, and that he hated the police.<sup>10</sup> She told them that she just wanted to take him home to Eastern Washington. The deputies responded that they would release Alvarez if she would promptly remove him from the area.

As soon as the Alvarez vehicle drove off, Grievant immediately began driving toward a Jack-in-the-Box restaurant a few blocks away.<sup>11</sup> Deputy Schrimpsheer was concerned that Alvarez might return, potentially with a weapon, and thus he believed that officer safety concerns necessitated moving to a different location. On the way to the Jack-in-the-Box, Deputy Keller reviewed the information concerning the Bulyca warrant already on the laptop. That information, which Deputy Keller testified had been

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<sup>9</sup> The CAD report shows that the deputies ran Alvarez's name at 4:15 PM, so presumably he was patted down sometime shortly before then.

<sup>10</sup> In a subsequent IIU telephone interview, Ms. Alvarez denied that she had said her husband hated the police.

<sup>11</sup> Although I do not believe the precise location of the Jack-in-the-Box is in the record, the transcript of Brandy Goldsberry's IIU interview (I will discuss Goldsberry's situation in a moment) indicates that when contacted by Grievant, she was in a vehicle in the parking lot of the Safeway store immediately adjacent to the Jack in the Box on "the Ave," i.e. University Way NE. Exh. E-36 at 00230-00231. That description corresponds to the Jack in the Box at NE 50<sup>th</sup> and University Way (the specific address is 4749 University Way NE).

minimized while they were dealing with Alvarez, clearly established that the warrant was not extraditable beyond fifty miles from the State of Nevada.<sup>12</sup>

As the deputies pulled into the parking lot near the Jack-in-the-Box, Grievant observed a vehicle that on previous days he had attempted to contact because he saw the male occupant stopping to talk to single women at bus shelters (Grievant suspected the man was attempting to solicit prostitutes). When the deputies' vehicle stopped in the parking lot near the Jack-in-the-Box, Grievant jumped out and confronted the male and also a female sitting in his car. The male came up clear, as did the female, Brandy Graves or Goldsberry, but Grievant testified that Goldsberry told him she had an outstanding misdemeanor warrant from Tukwila under a different name. Grievant released the male, and took Ms. Goldsberry into custody on the warrant after running her other name and confirming that she had an outstanding misdemeanor warrant.<sup>13</sup>

While Deputy Schrimpsheer was dealing with the male and Ms. Goldsberry, Deputy Keller was "covering" him by observing those interactions while leaning against the patrol vehicle with his hand near his sidearm. When Deputy Schrimpsheer returned with Ms. Goldsberry in custody, the Deputies released Bulyca because his warrant, as Bulyca had claimed all along, was not extraditable.<sup>14</sup>

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<sup>12</sup> According to Bulyca's statement given to Sgt. Corey, he had repeatedly told the deputies that they could not hold him on the warrant, that the Seattle Police had attempted to arrest him on that warrant several times before, only to let him go when they verified that it was not extraditable. Deputy Keller essentially corroborated that information. Tr. 570.

<sup>13</sup> It is not clear to me which name Brandy Graves or Goldsberry gave first, but apparently whichever it was, the warrant was under the other name. In any event, I will refer to her as "Goldsberry" for the remainder of this Decision and Award.

<sup>14</sup> It appears that the deputies first ran Brandy Goldsberry's name at 4:25 PM. Exh. E-36 at 00207. Assuming Bulyca was finally released at approximately that time, it appears that he was in custody for roughly 25 minutes, because the deputies took him into custody when his outstanding felony warrant came back at 4:02 PM. *Id.*

(A)

B. Brandy Goldsberry and Brandon Selover

Goldsberry offered to provide information about drug dealers in the area if the Deputies could help her with her outstanding warrant.<sup>15</sup> Brandy indicated that her former boyfriend, Brandon Selover, dealt heroin out of a series of motels along Aurora Avenue. He also had an outstanding felony warrant according to Goldsberry. She said she had tried to turn him in to the Seattle Police a week or so earlier when she learned that he had a new girl friend. Schrimpsheer "qualified" Goldsberry as a reliable potential confidential informant by asking her a series of questions, e.g. how much do you buy at one time? What quantity of drugs have you seen on the dealer's premises? Based on her answers, Grievant believed Goldsberry was telling the truth and genuinely attempting to be helpful so as to avoid arrest. Schrimpsheer also believed that her warrant would likely not have resulted in actual confinement had they taken her downtown (Schrimpsheer thought it would be "in the front door and out the back"). Consequently, he judged it would be a waste of their time to transport her downtown in rush hour traffic, and he thought it was therefore worthwhile to attempt to trade assistance on Goldsberry's misdemeanor warrant<sup>16</sup> for information about a "really bad dude"<sup>17</sup> who could be taken off the streets. Deputy Keller called Sgt. Laing and told him they had a person in custody on a "cheesy" warrant that they would like to work for information. He asked for permission to let her go in exchange for her help in arresting a person with a felony warrant. Sgt. Laing said

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<sup>15</sup> Goldsberry, as an addict, apparently was desperate not to go to jail where she would suffer withdrawal symptoms.

<sup>16</sup> Deputy Schrimpsheer told Ms. Goldsberry that he could put her in touch with a detective who might be able to help her.

<sup>17</sup> Goldsberry told the deputies that Selover was a heroin dealer who was usually armed and therefore dangerous.



“tell her we’ll get her next time.” While still at the parking lot near the Jack-in-the-Box, Grievant uncuffed Goldsberry (or “un-arrested her” as he put it in his testimony).

One reason Grievant gave for thinking that Goldsberry was giving him good information was that he recalled a telephone conversation with Deputy Charles Douglas, Metro liaison officer, that purportedly occurred just a couple of hours earlier on December 27. In that conversation, Grievant described Douglas as having told him that there had been complaints about needles and drug paraphernalia at bus stops at Aurora and Denny, and also at a stop near the bridge on Aurora.<sup>18</sup> Schrimpsheer then “put two and two together,” thinking Goldsberry’s information about Selover’s dealing heroin from motels on Aurora might be related to the information he had received from Deputy Douglas. In any event, after releasing Goldsberry from the handcuffs, the deputies instructed her to use Deputy Keller’s cell phone to make several calls to Selover to arrange to meet him for a drug buy. Goldsberry and Selover agreed to meet near a school just west of Aurora and not far from the motel where Selover was staying at the time, the Bridge Motel at the north end of the Aurora Bridge. Deputy Schrimpsheer overheard at least a portion of the first of these calls, then moved away from the area to keep police radio traffic from being heard by Selover in the background.

The deputies drove to the area at the north end of the Aurora Bridge, where Ms. Goldsberry pointed out the Bridge Motel. They then drove across the bridge (southbound), turned around and drove back over the bridge to take up a position near the school across Aurora to the west from the Bridge Motel, a couple of blocks north of the north end of the bridge. Deputy Keller called in three other Metro officers via Nextel

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<sup>18</sup> Deputy Douglas denied making any such call to Grievant, a matter that I will discuss in detail in the course of the Decision and Award that follows.

walkie-talkie—Mitchell, Gervacio, and Kennamer—specifically requesting that Deputy Kennamer bring his shotgun. The deputies then took up positions around the school, waiting for Selover to appear in the open where he could be arrested on his warrant. They waited for about thirty minutes, but Selover did not appear. One of the officers observed a Native American woman near a fire station on Linden Avenue North between North 38<sup>th</sup> and 39<sup>th</sup>, approximately one-half block south of where the Deputies were waiting at Linden and 39<sup>th</sup>. From the description transmitted between officers (apparently via Nextel), Ms. Goldsberry identified the female as Selover's new girlfriend. Deputy Mitchell contacted the female and questioned her in front of the fire station. He determined that she was Corinne Goodvoice, who confirmed that she was Selover's girlfriend. Goodvoice said that she had been sent by Selover to bring Ms. Goldsberry back to the motel room. When searched, Ms. Goodvoice had a knife, some heroin, and a key to a room at the Bridge Motel.

Deputy Keller testified that at this point they decided to attempt to arrest Selover on his warrant at the Bridge Motel.<sup>19</sup> They cut Goldsberry loose because she had fulfilled her part of the deal, i.e. to help them find Selover so he could be arrested. The precise time of Goldsberry's release is somewhat uncertain, but CAD shows Selover in custody at 6:52 PM (Exh. E-36 at 00210), and Kennamer and Gervacio, the Deputies involved in who had agreed to drive Goldsberry back to the University District, testified that on the way they received Nextel communications from Keller to "haul ass" back to the Bridge Motel because Keller and Schrimpsheer had spotted Selover going into his room there and

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<sup>19</sup> In his testimony at the hearing, Deputy Keller conceded that the arrest of Selover on an outstanding warrant presented, at best, a "weak" connection to Metro concerns, but he decided "Let's take this guy down. Let's put him in prison. I thought that was my job as a deputy sheriff. So I got excited about it" Tr. at 590.

were planning to arrest him. The Deputies then dropped Goldsberry at a nearby 7-11 Store, apparently at North 40<sup>th</sup> and Stone Way, and quickly returned to the Bridge Motel, just a few blocks away. Consequently, Ms. Goldsberry was with Keller and Schrimpsheer for approximately two and one-half hours, i.e. from not later than 4:25 PM at the Jack-in-the-Box in the University District to just before 6:52 PM when they released her near the school just west of Aurora.

In describing the arrest of Selover, Grievant testified that he and Keller drove to the Bridge Motel to take up a surveillance position while Gervacio and Kennamer took Goldsberry back to the University District as described above. Upon pulling up to the area, Deputy Keller observed Selover near a parked car in front of the motel. When Selover saw the patrol car approaching, he walked quickly up the stairs and entered a room. Deputy Schrimpsheer saw a man walking up the stairs and into a room, but could not identify him as Selover.<sup>20</sup> Nevertheless, he relied on Keller's identification. Deputy Mitchell went to the back of the motel in case Selover tried to escape that way, and the other four went up the stairs to the room—Keller in front, Schrimpsheer next in line, and the two other deputies trailing, including Deputy Kennamer with his shotgun. Keller tried the key in the door,<sup>21</sup> but determined that someone was holding the door from the other side. Schrimpsheer then shouldered the door open, and the deputies burst into the room,

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<sup>20</sup> Although Deputy Schrimpsheer had said during the IIU interview that "we saw Selover near a car in the parking lot," at the hearing he clarified that it was Deputy Keller who actually identified the subject.

<sup>21</sup> Keller testified that he did not announce himself before trying the door. Tr. at 601. Grievant, by contrast, contended that they announced themselves as deputy sheriffs. Exh. E-36 at 00394 (IIU interview June 19, 2007).

with Grievant heading immediately to the bathroom where Selover was attempting to flush something down the toilet.<sup>22</sup> The deputies arrested Selover at that time.

### C. Eric Ellis

Two days later, on December 29, 2006 Grievant was riding with Department of Corrections Community Corrections Officer Mike Schemnitzer. At approximately 9:24 PM, Deputy Schrimpsheer "on-viewed" a suspicious vehicle at "Triangle Park," at 18<sup>th</sup> and Delridge in Southwest Seattle. Grievant testified that he observed a Ford Explorer making a quick left-turn without signaling, so he stopped the vehicle. He approached on the driver's side and asked to see identification. The driver was Juan Diaz, a convicted felon on DOC supervision. His passenger, Eric Ellis, was leaned back in his seat without a seat belt according to Grievant,<sup>23</sup> so he asked to see his identification as well. Ellis questioned why he should be required to show identification. Something of a heated discussion followed, with Ellis claiming that Schrimpsheer called him "Johnny Cochran" and asked him where the drugs were located. Schrimpsheer and DOC Officer Schemnitzer said that Ellis was the one who got excited. During the investigation, Schrimpsheer testified that Schemnitzer ran Ellis and found a possible DUI warrant under an alias sometimes used by Ellis. Schemnitzer testified that it was Schrimpsheer who found the possible warrant. In any event, Ellis was taken into custody, handcuffed, searched, and

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<sup>22</sup> Schrimpsheer testified that he saw heroin in the bowl, but did not reach his hand in to retrieve it before it disappeared. In fact, the deputies testified that the motel room was a "disgusting mess," with "needles, blood, goop, and drug paraphernalia" everywhere. Tr. at 768 (Deputy Kennamer).

<sup>23</sup> Officer Schemnitzer also testified that Ellis was not wearing his seat belt, but Ellis testified to the contrary, and Diaz likewise told the IIU investigator that Ellis was wearing his belt. The issue is important because while DOC Officer Schemnitzer might have greater powers over Ellis because he was on DOC supervision, Deputy Schrimpsheer would have no right to ask Ellis for identification in the absence of some reason to believe that he had committed a violation of the law, e.g. by failing to wear his seat belt.

placed in the back seat of the patrol vehicle, then Diaz<sup>24</sup> was also removed from the vehicle while Schemnitzer and Schrimpsheer searched the car (purportedly limited to the areas where Ellis had been and could have hidden weapons or drugs). Some time later (the record is unclear just how much time elapsed), the officers determined that Ellis did not have a DUI warrant (apparently there was a warrant under a name similar to an alias sometimes used by Ellis). Schemnitzer decided he did not want to take Ellis into custody for violating the terms of his supervision,<sup>25</sup> so Grievant released Ellis with a "warning."

At the hearing, Grievant and Schemnitzer contended that Grievant had detained Ellis based on an express or implied request of Schemnitzer, i.e. that the DOC officer had asked for the deputy's assistance in exercising DOC powers that went beyond the powers Deputy Schrimpsheer could have exercised on his own.

#### D. Ellis and Alvarez Complaints

Both Eric Ellis and Anthony Alvarez filed complaints regarding their treatment by Deputy Schrimpsheer. The complaints were investigated by IIU and sustained, at least in part, insofar as they alleged violations of KCSO policies and procedures. For example, IIU investigator Sgt. Mullinax concluded that Grievant had acted improperly in taking Eric Ellis into custody without first verifying the validity of the possible DUI warrant, particularly in light of the fact that Ellis came back "clear" from dispatch. Similarly, IIU investigator Sgt. Corey concluded that Deputy Schrimpsheer (as well as Deputy Keller) had violated procedures by taking Luke Bulyca into custody for approximately thirty minutes without properly verifying whether his outstanding warrant was extraditable.

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<sup>24</sup> Diaz, who was admittedly cooperative at all times, contends that he was handcuffed as well. Deputy Schrimpsheer and DOC Officer Schemnitzer denied it.

<sup>25</sup> Apparently, Ellis was prohibited from being in the White Center area, although Ellis testified that he understood he was allowed to travel through the area on his way to somewhere else.

Allegations relating to Brandy Goldsberry, specifically that she had been stopped without probable cause and improperly released on an outstanding misdemeanor warrant, were non-sustained by Sgt. Corey.

During Sgt. Corey's investigation into these allegations, however, he became concerned that Deputy Schrimpsheer had not been entirely forthcoming in responding to his questions about the detention of Ms. Goldsberry. Specifically, Grievant had claimed that he received a telephone call from Deputy Douglas earlier in the day on December 27, 2006 about drug activity and drug paraphernalia at bus stops on Aurora—specifically, at a stop near Denny Way and also one “near the bridge.” Deputy Douglas denied that he had ever spoken with Grievant by telephone,<sup>26</sup> and he indicated that he was totally unaware of any drug related activity near the Aurora Bridge. Similarly, when asked how long Deputies Schrimpsheer and Keller had Ms. Goldsberry “in custody” gathering information about Brandon Selover, Grievant replied “long enough to give her a ride over to Aurora and so—if I had to guess, what thirty minutes?” Later IIU interviews appeared to confirm that Ms. Goldsberry was still with the Deputies within a few minutes prior to the arrest of Selover, several hours after she was initially detained.<sup>27</sup> Sgt. Corey filed additional charges against Grievant alleging that he had been untruthful during the investigation of the underlying complaints. After a preliminary inquiry by Capt. Cameron Webster, head of IIU, Sgt. Corey completed the investigation and recommended

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<sup>26</sup> At the hearing, however, Deputy Douglas conceded that telephone records demonstrate that he must have spoken to Deputy Schrimpsheer a week or so prior to December 27. Even so, however, Deputy Douglas reiterated his denial that he had ever spoken with Grievant about potential drug activity “near the bridge.”

<sup>27</sup> There were additional allegations that Deputy Schrimpsheer's responses to questions in IIU interviews were misleading and lacked candor, but the ones that were ultimately sustained by Chief Robin Fenton and Sheriff Rahr were that Grievant lied about the timing and content of the telephone conversation with Deputy Douglas and about how long Ms. Goldsberry was in custody. Because the termination here must stand or fall on the sustained allegations, I focus on these specific instances of alleged dishonesty.

“sustained” findings of dishonesty on both counts. Chief Fenton and Sheriff Rahr concurred.

In addition, Chief Fenton and Sheriff Rahr concurred with the IIU recommendations of “sustained” findings on the detention of Luke Bulyca for approximately 30 minutes on a non-ex warrant, and on the detention of Juan Diaz and Eric Ellis without verifying the existence of a “possible DUI warrant” for Mr. Ellis.<sup>28</sup> As of result of the dishonesty findings, Sheriff Rahr concurred in the recommendation that Grievant be discharged from KCSO.<sup>29</sup> These proceedings followed.

#### IV. DECISION

##### A. Burden and Quantum of Proof

KCSO accepts that it bears the burden of establishing the misconduct for which Grievant was discharged, but argues that the appropriate evidentiary benchmark is “preponderance of the evidence.” KCSO Brief at 38. The Guild, by contrast, contends that GOM 3.03.165(2) requires proof by “clear and convincing evidence” in cases in which “criminal or serious misconduct is alleged, and there is likelihood of demotion or termination.” Exh. G-2 at 18. I agree that a deputy with substantial seniority, i.e. a deputy who has achieved regular status, should not be deprived of his livelihood on the barest preponderance of the evidence.

The concept of just cause is flexible and pragmatic, encompassing notions of both substantive and procedural fairness. The precise elements of “fairness,” however, may

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<sup>28</sup> As previously noted, however, at the hearing Grievant and DOC Officer Schemnitzer testified that the DOC Officer had expressly or impliedly asked Deputy Schrimpsheer to detain and search Ellis because he was on active DOC supervision, not simply because of the possible DUI warrant. It is apparently uncontested that DOC has greater powers to detain and search than KCSO deputies.

<sup>29</sup> Sheriff Rahr testified, however, that the “policy and procedure” violations, i.e. the detentions of Bulyca and Ellis/Diaz, would not by themselves have warranted termination.

well vary depending on the precise nature of the case. As a result, arbitrators typically require that the more serious the alleged misconduct, the higher the quantum of proof the Employer must produce in order to sustain its burden to establish just cause for the discipline imposed. That is so because allegations of very serious misconduct typically result not only in termination from employment, but also in a stigma that can seriously hinder an employee's search for a replacement job. I presume that it is precisely for that reason that GOM 3.03.165 establishes a "preponderance of the evidence" standard for "ordinary" administrative investigations, but a higher standard of proof in "serious" cases in which a deputy's rank or continued employment is in jeopardy.

I will apply the "clear and convincing"<sup>30</sup> standard in my evaluation of the sustained allegations upon which Sheriff Rahr determined that Grievant should be discharged.

#### B. Whether Grievant Was "Dishonest"

The heart of the case, as Sheriff Rahr's testimony established, is whether Grievant was dishonest in his responses to questions posed by Sgt. Corey in the IIU interviews, particularly the interview on March 27, 2007. Although the KCSO Brief argues, at least implicitly, that Deputy Schrimpscher was dishonest in many respects—and on many subjects—during the investigation, for reasons already set forth above, I must focus on the two specific allegations sustained by Chief Fenton and relied upon by Sheriff Rahr to discharge Grievant. Specifically, I note that Sheriff Rahr cited two specific instances of dishonesty in her memo of December 4, 2007 (Exh. E-36 at 00171 *et seq.*), i.e. 1) that

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<sup>30</sup> As an aside, it has always struck me that the phrase "clear and convincing" is somewhat redundant. Evidence that is "clear" will surely be "convincing," whereas "unclear" evidence will not. Therefore, I typically describe the standard as "convincing" evidence, and that is the term I will use here. There is little, if any, substantive difference between the two formulations, however.



Grievant lied about his purported telephone conversation with Deputy Douglas on December 27, 2006, and 2) that Grievant falsely stated that Ms. Goldsberry was “in custody” for just thirty minutes or so that evening.

1. Telephone Conversation With Deputy Douglas

In the IIU interview on March 27, Sgt. Corey asked Grievant how it came about that he made contact with Ms. Goldsberry. Exh. E-36 at 00377. Deputy Schrimpsheer then recounted that as he drove up to the Jack-in-the-Box with Luke Bulyca in the back seat of the patrol car, he saw a male subject who he believed might be soliciting prostitutes at bus stops in the University District. *Id.* at 00377-78. He explained that he found Ms. Goldsberry sitting in the subject’s vehicle and that he was suspicious because she said she was the subject’s girlfriend, whereas the subject had simply described her as a “friend.” *Id.* He then asked Ms. Goldsberry’s name, which he ran, but it came back with no record. At that point, according to Grievant, Goldsberry “volunteered” that she had a misdemeanor warrant out of Tukwila under a different name,<sup>31</sup> and she also offered some information on a male who is dealing drugs and “might have a warrant.” *Id.* at 00378.

Deputy Schrimpsheer continued

Okay. Earlier in the shift, I’d been called by Charles Douglas on my Department cell phone about a guy in the same area that she’s mentioning dealing—that they’re having trouble on a Metro—in the Metro zone dealing heroin. . . . I put two and two together . . .

*Id.* Sgt. Corey then asked “I’m assuming that it’s the person that Charles Douglas tells you is the same person she’s talking about or . . .” and Grievant responds

ACC: See Chuck—no—Charles Douglas doesn’t say the same person but the same location.

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<sup>31</sup> Why Ms. Goldsberry would volunteer the fact that she had a warrant under a different name is unclear to me, although perhaps it related to her desire to get back at Selover, her former boyfriend.

SGT: Oh okay.

ACC: And then she tells me this guy that she's bought heroin from in the past—I can't think of his name now. I'd have to go back and look—but—but he—that's where he does business.

SGT: Okay.

ACC: And so—and you know—it was just funny because Charles Douglas had called me a couple of hours before that and told the same—that you know—we're getting complaints about this bus stop—finding needles—some—some late night occupy—and so I went back and I put two and two together . . . .

Exh. E-36 at 00379-80 (Grievant Interview of March 27, 2007).

When interviewed by Sgt. Corey a few days later on April 2, 2007, however, Deputy Douglas told the investigator that he was on vacation during the week of December 27, 2006, i.e. the week between Christmas and New Years Day. Exh. G-22 at 3. He also denied that he had ever discussed with Deputy Schrimpsheer—or Deputy Keller for that matter—any alleged drug activity near the Bridge Motel or near North 38<sup>th</sup> and Aurora, although he did recall speaking with Deputy Keller sometime in mid-December about a potential drug issue at a NB bus stop at Aurora and Broad, several miles away. *Id.* at 5.<sup>32</sup> At the same time, however, phone records discovered late in the process seem to establish that Deputy Douglas placed a phone call from his cell to Schrimpsheer's cell—not on December 27, but rather on December 19, 2006—and that they spoke for four minutes. Exh. G-30 at 1.

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<sup>32</sup> In a follow-up IIU interview on May 3, 2007, Sgt. Corey specifically asked Grievant about his claim that Deputy Douglas had told him in a telephone conversation about drug-related problems at bus stops in the same location as indicated by Ms. Goldsberry. Deputy Schrimpsheer replied

Well I don't know what to tell you because I did have a conversation—that's really easy to check—check my phone records—but he told me two bus stops—he told me the one at the Bridge and he told me one at Aurora and Denny.

Exh. E-36 at 00388 (emphasis supplied).

At the hearing, Deputy Douglas conceded that he must have made the call on December 19, despite his earlier recollection that he had never spoken by telephone with Deputy Schrimpsheer. I note that the timing of that call on December 19 also coincides with a series of e-mails within the Metro Unit seeking information to respond to a citizen complaint about drug-related problems at a northbound bus stop at Aurora and Broad near the Mercer Street overpass. Exh. G-26.<sup>33</sup> In one of those e-mails on December 19, the day that Schrimpsheer received a call from the cell phone of Deputy Douglas, Major Carol Cummings asked Sgt. Lonnie Arnold, Deputy Douglas's supervisor, if he knew of any Metro Unit activity in that area, apparently looking for information so she could respond to the citizen inquiry. *Id.* at 1. The Union argues that it is reasonable to assume that Deputy Douglas called Deputy Schrimpsheer on December 19 as part of the chain of events put in motion by the citizen complaint and that Grievant simply mis-remembered the precise timing of the call he had received, i.e. that he thought the telephone conversation occurred on December 27 until he reviewed the cell phone records in preparation for the hearing in this matter. In other words, Deputy Schrimpsheer contends that he was simply mistaken about the timing of the telephone call.

After reviewing the record of the investigation, Sheriff Rahr disagreed, noting in her *Loudermill* response letter:

Deputy Douglas does not describe having any conversation with you at any time that remotely supports what you claim. The closest he could

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<sup>33</sup> It would not be surprising to me if these e-mails prompted the conversation between Douglas and Keller regarding Aurora and Broad. KCSO argues, on the other hand, that there is no evidence that Deputy Douglas ever saw the e-mails involved. While that is true, there is evidence that the Command Staff was seeking information from Deputy Douglas's supervisor, Sgt. Arnold. *See, e.g.* the following discussion in the text about an inquiry from Major Cummings to Sgt. Lonnie Arnold. This background raises the distinct possibility that Deputy Douglas, who personally travelled to the bus stop involved at the request of Sgt. Arnold to judge for himself whether there was a problem that needed to be addressed, might have contacted Deputies Schrimpsheer and Keller to see if they had any knowledge of drug activities or paraphernalia at bus stops on Aurora.

come was to recall a conversation with Deputy Keller about a bus stop in a different location.

Exh. E-36 at 00171 (emphasis in original). Even taking into consideration the telephone call on December 19, 2006, the Sheriff did not change her view that Deputy Schrimpsheer had lied, based on the specificity of Grievant's emphatically stated recollection of the timing of the call, as well as the fact that Deputy Douglas insisted that he had never identified any problem bus stops in the vicinity of the Bridge Motel. Tr. at 512.

In resolving this portion of the dispute, I am mindful that dishonesty during an internal investigation is often a career-ending event in the life of a law enforcement officer. Therefore, it is particularly important that KCSO be held to the standard of convincing proof of intentional deception. I agree that the specificity of Grievant's recollection of the *timing* of the call from Deputy Douglass, i.e. just a couple of hours earlier in the same day of his encounter with Brandy Goldsberry, is troubling. On the other hand, three months had elapsed between the events at issue and the time Sgt. Corey asked his questions about the detention of Ms. Goldsberry, and it is entirely possible that Deputy Schrimpsheer, three months later, simply was mistaken about precisely when the call occurred.

I find Deputy Schrimpsheer's responses to the specific questions asked in the May 3, 2007 interview consistent with that theory. That is, when Sgt. Corey asked Grievant to explain why Deputy Douglas would deny talking to him by telephone that day, as well as deny that he had given Grievant any information about drug problems in the area near Selover's arrest, Grievant's response was "that's really easy to check—check my cell phone records." Ex. E-36 at 00388. It seems to me that a person who had simply made up a telephone conversation would not have responded that way, nor would a person who

had knowingly misrepresented the *timing* of that conversation. The phone records are simply too easy to check.<sup>34</sup> Thus, I respectfully disagree with Sheriff Rahr's conclusion that Grievant was dishonest in describing a telephone conversation with Deputy Douglas—at least to the extent that conclusion rests on Grievant's misstatement as to the timing of the call.

That conclusion, however, does not necessarily preclude a finding that Deputy Schrimpscher was dishonest in describing the *substance* of the conversation, and Sheriff Rahr based her findings on that theory as well, i.e. she wrote "Deputy Douglas does not describe having any conversation with you at *any* time that remotely supports what you claim." KCSO argues strenuously that Deputy Douglas could not have given Grievant any information about drug activity near 38<sup>th</sup> and Aurora and/or the Bridge Motel because there was no such activity at that time known either to Deputy Douglas or to the Metro Unit. KCSO Brief at 39-40. But, in carefully reviewing the transcripts of the interviews, I note that Deputy Schrimpscher did not contend that Deputy Douglas had mentioned the Bridge Motel or North 38<sup>th</sup> and Aurora. Rather, in the March 27 interview, he said that he understood Brandy Goldsberry to be telling him that Selover was dealing heroin in the "same area" that Deputy Douglas had described to him earlier. Exh. E-36 at 00378; *see also, Id.* at 00380 ("Charles Douglas had called . . . and told the same—that you know—we're getting complaints about this bus stop—finding needles—some—some late night occupy—or passengers have seen drug use there—drug deals—so it was just like fortuitous and so I went back and I put two and two together . . ."). But what was

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<sup>34</sup> Although Sgt. Corey checked the relevant cell phone records, he limited his search to December 27, 2006. Given the certainty with which Grievant had contended that his conversation with Deputy Douglas had occurred that day, it is understandable that Sgt. Corey might not conduct a wider inquiry. The record of the December 19, 2006 call from Deputy Douglas's cell phone to Grievant's cell phone did not turn up until shortly before the hearing as a result of a document request by the Guild.

the "same area" Deputy Schrimpsheer was referring to? In the May 3 interview, when asked why Deputy Douglas had denied giving him any information about the Bridge Motel, Grievant said "he told me two bus stops—he told me the one at the Bridge and he told me one at Aurora and Denny." Exh. E-36 at 00388 (capitalization of "Bridge" in the original). And in another follow-up interview on June 14, 2007, Grievant told Sgt. Corey that Ms. Goldsberry had told him, referring to Selover, that "she wasn't sure what hotel but he always—he stays at the hotels along Aurora Ave." *Id.* at 00393.

KCSO seems to argue that when Grievant mentioned a bus stop "at the bridge," he meant "at the Bridge Motel" or at least somewhere near North 38<sup>th</sup> and Aurora. In context, however, it is entirely possible that Grievant understood Deputy Douglas to tell him that there were problems at one or more bus stops along Aurora Avenue, that Grievant thus "put two and two together" when Ms. Goldsberry told him that Selover dealt heroin out of hotels along Aurora Avenue, and that when he mentioned "the bridge," he meant the physical structure, not the Bridge Motel. I agree that the denial by Deputy Douglas that he was aware of any problem on Aurora between downtown and N. 85<sup>th</sup>—other than a citizen inquiry regarding a NB stop at Aurora and Broad—raises the possibility that Grievant was being untruthful when he told Sgt. Corey that Deputy Douglas had mentioned *two* problem bus stops, including one near "the bridge." I also agree that it is unlikely that Deputy Douglas would have mentioned two bus stops given that he had no information with respect to potential problems along that particular stretch of Aurora other than the area of Denny/Broad. Consequently, if Deputy Schrimpsheer had actually contended that Deputy Douglas specifically mentioned the Bridge Motel and/or 38<sup>th</sup> and Aurora, it would be reasonable to conclude that he had been dishonest. But what

Grievant actually said on that score was that both Goldsberry and Deputy Douglas had mentioned drug activities along Aurora, and while I agree that the specific contention that Douglas described a problem at a bus stop near the bridge justifies a suspicion of a lack of candor, by itself it simply does not exclude the possibility of innocent misunderstanding or miscommunication.

In sum, I find that the Department has not carried its burden to establish convincingly that Grievant lied about a telephone conversation with Deputy Douglas.

2. The Length of Time Ms. Goldsberry Was in Custody

a. Grievant's answers during the investigation and his testimony at the hearing

The second sustained finding of dishonesty relates to Grievant's description of the length of time he and Deputy Keller had Brandy Goldsberry in custody. The specific exchange at issue is contained in the transcript of the March 27 interview:

SGT: Okay. And how long did you guys keep her [Goldsberry] in custody getting this information, do you recall?

ACC: You know what—long enough to give her a ride over to Aurora and so—if I had to guess what—thirty minutes.

Exh. E-36 at 00380. In subsequent IIU interviews, however, Grievant described the circumstances of the arrest of Brandon Selover<sup>35</sup> and conceded that Ms. Goldsberry was physically present with the Deputies until Gervacio and Kennamer dropped her off at a nearby 7-11 store just “minutes” before the arrest at the Bridge Motel. Thus, Chief Fenton and Sheriff Rahr found Grievant's original description of having Goldsberry in

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<sup>35</sup> See, Exh. E-36 at 00393-00398 (IIU interview of June 14, 2007).

"custody" for approximately thirty minutes was "extraordinarily misleading." Exh. E-36 at 00171.<sup>36</sup>

At the hearing, Grievant seemed to attempt a semantic defense to justify his estimate that Ms. Goldsberry was in custody for just thirty minutes. That is, he drew a distinction between Goldsberry's time with the Deputies prior to her "un-arrest" (i.e., prior to her "release" after Deputy Keller spoke by telephone with Sgt. Laing) as opposed to the rest of her time with the Deputies while she was "voluntarily" assisting them to set up the arrest of Selover. Deputy Schrimpsheer seemed to be contending that prior to her release from handcuffs, Goldsberry was "in custody," but after that point she was a voluntary "cooperating witness" and thus not "in custody."

For example, when KCSO counsel asked Grievant on cross examination about his statement that Goldsberry was in custody for roughly thirty minutes, the following exchange occurred:

Q. And your testimony is that answer is truthful?

A. Yes.

Q. It's not misleading?

A. No, it's not misleading.

Q. That's because you interpreted at the time his reference to custody as sort of a qualifier?

A. That's correct.

Tr. at 956. Using Deputy Schrimpsheer's definition of "custody," as set forth in the testimony quoted above, Ms. Goldsberry was only "in custody" an estimated five to fifteen minutes at the Jack-in-the-Box. *See*, Tr. at 985; *see also*, Tr. at 996-97. Yet, when

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<sup>36</sup> As described previously in the "Facts" section, Ms. Goldsberry was actually with Deputies Schrimpsheer and Keller for approximately two-and-one-half hours, from 4:25 PM until the arrest of Selover at 6:52 PM.



asked by Sgt. Corey during the IIU investigation how long Brandy was “in custody,” Deputy Schrimpscher replied “*long enough to give her a ride over to Aurora* and so—if I had to guess what—thirty minutes.” Exh. E-36 at 00380 (emphasis supplied).

My concern here is not the discrepancy between Grievant’s estimate in his testimony at the hearing that Goldsberry was in “custody” for five to fifteen minutes, whereas in response to Sgt. Corey’s IIU interview question on March 27 he had estimated thirty minutes. I would not find that difference particularly significant under these circumstances, particularly when it is specifically identified as a “guess.” It is highly problematical in my view, however, that in responding to Sgt. Corey’s question Grievant included the transit time to Aurora as part of the time Goldsberry was “in custody.” If Deputy Schrimpscher considered Goldsberry still in “custody” while the Deputies drove her to Aurora, then Grievant’s theory about why his answer to Sgt. Corey’s question was truthful simply falls apart. That is so because, as noted, that answer was based on the distinction between the time Goldsberry was in handcuffs (and thus “detained”) and the time after Deputy Schrimpscher removed the cuffs, at which point he contended that she was a “voluntary” participant in the scheme to arrest Selover.

Moreover, if it were the case that Goldsberry was still “in custody” on her way to Aurora after being purportedly “un-arrested” at the Jack-in-the-Box, then it would seem to me, using Grievant’s own definition, that she was “in custody” the entire time she was with the Deputies.<sup>37</sup> Counsel for KCSO explored this inconsistency in the following exchange on cross:

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<sup>37</sup> In fact, KCSO argues, with considerable justification, that Goldsberry was in fact “in custody” the entire time because she was not free to leave before making good on her commitment to assist the Deputies in apprehending Selover. Grievant conceded in his testimony that had Goldsberry backed out of that commitment, she would have been promptly rearrested. In the end, however, this aspect of the case does

Q. When you answered your question though for Corey you included in your estimate the drive time back over to Aurora; is that correct?

A. Yes, sir.

Q. And that is because in your own mind you recognize that she was still in custody at that time; isn't that true?

A. I wasn't sure at the time. I didn't have the time—Having to go through all this in my head. He asked me that questions and I took a guess at it and that's what I answered. I didn't want to say—You know, I didn't want to be wrong. I wanted to guess on the long side to make sure, you know.

Q. *Well, if you didn't want to be wrong why not be more forthcoming and tell how long you guys were working with this person and don't get tripped up on the definition of custody?*

A. I don't underst—*It's not really a definition of custody.* I assume that's what he was asking so. You know, I gave him an estimation of time and I gave you an estimation of time.

Tr. at 985-86 (emphasis supplied).

I find this exchange significant as much for what Grievant does *not* say as for what he does. Grievant does not contend, for example, that he simply did not *remember* how long Goldsberry was actually with the Deputies. Rather, he parsed Sgt. Corey's question in a narrow—and internally inconsistent—way in an attempt to make his answer technically truthful,<sup>38</sup> while avoiding disclosure of the true length of time Ms. Goldsberry was present with the Deputies, as well as the scheme they were using her to accomplish. That attempt, in my view, was a deliberate failure to tell "the whole truth" and was a violation of Grievant's obligations as a subject of an IIU investigation. Therefore, I find

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not turn on the technical legal definition of "custody." Even accepting Deputy Schrimpsheer's stated definition, which he purportedly used in answering Sgt. Corey's question about how long Goldsberry was in custody, his answer was incorrect and highly misleading.

<sup>38</sup> And in the end, he even had to abandon the parsing of the word "custody" ("It's not really a definition of custody").

that the Department has convincingly established that Deputy Schrimpsheer dishonestly answered Sgt. Corey's question about how long Brandy Goldsberry was in custody on December 27, 2006.

b. Deputy Schrimpsheer's defenses

1). Sgt. Corey's questions were outside the scope of the A-150

According to Grievant, however, his approach to answering Sgt. Corey's question was consistent with the advice he had received from the Guild prior to his interviews, i.e. to "stick to the subject of the A-150."<sup>39</sup> Grievant understood the subject of the investigation as being limited to whether he had probable cause to detain Ms. Goldsberry and whether he had improperly released her after arresting her on an outstanding warrant. Any questions about the attempt to apprehend Selover, according to Grievant, fell outside the proper scope of that inquiry, and thus were improper.<sup>40</sup> In his testimony at the hearing, Grievant implied, at least, that he had no obligation to provide a broader factual context for his narrowly crafted answer about the length of time Ms. Goldsberry was in custody—even though the answer was seriously misleading without that context—because the length of Ms. Goldsberry's detention was not part of the allegations he had been notified were under investigation by IIU.<sup>41</sup>

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<sup>39</sup> The A-150 is the form used by the Department to inform a Deputy of the subject matter of the investigation. While it is true that Grievant was advised to focus on the matters contained in the A-150, he concedes that he was also advised by the Guild to be "forthcoming."

<sup>40</sup> Grievant agreed at the hearing, however, that neither he nor his Guild representative objected to the questions at the time. I suspect that is so, in large part, because as I observe in the following text, Deputy Schrimpsheer himself introduced the subject of the attempt to apprehend Selover—at least he started down that road—and he did so in response to a legitimate question from Sgt. Corey.

<sup>41</sup> It might be argued, however, that the question about how long Goldsberry was in custody was related, at least tangentially, to the issue of whether she had been improperly released after being arrested on an outstanding warrant.

Under many circumstances, I might find Grievant's objection to be well-taken. I note here, however, that the subject of working Goldsberry for information following her "release" was raised voluntarily by Grievant. Sgt. Corey, in the March 27 interview wrapped up his questions about the detention of Luke Bulyca, then shifted the subject to the detention of Goldsberry with the following questions:

SGT: And you have contact with this Brandy Graves. Brandy Goldsberry.

ACC: Okay, yeah.

SGT: How did that come about?

Exh. E-36 at 00377. In response to this extremely open-ended, but entirely proper question, Grievant gave a lengthy response describing the following series of events: his suspicions that the man he observed with Goldsberry near the Jack-in-the-Box was soliciting prostitutes at bus stops; that he asked Goldsberry for her name and eventually found out that she had an outstanding misdemeanor warrant; that he and Deputy Keller did not want to take her downtown on a "cheesy" warrant at the height of rush hour, assuming that she would be promptly released (thus it would be a waste of their time); that Goldsberry offered to provide the Deputies with information about a heroin dealer with an outstanding felony warrant in exchange for not arresting her; that Deputy Keller called Sgt. Laing and got permission to release Goldsberry;<sup>42</sup> that Grievant "put two and two together" based on earlier information he had received from Deputy Douglas about potential drug problems at a bus stop on Aurora; thus he had determined that Goldsberry was "giving me good information"; and that he offered to talk to others in the Department

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<sup>42</sup> Deputy Schrimpsheer's argument that Sgt. Corey's questions exceeded the scope of the A-150 would be much stronger if he had simply stopped at this point, but he continued to provide additional information.

who might be able to help Goldsberry with her warrant if the information she provided about Selover proved to be reliable.

At that point, Sgt. Corey asked his next question; “Okay. Let’s just back up again now, so you drive up to the Jack n [sic] the Box and you see this car, when do you kick Luke loose and when do you make contact?” Exh. E-36 at 00379. Again, this is an entirely proper question within the confines of the A-150 at issue. In fact, Sgt. Corey seems to be backing away, for the moment at least, from the subject of Goldsberry’s detention. Grievant responded that Keller covered him while he was engaging Goldsberry and the male subject, and that they then let Bulyca go when they took Goldsberry into custody. *Id.* After that explanation, Sgt. Corey returned to the subject of Goldsberry and the “reliable” information she was providing, asking whether Goldsberry had given him information about the same person that Charles Douglas had told him about. Grievant corrected Sgt. Corey’s misunderstanding of the situation: “Douglas doesn’t say the same person but the same location.” *Id.* After Sgt. Corey responded “okay,” Grievant went back to a slightly more detailed description of how he had received a phone call from Deputy Douglas just a couple of hours earlier about drug issues at “this bus stop on Aurora” and that he had decided on that basis that Goldsberry was a reliable informant. *Id.* at 00380. The critical question came next, i.e. “How long did you guys keep her in custody getting this information, do you recall?”

Given this sequence of events, it is hard for me to fault Sgt. Corey for asking a simple follow-up question based on information that Grievant had already volunteered—and that he had volunteered in response to a clearly appropriate question.<sup>43</sup> Perhaps Deputy Schrimpscher would have been justified in declining to answer questions about

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<sup>43</sup> As noted above, Sgt. Corey simply asked “How did [your contact with Goldsberry] come about?”

anything that happened after Keller received permission from Sgt. Laing to let Goldsberry go despite her outstanding warrant. That is a hypothetical matter I need not and do not decide. In this case, however, it was Deputy Schrimpsheer who brought Charles Douglas and drug problems on Aurora Avenue into the discussion. Having done so, in response to a perfectly legitimate question about how Grievant's contact with Goldsberry came about, Sgt. Corey was permitted to assume that Grievant was attempting to be responsive to his question, and thus he had a right to explore Grievant's answers with additional questions. Again, Deputy Schrimpsheer might or might not have been privileged to decline to answer the follow-up questions—or at least to inquire what relevance they had to the matters contained in the A-150—even though he is the one who introduced the subjects into the discussion. I cannot say, however, at least under these precise circumstances, that he was privileged to answer those questions untruthfully, nor that he was privileged to fail to provide a factual context for his answer about how long Ms. Goldsberry was in custody—a context that was necessary to prevent his answer from being substantially and materially misleading.

2). Deputy Schrimpsheer had no motive to conceal the attempt to arrest Selover

The Guild argues on Grievant's behalf that he had no motive to lie about the Goldsberry/Selover situation, and thus that I should attribute his misleading answer about the length of time Goldsberry was in custody to a failure of memory rather than to deliberate deception.<sup>44</sup> I will candidly admit that it is unclear to me why Deputy Schrimpsheer would attempt to avoid telling the whole truth about the events of December

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<sup>44</sup> As a preliminary matter, I note that accepting this argument would require me to believe that Deputy Schrimpsheer did not remember, at the time of the interview, that he had spent more than two hours with Ms. Goldsberry attempting to entice Selover into the open. For reasons that follow, I simply cannot believe that could be the case.

27.<sup>45</sup> In the end, however, I find that motive is somewhat irrelevant here. That is so because Deputy Schrimpsheer did not simply trip up on a single detail of his activities that evening. He either “forgot,” or chose not to disclose, most of what seems to have been a very significant series of events—an evening in which Deputies Schrimpsheer and Keller: 1) detained Ms. Goldsberry; 2) worked to “flip” her in exchange for a reportedly armed and dangerous heroin dealer with an outstanding felony warrant; 3) spent a couple of hours with Goldsberry in the patrol vehicle, during which time Deputy Keller had Goldsberry call Selover to set up a drug buy out in the open so the Deputies could take him into custody; 4) called in three other Metro Deputies, specifically telling one to “bring his shotgun”; 5) arrested a female companion of Selover (Ms. Goodvoice) when she appeared near the arranged meeting location instead of Selover himself; 6) turned Goldsberry loose once confirming through Goodvoice that Selover was in a room at the Bridge Motel for which she had a key that they took into their possession; 7) transited to the Bridge Motel where they observed Selover, either making contact with a car in the bus zone in front of the Motel or in the parking lot; 8) quickly called Deputies Kennamer and Gervacio and told them to “haul ass” back to the Motel because they had observed Selover quickly going up the stairs and entering a motel room; and 9) forcibly entered Selover’s room, which all the Deputies described as “disgusting” and littered with used

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<sup>45</sup> I do believe that the arrest of Selover was far removed from the scope of “Metro work” and not within the normal exceptions to that rule as I understand them, e.g. exceptions based on personal observation or a direct citizen report of a crime in progress. But Grievant disclaimed any concern on that score. Similarly, all of the Deputies involved in the raid on Selover’s motel room testified that they did not believe they were required to notify—let alone get permission from—an appropriate supervisor in order to undertake an arrest on an outstanding felony warrant, tangentially related at best to Metro concerns, in a motel room in a densely populated area. Personally, however, I found Sgt. Laing’s testimony on that issue compelling. The potential for adverse impact on the relationship between KCSO and the SPD would seem to me to be significant, and the Deputies had no way of knowing for sure whether there might be an undercover police officer involved with Selover, nor could they guarantee the safety of occupants of nearby motel rooms—and perhaps houses as well—if a fire erupted while taking a presumably “armed and dangerous” drug dealer into custody.

syringes, food wrappers, "goop," and blood; and 10) caught Selover flushing suspected heroin down the toilet, at which point they took him into custody.

As KCSO points out in its Brief, Deputy Schrimpsheer had little difficulty remembering the details of the first part of the evening, i.e. the interactions with Bulyca, Alvarez, and the initial detention of Goldsberry, each of which strike me as relatively mundane police work.<sup>46</sup> In the IIU interview of March 27, 2007, however, Deputy Schrimpsheer claims he did not remember several significant aspects of the evening's events. For example, Grievant told Sgt. Corey that he could not recall whether or not the arrest on a felony warrant they made that evening was based on the information provided by Goldsberry. Grievant's purported inability to recall whether Selover was arrested as a result of Goldsberry's information was significant to Sheriff Rahr, and it is significant to me as well. It is simply inconceivable to me that Deputy Schrimpsheer would not remember, even three months later, whether the person he arrested that evening (even if he could not remember the name) was the same person Brandy Goldsberry had offered up in order to avoid arrest on her warrant. Tr. at 968-72.

Similarly, Grievant testified that he could not recall, at the time of the interview, that Deputy Keller had arranged for Goldsberry to use Keller's Department cell phone to call Selover to set up a drug buy out in the open so Selover could be taken into custody with minimum danger to the officers and the public. Tr. at 1001. At the same time, however, Grievant seemed to concede at another point in his testimony that he *did*

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<sup>46</sup> In making this observation, I do not mean to minimize the potential threat to officer safety from Mr. Alvarez. In contrast to the later series of events involving Goldsberry and Selover, however, the initial interactions with Bulyca, Alvarez, and Goldsberry seem much more routine.



remember the calls, but did not mention them because Sgt. Corey failed to ask him a specific enough question to require him to disclose that fact:

Q. But you knew that there were three or more phone calls made by Keller and Goldsberry on Keller's phone. You were part of coordinating that effort. *You knew that when you answered this question. Isn't that true?*

A. *Yeah.* But he—I asked him. I assumed he was asking about the number itself.

Tr. at 998 (emphasis supplied). This testimony suggests a significant inconsistency in Grievant's testimony at the hearing. He seems to testify both that he had forgotten about the cell phone calls to Selover *and* that he remembered them, but did not disclose that fact in response to Sgt. Corey's question because it was not specific enough (or, perhaps, too specific). In any event, just as with the issue concerning whether or not Goldsberry's information led to the arrest of Selover, it is just as inconceivable to me that Deputy Schrimpsheer would be unable to recall, even though three months had elapsed, that he and Keller spent several hours with Goldsberry trying to set up a ruse to bring Selover into the open. The calls from Goldsberry, after all, constituted the central element in that ruse, i.e. having her use Keller's cell phone to call Selover to arrange a potential drug buy. Grievant conceded that he overheard at least a portion of one of those calls, and thus I find incredible Deputy Schrimpsheer's claim that at the time of the IIU interview he had forgotten the key step he and Keller had taken to arrest an armed and dangerous "bad dude" dealing heroin on Aurora Avenue and possibly in the University District as well.

Given these and similar discrepancies in Grievant's testimony, I find the lack of a clearly identifiable motive to conceal the truth an unconvincing defense.

c. conclusion

For the reasons set forth above, I find that Deputy Schrimpsheer was dishonest in stating that Ms. Goldsberry was in custody just long enough to take her to Aurora Avenue, approximately thirty minutes.

C. The Alleged "Policy and Procedure" Violations

With respect to the alleged policy violations in the detention of Luke Bulyca without properly verifying whether his warrant was extraditable, as well as the similar detention of Eric Ellis without verifying whether his "possible" DUI warrant actually existed, I find it unnecessary to deal with these issues in detail. That is so because the crux of the case, in terms of whether the discharge will stand, is Grievant's alleged dishonesty. KCSO readily conceded that the policy violations, if established, would not have justified discharge. Therefore, having found that Grievant was, in fact, less than fully truthful as charged in one of the findings sustained by Sheriff Rahr, the policy and procedure violations have essentially become insignificant.

I will observe, however, that I found the explanations of Deputies Keller and Schrimpsheer with respect to the detention of Luke Bulyca sufficient to preclude a finding, by convincing evidence, that they violated policy by detaining him without properly verifying his warrant. As with the other elements of this case, there is some reason for suspecting that the Deputies were lax in observing the rights of citizens—rights which, after all, apply equally to citizens suspected of criminal activities as well as to law-abiding members of the public. Deputy Schrimpsheer testified, without contradiction, however, that a warrant described as "non-ex" by dispatch still needs to be researched, and although there is no record that he or Deputy Keller actually contacted "Data" to

verify the nature of Bulyca's warrant, the evidence does not exclude the possibility that they turned to the Data channel and immediately heard "standby," then waited for a signal that Data was ready to take additional inquiries. I also note that in the meantime they had to deal with the Alvarez situation and then had to change locations for what seems to me to be legitimate officer safety reasons. Thus, I do not find convincing evidence that Deputies Schrimpsheer and Keller intentionally held Bulyca without attempting to verify the warrant.

The Ellis situation is similar. While Deputy Schrimpsheer clearly did not have proper authority to detain Mr. Ellis on a "possible" DUI warrant, and while the original information from Grievant and from DOC Officer Schemnitzer about who found the "possible warrant" was conflicting,<sup>47</sup> by the time of the hearing they agreed that Schemnitzer, either expressly or impliedly, had asked Deputy Schrimpsheer to assist him in the exercise of his powers as a Community Corrections Officer.<sup>48</sup> Those powers, the parties agree, substantially exceed the powers of a KCSO Deputy, at least for felons on active DOC supervision. That arrangement, i.e. that a DOC Officer may delegate his or her authority to an accompanying KCSO Deputy, may not comport with the Department's understanding of the terms of the arrangements between DOC and KCSO, but there is some evidence in the record in support of the proposition that Deputies and DOC Officers in the field interpret it that way. That evidence is sufficient to prevent a

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<sup>47</sup> Each said the other is the one who found the possible warrant.

<sup>48</sup> I agree that this new-found explanation for the events of the evening smacks of an after-the-fact justification given that neither Grievant nor Officer Schemnitzer had mentioned that theory prior to the hearing, but I do not find that suspicion sufficiently compelling to justify a conclusion that the two witnesses were being untruthful as opposed to having had their recollections refreshed subsequent to the IIU interviews.

finding, judged by the convincing evidence standard, that Grievant violated clear policies of the Department.

#### D. Due Process Issues; Appropriateness of the Penalty

The Guild argues that the IIU investigation of Grievant violated his due process rights because Sgt. Corey reached a conclusion that Deputy Schrimpsheer had lied, then filed an internal complaint against him on that basis, and finally acted both as investigator and decision-maker (at least in terms of making a recommendation to the Command Staff) on the substance of that complaint. The Guild adds that Sheriff Rahr had her own reasons for ignoring due process for Grievant and for Deputy Keller—Deputy Keller had a pending lawsuit against the Sheriff and others in the Command Staff at the time of this investigation. Supposedly, the Sheriff allowed Sgt. Corey's "biased" investigation to continue because she believed Keller should have been terminated as a result of earlier alleged misconduct,<sup>49</sup> and she allegedly wanted to be able to terminate him as a result of this investigation.

I have carefully considered these contentions, but I do not find them persuasive. With respect to Sgt. Corey's investigation, I note that Judge Terrence Carroll (Ret.), with more than a decade of experience as Internal Affairs Auditor for the Seattle Police Department, reviewed the investigatory files and judged the investigation fair.<sup>50</sup> As a result of my own independent review of the actions of Sgt. Corey, I concur. Clearly, it is possible for people of good faith to reach different conclusions based on the evidence, at

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<sup>49</sup> The Sheriff at the time, Dave Reichert, decided not to discharge Keller over allegations that he had participated in mistreatment of an informant.

<sup>50</sup> I also note that the record establishes that Sgt. Corey did not act entirely alone in this process. Rather, he consulted with other members of the IIU team, including Capt. Webster, head of IIU.

least with respect to some of the allegations. Many of my own conclusions differ from those articulated by Sgt. Corey, for example. Yet, even as I have determined that some of the allegations of misconduct by Deputy Schrimpscher were not supported by convincing evidence, I also find that in each case there was substantial evidence to support more than a reasonable suspicion that Grievant had been guilty of misconduct.<sup>51</sup>

The Guild's theory about Sheriff Rahr's bias is just that—a theory. It is unclear to me, however, why the Sheriff would want to “persecute” Deputy Schrimpscher on the basis of a lawsuit filed against her by Deputy Keller, particularly after Deputy Keller had resigned from KCSO. I also note that given the potential for a conflict of interest because of Keller's lawsuit, the Sheriff arranged for Chief Fenton, outside the normal chain of command, to review Sgt. Corey's recommendations in the first instance. I was impressed by Chief Fenton's fairness and thoughtfulness, and I find no reason in this record to doubt that she exercised her judgment with the utmost good faith (again, even though I ultimately disagreed with some of her conclusions). Additionally, in Sheriff Rahr's testimony, she articulated substantial reasons to be concerned about Deputy Schrimpscher's conduct and about his honesty, and at least with respect to his untruthful answer about how long Ms. Goldsberry was in custody, I agree. In sum, I cannot accept the Guild's contention that Deputy Schrimpscher was denied due process.

That leaves only the issue of the appropriateness of the penalty of discharge.

KCSO argues that I should not interfere with the Sheriff's choice of penalty, that to do so

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<sup>51</sup> To the extent the Guild's argument relies on questions asked—or not asked—by Sgt. Corey during the IIU interviews, it seems to me that it is easy to criticize an investigation after-the-fact. Even if I were ultimately to agree with the Guild's contention that Sgt. Corey should have structured the interviews of Grievant differently—a matter I do not find it necessary to decide—there is no doubt in my mind that Deputy Schrimpscher had every opportunity on March 27, 2007 to tell the truth about how long Ms. Goldsberry was in custody. Because that is the one sustained finding which I have found supported by convincing evidence, the other alleged defects in the IIU interview process would be immaterial to the outcome here.

would be to invade the sphere of reserved management discretion. In support of the proposition, KCSO cites the venerable *Stockham Pipe Fittings Co.* doctrine enunciated by Arbitrator Whitley McCoy in 1945. While I agree with that doctrine, I note that it finds its most persuasive application in those cases in which the Employer has successfully met its burden to establish each and every element of the alleged misconduct upon which the disciplinary penalty was based. When as here, however, one or more of the alleged instances of misconduct has not been convincingly established, it is entirely appropriate for the Arbitrator to evaluate whether the penalty imposed by the Employer fits the offense as proved by the record. Some level of deference may still be appropriate, to be sure, but not necessarily the level set forth in *Stockham Pipe Fittings*. For its part, the Guild contends that the discharge here is inconsistent with principles of just cause because of Deputy Schrimpscher's work record, because other officers who have been untruthful have not been terminated, and because principles of progressive discipline require a penalty short of discharge when a Grievant can reasonably be expected to reform his ways if given a chance at rehabilitation.

In evaluating the parties' respective contentions with respect to the appropriateness of the penalty, I note first that Deputy Schrimpscher's work history is not exemplary in every respect. In fact, some aspects of his performance resulted in his being placed on a performance improvement plan while working in the Metro Unit, a plan that followed him when he successfully asked to be transferred back to regular precinct work. Nevertheless, KCSO concedes that it was his dishonesty in responding to questions during an IIU investigation, not his technical performance, that drove the discipline here. It is clear that Grievant is a proactive law enforcement officer, and that officers of that

kind are a valuable asset to the Department—at least when they are able to operate within the bounds of the law and Department policy. Thus, with qualification, this element of the analysis somewhat favors Deputy Schrimpsheer.

On the other hand, Sheriff Rahr has made clear her expectation that KCSO Deputies be scrupulously honest. In fact, it is the first rule stated in the Preamble to the General Operations Manual. Exh. E-28 (“Be honest”). At the same time, however, the Guild points out that “sustained” allegations of dishonesty with respect to some other officers have not necessarily resulted in termination from KCSO. Exh. G-32 at 16-25. Thus, contends the Guild, Deputy Schrimpsheer has been a victim of disparate treatment in violation of one of the central principles of just cause—namely, that like offenses must be treated alike.

I have carefully reviewed the disciplinary matters relied upon by the Guild in support of this disparate treatment argument, and I find a critical distinction between those cases and the case at hand. Specifically, so far as I can tell none of those cases, each of which resulted in a suspension and/or demotion instead of discharge, involved dishonesty *during an IIU investigation*. It is one thing to engage in conduct that rightfully can be considered dishonest (such as accepting pay for off-duty work and KCSO work for the same hours). Exh. G-32 at 16-23. In my view, however, it is far more egregious to provide untruthful information in a formal IIU interview after having been specifically reminded of the obligation to tell the truth, as well as having been specifically informed that “failure to cooperate in this investigation could result in discipline up to and including employment termination.” Exh. E-36 at 00373 (March 27, 2007 interview). Nor

is there any doubt that Grievant understood the rules. He conceded in his testimony that he knew during Sgt. Corey's IIU interviews that "one lie was the end." Tr. at 927-28.<sup>52</sup>

Finally, I do not agree that discharge for a single instance of dishonesty during an IIU interview violates the principles of progressive discipline. Significant dishonesty is considered by most arbitrators to be one of the "capital offenses" for which an Employer may impose the ultimate penalty, even for a first offense. St. Antoine, ed. *The Common Law of the Workplace* § 6.7(b) (2<sup>nd</sup> Ed., BNA, 2005); *see also*, Brand & Biren, eds., *Discipline and Discharge in Arbitration* at 80-81; 299 *et seq.* (2<sup>nd</sup> Ed., BNA, 2008).<sup>53</sup> In essence, principles of potential rehabilitation fall by the wayside once a capital offense such as dishonesty has been convincingly established by the evidence. That is particularly so when the nature of the dishonesty involved has a demonstrable effect on the effectiveness of an employee's continued service, as it seems to me is unquestionably the case with a law enforcement officer who lies while responding to an internal investigation.

#### V. Conclusion

For the reasons set forth above, I find that KCSO had just cause to discharge Deputy James Schrimpscher for dishonesty during an IIU interview. Therefore, the grievance must be denied.

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<sup>52</sup> I have often heard this rule formulated in the law enforcement context as "you lie, you die."

<sup>53</sup> The Brand & Biren text notes, for example, that "a single occurrence of certain types of misconduct may warrant discharge notwithstanding that it is a first offense. There is general agreement that summary discharge may be warranted for severe misconduct, such as theft, *dishonesty*, serious threats, serious safety violations, striking a supervisor or similar types of serious misconduct . . . . *Id.* at 80 (emphasis supplied).




**AWARD**

Having carefully considered the evidence and argument in its entirety, I hereby render the following AWARD:

1. The King County Sheriff's Office had just cause to discharge Deputy James Schrimpscher for dishonesty during an IIU interview; therefore,
2. The grievance must be denied; and
3. Consistent with the terms of their Agreement (Article 12, Section 2), the parties shall bear the fees and expenses of the Arbitrator in equal proportion.

Dated this 19<sup>th</sup> day of July, 2009



Michael E. Cavanaugh, J.D.  
Arbitrator