

- Special Order S13-047 was issued on 12/10/2013. The subject of this Special Order was "Release of Non-Public Data and Employee Signature Required." In part, S13-047 stated, "Personnel are reminded that the release of data is governed by MPD policy and state and federal laws. The improper disclosure of data that is not public can interfere with the integrity of an investigation or obstruct the legal process. Therefore, employees must follow MPD procedure and comply with laws regarding the release of data. To emphasize the importance of protecting data, Chief Harteau will consider such disclosures to be extremely serious violations of MPD policy." It also stated, " This communication requires you to immediately review the following:

- 4-501 Confidential Department Records, Reports and Information
- 4-503 Access To Criminal Records
- 4-504 Legal Process Involving the Production or Inspection of Evidence or Records in Court
- 4-505 Inspection of Records and Reports by the Media or Public
- 4-505.01 Use of Victim Photographs/Videos
- 4-506 Openness in Government
- 5-101.01 Truthfulness
- 5-102.01 MN Law Enforcement Code of Ethics
- 7-116 Cellular Phones
- 10-423 Employee Cell Phones and Recording Devices Used to Capture Evidence
- 7-119 Social Networking
- City's Electronic Communication Policy"

Officer Goltart signed the acknowledgement for S13-047 on 12/12/2013.

Allegation # 3: It is alleged that Officer Goltart used his personal cell phone to capture electronic images of DWI arrestees during the chemical testing process 20 known times between 06/09/2014 and 10/24/2013. It is alleged that this evidence was not properly handled. If this allegation were found to be true, it would violate the following:

<p>10-423 EMPLOYEE CELL PHONES AND RECORDING DEVICES USED TO CAPTURE EVIDENCE</p> <p style="text-align: right;">(07/25/13)</p>
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<p>A. All electronic data that could be considered evidence, captured by an employee's personal or MPD-owned cell phone or other recording device, generated during on-duty or off-duty (part-time) employment while in a law enforcement capacity for the City of Minneapolis, is considered to be government data and the</p>
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property of MPD, and may only be distributed in accordance with department policy. (See 4-501 Confidential Department Records, Reports and Information.)

B. The mandatory protocol which outlines what shall occur during the course of transferring captured evidence from an employee's device to MPD custody is as follows:

1. The cell phone or other recording device containing evidentiary photos or recordings shall immediately be property inventoried. The minimum turnaround time for processing is 24 hours, possibly up to a week.

2. All content stored on the cell phone or other recording device which captured the evidentiary photos or recordings shall remain unchanged. Text messages, photos, emails or other data stored on the cell phone or recording device shall not be modified or deleted. This includes all content not related to the data captured as evidence.

3. The Crime Lab will process the evidence in the same manner all other phones or recording devices are handled. There are no exceptions.

4. "Processing" a phone or other recording device means a snapshot of all current data on the device will be obtained (not just an individual photo or recording), to include:

- Call history
- Text messages
- Contacts list
- All images
- All video
- All audio
- Deleted data files

5. Once processing is complete, the cell phone or recording device will be returned to the Property and Evidence Unit and a release from an investigator must be entered prior to retrieval by the employee.

6. A copy of all data outlined in #4 is provided to the court as part of evidentiary requests. This is standard procedure and personal or other unrelated data captured on phones or recording devices cannot be redacted or deleted.

7. The cell phone or recording device may be subpoenaed at a later time by defense attorneys to be subjected to another forensic analysis. The cell phone or recording device may be retained on a litigation hold for an extended period of time.

C. Photos emailed or texted by employees to City email or other devices will not meet standards required for admissibility in court.

Investigative Facts

- On Chem Test videos, Officer Goltart appears to be capturing twenty images or videos of DWI arrestees / defendants. This capturing and distributing was done with a cellular phone.
- The Minneapolis City Attorney's Office emailed Deputy Chief Travis Glampe on 05/29/2014 informing him that a defense attorney alleged that Officer Goltart was using a cell phone to take "cleavage shots" of his client during the DWI chem test process, and this defense attorney was trying to use the officer's alleged behavior to broker a better deal for his client. The defendant in this case was Abby Zimmerman, the arrest date was 11/20/2013, and the CCN is 13-386528. This defense attorney had stated his intention to demand production of any cell phone photos or video taken of his client by Officer Goltart. The City Attorney's Office stated that they have a duty to take steps to preserve any existing photos or video, and they asked that the Minneapolis Police Department assist in facilitating their preservation, if applicable, for the duration of the case.
- Inspector Loining and Lt. Chiodo met with Officer Goltart on 06/02/2014 regarding this matter, and Officer Goltart explained to them that he had recently upgraded his cell phone and did not have any of the images or recording in question.
- In his Internal Affairs interview, Officer Goltart:
 - 1) Admitted to using his personal cellular phone to capture images and/or videos between 20 and 25 times using the Snapchat application. He also confirmed that the 20 known instances seen on Chem Test videos were showing him capturing images or video with the Snapchat application.
 - 2) Stated that his personal cellular phone used to capture images and/or videos was a Verizon Samsung Galaxy S4.
 - 3) Stated that since capturing the known images and/or videos, he has replaced his cellular phone and no longer has any of these images and/or videos.
 - 4) Answered "I don't believe so, no." to the question, "Do you currently have any of these pictures, or images, or recordings that you captured during the chemical testing process on your home computer?"
 - 5) Admitted that he never mentioned any of the captured images or recordings of DWI defendants in his CAPRS reports.
- Also, in his Internal Affairs interview, Officer Goltart admitted to sending Snapchats to Officer Jeremy Foster of the Minneapolis Police Department. In a subsequent Internal Affairs interview with Officer Jeremy Foster, Officer Foster admitted to having received Snapchats from Officer Goltart and also to capturing screenshots of a few of these Snapchats. Officer Foster also stated that he has deleted all of these images from his cell phone.

I confirm that the information I provided in this case is true to the best of my knowledge.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'J. Walters', with a long horizontal stroke extending to the right.

Sgt. Jason Walters
Internal Affairs Unit

mpd

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Memorandum

To: File
CC: Chief Janeé Harteau
From: Chief Janeé Harteau
Date: 6/26/2015
Re: IAU Case #14-1115

After reviewing the case file in detail, I support the panel's recommendation of termination for the following reasons:

Code of Ethics – Use of Discretion

Officer Golgart was captured on video inappropriately taking photographs of at least 13 defendants while they were in his custody at the MPD Chem Test after being arrested by Officer Golgart. There was no law enforcement purpose for the photographs and when asked in a formal interview why he took them Officer Golgart replied, "I guess, uh, just kind of pass the time. I would see something that I thought was funny and send it to somebody." At least one of these incidents included what was described by the defendant as "cleavage shots."

Officer Golgart's actions are in direct conflict with the MN Law Enforcement Code of Ethics and the MPD's core values of commitment, integrity and transparency. In addition to a lack of a professional reason for taking photographs, there is never a legitimate reason to send to family and friends or display on Snapchat. Most disturbing is that Officer Golgart appeared to see entertainment value in capturing people on camera when they were at their most vulnerable.

Officer Golgart has received accolades and awards for his high number of DUI arrests however, I am now forced to question his motivation for his aggressive enforcement efforts, In addition, there is also no way of knowing at this time whether Officer Golgart took photos

June 26, 2015

and/or videos of anyone else while he was performing his duties as a Minneapolis Police Officer.

Finally, Officer Goltart's actions are not consistent with the values of the Minneapolis Police Department nor do they accurately reflect how a law enforcement professional should act. I have lost all confidence in his ability to serve the citizens of Minneapolis due to his poor judgment and his lack of integrity, as public trust is vital in our ability to effectively protect and serve.

CONFIDENTIAL



Police Department

Janeé L. Harteau
Chief of Police

350 South 5th Street - Room 130
Minneapolis, MN 55415-1389

612 673-2735
TTY 612 673-2157

July 2, 2015

James Goltart
3100 128th Avenue NE
Blaine, MN 55449

RE: IAU Case Number #14-11115
Corrected Discharge Notice

Mr. Goltart,

This letter is to inform you that there were clerical errors on the Discharge Form you received on June 29th, 2015 at the Minneapolis Police Department. The clerical errors occurred in the Internal Affairs Unit (IAU) when the form was generated.

The original Discharge Form read: "*Violation of the following Department Rules(s), Law(s), Ordinances(s), or Regulations(s): 5-105(15), 4-501, 10-423*".

The Discharge Form should have read: *Violation of the following Department Rules(s), Law(s), Ordinances(s), or Regulations(s): 5-102, 5-103, 4-501, 10-423*.

The clerical errors were corrected by IAU and a corrected Discharge Form was generated. The Chief was advised of the clerical error and directed Commander Granger to stamp her signature on the signature lines of the corrected Discharge Form. A copy of the corrected Discharge Form is enclosed and will replace the original in the IAU Case File. Please accept my apology for any inconvenience this may have caused.

Sincerely,

Cmdr. DeChristopher Granger
Internal Affairs Unit



CC: IAU Case File
Encl

In Re the Arbitration Between:

GR# 15-12

City of Minneapolis,

Employer,

and

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

Police Officers' Federation of Minneapolis,

Union.

Discharge of Goltart, Grievant.

- Pursuant to **Article 5** of the collective bargaining agreement effective January 1, 2012 through December 31, 2014, the parties have brought the above captioned matter to arbitration.
- James A. Lundberg was appointed by the parties as their neutral arbitrator.
- The grievance was submitted by letter dated July 1, 2015.
- The arbitration hearing was conducted on October 19, 2015.
- The parties agreed that there are no procedural issues before the arbitrator and the matter is properly before the arbitrator for a final and binding determination.
- Closing briefs were submitted on November 20, 2015 by e-mail transmission and the record was closed.

APPEARANCES:

FOR THE EMPLOYER

Trina R. Chernos
350 South 5th Street
Room 210
Minneapolis, MN 55415

FOR THE UNION

Dan Louismet
10 Second Street Northeast
Suite 206
Minneapolis, MN 55413

ISSUE:

Whether the Employer had just cause to discharge the grievant, Officer James Goltart, Jr. ?

If not, what is the proper remedy?

MINNEAPOLIS POLICE DEPARTMENT POLICIES AND PROCEDURES UPON

WHICH DISCHARGE IS BASED:

MPD Policy & Procedure #5-102 Code of Ethics

- *All sworn and civilian members of the department shall conduct themselves in a professional and ethical manner at all times and not engage in any on or off-duty conduct that would tarnish or offend the ethical standards of the department. Employees shall abide by the City's Ethics in Government Policy, Chapter 15.*

MPD Policy & Procedure #5-103 Use of Discretion

- *The police profession is one that requires officers to use considerable judgment and discretion in the performance of their daily duties. Officers have a large body of knowledge from Department policies and procedures, training, their own professional policy experience and the experiences of their fellow officers to guide them in exercising proper judgment and discretion in situations not specifically addressed by Department rules and regulations. In addition, officers must always adhere to the following principles in the course of their employment with the Minneapolis Police Department:*

- *POLICE ACTION – LEGALLY JUSTIFIED: officers must act within the limits of their authority as defined by law and judicial interpretation, thereby ensuring that the constitutional rights of individuals and the public are protected.*
- *EQUALITY OF ENFORCEMENT: Officers shall provide fair and impartial law enforcement to all citizens.*
- *LOYALTY: Officers shall be faithful to their oath of office, strive to uphold the principles of professional police service, and advance the mission of the Department.*

MPD Policy & Procedure #4-501 Confidential Department Records, Reports & Information

- *Numerous official files, documents, records, reports and information held by the MPD or in the custody or control of MPD employees are regarded as non-public and/or confidential. Employees shall not access, disclose or permit the disclosure or use of such files, documents, reports, records or information except as required in the performance of their official duties and consistent with State and Federal law related to data practices. If an employee is uncertain of the status of any document, he/she should consult with the MPD Data Practices Specialist or supervisor of the Records Information Unit.*

MPD Policy & Procedure #10-423 Employee Cellular Phones & Recording Devices

- *All electronic data that could be considered evidence, captured by an employee's personal or MPD owned cell phone or other recording device, generated during on-duty or off-duty (part time) employment while in a law*

enforcement capacity for the City of Minneapolis, is considered to be government data and property of MPD, and may only be distributed in accordance with department policy.

FACTUAL BACKGROUND:

The grievant, James Goltart, Jr. was employed as a Patrol Officer by the City of Minneapolis Police Department from September of 2006, until his discharge on June 29, 2015. The grievant was discharged following concerns raised by the Minneapolis City Attorney's Office that Officer Goltart was allegedly taking digital photos on his cell phone of suspects at the Department's Chemical Testing Unit and sending the digital photos to others by text message.

Two specific instances were cited by two different defense attorneys, wherein Officer Goltart took cell phone photos of their clients, during the chemical testing process¹. A review of the video recordings of the Chemical Testing Unit taken on October 24, 2013 and November 20, 2013 confirmed that Officer Goltart was directing his cell phone at suspects and appeared to be taking photographs of them. On November 20, 2013 Mr. Goltart appeared to be adjusting the photo screen on his cell phone to take a close up photo. The defense attorney for the suspect photographed on November 20, 2013 alleged that Officer Goltart was using his cell phone to take "cleavage shots" of the female suspect.

While the video of the two incidents identified by the City Attorney's Officer were being investigated, a third instance wherein Officer Goltart appeared to be taking photos of a DUI suspect was discovered by the investigator who was

¹ DUI suspects are brought to the Chemical Testing Unit, where they are given an

reviewing videos. Consequently, the investigator considered the possibility that Officer Goltart may have engaged in the conduct over a long period of time. The investigator reviewed every video taken in the three rooms that comprise the Chemical Testing Unit between June 9, 2014 and December 13, 2013. The investigator found eleven arrestees/defendants whose photos appeared to be taken by Officer Goltart, a total of sixteen times between June 9, 2014 and December 2013.² The scope of the investigation was not expanded, since a clear pattern of behavior was established. Officer Goltart appeared to have used his cell phone to photograph thirteen defendants twenty times between the date of the first complaint and June 9, 2014.

Officer Goltart was interviewed by the Internal Affairs Unit. He was asked about the apparent photographing of suspects with his cell phone in the Chemical Testing Unit. Officer Goltart admitted that he took digital photos of suspects in the Chemical Testing Unit, using an "APP" called "Snapchat". He also explained "Snapchat" to the interviewers.

"Snapchat" is a cell phone application that accepts a still picture or a video of a subject selected by the user. After the user takes the still photo or video, he/she selects a display "duration" from one to ten seconds, which is how long the image will appear on the user's phone and a phone to which the image has been transmitted. The digital image or video can be retained by either the person taking

² The video review was limited to six months simply because the system holds videos for six months without having to reload. The two instances initially brought to the attention of the Minneapolis Police Department by the City Attorney's Office occurred prior to December 13, 2013.

the photo or by the person receiving the photo. Whether the image that is transmitted will be retained by the recipient cannot be controlled by the sender.

Officer Goltart sent images to other Minneapolis Police Officers, persons who have no affiliation with any police department, including family members and friends, and to members of the Minnesota State Patrol. Officer Goltart testified that he never retained any of the images taken of suspects in the Chemical Testing Unit. He did not know whether any of the images he captured were retained by any of the people to whom he sent them.

The Internal Affairs Investigation determined the following facts, which were confirmed by testimony given in arbitration:

- There was no law enforcement need met by the photos taken by Officer Goltart.
- Officer Goltart distributed the photos to friends in law enforcement in and outside the department, family and civilian friends.
- Officer Goltart has never been trained to photograph arrestees.
- Officer Goltart has never been ordered to take pictures of arrestees with his his personal cell phone.
- Officer Goltart never mentioned photographic images taken on his cell phone in any official report.
- Officer Goltart does not believe that Snapchat is a secure, private way of exchanging photos or recordings.
- A data privacy statement stating that the images were confidential information did not accompany the images sent by Snapchat.

- Prior to June 2, 2014, when he met with Inspector Loining and Lieutenant Chiodo, Officer Golgart had not thought about the impact of transmitting the images to other police officers, his family and his friends.
- Officer Golgart was ordered to not take additional photos of arrestees on his cell phone and he confirmed that he followed the order.
- Officer Gogart had no knowledge of whether his taking photos of people in the Chemical Testing Unit affected any criminal proceedings.
- Officer Golgart did not know that he was on video in the Chemical Testing Unit.
- Officer Golgart manually starts the video recording in the Chemical Testing Unit, when he is assigned to work there.
- Officer Golgart has seen Administrative Announcement 12-019 regarding “using cell phones/recording devices to capture evidence” and signed an acknowledgement of receipt.
- Officer Golgart never used any other application other than Snapchat to distribute photos taken on his cell phone in the Chemical Testing Unit nor did he ever save photos on his phone.
- Officer Golgart distributed all photos he captured with Snapchat.

Office Golgart explained that he did not mean to bring discredit upon the police department by his conduct nor did he intend to demean the arrestees he photographed. When he was taking pictures on his cell phone in the Chemical

Testing Unit, Officer Goltart was not reflecting on policies and procedures. He explained that he was “more or less killing time.”³

Following the investigation and *Loudermill* hearing, the grievant, Officer Goltart, was discharged. The notice of discharge was effective June 29, 2015. The notice of discharge cited violations of Department Rules **5-105 (15), 4-501, 10-423** as the reason for discharge. By letter dated July 2, 2015 Officer Goltart was notified that a clerical error had been made in the discharge notice and the reason for discharge was violation of Department Rules **5-102, 5-103, 4-501** and **10-423**.

The Union grieved Officer Goltart’s discharge by letter dated July 1, 2015.

The parties were unable to resolve the dispute through the contractual grievance procedures and brought the dispute to arbitration for a final and binding determination.

SUMMARY OF EMPLOYER’S POSITION:

The Employer argues that it proved by sufficient evidence that the grievant engaged in the misconduct for which he was disciplined; a fair and even handed investigation was conducted by the Employer; the grievant received due process and the discipline was appropriate given the nature of the misconduct. Hence, there exists just cause to discharge the grievant and the grievance should be denied.

There is no dispute over whether the grievant took photos on his personal cell phone of detainees in the department’s Chemical Testing Unit. Video recordings captured repeated instances where Officer Goltart appeared to be taking photos of detainees with his cell phone. When asked, Officer Goltart admitted that the video

³ From *Loudermill* report page 4.

recordings captured him taking photos of detainees. Officer Goltart went on to explain that the digital images he captured of detainees were being transmitted to other police officers, family members and civilian friends using an application called "Snapchat." Officer Goltart's admissions together with the evidence that was accumulated establish that he engaged in the specific conduct for which he was disciplined.

The investigation into Officer Goltart's conduct was initiated in response to an inquiry made by the City Attorney's Office. The Internal Affairs Investigation was based upon video records that were reviewed for the purpose of determining whether the allegations brought to the City Attorney's Office were accurate. The review of video records was expanded because an additional incident was observed by the investigator. The investigator found multiple incidents of the conduct over a six-month period of time from video recordings that were readily available. The investigator's review of video recordings could have established that the grievant's misconduct was isolated or could have established a pattern. In this case, the pattern of misconduct was well established by the video recordings.

Officer Goltart appeared on the video recordings to be taking photos of detainees in the Chemical Testing Unit and he was asked about his conduct. Officer Goltart not only confirmed that he was taking photos of detainees with his personal cell phone but explained that he was using the "Snapchat" application and transmitting the images to other police officers, his family and civilian friends. The grievant in this case was asked about the alleged misconduct. Grievant not only confirmed that he engaged in the alleged misconduct, taking photos of detainees

with his cell phone, but he further explained that he published the photos using the “Snapchat” application. Nothing in the gathering of facts in the investigation suggests any bias or a failure to consider the grievant’s point of view.

The record of the Internal Affairs Investigation demonstrates that grievant was afforded due process. Officer Goltart had Union representation throughout the process. He was notified of the allegations made against him and he was given an opportunity to explain his actions in a *Loudermill* hearing. At the *Loudermill* hearing, when Officer Goltart was given an opportunity to present any mitigating circumstances, he acknowledged his mistakes and apologized for his misconduct. As mitigating factors, the Union offered prior awards and commendations received by the grievant. The Union did not allege a lack of due process.

The grievant had an excellent record of making DUI arrests and received commendations for his aggressive enforcement. However, his performance over the past eight years also includes thirty three (33) complaints, a ten (10) hour suspension, a forty (40) hour suspension,

13.43 - Personnel Data

Consequently, the grievant’s job overall performance is not a positive mitigating factor.

The level of discipline is appropriate in this situation due to the egregious nature of the misconduct. First, taking photographs of detainees and sending them to other police officers, the grievant’s family members, and the grievant’s civilian friends is simply not part of the job of a Police Officer. Taking and transmitting the photos served no law enforcement purpose. Officer Goltart was taking the photos

and sending them out on "Snapchat" simply to "kill time." The activity was outside the scope of his work and demeaned the detainees in his custody. The misconduct also potentially compromised his role as observer in the Chemical Testing Unit. While the grievant was focused on taking unnecessary photos and sending them to others, he was not paying attention to the safety of his work environment. He was a distracted police officer with a loaded firearm in a small room with intoxicated people. His distraction placed himself and other officers at risk. The grievant knew that the images he was sending could be copied and saved. Finally, the grievant engaged in the misconduct over an extended period of time. The videos examined by investigators prove that the grievant was taking photos and sending them out on "Snapchat" over a period of at least nine (9) months. Grievant's misconduct was not due to a simple lapse in judgment.

The egregious nature of the grievant's misconduct over an extended period of time is a sufficient basis for imposing the penalty of discharge on the grievant,

SUMMARY OF UNION'S POSITION:

The Union contends that Officer Goltart did not violate either Minneapolis Police Department Policy **10-423** or Minneapolis Police Department Policy **4-501**. The Union position is based upon a careful reading of both policies.

The cellular phone/recording device policy **MPD P/P 10-423** applies to "All electronic data **that could be considered evidence.**" According to Deputy Chief Glampe, one disturbing element of the grievant's conduct was the fact that images that had "no evidentiary value" were taken by the grievant. Since the images

contained “no evidentiary value” they did not fall within the scope of **MPD P/P 10-423**. In order for the policy to apply to the conduct, the images would have to be something “that could be considered evidence.”

MPD P/P 10-423 also requires that a cell phone or recording device actually “contain” the evidence. As described at length by Officer Goltart, the images he took were never saved on his cell phone. The images were momentarily captured and transmitted but Officer Goltart never saved an image that was taken in the Chemical Testing Unit.

The City did not prove that grievant violated **MPD P/P 10-423**. Hence, the alleged policy violation cannot form the basis for a just cause discharge.

Similarly, Officer Goltart’s conduct did not violate **MPD P/P 4-501**, as the momentary capturing of an image through Snapchat does not constitute a “file, document, record or information.” The Employer is attempting to extend the meaning of the policy, which is designed to address documents, written information and other tangible things to an electronic image that deletes in a matter of a few seconds. The grievant’s conduct is simply not within the scope of the policy and **MPD P/P 4-501** was not violated by the grievant.

The grievant was discharged for his taking of still photos and transmitting them using “Snapchat.” In a comparable situation a fellow Officer was given a thirty (30) day suspension for taking and transmitting a video of an arrestee in the Chemical Testing Unit. The two circumstances are very similar, although the Union contends that taking and transmitting a video is perhaps more egregious conduct.

Hence, the grievant's discipline was disparate and the discharge was too harsh a penalty.

The discipline imposed by the Employer in this case was simply too harsh. The grievant did violate **MPD P/P 5-102**, Code of Ethics and **MPD P/P 5-103** Use of Discretion but discharge is simply too harsh a penalty for the rule infractions. The conduct was characterized by the Employer as shocking but, in fact, the impact on detainees was minimal at best.

The grievant's record of enforcing the DUI laws is impressive but was not considered a mitigating factor. In this case, the Employer is losing a seasoned and capable Officer for conduct that had minimal, if any, impact upon the people whose images were captured and transmitted for a few seconds.

The Union asks that the grievant be reinstated and made whole in all respects.

OPINION:

The Union concedes that **MPD P/P 5-102** Code of Ethics and **MPD P/P 5-103** were violated but argues that the rule violations were minor and the discipline too harsh. At least to the extent that the grievant's conduct violated **MPD P/P 5-102** and **MPD P/P 5-103**, there is no dispute.

MPD P/P 10-423 applies to "*All electronic data that could be considered evidence, captured by an employee's personal or MPD-owned cell phone...*" The policy provides for speculation. Any photo taken in the Chemical Testing Unit by a licensed police officer, on duty and responsible for the safety and operation of the Unit "could be evidence". In this case, two defense attorneys representing different

clients thought the photos could be evidence. Presumably the photos “could” have been evidence in the defense of the two defendants against charges or in a claim raised by the defendants. The policy is not limited to photos that “are” or “will be” evidence but applies to any photo taken on a cell phone by an on duty officer that “could be” evidence. Hence, the grievant violated **MPD P/P 10-423**.

The photos taken by Officer Goltart were a “record” made by a Police Officer, while on duty in the Chemical Testing Unit. The cell phone in Officer Goltart’s custody and control recorded a scene in the Chemical Testing Unit, the recorded image is regarded as “non-public and/or confidential” based upon the plain meaning of **MPD P/P 10-423**. According to the policy, transmission of a non-public/or confidential record is prohibited! Officer Goltart transmitted records he took with his cell phone, while on duty in the Chemical Testing Unit. Hence, he also violated **MPD P/P 4-501**.

While the Union challenges whether **MPD P/P 10-423** and **MPD P/P 4-501** were violated because the photos taken were of no evidentiary value and the photos were deleted after a few seconds, the Union’s analysis undercuts the purpose of the rules. The rules are designed to protect against revelation of non-public/confidential information and create a method whereby evidence or recorded information that could be evidence will be preserved. Officer Goltart was on duty and in charge of the Chemical Testing site at the times he took photos of detainees in his custody. He failed to follow the appropriate protocol for preserving records created in the course of his official duties, he failed to protect non-public records he created, he failed to treat detained suspects in a professional manner and his “killing

time” using Snapchat photography was not legally justified conduct. The policies he violated include protections for evidence, protections for non-public records and protections for the rights and dignity of detained citizens. Officer Goltart violated all four of the policies cited in the notice of discharge.

The Union has not questioned whether the investigation into Officer Goltart’s conduct was thorough or fair nor has it questioned whether grievant received due process. A review of the reports and the *Loudermill* record reflect a fair and even handed investigation wherein the grievant was afforded due process.

The situation cited by the Union as evidence of disparate treatment is not comparable. The other Officer, who took a “Snapchat” video, self reported his misconduct. The other Officer had no disciplinary history, while Officer Goltart was disciplined a number of times for rule violations that resulted in very serious discipline. Additionally, the grievant engaged in the misconduct repeatedly over a period of at least nine months, while the other Officer engaged in the misconduct on one occasion. The grievant’s circumstances are different from those of the other Officer and the fact that the other Officer’s discipline was less severe does not support a finding of disparate treatment.

According to the grievant, a “Snapchat” image can be retained as a permanent record by taking a “screenshot” of the image. In fact, the grievant does not know whether any of the images he published, using “Snapchat”, were captured and retained by persons to whom he transmitted the images. The images transmitted were “non-public records” sent to persons not authorized to view them and an unauthorized person may have saved any or all of the images. While the Union

points out that the images only appear on a recipient's screen for a moment, it is clear that in that moment a screen shot can be taken and preserved. Frequent transmittal of "non-public" records by an on duty Police Officer over an extended period of time is a very serious offense. Similarly, the failure of an on duty Police Officer to preserve records that "could be evidence" is a very serious rule violation.

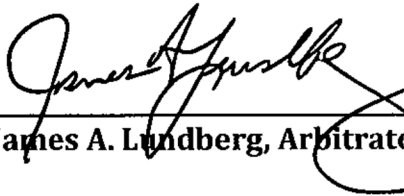
The inappropriate treatment of detainees for the purpose of "killing time", while the detainees were in custody and under the control of the grievant aggravates the situation.

The Employer determined that the grievant's misconduct was so egregious that discharge was the only appropriate remedy. In this case, the serious nature of the misconduct has been demonstrated. Because the grievant's employment history reflects a strong arrest record but also a very questionable disciplinary history, the grievant's overall work record does not support reduction of the level of discipline imposed on the grievant. The level of misconduct is appropriate given the nature of the misconduct and the grievance should be denied.

AWARD:

- 1. The Employer had just cause to discharge the grievant James Goltart, Jr.***
- 2. The grievance is hereby denied.***

Dated: December 15, 2015


James A. Lundberg, Arbitrator